



Interconnected Government: International Regulatory Cooperation in ASEAN

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Dedicated to the Memory of
Ponciano Intal Jr
1949 – 2019



Foreword

People know it when they see it, but it is hard to define the boundaries' is a description as apt for international regulatory cooperation (IRC) as it is for art, notes Derek Gill in the book, *Interconnected Government: International Regulatory Cooperation in ASEAN*. This may seem surprising for a practice that goes back to at least 1874 with the establishment of the Universal Postal Union and since then has become ever more deeply enmeshed at the bilateral, regional, and multilateral levels around the globe.

Yet, while the practice has been growing, questions remain as to what it actually is, what its different forms are, why do it, what is promoting it, what the barriers to it are, and how it is governed. These questions will be explored in this book, specifically intended as a guide to the Association of Southeast Asian Nations (ASEAN) Member States (AMS). To help understand perceptions of IRC within the AMS, this study used interviews and a survey of issues and attitudes relating to IRC in each AMS, along with New Zealand, to gain insight into its persuasiveness and pervasiveness.

But why do this study now? There is currently a lack of literature on and understanding of this issue in ASEAN. With more insight into the practice of IRC, we hope this study will promote IRC at a time when ASEAN is focused on good regulatory practice – of which IRC is a subset – as critical to achieving the goals of the ASEAN Economic Community Blueprint 2025. Within this blueprint, Element B7 'Effective, Efficient, Coherent and Responsive Regulations and Good Regulatory Practice', under the second characteristic of 'A Competitive, Innovative and Dynamic ASEAN', is key. While there are many drivers of IRC, good regulatory practice is seen as fundamental to reducing costs by streamlining regulations, thereby increasing trade and competitiveness.

The Economic Research Institute for ASEAN and East Asia (ERIA) has a long history of research in this field, and we are honoured to partner again with Derek Gill, Principal Economist at the New Zealand Institute of Economic Research, and co-editor of the 2016 two-volume series *The Development of Regulatory Management Systems in East Asia*. This book, like the 2016 series, was intended to be co-edited by Derek Gill along with Dr. Ponciano Intal, Jr. Tragically, Ponciano was taken from us in August 2019. ERIA, his family, friends, and colleagues still mourn his demise and miss his reassuring presence dearly. Like so many research projects and so much out-of-the-box thinking within ERIA and the ASEAN Community more broadly, this research project was inspired by Ponciano, and we would like to dedicate this book to his memory.

While it has been difficult to complete this book without Ponciano, I would like to give special thanks to Derek Gill who stepped in to take charge and complete this important study in a timely way, sharing insights we hope will inspire AMS to move forward in undertaking IRC.

This book was originally intended to contain individual country studies from each AMS, as well as New Zealand. While it has not been possible for us to proceed with this original plan, I am very pleased that this book can shed light on practices found in all AMS. I would therefore like to thank all contributors to this study whose case studies do not appear in this book. They are Prof. Ahmed M. Khalid and co-authors Dr. Nazlida Binti Muhammad and Dr. Masairol Bin Masri from Brunei Darussalam, Dr. Ngov Penghuy from Cambodia, Dr. Yose R. Damuri and co-author Mr. Dandy Rafitrandi from Indonesia, Dr. Leeber Leebouapao and co-author Dr. Aloun Phonvisay from the Lao People's Democratic Republic, Mr. Kyaw Soe Thein from Myanmar, Dr. Hank Lim Giok-Hay from Singapore, and Dr. Vo Tri Thanh from Viet Nam. My thanks also go to the authors of the country studies as presented in this book.

This project would not have succeeded without the support and close cooperation of the governments of the AMS, especially their support in implementing the survey on IRC.

Finally, I would like to thank the following within ERIA for their support in ensuring the completion of this study: Dr. Intan Murnira Ramli, Policy Fellow; Mr. Edo Setyadi, Research Associate; and Mr. Jeremy Gross, Director of Capacity Building.

May this book shed light on and improve understanding of IRC in ASEAN, and may it provide insight and inspiration for IRC to contribute to the development of an economically integrated and prosperous region.



Hidetoshi Nishimura

President, Economic Research Institute for ASEAN and East Asia

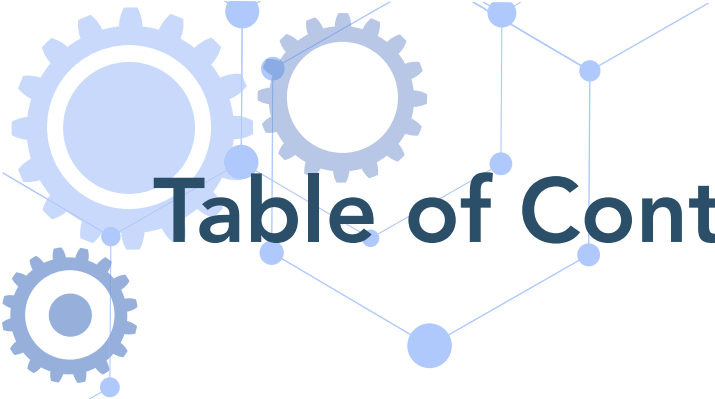


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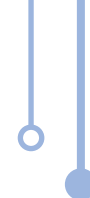
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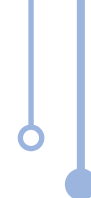


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Executive Summary

The last 40 years have seen rapid growth in international cooperation as governments increasingly work together.

Countries in East Asia have a history of actively engaging in international regulatory cooperation (IRC) of various types. This growing interdependence reflects a range of factors, including (i) mutual economic benefit through liberalised trade and investment, (ii) the strengthened ability of states to deliver regulation effectively, and (iii) geopolitical and strategic imperatives. However, existing studies focus on cooperation amongst developed economies, and little is known about IRC in East Asia as a whole.

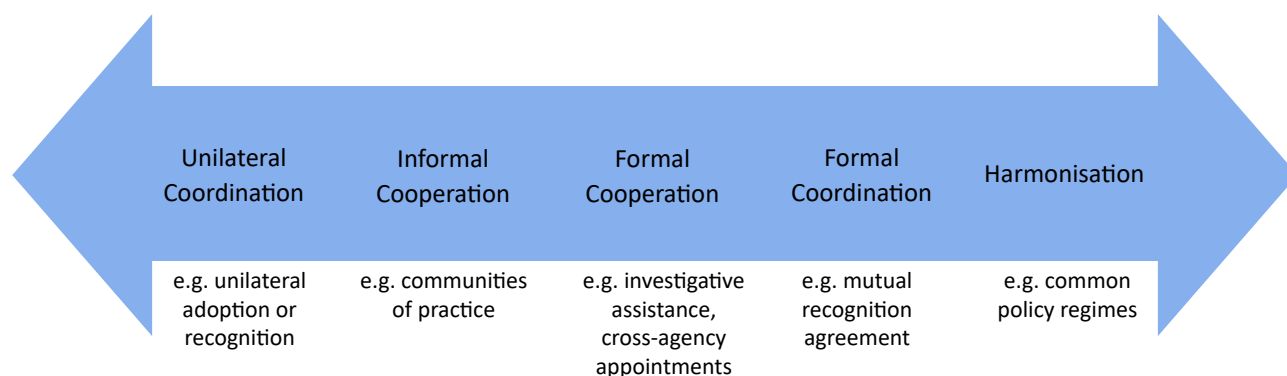
This research filled a gap by exploring the extent and willingness of governments to undertake international regulatory cooperation in East Asia.

This publication provides 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. The consistency of responses across these countries supports the reliability of the findings. However, two qualifications need to be highlighted. As a high-level analysis, the survey was not designed to capture what the average citizen thinks about IRC. Secondly, the research, conducted in 2018, pre-dates the outbreak of the coronavirus pandemic. As the analysis and interpretation of the findings were completed in early 2020, it was not possible to include an analysis of the pandemic's impact on IRC.

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 falls on a spectrum from autonomous regulation at one end to full regulatory integration at the other, as shown in Figure 1. In between are a range of intermediate points such as informal cooperation through communities of practice, explicit cooperation on policies and procedures, and formal coordination such as the ASEAN Mutual Recognition Agreement for Professional Services.

Figure 1. The International Regulatory Cooperation Continuum



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

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


- (i) 'Why' – the imperative for IRC;
- (ii) 'Who' – the number of actors (arrangements can be bilateral, subregional/regional, plurilateral, or multilateral);
- (iii) '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);
- (iv) 'How' – how intensive the cooperation is: informal networks of national regulators, mutual recognition agreements, and formal regulatory partnerships, amongst others; and
- (v) 'Which' – the structure of the legal form or other adopted mechanism.

(i) Why undertake international regulatory cooperation?

The drivers for undertaking IRC vary widely. Motives can include economic benefits, regulatory effectiveness, and geopolitical imperatives. 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.

(ii) 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, regional arrangements were the most common, followed by multilateral agreements. New Zealand has a long history of multilateral involvements as well as a close relationship with Australia. For New Zealand,



IRC is predominantly multilateral arrangements (through the United Nations system, for example) or bilateral arrangements (mainly with Australia).

(iii) What does international regulatory cooperation focus on?

IRC is narrowly focused on specific areas of common interest – the ‘sweet spot’ of mutual gain. A win-win situation can involve aspects of regulatory policy or regulatory practices such as enforcement. For example, the close cooperation between Australia and New Zealand on trans-Tasman competition law focuses on investigations and remedies for mergers and cartels. There is limited cooperation on other areas such as restrictive trade practices between the two competition authorities, despite similar policy settings. The development of IRC is highly path-dependent with quite different arrangements in apparently similar sectors.

(iv) How intensively do countries work together?

Countries often work together through networks, as informal regulator-to-regulator communities of practice are preferred over formal supranational or government-to-government agreements. In these transgovernmental networks, regulators engage directly with their foreign counterparts without involving their respective ministries of foreign affairs. Over time, these arrangements might become more formal as trust and engagement increase within the network.

(v) Which type of international regulatory cooperation is used?

Form follows function. As IRC is diverse, flexible, and pragmatic, IRC practitioners take a ‘horses for courses’ approach to choice of structure, 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. The survey 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 research also focused on the factors that facilitate IRC, the barriers that impair it, how IRC is governed, and the direction of IRC in the future.

What are the enablers of international regulatory cooperation?

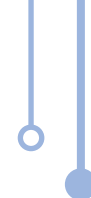
IRC programmes have several common success factors. In particular, the crafting of successful IRC involves (i) all participants seeing the IRC programme as a win-win; (ii) the programme design being clearly focused on what to cooperate on for mutual gain, by starting small and growing forward; (iii) aligning the intensity of IRC with what is required, and choosing the least demanding type of IRC required to get the tasks completed; (iv) keeping tabs on the key drivers (hard factors such as membership, leadership, and secretariat are important, but the soft factors of relationships, trust, and sustained commitment are critical); and (v) facilitating enablers (including legal mandates, the addressing of power imbalances, resourcing, capability, and stakeholder management). Thus, a complex array of factors influences the success of IRC initiatives.

What are the barriers to international regulatory cooperation?

The main potential barriers are (i) differences in capability as trust in other countries' systems is uneven, (ii) legal obstacles to IRC (e.g. restrictions on information sharing and confidentiality rules), (iii) the increased administrative burden of IRC, and (iv) concerns about the lack of regulatory flexibility and loss of sovereignty arising from IRC. Paradoxically, while there were concerns about the loss of regulatory sovereignty, there was strong support for the view that IRC strengthens states' capacity to deliver effective regulation. This is consistent with the view that, although the political optics of IRC arrangements may be that regulatory sovereignty is eroded *de jure*, in practice *de facto* regulatory sovereignty may actually be increased. This is because cooperation may enhance the capability and capacity of regulatory agencies to exercise their regulatory powers effectively.

How is international regulatory cooperation governed?

There was limited central oversight of IRC. In no country did the role of the lead agency with responsibility for GRP and the regulatory management system have explicit oversight of IRC. Across almost all of the countries, it is clear that there are two common themes in the governance of IRC: (i) for formal treaties and agreements, most countries reported that the ministry responsible for foreign affairs had an oversight role; and (ii) for informal transgovernmental networks, responsibility for IRC generally lies solely with the relevant individual line ministry or public agency.



What is the future for international regulatory cooperation in East Asia?

The growth of IRC since the 1980s has been driven by the combined impact of global economic trends, technological change, and geopolitical developments. Looking ahead beyond the coronavirus pandemic, the first two of these drivers will continue to operate in the next decade:

- (i) global economic trends include the growth in global supply chains, globalisation, the growth of multinational corporations, and pressure by business to reduce technical barriers to trade; and
- (ii) technology driving the Fourth Industrial Revolution from the combination of digitisation, artificial intelligence, cloud technology, big data analytics, and high-speed mobile.

However, on the geopolitical side, there is significant potential for discontinuity with IRC, given the slowdown in international economic integration, the ongoing United States–China rivalry, loss of American leadership, and loss of momentum in multilateral initiatives. As a result, there will be less impetus for IRC from the multilateral agreements that provide for the widening and deepening of regulatory cooperation.

In East Asia, several overlapping regional trade and regulatory initiatives might help drive the future of IRC in the region, including the AEC Blueprint 2025, regulatory provisions in the free trade agreements between ASEAN and other countries in the region, the Asia–Pacific Economic Cooperation and its Agenda on Structural Reform, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, and the Regional Comprehensive Economic Partnership. However, tensions between the United States and China will inevitably spill over into engagement between second-tier nations making collective agreements harder to achieve in regional forums like ASEAN and the Asia–Pacific Economic Cooperation.

There is an old Danish proverb that ‘it is difficult to make forecasts, especially about the future’. The research participants developed some speculative propositions about how IRC may play out in the future in East Asia. In the box below these are organised under the five key IRC questions of ‘why’, ‘who’, ‘how’, ‘what’, and ‘which’.

Box 1. Future of International Regulatory Cooperation in ASEAN

Why undertake IRC?	To gain economic benefits, and improve regulatory effectiveness, and achieving geo-political imperatives such as the AEC Blueprint 2025 for AMS
Who will countries cooperate with?	Less multilateral and more regional and plurilateral arrangements, the latter built on coalitions of the willing
How intensively will countries cooperate?	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
What will they cooperate on?	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 ‘greenfields’ areas, such as the fourth Industrial Revolution for example, than on ‘brownfields’ areas with more entrenched regulatory regimes.
Which structure will they use?	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: Author.

CHAPTER 1

Interconnected Government: An Introduction to International Regulatory Cooperation in ASEAN and New Zealand

Derek Gill and Edo Setyadi

1. Introduction

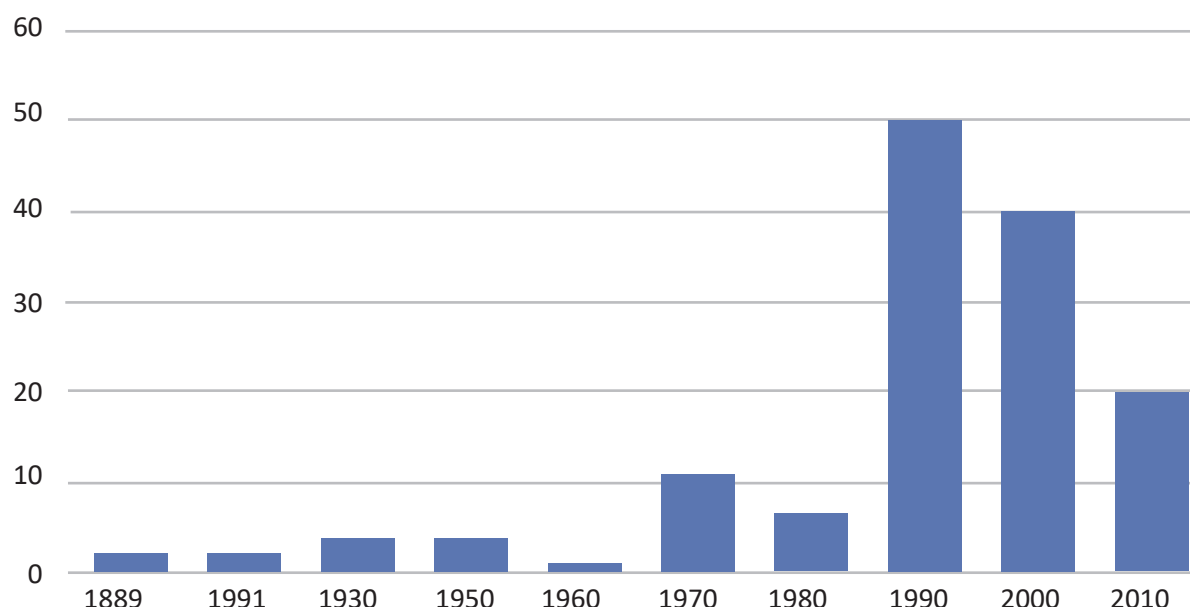
Since 1960, there has been rapid growth in international cooperation with governments working more closely together. Growing interdependence reflects a range of factors. These include economic drivers, such as the growth of global supply chains driven by globalisation and the rise of multinational corporations, alongside pressures to reduce barriers to trade. There are also technological developments, such as digitisation and the emergence of the internet, as well as geopolitical imperatives, such as the development of regional trading blocs (e.g. the European Union [EU]).

This growth has led to the proposition that what is emerging in international relations is a new style of global governance, known as international regulatory cooperation (IRC) (see Slaughter, 2004). This involves judges and legislators as well as regulators working directly with their foreign counterparts through sector- or region-specific networks. Officials are engaging on a wide range of issues, from health services to environmental issues and finance, as they exchange information and share their experience in policies, law, and regulatory enforcement. These engagements take place through a bewilderingly wide array of channels. In addition to traditional formal governmental agreements ('intergovernmental'), IRC can include supranational agreements (e.g. the EU and other deep regional integration agreements), as well as regulator-to-regulator agreements ('transgovernmental'). However, these transgovernmental networks are not unique. IRC is merely a special case of a more general type of cross-governmental cooperation conducted at a range of levels of government: local, subnational, national, regional, and international.

What is striking about these transgovernmental network arrangements is that they are less visible and more under-the-radar than more traditional intergovernmental state-to-state relationships or supranational agreements, which are mediated through formal treaties, international organisations, and foreign affairs ministries. Anne-Marie Slaughter suggested that regulators are becoming the 'new diplomats', 'on the front lines of issues that were once the exclusive preserve of domestic policy, but that now cannot be resolved by national authorities alone' (Slaughter, 2004: 63).

Cooperation amongst regulators is longstanding as regulators have been working across jurisdictional boundaries for well over a century. The International Telecommunication Union, established as the International Telegraph Union in 1865, was formed 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 IRC. Figure 1.1 draws on the Organisation for Economic Co-operation and Development (OECD) dataset of regulator-to-regulator forums, which the OECD terms transgovernmental networks (TGN). The figure shows that, while IRC is not new, IRC networks have grown rapidly in recent decades.

Figure 1.1. New International Regulatory Cooperation Networks Established Each Decade



Source: Abbott, K., C. Kauffmann, and J.-R. Lee. (2018)), 'The Contribution of Trans Governmental Networks of Regulators to International Regulatory Co-operation', Organisation for Economic Co-operation and Development (OECD) Regulatory Policy Working Papers, No. 10, Paris: OECD; drawing on the OECD database of 144 regulator networks where the establishment date is known.

One factor leading to the growth of networks since the 1970s has been the formation of the EU, which resulted in a host of intra-EU arrangements. In response, non-EU countries such as the United States (US) and Canada developed IRC arrangements of their own so they could engage with their regulatory counterparts in the EU. However, the fastest growth came in the 1990s and 2000s, reflecting ongoing demand-pull pressure from globalisation and supply push from enhancements in information and communications technology.¹

The OECD database of 144 regulator networks (TGNs) consists of 57 multilateral and 87 regional TGNs. Europe dominates the regional networks with 40 bodies operating in the EU. 'Asia', 'Asian', or 'Asia-Pacific' appears in the name of just 10 regional networks. Hoekman and Mavroidis (2015) describe the spectrum of IRC as 'frequent' amongst high-income countries, while south-to-south IRC is 'limited to date'.

Analysis of IRC amongst developed economies is still limited. However, a noteworthy article by Weiner and Alemanno (2015) provides case studies of IRC between the US and the EU, the US and Canada, and Australia and New Zealand. Less is known, however, about how IRC is working between developed and developing countries or amongst developing countries, with limited focus on Asia and the Pacific region as a whole. The form, nature, and scale of such cooperation is not well documented, and there is little publicly available information about how well different mechanisms are working in the Association of Southeast Asian Nations (ASEAN) or East Asian context. The research presented in this publication is designed to address that gap in understanding.

¹ As the dataset used in Figure 1.1 does not cover the full decade since 2010, the number of new IRC networks established in the latest decade (26) is not strictly comparable with the level in the previous 2 decades.

2. Focus of the Study

The purpose of the ERIA study is to explore the extent and enablers of the development of IRC in the East Asian region. This chapter sets the scene for the research by defining what IRC is and why IRC is important in the context of the Asian Economic Community (AEC) 2025. It then outlines the research questions and the research approach. This provides the context for subsequent chapters, which present the findings of research on IRC in the East Asia region, offer some reflections on future directions of IRC, and conclude with practitioners' insights into the craft of IRC.

2.1. Defining International Regulatory Cooperation

The US Chamber of Commerce defines IRC as, '...any interaction between regulators from different countries that results in some form of cooperation, with the view towards increasing efficiency, while achieving the desired regulatory outcome' (US Chamber of Commerce, 2017: 2). The OECD (2013) defines IRC as, 'any agreement or organizational arrangement, formal or informal, between countries to promote some form of cooperation in the design, monitoring, enforcement, or ex post management of regulation'. While the definitions vary, the essence of IRC is the development of engagement, mutual understanding, and cooperation between national and international regulators.²

This definition begs the question as to what regulators and regulations actually are, something on which there is no scholarly agreement.³ Regulation, used here in the broad sense of the verb 'to regulate', means the use of legal instruments – primary laws, secondary rules, tertiary guidance, and codes – to give effect to a government policy intervention. As this research project focused on cooperation amongst central government regulators, international cooperation with subnational government bodies or private regulators such as self-regulators or private standard setters was out of scope. The title of the publication *Interconnected Government* reflects the recognition that national regulators simultaneously cooperate on multiple levels: with regulators in local, regional, and district governments; with other regulators in their own government; with their international counterparts; and with international organisations.

Table 1.1 uses the OECD's classification of IRC structures to illustrate examples of IRC by national regulators involving some or all ASEAN countries.

IRC is an integral part of good regulatory practice (GRP) because consideration needs to be given to issues of consistency with international norms and models. However, IRC is like art: people know it when they see it, but it is hard to define the boundaries. Because it is not bounded, measurement is not easy. While it is generally agreed that there is a spectrum from autonomous regulation at one end to full regulatory integration at the other, there is no agreed taxonomy or classification system in the literature for the intermediate points in between.

² Some jurisdictions, including Canada, the US, and Mexico, have a narrower conception of IRC based on the World Trade Organization Technical Barriers to Trade Agreement, which aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade. In this volume we use IRC in a broader sense.

³ See the discussion in Victoria University of Wellington, Regulatory Reform Toolkit. <https://www.regulatorytoolkit.ac.nz/about-regulation/definitions>

Table 1.1. Examples of International Regulatory Cooperation Involving the Association of Southeast Asian Nations

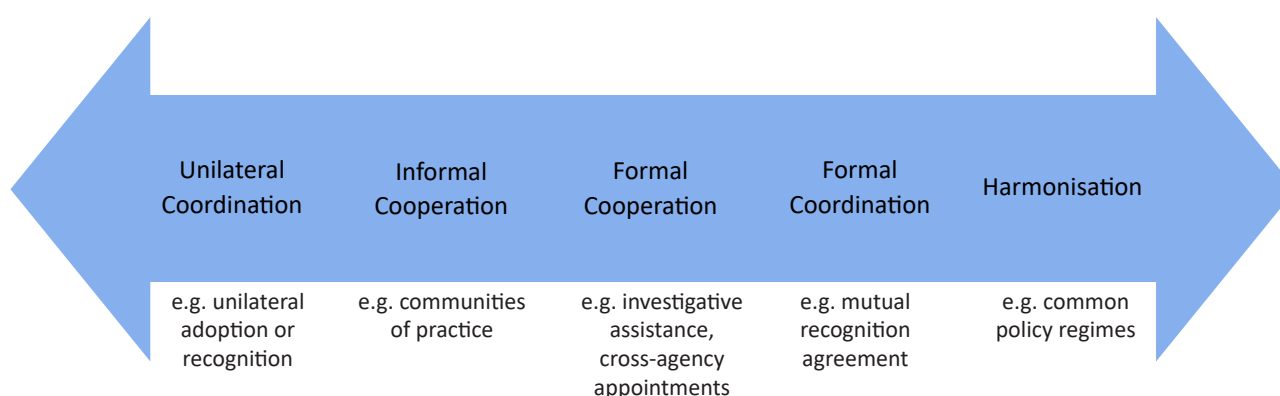
Type of mechanism	Illustrative examples
Harmonisation via supranational bodies	Basil Committee for Banking Supervision International Accounting Standards Board
Specific negotiated agreements (treaties and conventions)	ASEAN Trade in Goods Agreement, ASEAN Framework Agreement on Services
Regulatory partnership 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, MRA = mutual recognition agreement.

Sources: Various including Organisation for Economic Co-operation and Development (2013), International Regulatory Co-operation: Addressing Global Challenges. Paris: Organisation for Economic Co-operation and Development Publishing.

IRC comes in a variety of shapes and sizes, as shown in Figure 1.2. The typology in Figure 1.2 below shows how IRC can take many positions along a spectrum. At one end of the continuum is unilateral recognition through the adoption of another country's regulatory settings or standards, and at the other harmonisation through convergence of policies and practices. Beyond harmonisation is full integration through common rules for joint institutions. In between are a range of intermediate points such as cooperation through communities of practice, dialogue and information sharing, explicit cooperation on policies and procedures, and coordination through mutual recognition agreements.

Figure 1.2. The International Regulatory Cooperation Continuum



Source: Gill D. (2018), based on the Ministry of Business, Innovation and Employment International Regulatory Cooperation Toolkit (forthcoming). 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.

2.2. The Dimensions of International Regulatory Cooperation

There are multiple dimensions of IRC. When entering into IRC arrangements, countries need to make decisions at five levels: (i) why undertake IRC, (ii) whom to cooperate with, (iii) how intensively to cooperate, (iv) what to cooperate on, and (v) which structure to use. Thus, IRC can take a bewildering variety of forms, based on the following variables:

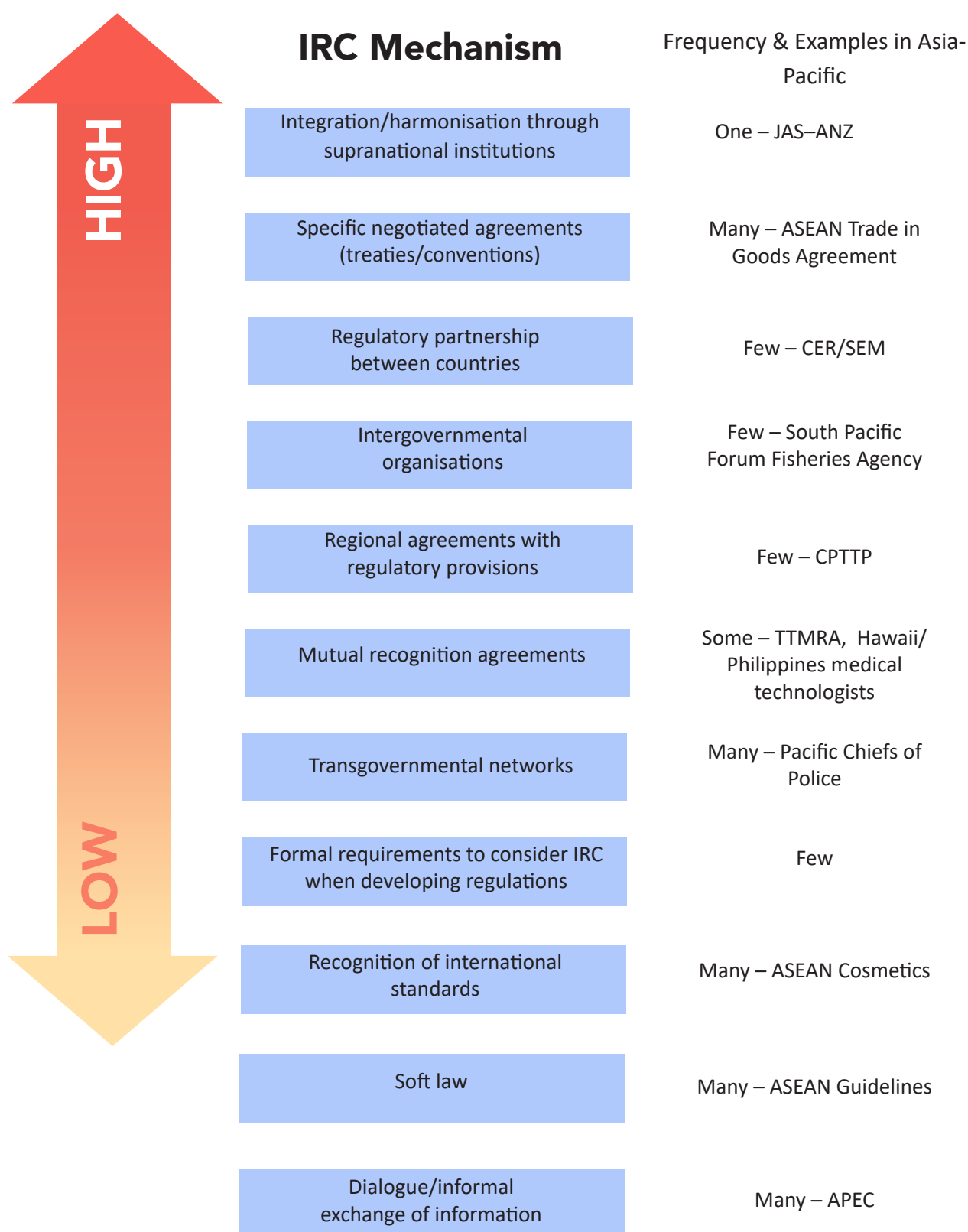
- (i) 'why' – the different imperatives for IRC (economic benefits, regulatory effectiveness, and geopolitical considerations);
- (ii) 'who' – the number of actors (arrangements can be bilateral, subregional/regional, plurilateral, or multilateral);
- (iii) 'how' – how intensive the cooperation is (e.g. networks of national regulators, mutual recognition agreements, and formal regulatory partnerships);
- (iv) 'what' – what areas the cooperation focuses on (regulatory policies [rule making], regulatory practices [interpreting, applying, and enforcing rules], or regulatory organisational management [supporting rules administration]; and
- (v) 'which' – the legal form or other mechanism adopted.

To illustrate the latter, some IRC is purely informal. For example, the Asia-Pacific Economic Cooperation is not a legal entity, but merely an agreement between the economies involved to participate. IRC can also operate under formal legal structures, such as regulatory provisions in free trade agreements, supranational arrangements (such as the EU), and agreements between regulators. For example, Petrie's 2014 examination of more than 100 IRC agreements on competition policy found that intergovernmental agreements (e.g. competition policy chapters in regional trade agreements) were the most common form, followed by transgovernmental agreements (e.g. regulator-to-regulator-only agreements), while supranational agreements (e.g. the EU) were relatively rare. The 'depth of cooperation', defined as the extent of constraint on the autonomy of states to prescribe, adjudicate, and enforce rules, was greater under more formal supranational and intergovernmental agreements than under transgovernmental agreements

The OECD has developed a classification based on the structural mechanisms, as shown in Figure 1.3. The left side shows the ladder of mechanisms ranging from the most to the least formal, while the right side lists some IRC examples from the region. The authors have made an educated guess about the frequency of these arrangements, and provided some examples from the region.

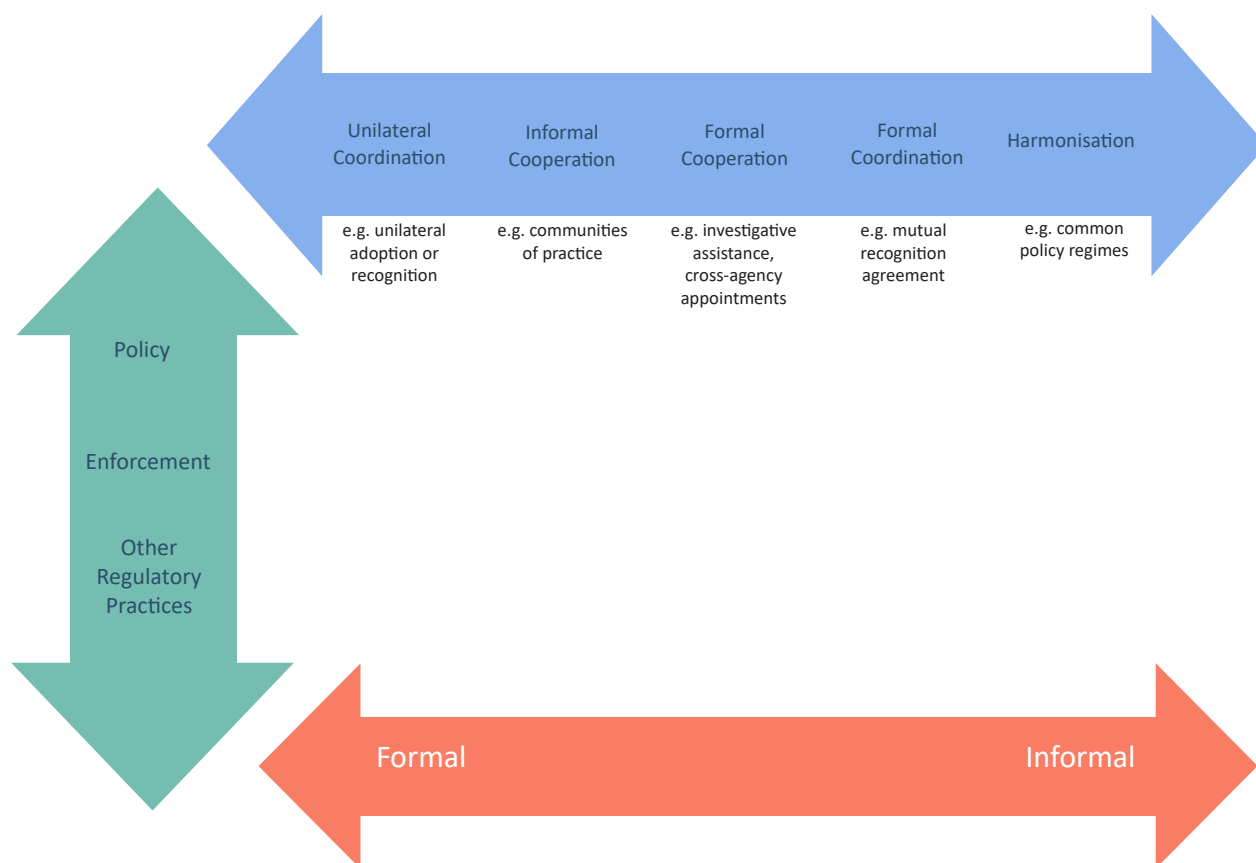
The OECD schema highlights the distinction between formal agreements involving supranational and intergovernmental cooperation 'at the top'; and more informal, transgovernmental agency-to-agency cooperation arrangements (or networks) lower down. There is a plethora of informal networks in the region where regulators such as censorship authorities share experiences and develop common practices. By contrast, there are few examples of harmonisation through supranational bodies.

Figure 1.3. The Organisation for Economic Co-operation and Development's International Regulatory Cooperation Ladder



APEC = Asia-Pacific Economic Cooperation, ASEAN = Association of Southeast Asian Nations, CER-SEM = New Zealand-Australia Closer Economic Relations-Single Economic Market, IRC = international regulatory cooperation, JAS-ANZ = Joint Accreditation System of Australia and New Zealand, CPTPP = Comprehensive and Progressive Agreement for Trans-Pacific Partnership, TTMRA = Trans-Tasman Mutual Recognition Act.
Source: Gill, D. (2016), 'Asia and Europe Regulatory Connectivity and Coherence', in A. Prakash (ed.) Asia-Europe Connectivity Vision 2025: Challenges and Opportunities. Jakarta: Economic Research Institute for ASEAN and East Asia.

Figure 1.4. International Regulatory Cooperation Varies by Intensity and Focus



Source: Gill, D. (2018), 'International Regulatory Cooperation Case Studies and Lesson Learnt'. Report to the Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. Wellington: New Zealand Institute of Economic Research; based on Petrie, M. (2009), 'Jurisdictional Integration: How Economic Globalisation Is Changing State Sovereignty', Victoria University <https://researcharchive.vuw.ac.nz/xmlui/handle/10063/893> (accessed 17 April 2020) (Figure 3, p.75).

Alternative classifications have been devised based on the depth of cooperation: regulatory policies (making rules), regulatory enforcement practices (interpreting, applying, and enforcing rules), and other regulatory organisational management practices (supporting rules administration).⁴ Such a schema is shown in Figure 1.4.

Figure 1.4 builds on the continuum of the ways to cooperate (in Figure 1.2) and adds what the focus of IRC is. The vertical axis, like the horizontal one, is a continuum. The vertical axis highlights that the focus of IRC can be centred on different aspects: on regulatory policies (making rules), regulatory enforcement practices (interpreting, applying, and enforcing rules), or other regulatory organisational management practices (supporting rules administration). While the precise mix of regulatory functions undertaken varies across regulators, most carry out some of the following activities: setting standards; education and assistance; entry and exit control; checking compliance (inspecting, auditing, and monitoring); intelligence collection; enforcement (conducting operations, investigations, and sanctions); and dispute and crisis management. Organisational governance includes corporate support functions, like staff training, data sharing, knowledge management and record keeping, measurement, and research.⁵

⁴ Petrie (2014) defines 'depth of cooperation' in terms of the extent of constraint on the autonomy of states to prescribe, adjudicate, and enforce rules. Depth of cooperation is measured for international competition policy based on an analysis of transgovernmental (e.g. regulator-to-regulator-only agreements), intergovernmental (e.g. competition policy chapters in free trade agreements), and supranational (e.g. the EU) agreements.

⁵ See Abbot, Kauffman, and Lee (2018: 16) for a more extended discussion of the range of governance and

2.3. International Regulatory Cooperation as a Part of the Regulatory Tool Kit

IRC is not a standalone practice but an integral part of other regulatory management techniques such as GRPs, regulatory management systems, and the reduction of unnecessary regulatory burdens. In a sense, IRC is an important part of the regulatory tool kit that ASEAN member state governments can use in the design and implementation of regulations. IRC supports work that will reduce 'regulatory distance' and promote greater regulatory coherence amongst ASEAN Member States. With respect to reducing unnecessary regulatory burdens, IRC can help ensure that regulations do not impose unwarranted or unnecessary compliance costs, distortions, or inconsistencies in the design and implementation of regulations; and also ensure that they address the problems they are meant to mitigate.

Because IRC is difficult to measure and because practice is widely distributed, it is hard to ascertain its pervasiveness. Therefore, the next section discusses the drivers of IRC and how it relates to the AEC Blueprint 2025.

2.4. The Drivers of International Regulatory Cooperation

There are three very different drivers for IRC: mutual economic benefit through liberalised trade and investment, strengthening the ability of states to deliver regulation effectively, and geopolitical and strategic imperatives (Bull et al., 2015).

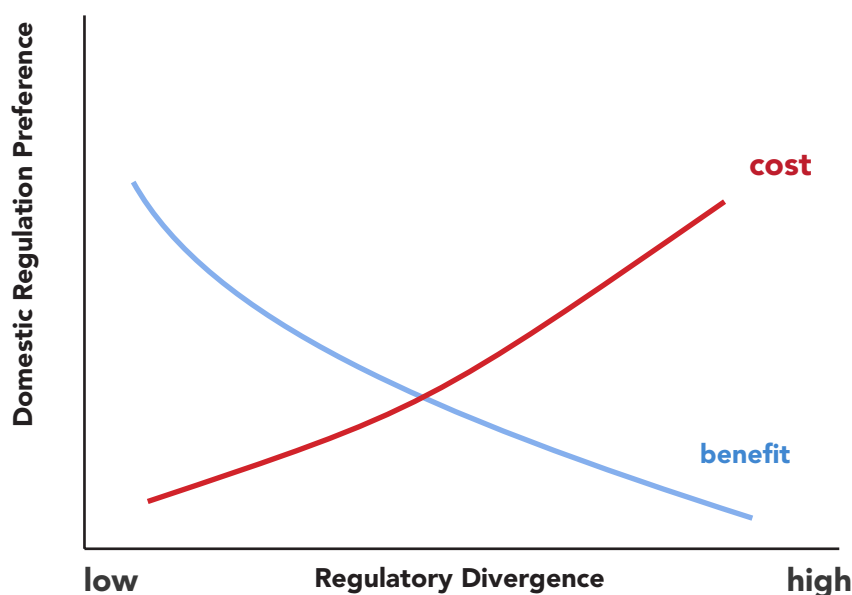
Much of the literature focuses on the economic gains from improved coherence through reduced non-tariff barriers (NTBs). Regulatory diversity is a growing policy concern as tariffs have come down to near zero for many areas of trade, and multilateral liberalisation has stalled. Improving regulatory coherence between countries can remove unintended and unnecessary barriers to trade, thus facilitating international trade and investment and participation in global supply chains.⁶ According to this view, the economic logic for IRC is that it 'aims at finding a suitable balance between the (welfare) costs related to changes to domestic regulation and the benefits resulting from reducing regulation-related trade costs' (Tongeren, Bastien, and von Lampe, 2015: 1).

The degree of coordination required in IRC depends on the 'relative importance of benefits from keeping current regulation versus the costs stemming from regulatory heterogeneity between countries' (OECD, 2017). The trade costs of regulatory diversity heterogeneity arise because of specification costs (compliance), conformity costs (the cost of demonstrating conformity), and information costs. This line of reasoning leads to a simple trade-off between trade costs and domestic policy preferences: if trade costs are small but domestic preferences for a certain type of regulation are very strong, it is not worth it to undertake costly IRC processes; however, if trade costs are high relative to the benefits of keeping current regulation, the optimal outcome may be a significant reduction of regulatory divergence.

operating practices of IRC networks, and how the main focus is often on setting common standards but frequently extends beyond policy to other regulatory practices. They identify nine main IRC process on which international organisations engage: the exchange of information and experience; data collection; research and policy analysis; discussion of GRPs; development of rules, standards, and guidance; negotiation of international agreements; enforcement activities including the imposition of sanctions; dispute settlement; and crisis management. For a discussion of regulatory governance see World Bank (2019).

⁶ Non-tariff measures can be imposed for a range of reasons. For example, some of Malaysia's import barriers are aimed at maintaining cultural and religious norms. Technical barriers (discussed in Chapter 7), including halal certification for the importation of meat and poultry, are regulated through licensing and sanitary controls.

Figure 1.5. Trade Cost and Regulatory Divergence Trade-off



Source: Economic Research Institute for ASEAN and East Asia.

However, the characterisation of IRC as an economic trade-off between ‘trade cost’ and ‘regulatory divergence’ is too narrow. For example, with cross-border spillover issues, what is optimal for a national unit may not be optimal for the wider community involved.

There is another logic 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 is 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 spillovers; (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. The case of Australia–New Zealand cooperation on competition law is discussed in Chapter 3.

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’. One example of regulatory competition and export is how the US and EU compete through their different approaches to regulation through IRC with neighbouring countries and globally. In addition, IRC can sometimes be an important means of avoiding interstate jurisdictional conflict by limiting attempts by dominant countries like the US to overreach in asserting extraterritoriality.

The OECD’s analysis of where regulatory networks operate around the world found two particularly dense institutional clusters in the areas of finance and health. ‘The modern international financial governance architecture is organised around a series of TGNs that

address specific functional areas of financial regulation, including supervision of banking, securities, and insurance markets; financial audits; private accounting standards; deposit insurance; trade and investment promotion; and competition law.... In the field of health, multilateral TGNs bring together leading regulators of pharmaceuticals, medical devices and cosmetics... [with a] focus on the technical requirements for registering new pharmaceuticals and veterinary medicine' (Abbott et al., 2018: 20).

At the regional level, around one-half of ASEAN's guidelines are focused on health-related material, including medical devices, pharmaceuticals, traditional medicines, and health supplements. These clusters highlight the range of policy rationales for undertaking IRC. Within a broad domain, there is a wide variety of specific areas of focus for IRC, with different policy rationales for IRC in each case. In short, the imperative for IRC is much broader than simply reducing NTBs.

2.5. International Regulatory Cooperation and the Association of Southeast Asian Nations Economic Community Blueprint 2025

There are a number of drivers to increase IRC under the AEC. The AEC Blueprint 2025 creates an imperative for GRPs, including the improvement of IRC. IRC complements GRP in the AEC Blueprint 2025 and supports the drive for regulatory coherence within ASEAN. IRC is implicitly within the ambit of Section B.7 on effective, efficient, coherent, and responsive regulations and GRP.

In the context of the AEC Blueprint 2025, as tariffs have come down to near zero, regulatory and standard divergence is increasingly the main policy concern amongst policymakers, businesses, and think tanks. IRC can be used in a way that supports the drive for regulatory coherence within ASEAN and fosters more inclusive integration and economic growth. IRC can also help domestic regulators identify unintended spillover effects from rule making. For instance, when a car assembler and manufacturer in Thailand sources its electric components from Viet Nam, the standards applied in Thailand and Viet Nam must be coherent. IRC can facilitate trade at the extensive margin by encouraging the range of trade that occurs, and at the intensive margin by expanding the volume of trade undertaken.

IRC aims to improve connectivity by improving how regulations are designed and applied. For countries in the East Asia region, IRC is a means of reducing the costs of doing business, facilitating international trade and investment, and improving regulatory outcomes in a variety of areas. To determine how these potentials can be realised, ERIA, in partnership with the New Zealand Institute of Economic Research, undertook this research project focusing on IRC in ASEAN and New Zealand.

2.6. Research Questions

A range of possible questions for a potential IRC study were identified, as follows: (i) why adopt IRC (e.g. what are the imperatives for IRC), (ii) where to use IRC (in which particular sectors or domains is IRC most productive), and (iii) when to use which forms (under what conditions are different types of IRC likely to be effective for particular problems). To reduce this list of demanding questions, the focus of the research was narrowed down to more practical questions about what is needed to make IRC successful.

Identifying what form of IRC works well for ASEAN Member States will allow countries to make more deliberate choices from a clearly articulated set of potential options. The project was designed to fill a gap in the literature by identifying the conditions required to

sustain IRC. These required 'conditions' could include pre-conditions, critical conditions, and supporting conditions.

The primary research questions for the project were:

- (i) What is the extent of IRC in the countries in the East Asia region (pervasiveness)?
- (ii) What are the enablers and facilitating factors of effective IRC (willingness and persuasiveness)?
- (iii) What are the main barriers and constraints that need to be overcome?

Given the diversity of IRC it was important to define what was in scope and what was out of scope for the project. The scope was national government-to-government regulatory cooperation, either transgovernmental, direct, regulatory agency-to-regulatory agency, or formal intergovernmental regulatory cooperation. The scope did not extend to private standards setters such as the International Organization for Standardization and Global Standards One, nor to government-to-government coordination on service delivery such as military or police cooperation.

2.7. The Research Design of the Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Project

We developed a four-phase, mixed-method approach to address the research questions. The project included all ASEAN countries as well as New Zealand, and involved a lead research institution from each country. The research involved four phases from 2018 to early 2020. Phase 1 consisted of desktop-based research to develop and refine the research approach, including the development of a survey questionnaire that was tested at a technical workshop (held in April 2018) on the IRC framework and survey methodology.

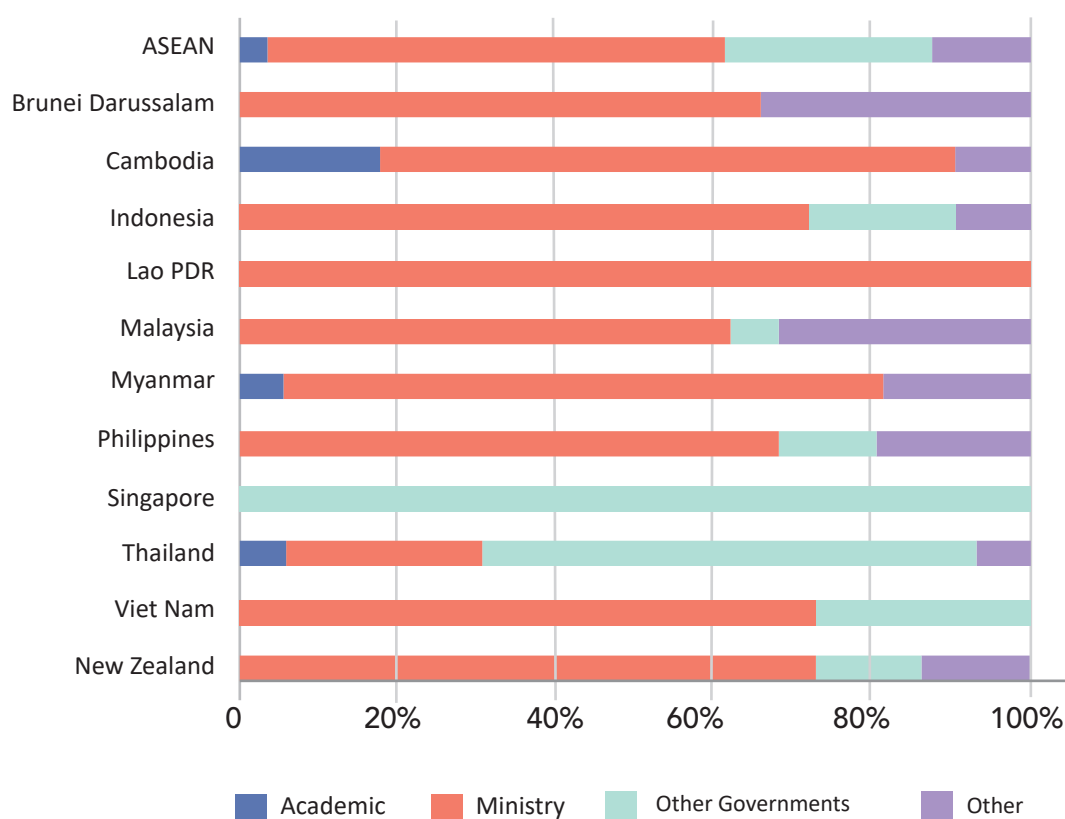
Phase 2 consisted of the survey administration and interviews. The interviews and survey were administered by researchers in each of the 10 countries (listed in Appendix 1). The researchers interviewed participants about their practical experiences with IRC and asked them to respond to the survey questions. While the New Zealand survey had the same structure and format as that used for respondents from the ASEAN countries, the contextual details were tailored to New Zealand's situation. Each researcher undertook up to 17 'elite' interviews with people with significant understanding of IRC drawn from a range of sectors. Figure 1.6 shows that the interlocutors were mainly in government (ministry or line agency), but some were academics or from the private sphere.

