
C Overseas models of mutual recognition

Mutual recognition, according to Nicolaïdis (1996), involves the agreement of two or more participating jurisdictions to the transfer of regulatory authority from the jurisdiction where a transaction takes place to the jurisdiction from which a product, person or service originates. The participants do this in recognition of the essential compatibility or acceptability of one another's regulatory regimes (Nicolaïdis 1996). While this describes the general principle of mutual recognition, specific mutual recognition arrangements can take a variety of forms and differ widely in terms of coverage and implementation.

This appendix outlines mutual recognition arrangements in Europe, Canada and the Asia Pacific Economic Cooperation (APEC) region.¹ Sections C.1 and C.2 examine the arrangements for goods and occupations, respectively, in the European Union (EU). Section C.3 briefly covers other European countries and bilateral arrangements between European countries and third parties. Section C.4 looks at the Canadian mutual recognition model. Finally, Section C.5 considers mutual recognition arrangements in the APEC region.

C.1 European Union — goods

Goods traded within the European Union are classified as 'harmonised' or 'non harmonised'. Harmonised goods are defined as those for which one set of harmonised standards or product requirements applies throughout the European Union and replaces national product regulations. These goods represent about 75 per cent of goods traded in the European Union (New Europe 2008). The

¹ A country not considered in this chapter is the United States (US). According to Osborne (2002), the US has pursued mutual recognition and harmonisation only to a very limited extent, with regulations, standards and conformity assessment within the country being fragmented and decentralised in nature. There are limited mutual recognition aspects in the North American Free Trade Agreement between the US, Canada and Mexico. The US is also party to a mutual recognition agreement on conformity assessment with the EU, as mentioned in section C.3 of this appendix, and to APEC arrangements as mentioned in section C.5.

remaining 25 per cent are non harmonised goods, which are subject to the mutual recognition principle as described below.

Non harmonised goods

Goods that have not been harmonised across the European Union are subject to mutual recognition. Under the EU model, the mutual recognition principle requires that a product that is lawfully marketed in one EU member state be allowed to be marketed in any other member state, even if it does not fully comply with the latter jurisdiction's technical product requirements (EC 2008e).

This principle is established under the European Community Treaty and has developed through case law following the *Cassis de Dijon* decision of the European Court of Justice (ECJ) (Goddard 2003).

Articles 28–30 of the Treaty provide for the free movement of goods within the European Union by prohibiting EU member states from maintaining or imposing intra-EU trade barriers, except in special circumstances. Specifically:

- Articles 28 and 29 prohibit quantitative restrictions on imports and exports between member states, as well as any measures having equivalent effect to quantitative restrictions.
- Article 30 makes an exception for measures justified on grounds of protecting public health and safety or the environment, as long as such measures do not amount to arbitrary discrimination or a disguised restriction on trade (EC 2008b).

In the *Cassis de Dijon* case of 1979, the ECJ ruled that a product recognised and approved for sale in one member state should be allowed to be sold in any other member state, without the need for additional testing or approval. Refusal of a product on the grounds of health and safety, the environment or consumer interests is legitimate as long as the refusal is 'proportionate to the risk posed by the product and [is] applied in a non discriminatory way' (EFTA 2007, p. 3).

Based on the Treaty provisions and case law of the ECJ, the mutual recognition principle has been interpreted to outlaw any measure that restricts intra-EU trade in goods except where a measure is generally applicable to all goods, regardless of origin, and:

- it is directed at a legitimate regulatory objective (e.g. public health and safety, the environment, consumer protection)
- it is proportional to that objective

-
- it gives effect to that objective in the manner least likely to impede the free movement of goods. (Goddard 2003, p. 7)

European Union member states can continue to impose national product requirements, as long as they meet the criteria above (non discriminatory, directed at a legitimate regulatory goal, proportionate and not unnecessarily trade restrictive). A member state that is planning to introduce regulations in a given product sector must notify the European Commission (EC) in advance, and the EC then assesses the draft national regulation to ensure conformity with the mutual recognition requirements (EFTA 2007).

Harmonised goods

Prior to 1985, all harmonised technical product requirements were set out in legislation. A number of product sectors continue to be regulated using this approach, including chemicals, fertilisers, cosmetics, pharmaceuticals and motor vehicles (EFTA 2007). Since 1985, legislative harmonisation has been largely restricted to regulations considered essential for the protection of health, safety and the environment (Osborne 2002).

Under the more recent system, termed the ‘new approach’ to harmonisation, EU directives for each product sector set out both the ‘essential requirements’ and the ‘harmonised standards’ applicable to that product sector:

- The essential requirements are mandatory, and relate to health, safety, and environmental outcomes. All EU member states are required to transpose the provisions of these requirements into their national legislation and to remove any national laws that conflict with these provisions.
- The harmonised standards are voluntary, and contain technical product specifications that represent one way to achieve compliance with the mandatory essential requirements. Manufacturers may choose to follow the harmonised standards, or apply any other standards that ensure compliance with the essential requirements. Harmonised standards are created by three European standards organisations: CEN (European Committee for Standardisation); CENELEC (European Committee for Electrotechnical Standardisation); and ETSI (European Telecommunications Standards Institute) (PC 2003).

