

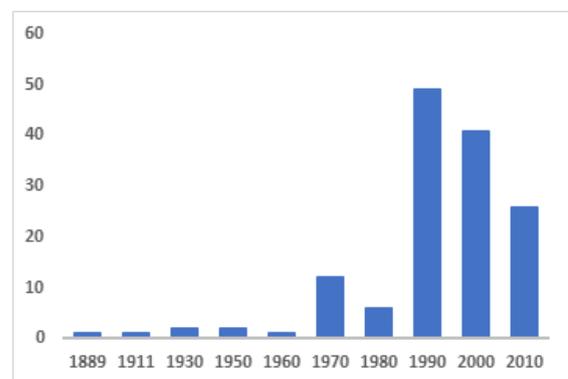
Regulators are the new diplomats – the role of international regulatory cooperation in a post-COVID world

- The last 40 years have seen rapid growth in international regulatory cooperation (IRC) as government regulators increasingly work together.
- New research (Gill 2020) has highlighted how IRC is highly pervasive in the Asia -Pacific region. A survey found New Zealand is deeply embedded in a complex web of arrangements with some regulatory agencies involved in a mix of bilateral, sub-regional and regional links as well as an international organisation.
- IRC takes a wide range of forms: much of this cooperation occurs outside of formal free trade agreements and the WTO Technical Barriers to Trade (TBTs) regime and often in informal trans-government engagements, such as communities of practice.
- With growing uncertainty about international trade policy, the imperative for IRC is heightened: looking ahead most long-term drivers of IRC will continue to operate while Coronavirus has highlighted the importance of the role IRC can play

The last 40 years have seen rapid growth in international cooperation as government regulators increasingly work together

Cooperation among 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 established 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 draws on the Organisation for Economic Co-operation and Development (OECD) dataset to show that, while IRC is not new, IRC networks have grown rapidly in recent decades.

Figure 1 New IRC networks established each decade



Source: Gill (2020) from Abbott, K. Kauffmann C and Jeong-Rim Lee

Growing interdependence reflects a range of factors. There are economic drivers, such as the growth in global supply chains driven by globalisation and the rise of multinational corporations alongside pressures to reduce the barriers to trade. There are also technological developments such as digitisation and the emergence of the internet as well as geo-political imperatives, for example, the development of regional trading blocks, such as the European Union.

New ways of working – regulators are the new diplomats

This growth has led to the proposition that what is emerging in international relations is a new style of global governance (see Slaughter 2004). This involves judges and legislators as well as regulators working directly with their foreign counterparts through sectoral or regional specific networks. Officials are engaging on a wide range of issues as they exchange information and share their experience around policies, law and regulatory enforcement.

Rather than traditional ‘intergovernmental’ state-to-state relationships mediated through formal treaties, international organisations and foreign affairs ministries, IRC often occurs in more informal networks. What is striking about these ‘trans-governmental’ network arrangements are that they are less visible and more under-the-radar than more traditional ‘intergovernmental’ state-to-state relationships or supranational agreements. Anne-Marie Slaughter (2004, p63) 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”*.

New Zealand is deeply embedded in a complex web of IRC arrangements

New Zealand has a long history of actively engaging in international cooperation of various types. As a small, reasonably open, and developed economy, New Zealand is largely a rule-taker, and thus has much to potentially gain from IRC. A number of factors 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 cooperation
- III. globalisation—increasing emphasis is paid to international regulatory interoperability as New Zealand’s size means that it not effective to implement stand-alone regulatory regime designs that do not interface with other countries’ systems
- IV. agility—as a small flexible government, agencies attempted to shape ‘what to do’ rather than ‘be done to’ and build coalitions of the willing.

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. The imperatives for IRC in New Zealand 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.

Detailed case studies on regulatory cooperation¹ (Gill 2018) highlighted how the development of IRC is highly path-dependent, with quite different arrangements in apparently similar sectors. One important distinction is 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’.

International regulatory cooperation takes a diverse range of forms

IRC can range from unilateral recognition by adopting of another country’s regulatory settings or standards at one end of the spectrum, through to harmonisation of policies and practices at the other. In between there is a range of forms, shown

¹ The case studies discussed in this Insight concern trans-Tasman competition law, Asia Region Funds Passport and two ASEAN examples, on intellectual property and cosmetics. In addition, it draws on the author’s experience with the failed attempt to establish a joint regulator with Australia on Therapeutic products.

in Figure 2, that increase in difficulty as one moves from left to right. The easiest types of IRC to support are relatively informal trans-governmental engagements, such as communities of practice. For example, APEC hosts a range of informal fora where regulators exchange of information. More structured formal intergovernmental agreements, such as mutual recognition

agreements covering standards and conformity assessments or mutual recognition of rules, require more investment and support going forward. The Trans-Tasman Mutual Recognition Agreement provides for the recognition of the decisions of respective regulatory regimes as well as conformity assessment procedures.

