REGULATIONS AND COMPETITIVENESS

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SEVENTEENTH REPORT OF THE STANDING COMMITTEE ON FINANCE

FIRST REPORT OF THE SUB-COMMITTEE ON REGULATIONS AND COMPETITIVENESS

January 1993

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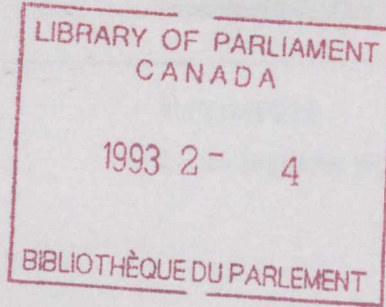

SEVENTEENTH REPORT OF THE STANDING COMMITTEE ON FINANCE

FIRST REPORT OF THE SUB-COMMITTEE ON REGULATIONS AND COMPETITIVENESS

January 1993

HOUSE OF COMMONS

Issue No. 53

Thursday, December 10, 1992

Chairman: Murray Dorin

CHAMBRE DES COMMUNES

Fascicule nº 53

Le jeudi 10 décembre 1992

Président: Murray Dorin

Minutes of Proceedings and Evidence of the Standing Committee on

Finance

Procès-verbaux et témoignages du Comité permanent des

Finances

RESPECTING:

Pursuant to Standing Order 108(2), consideration of a draft report

CONCERNANT:

Conformément à l'article 108(2) du Règlement, considération d'un projet de rapport

INCLUDING:

The Seventeenth Report to the House

Y COMPRIS:

Le dix-septième rapport à la Chambre

Third Session of the Thirty-fourth Parliament, 1991–93

Troisième session de la trente-quatrième législature, 1991–1993

25270

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The Standing Committee on Finance

has the honour to present its

SEVENTEENTH REPORT

In accordance with its mandate under the Standing Order 108(2), your Committee has examined the Federal government's system of regulation and how it affects competitiveness and has agreed to report the following:

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PREFACE

1. The budget of February 25, 1992, announced the launching of a comprehensive review of regulations "to ensure that the use of the government's regulatory powers results in the greatest prosperity for Canadians." Although ultimately government-wide, the review would begin with three departments: Agriculture, Transport, and Consumer and Corporate Affairs. The House of Commons Standing Committee on Finance was asked to assist in the review. On April 7, the Finance Committee established the Sub-committee on Regulations and Competitiveness to take on that task.

2. The original budget announcement said that the Finance Committee would be asked to review federal regulatory programs to determine how they affect our competitiveness, and suggest ways to improve regulatory programs, processes and intergovernmental collaboration. Additional substance was added to this request by the Hon. Gilles Loiselle, President of the Treasury Board and Minister responsible for Regulatory Affairs, in a letter to the Finance Committee Chairman dated March 19, 1992. In his letter, Mr. Loiselle cautioned the Committee to avoid getting immersed in specific regulations and to focus instead on the following:

- assessing the overall impact of regulation on competitiveness
- examining the Canadian approaches to regulation in relation to those of our trading partners
- determining those areas where regulation is leading to a loss of competitiveness
- identifying means of improving inter-governmental cooperation in regulation so as to reduce the regulatory burden
- surveying alternatives to government regulation
- examining whether the regulatory process is achieving its intended aims
- exploring how best to balance competing interests in the regulatory process

3. In his appearance before the Sub-committee on May 12, 1992, the Minister reiterated these points, advising the Sub-committee to take a broad approach to its work rather than lose itself in the details of individual programs.

4. The Minister's list of issues struck us as a tall enough order, so we had no difficulty in acceding to his caution that we limit our inquiry to the regulatory process. We interpreted the term "regulatory process" to include all elements involved in developing and implementing regulations, from the delegation of regulation-making powers by Parliament and the design of new regulations, to the monitoring and evaluation of existing regulations.

5. We began public hearings into our inquiry by inviting industry representatives and regulation specialists to a round table discussion on May 7, aimed at helping committee members identify key issues in the regulatory process, and options for dealing with them. We continued our hearings into May and June, with witnesses from government departments and the private sector. In July, to assist future witnesses and others who wished to participate in our inquiry, we released a paper prepared by Committee staff, summarizing the evidence we had received and identifying the issues raised at our hearings to that point. We held additional hearings in September and in early November, the separation between these last two sets of hearings being forced on us by the exigencies of the referendum on the Charlottetown Constitutional Accord.