According to the EC (2008g), a large proportion of products sold throughout the European Union in more than 20 product sectors is now covered under the new approach to harmonisation, including machinery, toys, medical devices, construction products and radio/telecommunications equipment.

In many cases, EU directives require that products receive third-party certification by conformity assessment bodies before being placed on the market, to ensure they comply with all essential requirements (EC 2008g). Under the ‘global approach’ to conformity assessment, introduced in the early 1990s:

- products are allowed to be tested and certified in any member state
- member states are responsible for regulatory oversight of testing and certification
- member states designate as ‘notified bodies’ the conformity assessment bodies they consider technically competent, and notify the EC of these bodies. Only ‘notified bodies’ are authorised to approve products
- certified products receive a ‘CE’ (Conformité Européenne) mark that guarantees free movement within the European Union without further conformity assessment (Osborne 2002).

Monitoring and enforcement

Monitoring and enforcement of the EU mutual recognition and harmonisation arrangements are carried out by surveillance bodies, national courts and administrative bodies and, in some cases, by the EU authorities themselves.

Member states are responsible for the implementation and enforcement of EU legislation under national law, and national courts and administrative bodies have primary responsibility for ensuring national authorities comply with EU law (EC 2008c). Market surveillance bodies monitor products on the market, to ensure compliance with the relevant directives (PC 2003). National courts have the power to issue orders to administrative bodies and annul a national decision, as well as to order a member state to compensate an individual for losses sustained as a result of infringement of EU law (EC 2008c).

The EC encourages individuals and businesses with a complaint about infringements of EU law to seek redress at a national level, as the issue may then be dealt with more quickly and directly. However, anyone may lodge a complaint with the EC against a member state for any regulation or measure considered to be in breach of EU legislation. If the EC believes that such a breach may indeed be occurring, it can open infringement procedures against the relevant member state by issuing a ‘letter of formal notice’ to the member state, requesting it to submit a response on the issue believed to be the subject of the infringement (EC 2008c). The EC may then issue a ‘reasoned opinion’ to the member state, which sets out the reasons why it considers there to have been an infringement of EU law and calling on the member state to comply with the relevant law within a specified period.

If the member state does not comply with the reasoned opinion, the EC can refer the case to the ECJ. The ECJ takes, on average, about two years to rule on cases brought forward by the EC, and will deliver a judgment stating whether there has been an infringement of EU law. However, it does not have the power to annul a national law that is deemed inconsistent with EU law, nor to force a member state to respond to an individual's request or compensate an individual for the adverse effects of an infringement. Rather, it is up to a member state to take whatever measures it sees fit in light of an ECJ decision (EC 2008c).

As an alternative to pursuing legal proceedings, a non judicial dispute resolution mechanism known as SOLVIT is available to individuals and businesses wishing to resolve disputes relating to EU law. The service, which began operating in 2002 and is provided free of charge, is coordinated by the EC and operates through centres in each member state. To use the service, an individual or business registers a complaint with the local SOLVIT centre. This centre then works with the SOLVIT centre in the jurisdiction where the problem has occurred to address the issue, with a target deadline of 10 weeks for finding a solution. According to the EC, SOLVIT has resolved 78 per cent of cases presented to it (EC 2008i), and the service was 'widely praised' by respondents to a public consultation on the EU internal market, although respondents also claimed that it is 'under-funded and under-publicised' (EC 2006c, p. 26).

Effectiveness of the arrangement and recent reforms

The EC has claimed that mutual recognition operates generally successfully for many products (Osborne 2002). However, the EC has also noted ongoing technical obstacles to intra-EU trade. As at 2003, many businesses across the European Union still faced barriers to trade in the form of national technical regulations and conformity assessment. Approximately 6000 draft national technical regulations had been notified to the EC from 1992 to 2003, and the number of open cases in the ECJ for mutual recognition infringement had increased from 700 to nearly 1600 over that period (PC 2003).

It is unclear whether the situation has improved in the last five years. In 2006, the EC conducted a public consultation on EU single market policy. The consultation drew complaints of over-regulation and 'gold plating' at the national level, with member states 'frequently' adding national product requirements to EU-level standards on the basis of 'meeting additional environmental and social concerns' (EC 2006c, p. 11). Respondents' opinions were divided on the effectiveness of the mutual recognition arrangements — they generally felt that minimum harmonisation approaches allowed trade barriers to remain, but that stronger

harmonisation may be difficult to achieve and could lead to the imposition of excessively stringent rules (EC 2006c).

