

# International Regulatory Cooperation: Case Studies and Good Practices

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# Presentation Structure

- What is IRC
- Why undertake IRC
- What forms can IRC take
- IRC and competition authorities: the case of NZ and Australia
- Lessons learnt about IRC Case studies

## Drawing from:

- ERIA/NZIER study of IRC barriers and enablers in ASEAN & NZ
- Case studies funded by NZ MFAT, sponsored by MBIE, researcher's take not NZ Govt. view. See elink NZIER (2018)

<https://nzier.org.nz/publication/international-regulatory-cooperation-case-studies-and-lessons-learnt>

# What is International Regulatory Cooperation?

- IRC is “ about working across countries to achieve the best regulatory outcomes in a trade facilitating manner”
- IRC is “ a ladder of options that can occur during the design, monitoring, enforcement, or ex post management of regulations”
- IRC is “about trust. Without it, opportunities for cooperation between regulators are limited”
- IRC is easier on the ex-ante side of the regulatory process than on the ex-post side.
  - US Chamber of Commerce
- **Just a special case of interagency cooperation**

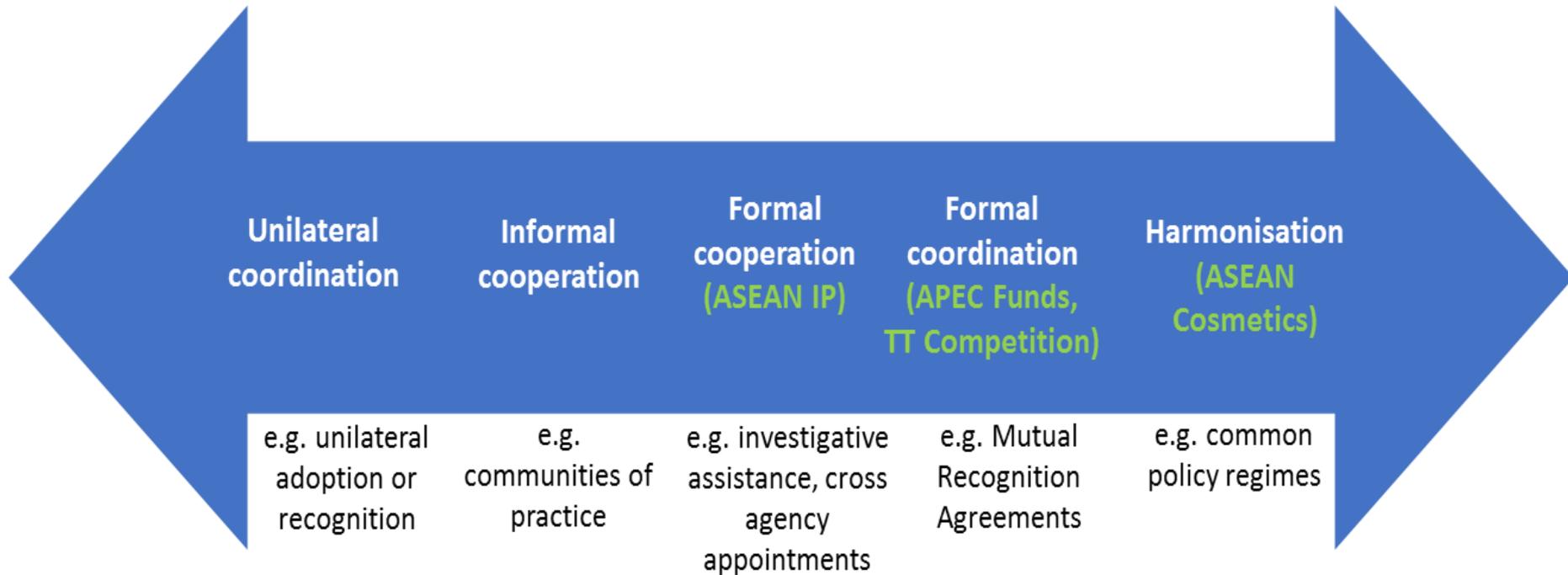
# Why undertake International Regulatory Cooperation?