6. In total, we heard testimony from 65 witnesses and received many more submissions from private individuals and organizations. We wish to thank all those who agreed to appear before the Committee and all those who took the time and effort to make submissions.

7. In addition to the public hearings, Committee staff met with officials from several departments: the Privy Council Office, the Office of the Auditor General, and the Standards Council of Canada. We are grateful to these officials for their contributions. We want especially to single out James Martin and his staff at the Regulatory Affairs Directorate, Treasury Board Secretariat, for their generous cooperation and support throughout our inquiry.

LIST OF RECOMMENDATIONS

REGULATION AND COMPETITIVENESS

3.1 All the costs and benefits should be estimated for major proposed regulations. **(page 38)**

3.2 Where feasible, regulations should be expressed as functional outcome or performance objectives rather than detailed specification of the means of compliance. **(page 38)**

AN ASSESSEMENT OF FEDERAL REGULATORY PROCESS AND PROPOSALS FOR CHANGE

4.1 The Treasury Board Secretariat should be required to develop a set of standardized consultation processes adapted to fit different types and scales of proposed regulations. These would be guidelines for departments. **(page 42)**

4.2 All intermediate and major proposed regulations should be reported in at least the previous year's Federal Regulatory Plan before they can be sent to the Special Committee of Council. **(page 42)**

4.3 Departments should be required to report in the RIAS a brief summary of views received during the consultation process and the reasons for accepting or rejecting them. **(page 42)**

4.4 The annual Federal Regulatory Plan should be changed as follows:

- The department or agency must provide a preliminary classification of the scale of the planned regulations in terms of their estimated costs to society: small/technical, intermediate, and major.

- The department or agency must indicate the method of the planned consultation process. (This is linked to 4.1 above.)

- Each proposed regulation must be given an identification number which will be used throughout the regulation-making process (that is for the estimated costs of federal regulations to be tabled with the Estimates, as proposed below, and when the draft regulation and RIAS are "pre-published" in the Canada Gazette, Part I). **(pages 42-43)**

4.5 The President of the Treasury Board should be required to compile the "Estimated Costs and Benefits of Federal Regulations" (ECBFR) annually, to be tabled in the House of Commons with the Estimates. (This would require that departments and agencies submit to the Regulatory Affairs Directorate the following information: (a) the estimated costs and benefits of every proposed major regulation expected to be made in the next fiscal year (or the following two years); (b) the number of "intermediate" proposed regulations for the next fiscal year; and (c) for major proposed regulations, the estimated costs and benefits should be categorized by government administrative costs and by private sector compliance costs, broken down by major industry sector. **(page 46)**

4.6 For proposed major regulations where the estimated costs measured outweigh the benefits measured, departments should be required to summarize in the RIAS the reasons why the regulation should nevertheless be adopted. **(page 49)**

4.7 The President of the Treasury Board should be required to prepare and publish an "Annual Report on the State of Federal Regulation" with a view to increasing public awareness of the growth, scope, and costs of federal regulations. The report would include review of the policies and experience of other countries, notably those with which Canadian firms compete and into whose markets they export. **(page 49)**

4.8 Clear definitions of major, small/technical and intermediate categories of regulation should be developed. The proposed threshold for "major" is $100 million in total costs to society measured in present value terms. The threshold would also include a measure in terms of the costs relative to the output of the sector(s) likely to be most affected by the proposed regulation. **(page 54)**

4.9 For intermediate and major regulations, the RIAS should indicate the planned process of monitoring and evaluation of the proposed regulation. **(page 54)**

4.10 The RIAS requirement for the deletion of regulations should be simplified. **(page 54)**

4.11 The RIAS should disclose the set of alternatives that were considered by the department and rejected, with a brief explanation why the alternative chosen is superior. **(page 54)**

4.12 The RIAS should include an assessment of the proposed regulation's impact on the competitiveness of the firms in the sectors where the majority of the compliance costs are expected to occur. **(page 54)**

4.13 The Statutory Instruments Act should be amended to provide that RAD must certify that (1) the methodology employed in preparing the cost-benefit analysis accompanying each proposed major regulation meets professional standards, and (2) that all proposed regulations are properly classified in terms of their impact as small/technical, intermediate, or major. This would be closely analogous to the requirement that the Clerk of the Privy Council certify that proposed regulations are legally correct in form and not ultra vires. **(page 54)**