In February 2008, reflecting on the views aired in the 2006 public consultation, the EC noted that the technical barriers posed by national product requirements continue to hinder intra-EU trade (EC 2008g). It acknowledged that although, legally, member states can only refuse entry to goods lawfully sold in other member states in exceptional circumstances, in practice, the vast range of national product requirements still creates technical barriers for businesses and has led to ‘substantial obstacles to the free movement of goods’ (EC 2008g, p. 4). In particular, the EC noted that consultation had revealed:

- a widespread lack of awareness among businesses and national authorities of the principle of free movement of goods
- legal uncertainty about the burden of proof where a member state refuses entry to a product
- difficulty for businesses in determining, *a priori*, whether they can lawfully sell their products in another member state with different technical requirements (EC 2008g).

The EC also noted inconsistencies across the European Union in the standards of conformity assessment and market surveillance. As mentioned earlier, it is the responsibility of member states to select which conformity assessment bodies are sufficiently competent to become recognised notified bodies. According to the EC, member states differ in the methods and stringency by which they designate notified bodies. While some perform the selection process directly through their public administration, others rely on national accreditation bodies to independently evaluate the competence of conformity assessment bodies. Many, but not all, national accreditation bodies coordinate at the EU level into the EA (European cooperation for Accreditation). However, as the EC (2008g, p. 2) noted, not all notified bodies are selected by accreditation and not all accreditation bodies are members of the EA, and the resultant variation in standards of notified bodies has led to an ‘unlevel playing field’ for goods across the EU market.

In addition, differences in the extent of market surveillance between member states and a lack of transnational coordination means that surveillance information is not always effectively shared across jurisdictions. According to the EC, some manufacturers have taken advantage of the resulting gaps in market surveillance, and consequently there are concerns that ‘large numbers of non compliant (and potentially dangerous) products reach the market each year’ (EC 2008g, p. 2).

Finally, respondents to the EC's public consultation complained that the enforcement procedures for dealing with infringements of EU law were 'unacceptably slow' (EC 2006c, p. 26).

In 2007, in response to some of these concerns, the EC proposed a package of reforms to enhance the operation of the EU goods market. The reforms, approved by EU member states on 23 June 2008, seek to improve the effectiveness of market surveillance and conformity assessment, and reduce barriers to trade in non harmonised goods caused by differing national product requirements (EC 2008d). The reforms will:

- shift the burden of proof for market access from manufacturers to member states. If a member state intends to refuse entry to a product on the basis of national technical requirements, it will be required to talk to the manufacturer of the product and give detailed reasons for denying market access
- establish 'product contact points' in each member state, charged with the task of providing information on national technical rules to businesses as well as to national authorities in other member states
- introduce a common legal framework for accreditation of conformity assessment bodies at the EU level, with the EA as the basis for the new framework
- introduce new rules on market surveillance to improve coordination between jurisdictions
- clarify the meaning of the CE mark and establish it as a community collective trademark (EC 2008d, 2008g).

At this stage, it is too early to assess whether these reforms will be sufficient to address the problems affecting mutual recognition of goods in the European Union.

C.2 European Union — occupations and services

Freedom of movement of persons within the European Union is established under the European Community Treaty and in European case law. Article 39 of the Treaty provides for the free movement of workers within the European Union, without discrimination based on nationality. Following case law, prohibitions on entry to the country, treating migrant workers less favourably than domestic workers, or the application of any 'indistinctly applicable' measures that affect essentially migrant workers are all considered breaches of Article 39 (PC 2003).

Qualifications

To enhance freedom of movement of workers, the European Union also introduced mutual recognition of professional qualifications. In a parallel manner to the arrangements for goods, some occupations have had their training requirements harmonised across the European Union, while remaining occupations are subject to a general system of mutual recognition.

The current arrangements for the mutual recognition of professional qualifications are set out in Directive 2005/36/EC, which was adopted on 7 September 2005 and came into effect on 20 October 2007. This directive consolidates and replaces 15 separate EU directives covering all professional qualification recognition rules except for lawyers, activities in the field of toxic substances and commercial agents (EC 2008a).

Under Directive 2005/36/EC:

- Training requirements are harmonised across EU member states for doctors, nurses, midwives, veterinary surgeons, dentists, pharmacists and architects. As a result, there is automatic recognition of qualifications and no comparison of qualifications is permitted for the purpose of professional recognition.
- For workers in selected manufacturing, trades, personal services and other occupations listed in Annex 4 of the Directive, mutual recognition is based primarily on the level of professional experience attained, and recognition is automatic once an applicant has professional experience of the duration specified. Consequently, no comparison of qualifications is permitted for the purpose of professional recognition.
- For workers in the above category who do not have the required duration of professional experience, and for workers in non harmonised occupations, the ‘general system’ of mutual recognition applies. Under this system, national authorities receiving an application for professional qualification recognition from a worker of another member state first check whether the applicant’s training is equivalent to that required in the home jurisdiction. If there are substantial differences in the levels of training, the next step is to assess whether the applicant’s other educational and professional experience can compensate for the differences. If not, the national authority may choose to impose a ‘compensatory measure’ — such as an aptitude test or training period — on the applicant, to achieve equivalence (EC 2008h).