Phase 3 consisted of consolidation and integration. Each researcher produced a country report, which was discussed at a workshop on the research findings (held in Kuala Lumpur on 9–10 October 2018).

Phase 4 consisted of finalisation of the research publication. The final deliverable synthesised and articulated the key research findings.

Documentation of the research findings was completed just as the coronavirus disease emerged and began to spread in early 2020. Accordingly, the results reflect the thinking of the time before the pandemic.

Figure 1.6: Institutional Affiliations of Respondents



ASEAN = Association of Southeast Asian Nations, Lao PDR = Lao People's Democratic Republic.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 1.

In parallel with the ERIA-led project, the Government of New Zealand commissioned the New Zealand Institute of Economic Research to undertake four detailed IRC case studies on trans-Tasman competition law, the Asia Region Funds Passport, and two ASEAN examples of intellectual property and cosmetics (Gill, 2018). These cases, which are discussed in more detail in Chapter 3, were discussed in the technical workshops to focus on practical lessons learned, barriers, and enablers.

This chapter has set out the context for the ERIA research project on IRC, the research questions, and the research approach. The next chapter will explore the research findings on IRC in Asia and the Pacific region, drawing mainly on the survey results and concluding with some reflections on future directions. Subsequent chapters will include practitioners' insights into the craft of IRC and a selection of country case studies, including the Philippines, Thailand, Malaysia, and New Zealand.

References

- Abbott, K., C. Kauffmann, and J.-R. Lee (2018), 'The Contribution of Trans Governmental Networks of Regulators to International Regulatory Co-operation', Organisation for Economic Co-operation and Development (OECD) Regulatory Policy Working Papers, No. 10, Paris: OECD.
- Association of Southeast Asian Nations (2020), ASEAN Health Sector Efforts on COVID-19. <https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/standards-and-conformance/policy-and-guidelines/> (accessed 17 April 2020).
- Bull, R., N. Mahboub, R. Stewart, and J. Wiener (2015), 'New Approaches to International Regulatory Cooperation: The Challenge of TTIP, TPP, and Mega-Regional Trade Agreements', *Law and Contemporary Problems*, 78(1), pp.1–29.
- Gill, D. (2018), 'International Regulatory Cooperation Case Studies and Lessons Learnt'. Report to the Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. Wellington: New Zealand Institute of Economic Research.
- Hoekman, B. and P.C. Mavroidis (2015), 'Regulatory Spillovers and the Trading System: From Coherence to Cooperation', *Strengthening the Global Trade System for Sustainable Development. The E15 Initiative*. Cologne: World Economic Forum.
- OECD (2013), *International Regulatory Co-operation: Addressing Global Challenges*. Paris: OECD Publishing. <http://dx.doi.org/10.1787/9789264200463-en>
- OECD (2017), *International Regulatory Co-operation and Trade: Understanding the Trade Costs of Regulatory Divergence and the Remedies*. OECD Publishing, Paris.
- Petrie, M. (2009), *Jurisdictional Integration: How Economic Globalisation Is Changing State Sovereignty*. Wellington: Victoria University. <https://researcharchive.vuw.ac.nz/xmlui/handle/10063/893> (accessed 17 April 2020).
- Petrie, M. (2014), 'Jurisdictional Integration: A Framework for Measuring and Predicting the Depth of International Regulatory Cooperation in Competition Policy', *Regulation and Governance*, 10(1).
- Slaughter, A.-M. (2004), *A New World Order*. Princeton, NJ: Princeton University Press.
- United States Chamber of Commerce (2017), *The Bridge to Cooperation: Good Regulatory Design*. Washington, DC: United States Chamber of Commerce.
- von Lampe, M., K. Deconinck, and V. Bastien (2016), 'Trade Related International Regulatory Co-operation: A Theoretical Framework', *OECD Trade Policy Papers*, No. 195, Paris: OECD Publishing. <http://dx.doi.org/10.1787/3fbbf60b1-en>
- Weiner, J.A. and A. Alemanno (2015), 'The Future of International Regulatory Cooperation: TTIP as a Learning Process Toward a Global Policy Laboratory', *Law and Contemporary Problems*, 78, pp.103–36.
- World Bank (2019), *Governing Infrastructure Regulators in Fragile Environments: Principles and Implementation Manual*. <http://documents.worldbank.org/curated/en/458291562935090753/Governing-Infrastructure-Regulators-in-Fragile-Environments-Principles-and-Implementation-Manual> (accessed 2 March 2020).

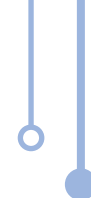
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The Pervasiveness and Persuasiveness of International Regulatory Cooperation in the Association of Southeast Asian Nations and New Zealand – Research Findings

Derek Gill and Edo Setyadi

1. Introduction: International Regulatory Cooperation in East Asia

Chapter 1 discussed how international regulatory cooperation (IRC) has become increasingly widespread throughout the world, but that relatively little is known about IRC amongst Association of Southeast Asian Nations (ASEAN) countries and, more broadly, Asia and the Pacific region. The research outlined in this book aims to address that gap. IRC is a multifaceted phenomenon that raises the following questions:

- (i) Why undertake IRC?
- (ii) With whom do countries cooperate? (arrangements can be bilateral, subregional/regional, plurilateral, or multilateral)
- (iii) How intensively do the countries' regulators cooperate (from informal networks of national regulators, through to formal regulatory partnerships and harmonisation)?
- (iv) To what depth do they cooperate – regulatory policies (making rules); regulatory practices (interpreting, applying, and enforcing rules); or regulatory organisational management (supporting rules administration)?
- (v) Which IRC structures do they use (international organisations, agreements, regulatory chapters included in free trade agreements (FTAs), or other mechanisms)?

This chapter will explore these five questions – 'why', 'who', 'how', 'what', and 'which' – for IRC in East Asia. We explore IRC, as defined in the previous chapter, in the widest sense as engagements between national and international regulators, and do not simply focus on the narrower conception of IRC based on the World Trade Organization (WTO) Agreement on Technical Barriers to Trade. This study will draw on the findings of a series of country studies for all 10 ASEAN Member States (AMS), as well as New Zealand, based on an 'elite' survey of officials and selected commentators. The research was conducted in 2018 and involved 127 respondents from all 10 AMS as well as 15 respondents from New Zealand. This chapter includes excerpts from the country studies, four of which are included in Part 2 of this publication.

As the survey was conducted in English, different researchers adopted slightly different approaches to engage respondents. In New Zealand where English is the primary language, respondents completed a hard copy of the survey, which was transcribed manually into Survey Monkey. In most other jurisdictions, the researcher asked respondents the questions during an interview. Afterwards, the research team completed the survey on behalf of the interviewees, giving them the opportunity to edit their survey responses.

The semi-structured interview format generally started with a discussion of an example of IRC with which the respondent was most familiar. Interlocutors then completed the survey. The survey instrument was mainly closed-ended but also included some open-ended questions about respondents' experiences with particular IRC cases. The background of the survey respondents, as well as the survey itself, are included in the annex to this chapter.

Table 2.1. Survey Format

Nature of questions	Number of questions	Reference to questions
Questions on respondents' perception about IRC	15	11–26
Questions on the pervasiveness of IRC	15	27–41
Questions on the persuasiveness of IRC	33	42–75
Questions on willingness to develop IRC	9	76–84
Questions on IRC governance	3	85–88
Questions on IRC development	3	89–92

IRC = international regulatory cooperation.
Source: Author.

One key theme that emerges from the survey results is unity in diversity. This unity arises because IRC is not something that is unique, but is merely a special case of a more general range of cross-governmental cooperation that is a feature of day-to-day operations. One senior New Zealand respondent observed the interconnected nature of their regulatory agency's work as it was involved in a complex web of 'cooperation activities: domestically (i.e. with local government, and with other regulators); regionally in the Pacific (...with capability building but also working together in one or two well-established international cooperation regimes); in the Asia Pacific across agencies (a much "softer" network which is, after 20 years, still very much information sharing and relationship maintenance); and internationally as part of an international organisation which drives policy and operational activity around the globe'.⁵

There was a remarkable similarity in the responses across the different countries. This similarity was not expected when the project was designed given the variety in the levels of economic development amongst the various ASEAN countries and New Zealand, as well as significant cultural and historical differences. Beneath the surface similarities, however, lies differences in the countries' imperatives for IRC, and the use of different approaches in different sectors.

2. Different Countries Have Different International Regulatory Cooperation Imperatives

Attitudes towards IRC develop within the country context in response to needs, pressures, and levels of engagement on the issue. The summaries below, taken from the country reports, are indicative of the different contexts and formative influences.

In the case of Indonesia, the agenda of international regulatory cooperation has expanded beyond, across and behind national borders. Trade issues have expanded from tariffs to commercial regulation aspects, such as investment rights and protection, intellectual property rights, government procurement and competition policy, and other aspects such as labour standards, environmental standards and economic cooperation.

⁵ In this chapter, text in single quotes has been used to identify unattributable quotes provided in answer to the open-ended survey questions or as part of the interviews.

Indonesia's involvement in international agreements has the potential to break the impenetrable political economy barriers at home by pushing reforms from outside. There are examples of this, including the adoption of the anti-corruption law in Indonesia.... and the adoption of the anti-terrorism financing law following the G-20 Leaders commitment to comply with the Financial Action Task Force mandates'. (Damuri et al., 2018)

As a small and less developed economy, Cambodia is generally a rule taker of IRC in regional and multilateral settings. In the regional setting, it is mostly related to ASEAN, and Mutual Recognition Arrangements (MRAs) are one of the most important agenda items of IRC. In the multilateral framework, Cambodia's engagement with IRC is mostly related to WTO. Generally speaking, Cambodia's stance in IRC is clear. Cambodia takes a liberal approach by welcoming regional or international standards and tries to apply them in the country. It is a strategy to open up the country and catch up with more developed nations. (Ngov, 2018)

Thailand is deeply involved in a complex array of IRC initiatives. Government officials view IRC positively and are open to the 'persuasiveness' argument for IRC. In general, officials acknowledge IRC as an opportunity for Thailand to open up to trade, integrate with global supply chains, and exchange knowledge. Officials are willing to engage in IRC where there is a case for it.


To assess Thailand's IRC landscape, it is important to understand the context in the country operates. Thailand's history, its middle-income status in a fast-growing region, and the political backdrop of its governance are useful frames for understanding its IRC environment'. (Lam, Chapter 4)

Singapore as a small open trade-dependent economy must leverage external resources for its economic growth dynamics. The willingness and the impetus to initiate IRC coincide with its national interest and within the management scope of Singapore Good Regulatory Practice. (Lim, 2018)

Brunei Darussalam is the second richest country (second to Singapore) in terms of per capita GDP but when it comes to economic development and integration to the global world, Brunei Darussalam can still be considered as an emerging economy. Economic diversification through participation by both domestic and foreign investors is a key strategy under the Brunei Vision 2035/Wawasan 2035 launched in 2008. Obviously, international regulatory cooperation (IRC) becomes crucial to Brunei's integration to the global economy. (Khalid et al., 2018)

In pursuit of a market-oriented economy, the Government of Lao PDR has been involved in a number of reforms since 1986. Regulatory processes have gradually increased, but the pace of the country being integrated into the international standard of regulatory cooperation has occurred since the accession to ASEAN membership in 1997.

Admission to the WTO in 2013 has led to the Government of Lao PDR fully committing to international regulatory cooperation. The IRC arrangements have focused on the improvement of business and trade enabling environments. Multilateral cooperation is widely recognized through the World Bank initiative (for example WTO) and the ADB (for example Greater Mekong Sub-region – GMS) while Bilateral cooperation, in the form of deepening and expanding in economic, social and political aspects, is commonly arranged (particularly with neighbouring countries such as China, Vietnam and Thailand). (Leebouapao et al., 2018)



The Government of New Zealand is deeply embedded in a complex web of IRC arrangements. While these arrangements were predominantly multilateral (e.g. through the United Nations system) or bilateral (mainly with Australia), there were also a host of regional (e.g. APEC) and plurilateral (e.g. the OECD) arrangements. Unsurprisingly, AMS respondents reported more frequent use of regional arrangements than did New Zealanders. The imperatives for IRC were quite varied. *While a handful of agencies with trade policy responsibilities had a particular focus on removing technical barriers to trade, for the majority of agencies the imperatives for IRC included other objectives such as regulatory effectiveness and interoperability [emphasis added].* (Gill, Chapter 5)

3. Differences in Sector Approaches: 'Horses for Courses'

The second major theme that emerged from the dialogue generated through the research project was the 'horses for courses' approach (different ways suiting different issues in different domains). Of all of the propositions in the survey results (see section 6 below), the suggestion that, 'Regulators and politicians need to be shown the benefits from reduction in regulatory differences...under IRC', received the strongest support from New Zealand respondents and was also ranked highly by the other respondents. Yet, the differences in approach by sector comes through clearly in the country studies:

Since the accession to ASEAN and especially in preparation for the WTO accession, Vietnam has actively engaged itself in learning foreign regulatory practices. However, the activeness in learning and the unilateral adoption of foreign standards/regulatory regimes *appeared to vary drastically across sectors [emphasis added]*.... While the government of Vietnam has no explicit policy on IRC, promoting trade and investment has been high in the government agenda.... Looking forward, the implementation of CPTPP, AEC by 2025, and RAASR [sic – Renewed APEC Agenda on Structural Reform] will have important implications for IRC in Vietnam. (Vo, 2018)

[For New Zealand] (t)he locus or type of international regulatory cooperation (IRC) is arranged across the spectrum, from informal communities of practice to mutual recognition (mainly with Australia) to full harmonisation, mainly with the norms of International Organisations. Informal cooperation is more frequent than more formal arrangements such as exchange of staff or joint institutions. *The development of IRC is highly path dependent with quite different arrangements in apparently similar sectors [emphasis added].* (Gill, Chapter 5)

Overall, Thailand is heavily engaged in IRC in many forums. Government officials are creative in using existing forums to build coalitions to advance Thailand's agenda, as well as forging new alliances to achieve their objectives beyond the constraints of existing forums. Their creativity and flexibility allow Thailand to maximise the use of limited resources in a fast-changing and increasingly multi-polar world. (Lam, Chapter 4)

There are common characteristics in the development of IRC in Singapore, such as the well-defined objectives and strategies on how to leverage external resources, talents and knowledge to develop domestic economy and enterprise with the full support of the political leadership and bureaucracy. *However, there are also diversities in approaching and engaging IRC by different organisations, depending on the nature and characteristic of the sector or activity [emphasis added].* (Lim, 2018)

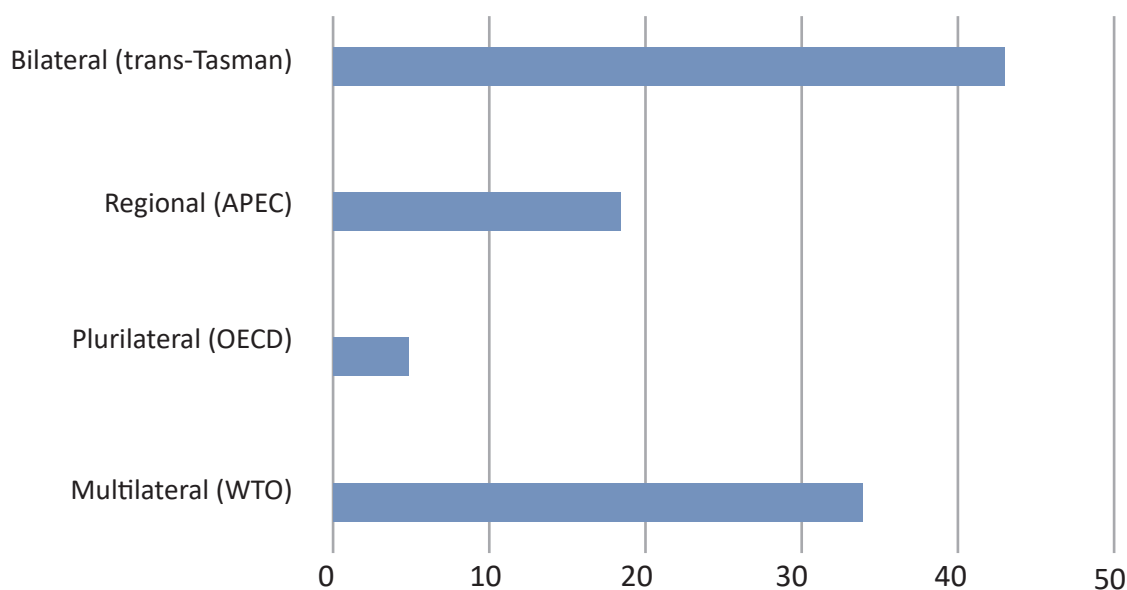
In interpreting the survey results that follow it is important to bear in mind the diversity of country contexts and imperatives, and differences in the approaches to IRC adopted in different sectors.

The rest of this chapter is in seven parts based on the structure of the survey. The next section will address how widespread IRC is (pervasiveness). Subsequent sections will discuss the willingness and facilitating factors for IRC, the persuasiveness of IRC, barriers and enablers, the evolution of IRC, and the governance system for IRC in ASEAN countries and New Zealand. The chapter will conclude with some speculative comments on future directions for IRC in East Asia.

4. Pervasiveness of International Regulatory Cooperation

The first research question for the project concerned the extent of IRC in the countries in East Asia. This question arose because, while there is a body of research on IRC amongst developed countries, much less is known about other countries' involvement. In Part 3 of the survey, respondents were asked about with whom IRC occurs ('who'). One question explored interviewees' perceptions about whether IRC was 'mainly bilateral, regional, plurilateral or multilateral', and respondents could select one or more options (consequently the totals add up to more than 100%). Figures 2.1 and 2.2 contrast the response for New Zealand with that of ASEAN countries. The New Zealand survey results (n = 15) showed a classic 'U' curve, with the main types selected being bilateral and multilateral. This pattern is not surprising, given the country's strong bilateral relationship with Australia where the extent of regulatory cooperation is unrivalled anywhere in the world outside of the European Union (EU).

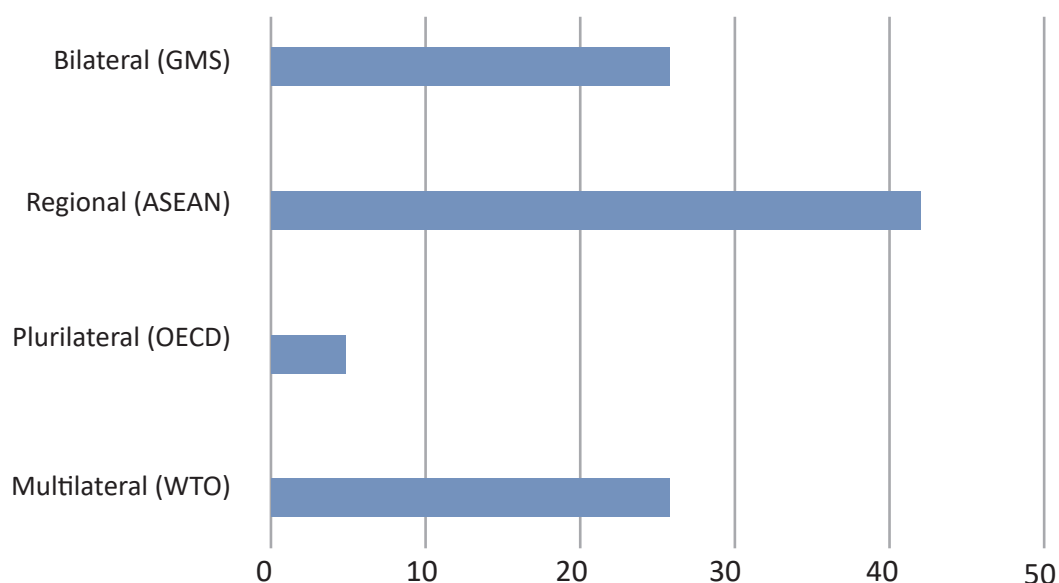
Figure 2.1. International Regulatory Cooperation in New Zealand



APEC = Asia-Pacific Economic Cooperation, OECD = Organisation for Co-operation and Development, WTO = World Trade Organization.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Question 41.

Figure 2.2. International Regulatory Cooperation in the Association of Southeast Asian Nations



APEC = Asia-Pacific Economic Cooperation, GMS = Greater Mekong Subregion, OECD = Organisation for Co-operation and Development, WTO = World Trade Organization.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Question 41.

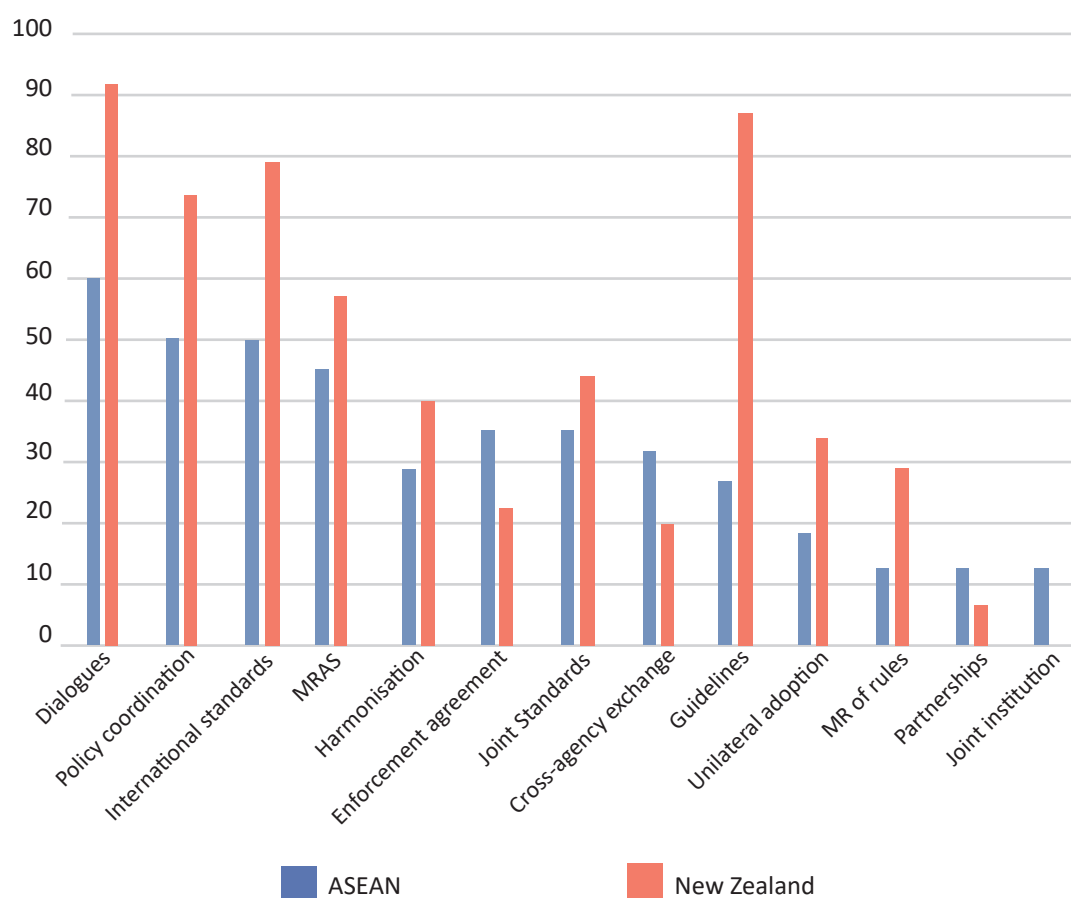
By contrast, ASEAN countries' regional connections were much stronger, as shown in Figure 2.2. Equally unsurprisingly, the results show that, when asked about the perceived frequency of IRC, 42% of respondents indicated that IRC was mainly regional; this response was followed by bilateral (27%), multilateral (26%), and plurilateral (minimal).

The choices of multilateral, plurilateral, or regional IRC should not be interpreted as mutually exclusive alternatives, but can be complementary: 'and' not 'or'. Regional groupings, such as the cases of ASEAN intellectual property cooperation and ASEAN cosmetics harmonisation (discussed in Chapter 3), have led to convergence with international standards. Similarly, plurilateral 'coalitions of the willing' can add to multilateral rules and procedures while remaining compatible with them.

The survey also investigated how intensively different countries cooperate by exploring the perceived frequency of different forms that IRC can take. IRC can range from unilateral recognition or adoption of another country's regulatory settings or standards at one end of the spectrum, through to harmonisation of policies and practices at the other, with several forms in between. These include relatively soft and informal transgovernmental engagements, such as policy dialogues, as well as more structured formal intergovernmental agreements, such as mutual recognition agreements covering standards and conformity assessments, or mutual recognition of rules. IRC also includes supranational agreements such as the EU.

For each type of IRC, respondents were asked whether there were 'none (that I know of)', 'one or two', 'few (between 3 and 5)', and 'many (more than 5)'. Figure 2.3 ranks the types of IRC from high to low based on the number of respondents from ASEAN countries who selected 'many', and contrasts this with the results from the New Zealand respondents.

Figure 2.3. Main Forms of International Regulatory Cooperation in East Asia



ASEAN = Association of Southeast Asian Nations, MR = mutual recognition, MRA = mutual recognition agreement.
 Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39.

The results for New Zealand and the ASEAN countries on the relative frequency of different types of IRC were relatively similar. The most common were:

- (i) regulatory dialogues and exchange of information with another country or region (e.g. ASEAN and the Asia-Pacific Economic Cooperation [APEC]) (discussed in Box 2.1 below);
- (ii) policy coordination with a partner country on a specific area or sector regulation;
- (iii) adoption of international standards developed by international public and private standard-setting bodies (e.g. the norms set by the International Maritime Organisation, or the International Organization for Standardization);
- (iv) intranational or region-wide mutual recognition agreements (MRAs) on conformity (discussed in Box 2.3 below); and
- (v) harmonisation of technical regulations (involving specific products) with another country or regionally.

Box 2.1. Regulatory Dialogues

Regulatory dialogues are informal exchanges of information involving regulators and stakeholders who meet in a discussion forum, conference, workshop, or similar environment to exchange information on regulatory policy settings and regulatory enforcement practices. One example of this form is the Association of Southeast Asian Nations (ASEAN) Regulatory Reform Dialogue, which involves the World Bank and Asia-Pacific Economic Cooperation Secretariat, as well as regulators from ASEAN Member States and the ASEAN Secretariat.

Source: Authors.

Forms of IRC less frequently used in both ASEAN and New Zealand included:

- (i) joint institutions, or an institution established by two or more countries;
- (ii) formal regulatory cooperation partnerships with another country (or region) that stop short of harmonisation; and
- (iii) mutual recognition of the regulatory outcomes from applying rules.

For New Zealand, and two ASEAN countries (Lao People's Democratic Republic and Viet Nam),⁶ guidelines (i.e. 'voluntary, non-justiciable commitment to best practice guidelines and principles') also featured as a frequent form of IRC. In New Zealand's case, this likely reflects involvement with a range of plurilateral organisations.

New Zealand is an active contributor to APEC (along with Viet Nam), and is also a member of the Organisation for Economic Co-operation and Development (OECD). The ASEAN good regulatory practice (GRP) guidelines (discussed in Box 2.2) are an example of high-level guidelines where AMS have committed to embedding GRP into their respective national regulatory regimes.

Overall, the results suggest that relatively informal arrangements (e.g. dialogues and communities of practice) were more common than formal structures involving mutual recognition of rules (73% suggested few or none for ASEAN countries) or joint institutions (72% suggested few or none for ASEAN countries).

⁶ The low reported frequency of guidelines for a number of ASEAN countries was somewhat surprising given that ASEAN has developed high-level guidance for a range of sectors. Several of these are discussed in Box 2.2. One plausible interpretation is that respondents did not consider this guidance sufficiently prescriptive to be a form of IRC. For a listing of these guidelines, see ASEAN, Policy and Guidelines. <https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/standards-and-conformance/policy-and-guidelines/>

Box 2.2. Association of Southeast Asian Nations Good Regulatory Practice Guidelines

The Association of Southeast Asian Nations (ASEAN) good regulatory practice guidelines focus on standards, technical regulations, and conformity assessment procedures. This has three elements: (i) transparency on non-tariff measures and the removal of trade barriers, (ii) the implementation of mutual recognition agreements, and (iii) the harmonisation of standards and technical regulations. The guidelines are used in conjunction with the ASEAN Policy Guidelines on Standards and Conformance (2005) and the ASEAN Work Plan on Good Regulatory Practice (2016–2025).

Source: Authors.

Participants in the research workshops highlighted the limitations of FTAs as a vehicle for pursuing IRC. While FTAs can be useful as a platform from which opportunities for considering IRC can grow, most IRC provisions in FTAs are formulaic and focus on narrow areas traditionally covered by trade agreements. In part, that is because the relevant experts (on policy and regulatory practice) are not generally at the table, and the timetable does not allow negotiations at the level of detail needed for IRC. This is also partly because negotiations are normally led by trade officials and not regulatory policy officials. Trade officials and negotiators tended to adopt more positional bargaining and a mercantilist approach based on trading concessions. This contrasted with more informal transgovernmental networks where peer-to-peer negotiations were more collaborative.

MRAs are a framework that takes two main forms: recognition of another's conformity assessment procedures (such as product testing regimes), and recognition of others' regulatory standards and hence the outcomes from their regimes. The survey included separate questions on the perceived frequency of MRAs on standards and on conformity assessment, and the responses were markedly different. While nearly 50% of respondents suggested that there were many MRAs on conformity assessment, only 12% of AMS respondents and 29% of New Zealanders reported many MRAs covering standards.

In the case of ASEAN, this is not altogether surprising. The ASEAN Consultative Committee on Standards and Quality is a good example of cooperation using an MRA. The committee, whose end goal is 'one standard, one test, accepted everywhere', was established to harmonise national regimes with international standards and implement MRAs on conformity assessment. However, ASEAN has examples of MRAs on the testing of both goods and standards, such as the MRA for professional services discussed in Box 2.3, which seemed to have less widespread recognition.⁷

⁷ Research by de Brito, Kauffman, and Pelkmans (2016) on OECD countries suggests there is a significant gap between the rhetoric of MRAs and the practical enacted reality on the front line.

Box 2.3. Association of Southeast Asian Nations Mutual Recognition Agreements for Professional Services

The Association of Southeast Asian Nations (ASEAN) has implemented a regional mutual recognition agreement (MRA) for professional services to facilitate trade in services. For example, the MRA on medical practitioners requires each medical practitioner to be licensed by the professional medical regulatory authority in their country, and this recognition then allows medical practitioners licensed in any ASEAN member state to move across ASEAN. Other professional services covered by MRAs include engineering services, nursing services, architectural services, dental practitioners, tourism professionals, surveying qualifications, and accountancy services.

Source: Authors.

5. Willingness to Undertake Particular Types of International Regulatory Cooperation

We turn now to which IRC mechanisms are used, as IRC can take a variety of forms. Traditional 'intergovernmental' state-to-state relationships tend to occur through formal diplomatic channels and were often formalised in treaties, other legal agreements such as FTAs, or occasionally with 'mirror' legislation (such as the Trans-Tasman Mutual Recognition Agreement between New Zealand and Australia). IRC occasionally also goes beyond intergovernmental to supranational agreements involving international organisations (such as the EU).⁸ By contrast, direct regulator-to-regulator 'trans-governmental' network arrangements are less visible, more under the radar, and less costly to negotiate and execute; these have become a common form of IRC.

The Indonesian country study emphasised how the relative costs of IRC processes lead to a preference for more informal transgovernmental arrangements.

The cost of the process related to IRC, e.g. meeting, traveling and coordination [at the] national level, are tangible costs that must be borne by the relevant agencies. Moreover, the implications of such cooperation, including efforts to align domestic regulations to international practices, require more resources and a lengthy process. It is then understandable that most of the respondents prefer to engage in the less committed forms of cooperation, such as dialogue or informal exchange of information, in comparison to IRCs that lead to international commitments, such as mutual recognition or supranational processes. (Damuri et al., 2018)

The project's second research question focused on willingness to undertake IRC. Section 4 of the survey asked about respondents' perceptions of their countries' willingness to engage in IRC of different types. Respondents had four options: 'strongly not willing', 'not willing', 'willing', and 'strongly willing'. Figure 2.4 shows the total willingness to undertake particular types of IRC, and contrasts this with the lack of willingness, combining the results for the ASEAN countries and New Zealand as they were relatively consistent. The figure adds together 'strongly willing' and 'willing', and 'strongly not willing' and 'not willing'.

⁸ For a list of supranational organisations see http://www.actuaries.org/CTTEES_SCIENTIFIC/Documents/Chicago_Oct2017/SCIENTIFIC_Chicago_10.i_ListofSupraOrganizations.pdf

Figure 2.4. Openness to Types of International Regulatory Cooperation (Willing/Not Willing)




Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 76–84.

Respondents viewed their countries as very willing to develop and strengthen various forms of IRC, with two notable exceptions (discussed below). The types of IRC where willingness was highest included (i) the adoption of international standards (i.e. international norms and guidelines); (ii) dialogue and the informal exchange of information on policy, enforcement, and other regulatory practices; (iii) the formal exchange of staff; (iv) MRAs on conformity; and (v) regional, transgovernmental networks amongst regulators.

There were some intriguing country differences in the types of IRC preferred. In Thailand, formal regulatory cooperation partnership attracted strong support (67%), whereas in other ASEAN countries this type of IRC was less popular (averaging 34%). Thailand and Viet Nam generally preferred the adoption of international standards as their most common form of IRC, whereas regulatory dialogue and the exchange of information with other countries was the most common form of IRC for other ASEAN countries. In Viet Nam, cross-agency exchange of personnel was ranked the second most popular form after the adoption of international standards. By contrast, New Zealand respondents reported relatively low willingness to engage in staff exchanges compared to the ASEAN countries in the survey. Rather than being specific to IRC, this probably reflects certain features of the New Zealand public management regime, including the absence of restrictions on citizens of foreign countries joining the public service, and open entry into the public service at all levels up to and including chief executive. The lowest support was for the unilateral adoption of policy or regulatory practices of others, and bilateral or regional legally binding regulatory agreements and/or harmonisation, with oversight enforcement by a supranational or regional body.

5.1. Unilateral Adoption

One interesting feature of the findings is how unilateral adoption was perceived relatively unfavourably as a form of IRC by most ASEAN countries as well as New Zealand. At first glance, unilateral adoption is the easiest form of IRC, as the costs are low and the benefits



high. A simple AMS example can be drawn from the case study on ASEAN intellectual property (see Chapter 3). Cambodia has unilaterally recognised patent searches undertaken in select other jurisdictions, including Singapore, as equivalent to a search undertaken domestically. Similarly, the ASEAN Cosmetics Directive has in effect unilaterally adopted the EU cosmetics regime as a de facto international standard.

More generally the relatively low willingness to undertake unilateral adoption, both in ASEAN countries and New Zealand, is somewhat puzzling. Two explanations are plausible, one technical and one concerning political optics. On the technical side, since open economies interact with many trading partners, harmonising by adopting the standards of one economy risks diverging with others (unilaterally recognising the outcomes from the regulatory settings of one or more other jurisdictions gets around this problem). With respect to optics, unilateral adoption by one country of the standards of another runs against the notion of regulatory sovereignty and that one should control one's own destiny. Although this is a matter of appearances rather than logic, political optics matter.

For ASEAN respondents, half of the respondents viewed their country as either not willing (43%) or strongly not willing (3%) to undertake unilateral adoption. The Philippines country study sheds some light on this conundrum:

In the interviews, the respondents, especially those coming from the trade sector, manifested strong hesitation against two IRC activities, that is, (a) unilateral adoption of policy and regulatory practices of other countries or international bodies, and (b) governance of IRC by a supranational regional body. IRC in these two forms seems to be perceived by the respondents as a potential surrender of policy space or a diminution of sovereignty. The perception of 'surrender of policy space' may be driven by the fear that unilateral adoption of a trading partners' regulations may not result in positive outcomes because those partners issue regulations that serve their self-interest.

5.2. Regional Harmonisation

ASEAN has developed three regional harmonised regulatory regimes, as follows:

- (i) Agreement on the ASEAN Harmonised Cosmetic Regulatory Scheme (2003), which has been fully implemented as discussed in the next chapter;
- (ii) Agreement on the ASEAN Harmonized Electrical and Electronic Equipment (2005), which is currently being implemented; and
- (iii) ASEAN Agreement on Medical Device Directive (2014), which is at an initial stage of planning for implementation.

The ASEAN Cosmetics Directive (discussed in detail in Chapters 3 and 6) provides a regional example of harmonisation, albeit without a regional or international body overseeing enforcement. This regime allowed all AMS to adopt the main features of the regime of standards for cosmetics ingredients in the EU Cosmetics Directive.

The Philippines country study quoted above also highlighted the concerns of practitioners in a range of countries about harmonisation using an international or regional body. Almost a quarter of respondents (23%) suggested that they were unwilling or strongly unwilling to engage in harmonisation, while three-quarters supported this approach. These more formal types of IRC require formal agreements to be negotiated and formally ratified. This implies that some respondents viewed international and supranational bodies with some suspicion, given that the agreements are legally binding and could potentially reduce regulatory

flexibility and infringe on national policy discretion.

5.3. Adoption of International Standards

A main focus of international networks and organisations is the development and mutual adoption of guidelines and standards. Their reluctance to undertake 'harmonisation through a supranational body' contrasts with their high willingness to adopt international standards, which generally takes place on a voluntary, case-by-case basis. Standards can be set by international organisations such as the International Maritime Organisation, by private standard setters like the International Organization for Standardization and GS1, or de facto standards, such as ASEAN adopting the EU Cosmetics Directive.

6. Persuasiveness of International Regulatory Cooperation

Across all the countries in the project, the respondents taking part in the questionnaire and interviews expressed generally positive views on IRC. This support for IRC should be interpreted as 'in general and on average' rather than support that 'applies to each and every case'. Support for IRC was conditional on a case-by-case approach – a 'horses for courses' approach. The country study for Thailand is instructive here:

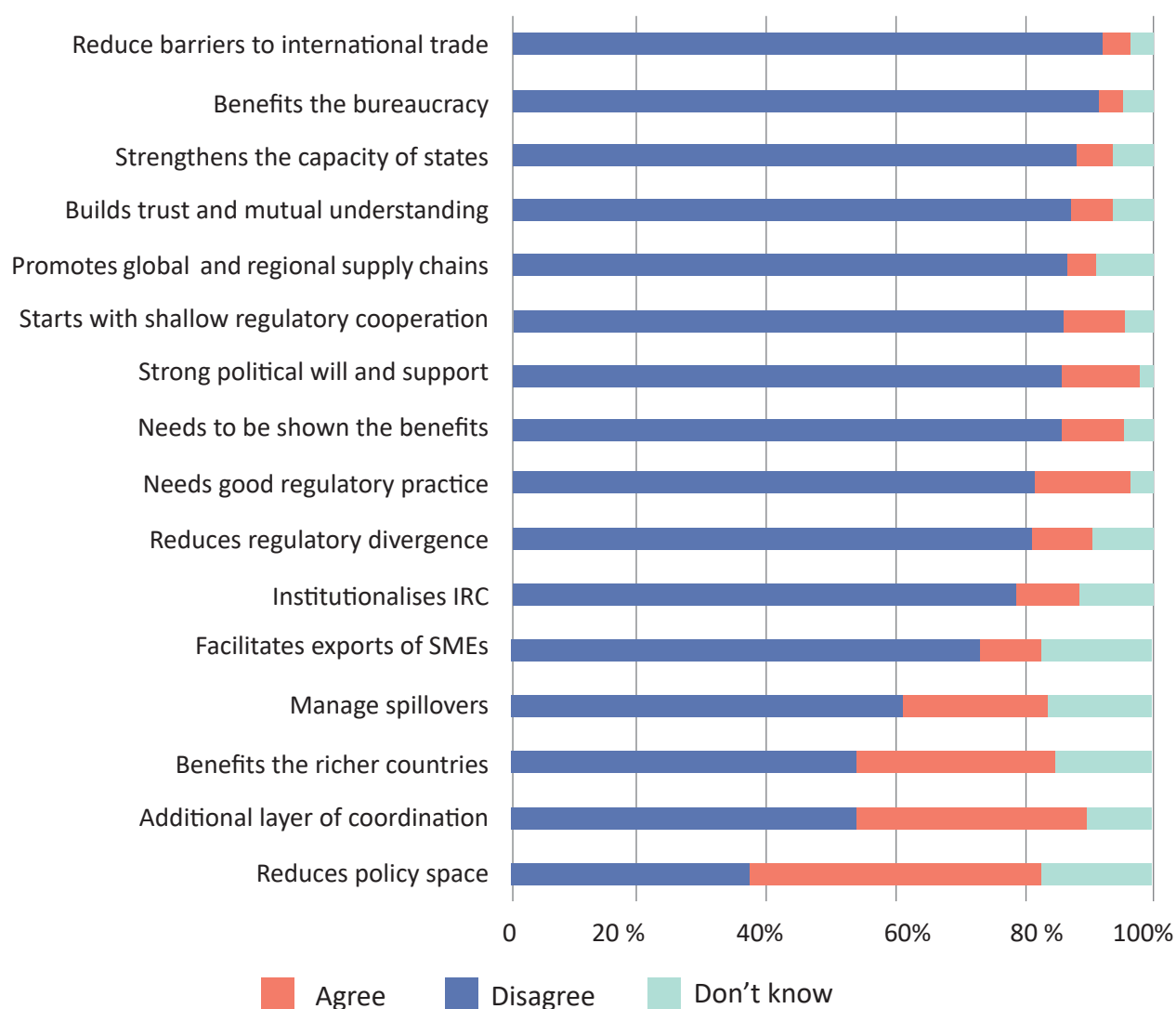
In general, government officials have a positive view of IRC, in that it presents opportunities to bring Thailand in line with global standards and open it up for trade and knowledge exchange. When they engage, government officials are adept at playing different roles in different forums, adopting the 'swaying bamboo' approach, being flexible to the situation at hand. Where appropriate, officials employ a 'tailgating' strategy, using multiple international regulatory forums to achieve one particular outcome. Configurations and alliances are chosen on a case-by-case basis, targeting the best potential outcome for Thailand. The approaches used are not ideological. (Lam, Chapter 4)

Section 2 of the survey asked respondents about their views on a series of propositions about IRC. There were five options: 'strongly disagree', 'disagree', 'agree', 'strongly agree', and 'don't know'. While the propositions about IRC in the questionnaire were generally expressed in the positive, three were expressed as negatives: IRC reduces policy space to a countries' disadvantage, benefits richer counties more than poorer, and makes life more difficult. In Figure 2.5 below, we have reversed the display of agree/disagree for these three questions to make it easier to compare them with the other questions.

ASEAN respondents strongly agreed that IRC reduces barriers to international trade; can benefit the bureaucracy through enhanced knowledge flow about technical issues and options, and about the policy experiences of other countries; strengthens the capacity of states to deliver effective regulation to citizens and businesses; builds trust and mutual understanding amongst institutions in countries in the region; and helps with the design and implementation of regulations that promote global and regional supply chains.

Figure 2.5 ranks support for the propositions from high to low by adding together 'strongly agree' and 'agree', and 'disagree' and 'strongly disagree' for ASEAN countries only (this is contrasted in Figure 2.6).

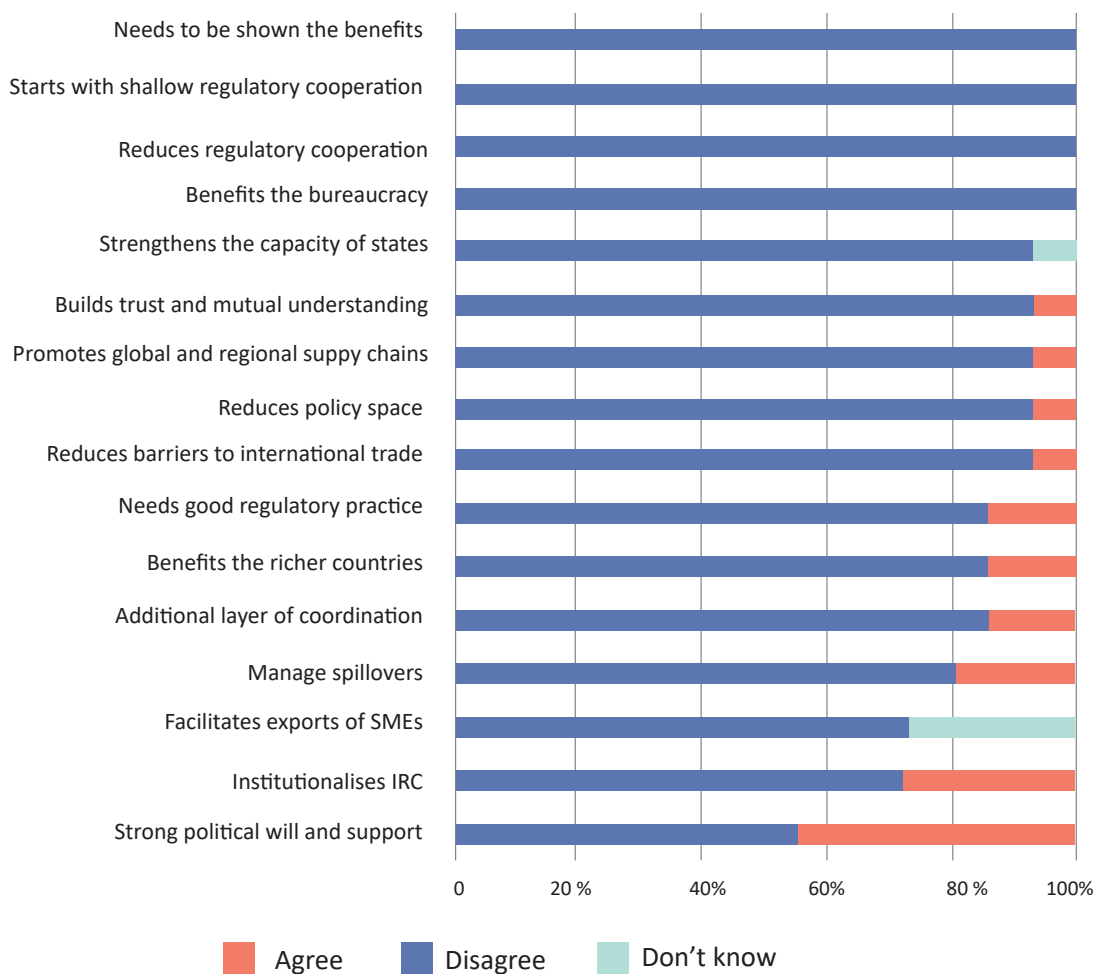
Figure 2.5. Association of Southeast Asian Nations Attitudes to International Regulatory Cooperation (Agree/Disagree)



IRC = international regulatory cooperation, SMEs = small and medium-sized enterprises.
Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 11–26.

New Zealanders’ responses were reasonably consistent with those for ASEAN. However, the ordering of the intensity of support differs. For example, the ‘horses for courses’ proposition ‘Regulators and politicians need to be shown the benefits from reduction in regulatory differences...under IRC’ earned the strongest support in New Zealand but was only ranked seventh highest by AMS respondents.

Figure 2.6. New Zealanders' Attitudes to International Regulatory Cooperation




IRC = international regulatory cooperation, SMEs = small and medium-sized enterprises.
Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 11–26.

Across all countries there was reasonably strong agreement with all of the propositions except two (the last two bars on Figure 2.5), where agreement and disagreement were divided: (i) IRC adds an additional layer of coordination and makes life for administrators and regulators even more difficult and bureaucratic (37% agree, 53% disagree); and (ii) IRC that requires treaties and protocols reduces the policy space of a country to the country's disadvantage (45% agree, 37% disagree). There was also some support (31% agree, 54% disagree) for the proposition that IRC benefits richer countries more than poorer ones. There were also marked contrasts between ASEAN and New Zealand respondents to several of the propositions.

6.1. Policy Space

There was quite strong support (45%) amongst practitioners in ASEAN countries for the proposition that IRC reduces the policy space of a country. This may explain why some respondents were very willing to engage in informal communities of practice, but much more reluctant to engage with IRC 'harmonisation with oversight enforcement by a supranational regional body'. Interestingly, few New Zealand respondents agreed with this proposition (7%). One seasoned observer commented on how the development of regulations in New Zealand has changed over the last 30 years.



Regulatory policy design no longer aims to develop ‘best of breed’, stand-alone regulatory policy regimes. Instead increasing attention is paid to international regulatory interoperability as New Zealand goods and services need to compete in accessing international value chains. New Zealand is simply too small to be able to develop bespoke regimes that cannot interoperate with international systems and standards. Seamless interoperability is particularly important for the tradeable sector. (Gill, Chapter 5)

There was strong support in New Zealand for the proposition that IRC strengthens the capacity of states to deliver effective regulation (53% strongly agree, 40% agree, 7% don’t know). This is consistent with the view that, while the political optics of IRC are that regulatory sovereignty is eroded de jure, in practice de facto regulatory sovereignty may actually be increased. This is because cooperation may enhance the capability and capacity of regulatory agencies to exercise their regulatory powers effectively.⁵

6.2. Political Mandate

There was also a striking difference in opinion between New Zealand and ASEAN respondents about the role of political mandate. While amongst ASEAN countries there was 86% support for the proposition that, ‘Without strong political will and support, IRC cannot be sustained’, 46% of New Zealand respondents disagreed with this view. This difference may be semantics as much as a substantive cross-jurisdictional difference, since the survey question did not clearly distinguish between political mandate and political champions.

Political leaders can take either a passive symbolic role, lending legitimacy to and providing a formal mandate for IRC, or an active role as well, championing specific IRC initiatives. In all of the case studies discussed in Chapter 3, political leaders played a symbolic role. In none of the cases did political leaders act as champions, providing the drive and impetus required to get an IRC initiative over the line. This is discussed further in Chapter 3 on the lessons learned about the craft of IRC.