4.14 The President of the Treasury Board should have the power to delay proposed major or intermediate regulations which have not previously been reported in the annual Federal Regulatory Plan, except where the regulation is in response to an emergency arising since the deadline for submissions to the last plan. **(page 54)**

THE ROLE OF PARLIAMENT IN THE CREATION AND REVIEW OF REGULATIONS

5.1 Every bill containing an enabling clause should be accompanied by a memorandum setting out precisely why the particular delegated law-making power contained in the clause is sought, and the form the sponsoring Minister sees the delegated law taking. **(page 63)**

5.2 Consideration of major proposed regulations by standing committees as to merits, and by the Standing Joint Committee for the Scutiny of Regulations as to legality and propriety, should be encouraged and undertaken. As a necessary sanction, the requirements of an affirmative resolution for the coming into force of regulations should be imbedded in the grant of enabling powers, where the exercise of those powers may

- substantially affect the provisions of the enabling or any other statute,
- lay down a policy not clearly identifiable in the enabling Act or make a new departure in policy, or
- involve considerations of special importance.

The Standing Orders should be amended to make the affirmative-resolution procedures of the Interpretation Act operable, and to ensure that a vote on the resolution to affirm any regulations is not taken until the standing committee and the Standing Joint Committee have reported on it or have allowed a reasonable time period to elapse without report. **(pages 63-64)**

5.3 Provide each subject-area standing committee with an opportunity to review the proposed regulations after pre-publication in Canada Gazette Part I. The committee's report would be tabled in the House, but its primary role would be to provide advice to the Special Committee of Council. PCO could notify each committee in respect to every proposed regulation (classified by size of economic impact). The committee would then have 30 days to decide which ones it would review and another 60 days in which to conduct its review. **(page 64)**

5.4 The present disallowance procedure under S.O.'s 123-128 should be replaced by a statutory procedure covering all statutory instruments (and any part of a statutory instrument) not subject to affirmative-resolution procedure. The deemed disallowance feature of the present procedure when a resolution is not disposed of should be retained and given statutory force. **(page 64)**

5.5 The Standing Committee on Finance should review the "Estimated Costs and Benefits of Federal Regulations" tabled with the Estimates. **(page 64)**

5.6 Standing committees in each subject area should be encouraged to undertake periodic evaluations of regulatory programs in order to hold the government accountable for the performance of such programs. The periodic evaluation or assessment might be triggered by (a) an indication by the OCG that a regulatory program has been evaluated pursuant to the program evaluation policy 01-01-92 in the Treasury Board Manual; (b) publication of an evaluation by the Auditor General, or (c) information received by the committee suggesting that an evaluation should be conducted. **(page 64)**

STANDARDS

6.1 When legislated standards are deemed necessary, governments should increase their effort to coordinate standard requirements and activities by mandating more extensive use of reference to standards (particularly undated reference) developed within the National Standard System (NSS). Specifically, when identifying and assessing alternatives in the regulatory process, regulatory authorities should review the available listings of existing standards (Canadian, international and foreign standards) to ascertain what may be suitable. If an acceptable standard exists, then reference to it should be made when drafting the regulation. If no acceptable standard exists, regulatory authorities should arrange for the development of a standard through either the Standards Council of Canada's National Standardization Branch or the NSS's member standard writing organizations. **(page 75)**

6.2 Government should be reticent about promulgating standards outside the health, safety and environmental area. Furthermore, a program should be established, and a person accountable for achievement by a specified target date should be designated, to review existing government promulgated standards with this principle in mind. **(page 75)**

6.3 Wherever possible, government-promulgated standards must specify to system standards and, where applicable, to performance (output) standards. Specifying to design (input) standards should be avoided and decisions about the details delegated to regulated enterprises. Furthermore:

- Where performance standards are not possible, government-promulgated standards should be required to outline broad essential requirements that products must meet. If standards writing organizations are retained to write more detailed standards that meet these requirements, industry should be allowed to choose whether to follow the SWOs standards or meet the government directive using another approach. (page 74)