Figure 2 The IRC continuum



Source: Gill 2018

Practitioners preferred 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.

New Zealand practitioners took a generally positive view of IRC

New Zealand government officials, like their counterparts in ASEAN countries, took 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 New Zealand respondent observed (Gill 2020, p107),

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'.*

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.

Concerns about policy sovereignty was one of the major barriers to international regulatory cooperation

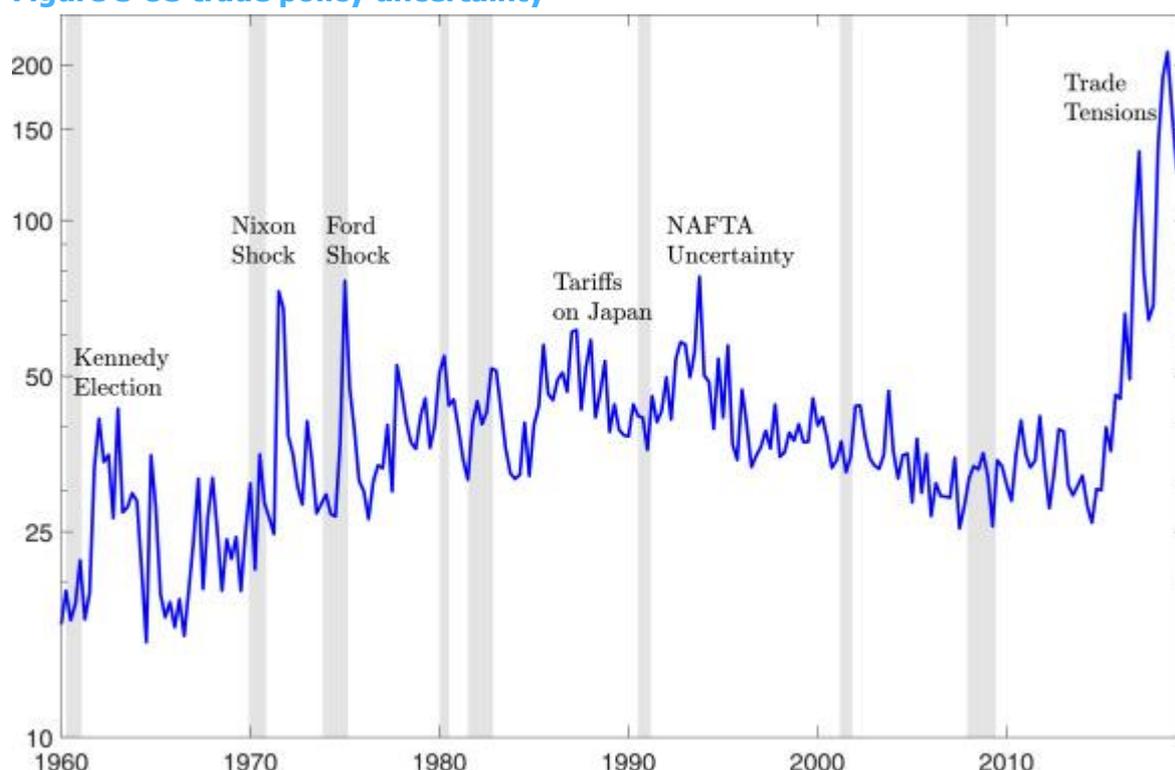
New Zealand practitioners were nearly unanimous in supporting the proposition that IRC strengthens the capacity of states to deliver effective regulation. According to this view, the decision to engage in IRC would increase the effective exercise of regulatory sovereignty. The same people identified public concerns about eroding the perception of regulatory sovereignty as a major

obstacle to IRC. A major constraint was the risk of a lack of public legitimacy to pursue a more active IRC agenda. 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.

There is a potential disconnect between the overwhelmingly positive view of IRC expressed by practitioners and the wider New Zealand public’s awareness and appetite for IRC. We will return to explore the vexed issue of policy sovereignty in the next Insight.

