

APEC Professional Services and Mutual Recognition Community of Practice

Session 6 – Tuesday 6 June 2023 – 9:30AM to 11:00AM (AEST)

The role of FTAs in facilitating mutual recognition and MRAs for trade in professional services

Session 6 Discussion Summary

During Session 6, we explored the role of Free Trade Agreements (FTAs) in facilitating mutual recognition and MRAs for trade in professional services.

Overview of discussion

The session commenced with some introductory remarks by Mr Paul Howorth, the Community of Practice facilitator. These remarks provided some high-level context about why this topic is important for the community of practice.

Next, the session received a presentation from the United States Government on the topic of FTAs as 'enabling platforms' for mutual recognition and MRAs: the US approach. This presentation was given by Mr Jasun Moy. Mr Moy provided insights about the US context, and how and why the US uses FTAs to support mutual recognition, using the US-Mexico-Canada FTA as an example.

Then, Mr Arjuna Nadaraja, from the Australian Government, provided some further insights to the approach taken during the negotiation of the Australia-UK FTA. Mr Nadaraja also provided some general observations about the practical relationship between FTAs and mutual recognition / MRAs.

Finally, a facilitated discussion about the topic took contributions and insights from participants about their experience of working with FTAs in the process of developing MRAs. This discussion was aided by the presentation of a table of other examples of FTAs and similar agreements. The main outcome of this discussion was the identification of the common elements of how FTAs and similar agreements approach and support mutual recognition, generally but also within the APEC region.

A link to the presentations made at Session 5 can be found here:

<https://auapecstudycentre.wordpress.com>

Summary of key discussion points

The following key points emerged from facilitated discussion of the above themes:

Presentation – FTAs as ‘enabling platforms’ for mutual recognition and MRAs: the US approach

Mr Jasun Moy, International Trade Specialist, Architecture, Engineering, Construction, and Design Services Lead , Office of Supply Chain, Professional and Business Services, U.S. Department of Commerce | International Trade Administration | Industry & Analysis

The key points arising from Mr Moy’s presentation were as follows:

- An overview of the role of the US International Trade Administration in supporting trade in services generally
- An explanation of the US licensing model, recognising the federated nature of the US working across 55 state jurisdictions, making a one size fits all approach impossible
- An explanation of the difference between a recognised ‘right to title’ and ‘right to practice’ as two forms of licensing, and how the focus of mutual recognition is on the ‘right to practice’
- The recent rise in the share of workers with a state occupational license, from around 5% in the 1950s to around 25% in the last decade, and how this shows how significant the role of licensing has become in influencing trade in services
- Recognising that regulatory power over licensing resides with state governments, how the federal government supports mutual recognition by advocating for and encouraging non-prescriptive approaches to mutual recognition that work for each state, with a focus on the key outcomes of enabling the mobility of professional services and reducing domestic barriers to trade
- An overview of the approach taken in the US-Mexico-Canada FTA, which includes a non-binding recognition article backed by an annex that provides a process for working towards mutual recognition and guidelines for MRA making and implementation

The Australia – UK FTA: some remarks about the approach taken

Mr Arjuna Nadaraja, Director, Professional Services and Mutual Recognition Unit
FTA Services Branch, Free Trade Agreements and Stakeholder Engagement Division, Department of Foreign Affairs and Trade

The key points arising from Mr Nadaraja's remarks were as follows:

- The Australian Government's approach generally also promotes a non-prescriptive / facilitative use of FTAs to support mutual recognition
- In the case of the Australia-UK FTA, an important starting point was to acknowledge the long history of engagement between professions within the two economies, and the established connections and similar routes that the professions have traditionally used to support mutual recognition
- The inclusion of professional services in a separate chapter in this FTA, to give these a higher profile than being included only in an annex
- A preference for non-prescriptive measures addressing a broad range of professions, except in the case of legal services where a specific dialogue requirement was prescribed
 - legal peak bodies have agreed to engage and further streamline and guarantee easier access for lawyers between Australia and the UK
- Including the use of facilitative mechanisms such as a working group for professional services trade, with the intention of having trade officials working directly alongside other actors such as regulators and competent authorities on an ongoing basis to work through the requirements of specific sectors
- Overall, the approach is to use FTAs to support and enhance working relationships that can lead to more mutual recognition and MRAs

Facilitated discussion

During facilitated discussion, further insights were contributed via representatives from several professional bodies. These insights focussed upon how FTAs were worked with and used to support specific examples of mutual recognition and MRA development, in the engineering and architecture services sectors. Other examples of FTAs and similar agreements with direct relevance to the APEC region were also discussed, including:

- The Canada-UK FTA
- The Comprehensive and Progressive Agreement for Trans-Pacific Partnership
- The Indonesia-Australia Comprehensive Economic Partnership Agreement

Overall, during discussion, the following common approaches for how FTAs support mutual recognition were identified:

- Using FTAs to provide facilitative, non-prescriptive support and guidance towards mutual recognition
 - In most cases, FTAs will not provide 'automatic' mutual recognition of professional qualifications. To complete the circle of market access for professional services,

additional steps need to be taken.

- The WTO Joint Initiative on Services Domestic Regulation provides important guidance.
- The crucial role of FTAs in providing a clear imprimatur for sectors to engage in mutual recognition activities.
- Using FTAs to establish working groups and similar bodies to develop, enhance and use relationships between key actors to help drive mutual recognition – relationships between trade officials, competent authorities and regulators are of particular importance

The terms of reference for the Community of Practice are available on the [APEC Projects Database](#).