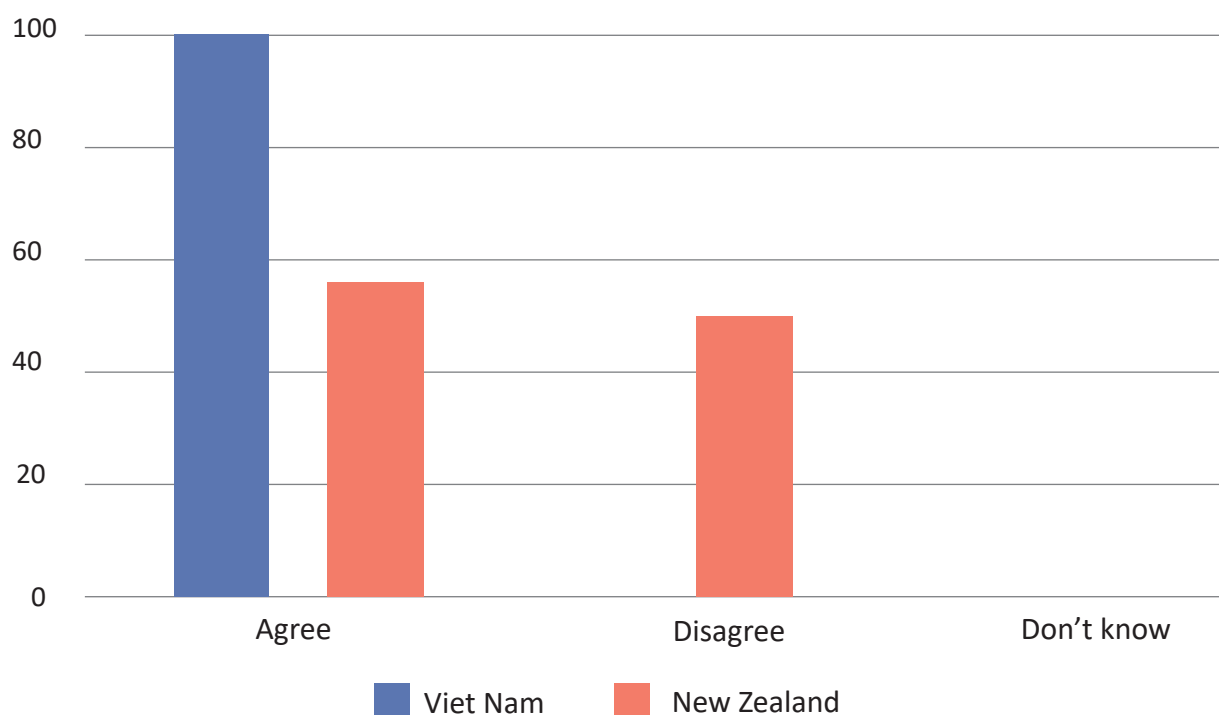
However, all rules have exceptions. In the case of the Philippines (discussed in Chapter 6), the intervention of a cabinet declaration, followed by a memorandum from the Office of the President directing agencies to undertake computerisation, was required for Philippines to be able to connect to the ASEAN Single Window.

Differences in political and public management systems have resulted in significant differences in the perceived importance of political mandate. For example, Figure 2.7 contrasts the responses from New Zealand, a mature democracy with a high degree of delegation to the professional public service, and Viet Nam to the proposition ‘Without strong political will and support, IRC cannot be sustained’.

Looking across willingness and persuasiveness, survey respondents in all of the countries took a positive view of IRC overall. In general, respondents believed that IRC could benefit countries in the long term by enhancing transparency, preventing unnecessary trade barriers, and enhancing regulatory effectiveness. However, this is very much a ‘horses for courses’ approach, depending on the sector and the precise form of IRC.

⁵ Krasner (1999) contends that states have never been as sovereign as some have supposed. Sovereignty refers to a wide range of things, and the principles associated with the concept are routinely violated in practice.

Figure 2.7. Political Mandate for International Regulatory Cooperation - The Contrast Between New Zealand and Viet Nam



Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 24.

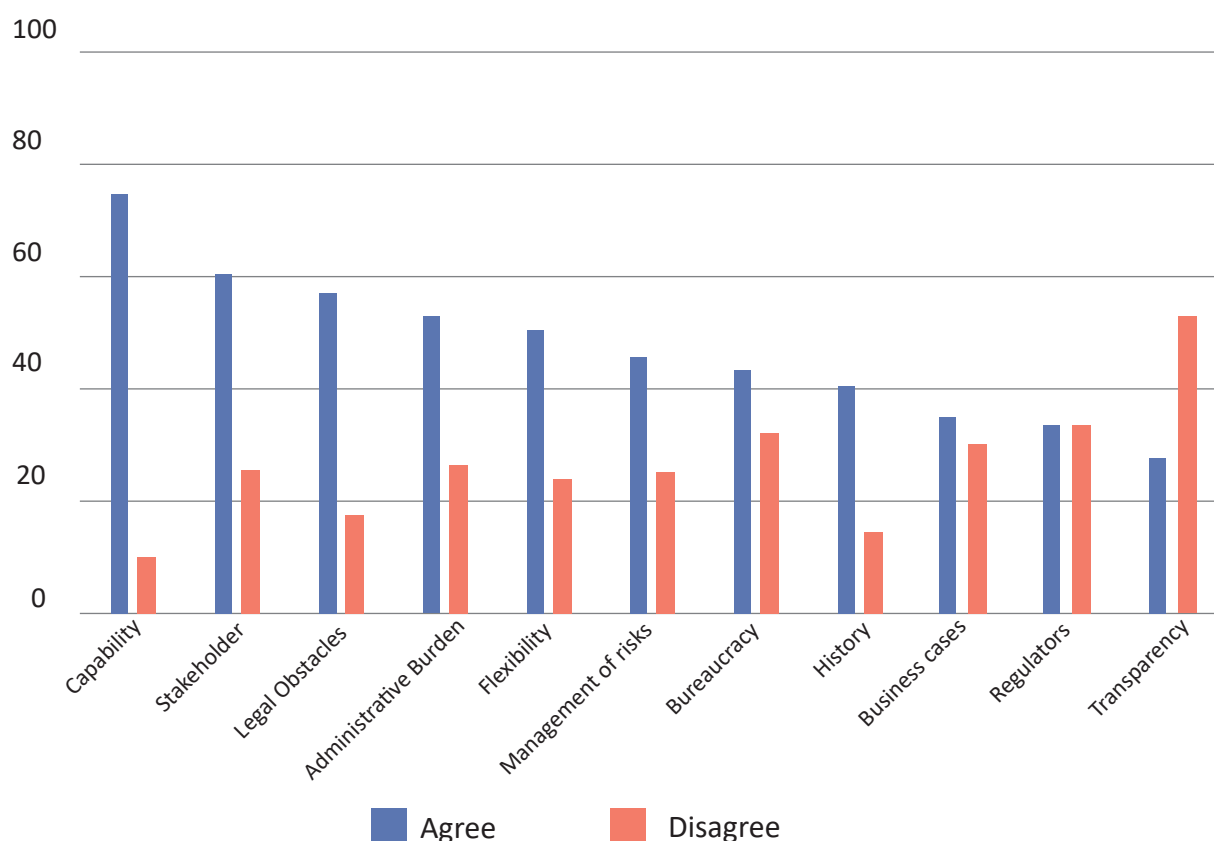
7. Barriers and Enablers of International Regulatory Cooperation

IRC is a 'long march'; in game theory terms it is a repeated game that plays out over a long time. This is illustrated in Chapter 3, which discusses five IRC case studies that play out over decades. In one case, Tasman Therapeutics, the IRC initiative was abandoned in 2014 after over a decade of sustained effort starting in 2003 when the treaty was signed establishing the framework for the regime.

The third research question for the project concerned the main barriers to and constraints of IRC that need to be overcome. In the course of the interviews used to administer the survey, other factors not covered by the survey, such as power imbalances, emerged very clearly. These other factors are discussed after the survey results in Box 2.4, along with some criticisms of IRC.

To address the enablers of and barriers to IRC, section 4 of the survey asked respondents about their views on a series of propositions on the factors that most restrict or inhibit the growth of IRC in their country. There were five options: 'strongly agree', 'agree', 'disagree', 'strongly disagree', and 'don't know'. Two propositions were expressed as negatives: IRC reduces transparency and reduces management of risks at the border. For ease of comparison, in Figure 2.8 below we have reversed the display of agree/disagree for these two questions. The graph shows the types of IRC barriers arranged from high to low by adding together 'strongly agree' and 'agree', and 'disagree' and 'strongly disagree'.

Figure 2.8. Barriers to International Regulatory Cooperation – Association of Southeast Asian Nation Member States and New Zealand Respondents (Agree/Disagree)



Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 65–75.

There was a high degree of agreement between AMS and New Zealand respondents that the main barriers to IRC were the following:

- (i) differences in capability because trust in other countries' systems is sometimes lacking,
- (ii) legal obstacles to IRC (e.g. restrictions on information sharing and confidentiality rules),⁶
- (iii) increased administrative burden for the countries involved in IRC, and
- (iv) concerns on the lack of regulatory flexibility and sovereignty arising from the adoption of IRC.

In addition, 50% of AMS respondents (but no New Zealanders) saw one potential barrier as important: IRC leads to reduced transparency between countries.

Differences in capability between economies at different levels of development came through as the most important blocker. This is because of the importance of trust in other countries' regulatory regimes and systems that is required. For example, trust is critically important to the mutual recognition of standards as it requires accepting outcomes from another country's regime as equivalent.

The capacity and capability of domestic regulators also came through as an important constraint in the country studies. In the case of Thailand:

⁶ See the discussion on information sharing and issues of confidentiality, registration, and enforcement (IMF, 2007: xviii to xxvi).

'...at a practical level, time and capable staff are limited in a fast-changing, complex, and increasingly multipolar world. For many regulatory organisations, keeping up with international standards or negotiating IRC can be a challenge. An increasingly multipolar world leads to a proliferation of IRC. At the same time, many industries are changing rapidly and capable resources are limited'. (Lam, Chapter 4)

In a similar vein, other country studies discussed capability constraints. In the case of the Lao PDR, 'Lack of systematic capacity building and financial resources have inhibited various government sectors to fully commit to the IRC' (Leebouapao et al., 2018). In Cambodia the concerns particularly related to implementation capacity. 'The capability of bureaucrats was related more to the effectiveness of the enforcement. It was stressed that the capability of bureaucrats (the ones who actually implement the policies) is relatively low and quite a number of them are not assigned to where their expertise lies.... Furthermore, inter-ministry coordination has been often pointed out by the respondents as key factors to inefficiency of the bureaucracy in Cambodia.' (Ngov, 2018)

Limited capacity and capability are challenges facing all economies. The interviews made it clear that New Zealand was entering into some IRC arrangements because of concerns that the domestic regulator lacked the technical capabilities required to exercise their regulatory powers effectively. As noted above, while the appearance of regulatory sovereignty is eroded de jure, in practice de facto regulatory sovereignty may actually be increased.

There were some intriguing country differences with respect to the barriers to IRC, as follows:


- (i) Reduced management risk across borders was perceived as a significant barrier in Singapore, but not in New Zealand or Viet Nam.
- (ii) Limited awareness and understanding of IRC ranked highly as a barrier for all countries except New Zealand and Singapore.
- (iii) Limited appetite by regulators for the joint design, monitoring, and evaluation of regulations was seen as a lower barrier by respondents in Indonesia, Philippines, Singapore, and Thailand, but was ranked highest in New Zealand.
- (iv) Indonesian respondents indicate that their bureaucracy has knowledge of and trusts the regulatory regimes of other AMS.

As the research progressed through case studies as well as country studies, the importance of power imbalances emerged very clearly. IRC is more likely to succeed when the parties manage conflict effectively and use mechanisms to address power imbalances. If there is one dominant country with an effective veto, then the IRC will need to be selected and designed carefully. In the case of New Zealand, a small country with limited bargaining power, there was a strong preference for plurilateral or multilateral over regional or bilateral cooperation.

For Thailand:

'An examination of the 'imperatives' and 'blockers' of IRC reveals that Thailand operates in a complicated landscape. Three issues are consistent. First, in terms of international relations, relative state power is a key determinant of the outcome of international regulatory arrangements. In a fast-growing region, relative power balances are fluid, adding dynamism to IRC engagement. Second, at a domestic level, a complex web of factors influences engagement in and adoption of regulation.... Third, at a practical level, time and capable staff are limited in a fast-changing, complex, and increasingly multipolar world'. (Lam, Chapter 4)

In the case of Indonesia, coordination costs emerged as a significant factor influencing the preparedness to undertake IRC.



'One of the major factors behind such low willingness is the coordination efforts to perform regulatory cooperation. In the process to implement the IRC, the focal point agencies need to communicate with their peers in other agencies, which have more authority on specific issues and deal with day-to-day regulatory process, to come up with a national position for international commitments. Those technical agencies often have different perspectives and interests to regulate their sectors or areas.

The coordination is getting more problematic in the process to ratify or incorporate IRC into the domestic regulatory framework. It takes a lot of effort for focal point agencies to obtain approval from technical agencies. The "coordination cost" increases significantly if the IRC requires a revision in national law or is related to trade agreement i.e. must have an approval by the parliament. Even after the international agreement has been signed, ratified and implemented, government agencies often introduce regulations which do not comply with the commitments'. (Damuri et al., 2018)

Chapter 3 discusses the common success factors identified by IRC practitioners based on their own experience and a series of IRC case studies. They suggested that crafting successful IRC involves:

- (i) all participants seeing the IRC programme as a win-win;
- (ii) the programme design being clearly focused on what to cooperate on to get mutual gain, and on starting small and growing forward;
- (iii) aligning the intensity of IRC to what is required and choosing the least demanding type of IRC that gets the win;
- (iv) keeping tabs on the key drivers (hard factors such as membership, leadership, and secretariat are important, but soft factors of relationships, trust, and sustained commitment are critical); and
- (v) facilitating enablers (including legal mandate, addressing power imbalances, resourcing, capability, and stakeholder management).

What matters for the success of IRC in particular instances is, however, very case specific. As the country study for Thailand observed,

'Overall, it is difficult to make generalisations about the "imperatives" or "blockers" of IRC. The outcome of any particular IRC depends on a complex weave of international, domestic, political, social, and economic factors. Each IRC initiative needs to be examined in isolation to determine its particular "imperatives" or "blockers"'. (Lam, Chapter 4)

Box 2.4. International Regulatory Cooperation and its Critics

While all survey respondents took a generally positive view of international regulatory cooperation (IRC), that does not mean IRC and good regulatory practice more generally are not more controversial with wider stakeholders. In particular, the inclusion of regulatory coherence chapters in the draft Trans-Pacific Partnership text, and chapters on behind-the-border technical barriers to trade in the North American Free Trade Agreement, and the Transatlantic Trade and Investment Partnership have attracted both academic and interest group criticism (see, for example, Canadian Centre for Policy Alternatives, 2019). Other commentators on financial markets, especially in the wake of the global financial crisis, have criticised IRC in that sector for being insufficiently stringent and intrusive.

Wiener and Alemanno (2015) identify four costs associated with IRC when it results in regulatory convergence: the costs of negotiating and overseeing the agreement, mismatches with local preferences and circumstances, regulatory error with a harmonised approach, and the loss of learning. Research participants highlighted the resource costs associated with IRC. The later three costs relate to the cost of harmonisation, rather than IRC per se. Other lines of criticism of IRC identified by the Organisation for Economic Co-operation and Development (Abbott et al. 2018) include: (i) limited public accountability, (ii) ineffectiveness in implementation and enforcement, (iii) the fact that it benefits powerful actors, and (iv) its focus on small problems rather than addressing significant regulatory problems. Several of these criticisms are actually a potential argument for more IRC rather than less.

A major constraint that emerged from the research was the risk from the lack of public legitimacy to pursue a more active IRC agenda. As one interviewee observed 'IRC is often not well understood. More needs to be done with stakeholders to explain the benefits'. There is a potential disconnect between the generally positive view of IRC expressed by survey respondents and the wider public. The contrast between 'expert' respondents' views and those of ordinary citizens is most obvious in the vexed issue of regulatory sovereignty. Experts nearly unanimously supported the proposition that IRC strengthens states' capacity to deliver effective regulation. In this view, the decision to engage in IRC would increase the effective exercise of regulatory sovereignty. The same experts identified public concerns about eroding the perception of regulatory sovereignty as a major obstacle to IRC.

Source: Authors, Canadian Centre for Policy Alternatives (2019); Weiner and Alemanno (2015); Abbott et al (2018)

8. Dynamics of International Regulatory Cooperation

IRC is a dynamic process that plays out over time. Cooperation is costly as it takes time and commitment to build up trust. IRC involves group dynamics, including 'forming, storming, norming, performing, and then potentially deforming' if the cooperation stalls and breaks down.

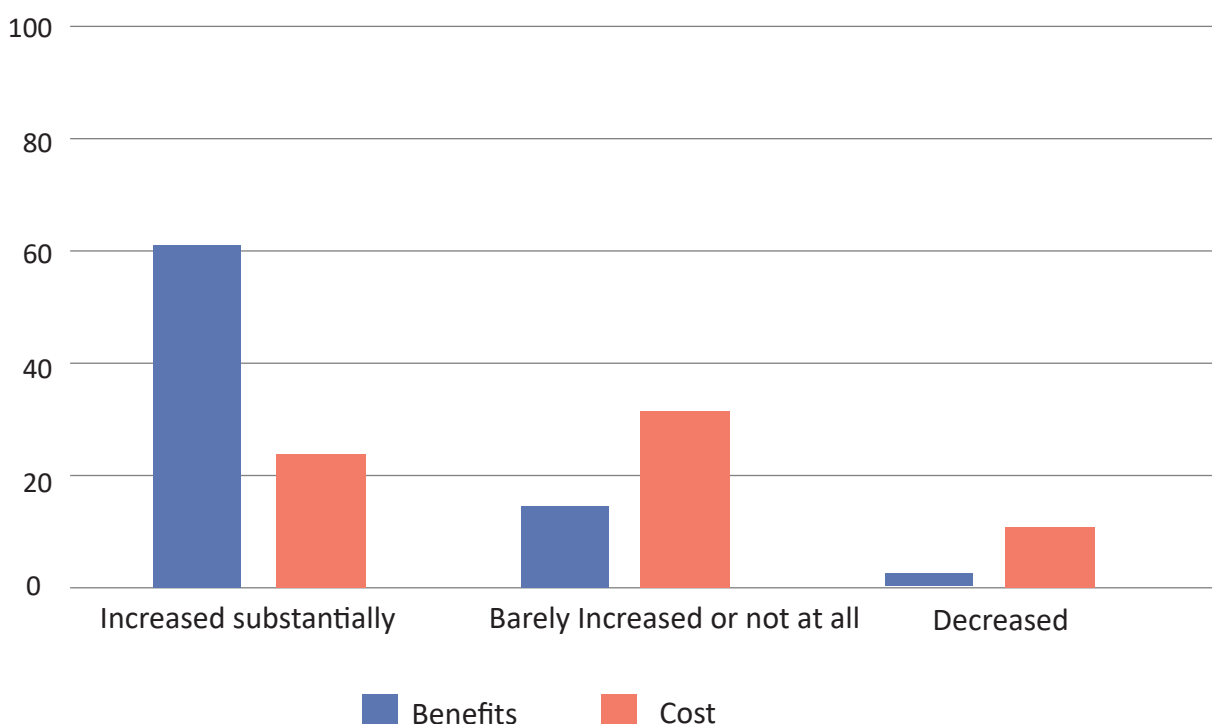
The benefits of IRC are usually hard to quantify in advance, frequently take time to be realised, and will typically require experience-based fine tuning of the regulatory rules, structures, and enforcement. As a result, IRC tends to change over time as the scope tends to expand (broadening), or the intensity of cooperation increases (deepening).

As part of the survey, respondents were asked to reflect upon an example of IRC with which they were most familiar and compare it with another case involving IRC. The survey explored how the costs and benefits changed over time and the importance of different actors at different stages in the process.

8.1. Costs and Benefits

Figure 2.9 shows that for all AMS countries, 60% of respondents suggested that the benefits of the specific IRC case had increased substantively over time, while the majority suggested that the costs had decreased or barely increased. There was general support for the view expressed in the Indonesia country study quoted above that more informal IRC has lower costs as line regulatory agencies do not incur the same 'coordination costs' as more formal IRC, which requires executive agreement, ratification in law, or inclusion in an FTA.

Figure 2.9. Costs and Benefits of International Regulatory Cooperation



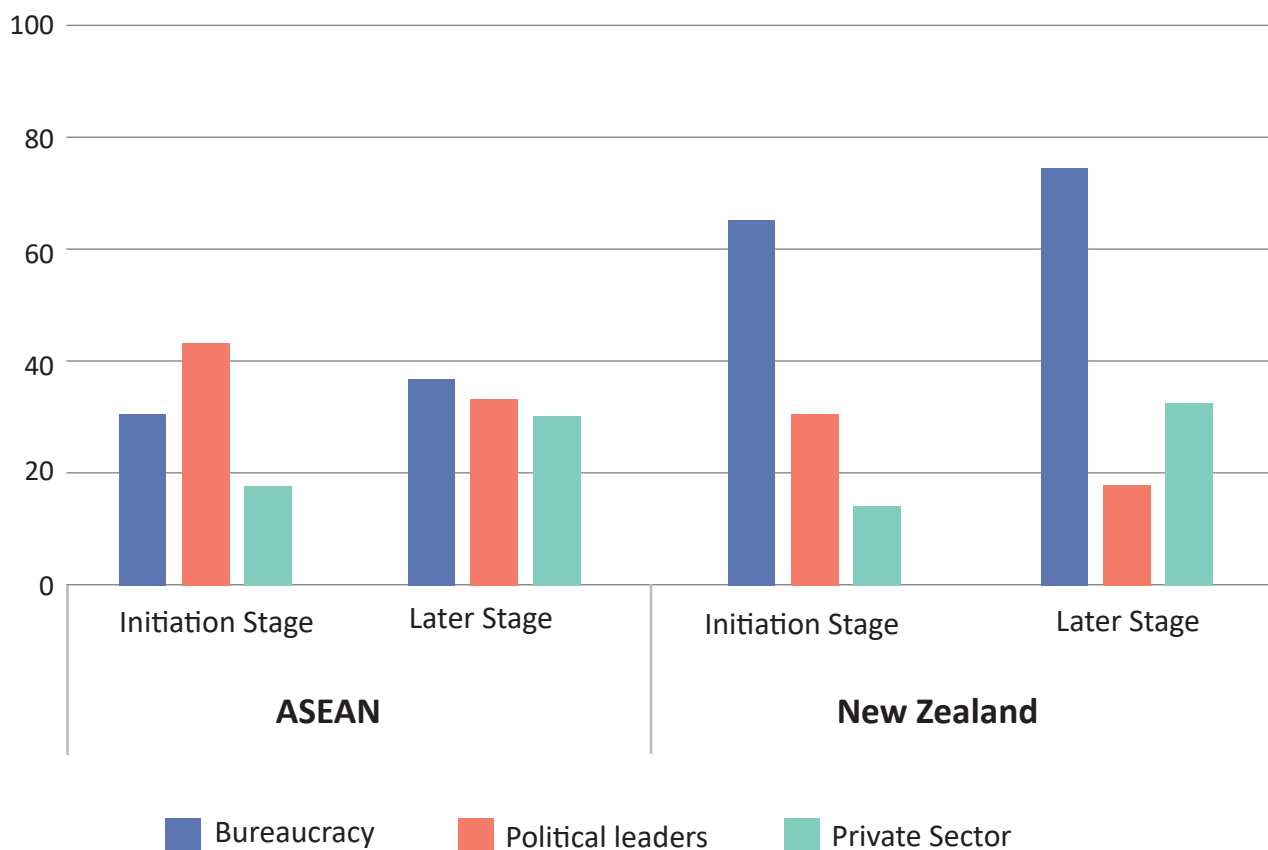
Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 57–58.

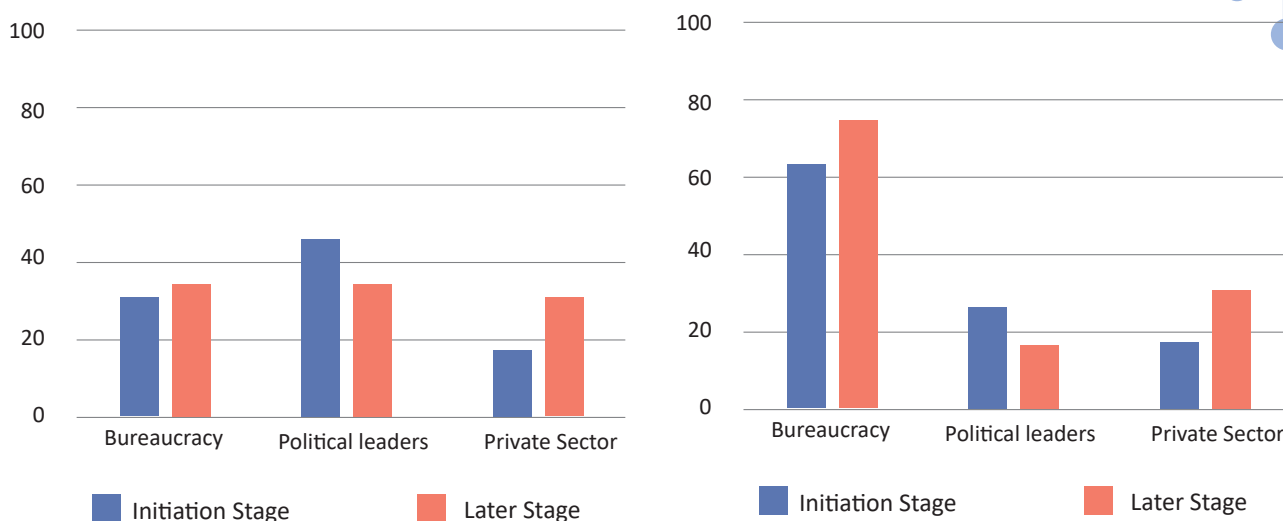
The patterns of support for IRC varied markedly between New Zealand and the AMS. Figure 2.10 below compares the support at different stages from political leaders, bureaucrats, and the private sector in the AMS with the support in New Zealand. In New Zealand, having the support of the bureaucracy comes through as critical, but that of the ministers much less so. One explanation for this is that much IRC in New Zealand is bilateral with Australia and more bottom-up. Transgovernmental networks (i.e. direct, informal, domestic, agency-to-agency arrangements) operate without the direct involvement of foreign ministries and 'beneath the radar' of politicians. New Zealand respondents emphasised that the ministers' role was generally limited to lending a symbolic legitimacy, rather than actively championing the IRC and committing to its success. By contrast, respondents from ASEAN countries perceived 'from-the-top' political mandate as more critical and going beyond symbolic support.

In both ASEAN and New Zealand, however, the importance of political support diminished over time, while that of the bureaucracy and the private sector tended to increase. This is consistent with the view that, although political support was more important in getting up-front commitment, the benefits were less obvious to politicians than other actors. This is consistent with the propositions discussed in section 6, where the majority of respondents agree that 'regulators and politicians need to be shown the benefits from reduction in regulatory differences among AMS under IRC'.

There is a remarkable similarity in the role of the private sector in AMS and in New Zealand. Private sector support was weak or very weak at the initiation stage, but becomes much stronger as the IRC evolves (83% responded that this was strong or very strong in New Zealand, 82% responded that this was so in later stages in AMS).

Figure 2.10. Dynamics of International Regulatory Cooperation – Support by Phase





(left) ASEAN (right) New Zealand

ASEAN = Association of Southeast Asian Nations.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 50–61.

9. The Governance of International Regulatory Cooperation in the Association of Southeast Asian Nations and New Zealand

Every country has its own unique regulatory management system (RMS) for developing laws, regulations, and rules (see Intal and Gill, 2017). ‘Regulatory management refers to the systematic appraisal of the impacts of proposed legislative rules and the sustained maintenance of existing laws and regulations’ (Gill, 2019). This appraisal occurs through the use of regulatory quality tools, such as regulatory impact analysis or administrative burden reduction. IRC is an integral part of high-performing RMSs. This is because RMSs and GRP generally need to consider the international implications of domestic regulatory processes for the design and operation of regulatory regimes.

In the IRC country studies, each researcher was asked to look at the interface between the RMS and the IRC in their country and the degree of central oversight of IRC. The focus questions were:

- (i) Was there one or more lead agency in the national government specifically responsible for promoting overall regulatory quality (GRP)?
- (ii) If so, did that body’s role include oversight of IRC?
- (iii) Was there an explicit government policy on IRC?

9.1. Lead Agency on Good Regulatory Practice and for International Regulatory Cooperation

There is a wide range of lead agency arrangements on GRP, as would be expected given the diversity of RMS arrangements across the countries in the study. Some countries (e.g. Indonesia and the Philippines until very recently) reported no GRP lead agency, or one with a relatively narrow focus (e.g. Brunei Darussalam on ease of doing business, and Thailand and Singapore on law drafting); some such as Viet Nam had a single lead agency (the Ministry of Justice); and some had two GRP leads (e.g. New Zealand and Malaysia).

In no case did the GRP lead body’s role include explicit oversight of IRC. However, in the case of New Zealand, the Ministry of Business, Innovation and Employment played a lead role

in promoting international regulatory coherence, which includes promoting IRC in its many forms. This diversity of arrangements is not unique to ASEAN. Across the world there is little evidence about what good IRC governance looks like, or what a 'best practice model' might be.

9.2. International Regulatory Cooperation Oversight and Policy

While there was limited central oversight of IRC and a wide variety of IRC arrangements in place, there were a number of similarities. All countries have to grapple with the range of types of IRC, including:

- (i) informal networks for which the lead regulatory agency generally decides the extent of participation,
- (ii) more formal executive agreements that generally need cabinet or presidential ratification to enter into force, and
- (iii) treaties that typically require executive agreement and some form of legislative concurrence.

There were two common themes: (i) for formal treaties and executive agreements, most countries reported that the ministry with responsibility for foreign affairs had an oversight role; and (ii) for informal transgovernmental networks, IRC responsibility generally lies solely with the relevant individual line ministry or public agency. IRC, when formal, is implemented through a range of legal instruments. As a result, most countries have developed arrangements to manage whether and how to become a party to international treaties and protocols.

In some countries where there is a separate ministry with responsibility for international trade (e.g. Malaysia and Viet Nam), this also oversees international trade and economic agreements. In other jurisdictions (e.g. the Philippines and Viet Nam), the planning agency also oversees GRP and hence indirectly IRC. The case of the Philippines is instructive.

'In general, there is no single government agency that oversees the quality of regulations or monitors the number and type of regulatory issuances made by government regulatory agencies.... there is no lead government body that promotes overall regulatory quality. Instead, each government department (ministry)...perform[s] regulatory functions over their respective sectors [e.g. health in the Department of Health]....

While international coordination concerning regulations and policies depends on the sector involved (e.g. the Department of Trade and Industry for trade-related matters), the National Economic and Development Authority (NEDA) is the closest agency that monitors and coordinates activities relevant to the formulation of government policies, plans, and programs; and undertakes policy reviews.... The NEDA implicitly oversees IRC activities across different sectors because it is tasked with providing policy reviews and recommendations to policy makers and is also the lead agency that prepares the Philippine Development Plan. Consequently, there is no explicit or distinct institutional framework governing IRC in the country'. (Llanto, Chapter 6)

For informal transgovernmental networks, the dominant governance model was a devolved approach. Under this approach, responsibility for a particular IRC initiative lies directly with the relevant individual line ministry or public agency.

Cambodia provides a typical example:

‘With regards to IRC, which deals with international regulatory matters, there is no dedicated body in the country to oversee/coordinate it. In general, each ministry has its department of international cooperation/affairs, dealing with IRC-related matters. The technicalities of the issues are chiefly handled at the department level, while the decisions are, in most case, referred to the general directorate or higher level in the hierarchy’. (Ngov, 2018)

No country reported an explicit cross-sectoral IRC policy, although some were implicit. For example, New Zealand’s regulatory stewardship framework, while not explicitly mentioning IRC by name, does refer to IRC in effect, The Government’s Expectations for Good Regulatory Practice (published in April 2017), which expects regulations to be ‘consistent with relevant international standards and practices’ and for regulatory agencies to ‘periodically look at other similar regulatory systems, in New Zealand and other jurisdictions’.⁷

The governance of IRC varies between countries but also across different sectors within the same jurisdiction. The country study for Thailand (Chapter 4 in this volume) points out:

‘The international regulatory landscape of each individual organisation is complex, as it reflects the industry being regulated, the different forums at which Thailand is represented, and the domestic setup of the regulatory organisations’.

However, there are also commonalities. The Office of the Council of State (OCS), ‘...oversees one aspect of the IRC process. As a key stakeholder for all organisations involved in regulation that impacts domestic law, the OCS is responsible for reviewing and assessing every piece of draft legislation before it is submitted to Parliament. The OCS is also responsible for translating every piece of legislation and regulation into English and Thai’. (Lam, Chapter 4)

A deeper understanding of the different approaches to IRC, both within and across countries, is likely to be a key part of the GRP toolkit. The governance of IRC is particularly challenging as it is not yet clear what good practice in IRC governance looks like. In the next and final section of this chapter we explore likely future trends in the development of IRC.

10. Concluding Comments: The Future of International Regulatory Cooperation

No discussion of IRC would be complete without a discussion of the possible future of IRC in East Asia. The concluding section of the survey included an open-ended question: ‘Are there any developments that will shape how IRC will develop (e.g. AEC Blueprint 2025 or CPTPP (TPP11))?’

A number of common themes emerged from the survey responses and the workshop discussions about how IRC might play out in East Asia. These discussions occurred in the context of slowing growth of world trade, a lack of progress on further multilateral liberalisation, ongoing strategic competition between the United States (US) and China, and US disengagement from its traditional leadership role on international economic issues.

There is an old saying that ‘all models are wrong but some are useful’. In the futures space, it can be said that ‘all futures work will be wrong, but some of it will be useful and insightful’. The trick is to distinguish between the trends that will continue to play out over time from the discontinuities that have the potential to throw things off course.

⁷ See Box 5.1 in Chapter 5 on New Zealand for a more detailed discussion.

10.1. Most Long-Term Drivers of International Regulatory Cooperation Continue to Operate

The growth of IRC since World War Two has been driven by the combined impact of (i) globalisation, (ii) technological change, and (iii) geopolitical developments. Looking ahead, beyond the coronavirus disease, for the next decade two of these drivers will continue to operate:

- (i) global economic trends including the growth in global supply chains, globalisation, growth in multinational corporations, and pressure from business to reduce technical barriers to trade; and
- (ii) technology driving the Fourth Industrial Revolution through the combination of digitisation, artificial intelligence, cloud technology, big data analytics, and high-speed mobile.

10.2. Geopolitical Tensions Will Continue

On the geopolitical side, there is significant potential for discontinuity, with the slowdown in international economic integration, ongoing US–China rivalry, loss of American leadership, and loss of momentum of multilateral initiatives. As the size and heterogeneity of members' interests in multilateral institutions grow, the prospect of universally binding commitments recedes. As a result, there will be less impetus for IRC from the multilateral agreements that provide for widening and deepening regulatory cooperation.

In East Asia, there are several overlapping regional trade and regulatory initiatives that might help drive the future of IRC in the region, including:

- (i) the AEC Blueprint 2025;
- (ii) regulatory provisions in the FTAs between ASEAN and six countries in the region (the Republic of Korea, Japan, China, India, New Zealand, and Australia);
- (iii) APEC with its agenda on structural reform that includes a number of countries from this study (Brunei Darussalam, Indonesia, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Viet Nam);
- (iv) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which currently involves 11 countries in Asia and the Pacific region including Brunei Darussalam, Malaysia, New Zealand, Singapore, and Viet Nam; and
- (v) the Regional Comprehensive Economic Partnership, which includes the 10 AMS, plus the five of the six countries with which ASEAN has an FTA.

In the longer term, the objective of the Free Trade Area of the Asia-Pacific is to link Pacific Rim economies from China to Chile to the US with the aim of harmonising the 'noodle bowl' of regional and bilateral FTAs that proliferated following the collapse of the Doha Round of the WTO talks in 2006.

The AEC 2025 provides a focus for GRP and IRC efforts in the region. The Closer Economic Relationship and vision of a Single Economic Market between New Zealand and Australia have driven many of the trans-Tasman IRC initiatives. Similarly, the ambition of the AEC should be to be a strong driver of IRC in the region.

In the workshops held to support this study, several sources saw US disengagement as an opportunity to expand IRC by providing 'freer paths of evolution, not constrained by US legalism, less dominance by a single powerful player', and observed that it was 'politically less hard to be seen to be responding to a US agenda'. The counterview, however, was that US–

China tensions will inevitably spill over into engagement between second-tier nations, making collective agreements harder to achieve in regional forums like ASEAN and APEC.

10.3. Alongside Discontinuity Is Continuity

Other trends will persist, providing continued impetus for IRC. The technological developments associated with the Fourth Industrial Revolution – digitisation, artificial intelligence, cloud technology, big data analytics, and high-speed mobile – will continue, and these drivers do not respect country borders.⁸ The need to manage international spillovers will increase the need for cooperation on regulatory policy design, enforcement, and other regulatory agency practices to ensure that the domestic regime remains effective. Cooperation is more likely to develop in newer ‘greenfield’ areas such as emerging technology, as it is much easier to start with a clean slate, both technically and politically, than to cooperate on ‘brownfield’ areas where different countries’ regulatory policy regimes and practices are much more entrenched.

In addition, the slowing growth of world trade, and economic growth in East Asia may increase the pressure for growth-enhancing structural policies, including greater interoperability of regulatory policies and practices.

10.4. International Regulatory Cooperation as a Flexible Pragmatic Response

In the absence of progress in multilateral forums, there is scope for more emphasis on plurilateral and regional arrangements such as the AEC, APEC, and CPTPP. IRC provides a pragmatic flexible approach that can be pursued selectively through the use of more informal mechanisms.

A recent example of plurilateral ‘coalitions of the willing’ developing ‘framework agreements’ is the Digital Economy Partnership Agreement between New Zealand, Chile, and Singapore that was formed to take advantage of opportunities from digital trade. We can also point to the Singapore–New Zealand-inspired agreement on trade in general medical supplies and equipment, which has been joined by several other economies; and the interim arrangement on a temporary replacement for the WTO Appellate Body, in which New Zealand is one of 15 economies.

The view from Viet Nam is instructive.

‘Looking forward, the implementation of CPTPP, AEC Blueprint 2025, and Renewed APEC Agenda on Structural Reform (RAASR) will have important implications for IRC in Vietnam. The CPTPP is often considered a high-quality agreement of the 21st century, with model standards on GRP, competition, [sanitary and phytosanitary measures], [technical barriers to trade], etc. Meanwhile, ASEAN has acquired more experiences in promoting intra-regional regulatory cooperation. The RAASR provides another framework for Vietnam’s voluntary and unilateral adoption of international regulatory standards to foster structural reform, with technical assistance from more advanced APEC member economies (Australia, New Zealand, [Republic of] Korea, etc.). The opportunities are thus diverse for Vietnam to participate in IRC, at different scopes and depth.’ (Vo, 2018)

⁸ See Yeung and Lodge (2019) for a discussion of the ambiguities and complexities posed by regulating algorithms.

10.5. Sovereignty as a Potential Wild Card

Parallel to international development, ongoing social trends (e.g. aging populations in developed countries and the expansion of the middle classes in some developing countries), as well as new energy technologies can enable a greener global economy. There is an old international negotiator's aphorism that states, 'the people who cause the most trouble in making a deal are not the other countries but those on your own side'. The importance of the domestic political atmosphere for IRC came up repeatedly in the country studies. A complex web of factors influences whether regulation generally and IRC in particular is adopted. Concerns about 'sovereignty' (discussed in Box 2.4) risks becoming an all-purpose tool to derail IRC proposals. In the face of the loss of favour for globalisation generally and freer movement of people in particular, willingness to adopt formal IRC dissipates. This line of argument emphasises the likely importance of diverse 'bottom up' routes to deeper regulatory cooperation further in the future.

10.6. Bringing it All Together: International Regulatory Cooperation – Why, Who, How, What, and Which

This chapter started with five key questions that IRC practitioners must address:

- (i) Why? Why undertake IRC?
- (ii) Who? With whom will countries cooperate (arrangements can be bilateral, sub-regional/ regional, plurilateral, or multilateral)?
- (iii) How? How intensively will the country regulators cooperate (from informal networks of national regulators, through to formal regulatory partnerships and harmonisation)?
- (iv) What? On what will they cooperate – regulatory policies (making rules); regulatory practices (interpreting, applying, and enforcing rules); or regulatory organisational management (supporting rules administration)?
- (v) Which? Which structure will they use?

These questions inevitably involve forces pulling in different directions, and the dynamics will vary across different sectors. Box 2.5 highlights some speculative propositions produced from the research about how IRC in East Asia may play out in the future.

Box 2.5: Conjectures about the Future of International Regulatory Cooperation in East Asia

Why undertake IRC?	To gain economic benefits, and improve regulatory effectiveness, and achieving geo-political imperatives such as the AEC Blueprint 2025 for AMS
Who will countries cooperate with?	Less multilateral and more regional and plurilateral arrangements, the latter built on coalitions of the willing
How intensively will countries cooperate?	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
What will they cooperate on?	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 'greenfields' areas, such as the fourth Industrial Revolution for example, than on 'brownfields' areas with more entrenched regulatory regimes.
Which structure will they use?	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.

In the futures space, it is important to bear in mind the old Danish proverb, 'It is difficult to make predictions, especially about the future'. In the case of this project, the coronavirus pandemic occurred just as documentation of the research findings was being completed. As the world is in the middle of the event as this text is being finalised (March 2020), it is too early to speculate in any detail on the impact on the world economic outlook generally and on IRC in particular.

There will likely be an important role for IRC even in a post-coronavirus world where the cross-border movement of people and international trade in goods and services may be more restricted. IRC can, of course, help create an environment that supports cross-border trade and investment. However, more importantly, as the pandemic has dramatically demonstrated, there are few regulatory regimes where factors outside domestic territorial borders do not have the potential to have a significant local impact. Some regulatory effectiveness issues will require more concerted action. Thus, another significant driver is the use of IRC to support the effectiveness of regulation to achieve domestic policy objectives.

Leaving aside the effect of the pandemic, the research in this project has provided some pointers about how IRC is likely to evolve in East Asia. If IRC is to continue to flourish, it will rely on the commitment of bureaucrats to get initiatives over the line. The next chapter focuses on the practical craft of IRC and examines the common success factors drawn from a range of IRC case studies.

References

- Abbott, K., C. Kauffmann, and J.-R. Lee (2018), 'The Contribution of Trans Governmental Networks of Regulators to International Regulatory Co-operation', *Organisation for Economic Co-operation and Development (OECD) Regulatory Policy Working Papers*, No. 10, Paris: OECD Publishing.
- Canadian Centre for Policy Alternatives (2019), *International Regulatory Cooperation and the Public Good: How 'Good Regulatory Practices' in Trade Agreements Erode Protections for the Environment, Public Health, Workers and Consumers*. Ottawa: Canadian Centre for Policy Alternatives.
- de Brito, A.C., C. Kauffmann, and J. Pelkmans (2016), 'The Contribution of Mutual Recognition to International Regulatory Co-operation', *OECD Regulatory Policy Working Papers*, No. 2, Paris: OECD Publishing.
- Gill, D. (2018), *International Regulatory Cooperation: Case Studies and Lesson Learnt*. Wellington: New Zealand Institute of Economic Research.. <https://nzier.org.nz/publication/international-regulatory-cooperation-case-studies-and-lessons-learnt> (accessed 31 March 2020).
- Gill, D. (2019), *Regulatory Management Toolkit*. New Zealand Institute of Economic Research public discussion document, March. https://nzier.org.nz/static/media/filer_public/7b/48/7b481896-f238-4fe4-ad94-e2dbdec12431/nzier_wp_2019-3_regulatory_management.pdf (accessed 31 March 2020).
- Intal, P. and D. Gill (2016), *The Development of Regulatory Management Systems in East Asia: Deconstruction, Insights, and Fostering ASEAN's Quiet Revolution*. Jakarta: Economic Research Institute for ASEAN and East Asia.
- International Monetary Fund (2007), *Working Together Improving Regulatory Cooperation and Information Exchange*. Washington, DC: International Monetary Fund. <https://www.imf.org/external/pubs/ft/books/2007/working/0607.pdf> (accessed 13 April 2020).
- Krasner, S. (1999), *Sovereignty: Organized Hypocrisy*. Princeton, NJ: Princeton University Press.
- Weiner, J.A. and A. Alemanno (2015), 'The Future of International Regulatory Cooperation: TTIP as a Learning Process Toward A Global Policy Laboratory', *Law and Contemporary Problems*, 78, pp.103-36.
- Yeung, K. and M. Lodge (2019), 'Algorithmic Regulation: An Introduction'. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3483693 (accessed 31 March 2020).

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Chapter 6: International Regulatory Cooperation in the Philippines – The Drive for Improved Regulatory Quality and Regulatory Coherence (Gilberto M. Llanto, Ma. Kristina Ortiz, and Aljan Salvanera)

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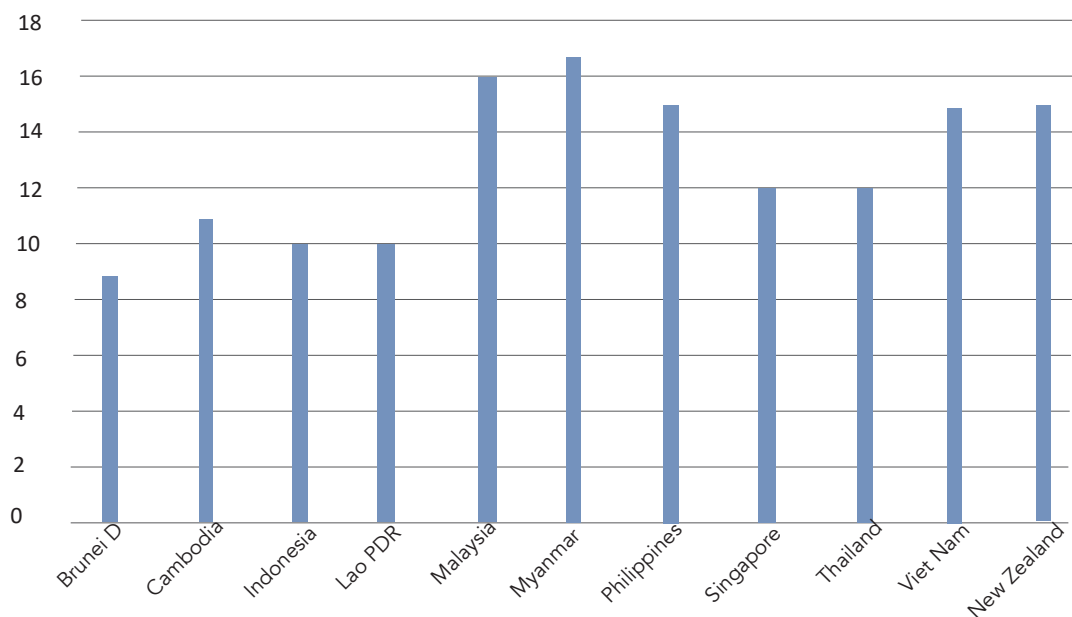
Internationally Networked Government: The Case of International Regulatory Cooperation in Singapore (Hank Lim Giok-Hay)

Appendix: Background on the International Regulatory Cooperation Survey

This appendix summarises the background material on respondents to the International Regulatory Cooperation (IRC) Survey, including the breakdown by country, institutional affiliation, and years of IRC experience as well as providing the actual survey questions given to Association of Southeast Asian Nations member state respondents. The New Zealand survey had the same structure and format, but the contextual details were tailored to New Zealand's situation.

As an expert survey, the survey design required a small number of people from each country with good understanding and direct practical experience with IRC.

Figure A2.1: Total Respondents by Country

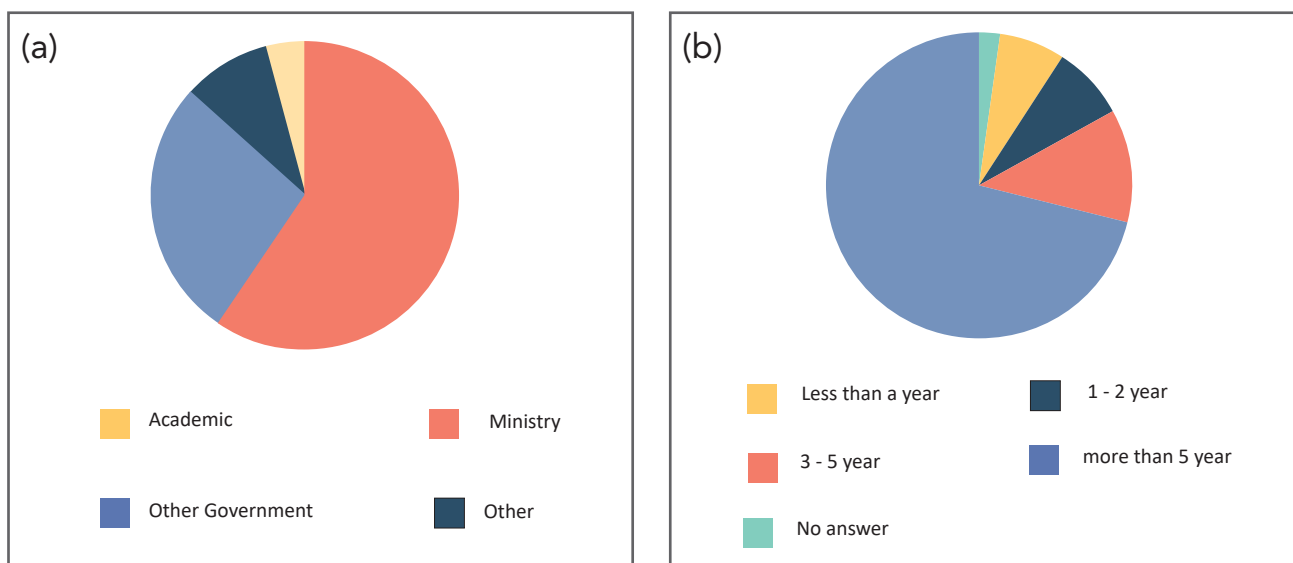


Brunei D. = Brunei Darussalam, Lao PDR = Lao People's Democratic Republic.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 1.

Unsurprisingly, the expert survey was predominantly made up of government officials. Figure A2.2 shows that the interlocutors were mainly ministry (57%) or line agency (28%) officials, with some academic and private interviewees. Respondents generally had considerable IRC experience – the majority (72%) of those interviewed reported that they have been involved in IRC for more than 5 years.

Figures A2.2: (a) Respondent Institutional Affiliations and (b) Degree of Involvement in International Regulatory Cooperation



Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 1.

INTERNATIONAL REGULATORY COOPERATION (IRC) SURVEY QUESTIONNAIRE – Association of Southeast Asian Nations Member States version

Please be as frank as possible as the responses will be summarized and reported so that individual responses are not identifiable. Where your statements and insights are particularly worth noting, we would ask your permission if we can quote you for the country report and for the overall integrative report.