- The program mentioned in recommendation 6.2 should also review existing government-promulgated standards with the foregoing drafting principles in mind. Where adjustments are necessary, regulatory authorities should arrange for the rewriting of the standard through either the Standards Council of Canada's National Standardization Branch or the National Standards System's member SWOs. **(page 75)**

6.4 Development of any standards that are effectively binding (either by legislative reference or government threat of such) should be subjected to the key features of the regulatory process. Accordingly, all government-promulgated standards should be disclosed to Parliament through the government's annual regulatory plan, and the following policies of the National Standards System should be made mandatory: review of costs versus benefits and independent review of these assessments, and review of standards on a continuing basis to assess their current need and conformity with other jurisdictions. **(page 76)**

6.5 Financial priority should be given to Canadian participation in relevant international standards development activities and to incentives for standards writing organizations (SWOs) if they make their standards international standards. Perhaps funding can be achieved for the incentive program by levying fees across the board to member SWOs and then using these levies to reward harmonization successes, thereby partially compensating for potential sales revenue losses. **(page 78)**

6.6 The reporting mechanism to Parliament of the Standards Council of Canada should be reviewed in light of the importance of standards to Canada's ability to trade competitively. **(page 78)**

IMPLEMENTATION AND ENFORCEMENT

7.1 Quality service principles should be used in the regulatory process. However, an approach such as a modified TQM should be fully implemented only if the necessary commitment of resources to such a program is made and continued. If the commitment is made, a supporting structure must be in place before full implementation of the approach is attempted, including training for the required new skills, recognition and rewards systems to effectively reinforce desired behavior, and measurement systems to quantify results. **(page 85)**

7.2 In conjunction with stakeholders, a policy manual for implementing regulations should be developed by each department, subject to continuous change and improvement as experience accumulates and consistent with the over-riding policies and guidelines set out in the Treasury Board and Department of Justice recently produced management and compliance frameworks. The manual should be accessible to all interested parties and include:

- consultation strategy, policy and procedures consistent with Treasury Board guidelines developed along the lines proposed under the Committee's recommendation 4.1
- guidelines for frequency and extent of regulatory reviews
- compliance strategy, policy and procedures considering the objectives of the regulatory program, the rules and design of the program, the roles and functions of key authorities, the regulated group, potential allies, the factors that affect compliance and the compliance profile. It should outline inspection procedures, criteria for undertaking prosecutions and other enforcement actions, and permissible deviations from legislative and regulatory standards, including discretionary action related to inspections, decisions to prosecute, persuasion and negotiation activities **(page 85)**

7.3 A policy should be adopted and communicated stating that, if a regulated company is certified to show that it is a total quality management company meeting ISO quality management standards, inspection and monitoring by government officials will be decreased so long as the regulated company provides proof of periodic audits verifying that the quality system is in place and is operating. **(page 86)**

7.4 The regulated parties be allowed options to prove conformance to regulations, including the options of:

- submitting their products to testing by an independent certified laboratory or consulting technicians able to determine non-conformity with standards and recommend improvements; and
- declaring conformity and demonstrating conformance in reports after testing and certifying their products themselves (that is, self-certification) where the degree of hazard presented by the product is minimal and the company is certified as having met service standards stated in recommendation 7.3).

To encourage the use of private sector certification and testing (especially the accredited organizations in the NSS), or self-certification, consideration should be given to charging for public sector inspection and monitoring this as a cost of doing business. **(page 87)**

7.5 Treasury Board should study the feasibility and practicality of establishing both:

- a rapid, inexpensive and informal mechanism to deal with complaints from regulatees. It would complement existing means of resolving complaints by providing regulatees with a body independent of the regulator to which they could bring unresolved concerns. The regulatee, in initiating its complaint, should include evidence that an unsuccessful attempt has been made to resolve the disagreement with the regulatory department or agency. The appeal procedure could be designed to be similar to the one existing in the National Standards System or the regulatory complaints settlement and process outlined in Appendix V;

- a special advocacy to assist small business in simplifying compliance, and understanding procedures, and to guide them through the appeal process. (**page 88**)

7.6 Wherever possible, stakeholders should be brought together at problem-definition stage of regulation development to reach a consensus on goals, priorities, and allocation of resources for achieving them. Consultation at this stage should be most effective. (**page 89**)