If an applicant’s qualification is successfully recognised under the general system of mutual recognition, the applicant is given a certificate of equivalence under

Directive 2005/36/EC. This certificate attests that the worker has qualifications equivalent to a worker of that occupation in the home jurisdiction (EC 2008h).

Services

While the above arrangements cover mutual recognition of professional qualifications, the EU model also includes a form of mutual recognition of services. Freedom of establishment and freedom to provide services across the European Union are general rights established under the European Community Treaty. Mutual recognition of services aims to facilitate the cross-border provision and use of services by businesses throughout the European Union. It also seeks to promote the ability of EU service providers to become established in other member states (for example, through affiliates or subsidiaries). An early example of the application of the principle of mutual recognition to the provision of services in the EU was the 2000/31/EC Directive on the cross-border provision of e-commerce (EC 2000).

In 2004, the EC tabled a proposal for a new Directive on Services in the Internal Market ('Services Directive'),² designed to achieve a single economic market for trade in most services throughout the European Union (EC 2006a).³ The Services Directive sought to prohibit national-level service industry regulations, except under certain circumstances. Under the directive, individuals and companies that are allowed to provide a service in one EU member state should be free to provide the same service in any other member state, with little (if any) legal or administrative restrictions. The Directive arose out of the European Union's so-called Lisbon Agenda, agreed upon in 2000 and intended to increase the economic competitiveness of the Union. Freeing up the internal market for services was regarded as holding great economic potential in that respect (box C.1).

² Also known as the 'Bolkestein Directive', after its main proponent, Frits Bolkestein, EU Commissioner for the Internal Market at the time.

³ All services performed for an economic consideration are covered by the Directive, except for: financial services; electronic communications networks; transport and port services; healthcare and social services; audiovisual services; gambling activities; and temporary employment agencies. Some of these excluded services are covered by other European Commission directives.

Box C.1 Economic impact of the EU Services Directive

In the European Union (EU), services account for around 70 per cent of GDP and employment, and for 95 per cent of new jobs. Yet services only comprise 20 per cent of cross-border trade. The Services Directive, by facilitating trade in services, can be expected to have significant economic effects.

De Bruijn et al. (2008) modelled the economic impact that the Services Directive, with and without the country of origin principle (CoOP), might have on the economies of the European Union. In their approach, the impact arises as a result of the reduction in regulatory heterogeneity between countries that the Directive would foster. The authors argue that bilateral regulatory heterogeneity between two trading partners is a particularly important source of non-tariff barriers to trade in services, because producers are faced with the need to adjust their business model to operate in another market.

Using computable general equilibrium simulations, de Bruijn et al. estimate that the Directive would increase intra-EU trade in services (excluding transport, real estate and government services) by between 30 and 62 per cent (19 and 38 per cent without the CoOP). Increased trade in services would, in turn, generate positive macroeconomic effects: total EU GDP would increase by between 0.3 and 0.7 per cent, and consumption by between 0.5 and 1.2 per cent (around 40 per cent less without the CoOP). According to the authors, these effects are due to: (i) improved resource allocation; (ii) improved terms of trade; and (iii) income effects.

Significantly, the authors find that, contrary to some assertions made in the course of the public controversy surrounding the Services Directive, liberalisation of trade in services would lead 'new' European countries such as Poland and the Czech Republic to redirect their output from services to manufacturing. Thus, the possibility that the directive would result in labour services being 'dumped' on Western European countries seems unlikely.

Sources: de Bruijn et al. (2008); Single Market News (2008).

A key element of the original proposal was the 'country of origin' principle (CoOP), which holds that service providers that meet the regulatory standards of their home member state should not be required to meet alternative or additional standards in the country where the service is delivered. This principle — effectively allowing total 'home country control' — rests on the mutual recognition by member countries of each other's regulatory standards, and was regarded as a preferred alternative to lengthy harmonisation of those standards.

However, the draft Services Directive generated substantial protest and debate across the European Union (Broughton 2004; Weiler 2007; Nicolaïdis and Schmidt 2007). Particular controversy surrounded the CoOP. Critics feared that application of this principle would lead to service providers moving their operations to those member states with the least stringent social and environmental standards

(Broughton 2004). Conversely, service providers from those states might flood into other countries, where they would undercut the conditions of local providers (Nicolaidis and Schmidt 2007).

Following this controversy, the proposed directive was substantially amended before its adoption by the European Parliament on 12 December 2006. The CoOP was removed, and the ‘freedom to provide services’ reiterated (Weiler 2007). Under this principle, set out in Article 16 of the amended directive, member states may continue to impose local regulations on service providers from other jurisdictions, but only where these regulations are: non discriminatory; justified for reasons of public policy, public security, public health or environmental protection; and proportional to their objectives (EC 2006a). The final version of the Directive has been described as a ‘managed’ form of mutual recognition of services regulation, whereby host countries retain a significant ability to regulate the provision of services by foreign providers (Nicolaidis and Schmidt 2007).