(The response is indicated by an X in the relevant column for each question)

1. Demographic Questions

- 1a. Name : Title ☐ Mr. ☐ Ms. ☐ Dr.
First Name:
Last Name:
- 1b. Country : ☐ Brunei Darussalam ☐ Cambodia
☐ Indonesia ☐ Lao PDR
☐ Malaysia ☐ Myanmar
☐ Philippines ☐ Singapore
☐ Thailand ☐ Viet Nam
- : Lead Position,
(e.g. Director, Manager, Associate)
- Sector focus of the institution.....
(e.g. agriculture, manufacturing, telecommunications,
whole economy, monetary policy, planning)
- 1d. Institutional Affiliation : ☐ Academic ☐ Ministry
☐ Other Government, (Please indicate)
☐ Other,(Please indicate)
- 1e. Degree of Involvement in IRC : ☐ Less than a year
☐ 1-2 year
☐ 3-5 year
☐ More than 5 year
- 1f. Main Area of IRC Involvement : ☐ Bilateral
☐ Sub-Regional (e.g. GMS)
☐ Regional (e.g. ASEAN)
☐ Multilateral

2. Views on International Regulatory Cooperation (IRC)

We would like to get your views on international regulatory cooperation (IRC) by responding to the following statements. Specifically, please check or tick the appropriate box for each of the statements below:

- A. IRC enhances transparency and predictability and reduces barriers to international trade.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- B. IRC facilitates exports of SMEs that are usually handicapped in meeting compliance challenges in foreign markets.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- C. IRC strengthens the capacity of states to deliver effective regulation to citizens and businesses.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- D. IRC that requires treaties and protocols reduces policy space of a country to the disadvantage of the country.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- E. Regulators (in my sector) often do not consider the trade implications of what they do. ASEAN needs IRC to manage spillovers across borders of national regulations in an integrated region.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- F. IRC in ASEAN benefits the richer countries much more than the poorer countries.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- G. IRC helps with the design and implementation of regulations that promote global and regional supply chains.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- H. IRC needs good regulatory practice (GRP) (e.g. stakeholder consultation) to make regulations more effective and beneficial to firms and citizens.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- I. IRC builds trust and mutual understanding among institutions in AMS.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- J. In ASEAN, regulations and their implementation differ substantially across countries. IRC reduces regulatory divergence and introduces more harmonized processes among AMS, thereby benefiting firms and citizens of the region.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- K. IRC can benefit the bureaucracy through enhanced knowledge flow about technical issues and options and about policy experiences of other countries.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- L. In ASEAN, with member states of widely varied levels of economic and institutional development and diverse cultures, it is best to start with shallow regulatory cooperation that apply to all members and deep (high level) cooperation for those who are willing and/or interested.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- M. Regulators and politicians need to be shown the benefits from reduction in regulatory differences among AMS under IRC.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- N. Without strong political will and support, IRC cannot be sustained.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- O. A more integrated ASEAN needs to institutionalize IRC.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know
- P. IRC adds additional layer of coordination and makes life for administrators and regulators even more difficult and bureaucratic.
☐ Strongly Disagree ☐ Disagree ☐ Agree ☐ Strongly Agree ☐ Don't Know

3. Pervasiveness of IRC

This section asks your perception of how pervasive IRC initiatives are in your country. You can answer for the sector you are involved in or the country as a whole. By IRC we include bilateral, regional (e.g. ASEAN) level, or multilateral initiatives. Please tick the appropriate box on your perception of the magnitude of IRC initiatives, according to different forms of IRC. We will also ask you to list down examples of IRC, except where there is none.

The response boxes are for: ☐ none (that I know of); ☐ one or two; ☐ few (between 3 and 5 IRC); and ☐ many (more than 5 IRC).

- A. Unilateral adoption of regulatory regime of a trading partner (in ASEAN or outside ASEAN)
☐ None ☐ One or Two ☐ Few ☐ Many
- B. Regulatory dialogues and exchange of information with another country or regional (e.g. ASEAN)
☐ None ☐ One or Two ☐ Few ☐ Many
- C. Voluntary, non-justiciable commitment to best practice guidelines, and principles (e.g. APEC).
☐ None ☐ One or Two ☐ Few ☐ Many
- D. Adoption of international standards developed by international standard setting bodies (e.g. ISO, GS1 barcodes, etc.)
☐ None ☐ One or Two ☐ Few ☐ Many
- E. Policy coordination with partner country (ies) on specific area or sector of regulation
☐ None ☐ One or Two ☐ Few ☐ Many
- F. Mutual recognition agreements (MRAs) with other countries or region-wide (e.g. ASEAN) on conformity results which allow specifications (qualifications of professionals, products) gained in one country to be recognized in another country (e.g. ASEAN MRAs on engineering, architecture, etc.).
☐ None ☐ One or Two ☐ Few ☐ Many
- G. Joint development of standards with another country or regionally (e.g. ASEAN)
☐ None ☐ One or Two ☐ Few ☐ Many
- H. Cross agency exchange of personnel (short term, long term) with other institution (s) in another country or regionally
☐ None ☐ One or Two ☐ Few ☐ Many
- I. (Formal) cooperation agreement on the enforcement of regulations with another country or regionally
☐ None ☐ One or Two ☐ Few ☐ Many
- J. Harmonization of technical regulations (involving specific products) with another country or regionally (e.g. ASEAN Cosmetics Directive)
☐ None ☐ One or Two ☐ Few ☐ Many
- K. Mutual recognition of rules: equivalent objectives, regulatory requirements, standards, and conformity procedures between countries. This is a stronger IRC than mutual recognition of conformity results e.g. APEC Asian Passport Funds.
☐ None ☐ One or Two ☐ Few ☐ Many
- L. Joint Institution or an institution established by two or more countries to supervise regulatory aspects in a particular area in the participating or member countries
☐ None ☐ One or Two ☐ Few ☐ Many
- M. Formal regulatory cooperation partnerships with another country (or region) which are broad political agreements between countries in order to promote better quality regulations and reduce regulatory divergences; e.g. US-Mexico High Level Regulatory Council
☐ None ☐ One or Two ☐ Few ☐ Many

Please list down examples of IRC involving your country, and if possible, indicate what is the nature or form of the IRC:

1. _____

2. _____

3. _____

4. _____

Thinking of your country's experience with IRC across the board (and not just in your sector/industry) are your country's IRC initiatives mainly bilateral, regional or multilateral?

- ☐ Bilateral
☐ Regional (ASEAN)
☐ Multilateral

4. Persuasiveness of IRC

From the examples that you have listed, let us examine one IRC case that you are most familiar with. We would like to know, based on your understanding and knowledge, the evolution of the IRC over time, the factors (enabling or constraining) that have affected its contributed to the shaping of the form of IRC and the extent of its implementation over time.

- A. Please indicate the IRC you are most familiar with that you would like to examine in some depth

- B. When did the IRC start involving your country? _____

Is it ☐ global or ☐ regional ☐ or bilateral?

What is the nature of the IRC? _____

- C. How has the IRC evolved over time:
Is the form or nature of the IRC the same now as it was at the start of the IRC?
☐ Yes ☐ No

If No, what were the changes in the form or nature of the IRC; e.g. country coverage, sector coverage, deepening or expansion in the form or nature of the IRC to higher levels of cooperation? Please indicate below

- D. In your understanding or perception (please encircle which), what are the key factors that contributed to the choice of the form of IRC and its evolution over time. Specifically,

	Very Strong	Strong	Weak	Very Weak
1. At initiation stage, support of political leaders--	[]	[]	[]	[]
2. At initiation stage, support of the bureaucracy	[]	[]	[]	[]
3. At initiation stage, support of the private sector	[]	[]	[]	[]
4. Other factors that have contributed to the decision of the country to be part of the IRC. Please state and explain briefly importance of each	<hr/> <hr/> <hr/>			

	Very Strong	Strong	Weak	Very Weak
5. At later stage, support of political leaders--	[]	[]	[]	[]
6. At later stage, support of the bureaucracy	[]	[]	[]	[]
7. At later stage, support of the private sector	[]	[]	[]	[]
	Increased Substantially	Barely Increased or Not at All	Decreased	Remained Not Understood or Known
8. At later stages of the IRC, benefits from IRC have proven to have	[]	[]	[]	[]
9. At later stages of the IRC, costs of undertaking the IRC have proven to have	[]	[]	[]	[]
10. Please briefly explain what kind of benefits and costs of the IRC:	<hr/> <hr/> <hr/>			

- E. In your understanding, what were the major problems that faced the initiation and implementation of the IRC, and how were those problems addressed? Please elaborate below

- F. What are the key lessons and insights that you think can be drawn from the IRC experience?
-
-
-
- G. In comparing this IRC discussed above and another one that you know of (please indicate here the name)
-
-
-
- H. Is this other more successful / less successful (please encircle one) than the IRC above? What do you think are the similarities and/or differences in the (enabling and/or constraining) factors that have influenced the performance of the other IRC compared to the IRC discussed above?
-
-
-

Thinking of your country's experience with IRC across the board (and not just in your sector/industry), which of the following most restricts or inhibits the growth of IRC in your country?

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
There is little awareness on and understanding of, and hence no push for, IRC by stakeholders (private business, academe, etc.)	[]	[]	[]	[]	[]	[]
Bureaucracy has little knowledge and trust of the regulatory regimes of other AMS	[]	[]	[]	[]	[]	[]
There is concern on the lack of regulatory flexibility and sovereignty arising from IRC	[]	[]	[]	[]	[]	[]
There is little appetite by regulators for joint design, monitoring and evaluation of regulations with other AMS	[]	[]	[]	[]	[]	[]
There is little appetite by regulators for joint design, monitoring and evaluation of regulations with other AMS	[]	[]	[]	[]	[]	[]
There are legal obstacles to IRC (e.g. restrictions on information sharing/confidentiality rules)	[]	[]	[]	[]	[]	[]
There is concern on increased administrative burden of IRC on the country	[]	[]	[]	[]	[]	[]

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
The lack of persuasiveness – as business cases for IRC don't stand up	[]	[]	[]	[]	[]	[]
The history to date – with mixed experience	[]	[]	[]	[]	[]	[]
Differences in capability and country size means trust in other country's systems is uneven	[]	[]	[]	[]	[]	[]
IRC led to reduced transparency between countries	[]	[]	[]	[]	[]	[]
IRC contributed to reduced management of risks across borders	[]	[]	[]	[]	[]	[]

*Interviewer's prompts - Has the variation come on the costs or benefits side?
Would a lower intensity / higher intensity level of IRC have worked better?*

	Strongly Not Willing	Not Willing	Willing	Strongly Willing
Unilateral adoption of policy or regulatory practices of other AMS and other countries	[]	[]	[]	[]
Dialogue and Informal exchange of information on policy, enforcement, and other regulatory practices	[]	[]	[]	[]
Joint recognition of international standards (e.g. through ASEAN)	[]	[]	[]	[]
Mutual recognition agreements	[]	[]	[]	[]
Regional trans-governmental networks among regulators (ASEAN)	[]	[]	[]	[]
Mutual enforcement cooperation in AMS/other countries	[]	[]	[]	[]
Formal requirement for transparency and considering IRC when developing regulations	[]	[]	[]	[]
Formal exchange of staff	[]	[]	[]	[]
Bilateral or regional legally binding regulatory agreements and/or harmonization, with oversight enforcement by a supranational regional body	[]	[]	[]	[]

6. Institutional Arrangements for IRC [answered by the researcher]

Some countries centres of government have a lead agency which has overall responsibility for regulatory policy and quality.

6a. Is there one or more lead body / agency in the national (central / federal) government specifically responsible for promoting the overall regulatory quality (GRP)?	<input type="checkbox"/> Yes, Please Elaborate <hr/> <hr/>
	<input type="checkbox"/> No
6b. If so, does that body's role include oversight of IRC?	<input type="checkbox"/> Yes, Please Elaborate <hr/> <hr/>
	<input type="checkbox"/> No
6c. Is there an explicit government policy on international regulatory cooperation?	<input type="checkbox"/> Yes, Please Elaborate <hr/> <hr/>
	<input type="checkbox"/> No

7. Concluding Questions

7a. Are there any other issues that you wish to cover or comment you wish to raise?

7b. Are there any developments that will shape how IRC will develop (e.g. AEC Blueprint 2025 or CPTPP (TPP11))?

7c. What are your thoughts and suggestions on institutionalizing, expanding and/or deepening IRC in ASEAN?

CHAPTER 3

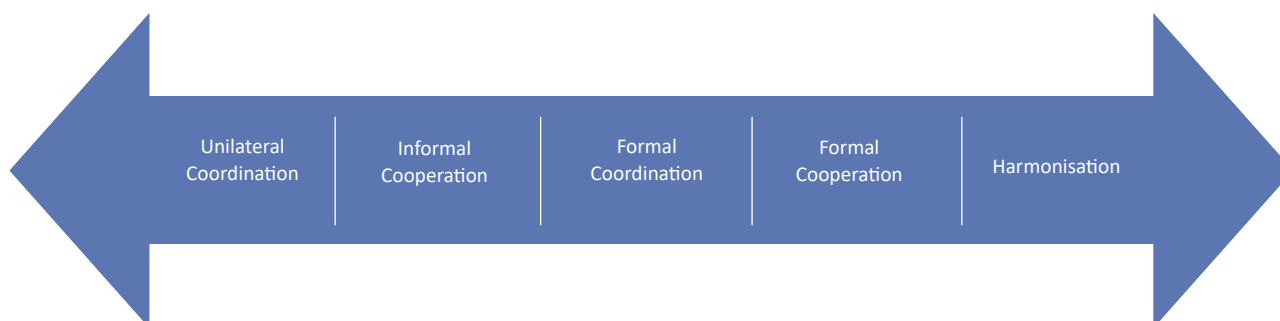
The Craft of International Regulatory Cooperation – Practical Lessons Learned

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).¹ 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.

¹ 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.
<p>After over a decade of negotiation, participants ultimately chose not to proceed as:</p> <ul style="list-style-type: none"> • new government leadership in Australia opposed the programme, and • the 'win' for Australia had disappeared, as Australia had already achieved the geopolitical gains that the programme was meant to provide. 	
What were the potential wins for each participant?	
<p>The key 'wins' for New Zealand were:</p> <ul style="list-style-type: none"> • Regulatory effectiveness: a joint regulator would have more capacity and capability, and geopolitical advantages. • The 'win' for Australia was: geopolitical: a seat at the table with the leading international health product regulators. 	
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

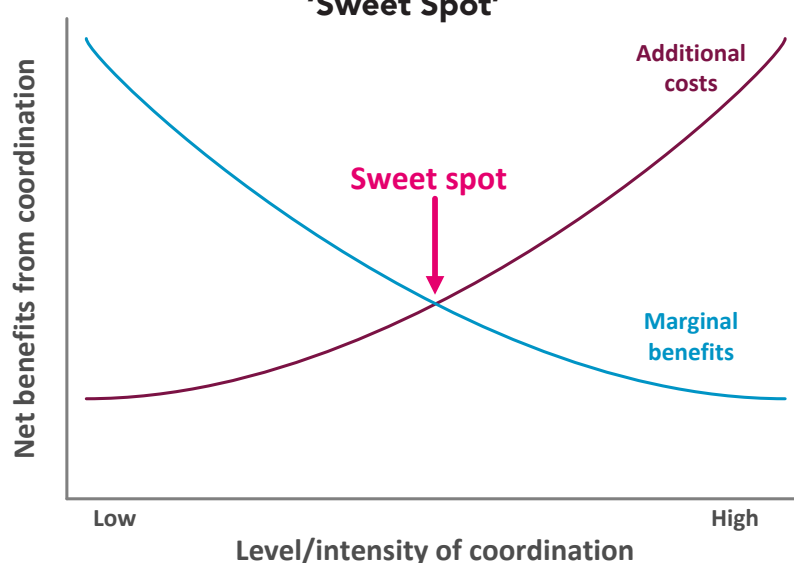
This section is about developing IRC with a clear focus on what to cooperate on and what not to. The design principle 'keep it simple stupid' summarises this criterion for creating successful IRC. The creation of successful IRC involves focusing on the mutual gain between parties and avoiding the addition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

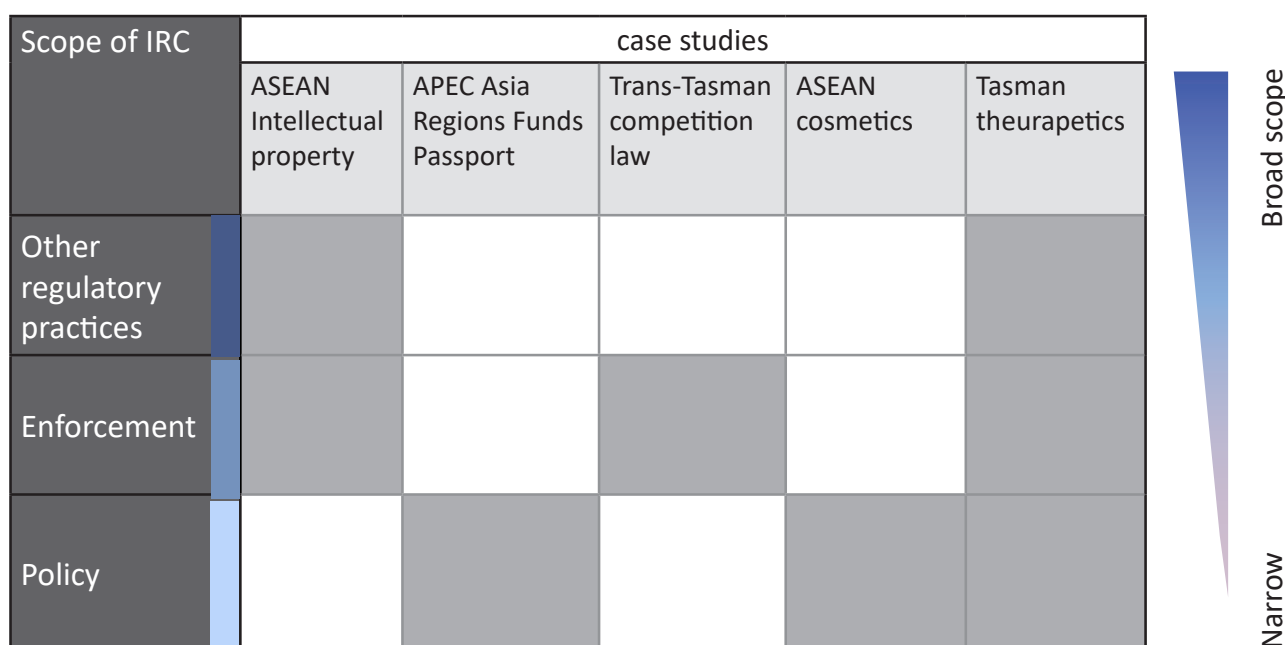
'a deliberate choice to focus on mutual recognition of licensing requirements and to limit the funds it applied to. Coverage was limited initially to "plain vanilla" funds by eligible fund managers that met specific criteria.... A more ambitious approach would have been to aim for full interoperability 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








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	
What was it?	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.
What happened?	<p>Harmonisation of cosmetics regulation across the ASEAN member states was achieved through a two-phase process:</p> <ul style="list-style-type: none"> • 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. • The second phase involved a more formal commitment by governments to harmonise fully. This phase was mainly pushed forward by government regulators.
What was the focus?	
What was the ‘sweet spot’?	The main focus was on consumer safety, by establishing harmonised systems for following up on adverse effects of cosmetics.
Did it start small?	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					
<p>intensity of cooperation low high</p> <p>formality of cooperation informal formal</p>					

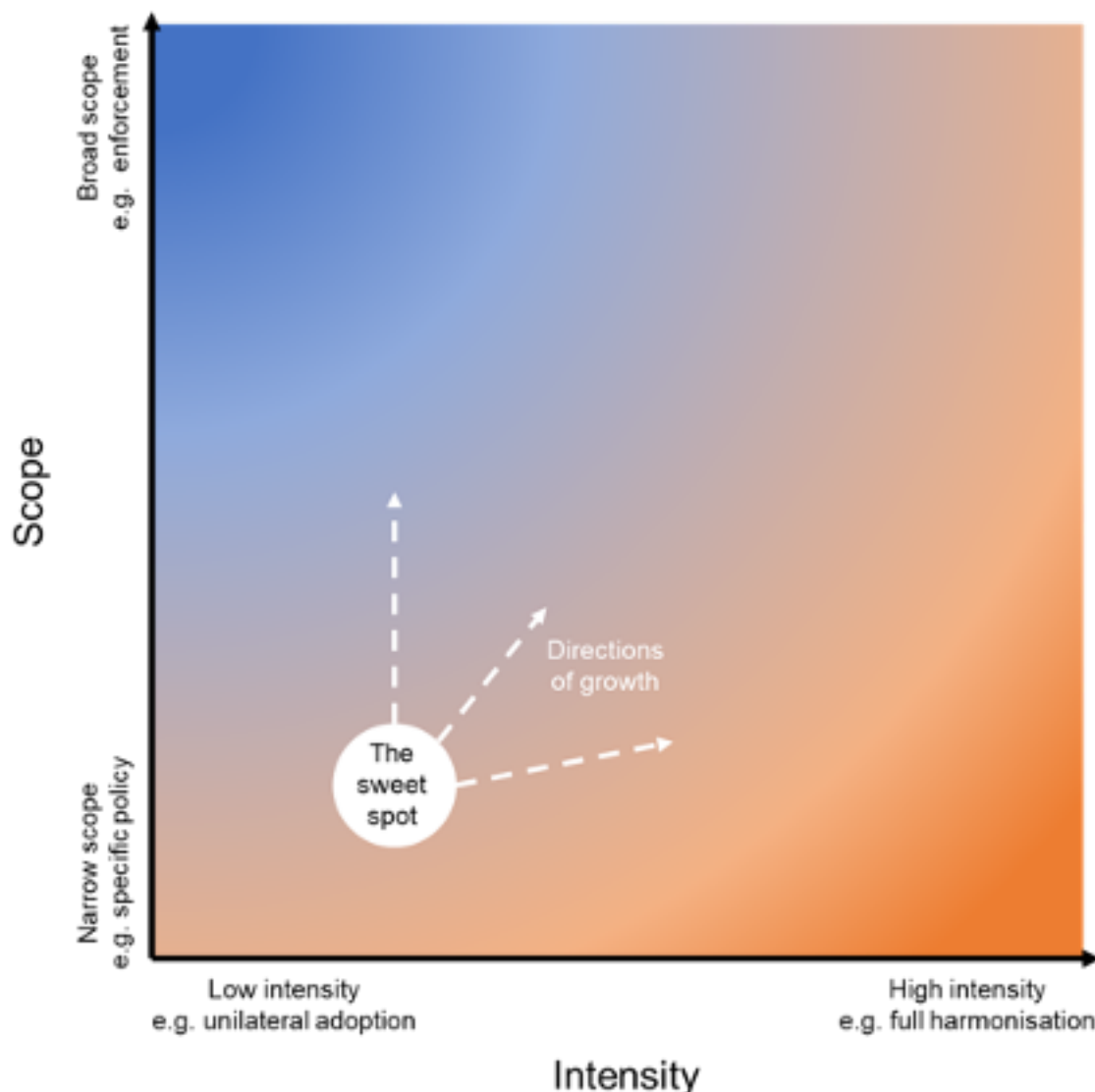
APEC = Asia-Pacific Economic Cooperation, ASEAN = Association of Southeast Asian Nations, IP = intellectual property, IRC = international regulatory cooperation.

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 3.3.²








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.

² 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	
What was it?	The first ASEAN intellectual property framework dealt with all the Trade-Related Aspects of Intellectual Property Rights (TRIPS) (mandated intellectual property rights).
What happened?	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.³

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.

³ 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	
What was it?	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.
What happened?	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?	
Membership	A small group of technical expert regulators
Leadership	A public entrepreneur from the Australian Treasury
Relationships	Having the right people in the room and on the journey
Trust	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 derailleurs 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	
What was it?	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).
What happened?	Cooperation occurred in two overlapping phases: <ul style="list-style-type: none"> • 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. • 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.
What were the enablers?	
Political mandate	Closer Economic Relations was a wide-ranging political commitment to greater economic integration.
Legal mandate	Greater cooperation on enforcement required amendments to legislation, as this is a sector where there are extensive legal challenges.
Cultural context	Australia and New Zealand have a shared history, language, and values.
Capability	New Zealand had already unilaterally adopted a competition policy framework from Australia.
Mandated targets	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.

a Mumford, P. 2018. 'Regulatory Cooperation', in J. Drake-Brockman and P. Messerlin (eds.), Potential Benefits of an EU-Australia Free Trade Agreement: Key Issues and Challenges. Adelaide: University of Adelaide Press, forthcoming.

Source: Authors.

References

- Abbot, K., C. Kauffmann, and J. Lee (2018), 'The Contribution of Trans-Governmental Networks of Regulators to International Regulatory Co-operation', Organisation for Economic Co-operation and Development (OECD) Regulatory Policy Working Papers, No. 10, Paris: OECD. [http:// dx.doi.org/10.1787/538ff99b-en](http://dx.doi.org/10.1787/538ff99b-en).
- Bryson, J.M., B.C. Crosby, and M.M. Stone (2006), 'The Design and Implementation of Cross-Sector Collaborations: Propositions from the Literature', Public Administration Review (Special Issue), pp.44–55.
- Gill, D. (2018), International Regulatory Cooperation Case Studies and Lessons Learnt. New Zealand Institute of Economic Research Report to the Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. Wellington: New Zealand Institute of Economic Research.
- Kauffmann, C. and N. Malyshev (2015), International Regulatory Co-operation: The Menu of Approaches. Paris: OECD.
- Mumford, P. (2018), 'Regulatory Cooperation', in J. Drake-Brockman and P. Messerlin (eds.) Potential Benefits of an EU-Australia Free Trade Agreement: Key Issues and Challenges. Adelaide: University of Adelaide Press, pp. 149-60.
- OECD (2013), International Regulatory Co-operation: Addressing Global Challenges. Paris: OECD Publishing. [http:// dx.doi.org/10.1787/9789264200463-en](http://dx.doi.org/10.1787/9789264200463-en).
- Petrie, M. (2016), 'Jurisdictional Integration: A Framework for Measuring and Predicting the Depth of International Regulatory Cooperation in Competition Policy', Regulation and Governance, 10(1).

CHAPTER 4

International Regulatory Cooperation in Thailand – Swaying Bamboo and Tailgating Strategies

Pechnipa Dominique Lam

1. Introduction

This chapter provides a glimpse into Thailand's international regulatory cooperation (IRC) landscape, drawing upon interviews from a small sample of IRC experts. It employs the definition and framework used by the Economic Research Institute for ASEAN and East Asia (ERIA) to examine the following five aspects of IRC in Thailand: the 'pervasiveness' of different forms of IRC, the 'persuasiveness' of the case for IRC, the 'willingness' of Thailand to engage, factors that are 'imperatives' and 'blockers' of IRC, and the governance of IRC. The chapter uses ERIA's framework, the survey results, and the context in which Thailand operates to provide insights on IRC in Thailand. In framing the context, three themes are critical to understanding the IRC environment in Thailand.

First, Thailand has long been involved in IRC. Thailand's experiences in the 19th century of unequal treaties with the major European powers and colonisation in neighbouring countries led to a strategy of balancing state-to-state relationships so as to be equally close to all major powers, in order to maintain sovereignty. This 'swaying bamboo' approach endures today.

Second, Thailand is a middle-income open economy in a fast-growing region characterised by a variety of development levels. As a result of these factors, Thailand operates in a dynamic economic and international relations environment in which many countries are jostling for market access.

Third, Thailand's own government has swung between democratic governance and military regimes throughout its modern history. This political framing provides perspective when understanding reasons for engagement in and adoption of IRC at different points in time.

These three themes provide the context for analysing Thailand's IRC landscape within ERIA's framework. In terms of the 'pervasiveness' of IRC, Thailand is heavily engaged in many IRC forums, as both an adopter and a negotiator. These forums cover the spectrum of arrangements – multilateral, plurilateral, regional, and bilateral – as well as different forms, from informal cooperation to legally binding harmonisation. Overall, Thailand's engagement reflects an open, practical approach: the substance of the IRC matters more than its form.

The 'persuasiveness' and 'willingness' aspects of IRC are analysed together. For Thailand, the 'persuasiveness' of the case for IRC determines the country's 'willingness' to engage in it. In general, government officials have a positive view of IRC, in that it presents opportunities to bring Thailand in line with global standards, and open it up for trade and knowledge exchange. When they engage, government officials are adept at playing different roles in different forums, adopting the 'swaying bamboo' approach, and being flexible to the

situation at hand. Where appropriate, officials employ a ‘tailgating’ strategy, that is, using multiple international regulatory forums to achieve one particular outcome. Configurations and alliances are chosen on a case-by-case basis, targeting the best potential outcome for Thailand. The approaches used are not ideological.

An examination of the ‘imperatives’ and ‘blockers’ of IRC reveals that Thailand operates in a complicated landscape. Three issues are consistent. First, in terms of international relations, relative state power is a key determinant of the outcome of international regulatory outcomes. In a fast-growing region, relative power balances are fluid, adding dynamism to IRC engagement. Second, at a domestic level, a complex weave of factors influences engagement in and adoption of regulation. IRC negotiated at different times may have different outcomes, depending on the exact social, economic, or political context. The governing political regime can be a factor. Third, at a practical level, time and capable staff are limited in a fast-changing, complex, and increasingly multipolar world. For many regulatory organisations, keeping up with international standards or negotiating IRC can be a challenge. An increasingly multipolar world leads to a proliferation of IRC. At the same time, many industries are changing rapidly and capable resources are limited.

The final section of the chapter describes aspects of IRC governance in Thailand. The Office of the Council of State (OCS) oversees IRC governance, and is involved in reviewing every legally binding IRC initiative before it is submitted to Parliament.

Overall, Thailand is heavily engaged in IRC in many forums. Government officials use existing forums creatively to build coalitions to advance Thailand’s agenda, and forge new alliances to achieve their objectives beyond the constraints of existing forums. Their creativity and flexibility allow Thailand to maximise the use of limited resources in a fast-changing and increasingly multipolar world.

1.1. Research Approach

The research team (Pechnipa Dominique Lam, Supasyn Itthiphatwong, Warit Nimmanahaeminda, Thanachok Taticharoen) conducted 12 interviews involving approximately 20 individuals working on IRC issues. We also conducted interviews with nine different organisations, including seven government ministries or regulators and two nongovernment organisations. These included the Bank of Thailand, Civil Aviation Authority of Thailand, Department of Trade Negotiations within the Ministry of Commerce, Marine Department, National Broadcasting and Telecommunications Commission, Office of the Council of State, Thai Customs Department, Thailand Development and Research Institute, and Tilleke and Gibbins, a private law firm.

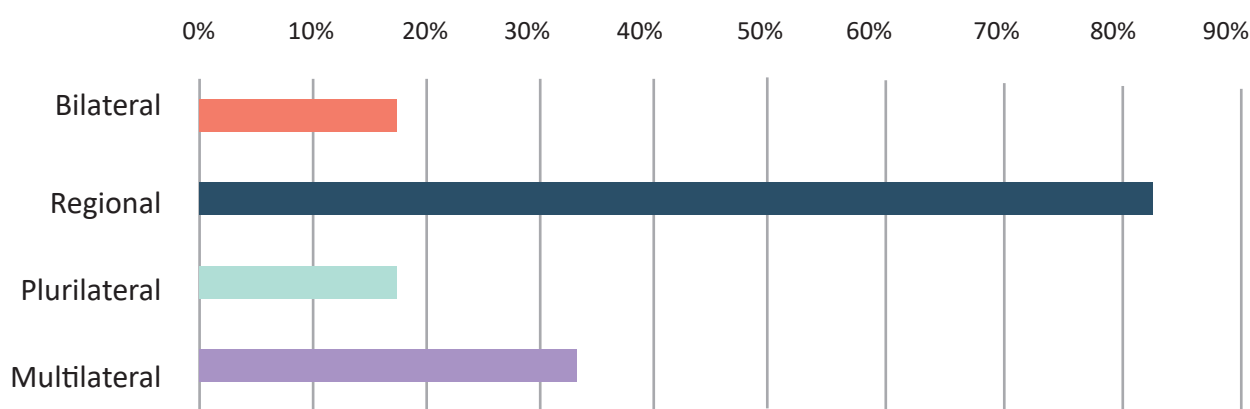
During the interview, the research team asked interviewees about their experiences with IRC. The interviews followed the format outlined in the ERIA survey, which consisted of questioning along these themes: the pervasiveness of types of IRC; the persuasiveness of and Thailand’s willingness to engage in IRC; imperatives and blockers of IRC; and the governance of IRC in Thailand. After the interview, the research team completed the survey on behalf of the interviewees, and gave the interviewees the opportunity to edit the survey responses.

This chapter summarises the results of the interviews and survey, following ERIA’s framework. It uses insights gathered from the interviews and illustrates these with case studies. Given the scope of the research, this is not intended as a comprehensive review of Thailand’s IRC, but is meant to shed light on the landscape and drivers behind IRC.

2. Pervasiveness of International Regulatory Cooperation

The survey results show that most forms of IRC are used widely in Thailand. Thailand is involved in bilateral, regional, plurilateral, and multilateral IRC initiatives. Most interviewees responded that Thailand is mainly involved in regional IRC initiatives (Figure 4.1). However, this reflects interviewees' impressions of Thailand's involvement in IRC initiatives, and does not reflect the actual proportion of regional IRC initiatives compared with other types. The percentage indicates the number of interviewees who selected that response, divided by the total number of interviewees. As some interviewees identified more than one response, the total responses sum to more than 100%.

Figure 4.1: Interviewee Impressions of Thailand's Main International Regulatory Cooperation Initiatives

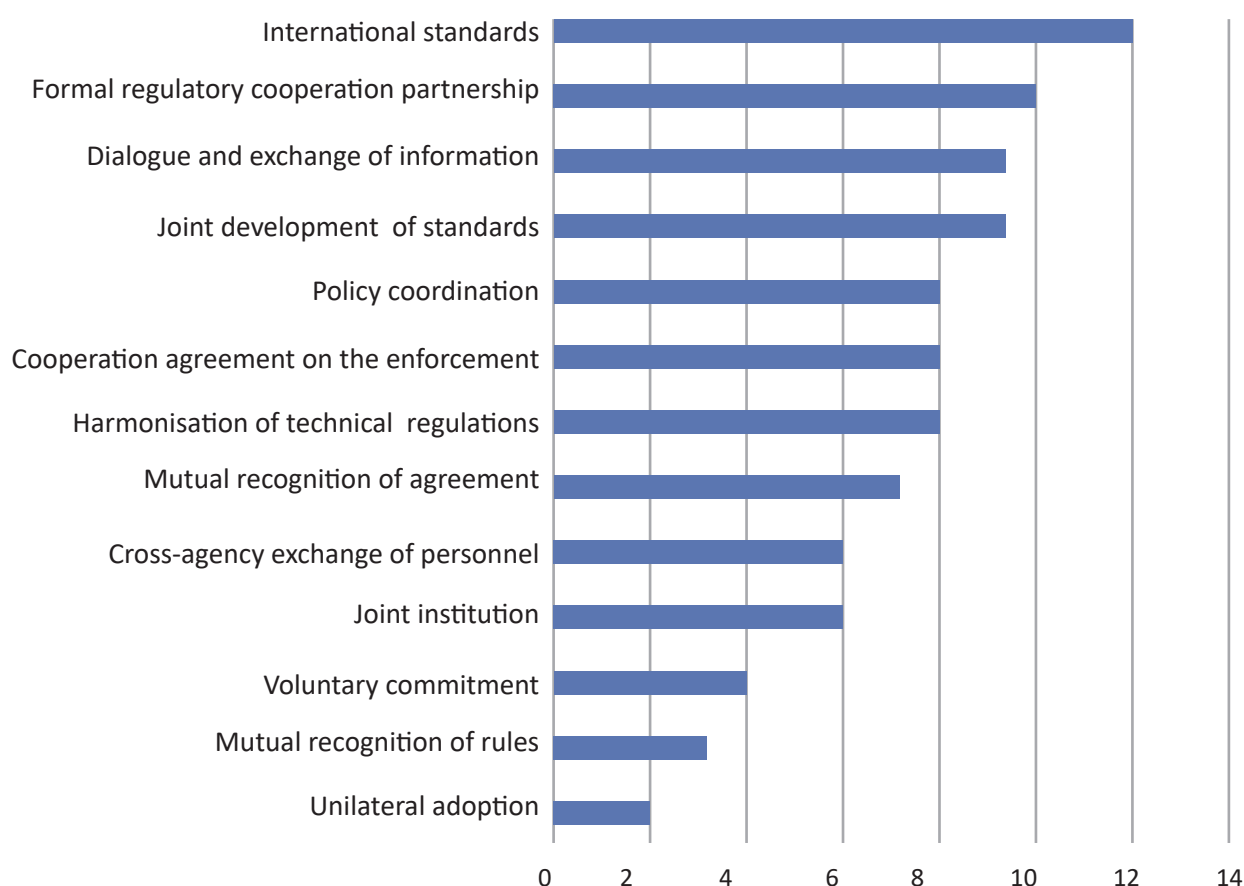


Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 1f

The survey asked interviewees how frequently different forms of IRC are used in Thailand: 'not at all', 'one or two', 'few', or 'many'. All forms of IRC specified in the survey are used in Thailand. Figure 4.2 shows that the most frequently used IRCs appear to be 'international standards', 'formal regulatory cooperation partnerships', and 'dialogues and exchange of information'. This is consistent with government officials' approach to IRC as revealed through the interviews, discussions of which are elaborated on later in the chapter.

The interviewees revealed that they are concerned with the substance of IRC under consideration and its potential impact on Thailand, rather than the specific form of IRC.

Figure 4.2: Number of Interviewees Who Selected “Many” of Different Forms of International Regulatory Cooperation in Thailand



Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39

3. Persuasiveness of and Willingness to Develop International Regulatory Cooperation (Sections 4 and 5 of Questionnaire)

Government officials discussed the persuasiveness of an IRC initiative as determining their willingness to engage. That is, if the case for IRC was persuasive and overall beneficial for Thailand, then they would be willing to engage. Interviewees did not see a need to distinguish between the persuasiveness of a case for IRC and Thailand’s willingness to engage in it.

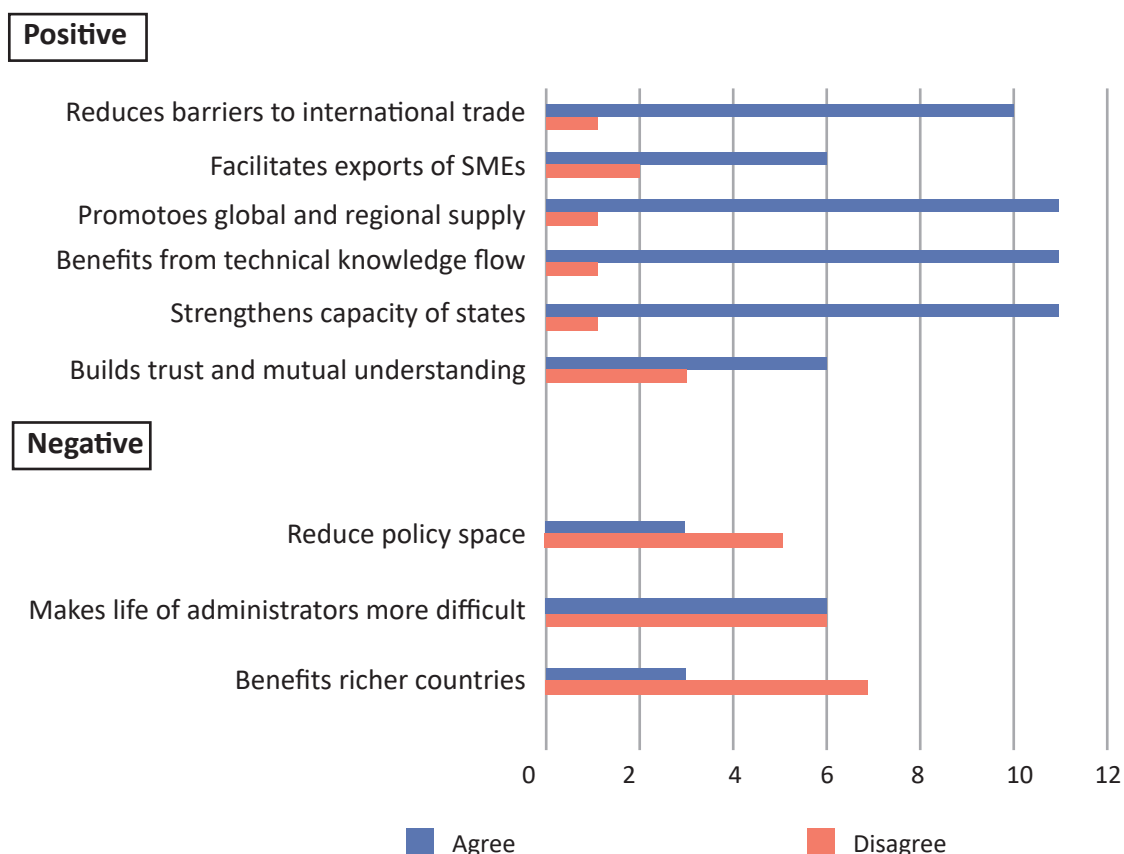
Three themes emerged consistently. First, government officials generally had a positive opinion of IRC and the case for engaging. In general, officials were ‘willing’ to engage in IRC, as long as the case was ‘persuasive’. Second, Thai officials are flexible at adapting their roles to the forum in which they are engaged (the ‘swaying bamboo’ approach). Third, Thai officials often strategically ‘tailgate’ their engagement, using one international forum to achieve a particular objective in another forum. The latter two themes interacted with the ‘persuasiveness of IRC’ and ‘willingness to develop IRC’; that is, the strategies that officials adopted determined what they could get out of an IRC negotiation. In turn, this raised the IRC’s ‘persuasiveness’ and consequently officials’ willingness to engage.

As with the ‘pervasiveness’ of IRC, officials’ willingness to engage in IRC depended on the substance of the issue at hand, rather than its form. As such, this section discusses general themes arising from the interviews rather than the particular forms of IRC.

3.1. Overall, Government Officials Had a Positive View of International Regulatory Cooperation and the Case for Engaging

Overall, interviewees expressed a constructive view of IRC, agreeing with the survey's positive statements on IRC. Government officials see IRC as an opportunity to bring Thailand in line with global standards, to open up Thailand's economy to trade, and to promote knowledge exchange between countries. Officials were savvy enough to be aware of the need to work around another country's agenda to ensure a win-win outcome for Thailand. As such, government officials were generally 'willing' to engage in IRC.

Figure 4.3: General Views on International Regulatory Cooperation



SMEs = small and medium-sized enterprises.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 11–26.

Notes: 'Agree' includes 'strongly agree' and 'agree' responses; 'disagree' includes 'strongly disagree' and 'disagree' responses.

Government officials welcomed the opportunity to bring Thailand in line with global standards, particularly where Thailand is a technology-adopter, and following global standards is a requirement for market access. This was true in sectors such as aviation, telecommunications, and marine safety. Officials recognised the benefits of knowledge transfer from IRC engagement in these sectors, as Thailand is often able to gain knowledge from relatively more advanced countries through such engagement. Occasionally, interviewees expressed cynicism about the training opportunities offered by advanced economies, that such training is only offered based on the national interest of advanced economies.

Interviewees generally acknowledged that Thailand benefitted from IRC by reducing barriers to trade and integrating the economy with global supply chains. Interviewees also recognised that IRC tends to benefit exporters more than domestically focused businesses, and large businesses more than small businesses. The negative effects of globalisation were not widely

expressed. Where negativity was raised, it was suggested that advanced economies gain more than developing countries from IRC negotiations, due to their greater knowledge, resources, and skills.

Overall, interviewees were positive about the opportunities arising from IRC engagement. The gains from accessing global markets and opening up to trade were usually key factors that determined the 'persuasiveness' of an IRC initiative, and Thailand's 'willingness' to engage. Officials themselves often gained from knowledge exchange during IRC engagement. In broad terms, government officials had a positive impression of IRC, meaning that they were open to the 'persuasiveness' of the initiatives and willing to engage.

3.2. Thai Officials Are Adept at Playing Different Roles in Different Forums (the 'Swaying Bamboo' Approach)

The most capable Thai officials demonstrate a high degree of flexibility and ability to engage in IRC across a range of forums. Such highly capable officials are able to discuss and negotiate on vastly contrasting issues in different contexts. These officials use their flexibility to find 'win-win' solutions. Their willingness to engage in this manner helps to raise the 'persuasiveness' of an IRC initiative beyond its original potential.

Thailand is a middle-income country striving to become an advanced economy. It shares borders with three 'least developed countries' – Myanmar, the Lao People's Democratic Republic, and Cambodia.¹ Thus, Thai regulators need to operate at varying levels across many sectors in different international forums. Sometimes, Thai regulators handle IRC negotiations with more advanced economies. At other times, Thai officials partner with neighbouring countries in a Thailand+1 agreement to attract investment from a more developed economy. Effective regulators understand the variation of development and infrastructure across Thailand's main partners and use this to achieve IRC outcomes.

For instance, different levels of development in regulations on currency settlement have hindered the progress of cross-border trade settlement systems across the Association of Southeast Asian Nations (ASEAN). In 2017, Thailand, Malaysia, and Indonesia completed the negotiation of a series of bilateral agreements on local currency trade settlement frameworks, enabling the use of local currencies and reducing reliance on major currencies, such as the United States dollar, for cross-border transactions amongst the three countries (Ibrahim, 2018). These negotiations originated in the form of an ASEAN-wide framework, but found traction on a smaller scale, and so shifted towards more flexible bilateral solutions. This demonstrates Thailand's willingness and ability to engage in IRC, using its flexibility to find a 'win-win' solution to negotiations.

In general, officials were comfortable adopting this flexible, 'swaying bamboo' approach to IRC. Given Thailand's position, this flexibility is necessary for negotiating successful IRC outcomes. Thailand's historical narrative, that of successfully courting many allies while maintaining sovereignty, originally gave rise to this international relations approach. Because of its past success, its place in the national narrative, and present-day usefulness, the 'swaying bamboo' approach endures today.

¹ According to the United Nations' list of least developed countries as of March 2018.

3.3. Thai Officials Often ‘Tailgate’, Using Multiple International Regulatory Forums to Achieve One Particular Outcome

Thai officials often adopt a ‘tailgating’ strategy, using multiple forums in conjunction with one another to achieve an overall outcome. This reflects a practical approach to engagement, rather than motivation based on ideological or cultural attachments. International forums were chosen based on their usefulness in achieving the desired objective. This ‘tailgating’ strategy demonstrates a high level of ‘willingness’ to engage in forums. Given that IRC negotiations are dynamic, using this strategy generally increases the ‘persuasiveness’ case of IRC, which in turn increases the ‘willingness’ to engage.

One such opportunity to use a ‘tailgating’ strategy in multiple forums exists in the financial sector, as seen in the Bank of Thailand’s (BOT) participation in the Executives’ Meeting of Asia-Pacific Central Banks (EMEAP) and the Basel Committee on Banking Supervision (BCBS) at the Bank for International Settlements. The EMEAP is a cooperative forum made up of 11 central banks, including the BOT, which discusses issues regarding economic and financial developments in East Asia and the Pacific region. Together, EMEAP economies make up 28% of the global economy, while Thailand’s economy by itself makes up less than 1%.² On the other hand, the BCBS is a global standard-setting body, whose rules cover 95% of the global economy (Bank for International Settlements, 2005). At the BCBS, rules are often made by the 10 founding members and then cascaded to other members, including Thailand.

The BOT uses the EMEAP forum to discuss the development of new global regulatory standards. As the EMEAP members make up more than one-quarter of the global economy, it is effective for Thailand to find common ground at this forum, finding issues of mutual concern amongst the members. Members then use the common ground found at the EMEAP to speak with a group voice at the global BCBS forum, and thereby have more impact than speaking as an individual country. Finding areas of common ground at the EMEAP and then letting the EMEAP take these forward at the BCBS is one way that Thailand uses the ‘tailgating’ strategy to influence regulatory standards at a global level.

The BOT in particular is well experienced in using multiple forums to achieve IRC outcomes. Box 4.1 demonstrates the BOT’s use of ASEAN as a forum to discuss capital flow measures as a policy tool. The BOT’s part in this debate and eventual ASEAN-level agreement were factors that enabled a shift in the global-level discussion of this issue at the International Monetary Fund.

Overall, this ‘tailgating’ strategy demonstrates a high degree of willingness to engage in international forums. Thai officials are willing to adopt approaches that help to increase the ‘persuasiveness’ case of an IRC initiative, which further positively impacts officials’ ‘willingness’ to engage.

² World Bank, GDP (current US\$). <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>; Thailand Development Research Institute calculation (accessed 17 September 2018).

Box 4.1: Thailand Plays its Role—The Global Debate on Capital Flow Management

Capital flow surges, the buildup of large amounts of cross-border liabilities, and ‘sudden stops’ in international capital flows have long been an issue for many emerging markets, sometimes ending in economic and financial crises. Managing these episodes requires international regulatory cooperation to mitigate the vulnerabilities of the country involved and ensure that systemic risk is not pushed elsewhere. However, the framework governing international capital movements is fragmented. The International Monetary Fund (IMF) gives its members the right to ‘exercise such controls as are necessary to regulate international capital movements’. However, members are generally obliged to refrain from imposing restrictions on the making of payments and transfers for current international transactions unless they are authorised by the IMF. Indeed, in the decades prior to the global financial crisis, the IMF promoted financial liberalisation policies.

Meanwhile, countries can be hamstrung by investment agreements, often included in free trade agreements (FTAs), which have provisions for the free transfer of capital flows and do not allow for the introduction of capital outflow restrictions in the event of a balance of payments crisis. In addition, investor state dispute settlement provisions in these agreements mean that private companies can sue governments if a government uses capital flow management measures. Thus, during surges of capital inflows or outflows, governments are hamstrung: on one hand they may need to act to reduce real risks associated with capital flow surges; but on the other they run the risk of being sued under investor state dispute settlement provisions if they use capital flow management measures as a policy tool.

The Bank of Thailand has been on the front foot in negotiations, pushing for greater policy space during such episodes. Throughout the 2000s, Thailand negotiated derogation texts in its FTAs with Australia, Japan, New Zealand, and the Association of Southeast Asian Nations (ASEAN). The ASEAN derogation text was agreed as part of the ASEAN Comprehensive Investment Agreement in 2009 and implemented in 2012. Similar to the bilateral FTAs, the ASEAN derogation text allows ASEAN member states to set up temporary controls in exceptional circumstances, to protect themselves against serious economic or financial disturbance during times of strong capital outflows or inflows. Thailand’s push enabled regional agreement on the use of capital flow management measures to address balance of payments issues.