7.7 Those instructing the drafters of the regulations (both program people and legal advisors) should review legislated offenses and associated penalties for their adequacy and appropriateness in light of: the Charter, other available compliance instruments; the increased sentencing options which are now available, and information arising from public consultations. Increased emphasis should be put on the use of civil sanctions or monetary penalties, and civil penalty or administrative tribunal mechanisms, wherever possible. (**page 89**)

7.8 Wherever possible, reliance should be placed on educational strategies to enhance regulatory compliance. (**page 89**)

7.9 Regulations should be written in language understandable by those affected. (**page 89**)

7.10 The data base being developed by the Privy Council Office of the Department of Justice (PCOJ), and to be operational by December 1993, should be made affordably accessible to all interested parties. (**page 89**)

7.11 Enforcement of regulations at the border should be strengthen to ensure that imports do not escape requirements imposed on domestic products. (**page 89**)

7.12 The government should redouble efforts to streamline and coordinate regulatory activities within the federal sector. Specifically, it should consider making Treasury Board responsible for:

- identifying and assessing opportunities for the consolidation of regulations pertaining to common elements of federal responsibility

- working with departments to achieve the same interpretation of federal regulations and standards across the country

- ensuring federal departments develop administrative agreements to share enforcement so as to minimize imposition of unnecessary costs on regulatees

- ensuring that agreements with provinces to administer federal regulations lead to consistent interpretation across the country and minimizes duplication (e.g., of measurement and inspection) (**page 90**)

FEDERAL/PROVINCIAL OVERLAP

8.1 Identification of areas of overlap and incompatibility between federal and provincial regulations should be included among the main objectives of the departmental reviews of regulations that are currently underway. (**page 95**)

8.2 The Online Access to Regulations and Statutes system currently under development (see section 2.C7) should be expanded to include information on regulations of all governments in Canada. (**page 95**)

8.3 Government departments and regulatory agencies should be required to notify provincial governments of proposed regulatory initiatives and provide them with adequate opportunity for comment. **(page 95)**

8.4 The RIAS should include a statement concerning how the proposed regulation relates to provincial government intervention in the same or closely-related areas. **(page 96)**

8.5 The federal and provincial governments should adopt mutual recognition of product standards as a general principle of interprovincial trade. **(page 96)**

THE DEPARTMENTAL REVIEWS

9.1 A review calendar should be established which would require each department to conduct an extensive policy and regulatory review, including extensive public consultation, every seven years. Moreover, the Committee further recommends that these efforts be coordinated so that every policy and regulation affecting each subject area be covered. **(page 102)**

9.2 The departmental reviews should be undertaken under the authority of legislation, not just administrative practice, and that the departments report to Parliament as well as the government. **(page 102)**

CHAPTER 1

Introduction

1. "Like army boot camp, regulation can be awful, at times excessive, but necessary. At the same time—as with the military, expenditure programs, and taxation—regulation must be well supervised and managed to be effective."[1] This pithy observation by economists Robert Litan and William Nordhaus captures concisely the regulatory challenge facing governments throughout the world today. Governments the world over use regulation extensively for a wide variety of public policy purposes. Yet, relative to other instruments of public intervention, such as spending or taxation, controls over the use of the regulatory instrument are primitive. Improvements in this area, therefore, offer the promise of substantial benefits. Identifying the means to such improvements is what this report is all about.

2. In the simplest terms, regulation can be defined as a set of rules, made and enforced by the state, restricting or specifying the nature of social and economic activity. In Canada, such rules may be created directly by Parliament, in the form of a statutory enactment, or by the Executive (the government) or an arm of the executive pursuant to authority provided under a statute. In practice, the majority of regulations issued in Canada today consist of regulations made by the Executive. In recent years, government-issued regulations have averaged about eight hundred a year, while the number of primary statutes rarely exceeds one hundred, and only a small portion of these consists of statutes which are primarily of a regulatory nature.

3. Regulations are usually grouped into two categories: economic and social. Economic regulation refers to the rules controlling prices that firms in an industry can charge or the rules setting conditions of market entry or exit for producers. This is the oldest type of regulation in Canada: the regulation of banking, for instance, predates Confederation; and the Board of Railway Transport Commissioners, established to regulate Canada's railway sector, was set up in 1903. Today, industries in Canada subject to economic regulation include telecommunications, radio and television broadcasting, transportation, public utilities, milk and poultry production, and financial services. Together, these industries account for more than 25% of Gross Domestic Product.