Moreover, the directive does not affect labour laws, employment and working conditions. The treatment of foreign workers operating on a *temporary basis* in the host jurisdiction is governed by another EC Directive — the Posting of Workers Directive (PWD) — which extends to temporary foreign workers all the benefits accruing to local employees, such as minimum wages (Vogt 2005; Nicolaidis and Schmidt 2007).⁴

Member states are required to implement the provisions of the Services Directive by December 2009 (box C.2).

⁴ Self-employed foreign workers are, however, exempted from the PWD.

Box C.2 **Mutual evaluation under the Services Directive**

Following the adoption of the final Services Directive, a three-year implementation process was initiated, during which member states are expected to:

- 'transpose' provisions of the Directive into national law
- set up 'Points of Single Contact' for service providers
- allow for electronic completion of all administrative procedures
- put in place a comprehensive system of administrative cooperation between national administrations
- review and adapt their administrative and legal requirements.

The last of these tasks has been termed 'mutual evaluation'. It requires, as a first stage, member states to 'conduct a screening of their legislation in order to ascertain whether requirements reserving access to certain activities to particular providers exist in their legal systems' (Messlerin 2007, p. 25). This process should result, during the implementation period, in the dismantling of national regulatory requirements that are contrary to the European Treaty's principles of freedom of establishment and free movement of services (based, in some cases, on rulings by the European Court of Justice). The requirements targeted for abolition include all discriminatory requirements (for example, place of establishment, residence, domicile or principal provision of the service activity) and some non-discriminatory requirements that can constitute a barrier to trade in services (for example, obligations to have a certain qualification to hold shares in a company or for a provider to take a specific legal form) (EC 2006a).

The systematic regulatory evaluation process now underway in all EU countries will culminate, at the end of 2009, in a series of individual national reports, summarising the results of the screening undertaken. Those reports will then be made available, in a second stage of the mutual evaluation process, to all other member states (and interested parties), for comment within six months. Depending on the results of the mutual evaluation exercise, further reform initiatives — including towards more harmonisation — may then be proposed by the European Commission.

Sources: EC (2006a); Messerlin (2007).

C.3 Other European countries and bilateral arrangements

EEA-EFTA member states

The mutual recognition arrangements in the European Union cover all countries in the European Economic Area (EEA). The EEA was established in 1994 and currently includes all 27 EU member states as well as Norway, Iceland and Liechtenstein. These latter countries constitute three of the four members of the European Free Trade Association (EFTA), with Switzerland the fourth EFTA member state. Norway, Iceland and Liechtenstein are also known as EEA-EFTA member states. The EEA allows these countries to participate in the EU internal market without requiring EU membership. Switzerland has not chosen to be part of the EEA, and has its own bilateral mutual recognition arrangements with the European Union.

For non harmonised goods, as described above, EU member states planning to introduce regulations in a given product sector must notify the EC in advance. An EEA-EFTA member state must notify the EFTA Surveillance Authority (ESA). Together with the EC, the ESA assesses the validity of the draft national product regulations.

While the general arrangements for mutual recognition of goods, services and qualifications apply to the EEA-EFTA states, certain areas of EU law do not extend to these states, or apply only in part. These include laws on veterinary and phytosanitary products, customs laws, and agricultural and fisheries laws (EFTA 2007).

Bilateral arrangements between European countries and others

The EU member states also have bilateral mutual recognition agreements with a number of third countries, including Australia, New Zealand, Canada, the United States of America (US), Japan and Switzerland (EC 2008f).

In contrast to the broad-based mutual recognition schemes in place within the European Union and Canada, these agreements are limited in terms of both scope and coverage. Specifically, they provide for mutual recognition of designated conformity assessment bodies (CABs), and do not extend to mutual recognition or harmonisation of standards or regulations. They also apply to a limited number of product sectors specified in each agreement, such as electromagnetic compatibility, telecommunications equipment, machinery and medical devices.

Each of these mutual recognition agreements sets out the conditions under which the EU member states and the third country will accept test reports and certifications issued by the other party's designated CABs.

The three EEA-EFTA member states have negotiated parallel mutual recognition agreements with the same third countries as have the EU member states, to preserve homogeneity and free movement of goods within the EEA market (EFTA 2007).

C.4 Canada

The Canadian Agreement on Internal Trade (AIT) has been in force since 1995. The Federal Government and all provincial and territorial governments are signatories to the AIT, the aim of which is to:

... reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. (AIT, Article 100)

The AIT includes six general rules — set out in Articles 400–407 — that prohibit governments from imposing measures that restrict trade, except in special circumstances. Articles 401 and 402 provide for equal treatment of, and free movement of, all Canadian persons, goods, services and investments. Article 403 requires that government laws and regulations do not create an obstacle to trade. However, Article 404 offers an exception for measures that have a 'legitimate objective' (such as protecting public health and safety or the environment), provided that they are not unnecessarily trade restrictive.

The six general rules apply to ten sectors of the Canadian economy,⁵ and further rules governing each of these sectors are set out in the sector-specific chapters of the AIT. An eleventh sector-specific chapter, relating to the energy sector, is still under negotiation (Industry Canada 2007b).