At a global level, acknowledging anything other than the merits of financial liberalisation before the global financial crisis was intractable, and other views were not widely discussed or accepted among policy makers. However, large swings in international capital flows evidently played a role in asset price bubbles and aspects of the global financial crisis itself. As such, a broader group of economies were more supportive of capital flow management measures as a policy tool. Following the financial crisis, the IMF shifted its view, acknowledging that surges in capital inflows or outflows can create macroeconomic and financial stability risk, and that there can be a role for ‘capital flow management measures’ in macroeconomic and financial stability policy.^a The ASEAN Comprehensive Investment Agreement was accepted as part of this. In 2012, the IMF fully updated its institutional view on capital flows to reflect these changes, effectively giving greater policy space for countries to implement temporary controls on capital in the event of surges in capital inflows or outflows.

a International Monetary Fund (2010), The Fund’s Role Regarding Cross-Border Capital Flows. Washington, DC:

International Monetary Fund. <https://www.imf.org/external/np/pp/eng/2010/111510.pdf>. (Accessed 17 September 2018).

b International Monetary Fund (2012), The Liberalization and Management of Capital Flows: An Institutional View (Washington, DC: International Monetary Fund. <http://www.imf.org/external/np/pp/eng/2012/111412.pdf>. (Accessed 17 September 2018).

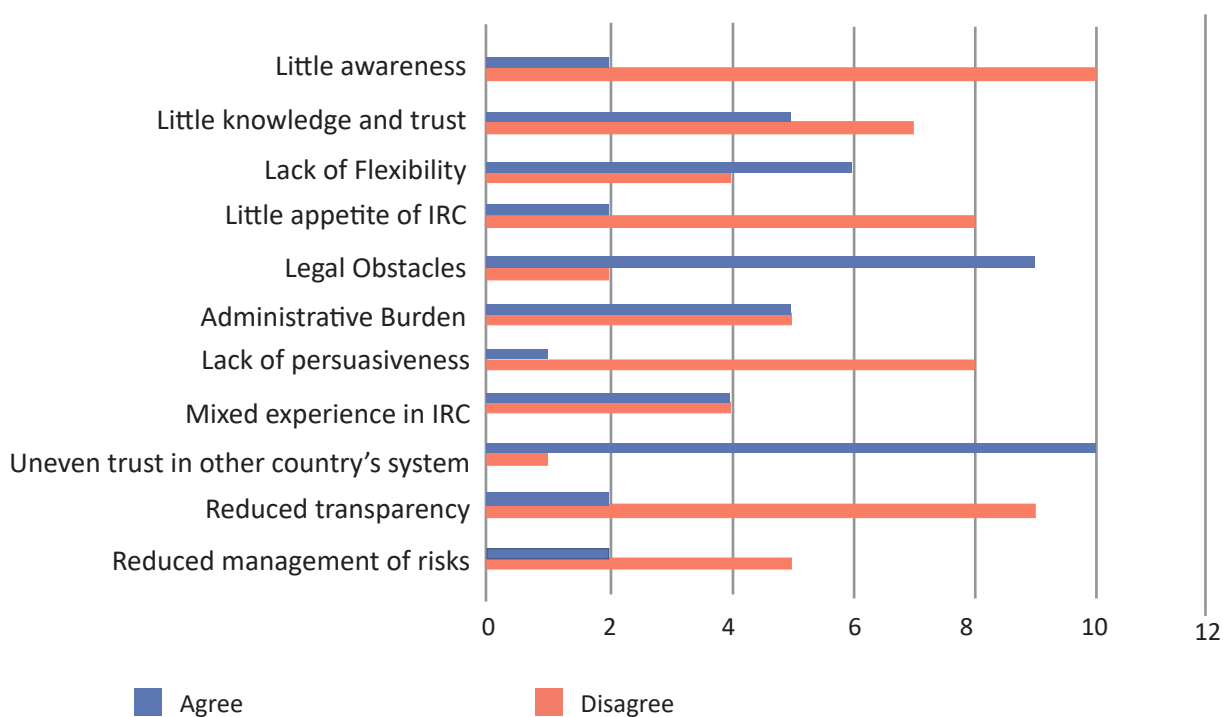
Source: Author.

4. Imperatives and Blockers of International Regulatory Cooperation (Questionnaire Section 2)

Interviewees cited a range of issues as ‘imperatives’ and ‘blockers’ of IRC. Three insights consistently emerged from the interviews: (i) relative state power is a determinant of international regulatory negotiations; (ii) a complex weave of factors influences the outcomes of IRC (successful IRC outcomes depend on a case-by-case basis, based on the exact context at the time of negotiation and adoption); and (iii) organisations are limited in their capable resources in a fast-changing, increasingly multipolar world. These three key issues worked together as a complex mix of ‘imperatives’ and ‘blockers’ of IRC.

The survey results in Figure 4.4 below show little consistent agreement on the factors that are ‘blockers’ of IRCs. This aligns with the qualitative interview conversations, which agreed that IRC outcomes depend on a case-by-case basis. Most respondents agreed that an ‘uneven trust in other country’s system’ and ‘legal obstacles’ were ‘blockers’ of IRC. The former is consistent with the qualitative interview results that relative state power is a key issue in IRC, while the latter is consistent with interview conversations that discussed difficulties in transposing regulation.

Figure 4.4: Blockers of International Regulatory Cooperation



IRC = international regulatory cooperation.

Notes: ‘Agree’ includes ‘strongly agree’ and ‘agree’ responses; ‘disagree’ includes ‘strongly disagree’ and ‘disagree’ responses.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 65–75.

4.1. Relative State Power Is a Key Determinant of the Outcome of International Regulatory Negotiations

Regulation is the act of a government imposing rules and defining the institutions of a market. In textbook economics, government regulation is used to solve coordination failures or agency problems for the benefit of society as a whole. Governments usually justify to their citizens the imposition of regulations by asserting that it is for the benefit of society, although there are instances of regulatory capture. IRC at the country-to-country level of engagement often seeks to impose rules and institutions on market participants in another country. Thai officials involved in IRC recognise this country-to-country engagement as a reflection of the relationship between the countries involved, their relative power, and the particular agenda that they bring to the negotiations. As such, relative state power is usually perceived as an ‘imperative’ of IRC.

As a middle-income country in a fast-growing region, Thailand’s relative negotiating power is fluid. Thailand has more influence in negotiations that include its less developed neighbours, and less influence in negotiations with advanced countries. This means that Thailand’s relative status depends on the specific situation at hand, and sometimes varies within the context of a single negotiation. The importance of relative state power and Thailand’s fluid negotiating power is highlighted by discussions surrounding the 2000 Lancang-Mekong Lancang–Mekong Commercial Navigation Agreement described in Box 4.2.

Recognising that an imbalance of power exists at the outset of negotiations, interviewees identified the need to see other countries’ positions as a reflection of national interests, rather than altruistic behaviour. More developed, powerful countries generally have more influence over the substance and form of negotiations. The agenda of these countries acts as a strong ‘imperative’ for IRC. Some interviewees expressed scepticism about IRC altogether, observing that it always works in the favour of more developed, larger economies, as less developed countries tend to have less information, expertise, or negotiation skills, creating risks for them during the negotiations. However, it was generally acknowledged that it is up to countries to find win-win solutions in negotiations. Ultimately, Thailand engages in IRC in many forums because it is of overall benefit to the country.

4.2. A Complex Web of Factors Influences the Adoption of Any Particular Piece of Regulation

At the domestic level, Thailand adopts regulation for a variety of reasons, depending on the exact social, economic, or political context. Usually, when regulation is negotiated or adopted, it is of benefit in at least one, if not all, of these dimensions. At least, it usually does no great harm by any one measure. Thailand’s institutions mostly adopt or negotiate regulations based on the context at the time, according to what can be practically achieved. The negotiation and adoption of international regulation reflects the complexities of domestic affairs, as well as the state of relations between countries. Thus, many factors work together to act as ‘imperatives’ and ‘blockers’ for any particular IRC.

This complexity and Thailand’s practical approach to regulation are demonstrated by examining the contextual factors in Thailand’s U-turns in trade negotiations with the United States, the Trans-Pacific Partnership (TPP), and Comprehensive and Progressive Agreement for TPP (CPTPP), over the last 15 years (see Box 4.3). In this case, the governing political regime is one factor which changed significantly during the evolution of the IRC.

Box 4.2: Relative State Power as a Factor in the Lancang-Mekong Commercial Navigation Agreement, 2000

Initiated by China, the Lancang-Mekong Commercial Navigation Agreement was instituted to increase trade and promote commercial navigation between the 'Upper Mekong' river countries: China, the Lao People's Democratic Republic (PDR), Myanmar, and Thailand. The negotiations were overwhelmingly driven by China, due to its relative power compared to the other countries in the agreement (in 2000, China's economy was nearly 10 times that of Thailand, and more than 100 times that of Myanmar and the Lao PDR).

The Government of China pushed forward negotiations at a fast pace. For the most part, the Lao PDR and Myanmar were willing to accede to China's demands, and Thailand found itself in a difficult position of negotiating against a bloc of three countries. In the end, the four countries signed the agreement behind closed doors in April 2000. Among other issues, the four countries agreed to the 'improvement of the navigability of the river', the details of which would later prove to be controversial.

Soon afterwards, the four countries set up the Lancang-Mekong Navigation Channel Improvement Project, as part of the 'improvement of the navigability of the river'. China funded the project. The objective was to enable large boats to pass freely along the Upper Mekong River. A critical and contentious part of this improvement was the dynamiting of 11 rapids and 10 reefs.

After a Thai cabinet decision approved the project in January 2002, the details of the project came into the public eye. In particular, the planned dynamiting of the Khon Pi Luang islets caused controversy due to the potential impact on the environment and border demarcation between Thailand and the Lao PDR, and Thai civil society and a number of politicians actively opposed the planned dynamiting.^b

Following this, the Government of Thailand and Thai civil society exerted a small but critical influence in the negotiations on the Lancang-Mekong Navigation Channel Improvement Plans. The Thai government persuaded China to agree to a local, non-Chinese environmental impact assessment, gaining support from Myanmar and the Lao PDR. Thailand held up the project further by demanding a review of the impact on the Thai-Lao PDR border demarcation. Thai civil society has been active in educating the wider public about the adverse impact on the river's ecosystem and livelihood of locals. As of 2018, Thailand still resisted the final implementation of the project.

Overall, the whole episode demonstrates the impact of relative power on these negotiations. While China's economic size and influence led these countries to rush negotiations and sign an agreement, this ultimately led to a border dispute between Thailand and the Lao PDR, and had potential adverse effects on the environment and livelihoods of those living along this part of the river. That one country could have an impact on a sovereign issue outside its own borders is a clear signal of its relative power and influence on IRC.

IRC = international regulatory cooperation, Lao PDR = Lao People's Democratic Republic.

a World Bank, 'GDP (current US\$)', Thailand Development Research Institute calculation.

b Pas-ong, S. (2005), 'Case Study: Lancang-Mekong Navigation Channel Improvement Project', in Thailand's State of Environmental Governance Report 2005 (2nd Assessment). Nonthaburi: Thailand Environment Institute, pp.191–206, <http://www.tei.or.th/tai/tai1-content-eng.html> (accessed 17 September 2018).

Source: Living River Siam Association, 'Navigation Channel Improvement Project on Lancang-Mekong River'. http://www.livingriversiam.org/4river-tran/4mk/_sub-eng-navigation.html (accessed 17 September 2018).

In general, proposed regulation usually affects a number of stakeholders across the country. During the negotiation and adoption of regulation, the complex web of these stakeholders and the context in which they operate interact, affecting the eventual outcome of the regulation. The exact push and pull of these factors and their context will change over time. Therefore, each IRC initiative is specific to its circumstances, and the reasons behind the negotiation and adoption of any particular regulation must be examined within the frame of its own context. This makes it difficult to draw general conclusions about factors which act as 'imperatives' or 'blockers' of IRC in Thailand.

Box 4.3: The Context of Thailand's U-Turns—United States Free Trade Agreement, Trans-Pacific Partnership, and Comprehensive and Progressive Agreement for the Trans-Pacific Partnership

Discussions on a bilateral FTA between Thailand and the US started in 2003. However, civil society groups protested the draft FTA provisions on intellectual property, as these would raise the local price of medicines. These protests held up discussions, and in 2006 the Government of Thailand broke off negotiations to focus on a domestic political crisis.^a

In 2008, the prospect of facing these same civil society protests prevented Thailand from entering TPP negotiations, as the intellectual property provisions in the TPP were similar to the US FTA proposals. Thus, despite the significant economic potential of entering into an FTA with the US, and the even greater potential of joining a broader group of countries in the TPP, Thailand's position was held back by protests.

Nearly a decade later in 2015, the Thai government reversed Thailand's position, announcing its intention to join the TPP. In 2018, the same government announced its intention to join the CPTPP (the modified version of the TPP following US withdrawal).^c The government, backed by the private sector, perceived that it had missed an opportunity by not joining the TPP discussions earlier. Meanwhile, the CPTPP had been modified to reduce the intellectual property provisions in the TPP, which it was hoped would appease the civil society groups that had protested against the US FTA proposals.

The political backdrop to these episodes provides useful context for examining the Thai government's changed position. When the US-Thailand FTA and TPP agreement were being negotiated, Thailand's government was democratically elected and thus sensitive to civil society protests and their popularity. These protests held the government back from progressing with negotiations. By contrast, Thailand's recent announcements of its decisions to join the TPP and CPTPP were made by a military government, which has restricted all protests since being in power. Thus, it is plausible that these decisions were made possible by the government's clampdown on protests and silencing of opposition to its positions, rather than changes made to the intellectual property provisions in the CPTPP.

Thailand's economic backdrop and position relative to its ASEAN neighbours provides another useful framing context for examining the government's changes in position. From 2000 to 2007, Thailand's economic growth averaged 5.4%, comfortably between the growth rates of Malaysia, Singapore, and Viet Nam, other ASEAN countries that had joined the TPP. However, from 2010 to 2014, Thailand's average annual growth rate almost halved to 2.9%, while Malaysia, Singapore, and Viet Nam maintained similar rates of GDP growth.^c In particular, Thailand appeared to be losing ground to Viet Nam. From 2000 to 2014, Thailand's GDP per capita fell steadily year on year, from five times to three times that of Viet Nam.^d Thailand's rejection of the US FTA and TPP proposals in 2006 and 2008 had been made on the back of strong economic growth performance, but by the time of the country's U-turns in 2015 and 2018, the economy was much weaker and losing its strength relative to its ASEAN neighbours. Thus, the reversal in Thailand's TPP and CPTPP positions could have been a reaction to the weakness in the country's economy, and a perceived need to boost international trade and investment via international agreements.

ASEAN = Association of Southeast Asian Nations, CPTPP = Comprehensive and Progressive Agreement for TPP, FTA = free trade agreement, GDP = gross domestic product, TPP = Trans-Pacific Partnership, US = United States (accessed 17 September 2018).

a Silp, S. (2006), 'Thai-US Free Trade Agreement Talks Spark Protests', The Irrawaddy, January 9. http://www2.irrawaddy.com/article.php?art_id=5344 (accessed); Meelarp, R.D. (2016), 'Sideline Democracy?: Explaining the United States' Response to Thailand's 2006 and 2014 Coups d'état', Calhoun, 29. <https://calhoun.nps.edu/handle/10945/49345> (accessed 17 September 2018).

b Arunmas, P. (2018), 'Somkid: Thailand Eyes Becoming CPTPP Member', Bangkok Post, March 30. <https://www.bangkokpost.com/business/news/1437386/somkid-thailand-eyes-becoming-cptpp-member> (accessed 17 September 2018).

c World Bank, GDP (constant 2010 US\$). <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD> (accessed 17 September 2018), Thailand Development Research Institute calculation.

d World Bank, GDP per Capita (current US\$). <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (accessed 17 September 2018), Thailand Development Research Institute calculation.

Source: Author.

4.3. Capable Resources Are Limited in a Fast-Changing, Complex, and Increasingly Multipolar World

On a practical level, Thai government agencies have resources to engage in IRC where necessary. However, these agencies are constrained by a limited supply of resources in terms of time and capable staff. Three issues are critical: (i) the pace of change in the industry; (ii) capabilities of staff in terms of language and specialist qualifications; and (iii) duplication of efforts amongst international forums, which requires staff to attend multiple forums of similar substance, particularly in an increasingly multipolar world. These factors sometimes exacerbate one another, leading to a shortage of capable staff able to engage and thus acting as a 'blocker' to progress in IRC.

Firstly, the rate of change outpaced regulators' expectations in many industries, making it difficult to keep abreast of international regulatory standards. For instance, in aviation, flight departures from Thailand grew at an average rate of more than 12 percent% each year from 2006 to 2016, compared with a global average of just 3.33 percent% (Frost and Sullivan, 2018). With the number of flights doubling roughly every 6 years, regulators were unable to keep up with the pace of growth. This partly contributed to the International Civil Aviation Organization (ICAO) decision to give Thailand a 'red flag' in 2015, signalling that Thailand was not meeting the ICAO's aviation safety inspection standards (Mahitthirook, 2015).

Secondly, Thai agencies do not always have enough capable staff to enforce or negotiate international regulation. Fluency in a second language is a common first hurdle to engagement in international regulation. While English is the most common second language amongst government officials, their degree of operational fluency and ability to negotiate in an international forum varies. Occasionally, officials are fluent in a different second language, such as French or Chinese, and this determines the international forum in which they engage. For instance, fluency in French rather than English encourages an official to engage with and gain exposure in a multilingual forum such as the Organisation for Economic Co-operation and Development (OECD) rather than a predominantly English-speaking forum such as ASEAN. In other areas, the enforcement of regulation requires specialist qualifications. Employing regulators with specialist qualifications takes time in terms of recruitment and training. This can constrain effective regulation, particularly in an industry undergoing rapid change.

Thirdly, the organisations interviewed mentioned the duplication of efforts amongst international forums as creating a constraint on resources. This was more often the case in industries where there was scope for negotiation according to domestic context or choice, rather than where adherence to an international standard was mandatory. For instance, the OCS described the ASEAN Good Regulatory Practice and OECD Best Practice Principles on the Governance of Regulators forums as being overly similar in their discussions and recommendations. In this particular case, the OCS adopted many of the OECD's best practice principles, and saw the ASEAN equivalent as a duplication of those efforts, but was obliged to send staff to attend both forums.

More generally, the increasingly multipolar nature of the world is resulting in the proliferation of IRC. This reflects the international relations environment in which Thailand operates. As Asia continues to grow rapidly, multiple states are competing for economic and strategic success in the region. In the past, IRC in Thailand usually involved cooperation with advanced economies. Today, IRC will just as often involve a mix of countries within Asia. The configuration of countries is often not bound to any established or preconceived patterns of cooperation, but dependent on circumstances as countries continue to develop and jostle for market access. This environment encourages the proliferation of IRC, in turn putting pressure on Thailand's regulators to keep up with these developments.

5. The Governance of International Regulatory Cooperation in Thailand (Questionnaire Section 6)

This section describes aspects of Thailand's IRC governance by assessing the organisations interviewed, the type of IRC in which they are engaged, and the responsibilities of the OCS; and by illustrating the IRC governance landscape of the Civil Aviation Authority of Thailand (CAAT).

5.1. A Variety of Organisations Are Involved in Many International Regulatory Cooperation Cases, with the Office of the Council of State Involved in Every Legally Binding Agreement

Thailand's modern regulatory institutions reflect its history of international relations, in particular its approach of courting many different foreign powers. For instance, the government's highest legal advisory agency, the OCS, was modelled on the French Conseil d'Etat (OCS), the Bank of Thailand was set up after the Thai government sought advice from the British and French banking industries (Bank of England Archives), and the Marine Department was originally headed by a British official (Marine Department, 2014).

Today, responsibilities for international regulation in Thailand are held across a number of different governmental ministries and regulatory agencies. Most of the organisations interviewed are responsible for both enforcing standards and negotiating international regulation in a number of international forums. Some organisations are more involved with enforcing international standards, and some are more involved with negotiating international regulation. In general, regulators in well-established, technology-led sectors are primarily responsible for enforcing international standards. On the other hand, regulators in sectors where domestic contexts require accommodation were more involved in negotiating international regulation. For instance, the CAAT is mostly involved in enforcing global standards led by aviation safety and security issues. Meanwhile, the Department of Trade Negotiations within the Ministry of Commerce is mainly involved in negotiating Thailand's trade and investment agreements with other countries, which is necessarily done on a voluntary, case-by-case approach. Figure 4.5 below illustrates, in relative terms, the extent to which the organisations interviewed are involved in enforcing international standards compared with negotiating international regulation.

Figure 4.5: Relative Engagement in the Enforcement of Regulation Compared to the Negotiation of International Regulatory Cooperation



IRC = international regulatory cooperation.

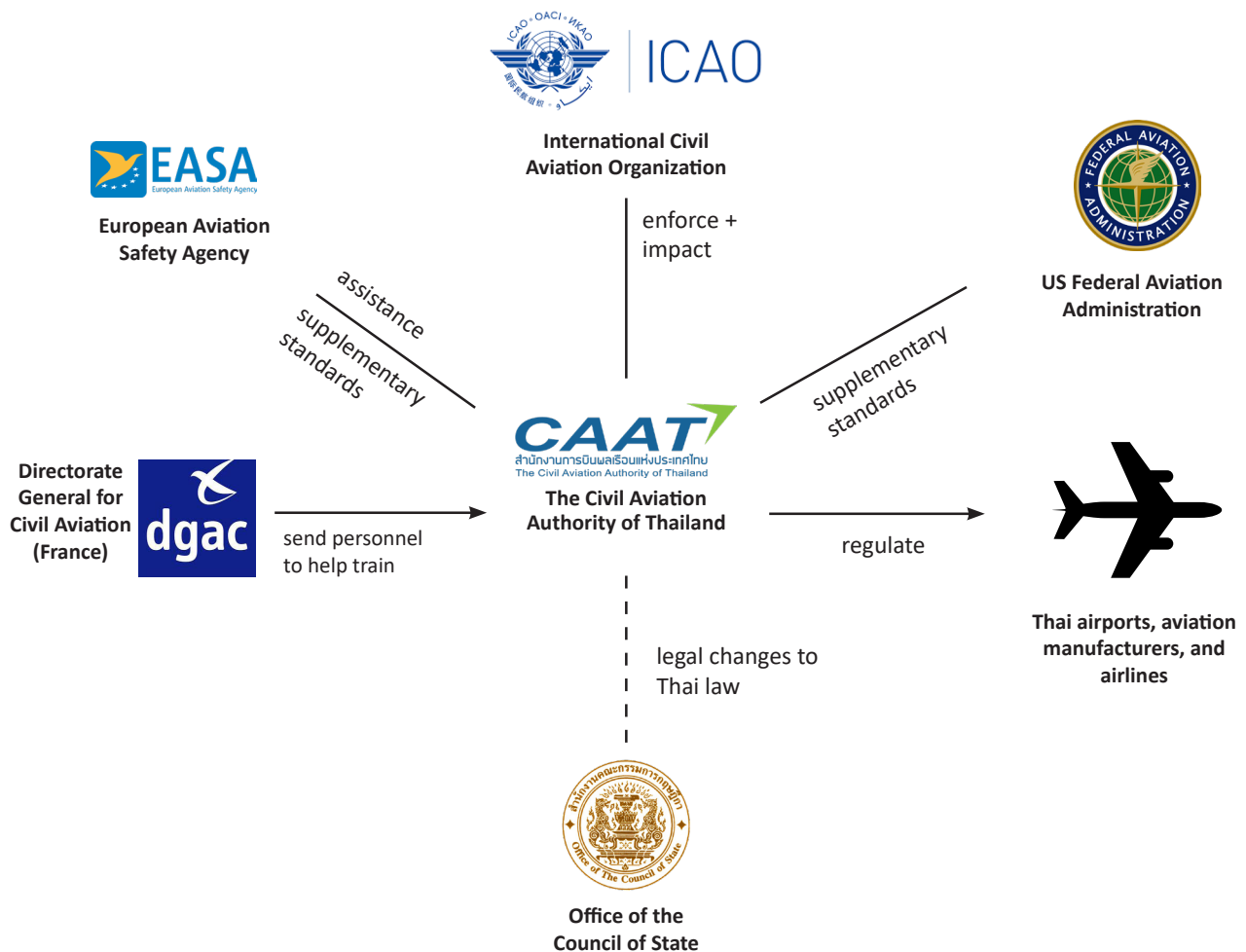
Note: This diagram is intended to illustrate the extent to which the organisations interviewed are involved in enforcement of global standards compared with negotiations of international regulation.

Source: Author.

The OCS oversees one aspect of the IRC process. As a key stakeholder for all organisations involved in regulation that impacts domestic law, the OCS is responsible for reviewing and assessing every piece of draft legislation before it is submitted to Parliament. The OCS is also responsible for translating every piece of legislation and regulation into English and Thai (Ongkittikul and Thongphat, 2016).

The international regulatory landscape of each individual organisation is complex, as it reflects the industry being regulated, the different forums at which Thailand is represented, and the domestic setup of the regulatory organisations. As an example, Figure 4.6 below illustrates the CAAT's international regulatory relationships in the aviation industry. This is a relatively straightforward set of relationships compared to the other organisations interviewed.

Figure 4.6: Overview of the Civil Aviation Authority of Thailand's International Regulatory Cooperation Relationships



ICAO = International Civil Aviation Organization, US = United States.
 Note: This diagram is intended to be illustrative, not comprehensive.
 Source: Author.

The ICAO oversees the international aviation standards that all of its 192 member countries, including Thailand, must follow, as well as recommended practices (ICAO), and conducts regular audits of its member countries. However, the CAAT must also ensure that Thai airlines that fly to the US and European Union meets the stricter standards of the US Federal Aviation Authority and the European Union's European Aviation Safety Agency. To help it meet these international standards, the CAAT receives technical experts from France's Directorate General for Civil Aviation and the European Aviation Safety Agency. Meanwhile, on the domestic side, the CAAT has drafted a revised version of the civil aviation law, seeking approval from the OCS to make sure that the transposition of global aviation standards is consistent with Thai law.

6. Concluding Comments

Thailand is deeply involved in a complex array of IRC initiatives. Government officials view IRC positively and are open to the 'persuasiveness' argument for IRC. In general, officials acknowledge IRC as an opportunity for Thailand to open up to trade, integrate with global supply chains, and exchange knowledge. Officials are willing to engage in IRC where there is a case for it.

To understand the context in which Thailand operates, it is important to assess its IRC landscape. Thailand's history, its middle-income status in a fast-growing region, and the political backdrop of its governance are useful frames for understanding its IRC environment. Similarly, these contexts are critical to understanding Thailand's operating environment.

Thailand's past provides officials with a historically successful and practical approach to engaging in IRC forums – the 'swaying bamboo' approach. Officials adapt their roles according to different forums, being flexible to the situation at hand. The historical success of this approach gives credence to its place in the national narrative and its endurance in international negotiations today. Furthermore, Thailand's position in a fast-growing region means that it needs to manage dynamic power balances actively amongst countries jostling for market access. Its middle-income status within the region means that officials need a high degree of flexibility to adapt to different IRC forums with countries at varying degrees of development. Thailand's own politics are dynamic, and its swings between democratic governance and military regimes provide different domestic backdrops for IRC negotiations.

Government officials engage in IRC in a practical manner, by looking at the substance of the IRC, and are willing to engage if there is benefit for Thailand. When engaging in IRC, government officials often employ 'tailgating' strategies. For example, to achieve an objective, officials might 'tailgate' one international forum to accomplish a goal at a different forum. More generally, officials choose alliances based on what is of greatest benefit to Thailand. This reflects a practical, rather than ideological, approach to IRC. In a fast-changing, increasingly multipolar world where resources are limited, these practical and flexible approaches serve Thailand well.

Overall, it is difficult to make generalisations about the 'imperatives' or 'blockers' of IRC. The outcome of any particular IRC depends on a complex web of international, domestic, political, social, and economic factors. Each IRC initiative needs to be examined in isolation to determine its particular 'imperatives' or 'blockers'.

Further study examining the development of IRC along a narrower and more clearly defined scope would be welcomed. The current IRC landscape of any given industry reflects the historical factors that have affected its development. As this chapter discussed, these factors form a complex web that changes over time. Many competing domestic factors impact the outcome of an IRC initiative, as seen in Thailand's positions with respect to the Thai-US FTA, TPP, and CPTPP. In addition, external developments, whether regional, global, or technological, influence IRC outcomes. This was seen in the outcomes of the Lancang-Mekong Lancang-Mekong Commercial Navigation Agreement, the global debate on capital flow management, and developments in the aviation industry.

Thus, future research could focus on the analysis of a single sector to enable more meaningful consideration of the factors affecting IRC outcomes. The sector could be analysed over a period of time and across a number of countries. Concurrent economic, political, social, or technological developments could more effectively be isolated and understood as to whether or not they affect IRC outcomes. Providing consistent analysis of IRC developments within a single sector across several countries might further understanding of what factors are truly exogenous. For instance, global or technological developments might affect the industry worldwide. This approach might yield a more meaningful comparative study. Isolating exogenous factors might enable a clearer understanding of the domestic factors affecting IRC outcomes.

References

- Arunmas, P. (2018), 'Somkid: Thailand Eyes Becoming CPTPP Member', Bangkok Post, 30 March. <https://www.bangkokpost.com/business/news/1437386/somkid-thailand-eyes-becoming-cptpp-member> (accessed 17 September 2018).
- Bank for International Settlements (2005). About BIS – Overview, 1 January. <https://www.bis.org/about/index.htm> (accessed 17 September 2018).
- Crosby, J. (1937–1939), 'Letters from J Crosby to the Bank of England. Thailand: Country File', Bank of England Archives, File OV25/5, December–February.
- Frost & Sullivan (2018), 'Future Plans on Policies, Regulations and Initiatives to Promote Aerospace Investments in Thailand', The Civil Aviation Authority of Thailand. <https://www.caat.or.th/wp-content/uploads/2018/01/Future-Plans-of-Aerospce-MRO-OEM-sectors-in-Thailand-2.0-1.pdf> (accessed 17 September 2018).
- Ibrahim, M.B. (2018), 'Muhammad Bin Ibrahim: Local Currency Trade Settlement between Indonesia, Malaysia and Thailand', Bank for International Settlements, 8 January. <https://www.bis.org/review/r180108f.htm> (accessed 17 September 2018).
- International Civil Aviation Organization, About ICAO. <https://www.icao.int/about-icao/Pages/default.aspx> (accessed 17 September 2018).
- International Monetary Fund (IMF) (2010), The Fund's Role Regarding Cross-Border Capital Flows. Washington, DC: IMF. <https://www.imf.org/external/np/pp/eng/2010/111510.pdf> (accessed 17 September 2018).
- IMF (2012), The Liberalization and Management of Capital Flows: An Institutional View. Washington, DC: IMF. <http://www.imf.org/external/np/pp/eng/2012/111412.pdf> (accessed 17 September 2018).

- Living River Siam, *Navigation Channel Improvement Project on Lancang-Mekong River*. http://www.livingriversiam.org/4river-tran/4mk/_sub-eng-navigation.html (accessed 17 September 2018).
- Mahitthirook, A. (2015), 'ICAO Red-Flags Thailand's Aviation Safety Standard', Bangkok Post, 18 June. <https://www.bangkokpost.com/news/general/596708/icao-red-flags-thailand-aviation-safety-standard> (accessed 17 September 2018).
- Marine Department (2014), 'The History of the Marine Department'. <https://www.md.go.th/en/index.php/2014-02-21-05-44-06> (accessed 17 September 2018).
- Meelarp, R.D. (2016), *Sidelining Democracy?: Explaining the United States' Response to Thailand's 2006 and 2014 Coups d'état*. Monterey, CA: Calhoun Naval Postgraduate School. <https://calhoun.nps.edu/handle/10945/49345> (accessed 17 September 2018).
- Office of the Council of State (2018), *Background*. http://www.krisdika.go.th/wps/portal/general_en!ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3g_A2czQ0cTQ89ApyAnA0__EIOAQGdXAwM_Y30_j_zcVP2CbEdFAFGmRSc!/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZftjBDNjFBNDJFUUJSQjBJT1QwUFFDRTAwRjY!/ (accessed 17 September 2018).
- Ongkittikul, S. and N. Thongphat (2016), 'Regulatory Coherence: The Case of Thailand', in D. Gill and P.S. Intal, Jr. (eds) *The Development of Regulatory Management Systems in East Asia: Country Studies*. Jakarta: Economic Research Institute for ASEAN and East Asia.
- Silp, S. (2006), 'Thai-US Free Trade Agreement Talks Spark Protests', The Irrawaddy, 9 January. http://www2.irrawaddy.com/article.php?art_id=5344 (accessed 17 September 2018).
- Thaicharoen, Y. and N. Ananchotikul (2008), 'Thailand's Experiences with Rising Capital Flows: Recent Challenges and Policy Responses', in *Financial Globalisation and Emerging Market Capital Flows*. Basel: Bank for International Settlements, Monetary and Economic Department.
- World Bank, *GDP (constant 2010 US\$)*. <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD> (accessed 17 September 2018).
- World Bank, *GDP (current US\$)*. <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (accessed 17 September 2018).
- World Bank, *GDP per Capita (current US\$)*. <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (accessed 17 September 2018).

CHAPTER 5

International Regulatory Cooperation in New Zealand – A Small Country Embedded in a Complex Web of Arrangements

Derek Gill

1. Introduction

Despite its physical distance from the centres of power, New Zealand has a long history of actively engaging in international cooperation of various types. For example, New Zealand was actively involved in the foundation of the United Nations after World War Two and more recently has developed a close bilateral relationship with Australia under the Single Economic Market.

The degree of regulatory integration with Australia, with mutual recognition of regulatory regimes, is unrivalled outside of the European Union (EU). This recognition is not limited to conformity assessment procedures (the most common form of mutual recognition internationally) but also includes standards. In the 1990s, the two governments agreed to deepen their free trade agreement by mutually recognising the other's laws for the sale of goods and for a range of services, including the registration of occupations and financial securities. Goods that can be legally sold in one country can also be sold in the other. Similarly, people registered to practise most occupations in one country can also practise in the other, once they have met local registration requirements. This chapter will focus on the extent to which New Zealand's IRC includes Australia as well as other regional and multilateral groupings.

1.1. Research Approach

IRC comes in a variety of shapes and sizes, and there is no central official inventory of IRC in New Zealand. To circumvent these problems, our approach is based on a small sample of 'elite' interviews with government officials and several private commentators who have a good overview of the issues. We identified government officials extensively involved in IRC from amongst the members of the New Zealand Government Regulatory Practice Initiative Steering Group. We augmented this group with two nongovernment interlocutors with a significant understanding of IRC in New Zealand.¹

The public officials were drawn from a wide range of agencies, including those involved in the primary sector and in trade policy (who tended to focus on technical barriers to trade [TBTs]); sectoral regulators (focused more on domestic environmental, workplace, and consumer safety); and competition policy agencies and central agencies (with views across the regulatory system). There was an even split between those whose experience was limited to one sector and those with wide-ranging views across New Zealand's regulatory system.

¹ In this chapter, text in single quotes has been used to identify unattributable quotes provided in answer to the open-ended survey questions or as part of the interviews.

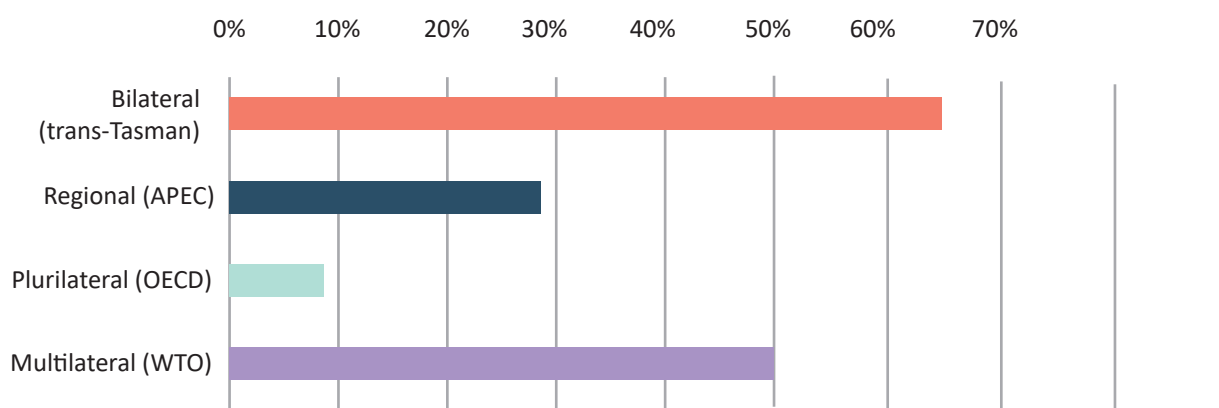
Government respondents were evenly balanced between male and female and drawn from a wide range of sectors, and 70% of respondents had more than 5 years of involvement in IRC.

Having shed some light on the background and overall context of the survey, we next turn to the questions of how widespread IRC is (pervasiveness) and what are the enablers and facilitating factors of effective IRC (willingness and persuasiveness). We will explore the findings from the survey and insights from the interviews in the next five sections on pervasiveness, willingness, persuasiveness, barriers and enablers, and the dynamics of the evolution of IRC. The last section focuses on the governance system for IRC in New Zealand, followed by some concluding comments.

2. Pervasiveness of International Regulatory Cooperation

The survey asked respondents about the relative frequency of different types of IRC. One question explored whether IRC was 'mainly bilateral, regional, plurilateral or multilateral' and respondents could select one or more options. The results (N=15), in Figure 5.1 show a classic 'U' curve, with the main types selected being bilateral and multilateral.

Figure 5.1 Main Forms of International Regulatory Cooperation in New Zealand



APEC = Asia-Pacific Economic Cooperation, OECD = Organisation for Economic Co-operation and Development, WTO = World Trade Organization.

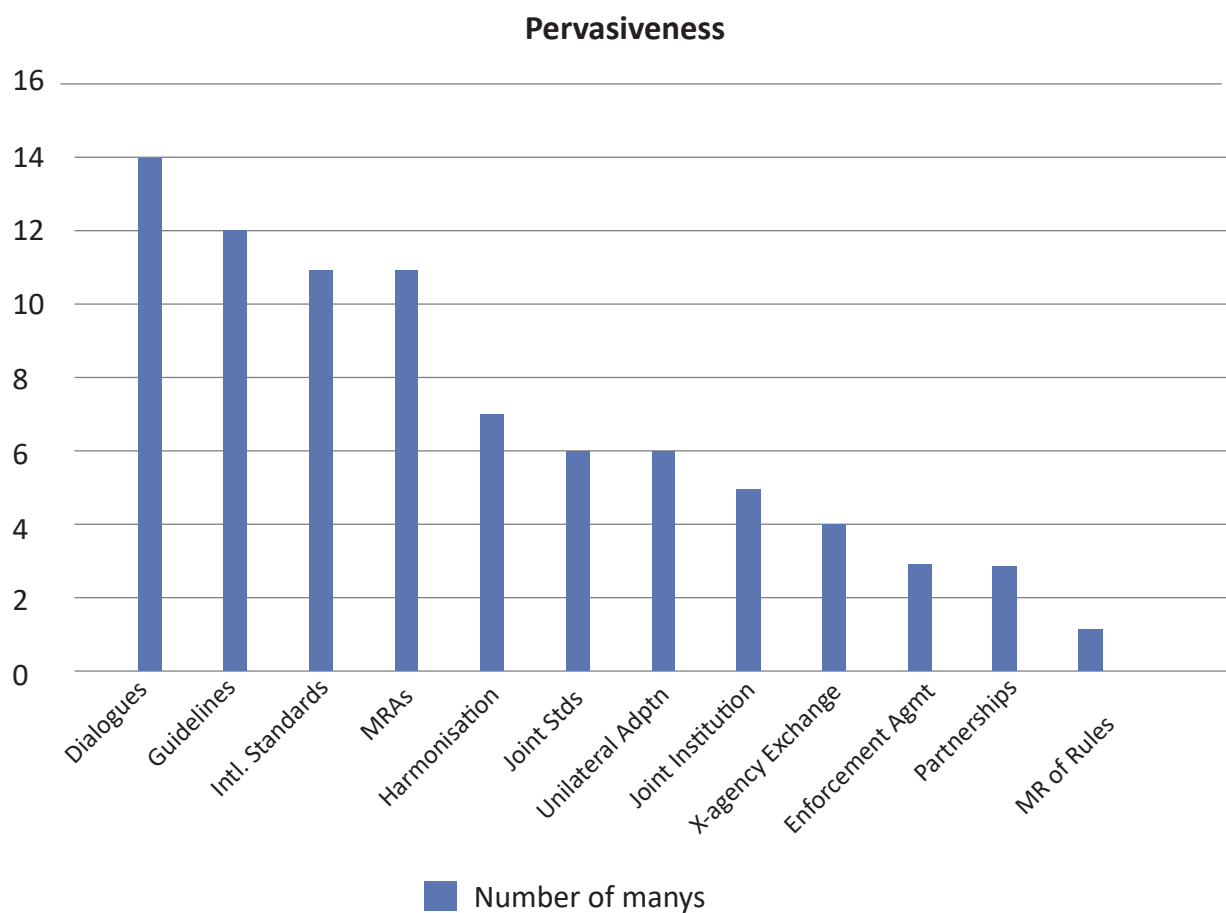
Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 41.

In Part 3 of the survey, respondents were asked about their perceptions regarding the pervasiveness of different types of IRC. IRC can take many forms ranging from unilateral recognition or adoption of another country's regulatory settings or standards at one end of the spectrum, through to harmonisation of policies and practices at the other.

For each type of IRC, interviewees were asked whether there were 'none' (that I know of), 'one or two', 'few' (between 3 and 5), and 'many' (more than 5). Figure 5.2 ranks the types of IRC from high to low based on the number of respondents who selected 'many'. The most common responses were:

- (i) regulatory dialogues and exchange of information with another country or region (e.g. the Asia-Pacific Economic Cooperation [APEC]);
- (ii) voluntary, non-justiciable commitment to best practice guidelines and principles (e.g. APEC);

Figure 5.2: Ranking of Types of International Regulatory Cooperation



MR = mutual recognition, MRA = mutual recognition arrangement.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39.

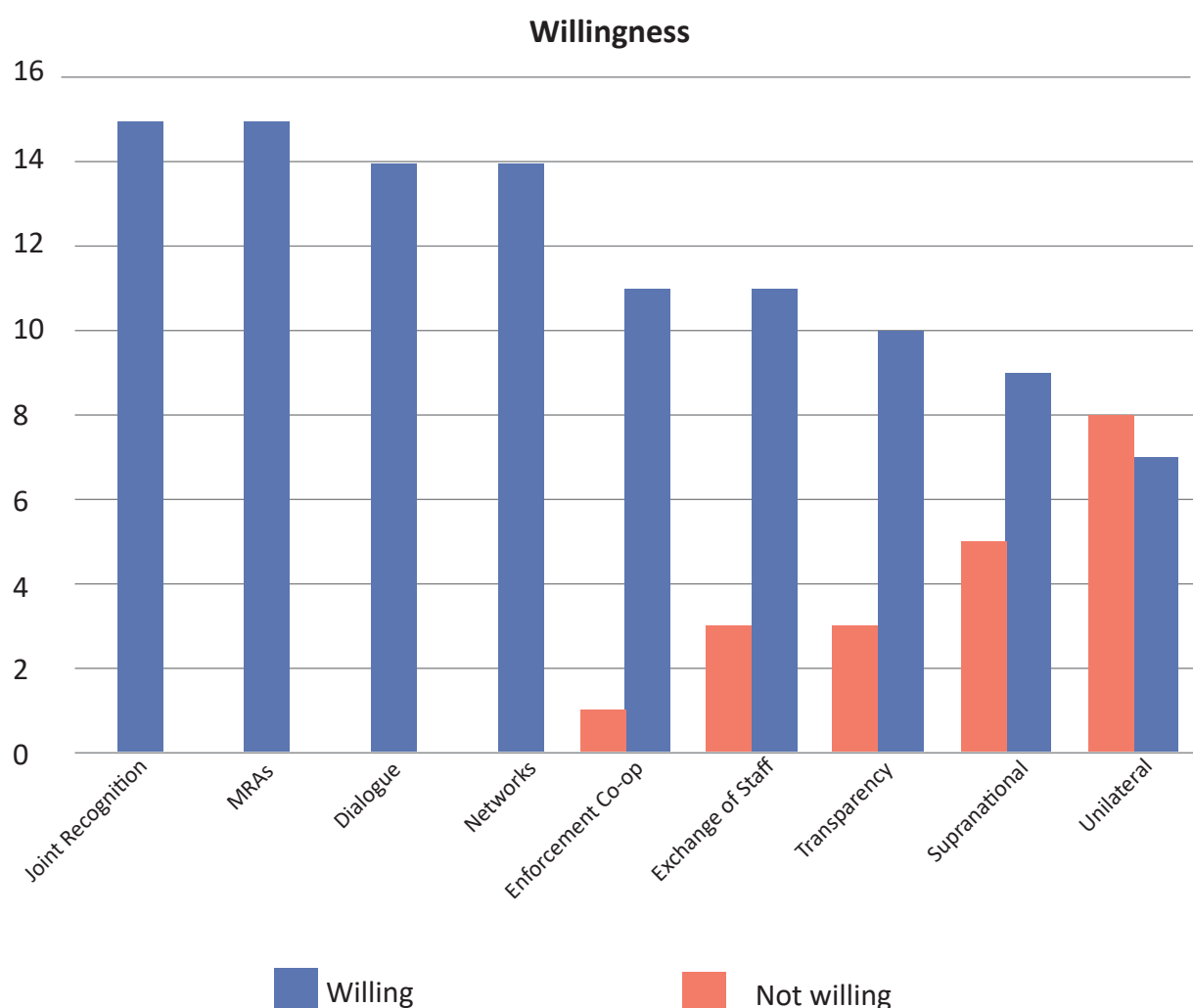
- (iii) the adoption of international standards developed by international public and private standards setting bodies (e.g. the International Maritime Organisation, or the International Organization for Standardization); and
- (iv) policy coordination with partner countries on a specific area or sector regulation.

This suggests that relatively informal arrangements (e.g. dialogues and communities of practice) were more common than formal structures involving the exchange of staff (46% suggested few) or joint institutions (66% suggested one or two).

3. Willingness to Undertake International Regulatory Cooperation

Section 4 of the survey asked respondents about their perceptions of the willingness to develop and strengthen IRC of different types. Respondents had four options: 'strongly not willing', 'not willing', 'willing', and 'strongly willing'. In Figure 5.3, 'strongly willing' and 'willing' were added together, as were 'strongly not willing' and 'not willing'. Figure 5.3 shows the total willingness to undertake particular types of IRC and contrasts this with 'not willing'.

Figure 5.3: Openness to Types of International Regulatory Cooperation in New Zealand (Willing/Not Willing)



MRA = mutual recognition agreement.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 76–84.

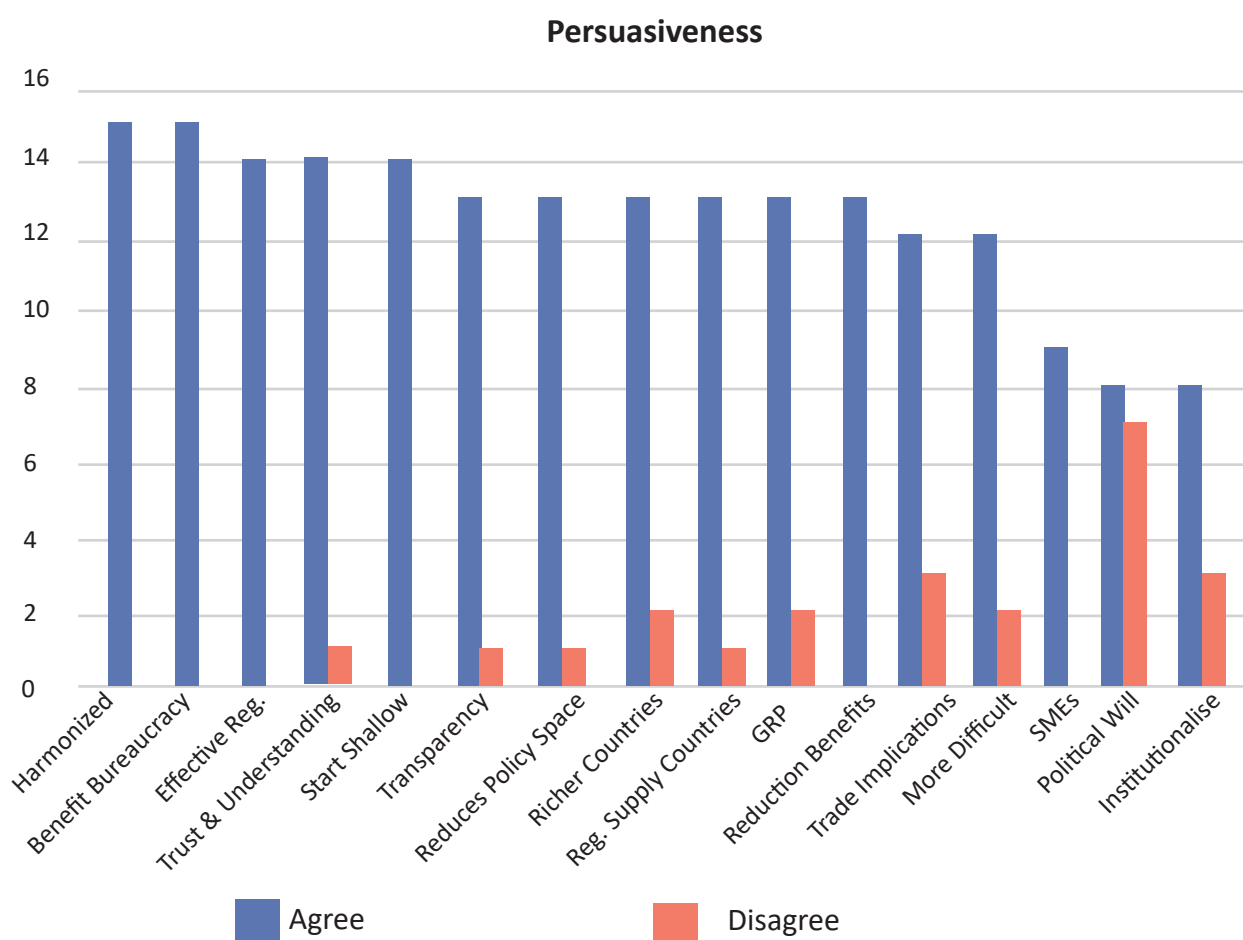
The types of IRC where willingness were highest included (i) the adoption of international standards; (ii) mutual recognition agreements; (iii) regional transgovernmental networks amongst regulators; and (iv) dialogue and informal exchange of information on policy, enforcement, and other regulatory practices. There was the least support for (i) the unilateral adoption of policy or regulatory practices of others; and (ii) bilateral or regional legally binding regulatory agreements and/or harmonisation, with oversight enforcement by a supranational regional body. Interviewees indicated that there was a willingness to consider the latter two options, but that the burden of proof would be higher for it to proceed.