4. Social regulation deals with issues cutting across specific industries, such as equality of opportunity, worker safety, consumer protection or environmental degradation. Regulation of this sort is more recent than economic regulation, and is the form of regulation that has experienced rapid growth over the past decade. In contrast, economic regulation over this period has been in decline, with transportation, telecommunications and financial services all experiencing partial deregulation.

5. A quick glance at the vast current inventory of regulations will reveal that we rely on regulations for the attainment of a very wide range of social objectives: preservation of health and safety, control of environmental pollution, prevention of unfair competition, promotion of activities and organizations deemed in the national interest, income support and redistribution, consumer and investor protection. The presumed rationale in each case is that, left to its own devices, the private sector would not yield socially desirable outcomes.

[1] Robert E. Litan and William D. Nordhaus, *Reforming Federal Regulation* (New Haven: Yale University Press, 1983), p. 2.

6. Why might that be? The general answer is that the conditions normally required for markets to operate effectively are absent. These conditions include the presence (actual or potential) of many sellers, so that there can be effective competition; a situation where the costs and benefits of each transaction are limited to those engaged in that transaction, so that production and consumption decisions reflect fully the costs and benefits of what is being transacted; and accessible information about the product, so that consumers can make informed choices about the things they buy. When these conditions are absent, markets fail to operate optimally.

7. Public intervention may also take place because the objectives being sought are such that even properly functioning markets cannot be expected to achieve them. For example, we regulate TV and radio broadcasting to encourage Canadian content; we regulate railway transportation to ensure services to remote communities; and we regulate the marketing of many agricultural commodities in order to protect farm incomes.

8. Regulation is, of course, only one form that public intervention may take. Moral suasion, information dissemination, government subsidies, public ownership and taxation are others. The particular circumstances in each case will determine the preferred instrument of intervention.

9. In practice, regulation today is by far the most pervasive form of public intervention. There is hardly an economic activity untouched by it. At the federal level alone, there are some 3,000 separate sets of regulations running into tens of thousands of pages. There are undoubtedly laudable reasons for most of these regulations: the problems they seek to address are real. But so are the costs they impose on society, and most particularly on the private sector. These costs should be measured not only in terms of time and money spent to meet regulatory requirements, but also in terms of innovations not introduced, investments not made and jobs not created because regulations did not permit them, or the regulation-induced cost burden made them not worthwhile.

10. In the broadest terms, we regulate in order to improve public welfare. Yet, ironically, regulations—if ill-considered or poorly designed—may set our welfare back, by making it much more difficult for business to generate the productivity improvements on which improvements in our living standards ultimately depend.

11. Our point is not that regulation is bad, but that we can have bad regulation. And when regulation is as pervasive in our economy as it now is, bad regulation is something we cannot afford. To shed the habit, we need a system for developing, implementing and evaluating regulations that screens out the chaff and finishes the remaining product to the highest grade. Identifying the constituent elements of such a system has been the basic mission of our inquiry into the existing regulatory process.

12. When the Nielsen Task Force reviewed the federal regulatory system in the mid-1980s, it denounced it as a shambles. The major problems identified by the Task Force included: lack of internal consistency and cohesion; a multiplicity of arrangements for developing, approving and implementing regulation; lack of effective mechanisms to plan or control regulatory intervention in the private sector; inadequate analysis of the implications of proposed regulatory initiatives; lack of an effective mechanism for systematically evaluating existing regulatory programs.[2]

13. Largely in response to the Task Force's findings, significant reforms to the regulatory process were introduced in 1986, as described later on in our report. These reforms were designed to improve the management of federal regulatory programs, give ministers more effective control of the

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[2] Canada, *Management of Government: Regulatory Programs*, A Study Team Report to the Task Force on Program Review (Ottawa: Supply and Services, 1986), pp. 633-4.

regulatory process and facilitate greater public access and involvement in federal regulatory activities. On the whole, they have resulted in a much improved process. Regulators are much more sensitive to the costs of regulatory initiatives than used to be the case; consultation with stakeholders is more frequent, more meaningful and more broadly-based; the turnaround time for regulatory actions has been reduced; the objectives of new regulations and their anticipated impacts are more clearly identified. Yet significant problems with the way we regulate remain, problems related to design as well as application.