- 1. Reduced NTBs** facilitating international trade and investment and participation in value chains
- 2. Improved regulatory quality** by reducing the costs of doing business
- 3. Managing international spill overs** by increasing the reach of regulation across borders
- 4. Improved cost effectiveness through *sharing resources*** (particularly important for smaller and less developed countries facing capability problems including achieving minimum critical mass)
- 5. Foreign policy objectives** including geo-political gains, development assistance through technical cooperation, obtaining ‘a seat at the table’

# What forms can International Regulatory Cooperation take?

- 1. Legal modalities** – Directly legally binding international instruments, indirectly binding through domestic legislation, & non-binding understandings (soft law)
- 2. Mechanisms** – Intergovernmental agreements, trans government networks dialogue fora
- 3. Structures** – FTA TBT provisions, International organisations' agreements (Basel capital adequacy) regional trade agreements, bilateral/plurilateral regulator to regulator
- 4. Membership** – unilateral, bilateral, plurilateral/ regional, multilateral (public and private)
- 5. Focus** – Policy, standard setting, enforcement, adjudication & dispute resolution, sharing resources (data, information)
- 6. Locus** – sector or subsector (with carve outs)

# What forms: the IRC Continuum





Name of presenter  
Venue or event  
Date of presentation

# IRC Case Study Project: practitioner driven

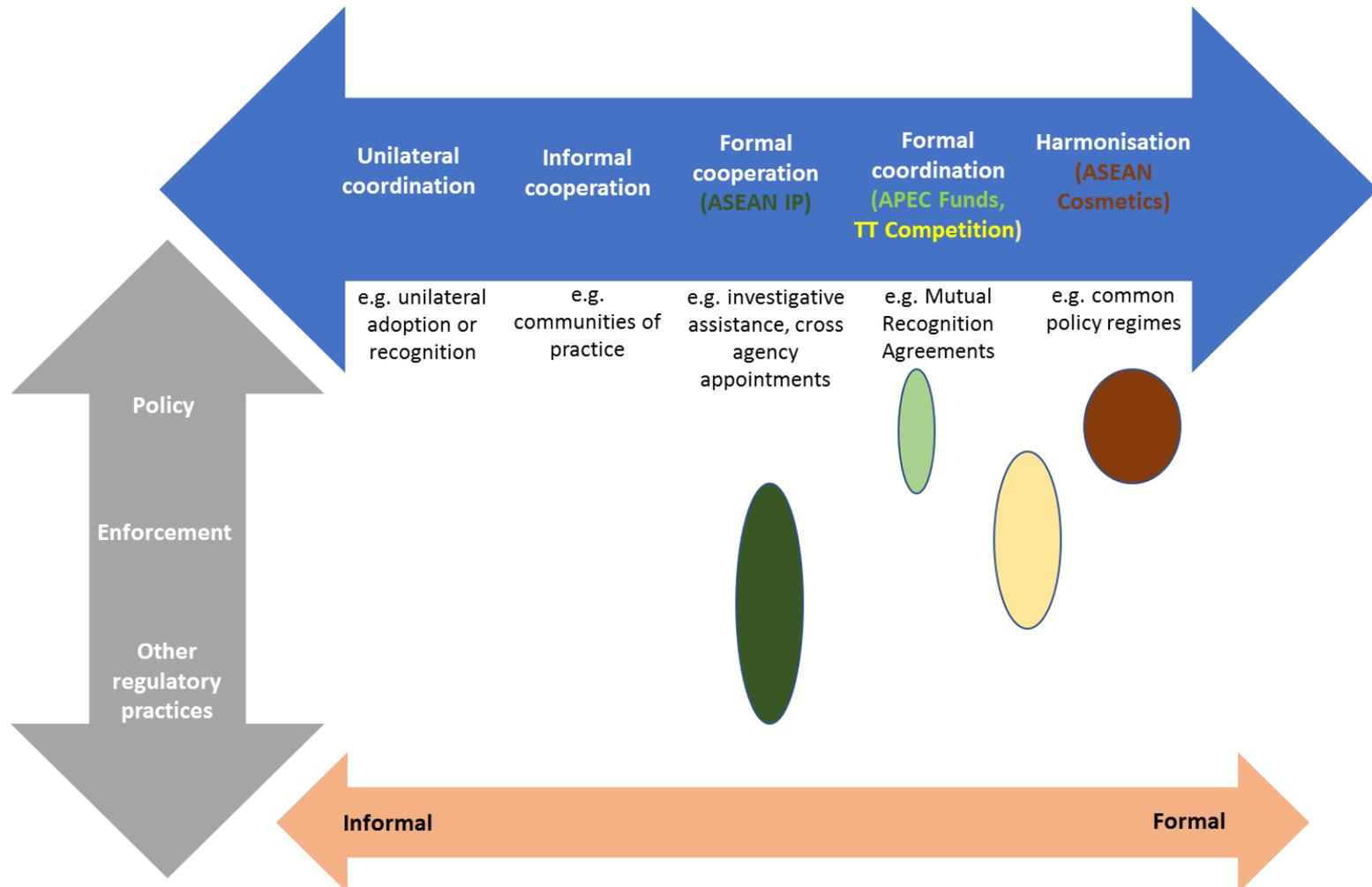
- Method – Document review and semi-structured interviews with 3- 4 key interlocutors
  - Augmented by interviews for ERIA Country survey
  - Workshopped themes with NZ regulatory practitioners
  - Case studies focused on IRC lessons learnt from:
    1. APEC Asian Passport Funds
    2. ASEAN IP
    3. ASEAN Cosmetics
    4. Trans-Tasman Competition Policy
- Plus one informal case – TransTasman Therapeutics