New Zealand respondents had relatively low willingness to engage in staff exchanges compared to AMS in the survey. This may reflect some general features of the New Zealand public management regime rather than being specific to IRC. Unlike a number of other jurisdictions, there is free lateral entry into public sector positions and no specific restrictions on the employment of non-New Zealand nationals in the public service. This openness to foreign staff is particularly important with respect to Australia with whom there is an open labour market, but it also applies to skilled staff from all countries. Given the ready access to and ability to recruit international staff, interest in the bilateral exchange of staff is likely to be reduced.

4. Persuasiveness of International Regulatory Cooperation

Section 2 of the interview asked about respondents' views on a series of propositions about IRC. There were five options: 'strongly disagree', 'disagree', 'agree', 'strongly agree', and 'don't know'. While the propositions about IRC were generally expressed in the positive, three were expressed as negatives in the questionnaire: IRC reduces policy space to a country's disadvantage, benefits richer countries more than poorer, and makes life more difficult. In Figure 5.4 below, we have reversed the display of agree/disagree for these three questions to make it easier to compare them with the other questions. The graph ranks support for propositions from high to low by adding together 'strongly agree' and 'agree', and 'disagree' and 'strongly disagree'.

Figure 5.4: Attitudes Towards International Regulatory Cooperation in New Zealand (Agree/Disagree)



GRP = good regulatory practice, SMEs = small and medium-sized enterprises.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 11–26.

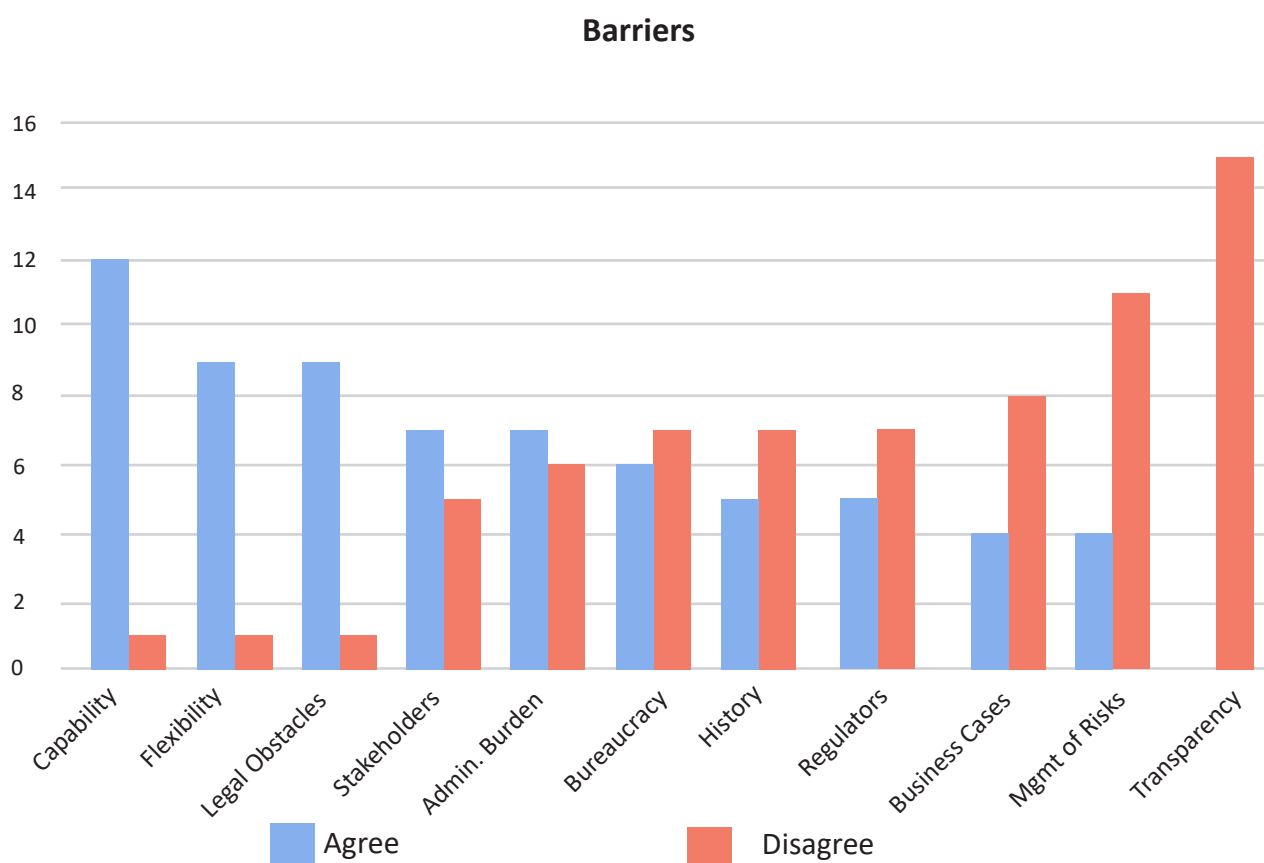
There was reasonably strong agreement with all of the propositions except for the following:

- (i) IRC facilitates exports of small and medium-sized enterprises that are usually handicapped in meeting compliance challenges in foreign markets (none disagree, 30% don't know).
- (ii) Without strong political will and support, IRC cannot be sustained (46% disagree).
- (iii) A more integrated Association of Southeast Asian Nations needs to institutionalise IRC (22% disagree).
- (iv) IRC adds an additional layer of coordination and makes life for administrators and regulators even more difficult and bureaucratic (82% disagree).

5. Barriers and Enablers of International Regulatory Cooperation

Section 4 of the interview asked respondents about their views on a series of propositions about the factors that most restrict or inhibit the growth of IRC in their countries. There were five options: 'strongly agree', 'agree', 'disagree', 'strongly disagree', and 'don't know'. Two propositions were expressed as negatives: IRC reduces transparency and reduces the management of risks at the border. For ease of comparison, in Figure 5.5 below we have reversed the display of agree/disagree for these two questions. The graph shows the types of IRC from high to low by adding together 'strongly agree' and 'agree', and 'disagree' and 'strongly disagree'.

Figure 5.5: Barriers to International Regulatory Cooperation in New Zealand (Agree/Disagree)



Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 65–75.

There were several potential barriers on which agreement and disagreement was divided. For example, the view that the bureaucracy has had little knowledge of and trust in other countries' regulatory regimes attracted five (40%) 'agrees' and five 'disagrees', with one person strongly disagreeing. The main barriers where there was most agreement were the following:

- (i) Differences in capability and country size means trust in other countries' systems is uneven (seven 'agree', one 'strongly agree', one 'disagree').
- (ii) There is concern on the lack of regulatory flexibility and sovereignty arising from IRC (seven 'agree', one 'strongly agree', one 'disagree').
- (iii) There are legal obstacles to IRC (e.g. restrictions on information sharing/confidentiality rules) (six 'agree', two 'strongly agree', one 'disagree').

In addition, two potential barriers were seen as not important:

- (i) IRC led to reduced transparency between countries (100% disagreement).
- (ii) IRC contributed to reduced management of risks across borders (four 'agree', six 'disagree', three 'strongly disagree').

During the interviews some practitioners elaborated on the potential barriers presented by capability differences, the applicable law, and concerns about regulatory sovereignty. On capability, there was general agreement that IRC between economies at different levels of development is particularly difficult when mutual recognition of the equivalence of other regimes is required. This is because of the extent of regulatory trust required in other countries' regimes and systems. As one interviewee commented, 'Trust is a critical issue for the enforcement of IRC. It is all about the people.'

Legal barriers were particularly important for regulatory practices such as enforcement. If the regulatory regime explicitly enables IRC, then it is easier to make progress. If the regulators' legal framework does not clearly provide both the flexibility and mandate to cooperate, then IRC can be constrained. Conversely, if there exists an explicit legal mandate to cooperate, and mutual trust exists then this provides a positive signal to regulators and is more likely to result in cooperation.

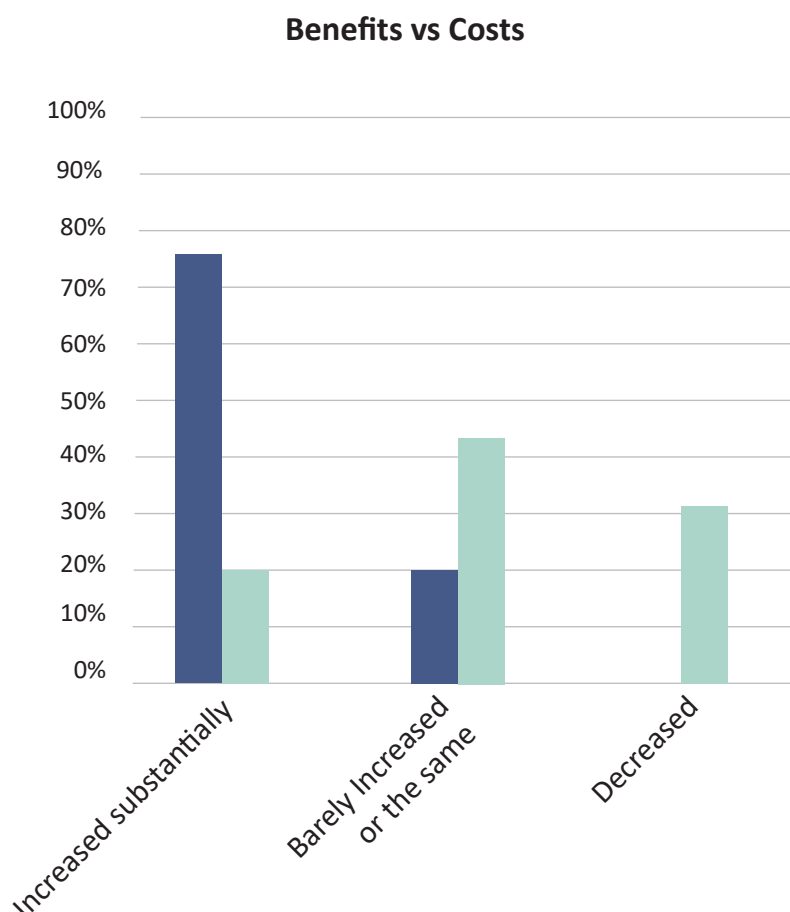
There was clear agreement about the perception that IRC leads to 'concerns about a lack of regulatory flexibility and sovereignty'. There was equally strong support for the proposition that IRC strengthens the capacity of states to deliver effective regulation (Question 12: 54% 'strongly agree', 40% 'agree', 6% 'don't know'). This is consistent with the view that while IRC may increase de facto regulatory sovereignty, it may erode the perception of regulatory sovereignty de jure.

6. Dynamics of International Regulatory Cooperation

As part of the survey, respondents were asked to reflect upon an example of IRC with which they were most familiar and compare that with another case involving IRC. Most respondents chose bilateral IRC arrangements with Australia as examples.

Figure 5.6 shows that 70% of respondents suggested that the benefits of the specific IRC case had increased substantially over time, while the majority suggested that the costs had decreased or barely increased. The main costs were the financial and opportunity costs of participation in IRC, including preparation, travel, and meeting time. For transgovernmental networks, resourcing was a common issue of concern as cooperation involves additional work and takes resources that could be applied elsewhere.

Figure 5.6: Costs and Benefits of International Regulatory Cooperation



IRC = international regulatory cooperation.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 57–58.

There were a wide range of benefits sought from the IRC cases, including (i) reductions in TBTs such as non-tariff barriers, (ii) increased interoperability and reduced transaction and compliance costs, and (iii) improved regulatory effectiveness through accessing economies of scale and technical expertise in regulation.

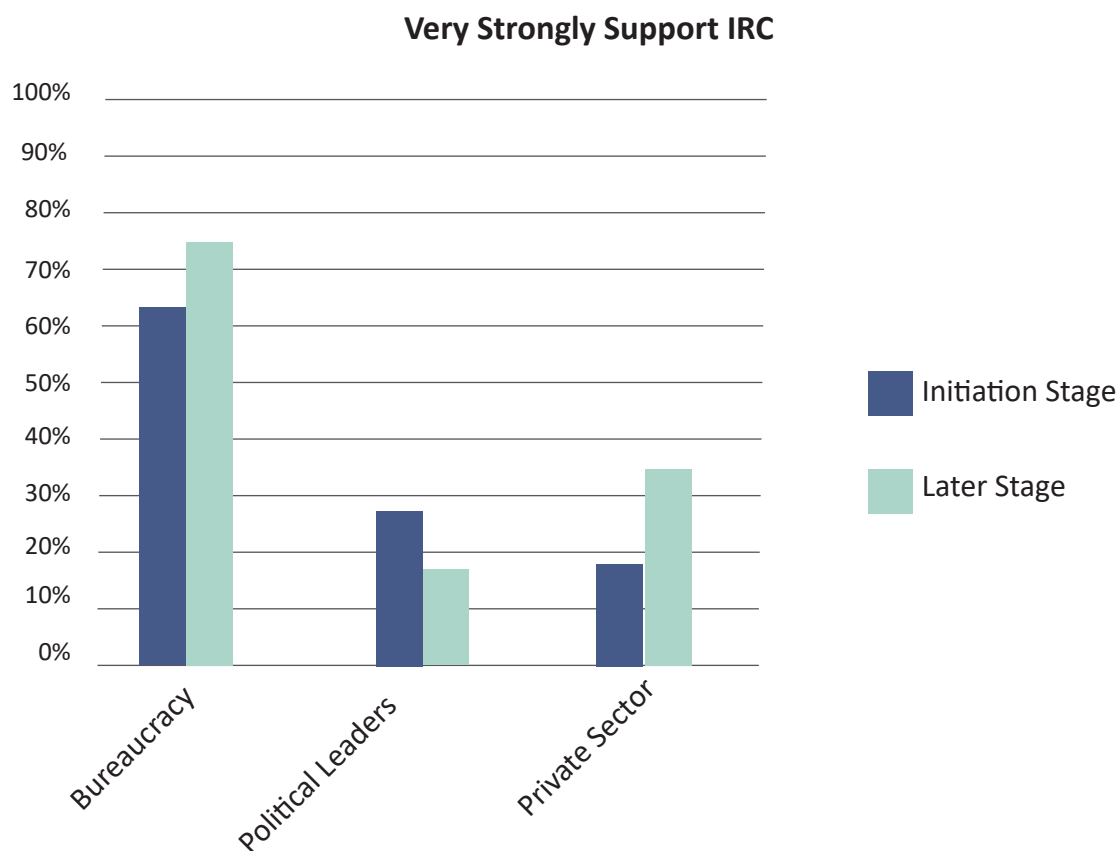
A small majority (55%) reported that IRC had changed over time, most often by deepening with the focus shifting exclusively from policy to include regulatory practices such as enforcement and the effective delivery of regulatory services. All of the respondents who suggested that the nature of the IRC had changed over time also reported that the benefits of IRC had increased. Of the respondents who reported no change in the scope of IRC, 50% also suggested that the benefits have increased over time.

The patterns of support for IRC varied markedly across the cases and as the IRC progressed. Figure 5.7 compares the support at different stages from political leaders, bureaucrats, and the private sector. Support from the bureaucracy was described as critical. One explanation for this is that much IRC involves transgovernmental networks (i.e. direct, informal, domestic, agency-to-agency arrangements) operating without the direct involvement of foreign ministries and ‘beneath the radar’ of politicians. In more formal intergovernmental arrangements, political salience increases. ‘Don’t underestimate [the] need for political consensus and management. Imbalances of power, real or perceived, are important and need to be managed.’ Support from the private sector, while weak or very weak in 40% of cases at the initiation stage, becomes much stronger as the IRC evolves (strong or very strong in 83% of cases).

There were mixed views on the importance of the private sector and political leaders, depending upon the details of the case. For example, support from political leaders was described as ‘weak’ or ‘very weak’ in just under half of the cases: 45% in the initiation phase and 42% in the later stages. By contrast, support from the bureaucracy was described as strong or very strong in around 90% of the IRC cases.

The lack of emphasis on political leadership is consistent with findings from the research drawing on lessons learned from the IRC case studies discussed in Chapter 3. This chapter concluded that political mandate helps but is insufficient on its own for IRC to gain momentum. However, this finding was particularly strong for New Zealand, while in the surveys of ASEAN countries, political will and support were emphasised more.

Figure 5.7: Dynamics of International Regulatory Cooperation – Support by Phase



IRC = international regulatory cooperation.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 50–56.

Respondents were asked to identify the key lessons learned from comparing two examples of IRC with which they were familiar. The themes that emerged included the time and sustained commitment required for IRC to succeed, the role of trust and relationships, continuity of participation for sustaining trust, and the importance of leadership. Some examples are:

‘The value of building trust, confidence and productive relationships between regulators across the Asia/Pacific region, which led to a framework able to be used in a varying range of situations to address regional and bilateral regulatory issues.’

‘Even when parties agree, IRC involving formal cooperation can take a long time to put in place. It helps to have political support and champions, but this only got underway because of a conversation, so [the IRC] was opportunistic but also innovative.’

7. The Governance of International Regulatory Cooperation in New Zealand

In New Zealand, responsibility for the oversight of GRP and IRC is shared amongst three departments. The Treasury, the government agency with lead responsibility for regulatory policies and GRP, is not very actively involved in IRC, other than negotiating regulatory cooperation chapters in free trade agreements. Instead the Treasury looks to the Ministry of Business, Innovation and Employment, the lead agency on regulatory practice, which is also responsible for promoting international regulatory coherence including promoting IRC in its many forms. The Ministry of Foreign Affairs and Trade, the lead advisor and negotiator on trade policy, gets involved if the IRC is a formal intergovernmental agreement involving a formal international treaty or legal agreement. However, much IRC activity is transgovernmental involving a technical regulatory agency-to-regulatory agency level across jurisdictions, and does not involve the Ministry of Foreign Affairs and Trade. While there is no formal government cross-sectoral policy on IRC, IRC is embedded in official documentation as an integral part of GRP. While not explicitly mentioning IRC by name, the Government's Expectations for Good Regulatory Practice (published in April 2017) refers to IRC in two places (see Box 5.1).

Box 5.1: Regulatory Stewardship Expectations—The International Regulatory Cooperation Dimension

Part A: Expectations for the Design of Regulatory Systems

'The government believes that durable outcomes of real value to New Zealanders are more likely when a regulatory system:

- is consistent with relevant international standards and practices to maximise the benefits from trade and from cross border flows of people, capital and ideas (except when this would compromise important domestic objectives and values)'

From Part B: Expectations for Regulatory Stewardship by Government Agencies (Part B being an update and extension of the initial regulatory stewardship expectations set by the government in 2013).

'The government expects regulatory agencies to work collaboratively to:

- periodically look at other similar regulatory systems, in New Zealand and other jurisdictions, for possible trends, threats, linkages, opportunities for alignment, economies of scale and scope, and examples of innovation and good practice'; and

'Where appropriate to their role, the government expects regulatory agencies to:...

- develop working relationships with other regulatory agencies within the same or related regulatory systems to share intelligence and co-ordinate activities to help manage regulatory gaps or overlaps, minimise the regulatory burden on regulated parties, and maximise the effective use of scarce regulator resources'.

Source: Government of New Zealand, The Treasury (2017), Government's Expectations for Good Regulatory Practice. April. Wellington. <https://treasury.govt.nz/publications/guide/government-expectations-good-regulatory-practice> (accessed 8 June 2020).

A number of interviewees, whose role tended to be more sector-based than system-wide, highlighted the scope for 'regulatory stewardship work, if it can be effectively embedded, [which] would be likely to bring more systematic attention to IRC issues'. This role could include the development of an IRC toolkit for New Zealand regulatory practitioners.

Although there is no formal government cross-sectoral policy on IRC beyond that in Box 5.1, certain cross-cutting policies apply. One important part of the overall approach is the Single Economic Market with Australia (discussed in Box 5.2).

Box 5.2: New Zealand – Australia Single Economic Market

Australia and New Zealand have a shared history, language, and values; a similar culture and political, legal, and economic institutions; and a high political commitment to greater integration. This has provided a solid platform of mutual understanding and trust on which to build a closer economic relationship. The free trade area established by the Closer Economic Relations (CER) agreement in 1983 led to further integration over time with the goal of achieving a single economic market. Key milestones include the following:

1983: CER comes into force (as a comprehensive bilateral free trade agreement, it substantially covers all trans-Tasman trade in goods and services).

1988: Memorandum of Understanding on the Harmonisation of Business Law between Australia and New Zealand.

1997: Trans-Tasman Mutual Recognition Agreement, which includes the recognition of the decisions of respective regulatory regimes as well as conformity assessment procedures.

2009: Single Economic Market Outcomes Framework, which includes multiple policy streams.

New Zealand and Australia show what can be achieved through a combination of political commitment and sustained bureaucratic effort when built on a foundation of trust. It should be acknowledged that it will be exceedingly difficult for other countries to imitate this. Moreover, there is always scope for improvement, as highlighted by the critical review of the operation of the Trans-Tasman Mutual Recognition Act by the Australian Productivity Commission in 2015.

Source: Author.

While the Single Economic Market provides a political mandate and lends legitimacy to trans-Tasman IRC initiatives, this is a useful but not critical supporting condition. Underpinning the relationship is a shared history and culture and a 'strong degree of trust and confidence in the institutions and regulatory processes of the other country'.

IRC, when formal, is given effect through a range of legal instruments. New Zealand is a party to a range of international treaties and protocols. Trans-Tasman mutual recognition is given legal effect through mirror legislation in both countries rather than legal treaties. In addition, a number of individual statutes either implicitly or explicitly empower regulators to engage

in IRC. For example, the Commerce Act explicitly provides the New Zealand Commerce Commission with the power to share information with the Australian Competition and Consumer Commission on trans-Tasman mergers and acquisitions.

One seasoned observer commented on how the development of regulations in New Zealand has changed over the last 30 years. Regulatory policy design no longer aims to develop 'best of breed', stand-alone regulatory policy regimes. Instead, increasing attention is paid to international regulatory interoperability as New Zealand goods and services need to compete in accessing international value chains. New Zealand is simply too small to be able to develop bespoke regimes that cannot interoperate with international systems and standards. Seamless interoperability is particularly important for the tradeable sector.

8. Concluding Comments

This chapter has summarised the key findings from a small elite survey of 13 government officials and two private commentators. Given the small sample size, care is required in interpreting the results. However, the consistency of the general pattern of the New Zealand responses with the survey results for the AMS supports the reliability of the findings.

One qualification needs to be highlighted, however. As an elite survey, it does not purport to capture what the average 'Kiwi' thinks about IRC. While the experts may be unanimous in dismissing the view that IRC reduces transparency, Kiwis may take a different view. These caveats aside, a number of interesting themes came through.


8.1. Pervasiveness

The government is deeply embedded in a complex web of IRC arrangements. While these arrangements were predominantly multilateral (e.g. through the United Nations system) or bilateral (mainly with Australia), there were also a host of regional (e.g. APEC) and plurilateral (e.g. the OECD) arrangements. Unsurprisingly, AMS respondents reported more frequent use of regional arrangements than did New Zealanders.

The imperatives for IRC were quite varied. While a handful of agencies with trade policy responsibilities had a particular focus on removing TBTs, for the majority of agencies the imperatives for IRC included other objectives such as regulatory effectiveness and interoperability.

The development of IRC is highly path-dependent, with quite different arrangements in apparently similar sectors. One interlocutor distinguished between hard and soft regulation. With hard regulations, the government is actively involved in setting the standards, and inspecting and certifying goods before they can be traded. In other sectors with soft regulations, the government is more reactive and there is greater reliance on complaints to act as 'fire alarms'. While the examples in the interviews suggested that the main focus of IRC tends to be regulatory policy or mixtures of policy and regulatory practices such as enforcement, there are examples where the sole focus is on enforcement practices and policy is not included.

The locus or type of IRC ranges across a spectrum, from informal communities of practice to mutual recognition (mainly with Australia) to full harmonisation, mainly with the norms and instruments of international organisations. Informal cooperation is more frequent than more formal arrangements, such as the exchange of staff or joint institutions.



There was a clear preference for more informal transgovernmental networks with direct agency-to-agency engagement without directly involving the respective ministries of trade and of foreign affairs. This is because of the mindset difference between more informal transgovernmental networks and more formal intergovernmental and supranational arrangements. With networks involving technical peers, there was generally a more collaborative win-win approach. By contrast, intergovernmental arrangements and international organisations involved a more conflict-based, mercantilist approach derived from diplomatic and trade negotiations. Over time, network arrangements could become more formal as trust and engagement increase within the network.

8.2. Willingness

New Zealand has a long history of actively engaging in international cooperation of various types. Like other countries in the survey, there was high willingness to consider all potential types of IRC – in particular, dialogue, transgovernmental networks, the adoption of international standards, and MRAs. Support was still positive but lower for the unilateral adoption of policy or harmonisation through a supranational body.

As a small, reasonably open, and developed economy, New Zealand is largely a rule-taker, and thus has much to gain from IRC. The interviews accompanying the survey identified a number of factors that promote engagement in IRC including:

- (i) capability constraints – IRC enables access to the expertise of other regulators;
- (ii) limited bargaining power – as a small country, New Zealand prefers plurilateral or multilateral to regional or bilateral cooperation²;
- (iii) globalisation – increasing emphasis is paid to international regulatory interoperability as New Zealand's size means that it not effective to implement 'best of breed' stand-alone regulatory regime designs that do not interface with other countries' systems; and
- (iv) agility – as a small flexible government, agencies attempted to shape 'what do' rather than 'be done to' and build coalitions of the willing.

8.3. Persuasiveness

Like their overseas counterparts, New Zealand government officials and private commentators alike have a generally positive view of IRC. For public officials, undertaking IRC is merely a special case of a more general range of cross-governmental cooperation that they regard as business as usual. As one respondent observed, their agency was involved in a range of 'cooperation activities:

- domestically (i.e. with local government, and with other regulators);
- regionally in the Pacific (...with capability building but also working together in one or two well established international co-operation regimes;
- in the Asia Pacific across agencies (a much 'softer' network which is, after 20 years, still very much information sharing and relationship maintenance); and
- internationally as part of an international organisation which drives policy and operational activity around the globe'.

² Frankel et al. (2013) use the example of patent law under the Trans-Pacific Partnership negotiations to illustrate why 'multilateral (or many party) agreement is the preferred one because New Zealand has a better chance of coordinating interests with like-minded countries'.

8.4. Barriers to International Regulatory Cooperation

Agreement and disagreement were divided on a number of potential barriers. The main areas of concern were differences in regulatory capability, legal barriers, and the perceived impact of IRC on policy sovereignty. As discussed above, ordinary Kiwis may take a different view of propositions supported by the experts.

The contrast between 'expert' respondents' views and those of ordinary citizens is most obvious in the vexed issue of regulatory sovereignty. Experts were nearly unanimous in supporting the proposition that IRC strengthens the capacity of states to deliver effective regulation. According to this view, the decision to engage in IRC would increase the effective exercise of regulatory sovereignty. The same experts identified public concerns about eroding the perception of regulatory sovereignty as a major obstacle to IRC.

One puzzling finding was the low level of support for the unilateral adoption of other countries' standards or regimes. In New Zealand's case, this was particularly surprising as unilateral adoption is the easiest form of IRC (no reciprocity or cooperation is required), and as a matter of practice, New Zealand frequently adopts Australian and other standards unilaterally. There are two plausible explanations for this: technical and political optics. The technical issue is that, as an open economy, New Zealand interacts with many trading partners, and harmonising with one economy risks diverging with others. The political optics argument is that adopting the standards of another country surrenders regulatory policy sovereignty. This low level of support was not limited to New Zealand but was consistent across all of the other countries surveyed.

8.5. Future Trends

Respondents also had the option of commenting about how IRC would develop in the future, and about half took this opportunity. The general theme of the comments was a continued drive for enhanced and deepened IRC. The comments highlighted a range of factors, both economic (e.g. growth in global supply chains, digitisation, globalisation, growth in multinational corporations, and pressure on business to reduce TBTs) as well as geopolitical (e.g. lack of progress on multilateral liberalisation and the disengagement of the United States [US]). Several sources saw US disengagement as an opportunity to expand IRC by providing 'freer paths of evolution, not constrained by US legalism, less dominance by a single powerful player', and observed that it was 'politically less hard to be seen to be responding to a US agenda'.

A major constraint was the risk of a lack of public legitimacy to pursue a more active IRC agenda. As one interviewee observed, 'IRC is often not well understood. More needs to be done with stakeholders to explain the benefits'. The survey was limited to a small number of experts and did not explore the attitudes of different stakeholders. My overall judgement would be that, while the bureaucracy in New Zealand is generally positive about IRC as 'business as usual', political leaders, although supportive, are more sceptical, and businesses, although generally supportive, have not been proactive. The wider civil society has doubts about the benefits and concerns about the loss of regulatory sovereignty.³

³ For a Parliamentary submission arguing that New Zealand should not accede to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership as it would 'restrict the regulatory sovereignty of current and future Parliaments' see, *It's Our Future: Kiwis Against TPPA* (2018), *Reject the TPPA and Review the Treaty-Making Process*. 27 April. <https://itsourfuture.org.nz/wp-content/uploads/2018/05/Reject-the-TPPA-and-review-the-treaty-making-process-Dont-Do-It-petition-submission.pdf>




Figure 5.5 shows how, in addition to technical barriers (e.g. capability and legal obstacles), the main political concern was the perception of a 'lack of regulatory flexibility and sovereignty arising from IRC'. There is a potential disconnect between the overwhelmingly positive view of IRC expressed by survey respondents and the New Zealand public's awareness and appetite for IRC. A typical comment was, 'The gains are real, but building consensus is harder than it looks. Need real champions as well as a strong business case'. Building a shared understanding of the role and limits of IRC is an important part of the future agenda. It is hoped that the chapters in this volume can contribute to improving that understanding.

References

- Australian Productivity Commission (2015), 'Mutual Recognition Schemes', Research Report. Canberra.
- Frankel, S.R., M.K. Lewis, C. Nixon, and J. Yeabsley (2013), 'The Web of Trade Agreements and Alliances and Impacts on Regulatory Autonomy', in S. Frankel and D. Ryder (eds.), *Recalibrating Behaviour: Smarter Regulation in a Global World*. Wellington: LexisNexis. Victoria University of Wellington Legal Research Paper, No. 4/2014. <https://ssrn.com/abstract=2335032> (accessed 18 April 2020).

CHAPTER 6

International Regulatory Cooperation in the Philippines – The Drive for Improved Regulatory Quality and Regulatory Coherence

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and Arjan Paulo Salvanera

1. Introduction

The Association of Southeast Asian Nations (ASEAN) Economic Community (AEC) has committed itself to an economic integration agenda in the region; that is, it aims to achieve a single market status across the ASEAN Member States (AMS), comprising 10 countries in the Southeast Asia region. In pursuit of a more integrated region, ASEAN has been a regional growth centre, notwithstanding a prolonged global economic slowdown. More recently, the rise in oil prices and the United States (US)–China trade war have brought new challenges to the region. However, growing economic interdependence has been a driver of continuing growth in each of the AMS, even as they continue to be linked to more developed economies outside the region, such as the Organisation for Economic Co-operation and Development (OECD) economies. The Philippines is no exception to this phenomenon as it continues to strengthen ties with its trading partners outside the region while also developing deeper economic relationships within the ASEAN region.

It is clear that the country must take advantage of the economic benefits of membership in the AEC. One important step is to address the heterogeneity of development and differences in regulation amongst AMS. Differences in AMS' regulatory regimes create unnecessary trade costs, generating substantial friction in an otherwise smooth trade and economic relationship. The compliance costs arising from different regulatory regimes alone impose a huge administrative burden on importers, exporters, and even government regulators in the AMS, and constrain the free flow of goods, services, investments, and people.

Given the different levels of development and regulatory capacity across the region it is important to explore various avenues of international regulatory cooperation (IRC). This underscores the importance of IRC as it tries to address inconsistencies in and a lack of coherence amongst regulatory structures across countries. IRC takes many forms ranging from informal (e.g. agreements to share data and information) to formal arrangements (e.g. the adoption of common standards for particular products, such as the ASEAN Cosmetics Directive). The OECD (2013) examined the shift in the nature of IRC from 'complete harmonisation of regulation to more flexible options such as mutual recognition agreements', and presented evidence of the increased internationalisation of regulation with multiple actors through a range of informal and formal mechanisms.

The Philippines is a middle-income, open economy with a growing trade sector, led by trade in services (e.g. business process outsourcing and management), substantial remittances from overseas Filipino workers, and a rising manufacturing sector that has started to respond to past and current economic reforms. It stands to benefit from a rise in foreign direct investments and reduced barriers to trade in goods and services through various forms of IRC that could bring about improved regulatory quality and coherence.

The survey results reported in this chapter reflect the respondents' experience with, and knowledge of, IRC. The Government of the Philippines is involved in a wide range of international cooperation arrangements, including multilateral (e.g. with the World Trade Organization [WTO]), bilateral (e.g. the Philippine–Japan Economic Partnership Agreement), and regional arrangements (e.g. the AEC). IRC ranges from informal arrangements (e.g. information sharing) to formal arrangements, such as mutual recognition (e.g. ASEAN mutual recognition arrangements [MRAs]), full harmonisation with international organisations such as the WTO, and the unilateral adoption of international standards. Informal IRC, the most common form, is more flexible and practicable than the formal types of IRC, which require formal approval by governmental bodies, including the ratification of protocols to implement the agreement (e.g. protocols in air service agreements in the ASEAN Single Aviation Market). The survey results indicate that, with respect to formal IRC, government officials take a pragmatic and informed approach, with the overall welfare of the country as their guidepost.

This chapter reports the survey results regarding how widespread IRC is (pervasiveness), the barriers to IRC (willingness), and enabling factors for effective IRC in the country (persuasiveness). Four cases illustrating the Philippines' experience with IRC explore its effectiveness in the country. While this chapter provides a glimpse of the Philippine's IRC based on a small purposive survey as opposed to a comprehensive assessment, it offers important insights on how IRC has been used as a mechanism to ensure regulatory consistency and quality.

Overall IRC is viewed positively, although the survey respondents expressed a few concerns (discussed in full below). Although there is a general willingness to strengthen IRC efforts in the Philippines and to support more formal arrangements, realistically this will require a committed effort by various stakeholders to achieve.

1.1. Research Approach

The Philippine research team conducted intensive interviews with 15 high-level government officials in different economic sectors, including the trade, services, industry, banking, finance, professional occupations, and cosmetics industries. The interviews were guided by the survey questionnaire developed by the Economic Research Institute for ASEAN and East Asia (ERIA), New Zealand Institute of Economic Research, and participants in a workshop organised by ERIA in Bangkok on 23–24 April 2018. The research team also perused various documents on regulatory cooperation in ASEAN, such as the ASEAN Cosmetics Directive, to obtain a good understanding of IRC in the region. Before the actual interviews, the research team discussed the many forms of IRC with the survey respondents (see Figure 6.1).

Figure 6.1: The International Regulatory Cooperation Continuum



Source: Gill D. (2018), 'International Regulatory Cooperation Case Studies and Lessons Learnt'. New Zealand Institute of Economic Research Report to the Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. Wellington: New Zealand Institute of Economic Research. https://nzier.org.nz/static/media/filer_public/1a/4c/1a4c6a07-c206-45e9-8e11-a5c2482dd3d8/irc_revised_summary_report_on_lessons_learnt_oct_2018.pdf (accessed 7 June 2020).

The Philippines is not new to international cooperation arrangements. Malaya and Mendoza-Oblena wrote that, 'the Philippines has interacted and cooperated with neighbouring countries and the rest of the international community through the decades, and as of this writing (i.e. 2010), has concluded some 1,660 agreements with them since 1946' (2010: 1). They also observed that from 2001 to the first half of 2010, the Philippines concluded some 393 agreements, covering various areas, including 11 on the promotion and protection of overseas Filipino workers, 10 tourism promotion agreements, nine investment promotion accords, eight health cooperation accords, six environmental conservation and protection agreements, and five on social security benefits. The agreements include a number of free trade agreements entered into by the Philippines and its ASEAN partners with the economies of major neighbouring countries, the Japan-Philippines Economic Partnership Agreement, the Stockholm Convention on Persistent Organic Pollutants, arrangements to establish the headquarters of the ASEAN Centre for Biodiversity and the Worldfish Centre in the Philippines, and the accessions to the Convention against Torture and the Protocol Additional to the Geneva Conventions of 12 August 1949 (Malaya and Mendoza-Oblena, 2010).

A good example of participation in such arrangements is membership in the WTO, and its predecessor the General Agreement on Tariffs and Trade (GATT).¹ Meanwhile, the Philippines of its own accord, but also prompted by the World Bank and International Monetary Fund, undertook various structural adjustment programs in the 1980s.² The unilateral reforms undertaken by the Philippines in the previous decade were instrumental in the Philippines' ratification of the WTO in 1995.

In a recent study, Llanto (2016) noted that an efficient and effective regulatory management system is necessary to achieve better societal welfare, greater efficiency and competitiveness of firms, and more efficient integration with the AEC. The Philippines does not have a formal regulatory management system like that of Malaysia, which has a detailed formal framework and process for the review and assessment of regulations in terms of impact, coherence, consistency, and quality (Llanto, 2016). While the country has the elements of a regulatory management system, those elements have not yet been woven into a formal framework and process. Meanwhile, in the pursuit of regulatory quality, the government has worked with donors to build capacity in government departments to undertake regulatory impact analysis. In this regard, the Asian Development Bank provided technical assistance to the departments of tourism, labour and employment, and finance for regulatory impact analysis. Progress in improving the regulatory framework has been accentuated by the recently enacted law, Republic Act No. 11032 or the Ease of Doing Business Act (enacted 28 May 2018), to promote regulatory quality. The government recognises the importance of regulatory quality in the pursuit of its inclusive growth agenda, as described in the Philippine Development Plan. Thus, the government has prioritised improved regulatory quality, consistency, and coherence in its development tool kit.

The Philippines also works with other AMS to improve the quality and coherence of regulations affecting all member states. Cooperation with outside parties such as donors (e.g. the Asian Development Bank) and the Malaysia Productivity Corporation has been important. For example, the Malaysia Productivity Corporation sent a senior official to help the Development Academy of the Philippines implement its training course on regulatory impact analysis.

¹ The GATT, which was established in 1947 to govern global trade, required members to follow the 'two basic principles of most favoured nations and national treatment and would bind member countries not to increase their tariffs nor use trade discriminatory measures according to agreed-upon commitments' (Medalla, 2018: 184–85). The WTO, which succeeded the GATT, came into force in 1995.

² For a narrative on the Philippines' structural adjustment program, see Montes (1988).

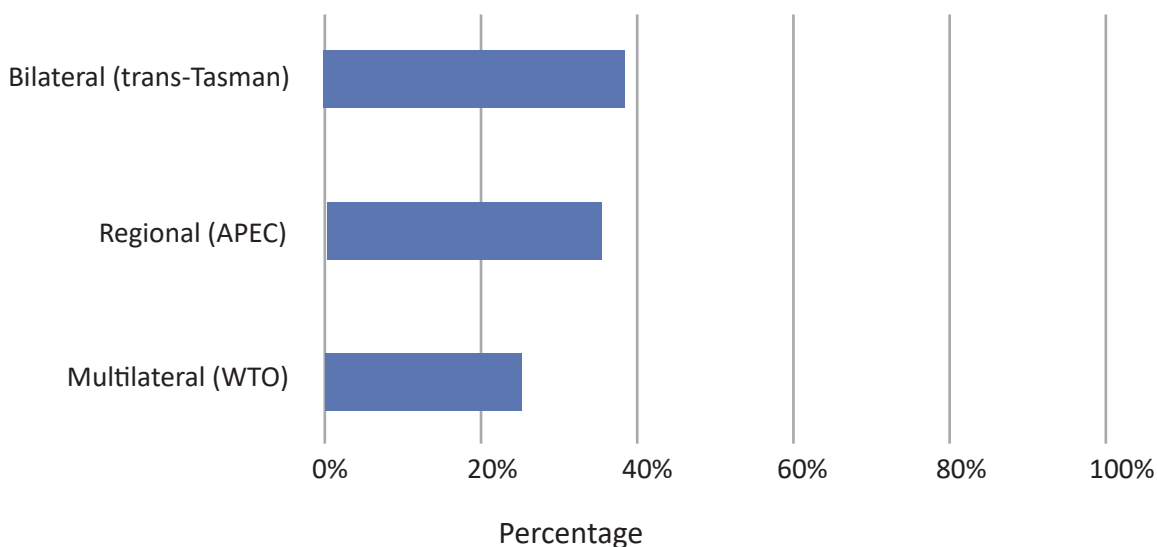
It is important to point out for the purpose of this chapter that (i) the Philippines has a lengthy and wide-ranging experience with international cooperation arrangements, (ii) the country adopted certain unilateral regulations or reforms because of their perceived benefits, and (iii) the Philippines is quite active in IRC arrangements to achieve a more integrated AEC. The country is an active participant in various meetings of ASEAN senior officials and technical workshops of ASEAN working groups to address ASEAN-wide issues (e.g. MRAs for the professions and regional cooperation on security, monetary, and financial cooperation amongst the region's central banks).

It is important to gain a good understanding of the pervasiveness and persuasiveness of IRC in the country as well as the willingness of various stakeholders to engage in functioning IRC that will lead to the harmonisation or alignment of regulatory regimes within the region. This chapter discusses the status of IRC in the Philippines as viewed by primary stakeholders, that is, various government agencies involved in different forms of IRC.

2. Pervasiveness of International Regulatory Cooperation

Respondents were asked about the nature of IRC arrangements in the Philippines, not only in their respective sectors, but across all areas. They were allowed to select more than one answer from 'bilateral', 'regional', and 'multilateral.' The survey results show that most of the Philippines' IRC initiatives are seen as bilateral (39%) and regional (36%), followed by multilateral (25%) (see Figure 6.2).

Figure 6.2: Main Forms of International Regulatory Cooperation

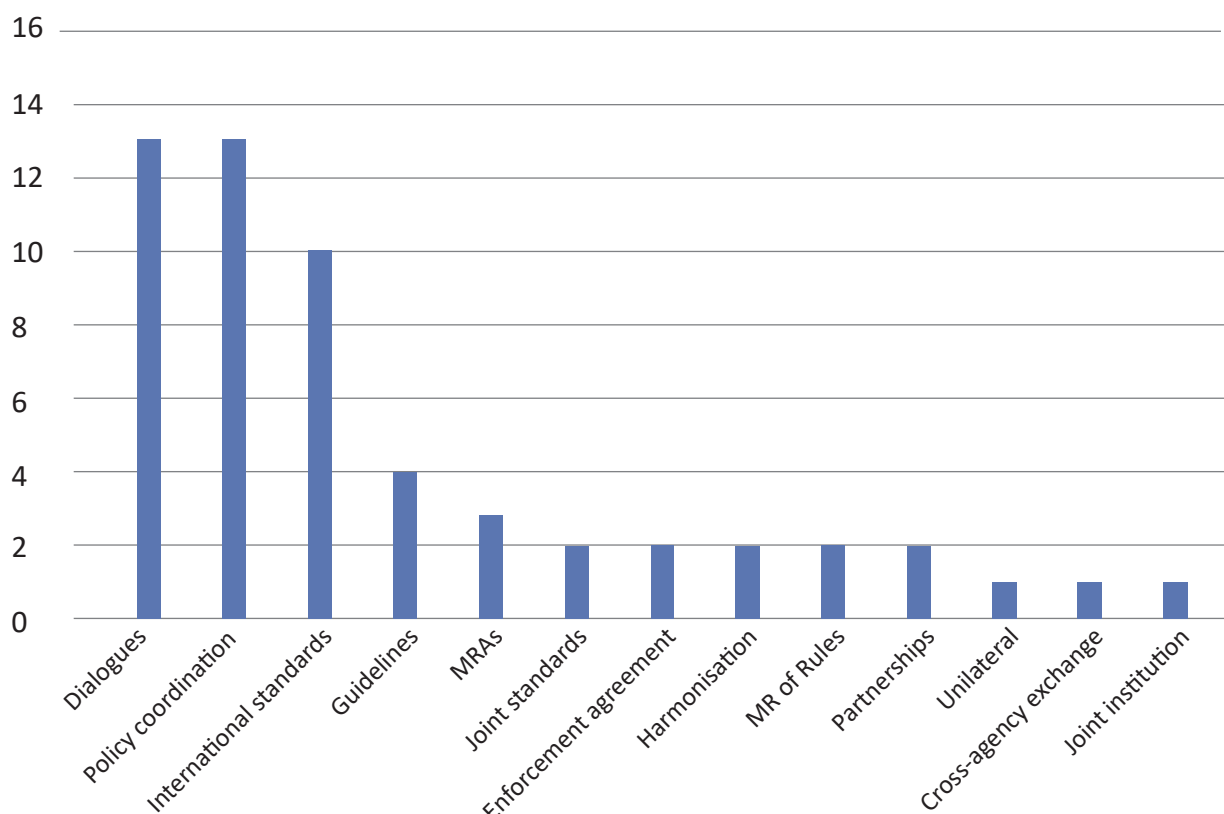


Source: Results of the Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 41

In terms of the pervasiveness of the different types of IRC initiatives, Figure 6.3 below shows that IRC activities mainly consist of regulatory dialogues and exchanges of information with another country or intra-regionally (13 respondents), policy coordination with partner countries on a specific sector of regulation (13 respondents), and the adoption of international standards developed by international standards setting bodies (e.g. International Organization for Standardization 9001:2015). The results illustrate that, along the IRC spectrum, the Philippines' exposure mainly falls within the informal cooperation and coordination ranges

where policy dialogues and information sharing are conducted. The country has adopted internationally set standards, indicating that it is critical to improve or upgrade to the level of international standards and/or best practices to achieve competitiveness in trade, business, and other economic activities.

Figure 6.3: Number of Interviewees Who Selected “Many” for Different Forms of International Regulatory Cooperation in the Philippines



MR = mutual recognition, MRA = mutual recognition agreement.

Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 26–39

In contrast, 10 government respondents noted that none of the country’s IRC initiatives included the unilateral adoption of a trading partner’s regulatory regime because bilateral negotiation is the usual norm for mutually acceptable standards. One example of a bilateral agreement that turned out to be mutually profitable and useful for the parties involved is the Philippines–Japan Economic Partnership Agreement (PJEPA), which covers trade in goods, trade in services, investments, movement of natural persons, intellectual property, customs procedures, improvement of the business environment, and government procurement. The Philippine Senate concurred with the ratification of the PJEPA on 8 October 2008 and the agreement officially entered into force on 11 December 2008 (Department of Trade and Industry). A rough calculation of the benefits coming from IRC through the PJEPA is shown in Box 6.1.

Box 6.1: Case 1—Gains from the Philippines–Japan Economic Agreement



TRADE

\$21 billion total trade with Japan (2016)

Japan is the Philippines' largest trading partner since 2010.

Trade balance increased in favour of the Philippines*

19% increase in total trade with Japan*

53% increase in Philippine exports to Japan*



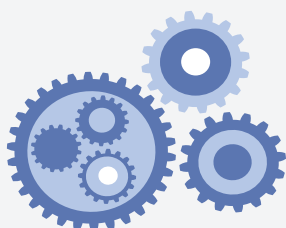
AGRICULTURAL TRADE

34% increase in Philippine agri exports to Japan

32% increase in Philippine banana exports

53% increase in Philippine pineapple exports

78% increase in Philippine coconut oil exports



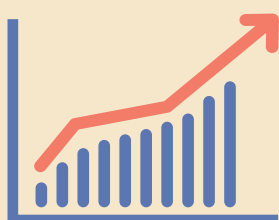
INDUSTRIAL TRADE

35% increase in Philippine industrial exports to Japan

90% increase in Philippine builders' joinery exports

57% increase in insulated wires, cables exports

100% increase in semiconductor exports



INVESTMENTS

\$569.75 million approved investments from Japan (2016)

Japan is the Philippines' fourth largest source of approved investments (2016).

Investments from Japan more than doubled after the PJEPA.



FILIPINO WORKERS

8 batches deployed since 2009

1,605 healthcare workers

473 nurses

1,132 careworkers

PJEPA = Philippines-Japan Economic Partnership Agreement. MR = mutual recognition, MRA = mutual recognition agreement.

Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39.

Source: Based on 8-year average data before 2001–2008 and after 2009–2016 (entry into force of the PJEP), International Trade Commitment Trademap, Department of Trade and Industry. <https://www.dti.gov.ph/international-commitments/bilateral-engagements/pjepaKOR> (accessed 6 November 2018).

Looking at the other responses, Figure 6.3 shows that the Philippines is significantly engaged in formal cooperation agreements on the enforcement of regulations with other countries or within the region. Several successful initiatives have been carried out under the joint development of standards and harmonisation of technical regulations (involving specific products) with partner countries or intra-regionally. One example is the adoption and implementation of the ASEAN Harmonized Tariff Nomenclature, which several respondents cited as an example of IRC. A motivating factor behind IRC is the AMS' desire to reduce trade costs, as intra-ASEAN trade has been a key factor in the growth of the region as a whole. In the case of the Philippines, intra-ASEAN trade has been crucial to the country's resurgent manufacturing sector.

The Philippines has been engaged in many bilateral, multilateral, and regional negotiations. The majority of IRC activities consist of policy dialogues and agreements, which are categorised as informal IRC activities. Formal IRC activities, that is, those at a deeper level such as formal regulatory cooperation partnerships, the mutual recognition of rules, and cross-agency exchanges of personnel with other institutions in another country do take place, but the eventual outcome depends on the interplay of various factors and relationship dynamics with other partner countries.

It is important to note that a positive experience with one IRC initiative will bolster the confidence of regulatory agencies in cooperating with their counterparts in other countries. Box 6.2 illustrates an IRC activity with a subnational state outside the ASEAN region that provided the Philippines Professional Regulatory Commission with a positive view of such cooperative arrangements, which in turn will inform the commission's future IRC activities.

Box 6.2: Case 2—Professional Regulatory Commission and International Regulatory Cooperation

The Professional Regulatory Commission (PRC) is the lead government body regulating 43 professional services in the Philippines, in cooperation with other countries outside the Association of Southeast Asian Nations (ASEAN). One of its mandates is to handle the mutual recognition agreement (MRA) of professional services. The respondents from the PRC (the International Affairs Office) to the International Regulatory Cooperation (IRC) survey noted that 'Mutual Recognition of Professional Qualification with ASEAN Member States' is a relatively successful endeavour in the ASEAN region.