A. REGULATORY BIAS IN CHOICE OF POLICY INSTRUMENT

14. We noted above that regulation is by far the preferred instrument of government intervention in the private sector. The preference is not always due to the superiority of regulation in terms of efficiency or effectiveness. Other reasons contribute to the attractiveness of the regulatory instrument and help explain its growing pervasiveness.

15. Relative to other means of changing incentives and affecting behaviour, regulation appears more certain and effective. For example, placing a specific limit on the pollutants that firms may discharge into the atmosphere creates the impression of a dedicated and decisive government; in contrast, explaining that pollution control may be achieved by less intrusive means can create the impression of a vacillating government, or worse, a government captive to business interests.

16. Furthermore, for governments the regulatory instrument is relatively costless, with most of the costs falling on the private sector. It thus enables governments to provide benefits without the attendant inconvenience of finding the revenues to pay for them. In times like the present, with cash-strapped governments facing increasing demands for public services, resort to regulation is particularly tempting.

17. The allure of regulation is further enhanced by the fact that most of the costs of regulation are hidden. They are reflected in higher prices for the things we buy or lower returns on labour or capital owing to lower productivity. While the benefits of regulation therefore tend to be visible and known, the costs are often unseen or underestimated. As a result, demand for regulation is higher than optimal.

18. These reasons make it all the more necessary that we have in place a system that can compensate for the resulting policy-instrument bias and promote the efficient use of regulation. Current policy calls for cost-benefit analysis of regulatory proposals and review of alternatives before proceeding with regulation. The problem is that this requirement does not occur early enough in the decision-making process to serve adequately the function of assisting instrument choice. In addition, the analysis is done by the department that initiates the regulation, with little outside oversight, allowing the possibility of self-serving bias. Finally, alternatives to regulation are often foreclosed to individual departments by primary legislation, leaving them with the choice of either intervening through specific forms of regulation or doing nothing at all. In short, the existing process lacks effective mechanisms for countering the bias towards regulation inherent in the regulatory instrument.

B. HAPHAZARD CONSULTATIONS

19. Consultation of parties affected by regulation is indispensable to effective regulation making: it can help inform the regulator, legitimize the regulation and improve compliance. Consultation can help regulators get a better appreciation of the effects of their actions and identify

better ways of achieving regulatory aims. It also enables those affected by a regulatory proposal to have a say in the decision whether to regulate, and in the design of the instrument to use for the purpose. Given the legal nature of regulation, in a democratic society citizens are entitled to such a say. Finally, effective consultation can facilitate implementation. Stakeholders who have had an opportunity to contribute to the making of a regulation are likely to be better informed about it and more accepting of its requirements. They are therefore also more likely to comply with the regulation without the need for close inspection and major penalties.

20. We are not saying anything here that the government does not already know. The need to consult widely and openly is one of the principles of current regulatory policy. Regulators are encouraged to consult before embarking on any regulatory initiative and to pre-publish proposed regulations for further public input and comment. Many of our witnesses commended departments for their efforts and expressed satisfaction with the access to the process and receptiveness of the regulators to stakeholders' opinions. But we also heard criticism of the process and found a disquieting degree of cynicism among many.

21. Witnesses appearing before the Sub-committee complained that consultation is sought too late in the regulatory process to be effective, that stakeholders are given too little time to study an issue and respond fully, that regulators often use "consultation" as a means to ratifying a pre-determined solution rather than finding one, and that stakeholder contributions to regulation are ignored without explanation. We also found much ambivalence about the consultation process: stakeholders want to be fully consulted on proposed regulatory initiatives, but resent the demands that consultation makes on their time and resources.

C. INSUFFICIENT COORDINATION AND LACK OF CENTRALIZED MANAGEMENT

22. Despite the establishment of a Minister responsible for regulatory affairs and a Regulatory Affairs Directorate within Treasury Board, regulation making remains a compartmentalized affair. Each department or regulatory agency drafts and evaluates regulations pretty much on its own, with little if any accounting of the inter-relationship between its regulatory activities and those of other regulators. The Regulatory Affairs Directorate receives copies of all proposed regulations but lacks both the resources to evaluate their effects, and the authority to block promulgation of regulations it deems detrimental or sub-standard.