International regulatory cooperation in a more uncertain world

Figure 3 US trade policy uncertainty



Source: Caldara et al 2019

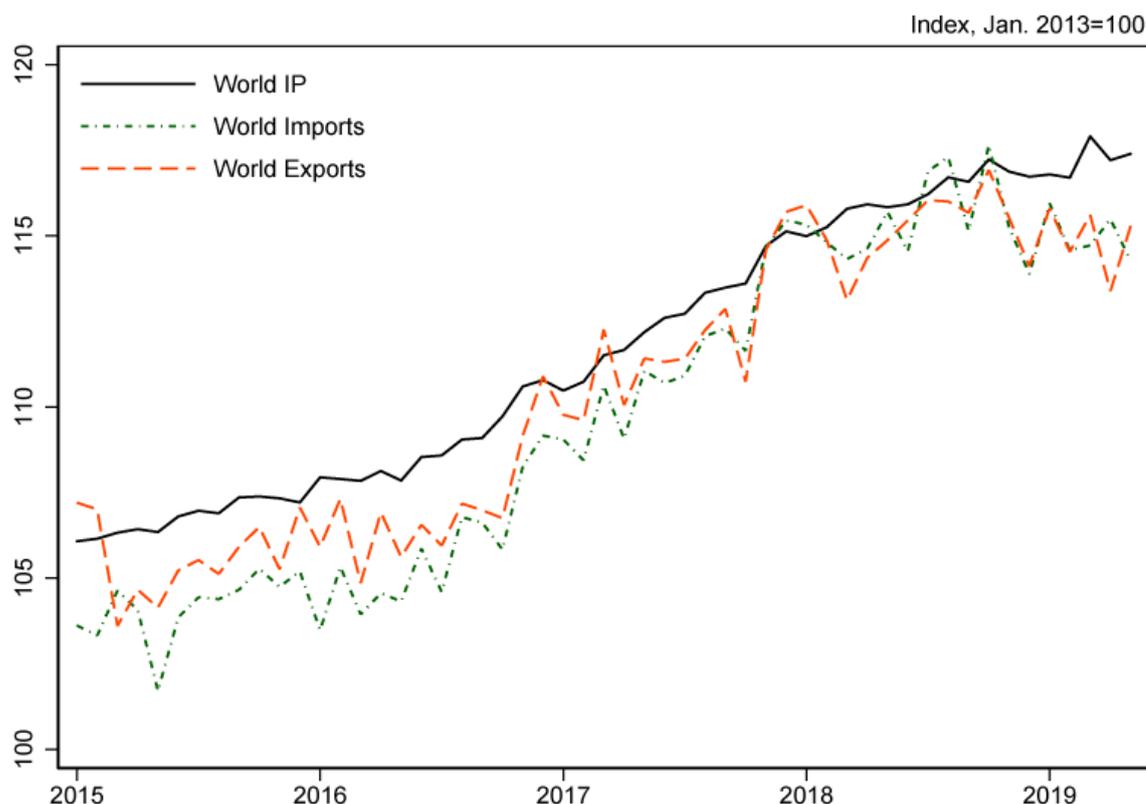
Uncertainty around the international economic outlook was increased even before Coronavirus. Figure 3 shows the US Federal reserve measure of US Trade Policy Uncertainty based on citations of trade uncertainty in publications. While volatile it

shows an unprecedented sustained spike in trade tensions under the Trump administration.

This uncertainty has contributed to the decoupling of trade from output growth – so called deglobalisation shown in Figure 4 – with world

trade levelling off in 2019 while industrial output continued to expand until the Coronavirus epidemic (Caldara 2019).

Figure 4 Decoupling of world trade from output growth



Source: Caldara et al 2019

Limited impetus for IRC from multilateral agreements

The disengagement by the United States from its traditional leadership role on international economic issues is reflected in the withdrawal from TPP as well as repeated threats to withdraw from the WTO (and the WHO). Together with the ongoing strategic competition between the United States and China, this has stalled progress on further multilateral liberalisation. As a result, there will be less impetus for IRC from the multilateral agreements that provide for widening and deepening regulatory cooperation.

Practitioners emphasised that in the future they expected a continued drive for enhanced and deepened IRC. There were a range of factors, both economic (e.g. growth in global supply chains,

digitisation, and pressure to reduce TBTs) as well as geopolitical developments. 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*' (Gill 2020, p108).

Coronavirus has highlighted the role of international regulatory cooperation in a more deglobalised world

Looking ahead, it is important to bear in mind the old Danish proverb that "*It is difficult to make predictions, especially about the future*". That said it is easy to overestimate the impact of major events. While the COVID-19 pandemic may

accentuate some of the trends underway, it does not appear that the pandemic has fundamentally changed the drivers of IRC.

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

In a world characterised by increased international trade uncertainty and geopolitical tensions, regulators as the 'new diplomats' will have an important role to play.

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