The coverage of the AIT is limited to these ten sectors and, in this sense, the agreement has been cited as an example of 'case-by-case' liberalisation (PC 2003), compared with the MRA and TTMRA models in which all goods are included unless specifically excluded or exempted. On the other hand, the scope of the AIT in relation to goods is broader than that of the MRA and TTMRA, in that the agreement would cover regulations relating to use of goods and manner of sale (NSW Government, sub. 55). That said, like the European Union model, the AIT

⁵ These sectors are: procurement; investment; labour mobility; consumer-related measures and standards; agricultural and food goods; alcoholic beverages; natural resources processing; communications; transportation; and environmental protection.

provides an ‘out’ for jurisdictions to impose their own regulations as long as these regulations are directed at legitimate objectives. In contrast, the MRA and TTMRA require governments to seek a temporary exemption if they wish to avoid the application of mutual recognition to a particular product. For this reason, the Canadian model has been described as ‘weak’ next to the MRA and TTMRA (NSW Government, sub. 55, p. 23).

Chapter 7 of the AIT sets out requirements relating to labour mobility, and states that any worker qualified for an occupation in one Canadian jurisdiction should have access to employment opportunities in that occupation in any other Canadian jurisdiction (Article 701).

Approximately 20 per cent of Canadian workers work in regulated occupations or trades (Human Resources and Social Development Canada 2006a). The AIT does not provide for automatic or universal mutual recognition of occupational registration or licences. Instead, under Article 708, participating jurisdictions are required to:

- mutually recognise the qualifications of workers from other jurisdictions
- reconcile differences in occupational standards in specific regulated occupations, where this is possible.

To meet this latter requirement, governments must assess the occupational standards in their jurisdiction to determine where there is commonality with other jurisdictions, and then take steps to reconcile or accommodate differences in standards.

In the case of regulated professional occupations, many occupational regulators have found it convenient to codify these standards assessments and reconciliations in the form of occupation-specific mutual recognition agreements, although this is not required by the AIT. As at January 2007, 30 of 50 professional occupations regulated in two or more Canadian jurisdictions have created mutual recognition agreements that cover most regulated jurisdictions; 16 have agreements signed by all regulated jurisdictions, and the remaining four do not yet have mutual recognition agreements (Industry Canada 2007a). Terms and conditions stipulated in these mutual recognition agreements vary across occupations and so the establishment of such an agreement does not necessarily imply the removal of all barriers to labour mobility in that occupation (Human Resources and Social Development Canada 2001).

For regulated trades occupations, assessment and reconciliation of standards has taken place through the Interprovincial Standards Red Seal Program. This program was established to facilitate greater mobility across Canada for skilled workers by

encouraging standardisation of provincial training and certification programs. Under the Red Seal Program, qualified tradespersons who successfully complete an Interprovincial Standards Examination receive a Red Seal endorsement and can then practise their trade in any Canadian jurisdiction without further assessment. Interprovincial examinations for each trade are developed using National Occupational Analyses, which are created by industry representatives and identify the key tasks performed by workers in that trade. The Red Seal Program is administered in each province and territory under the guidance of the Canadian Council of Directors of Apprenticeship, and now covers 49 regulated trades (Human Resources and Social Development Canada 2006b).

Despite the AIT having been in force for more than a decade, there is evidence of continuing barriers to interprovincial trade in Canada. In a survey of nearly 200 Canadian companies undertaken in 2005, 94 per cent of respondents said that non-tariff trade barriers within Canada had some form of impact on their business and 41 per cent identified standards and regulations as a barrier to their ability to do business (Conference Board of Canada 2006).

A recent development has been the signing of an internal trade agreement between two Canadian provinces, Alberta and British Columbia, in April 2006. The Trade, Investment and Labour Mobility Agreement (TILMA) has the objective of creating a seamless internal market between the two provinces, which together account for over one-quarter of Canada's gross domestic product. The agreement came into force in April 2007 and is expected to be fully implemented by April 2009 following a two-year transition period (Government of Alberta and Province of British Columbia 2006).

Unlike the AIT, TILMA is comprehensive, applying to all government measures that affect trade, investment and labour mobility unless specifically exempted from the agreement. Certain areas of provincial regulation, such as taxation and water, are exempt from TILMA, as are measures aimed at protecting public health, safety and the environment (Government of Alberta and Province of British Columbia 2006). Another difference between the agreements is that TILMA provides for a binding dispute settlement mechanism whereas, under the AIT, governments are not required to implement dispute settlement findings made against them (Macmillan and Grady 2007). This feature, along with the 'all-in' approach of TILMA, has led to the claim that TILMA may eventually have a much more significant impact on internal trade for its participating jurisdictions than has the AIT (Macmillan and Grady 2007).

C.5 APEC

The Asia Pacific Economic Cooperation (APEC) group is an international forum consisting of 21 countries or areas — known as ‘member economies’ — in the Asia Pacific region, including Australia and New Zealand. Some examples of APEC-led mutual recognition initiatives follow.