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# IRC case studies remarkably diverse

- Why? – different imperatives
  - ASEAN cosmetics – consumer protection and trading up
- With whom? – right countries right people
  - APEC passport funds
- What focus? – different domains
  - policy (APEC funds) or selected regulatory practices such as enforcement, training etc (ASEAN IP) or limited areas (Trans-Tasman competition policy)
- What locus? – different intensity
  - Interoperability (TT competition policy) or harmonisation (ASEAN Cosmetics)

# IRC cases have very different focus



# Trans-Tasman Competition Policy: harmonisation is not the only destination

- Replace anti-dumping with competition policy remedies
- Ensure competition policy enhances economic integration
- No harmonisation of policy, retain separate competition regulators
- Share resources on enforcement of mergers. Limited focus on Governance and Restrictive Trade Practices

## *Key Events*

- 1983 – Closer Economic Relations
- 1990 – Misuse of market power replace antidumping
- 2004 – Australian Prod Com report on Trans- Tasman Competition Policy rejects policy harmonisation or merger of authorities
- Ongoing dialogue and development
- 2007 – Single Track merger process (separate decisions)
- 2007 – Assist other CA investigation
- 2009 – Single Economic Market – including cross appointment of Associate Commissioners
- 2010 – mutual recognition of Court decisions
- 2015 - Australia competition policy review

# No one size fits all or best practice!



# So putting it all together: lessons learnt

## Why IRC?

Different Imperatives

## What focus?

Initial mutual gain

Be selective

Start small keep moving

New easier than existing

## What type/locus?

Consider all types

Use the 80/20 rule

Diminishing returns

## What are the drivers?

Membership, Leadership,  
Secretariat, Relationships,  
Trust, Commitment

## What are the enablers?

Political & legal mandate,  
Power imbalance addressed,  
Resourcing, Capability,  
Stakeholder engagement

Lessons Learnt: What's common is 'it's the soft stuff that's the hard stuff'