One example of the PRC negotiating IRC with countries outside the region is the MRA with the State of Hawaii on the practice of Filipino medical technologists in that state. In May 2018, the Hawaii State Department of Health and PRC signed a memorandum of understanding (MOU) on the practice of Filipino medical technologists in Hawaii.^a The PRC reports: 'Under the MOU, the Hawaii Administrative Rules, 11-110, 1-26 requiring a complete one (1) year of full-time experience as a medical laboratory technician in a clinical laboratory acceptable to HDOH, may be waived for a Filipino Registered Medical Technologist (RMT).

With satisfactory evidence of education, training and at least two (2) years of full-time work experience in a tertiary level clinical laboratory in the Philippines, a RMT may be given license to practice in the state of Hawaii as a medical technologist without passing through the technician level. A Verification of Certification to be submitted to HDOH is evaluated and approved by the Professional Regulatory Board of Medical Technology through the International Affairs Office at the Philippine International Convention Center (PICC)'.

The Hawaii State Department of Health initiated the recognition of professional medical technologists from the Philippines, and sent a delegation to visit tertiary-level facilities in the country. Being satisfied with what they learned from the PRC and saw in those facilities, they proceeded with the MOU, which provides for the unilateral acceptance or recognition of Filipino medical technologists based on the two above-mentioned conditions. For its part, the PRC continues to improve its regulatory stance with respect to the medical technology profession to assure local and foreign users of the quality and reliability of local medical technologists.

a <https://www.prc.gov.ph/article/1st-international-bilateral-agreement-between-prc-and-hawaii-medical-technology/3565> (accessed 4 November 2018).

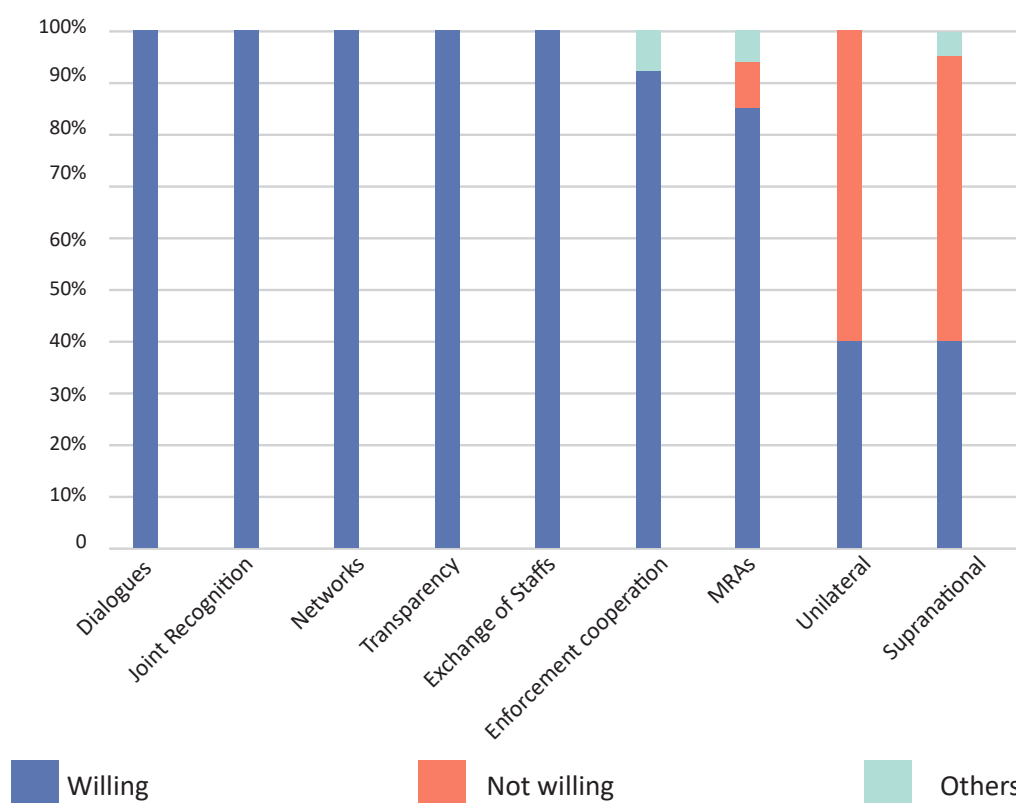
Source: Interview with the Professional Regulatory Commission.

3. Willingness to Undertake International Regulatory Cooperation

The survey respondents are well aware, based on their service to the government, that IRC can take many different forms. Their IRC experience has been heightened by the official establishment of the AEC in 2015, and the many different initiatives, both public and private, towards regional integration. They are also aware that the Philippines is signatory to multilateral, bilateral, and regional cooperation agreements, and their overall experience is that IRC, both formal and informal, has conferred benefits on the country. It is no surprise, therefore, that many of the respondents are willing to undertake IRC

There was a consensus on the willingness to undertake IRC initiatives like dialogues and the informal exchange of information on policy, enforcement, and other regulatory practices; the joint recognition of international standards; regional transgovernmental networks amongst regulators; formal requirements for transparency and the consideration of IRC when making regulations; and the formal exchange of staff, amongst others. However, there was sensitivity to the unilateral adoption of regulatory practices or regimes of other countries (60.0% of respondents unwilling), and to a supranational body overseeing the implementation of bilateral or regional legally binding regulatory agreements (53.3% unwilling) (Figure 6.4).

Figure 6.4: Openness to Types of International Regulatory Cooperation



MRA = mutual recognition agreement.

Source: Results of the Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 26 – 39.

An important distinction should be made here. The country has unilaterally adopted international standards and best practices that it deemed worthy of adoption and emulation, especially in the highly competitive marketplaces confronting domestic firms and consumers alike (see Box 6.3). Such decisions could be made by government departments (ministries) in the exercise of their executive functions without consulting or getting approval from the Senate.³ This type of IRC arises from a unilateral decision by the executive branch through its instrumentalities like a government department (ministry).

³ The Senate of the Philippines ratifies treaties, defined by Executive Order No. 459 as 'international agreements entered into by the Philippines which require legislative concurrence after executive ratification'. Executive agreements are 'similar to treaties except that they do not require legislative concurrence' (Malaya and Mendoza-Oblena, 2010).

Box 6.3: Case 3—Adoption of ISO 9001: 2015 in Public Offices and Their Systems

The Development Academy of the Philippines reported that under the previous Philippine Development Plan 2011–2016, the government recognised the value of standardising the quality of public service delivery to become consistent with the requirements of the ISO. The goal is to ensure that public service delivery will be ‘high quality, effective, efficient, transparent, accountable, economically and physically accessible, and non-discriminatory, to create an environment where citizens and the private sector can maximize their full potential’.^a

The succeeding administration continued with this vision to improve the quality of public service delivery through the adoption of ISO requirements. To ensure the compliance of government offices, the government issued Administrative Order (A.O.) No. 161—Institutionalizing Quality Management System (QMS) in Government, and Executive Order (E.O.) No. 605, s. 2007—Institutionalizing the Structure, Mechanisms and Standards to Implement the Government Quality Management Program.

The Bureau of Product Standards of the Department of Trade and Industry Technical Committee (BPS/TC 71) was recently reconvened to update the existing guidance document in Government Quality Management Program System.^b The BPS/TC 71 on Government Quality Management Program, comprising various representatives from academia, trade/industry, consumers’ organisations, professional associations, research institutions, government agencies, and testing institutions, met to discuss the possible adoption of the 2015 version of ISO 9001: Quality Management Systems—Requirements for implementation in public offices and their systems. The BPS/TC 71 was guided with the International Workshop Agreement 4:2009 to establish the guidelines in applying ISO 9001 in the government offices and their systems. The BPS/TC 52 adopted the ISO 9001:2015 as a Philippine National Standard in December 2015.

^a Under the current administration, the present plan is the Philippine Development Plan 2016–2022, which essentially follows the development agenda of the previous Philippine Development Plan 2010–2016.

ISO = International Organization for Standardization.

^a Development Academy of the Philippines (2014), ‘Development of a Quality Management System Certifiable to ISO 9001:2008’. <https://www.dap.edu.ph/wp-content/uploads/2014/07/ISO-Brochure-Detailed-7.15.2014-forPrint.pdf> (accessed 5 November 2018).

^b Department of Trade and Industry, Bureau of Product Standards (2017), ‘DTI: PH Government Discusses Adoption of ISO 9001:2015 in Public Offices and Their Systems’, 19 June. http://www.bps.dti.gov.ph/index.php?option=com_content&view=article&id=444:dti-ph-government-discusses-adoption-of-iso-90012015-in-public-offices-and-their-systems&catid=1:latest-news&Itemid=1 (accessed 5 November 2018).

Of some concern was IRC involving the unilateral adoption of a trading partner’s regulatory regime. In the interviews, respondents (especially those from the trade sector) manifested strong hesitation over two IRC activities: (i) the unilateral adoption of policy and regulatory practices of other countries or international bodies, and (ii) governance of IRC by a supranational regional body. The respondents appeared to perceive IRC in these two forms as a potential surrender of policy space or diminution of sovereignty. The perception of ‘surrender of policy space’ may be driven by the fear that unilaterally adopting a trading partner’s regulations may not result in positive outcomes because those partners issue regulations that serve their own interests. A typical conservative bureaucrat would rather have this form of IRC brought to the negotiating table to unpack the implications of trading rules, and to negotiate compromises if necessary.

On the perception of 'diminution of sovereignty', policy and regulatory governance is a shared space with Congress (legislators) who may have different views on IRC. Congress may want to subject proposals to closer scrutiny if they are not fully convinced of the merits of the regulations of trading partners. In the Philippine setting, a useful distinction of formal IRC is between an executive agreement, which needs presidential ratification in order to enter into force, and an agreement that is a treaty, which requires both presidential ratification and Senate concurrence (Malaya and Mendoza-Oblena, 2010). However, it should be noted that there are informal transgovernmental agreements where responsibility lies with the lead regulatory agency or department, as in the case of the Basel agreements where the Philippine central bank is a lead agency.

The survey responses seem to indicate an awareness of the tension between maintaining sovereignty and control over domestic regulations on the one hand, and the need for international cooperation on regulation for activities and events that transcend national boundaries on the other. This tension is best explained by the OECD in their 2018 report on globalisation, interconnectedness, and domestic regulatory frameworks (see Box 6.4). Globalisation and interconnectedness have resulted in a freer and more rapid flow of goods, services, people, and finance, which has tested the effectiveness and capacity of domestic regulatory frameworks (OECD, 2018). The future is more and more about IRC, especially in addressing failures of the market that impact the common good, particularly those with negative spillover effects beyond the border (e.g. climate change or pandemics), but this will require a calibrated pushback against sovereignty and domestic control of regulations. The OECD (2018) is conscious of the complexity of the political economy of IRC, and the concomitant challenges in the enforcement and implementation of cooperative agreements. This is certainly a challenge for the ASEAN Member States, which are in varying stages of development under different political frameworks.

Box 6.4: Case 4—Globalisation, Interconnectedness, and Domestic Regulatory Frameworks

OECD (2018) reports:

‘Goods and services are now bought from all over the world. Global trade intensity doubled between 1990 and 2015. Today, products cross many borders before being finally purchased in a given country.

People no longer live in the same place their whole life. In 2015, 13% of the total population living in OECD countries was foreign-born, compared to 9.5% in 2000.

World travel has become a lot easier with passenger air traffic expected to grow by 3% to 6% annually over the next 15 years.

We interact internationally through digital platforms. Social media viewing trends show that users increasingly access content outside their own country. Internet is enabling significant cross-border financial transfers on a daily basis’.

The consequence: ‘. . . acting in isolation is not an option anymore’

New things bureaucrats should realise:

‘Responding to climate change, tackling tax evasion and avoidance, managing pandemics, and strengthening financial market stability are all complex and multidimensional issues of an intrinsically transnational nature. The ability of countries to effectively deal with global challenges solely through domestic regulation is limited. Co-ordination is needed to tackle these challenges and achieve a coherent and effective regulatory response. Beyond this critical aspect, examples from the trade area show that greater coherence of regulations can lower time and costs for firms and citizens having to comply with multiple regulatory requirements. Co-operation is also likely to bring substantial gains to regulators, who are able to pool knowledge and resources through cooperating with their peers across borders. Yet international co-operation remains, to a large extent, under-valued by governments’.

Source: Organisation for Economic Co-operation and Development (2018), ‘International Regulatory Co-operation: Adapting Rulemaking for an Interconnected World’, Organisation for Economic Co-operation and Development Regulatory Policy Division Policy Brief, October. pp.1–2.

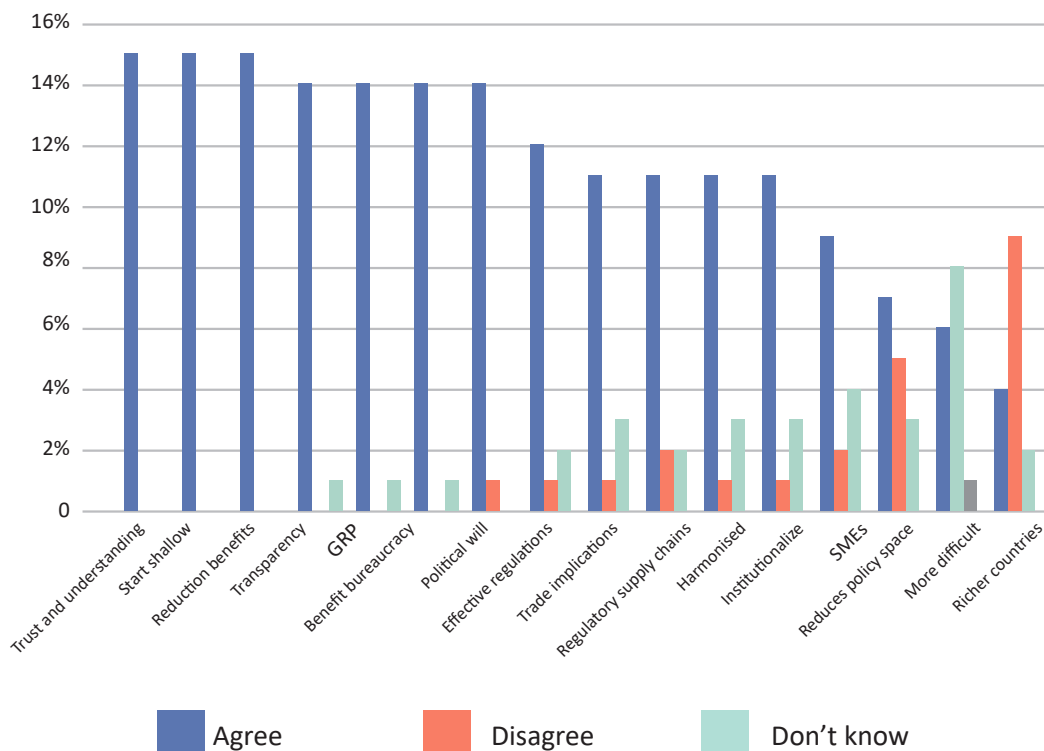
4. Persuasiveness of International Regulatory Cooperation

This section discusses the respondents’ views on aspects of IRC. The contained propositions about IRC are mostly presented as positive statements. There were also a few negative propositions, meaning that answers agreeing to those statements indicate the respondents’ reservations in terms of the possible consequences of IRC for the country. Figure 6.5 shows that in many aspects, the respondents generally had a positive attitude towards IRC.

The overwhelming majority agreed to the propositions about the positive impacts of IRC as shown in Figure 6.5. For instance, all agreed to the idea that IRC creates trust and mutual understanding amongst institutions in countries in the region and that it enhances

transparency and predictability (14 respondents). Most (93%) also believed that IRC works to the advantage of the countries/bureaucracies through enhanced knowledge flow about technical issues and policy experiences with other countries.

Figure 6.5: Positive Attitude to International Regulatory Cooperation (Agree/Disagree)



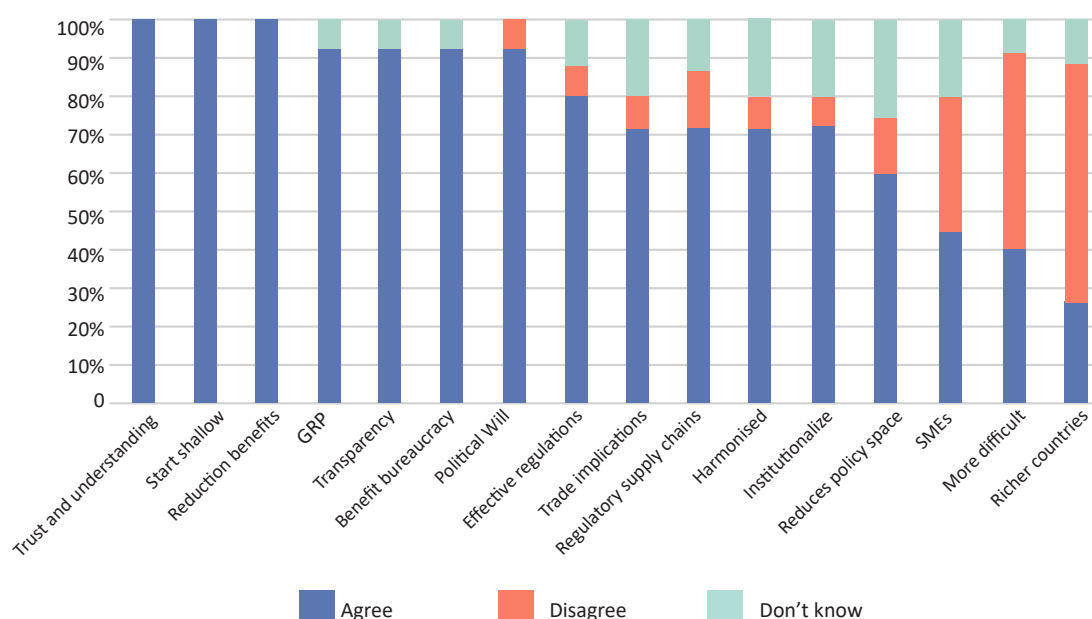
GRP = good regulatory practice, SMEs = small and medium-sized enterprises.

Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 11-26.

The responses to the survey indicate that there is a need to demonstrate to the regulators and politicians the benefits to the country of reducing regulatory differences or inconsistencies. To achieve this, the majority agreed that it would be best to begin with shallow regulatory cooperation that applies to all members and deeper (high-level) cooperation for those who are willing and/or interested in pursuing it. IRC also needs good regulatory practice to make regulations more effective and beneficial to firms and citizens. Finally, they believe that without a strong political will, IRC cannot be sustainably implemented.

However, respondents also expressed some concerns about IRC. Looking at the last three items on the right side of Figures 6.6, seven of the 15 respondents believe that IRC that requires treaties and protocols actually reduces policy space to the disadvantage of the country, with three respondents undecided. This illustrates the difficulty facing stakeholders and government agencies in embracing certain forms of IRC, including unilateral adoption, full harmonisation, and oversight by a supranational regulatory body.

Figure 6.6: Positive Attitude to International Regulatory Cooperation (Agree/Disagree)



GRP = good regulatory practice, SMEs = small and medium-sized enterprises.

Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 11– 26

Another concern is that IRC adds an additional layer of coordination and makes life for administrators and regulators even more difficult and bureaucratic. Six of the 15 respondents believed this to be the case. Four respondents thought that IRC favours richer countries more than poorer countries because they believed that the more economically advanced AMS are equipped to benefit more substantially from IRC than other members. But the prevailing view amongst respondents is that IRC benefits all countries regardless of their socioeconomic standing or level of development.

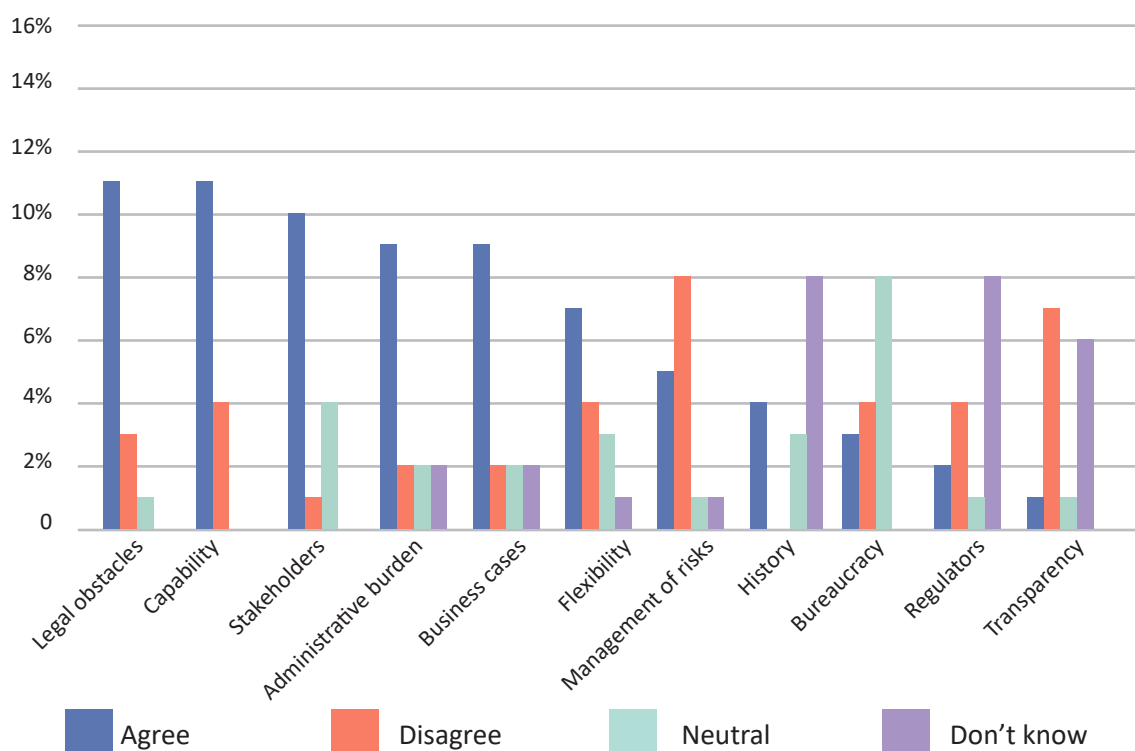
Overall, despite some doubts, most are optimistic that IRC would be a beneficial mechanism to achieve better quality regulations, both in terms of formulation and enforcement across countries. IRC can be a mechanism to build greater trust, coordination, and cooperation across countries.

5. Barriers and Enablers of International Regulatory Cooperation

This section discusses the respondents' perceptions of barriers to the development of IRC in the Philippines. There were six options: 'strongly agree, agree, disagree, strongly disagree, don't know, and neutral'. To simplify the analysis, the answers of 'strongly agree' and 'agree', and 'strongly disagree' and 'disagree' were lumped together to form aggregates of 'agree' and 'disagree' in the graphs.

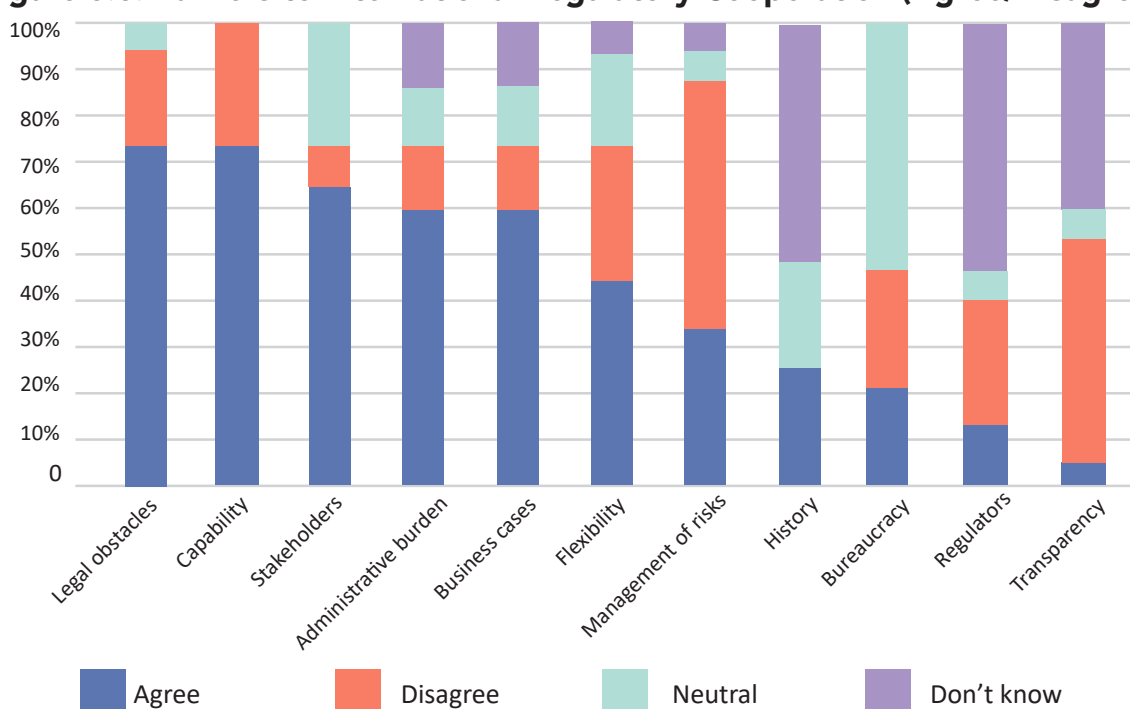
The majority of the respondents thought that the main hindrances to the development of IRC were legal obstacles (73%), uneven trust in other country's systems due to differences in capability and country size (73%), little awareness and understanding of IRC by stakeholders (67%), possible increased administrative burden (60%), and lack of persuasiveness as business cases for IRC do not stand up (60%) (Figure 6.7).

Figure 6.7: Barriers to International Regulatory Cooperation




Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 65–75.

Figure 6.8: Barriers to International Regulatory Cooperation (Agree/Disagree)



Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 65–75.

Figure 6.8 shows some of the difficulties hindering IRC, in particular, the perception that it has not contributed to the management of risks across borders (53%) and has led to reduced transparency between countries (47%). In some respects, many of the respondents appear undecided, specifically in terms of the bureaucracy having little



knowledge of and trust in the regulatory regimes of other countries (53% are neutral). They are unsure whether IRC would proliferate in the country given the different experiences in international cooperation (53%), and regulators' appetite for joint design, monitoring, and evaluation of regulation with partner countries in the region (53%).

Insights from the interviews show that there are several factors that may inhibit the country's receptiveness to IRC. For instance, one respondent shared the country's experience during the negotiation processes to achieve ASEAN harmonisation in a specific sector. There seemed to be a common perception that bilateral negotiations are only beneficial at the discussion or signing stages because, when it comes to implementation, progress is very difficult to achieve. The respondents felt that full integration will require giving up national policy, which is often problematic, since no AMS would want to compromise their own policies for something that may not benefit them as much.

The respondent cited above also observed that AMS rarely share experiences in a specific sector for reasons of national policy, negotiation strategy, or state security. Some countries are hesitant to divulge information about their current practices and experiences. Some countries tend merely to engage in prolonged talks during the negotiation stage, as ASEAN agreements often fail to ensure that AMS adhere to the prescribed timelines and outcomes. According to the respondent, there have been instances in the past when AMS officials would agree at the committee level but, during subsequent meetings, their representatives would insist that their superiors did not approve or agree to the agreement made in previous meetings. The reasons cited for this behaviour usually include the intensity of the commitment and the difficulty of adhering to the given timeline. AMS also have different capacities at the technical, administrative, and managerial levels, which by its nature IRC does not directly address. The implication is that effective IRC, in its many forms, presupposes a certain degree of competence and commitment amongst AMS stakeholders. If these are absent, it is difficult to get past the talking stage in instances where IRC is most needed, such as the handling and transshipment of dangerous drugs used in the pharmaceutical industry.

Overall, these survey results are important, notwithstanding the negative tone of some responses. They indicate a positive expectation of how IRC can improve the country's regulatory frameworks, as well as cross-ASEAN regulations. At the same time, the responses underscore the need for awareness of IRC experiences to build trust in IRC both within the Philippines and in the other AMS, and most of all, to build capacity amongst the country's government agencies and regulators on the different forms of IRC, including how to use them in pursuit of better regulations.

The respondents note that, while there are indeed gains to having IRC, these are somehow limited or restricted by the domestic rules that need to be followed in each country. Nonetheless, they recognise that dealing bilaterally and/or intra-regionally entails costs, and that it is a give-and-take process. The role of IRC is especially important when there are crises and issues that need to be resolved within the region and between countries.

For IRC to work, the AMS must work together on having proposed agreements or cooperative tasks very well understood, not only by the political leaders but also the various stakeholders (e.g. business leaders) to generate support for the required action and adhere to established timelines. Box 6.5 illustrates this point with an example from

the cosmetics industry, where the stakeholders, upon understanding the importance of a common regulatory regime, accepted the adoption and harmonisation of health and safety standards.

Box 6.5: Case 5—Food and Drugs Administration, Cosmetics

The Food and Drug Administration (FDA) is responsible for safeguarding public health by setting a certain level of public health standards in the Philippines in conformance with international public health standards. It maintains a Center of Cosmetic Regulation and Research, which covers cosmetic products and household and urban hazardous substances. According to their website, cosmetic products 'are substances or preparation intended to be placed in contact with the various external parts of human body or with the teeth and the mucous membranes of the oral cavity'.^a

In 2003, the Philippines, through the FDA, ratified the ASEAN Harmonized Cosmetic Regulatory Scheme with other Association of Southeast Asian Nations (ASEAN) member states (AMSs). This came after the AMSs had identified priority products, one of which is cosmetic products, as part of the harmonisation scheme. The ASEAN Harmonized Cosmetic Regulatory Scheme, a regional agreement on cosmetics regulation, is an example of mutual recognition and harmonisation of regulatory regimes. This facilitates trade of cosmetic products by the 'harmonization of standards, reciprocal recognition of tests and certification of products'.^b The agreement aims to enhance cooperation and eliminate restriction of trade of cosmetic products among AMSs.

The ASEAN Cosmetics Directive allows all AMSs to adopt the main features of the regime of technical standards for cosmetics ingredients in the European Union Cosmetics Directive. As discussed in Chapter 7 (Box 7.2), it is a case of harmonisation leading to trading up to a de facto world standard rather than a race to the bottom.

The mutual recognition agreement for product registration for cosmetics means that approval in one country also applies in the others. A feature of this mutual recognition arrangement is to recognise the 'cosmetic products registered by a Member State', which 'can be marketed in the territory of the other ASEAN Member States'.^b This procedure is done by a company notifying a regulatory body in a certain AMS of a cosmetic product registration.

All AMSs have agreed to participate in the ASEAN Harmonized Cosmetic Regulatory Scheme. This scheme includes the ASEAN Cosmetic Directive, which outlines the regulatory requirements of cosmetic products in the ASEAN region based on the European Union directive. Safety requirements and ingredient listing, labelling requirements, product information, and product claims are considered in the Cosmetics Directive. The ASEAN Guidelines for Cosmetic Good Manufacturing Practice ensures consistency and controlled quality in manufactured cosmetic goods. The Philippines is represented by the Department of Health, through the FDA, in the ASEAN Cosmetic Committee.

a Gutierrez, M.A. (2013), Overview of Cosmetics Regulation and Research (CCRR). Food and Drug Administration. <https://www.pappi.ph/sites/default/files/CCRR.pdf> (accessed 14 November 2018).

b ASEAN Cosmetics (2003), Agreement on the Asean Harmonized Cosmetic Regulatory Scheme. <http://www.aseancosmetics.org/docdocs/agreement.htm> (accessed 14 November 2018).

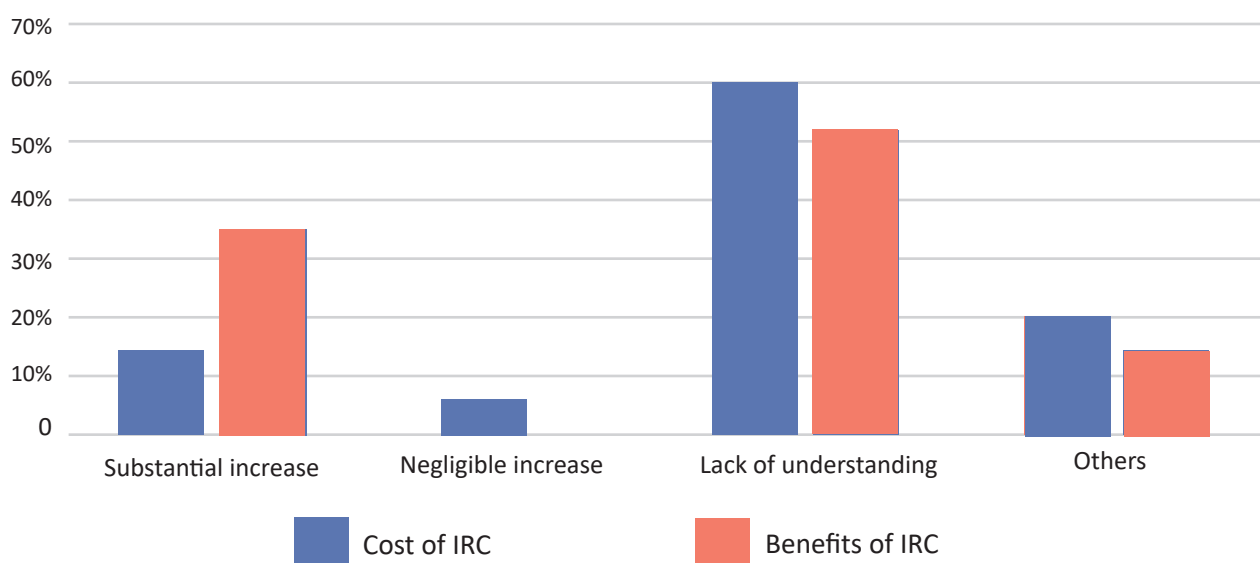
Source: Interview with the Food and Drug Administration, Cosmetics.

Another respondent shared that IRC may be welcome if it can be shown that IRC will lead to better economic performance of the country relative to its ASEAN peers. For instance, the need to coordinate and improve the systems of government agencies (i.e. computerisation) as part of the ASEAN Single Window initiative should be understood as not just about complying with the initiative's requirements, but also as an important step to reduce the cost of doing business and build competitiveness in the country to attract more investments. Another important point to consider is that the success of or experience with IRC may differ by sector. Some sectors are easier to navigate or negotiate at the international level, while others are less easy to handle, like the banking sector.

6. Dynamics of International Regulatory Cooperation

This section examines the dynamics of IRC in terms of its perceived costs and benefits and how these may be related to the support of various stakeholders by phase. Figure 6.9 suggests that most respondents were still undecided as to whether the benefits outweigh the costs at the later stages of IRC. Many (33%) believed that benefits had increased substantially across time, while a much smaller percentage (13.3%) said that costs had increased substantially instead.

Figure 6.9: Costs and Benefits of International Regulatory Cooperation

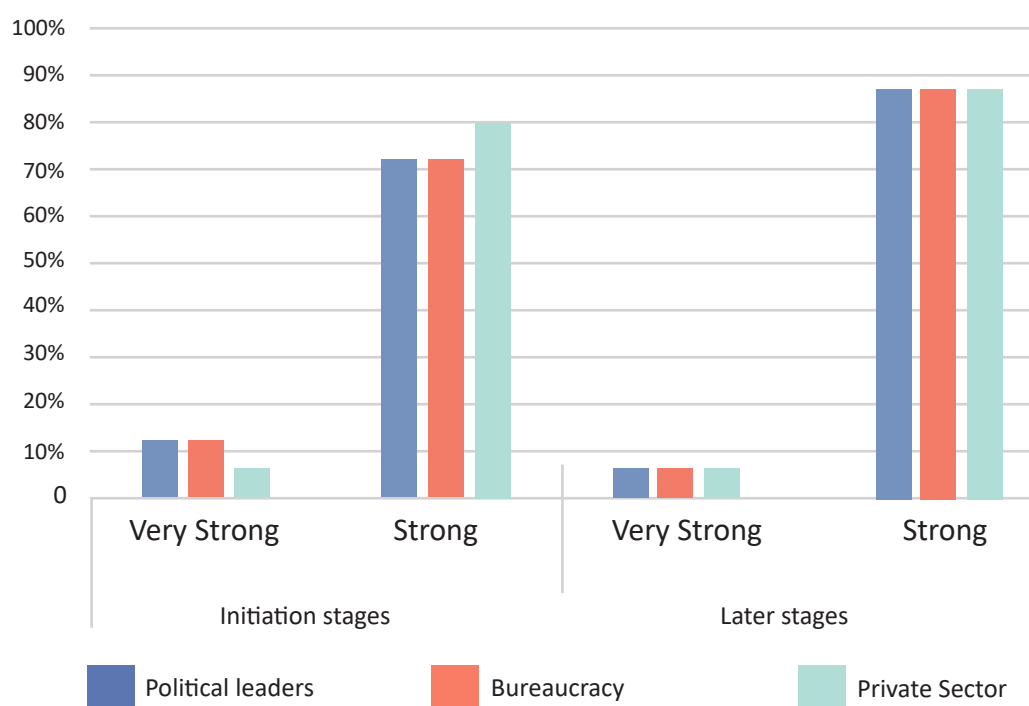


IRC = international regulatory cooperation.

Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 57-58

With regard to support from the different stakeholders in IRC, it is notable that, at the initiation stage and at the later stages especially, the respondents believe that support from political leaders, bureaucracy, and the private sector is strong. This indicates that these stakeholders are largely involved in the conduct of IRC across all stages. Their participation has influenced and contributed to the support of IRC and its development over time (Figure 6.10).

**Figure 6.10: Dynamics of International Regulatory Cooperation—
Support by Phase, Strong, and Very Strong**



Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 50-56

In one of the interviews, the respondent emphasised that political will and support from the leadership are the two key factors to the success of IRC. The Philippine regulatory environment is governed by many rules and bureaucratic procedures, which may sometimes negatively affect market transactions to the detriment of the end users. One example is the experience of an agency with regard to the requirement to computerise transactions and procedures across government agencies to improve their systems, and ultimately to help the country connect to the ASEAN Single Window. During the implementation of this initiative, the legal teams of the other government agencies asked the agency about the legal basis of this move. Looking at this initiative through the lens of ease of doing business, it is obvious that the move to computerise transactions and procedures across an agency should be an agency thrust and part of the drive to provide quality services to the public through improvements in the government agencies' systems and procedures. The query about the legal basis is unnecessary. Fortunately, the agency was able to secure a Cabinet declaration from the Office of the President to satisfy the legal query. Subsequently, the Office of the President issued a memorandum mandating agencies to comply with the move towards computerisation.



7. Governance of International Regulatory Cooperation in the Philippines

In general, there is no single government agency that oversees the quality of regulations or monitors the number and type of regulatory issuances made by government regulatory agencies. Seamless coordination of regulatory efforts is absent under the present structure of the bureaucracy, and there is no lead government body that promotes overall regulatory quality. Instead, each government department (ministry) such as the Department of Trade and Industry, Department of Agriculture, Department of Health, and other agencies perform regulatory functions over their respective sectors. In addition, specific regulatory agencies are tasked with regulating particular economic activities; these include the Food and Drug Administration, Philippine Ports Authority, Energy Regulatory Commission, and Bangko Sentral ng Pilipinas (central bank), amongst others. As noted by Llanto (2016), the regulatory system in the Philippines is spread amongst as many as 60 different regulators.⁴

While international coordination concerning regulations and policies depends on the sector involved (e.g. the Department of Trade and Industry for trade-related matters), the National Economic and Development Authority (NEDA) is the closest agency that monitors and coordinates activities relevant to the formulation of government policies, plans, and programs; and undertakes policy reviews. The NEDA reports to the NEDA Board, which comprises the President of the Philippines as chair and several government agencies, including the Department of Finance and Department of Budget and Management. The NEDA implicitly oversees IRC activities across different sectors because it is tasked with providing policy reviews and recommendations to policy makers and is also the lead agency that prepares the Philippine Development Plan.

Consequently, there is no explicit or distinct institutional framework governing IRC in the country. Nonetheless, the Philippines has various bilateral, regional, and multilateral cooperation arrangements that have undergone some form of IRC, such as coordination meetings on ASEAN MRAs. Meanwhile under the NEDA auspices, the Philippines has adopted the ASEAN Good Regulatory Practice Guidelines, which guide all ASEAN bodies working in the areas of standards, technical regulations, and conformity assessment procedures. The guidelines have three elements: (i) transparency on non-tariff measures and removal of trade barriers, (ii) the implementation of MRAs, and (iii) the harmonisation of standards and technical regulations. It is also used in conjunction with the ASEAN Policy Guidelines on Standards and Conformance. During the 23rd ASEAN Economic Ministers Retreat in March 2017, the ASEAN Work Plan on Good Regulatory Practice (2016–2025) was also adopted.

The Asia–Pacific Economic Cooperation (APEC), on the other hand, provides a valuable forum for economies to share knowledge and their respective experiences in IRC. The Philippines adopted the APEC Good Regulatory Practices, which contribute to the establishment of a common, predictable framework for regulatory intervention, thereby facilitating global regulatory cooperation and harmonisation. The Eighth Conference

⁴ The responses and insights in this paragraph were given prior to the enactment of the Philippine Congress of Republic Act 11032 or the 'Ease of Doing Business and Efficient Delivery of Government Service Act of 2018', which created an oversight body for regulatory quality called the Anti-Red Tape Authority. The law enjoins government agencies, especially regulatory bodies, to undertake a regulatory impact assessment of proposed regulations prior to issuance. According to this new law, 'all proposed regulations of government agencies...shall undergo regulatory impact assessment to establish if the proposed regulation does not add undue regulatory burden and cost to agencies and the applicants or requesting parties'. At present, the Anti-Red Tape Authority has been organised and is currently acting as oversight body for regulatory quality.

on Good Regulatory Practice in August 2015 at Cebu City included experience sharing from policy officials and representatives from the private sector on the following tools: (i) single online locations for regulatory information, (ii) periodic review and prospective regulatory planning, (iii) capacity building and education efforts, (iv) best practices of the APEC economies, and (v) challenges faced by small and medium-sized enterprises for inclusive growth. In addition, IRC falls within regulatory reform efforts, and the Philippines implements the Individual Action Plan of the Renewed APEC Agenda on Structural Reform.


Despite not having a comprehensive and integrated regulatory management system that oversees IRC activities, the initiatives and efforts discussed earlier show that the Government of the Philippines is committed to engaging and developing IRC further in the country. The respondents suggested some factors that may contribute to better IRC practices, including the commitment of all AMS to abide by the provisions in the AEC 2025 Strategic Action Plan. Within the Philippines, regular information sharing and consultation amongst all stakeholders (e.g. professional regulations) and the upgrading of professional standards and practice will be a good platform for regulatory cooperation, whether at the national or international level. Some of the survey respondents stressed that IRC, once in place, increases regulatory predictability, something that will especially benefit importers and exporters. It was also suggested that AMS should assess the likelihood or practicability of IRC in the light of different socioeconomic and political contexts in the region to make it implementable.

8. Concluding Comments

This chapter presents the findings of a small survey (n = 15) of key respondents from a range of government agencies on their experiences with IRC. The survey is purposive, and its main objective is to gain a rapid understanding of how IRC is viewed across some government agencies that have been involved or engaged in IRC in its many different forms.

Overall, the responses indicate a positive view of IRC. Most IRC in the Philippines is of the informal type, such as the sharing of information and staff exchanges with counterparts in the ASEAN region. The survey found that the government has wide-ranging involvement in IRC arrangements. Most of the respondents observed that the type of involvement ranges from bilateral, to regional, to multilateral. This is explained by the Philippines' long-standing engagement with different types of partners: bilateral (e.g. PJEPA), multilateral (e.g. membership in the WTO), country development partnerships with multilateral donors like the World Bank, and regional (e.g. various ASEAN policy dialogues).

IRC ranges from informal arrangements (e.g. information sharing), to mutual recognition (e.g. ASEAN MRAs), to full harmonisation with international organisations such as the WTO. In formal IRCs, government officials take a pragmatic and informed approach, with the overall welfare of the country as a guidepost. The most common form of IRC is informal, which is more flexible and practicable than the formal type of IRC (e.g. the air service agreement in the ASEAN Single Aviation Market), which requires formal approval by government bodies, including the ratification of protocols to implement the agreement.



There is great willingness on the part of respondents to undertake IRC because of their overall experience that IRC, whether formal or informal, has benefited the country. IRC could help bring about regulatory quality and coherence in AMS' regulatory frameworks. Regulatory quality and coherence address both 'behind the border' issues (e.g. domestic regulation) and 'across the border' issues (e.g. customs administration). Undertaking such regulatory reforms through IRC will stimulate cross-border investments; greater trade; and mobility of goods, services, and natural persons. In turn, as the case of the ASEAN Cosmetics Directive demonstrates, IRC can also contribute to the agenda for more effective domestic regulation.

The Philippines, a middle-income country with a growing trade in the goods and services sector, has experienced the benefits of IRC, especially in contributing to freer trade and investment regimes. For example, the ASEAN Free Trade Area has encouraged greater intra-ASEAN trade that correlates well with growth and the accessibility of a wide range of intermediate and final (consumer) goods across the AMS.

The types of IRC least appealing to respondents were those involving the unilateral adoption of the standards or practices of a trading partner, full harmonisation of regulation across AMS, and the establishment of a supranational body for IRC. The most often cited reason was the threat to the policy space, especially in view of an active Congress that is jealous of its policymaking mandate. These are not irremediable problems. There is scope for acquiring support for more formal types of IRC, such as MRAs, and the adoption of common standards or protocols (e.g. the manufacture of cosmetics products and the ASEAN Single Aviation Market). However, this will require substantial investment in better communication and education on the advantages of IRC, and building capacity amongst government agencies, especially regulatory agencies in smart regulation and IRC processes. There is a perceived need to build more awareness of IRC in its different forms as a key factor in regulatory quality and coherence, and to build capacity amongst stakeholders.

This chapter has surfaced some factors or barriers hindering the establishment of effective IRC in the Philippines, namely, (i) the lack of understanding of or familiarity with IRC processes, (ii) the lack of capability of the bureaucracy, (iii) a lack of information and awareness of the benefits of IRC, (iv) few occasions to share experiences of IRC across ASEAN, and (v) the perception that IRC reduces policy space. On the other hand, the respondents mentioned facilitating factors for IRC that provide a positive context for the establishment of IRC, such as those described in the four case studies. Notwithstanding the fear of erosion of policy space or surrender of sovereignty, there is strong support for IRC from political leaders, the bureaucracy, and the private sector alike. Respondents perceive political will and support for IRC by political leaders as key to its success. The information provided on the pervasiveness of IRC, positive perceptions, and willingness to undertake it in its many forms as indicated by the survey responses augur well for the country.

References

- Department of Trade and Industry (2018), <https://www.dti.gov.ph/international-commitments/bilateral-engagements/pjepa> (accessed 6 November 2018).
- Gill D. (2018), 'International Regulatory Cooperation Case Studies and Lessons Learnt'. New Zealand Institute of Economic Research Report to the Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. Wellington: New Zealand Institute of Economic Research. https://nzier.org.nz/static/media/filer_public/1a/4c/1a4c6a07-c206-45e9-8e11-a5c2482dd3d8/irc_revised_summary_report_on_lessons_learnt_oct_2018.pdf (accessed 7 June 2020).
- Llanto, G.M. (2016), 'Towards a Requisite Regulatory Management System: Philippines', Economic Research Institute for ASEAN and East Asia Discussion Paper Series 2016 no.21 Jakarta: Economic Research Institute for ASEAN and East Asia.
- Malaya, J.E. and M.A. Mendoza-Oblena (2010), 'Philippine Treaty Law and Practice', *Integrated Bar of the Philippines Journal*, 35(1), August, pp.1–17.
- Medalla, E.M. (2018), 'Pass the Torch: Opening Minds and Markets', in G.M. Llanto, V.B. Paqueo, and A.C. Orbeta, Jr. (eds.) *From Evidence to Policy: Celebrating 40 Years of Policy Research* (pp. 184–85). Quezon City: Philippine Institute for Development Studies.
- Ministry of Public Health, Thailand (2008), *ASEAN Good Regulatory Practice (GRP) Guide*. http://newsser.fda.moph.go.th/IAHCP/userfiles/Home/Final_Draft_ASEAN_GRP_Guide.pdf (accessed 5 November 2018).
- Montes, M. (1988), 'Review of Structural Adjustment in the Philippines', *Journal of Philippine Development*, 27(15–2), pp.139–65.
- Organisation for Economic Co-operation and Development (OECD) (2018), 'International Regulatory Co-operation: Adapting Rulemaking for an Interconnected World', OECD Regulatory Policy Division Policy Brief, October. Paris: OECD.
- OECD (2013), 'International Regulatory Co-operation: Addressing Global Challenges', April 24. <http://www.oecd.org/gov/regulatory-policy/international-regulatory-co-operation-9789264200463-en.htm> (accessed 6 November 2018).

CHAPTER 7

International Regulatory Cooperation in Malaysia – Regulatory Interoperability through Regional and Multilateral Linkages

Dato' Abdul Latif Hj Abu Seman,
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1. Introduction

Malaysia is a middle-income country with a diverse economy. Trade is very important, with exports and imports of goods and services equivalent to about 130% of gross domestic product (GDP). For the past 4 years, real GDP growth has averaged nearly 5% despite a number of external and domestic shocks, including global commodity price and financial market volatility, weak external demand, and domestic political controversy. Growth has been based on domestic demand and helped by the diversified production and export base, a flexible exchange rate, responsive macroeconomic policies, and strong financial markets. The country's long-term economic policy is set out in Vision 2020, which includes the objective of achieving high-income country status by 2020, by, amongst other things, sharply accelerating the growth of labour productivity. In addition, the Eleventh Malaysia Plan and sectoral plans, such as the National Agrofood Policy 2011–2020 and the National Commodity Policy 2011–2020, emphasise the importance of productivity, innovation, and trade in achieving economic growth (World Trade Organization [WTO], 2017).

Malaysia has been an active member of the Association of Southeast Asian Nations (ASEAN) since its establishment on 8 August 1969. ASEAN remains the cornerstone of Malaysia's foreign policy, and the establishment of the ASEAN Economic Community (AEC) in 2015 significantly elevated Malaysia's approach and engagement at the regional level. Concurrently strengthening bilateral and multilateral aspects of Malaysia's engagement with the world will remain an important focus. The nation's well-being is founded on its strong and friendly relations with other countries and its commitment to the multilateral system (Ministry of Foreign Affairs, 2019). As a member of ASEAN, Malaysia has played a pivotal role in facilitating and shaping the overall progress and development of ASEAN over the 5 decades since its inception. Various programmes and incentives have been proposed, launched, and executed by Malaysia at the ASEAN level, as evidence of their participation in the organisation.

It is important for Malaysian businesses to go beyond their borders, explore more opportunities, and expand markets. The free trade agreements (FTAs) that the Government of Malaysia has signed can help companies to export goods, services, investments, and economic cooperation through international agreements between countries to reduce or remove trade barriers, bring closer economic integration, and have preferential market access. FTAs help to enhance the country's competitive advantage, strengthen investors' confidence, and to a large extent build Malaysia's sustainable development (Malaysia External Trade Development Corporation).