Goods

The APEC Mutual Recognition Arrangement on Conformity Assessment of Electrical and Electronic Equipment (EEMRA) and the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (APEC TEL) are examples of limited mutual recognition of selected goods undertaken at a multilateral level. Under these arrangements, discussed below, the scope of mutual recognition is restricted to conformity assessment, rather than mutual recognition or harmonisation of standards or regulations.

Electrical and electronic equipment

The APEC EEMRA was announced in September 1999. The arrangement is based on the mutual recognition of test reports and certificates of conformity (based on the importing country’s requirements) issued by designated test facilities and conformity assessment bodies in other participating economies. The EEMRA aims to reduce duplicative testing and certification, which can add time and other costs to the export of goods, and to facilitate trade more generally (PC 2003).

The EEMRA has three levels of participation:

- Part I involves information exchange, enabling participating economies to familiarise themselves with each other’s regulatory systems. Member economies participating in Part I must provide — in a standardised format — information about their mandatory requirements on regulated electrical and electronic products, to assist exporters of these products in other APEC economies.
- Part II provides for product testing in the exporting country by designated test facilities, with test reports recognised by the importing country.
- Part III provides for the certification of products in the exporting country by designated certification bodies, with conformity accepted by the importing country (APEC 2008a, PC 2003).

Participation in Part I is a prerequisite for participation in either of Parts II or III.

Participation in Parts II or III requires an economy to appoint a ‘designating authority’, which is responsible for designating, suspending, removing suspension and withdrawing designation of test facilities and/or certification bodies in that jurisdiction. The designating authority also specifies the scope of the testing or conformity assessment activities that may be undertaken by designated test facilities or designated certification bodies.

The EEMRA is administered by a Joint Advisory Committee, which convenes representatives from each participating economy. The Committee provides a forum for discussing issues, sharing information and reaching decisions associated with the operation of the arrangement. It also plays a role in dispute resolution (APEC 1999).

As at August 2008, 16 of the 21 APEC member economies were participating in Part I (information exchange) of the EEMRA. Of these 16, five member economies were participating in Part II (mutual recognition of test reports) and four of these five were participating in Part III (mutual recognition of certification) (table C.1) (APEC 2008b).

Table C.1 Participation in the EEMRA, by date of commencement

<i>APEC member economy^a</i>	<i>Part I</i>	<i>Part II</i>	<i>Part III</i>
Australia	1999	2002	2002
Brunei Darussalam	2003	2007	2007
Canada			
Chile	2000		
China	1999		
Hong Kong, China	2000		
Indonesia	1999		
Japan	1999		
Korea	1999		
Malaysia	1999	2006	
Mexico			
New Zealand	1999	2003	2003
Papua New Guinea			
Peru			
Philippines	1999		
Russian Federation	2000		
Singapore	1999	2002	2002
Chinese Taipei	1999		
Thailand	1999		
United States			
Vietnam	2000		

^a Not all APEC members are participants in EEMRA. Empty cells denote non-participating APEC countries.

Source: APEC (2008b).

It should be noted that the participation of both Australia and New Zealand in all parts of the EEMRA (as indicated in table C.1) would not affect or replace the operation of the TTMRA. This is because participation in Parts II and III of the EEMRA implies mutual recognition only of conformity assessment to the importing country's own standards, not mutual recognition of each country's product standards as in the TTMRA.

Telecommunications equipment

The APEC TEL arrangement was endorsed by APEC Telecommunications and Information Industry Ministers in June 1998 and commenced in July 1999 (OFTA 2007). The arrangement provides for the mutual recognition of test results and equipment certification (based on the importing country's requirements) undertaken by accredited test facilities and conformity assessment bodies in other participating economies (ACMA 2007a).

Like the EEMRA, the APEC TEL arrangement seeks to facilitate trade among APEC member economies by streamlining testing and certification procedures and, hence, reducing the costs imposed by these procedures on exporters, importers and regulators. The arrangement extends to all equipment subject to telecommunication regulations, including wireline and wireless, terrestrial and satellite equipment. It covers electromagnetic compatibility and electrical safety aspects, as well as telecommunications aspects of this equipment (APEC 1998).

The APEC TEL arrangement has two levels of participation:

- Phase I involves the mutual recognition of test laboratories as CABs and mutual acceptance of test reports
- Phase II involves the mutual recognition of certification bodies as CABs and mutual acceptance of equipment certifications (OFTA 2007).

To participate in either or both phases of the arrangement, a jurisdiction must specify, and make available to all other participants, a list of its technical regulations relating to telecommunications equipment for which it will recognise the test reports and/or equipment certifications provided by other jurisdictions' CABs. Each participating jurisdiction appoints a 'designating authority' that is responsible for designating, listing, and limiting or withdrawing designation of CABs in that jurisdiction, and to recognise CABs in other participating jurisdictions.