## Critical Drivers

1. Trust and relationships
2. Leadership
3. 'Honest broker' secretariat
4. Sustained commitment

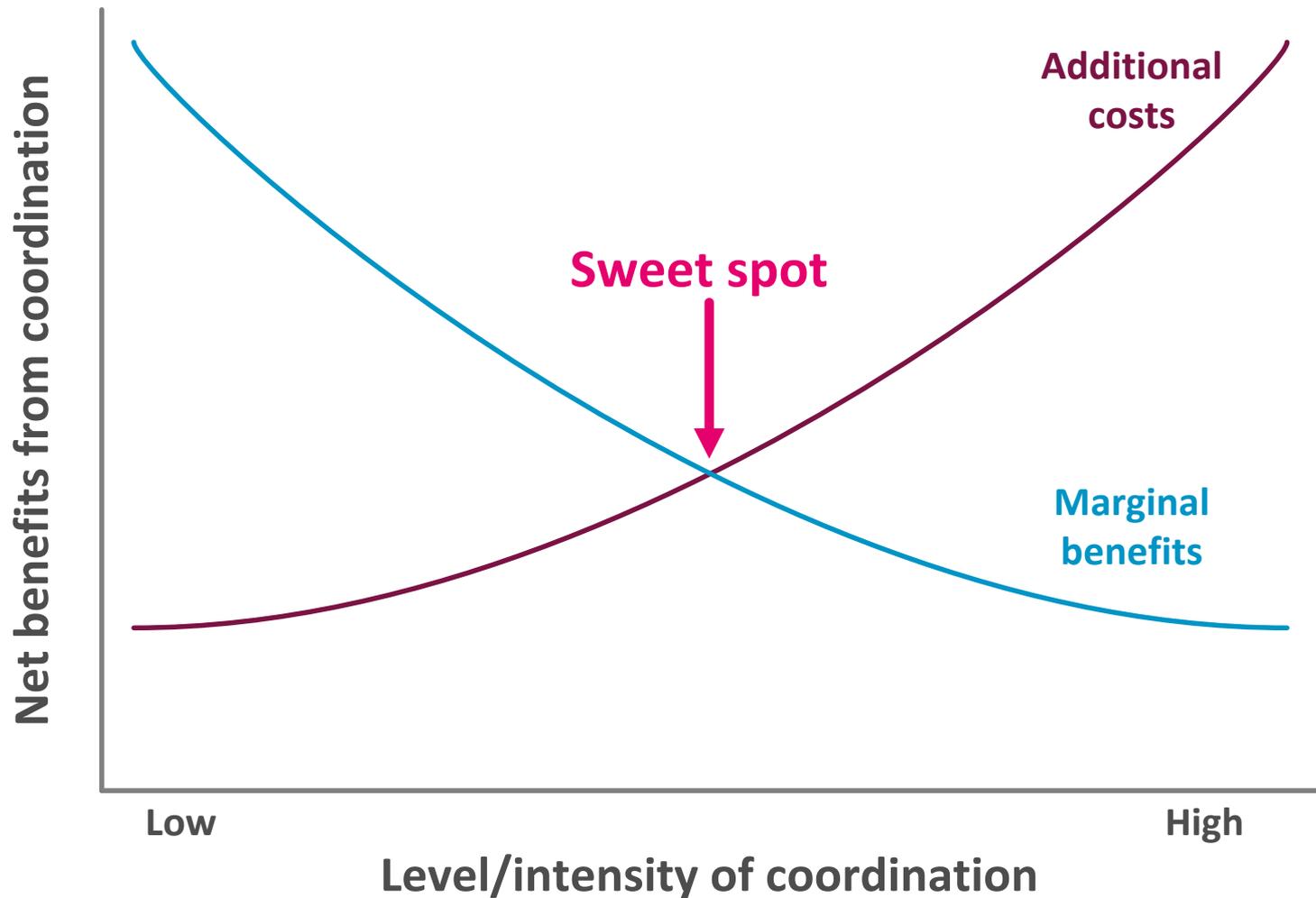
## Supporting Conditions

- Political mandate
- Legal mandate
- Dealing with power imbalances

What's common is 'It's the soft stuff  
that's the hard stuff'



# The holy grail is finding the IRC sweet spot



**YOUR QUESTIONS ??????**

# SUPPLEMENTARY INFORMATION

# IRC is a specific example of government cooperation generally

My agency is involved in a range of “*cooperation activities*”:

- *domestically (i.e. with local government, and with other regulators..)*
- *regionally in the Pacific (...with capability building & ....in ....international co-operation regimes),*
- *in the Asia Pacific across agencies (a much ‘softer’ network..)*
- *internationally as part of an international organisation which drives policy and operational activity around the globe.”*

# ASEAN IP

- Ambitious start – Top down *IP Harmonisation EU* style – ‘a continent too far’
- Reset – bottom up *IP interoperability with international accession*
- Mandate – aspiration statements regularly refreshed
- Multiple work strands: capacity building, ASEAN IP Direct (online IP info), non-binding use of others patent search

## Key Events

- 1995 WTO Uruguay rounds includes TRIPs
- 1998 Hanoi Plan of Action Plan (1999- 2004) – top down
- 2004 ASEAN IP Action Plan (2005-2010) – bottom up
- 2011 ASEAN IP Rights Action Plan (2011-15) – IP Treaty accession largely completed
- 2016 ASEAN IP Rights Action Plan (2016-25) – unitary IP title back on the agenda

# Asian Regional Funds Passport Initiative: ten years in the making!



*ARFPI - Mutual recognition of fund licensing allowing managed fund to be offer to retail investors in other passport member economies*

- 2009 - The Johnson report leads to Australian Treasury led initiative
- 2010 - APEC Finance Ministers launch APRI as an exploratory process.
- 2010 - Series of exploratory meetings leading to a core working group (with a changing composition) of the most committed countries.
- 2013 - Australia, Korea, New Zealand and Singapore sign a Statement of Intent and Framework
- 2014 - APEC PSU CBA published
- 2016 - Memorandum of Cooperation signed by Australia, Japan, Korea, New Zealand and Thailand.
- 2019 - Planned launch: Australia, Japan, Korea, Malaysia, New Zealand, and Thailand.

# ASEAN Cosmetics Directive

- Harmonisation EU style closely tracking the EU directive
- ‘first concrete instances of economic integration between ASEAN countries’
- All ASEAN member states adopt the Cosmetics Ingredients Listings based on the EU Cosmetics Directive

## Key Events

- 1998 Cosmetics Products Working Group established
- 2003 ASEAN Cosmetics Directive (Phase 1 voluntary)
- 2011 Final ratification of ASEAN Cosmetics Directive (Phase 2 mandatory)
- 2013 – Complete adoption into ASEAN domestic law

# Non-Case – the failure of Trans-Tasman Therapeutics



- Joint regulator of medicines and medical device safety
- replace Therapeutic Goods Administration (Australia) & Medsafe (NZ)
- Unified policy regime and regulatory practices

## *Key Events*

- 2003 – Treaty Signed
- Ongoing dialogue and development close to completion
- 2007 – on hold due to NZ's stance on complimentary medicines
- 2008 – New Zealand carve out for complimentary medicines
- Repeated joint Prime Ministerial commitment (No. 1 priority for deepening TT relationship)
- 2011 – Statement of Intent reaffirmed commitment
- 2013 – Change of Government in Australia
- 2014 – Joint decision **not** to proceed