Malaysia is committed to international and intergovernmental agreements (e.g. the WTO Agreement, WTO Technical Barriers to Trade Agreement, and Sanitary and Phytosanitary Agreement), other regional agreements (e.g. the AEC), and bilateral agreements (Malaysia and Thailand have enjoyed a 61-year diplomatic relationship) that complement the country's multilateral approach to trade liberalisation. International regulatory cooperation (IRC) in trade agreements requires governments to institutionalise voluntary or mandatory arrangements through which public servants in different countries can and in some cases must work together, usually in close collaboration with industry, to reduce or eliminate differences in domestic laws, policies, standards, regulations, and testing procedures, including health, environmental, and consumer protections that are said to impede trade (Trew, 2019).

ASEAN offers an integrated market, closely linked economy, improved business environment, and enhanced connectivity. The AEC Blueprint aims to narrow the development gap and promote equitable development in the region. Under the AEC 2015, intra-ASEAN import tariffs have been virtually eliminated and formal restrictions in the services sector gradually removed (WTO, 2017). Another important mechanism on which ASEAN is currently working is enhancing internal integration through developing trade facilitation by harmonising standards and technical regulations within ASEAN. Efforts by ASEAN leaders to improve internal integration also involve reducing trade and investment barriers, especially those often referred to as 'behind the border measures', as well as burdensome regulatory procedures (International Monetary Fund, 2007).

Crucially, Malaysia's import barriers are aimed at protecting the domestic market and strategic sectors as well as maintaining cultural and religious norms.

Technical barriers such as halal certification for the importation of meat and poultry are regulated through licensing and sanitary controls. An example of a regional initiative involving Malaysia is the ASEAN Regulatory Cooperation Project (ARCP), which aims to address non-tariff barriers due to the divergence of chemical management regulations by encouraging regulatory cooperation and convergence. This initiative is spearheaded by the International Council of Chemical Associations' Global Regulatory Cooperation Task Force under the auspices of the International Council of Chemical Associations Chemical Policy and Health Leadership Group. Based on the global principles for regulatory cooperation, the ARCP initiative is aligned with the AEC directive promoting the use of good regulatory practice (GRP) to help establish regulatory environments that encourage free and open trade and investment while protecting human health, safety, environment, and security. The ARCP is led by the American Chemistry Council, the European Chemical Industry Council, Japan Chemical Industry Association, and Singapore Chemical Industry Council in a joint effort to advance chemical regulatory cooperation in the ASEAN region (Singapore Chemical Industry Council).

IRC takes a wide variety of legal forms ranging from regulator-to-regulator agreements (transgovernmental networks), to formal governmental agreements such as regional trade agreements with regulatory provisions (intergovernmental), to supranational arrangements involving international organisations. FTAs currently pursued with selected countries are not confined to liberalisation and market-opening measures, but are comprehensive and include investment, trade facilitation, and intellectual property rights, as well as economic cooperation in areas such as competition policy, standards and conformity assessment, information and communication technology, science and technology, education and training, research and development, financial cooperation, small and medium-sized enterprises development, and paperless trading (Malaysian Timber Industry Board).



Examples of FTA that include regulatory provisions include the ASEAN Trade in Goods Agreement, Agreement on Subsidies and Countervailing Measures, Intellectual Property Rights Agreement, and multilateral environmental agreements under the dispute settlement mechanism.

As Malaysia seeks to sustain the dynamism of its economy and recalibrate its strategy towards becoming a developed country, there is a greater need to strengthen public sector delivery to ensure that milestones towards this goal are achieved effectively and efficiently, and are guided by principles of good governance. Effective regulatory frameworks enhance productivity through healthy, market-driven competition that drives businesses to improve their processes, products, and services continuously. Since 2007, Malaysia's ongoing reforms under the Special Taskforce to Facilitate Business have represented a joint effort between the government and private sector to streamline regulatory frameworks, reduce business licensing requirements, and promote information technology use by government agencies (WTO, 2017).

Further to this, the launch of the National Policy on the Development and Implementation of Regulations (NPDIR) on 15 July 2013 marks a change in the government's approach to regulatory reform, from deregulation to a whole-of-government approach on GRP. The NPDIR aims to promote a regulatory process that is effective, efficient, and accountable, and that supports greater policy coherence. The NPDIR's objective is to ensure that Malaysia's regulatory regime effectively supports the country's aspirations to be a high-income and progressive nation with a competitive economy that subscribes to sustainable development and inclusive growth (Organisation for Economic Co-operation and Development [OECD], 2015). Malaysia's adoption of an explicit regulatory policy (and the policy's contents) are broadly in line with the Recommendation of the OECD Council on Regulatory Policy and Governance (OECD, 2012) and international good practice.

At the international level, Malaysia's reforms promote regulatory cooperation and convergence, in line with ASEAN and Asia-Pacific Economic Cooperation objectives to support regional integration and institutional connectivity. Regulatory harmonisation of standards, technical regulations, conformity assessment procedures, and regulatory frameworks of selected priority sectors were identified as key to the realisation of a single market and production base under the AEC in 2015. Regulatory reform is also key to supporting the achievement of the 2009 ASEAN Leaders' Statement on Connectivity and 2010 Master Plan on ASEAN Connectivity, especially related to institutional connectivity. Key elements of institutional connectivity include trade liberalisation and facilitation, investment and services liberalisation and facilitation, mutual recognition agreements (MRAs), and cross-border procedures.

Attention to regulatory reform within ASEAN is likely to continue to grow in the future. ASEAN and the World Bank (2013) found that trade and investment liberalisation remain areas for improvement, and the overall integration agenda should also now include regulatory measures that remain largely unaddressed. Non-tariff measures (NTMs) and barriers, red tape and transaction costs, and foreign direct investment policies all have a common important regulatory agenda that affects international trade and needs to be addressed.

Moving forward, on 8 May 2017 the Prime Minister launched the Malaysia Productivity Blueprint (MPB), a new milestone and national strategy to drive productivity. The National Productivity Council (NPC) provides leadership and direction at the national level for the MPB. The MPB defines five key strategic thrusts, supported by 10 national-level initiatives to roll out these initiatives. The NPC has been given the mandate to forge a robust ecosystem, with a specific focus on the MPB's Key Activity 13 (a priority area): 'Remove non-tariff measures

that impede business growth and improve efficiency of the logistics sector'. This will require the implementation of clear and effective regulation across multiple government ministries and agencies throughout the nation. A robust ecosystem is critical to improve the efficiency, adaptability, and accountability of governance systems in supporting enterprises to increase their productivity and competitiveness.

The review will focus on removing non-tariff measures that impede business growth will help to identify areas where regulation can be improved, consolidated or simplified to reduce unnecessary burdens without compromising underlying policy objectives. As Malaysia is heavily involved in both internal and external trade, trade flows between nodes must be efficient. With the country moving towards a vision to become an advanced economy and inclusive nation by the year 2020, restructuring NTMs will strongly enable trade by ensuring streamlined processes and regulations for export and import permits and regulations. The most common NTMs in which Malaysia is currently engaged are sanitary and phytosanitary measures; technical barriers to trade; pre-shipment inspection and other formalities; and other non-automatic licensing, quotas, prohibitions, and quantity control measures (other than technical barriers to trade or sanitary and phytosanitary measures).

Recently, the Securities Commission Malaysia and China's Ministry of Finance signed a memorandum of understanding for cross-border regulatory cooperation on accounting and audit matters under their respective oversight. The signing was witnessed by Prime Minister Tun Dr. Mahathir Mohamad and Chinese Premier Li Keqiang. The signing of the memorandum will enable both countries to benefit in areas of mutual interest relating to accounting and auditing.

Malaysia is also actively involved in a banking and financial integration bilateral agreement with Indonesia, under the ASEAN Framework Agreement on Services signed in 2016. It is envisaged that the implementation of this agreement will enable both Malaysian and Indonesian banks to play a greater role in facilitating cross-border trade and investment. The increased banking and financial integration will further deepen the potential for mutually reinforcing growth and greater shared prosperity between both countries and within the region.

This report offers a snapshot of Malaysia's IRC environment. It focuses on the extent to which IRC facilitates cross-border access, cooperative activities, and international trade. The report uses ERIA's IRC definition and framework to examine five aspects of IRC in Malaysia. These aspects of IRC include: the 'pervasiveness' of different forms of IRC, the 'persuasiveness' of the case for IRC, the 'willingness' of Malaysia to engage, factors that are 'imperatives' and 'blockers' of IRC, and the governance of IRC. The chapter uses ERIA's framework, the survey results, and the context in which Malaysia operates to provide insights on IRC in this country.

1.1. Research Approach

As there was no official inventory of IRC in Malaysia, our approach was based on a survey and selected interviews with a small sample of government officials and a few prominent industry players with a good overview of IRC. We identified government officials with a good understanding and knowledge of IRC from the members of the Special Task Force to Facilitate Business. This high-powered task force consists of 23 highly respected individuals from both the private and public sectors. Some of the respondents are from the ministries and agencies directly involved in some IRC projects. The individuals who contributed by answering the questionnaire on the government side are from the Ministry of Agriculture and Agro-Based Industries, Ministry of International Trade and Industry, Ministry of Health, and Royal Malaysian Customs Department. While six individuals are from the same ministry (Ministry

of International Trade and Industry), they are from different departments directly involved with IRC: the Investment Policy and Trade Facilitation Section, ASEAN Economic Integration, Strategic Planning Division, Legal Advisor, Senior Federal Counsel of Legal Advisor's Office, and the Office of the Secretary General. The contributors from the private sector include individuals from the engineering sector, manufacturing sector, and audit and taxation sector, as well as a building surveyor.

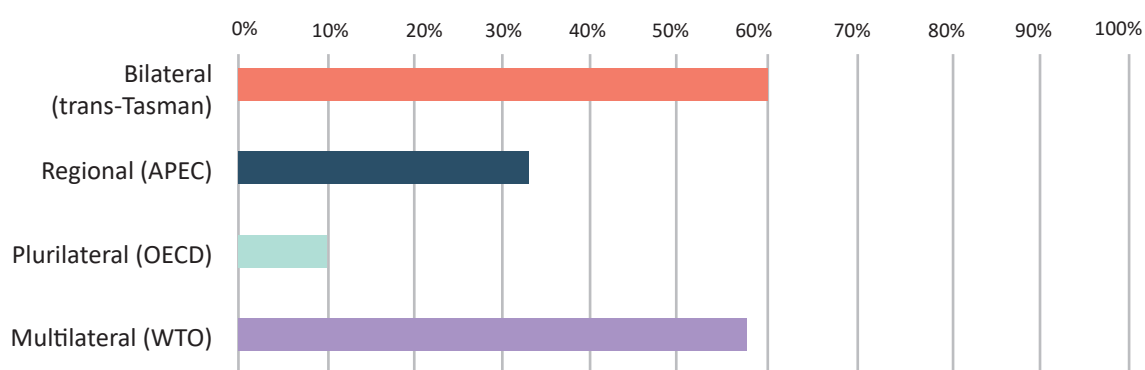
The semi-structured interview format began with a discussion of an IRC example with which the respondent was most familiar. Some of the respondents met face-to-face with the research team, while some of the interview sessions were done by telephone. The completed survey was then entered into Survey Monkey. Most of the respondents were male (60%) while 40% were female. They were drawn from a wide range of sectors, and 56.25% had been involved in IRC for more than 5 years. There was a noticeable difference between those whose experience was limited to one sector (12.5%) and those with wide-ranging views (87.5%) across the Malaysian regulatory system. Most of the respondents were mainly involved in regional engagement, and there was an even split between those involved in bilateral areas and those involved in multilateral areas.

With that background on the overall approach, we turn now to the questions of how widespread IRC is (pervasiveness) and enablers and facilitating factors in effective IRC (willingness and persuasiveness). We explore the findings from the survey and insights from the interviews in the next five sections on pervasiveness, willingness, persuasiveness, barriers to, and evolution of IRC. The last section focuses on the IRC governance system in Malaysia and offers some concluding comments.

1.2. Types of International Regulatory Cooperation

The survey asked respondents about the relative frequency of different types of IRC. One question explored whether IRC was 'mainly bilateral, regional, plurilateral or multilateral' (respondents could select one or more options). The results (n = 16) revealed that most respondents selected 'regional' (e.g. ASEAN) (Figure 7.1).

Figure 7.1: Main Forms of International Regulatory Cooperation in Malaysia



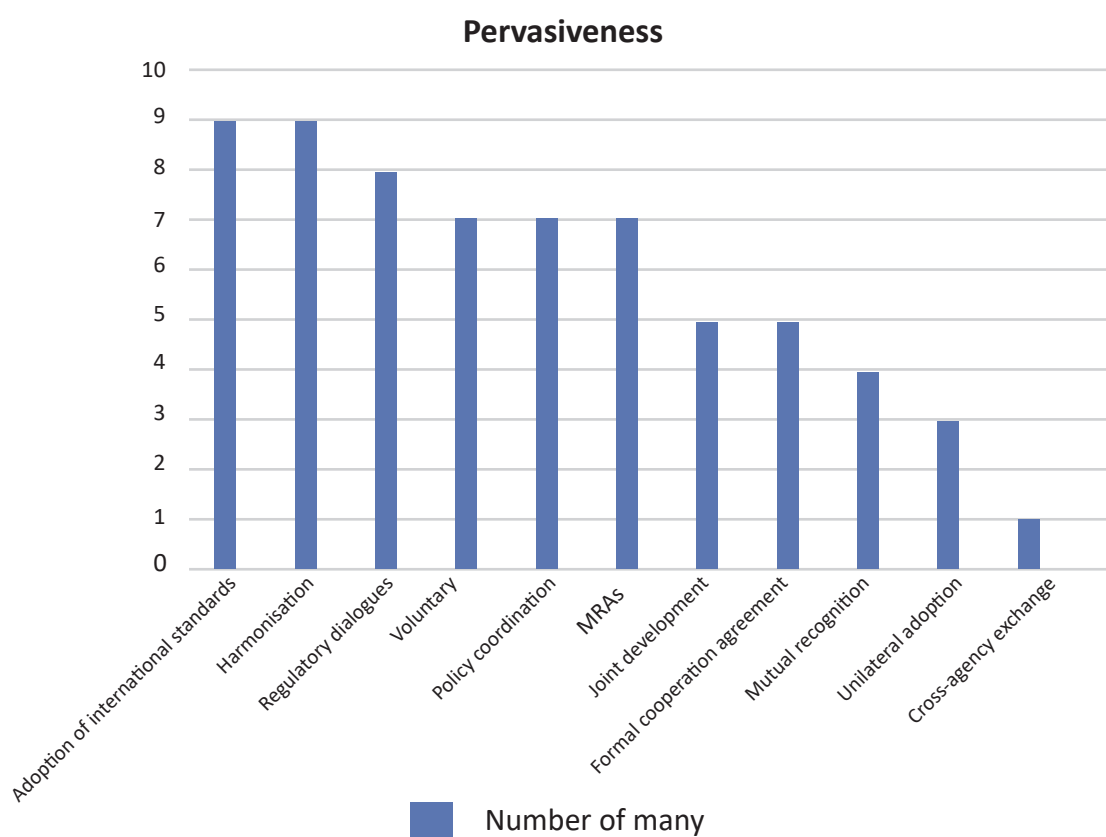
ASEAN = Association of Southeast Asian Nations, GMS = Greater Mekong Subregion, OECD = Organization for Economic Co-operation and Development, WTO = World Trade Organization.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 41.

2. Pervasiveness of International Regulatory Cooperation

In section 3 of the survey, respondents were asked about their perceptions regarding the pervasiveness of different types of IRC. IRC can take many forms ranging from the unilateral recognition or adoption of another country's regulatory settings or standards at one end of the spectrum, through to harmonisation through the convergence of policies and practices at the other. For each type of IRC, interviewees were asked whether there were 'none (that I know of)', 'one or two', 'few (between three and five)', and 'many (more than five)'. Figure 7.2 ranks the types of IRC from high to low based on the number of respondents who selected 'few' and 'many'. The survey results for 'few' and 'many' were combined because the research team felt that this was more meaningful to analyse and understand the pervasiveness of IRC in Malaysia.

Figure 7.2: Ranking of Most Common Types of International Regulatory Cooperation in Malaysia



MRA = mutual recognition agreement.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39.



The most common types of IRC were:

- (i) the adoption of international standards developed by international standards setting bodies (e.g. the International Organization for Standardization and Global Standards One barcodes);
- (ii) regulatory dialogues and the exchange of information with another country or regionally (e.g. ASEAN);
- (iii) the harmonisation of technical regulations (involving specific products) with another country or regionally (e.g. ASEAN); and
- (iv) MRAs with other countries or region-wide (e.g. ASEAN) on conformity results, which allow specifications (e.g. qualifications of professionals and products) gained in one country to be recognised in another (e.g. ASEAN MRAs on engineering and architecture).

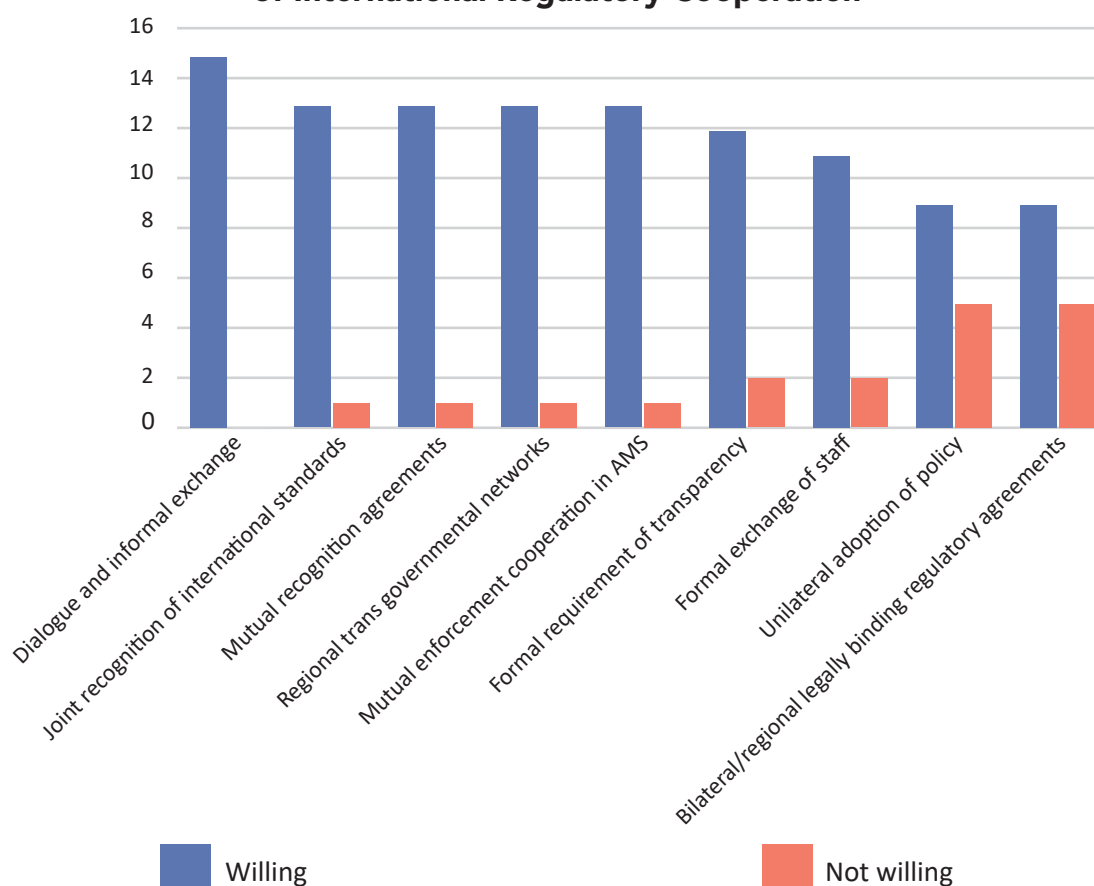
The results show that most respondents agree that IRC in Malaysia is mostly influenced by the adoption of international standards developed by international standards setting bodies. International standards in particular help make the development, manufacturing, and supply of goods and services safer and more efficient. It also makes trade between countries easier and fairer because the same specifications are adopted for use in different countries as national or regional standards. Many regulations in Malaysia align and comply with international standards, such as electrical regulations and toy safety standards.

The survey results are consistent with Malaysia's goal in reviewing regulatory regimes to identify areas where regulation can be improved, consolidated, or simplified to increase regulatory effectiveness and reduce unnecessary burdens related to NTMs without compromising underlying policy objectives. It will also examine regulations and enforcement practices that might impede competition and productivity in trade-related business. It is important to harmonise technical regulations between countries to avoid unnecessary regulatory burdens, which adversely affect global and regional production and supply chains and increase the cost of doing business. The results also show that Malaysia welcomes a platform to exchange information with other trading countries through regulatory dialogues.

3. Willingness to Develop International Regulatory Cooperation

Section 5 of the survey asked respondents about their perceptions of the willingness to develop and strengthen different types of IRC. Respondents had four options: 'strongly not willing', 'not willing', 'willing', and 'strongly willing'. In Figure 7.3, 'strongly willing' and 'willing' were added together, as were 'strongly not willing' and 'not willing'. Figure 3 shows the total willingness to undertake particular types of IRC and contrasts this with 'not willing'.

Figure 7.3: Malaysia's Openness to Different Types of International Regulatory Cooperation



AMS = Association of Southeast Asian Nations member state.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39.

The types of IRC where willingness was highest were (i) dialogue and informal exchange of information on policy, enforcement, and other regulatory practices; (ii) joint recognition of international standards; (iii) MRAs; (iv) regional transgovernmental networks amongst regulators; and (v) mutual enforcement cooperation. There was least support for (i) the unilateral adoption of policy or regulatory practices of others; and (ii) bilateral or regional legally binding regulatory agreements and/or harmonisation, with oversight enforcement by a supranational regional body.

Again, this reflects respondents' perceptions that Malaysia is willing to develop and strengthen IRC. There was consensus on almost all forms of IRC as the respondents are well aware that Malaysia is an open economy where trade plays a very significant role and is a key driver of economic growth. Malaysia is integrated into the global trading system as a member of the WTO, ASEAN, and other international organisations, as well as through bilateral arrangements. Notwithstanding this openness, Malaysia does have a few protected sectors and sensitive areas that influence its options for deeper liberalisation.

Malaysia, along with other ASEAN Member States (AMS), is engaged in discussions with the European Union on intellectual property, normally with a focus on efforts to improve intellectual property protection and enforcement. The Securities Commission also keeps in touch with priority countries through informal meetings and exchanges of information. The respondents' perceptions are consistent with Malaysia's active participation in formal and informal dialogue on various platforms, particularly ASEAN, discussing and debating various and broader issues, such as biodiversity, economic surveillance, strategic policy, and finance.

Respondents reported the least support for bilateral or regional legally binding regulatory agreements and/or harmonisation, with oversight enforcement by a supranational regional body, perhaps because of concerns about giving up part of the country's sovereignty. As former ambassador and former Secretary General of ASEAN, Rodolfo C. Severino Jr. rightly observed,

ASEAN is an inter-governmental organisation where decisions are based on consensus of all the member countries. It is not, and was not meant to be, a supranational entity acting independently of its members. It has no regional parliament or council of ministers with law-making powers, no power of enforcement, and no judicial system. Much less is it like NATO, with armed forces at its command, or the UN Security Council, which can authorise military action by its members under one flag. (Severino, 1999)

Box 7.1 below offers a glimpse of Malaysia's approach to the international trade landscape, which set the tone for this study.

Box 7.1: Malaysia's Attitude to International Trade

Malaysia is a founding member of the World Trade Organization (WTO) by virtue of its membership in the General Agreement on Tariffs and Trade (GATT) since 1957. As a WTO member, Malaysia accords high priority to the rules-based multilateral trading system under the WTO, and has continuously been voluntarily reducing and eliminating tariffs to enhance Malaysia's competitiveness. Over the years, the country has adopted open and transparent trade policies and measures. In addition, Malaysia is committed to building regional and bilateral trade arrangements with individual regional groupings and countries.

At the regional level, Malaysia is part of the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) together with other ASEAN Member States (Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam), creating a complete free trade area amongst them. ASEAN presently has AFTA free trade agreements (FTAs) with China, Japan, the Republic of Korea, India, Australia, and New Zealand. Through AFTA, Malaysia has also entered into the ASEAN Trade in Goods Agreement and, together with Brunei Darussalam, Singapore, and Thailand, embarked on a self-certification pilot project on 1 November 2010 aimed at facilitating an enhanced environment for trade. Malaysia has also developed significant relations economically and politically with the Gulf Cooperation Council and is keen to have strong bilateral trade ties with the council through future FTAs. As a member of the Organisation of the Islamic Conference (OIC), Malaysia has actively supported and promoted intra-OIC trade and has ratified the Framework Agreement on Trade Preferential System amongst the OIC countries. On 4 February 2016, Malaysia signed the Trans-Pacific Partnership (TPP) Agreement, an FTA initiative with Australia, Brunei Darussalam, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore, Viet Nam, and the United States.

Although the United States subsequently withdrew from the TPP under the Trump administration, the other members of the TPP have agreed to pursue the trade deal without the United States. On 9–10 November 2017, the TPP was renamed the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP) and was signed by the remaining 11 member countries on 9 March 2018 after eight rounds of negotiations. The CPTPP also highlighted regulatory coherence. This refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing, and reviewing regulatory measures to facilitate the achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation to further those objectives and promote international trade and investment, economic growth, and employment. With the installation of the new Government of Malaysia following national elections on 9 May 2018, Malaysia will continue their commitment to the CPTPP trade pact and agenda.

Source: Trade and Customs (2018), 'Getting the Deal Through (August)'. <https://gettingthedealthrough.com/area/51/jurisdiction/55/trade-customs-malaysia/> (accessed 13 June 2020); The Straits Time (2018), 'Malaysia to go ahead with Asia-Pacific trade pact CPTPP, says PM Mahathir', 27 August. <http://bilaterals.org/?malaysia-to-go-ahead-with-asia> (accessed 13 June 2020).

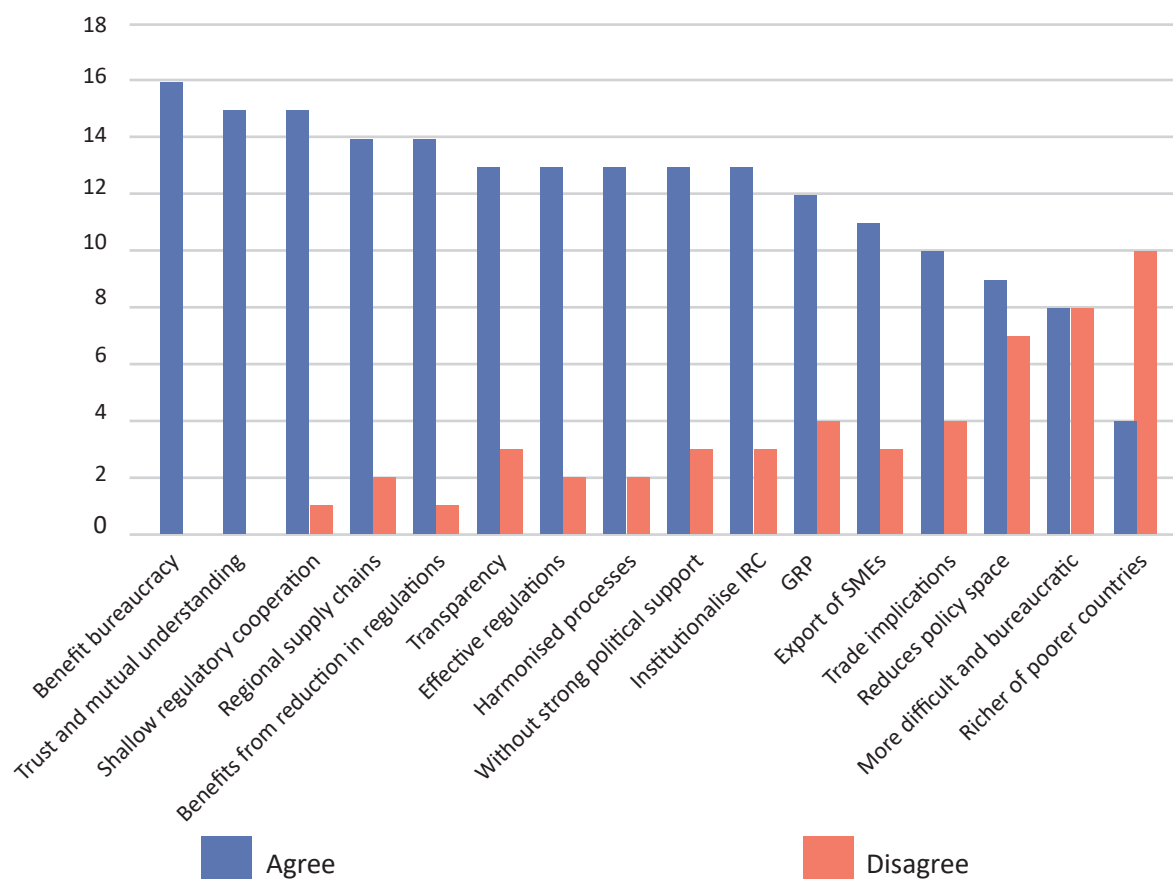
4. Imperatives and Blockers of International Regulatory Cooperation

Section 2 of the interview asked respondents about their views on a series of propositions about IRC. There were five options: 'strongly disagree', 'disagree', 'agree', 'strongly agree', and 'don't know'. The survey questions generally expressed the propositions about IRC in the positive. Three propositions were expressed as negatives in the questionnaire: IRC reduces policy space to a country's disadvantage, benefits richer countries more than poorer, and makes life more difficult. In the following Figure 7.4, we have reversed the display of agree/disagree to these three questions to make it easier to compare them with the other questions. The graph ranks the types of IRC from high to low by adding together 'strongly agree' and 'agree', and 'strongly disagree' and 'disagree'.

There was reasonably strong agreement with all of the propositions except for the following:

- (i) IRC benefits richer countries much more than poorer countries (62.50% disagree),
- (ii) IRC adds an additional layer of coordination and makes life for administrators and regulators even more difficult and bureaucratic (50.00% disagree),
- (iii) IRC that requires treaties and protocols reduces the policy space of a country to the disadvantage of the country (43.75% disagree), and
- (iv) IRC needs GRP (e.g. stakeholder consultation) to make regulations more effective and beneficial to firms and citizens (25.00% disagree).

Figure 7.4: Views on International Regulatory Cooperation



GRP = good regulatory practice, IRC = international regulatory cooperation, SMEs = small and medium-sized enterprises.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 11–26.

On the positive side, the survey results found that all respondents agree that IRC can benefit the bureaucracy through enhanced knowledge flows about technical issues and options, and about the policy experiences of other countries. Moreover, almost all agree that IRC builds trust and mutual understanding amongst institutions in countries in the region. Almost all agree that in the ASEAN region, where member states are at widely varying levels of economic and institutional development and have diverse cultures, it is best to start with shallow regulatory cooperation that applies to all members and deep (high-level) cooperation for those who are willing and/or interested.

These results show the consistency of the responses. It is imperative to know that there are challenges that Malaysia faces in negotiating or entering trade agreements. According to the Khazanah Research Institute (KRI), the non-profit organisation that carries out research on pressing issues of the nation, the government faces challenges in negotiating international trade agreements as it must strike a balance between domestic policies and liberalising selected sectors.

The KRI highlighted that international trade limits countries' ability to regulate their own people, and that such international trade agreements are always a matter of 'give and take'. Some elements, such as intellectual property rights, tariffs, government procurement, and the movement of human capital, may limit government health and education policies. Therefore, those formulating trade policies must find a balance between the interests of the government, foreign companies, and the people (Ho, 2017). As Malaysia aspires to become the preferred logistics gateway to Asia, efficient and high-performing logistics and trade facilitation are

important determinants. One of the focus areas of the Eleventh Malaysia Plan (2016–2020) is unleashing growth in logistics and enhancing trade facilitation. This will be achieved through various strategies, including the strengthening of the institutional and regulatory framework.

Box 7.2 below provides an example of multilateral agreements subscribed to by Malaysia. It shows that a stringent policy on biodiversity introduced to protect the environment, like several other NTMs with primarily non-trade objectives (in this case the protection of public health and the environment), may affect trade and represents a major challenge for exporters, importers, and policymakers. Although many NTMs aim primarily to protect public health or the environment, they also substantially affect trade through information, compliance, and procedural costs.

Box 7.2: Multilateral Environmental Agreements Subscribed to by Malaysia

INTERNATIONAL OBLIGATIONS

On the global front, Malaysia is party to various biodiversity-related multilateral environmental agreements, such as the Convention on Biological Diversity.

Malaysia is also a party to agreements covering a wide range of subjects, including trade in endangered species, protection of important wetlands, biosafety, climate change, transboundary movement of hazardous wastes, haze, and laws of the sea. Malaysia's obligations are numerous, and the country needs to strengthen its policy framework to enable it to fulfil its responsibilities.

In addition to the Convention on Biological Diversity, Malaysia also participates in various other biodiversity-related multilateral environmental agreements, including the following:

- i. Association of Southeast Asian Nations Agreement on Transboundary Haze,
- ii. Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal,
- iii. Cartagena Protocol on Biosafety,
- iv. Convention on International Trade in Endangered Species of Wild Fauna and Flora,
- v. Convention on Wetlands of International Importance (Ramsar Convention),
- vi. Kyoto Protocol to the United Nations Framework Convention on Climate Change,
- vii. Montreal Protocol on Substances that Deplete the Ozone Layer,
- viii. Rotterdam Convention,
- ix. Stockholm Convention on Persistent Organic Pollutants,
- x. United Nations Framework Convention on Climate Change,
- xi. United Nations Convention on the Law of the Sea,
- xii. Vienna Convention for the Protection of the Ozone Layer, and
- xiii. World Heritage Convention.

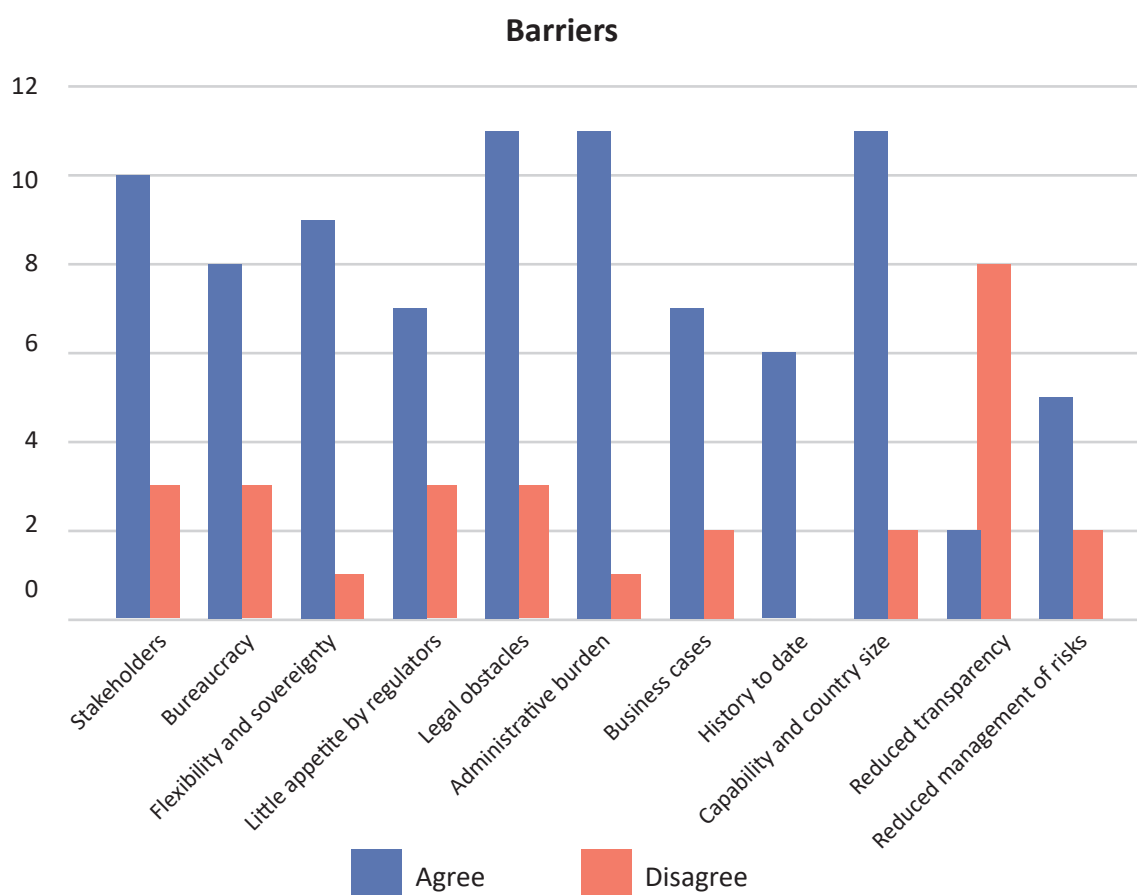
These multilateral environmental agreements complement and mutually reinforce each other in defence of the broad environment, including measures needed for national and international biodiversity management.

Source: Malaysia Biodiversity Information System (MyBIS), 'Multilateral Environmental Agreements Subscribed by Malaysia'. <https://www.mybis.gov.my/art/19> (accessed 11 November 2018).

5. Persuasiveness of International Regulatory Cooperation

Section 4 of the interview asked respondents about their views on a series of propositions about the factors that most restrict or inhibit the growth of IRC. There were five options: 'strongly agree', 'agree', 'disagree', 'strongly disagree', and 'don't know'. Two propositions were expressed as negatives (IRC reduces transparency and reduces management of risks at the border). In Figure 7.5 below, we have reversed the display of agree/disagree for these two questions for ease of comparison. The graph shows the types of IRC from high to low by adding 'strongly agree' together with 'agree', and 'disagree' together with 'strongly disagree'.

Figure 7.5: Barriers to International Regulatory Cooperation in Malaysia (Agree/Disagree)



Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 65–75.

Respondents mostly disagree (or are neutral) that 'IRC has led to reduced transparency between countries' (50%), while nobody disagrees that 'the history to date – with mixed experience' is a barrier. There is the least concern (6.25%) about the lack of regulatory flexibility and sovereignty arising from IRC and the increased administrative burden of IRC. The most agreement was reported for the following barriers:

- (i) legal obstacles to IRC (e.g. restrictions on information sharing/confidentiality rules) (11 agree, three disagree, three neutral);
- (ii) concern regarding the increased administrative burden of IRC on the country (11 agree, one disagree, two neutral); and
- (iii) differences in capability and country size create uneven trust in other countries' systems (11 agree, two disagree, one neutral).

The results show that most respondents agree that there are legal obstacles to IRC, most notably restrictions on information. In fact, all three statements that garner the highest number of 'agree' responses are interrelated where confidentiality and trust issues are the main concern. Trading countries understand that different regulatory authorities have different approaches. All regulatory authorities in any jurisdiction will be bound by secrecy or confidentiality restrictions of some kind, since such restrictions are required by international standards. Equally, there will be hardly any regulatory authorities whose confidentiality restrictions are not subject to some exemptions (or gateways), again, as required by international standards (International Monetary Fund, 2007).

Another lesson with regard to implementing IRC is the challenge of overcoming legacy baggage and cultural bureaucracy. Poor knowledge of other countries' regulatory setups and a lack of competency must also be addressed. ASEAN has incredible diversity in terms of religion, language, ethnicity, and culture; several different forms of government; and different interpretations of the proper relationship between the individual and the state. However, until we can achieve a better understanding of what these differences are, how they can be lessened, and the commonalities that we can hope to achieve (including the establishment of commitments, such as reducing discriminatory regulatory barriers and creating a more transparent regime), our diversity will be a weakness, not a strength (Sathirathai, 2018).

6. The Governance of International Regulatory Cooperation in Malaysia

The Malaysia Productivity Corporation (MPC), an agency under the Ministry of International Trade and Industry (MITI), is responsible for overseeing GRP and specifically responsible for promoting overall regulatory quality. The directive was highlighted in the 10th Malaysia Plan (2010–2015), which states that the 'MPC [is] to spearhead a comprehensive review of business regulations and improve processes and procedures to increase productivity and competitiveness of major economic sectors' (Chapter 3, pp.73–74). The MPC was mentioned again in the 11th Malaysia Plan (2016–2020), which stated that 'comprehensive and integrated governance reforms will be pursued to ensure a thriving and competitive environment for the services sector. The National Policy on the Development & Implementation of Regulations (NPDIR) to modernise the current regulatory regime will be fully implemented to include states and local governments' (Chapter 8, p.16).

Although the MPC is the lead body for GRP, the agency's role does not include oversight for IRC. In fact, there is no particular lead body in the government that assumes that role; instead, each ministry and agency is responsible for the international regulatory activities in their respective sectors (see Box 7.3). However, the MITI oversees, develops, and implements policies with regard to industrial development, international trade, and investment; formulates industrial development, international trade, and investment policies; and makes policy in consultation with relevant stakeholders including the Economic Planning Unit (EPU), which is responsible for developing Malaysia's 5-year development plans. As one of its functions is to attract quality foreign and domestic investments, the MITI promotes and increases Malaysia's exports of high value-added goods and services by strengthening bilateral, regional, and multilateral trade relations and cooperation.

While there is no explicit government policy on IRC, the principles of the NPDIR, a policy that embeds GRP in the formulation of new regulations or amendments to regulations, clearly states that all federal regulators (i.e. ministries, departments, statutory bodies, and regulatory commissions) must ensure that regulations are consistent with Malaysia's commitments in international and intergovernmental agreements. In addition, the NPDIR acknowledges the role of the Attorney-General's Chambers in offering legal advice to the cabinet or any minister on the development of laws and regulations. The Attorney-General's Chambers may provide

legal opinions on regulatory solutions, the drafting of regulations, the harmonisation of regulatory requirements, and Malaysia's compliance with obligations of international treaties and relevant agreements.

The NPDIR supports domestic reforms of regulatory settings at the whole of-government and sector-specific levels, as well as those related to public governance and Malaysia's commitments to regional cooperation and convergence. The table below demonstrates the link between regulatory reform and the government's New Economic Model, Economic Transformation Programme, and Government Transformation Programme, as well as ASEAN and the Asia-Pacific Economic Cooperation.

7. Concluding Comments

Table 7.1: Link Between Malaysia's Domestic Policies, Regional Commitments, and Good Regulatory Practice

	ASEAN / APEC	New Economic Model	Economic Transformation Programme	Government Transformation Programme
Regulatory co-operation & convergence	++			
Whole-of-government regulatory settings		++		
Sectoral regulatory settings		+	++	
Regulatory governance	++	+	+	+

ASEAN = Association of Southeast Asian Nations, APEC = Asia-Pacific Economic Cooperation.

Note: ++ = strong emphasis, + = general emphasis.

Source: OECD (2015), *Implementing Good Regulatory Practice in Malaysia*. Paris: Organisation for Economic Co-operation and Development Publishing.

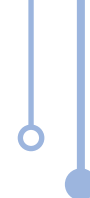
BOX 7.3: Lead Ministries and Agencies Overseeing Malaysia's Interests

In terms of trade agreements, the Ministry of International Trade and Industry has been championing free trade agreements, which have traditionally been confined to trade in goods. However, since the establishment of the World Trade Organization, trade in services and other areas such as investment, intellectual property protection, competition policy, and cooperation measures have been included. The table below shows the areas and the lead ministries and agencies responsible for safeguarding Malaysia's interest in each area.

AREA	LEAD MINISTRIES/AGENCIES
Market access in goods	Ministry of International Trade and Industry
Technical barriers to trade	Standards Malaysia
Sanitary and phytosanitary	Ministry of Agriculture and Food Industries

Customs cooperation	Royal Customs Department
Rules of origin	Ministry of International Trade and Industry
Trade remedies	Ministry of International Trade and Industry
Investment	Ministry of International Trade and Industry
Services	Ministry of International Trade and Industry
Non-conforming measures	Ministry of International Trade and Industry
Financial services	Central Bank of Malaysia
Telecommunication	Ministry of Communications and Multimedia
E-commerce	Ministry of Communications and Multimedia
Business mobility	Ministry of International Trade and Industry
Government procurement	Ministry of Finance
Competition policy	Ministry of Domestic Trade and Consumer Affairs
Intellectual property rights	Ministry of Domestic Trade and Consumer Affairs
Labour	Ministry of Human Resources
Environment	Ministry of Environment and Water
Cooperation and capacity Building	Ministry of International Trade and Industry
Cross-cutting/horizontal issues	Ministry of International Trade and Industry
Legal	Attorney-General's Chambers

Source: Free Trade Agreement, https://www.miti.gov.my/miti/resources/fileupload/FAQs_BI.pdf (accessed 11 November 2018).



This chapter has summarised the key findings from a small group survey of eight government officials and eight private sector players. Given the small sample size, care is required in interpreting the results. The survey results reflect a small sample of individuals' views on various forms of IRC based on their own experience, and may not reflect the views of the wider population of the country as a whole.

The respondents' feedback shows strong agreement on the benefits that IRC has to offer. They agree that IRC could promote trade and business relations amongst participating countries while streamlining internal processes with international agreements. Trade facilitation can be improved and there will be a free flow of goods and human resources; a decrease in unnecessary regulatory burdens; greater freedom and ease of doing business; greater market efficiency; improved competition and competitiveness; improved safety, health, and environment issues; and improved use of natural resources. Laws between countries have been monitored accordingly to ensure full compliance with international obligations, and more professionals and expatriates are enabled to do business anywhere in ASEAN.

The survey also asked respondents about the major problems facing the initiation and implementation of IRC, and how those problems could be addressed. The factors highlighted include a lack of support or advocacy in individual AMS, different levels of economic development in member countries, and the lack of a regulatory mechanism in certain countries, all of which make regulatory harmonisation difficult. Some of the respondents believe that a reluctance to open up to other AMS perhaps stems from a desire to protect local expertise; this could eventually be solved by a political will to educate the public on the benefits that can be gained from a more open economy. All of these issues could potentially be reduced if a central coordination committee were established to oversee Malaysia's IRC.

A key lesson is the need to adopt other countries' best practices in regulating certain sectors and in terms of coordinating and establishing a central body to supervise the development of IRC in Malaysia. Political will is seen as vital to push the IRC agenda; otherwise the implementers will face resistance from all levels, which will scuttle the initiatives. Regulatory prediction and certainty could elevate the confidence of others to do business in Malaysia, which in turn will increase foreign direct investment and benefit the population in the long run.

References

- Association of Southeast Asian Nations (ASEAN) Secretariat and the World Bank (2013), ASEAN Integration Monitoring Report. Jakarta: ASEAN Secretariat.
- Azman, S. (2018), 'Reassess Malaysia's Position in Trade Agreements', The Edge Markets, 6 June. <http://bilaterals.org/?reassess-malaysia-s-position-in> (accessed 13 June 2020).
- Department of Foreign Affairs of Trade, Malaysia–Australia Free Trade Agreement. <https://dfat.gov.au/trade/agreements/in-force/mafta/Pages/malaysia-australia-fta.aspx> (accessed 13 June 2020).
- Ho, S. (2017), 'Malaysia Faces Challenges in Negotiating International Trade Pacts', The Edge Markets, 8 November. www.theedgemarkets.com (accessed 13 June 2020).
- Horlick, G. (ed.), Trade & Customs: Malaysia. <https://gettingthedealthrough.com/area/51/jurisdiction/55/trade-customs-malaysia/> (accessed 13 June 2020).
- International Monetary Fund (2007), Improving Regulatory Cooperation and Information Exchange (June). Washington, DC: International Monetary Fund. <https://www.imf.org/external/pubs/ft/books/2007/working/0607.pdf> (accessed 13 June 2020).
- International Trade Administration, 'Malaysia – Trade Agreement, Malaysia Country Commercial Guide'. <https://www.export.gov/article?id=Malaysia-Trade-Agreements> (accessed 13 June 2020).
- Malaysia External Trade Development Corporation, Free Trade Agreements. <http://www.matrade.gov.my/en/malaysian-exporters/going-global/understanding-free-trade-agreements> (accessed 13 June 2020).
- Malaysian Timber Industry Board (2019), Malaysia's FTA Involvement. <http://www.mtib.gov.my/corporate-info/2-uncategorised/110-free-trade-agreement-fta> (accessed 13 June 2020).
- Ministry of International Trade and Industry, Free Trade Agreement: Malaysia's FTA Involvement. <http://www.miti.gov.my/index.php/pages/view/948> (accessed 13 June 2020).
- Multilateral Environmental Agreements Subscribed by Malaysia. <https://www.mybis.gov.my/art/19> (accessed 13 June 2020).
- Nations Encyclopedia, 'Malaysia – International Trade', Nikkei Asian Review. <https://www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/Malaysia-INTERNATIONAL-TRADE.html> (accessed 13 June 2020).
- New Straits Times (2017), 'Malaysia's Economic Cooperation with Other Countries Has Benefitted Nation'. <https://www.nst.com.my/news/nation/> (accessed 13 June 2020).
- New Straits Times (2018), 'China's MoF, Securities Commission Malaysia Sign MoU on Regulatory Cooperation', 20 August. <https://www.nst.com.my> (accessed 13 June 2020).
- Organisation for Economic Co-operation and Development (OECD) (2012), Recommendation of The Council on Regulatory Policy and Governance. Paris: OECD Publishing.
- OECD (2015), Implementing Good Regulatory Practice in Malaysia. Paris: OECD Publishing.
- Sathirathai, S. (2018), 'Eight Challenges ASEAN Must Overcome', Today Online. <https://www.todayonline.com/> (accessed 13 June 2020).
- Severino Jr., R.C. (1999), ASEAN and the Growth of Regional Cooperation in Southeast Asia, 1 August. www.asean.org (accessed 13 June 2020).

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- Singapore Chemical Industry Council, ASEAN Regulatory Cooperation Project. <https://scic.sg/asean/> (accessed 13 June 2020).
- The Straits Times (2018), 'Malaysia to Go Ahead with Asia–Pacific Trade Pact CPTPP', 27 August. <http://bilaterals.org/?malaysia-to-go-ahead-with-asia> (accessed 13 June 2020).
- Trew, S. (2019), International Regulatory Cooperation and the Public Good. Canadian Centre for Policy Alternatives.
- World Health Organisation, International Regulatory Cooperation for Herbal Medicines (IRCH). <http://www.who.int/traditional-complementary-integrative-medicine/collaboration/IRCH/en/> (accessed 13 June 2020).
- World Trade Organization (2017), Trade Policy Review for Malaysia. https://www.wto.org/english/tratop_e/tpr_e/s366_e.pdf (accessed 13 June 2020).