Any two participating jurisdictions can then contact each other to exchange information on designated CABs and arrange for Phase I and/or II to be implemented between them. In this way, the APEC TEL arrangement has been

implemented through a series of bilateral agreements between participants to recognise each other's designated CABs in accordance with the agreement. For example, Australia has so far recognised CABs in the member economies of Canada, Chinese Taipei, Singapore and the United States, and designated Australian CABs are recognised by Canada, Chinese Taipei, Japan, Singapore and the United States (ACMA 2007b, 2008).

As of March 2008, 16 APEC member economies were participating in the APEC TEL arrangement: Australia; Canada; Chile; China; Chinese Taipei; Hong Kong; Indonesia; Japan; Korea; Malaysia; New Zealand; the Philippines; Singapore; Thailand; United States; and Vietnam (APECTEL 2008).

Occupations

Engineers and architects

The APEC Engineer Project and the APEC Architect Project are examples of limited mutual recognition of selected occupations undertaken at a multilateral level.

The projects were endorsed by the APEC Human Resources Development Working Group in 1997 and 2000, respectively. They aim to facilitate the international mobility of professional engineers and architects within the APEC region by establishing common criteria for the recognition of professional competence. Professional engineers and architects in each participating jurisdiction who are assessed as meeting these criteria are listed on the APEC Engineer Register or APEC Architect Register (APEC 2005).

Mutual recognition is limited in the sense that the arrangements do not remove the ability of participating jurisdictions to require additional assessment of registered engineers and architects before they are allowed to practise in the new jurisdiction. However, the intention is that such additional assessment would be restricted to jurisdiction-specific matters and that a period of sponsored practice in the jurisdiction may be more effective than further assessment (PC 2003).

As set out in the APEC Engineer Manual, to be eligible for registration as an APEC engineer, a person must be recognised as a professional engineer within an APEC economy, and must satisfy an authorised body in that economy that he or she has:

- completed an accredited or recognised engineering program, or assessed recognised equivalent

-
- been assessed within his or her own economy as eligible for independent practice
 - gained a minimum of seven years' practical experience since graduation
 - spent at least two years in responsible charge of significant engineering work
 - maintained continuing professional development at a satisfactory level (APEC 2000).

Similar eligibility requirements for registration as an APEC architect are set out in the APEC Architect Operations Manual. A person must be recognised as a professional architect within an APEC economy, and must satisfy an authorised body in that economy that he or she has:

- completed an accredited or recognised architectural program
- gained a minimum period of post graduate practical experience, with specified requisites
- fulfilled registration, licensing or other requirements for full professional recognition in the home jurisdiction
- gained a minimum period of professional practice as a registered or licensed architect, with specified requisites (APEC 2006).

The two projects have a common framework, consisting of:

- a monitoring committee in each participating economy, responsible for administering that jurisdiction's respective sections of the Engineer and Architect Registers. Monitoring Committees consist of representatives from government, industry, educational institutions and professional bodies. They provide information on whether individuals in that jurisdiction are APEC engineers or architects, and develop and maintain assessment systems to ensure that candidates for each of the registers have complied with the set criteria.
- a central council, responsible for deciding the standards and criteria required for registration as an APEC engineer or architect and to establish operational procedures for management of the APEC registers. It comprises one voting representative from each participating economy's monitoring committee. The central council also develops and maintains standards and criteria for facilitating practice by APEC engineers or architects throughout the participating APEC economies (APEC 2005).

The APEC Engineer Register was launched in November 2000 and the APEC Architect Register in September 2005 (APEC 2005). Currently, 13 APEC member economies maintain sections of the APEC Engineer Register: Australia, Canada, Chinese Taipei, Hong Kong, Indonesia, Japan, Korea, Malaysia, New Zealand, the

Philippines, United States, Thailand and Singapore (APEC 2005). Fourteen APEC member economies maintain sections of the APEC Architect Register: Australia, Canada, China, Chinese Taipei, Hong Kong, Japan, Korea, Malaysia, Mexico, New Zealand, the Philippines, Singapore, Thailand and the United States (APEC 2006).

Australia and Japan took the implementation of the APEC Engineer Project a step further by signing a bilateral agreement to facilitate mutual recognition of registered APEC engineers in October 2003. The agreement allows engineers listed in either the Australian or Japanese sections of the APEC Engineer Register to obtain registration in the other jurisdiction (the 'host' jurisdiction), provided that they:

- agree to abide by the laws, regulations and ethical standards of the latter jurisdiction, and to meet any continuing competence requirements of the host jurisdiction
- have obtained the equivalent of one year of experience in the host jurisdiction
- declare any previous application for registration to the host jurisdiction.

Applicants must complete an application form and pay a registration fee to the host jurisdiction. The arrangement permits both Australia and Japan to retain full discretion on the registration of applicants. However, if a host jurisdiction rejects an applicant qualified under the above criteria, it must (on request) inform the applicant's home jurisdiction of the reasons for the rejection or any additional requirements (Engineers Australia 2003).