23. One clear consequence of the lack of central management of regulatory activities is that the cumulative effect of regulations on individual firms or sectors is ignored. Collectively, therefore, regulators may be saddling individual firms or sectors with a greater regulatory burden than any one regulator, separately, would deem desirable. With its sights narrowly focused within its own domain, each regulator can satisfy itself that its own regulatory requirements are easily affordable. Add everyone's requirements together, however, and the cumulative burden may become impossible to bear. Alasdair J. McKichan, President of the Retail Council of Canada, referred to the problem as "death by a thousand cuts. You have to deal with a great many regulations. Often no set of them are particularly onerous in themselves, but it is the cumulative effect of a great many regulations dealing both with products and operations." (17:7) Several other witnesses made the same point.

24. The second implication of fragmented regulation making is that necessary trade-offs among regulatory objectives are not made and priorities according to value are not set. Regulations absorb resources. To obtain maximum value, we must ensure that those resources at the margin are allocated to areas that yield the greatest benefit. This obviously requires a mechanism for reviewing regulations

across the spectrum and shifting regulatory resources from areas of low value to areas of higher value. We do have such a mechanism now for direct spending. That mechanism includes spending ceilings on the basis of fiscal projections by the Minister of Finance; and central allocation of spending limits by envelope and department, subject to explicit approval by Parliament. Contrast this system with that of regulatory "spending," where each department effectively determines the size of its own budget without regard to what other departments are spending, without accounting to Treasury Board and without the need for parliamentary approval. One implication is that we do not know how much we are spending through the regulatory instrument. Another is that we do not regulate efficiently, in the sense of allocating our regulatory spending in ways that would maximize social benefits. Generally, if benefits of different programs at the margin are not equalized, social welfare can be improved by shifting resources from lower to higher benefit programs. Under the current fragmented approach to regulation making, calculations of this sort cannot be made.

D. DEFICIENT COMPLIANCE MECHANISMS

25. The intent of regulation is to modify behaviour in the private sector in specific ways. Unless regulated conduct changes as intended, regulation is at most of symbolic value.[3] Compliance, in short, is the measure of effectiveness of regulatory actions. Yet, while the government has produced a comprehensive guide to the regulatory process, from design and development to the promulgation of regulations, there is no corresponding written policy or process regarding implementation and enforcement. Each department and agency is left on its own to determine the best way of enforcing the regulations within its scope. While this decentralized approach has the advantage of flexibility, allowing each department to tailor policies to its own particular requirements, it suffers from a number of drawbacks, including the following:

- The lack of clear policy on enforcement creates uncertainty on the part of regulated firms about the expectations of regulatory authorities, methods of compliance monitoring, and sanctions for infraction. The problem is compounded by the tendency to write regulations in language that, in the words of one witness, "only some lawyers can understand."

- Regulations can be applied unevenly in different parts of the country, owing to discretion in regulatory interpretation and enforcement, giving one plant or province a competitive advantage over another.

- Compliance is largely monitored directly by government inspectors. In addition to the uneven enforcement already noted, government inspection has the further drawback that the rules under which government inspectors work may not be compatible with those of the firms being inspected, and the costs of inspection are borne by the taxpayers rather than the regulatees.

- The range of enforcement instruments is too narrow. For the most part, the federal government relies on criminal sanctions to punish regulatory infractions and encourage compliance. The criminal law, however, can be a very blunt and rigid instrument. Drawbacks include the strict requirements of proof, making conviction difficult, and a costly and very lengthy process. Often, the issue under litigation ceases to be relevant by the time the process is complete.

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3 Kernaghan Webb and Peter Finkle, "Compliance and Enforcement of Consumer Protection Policies: Where the Rubber Meets the Road," *Mimeo* (Ottawa: Consumer Policy Framework Secretariat, Consumer and Corporate Affairs Canada, February 8, 1991)

E. REGULATORY DUPLICATION AND INCONSISTENT REGULATIONS

26. Finding ways to improve inter-governmental cooperation in regulation was one of the specific issues that the Minister responsible for regulatory affairs, the Hon. Gilles Loiselle, asked the Committee to address. Federal-provincial duplication and conflicting or inconsistent regulations by different jurisdictions in Canada were also mentioned by a majority of the witnesses appearing before us. These are not new concerns, of course, but they are not any the less pressing. Indeed, the growing internationalization of our economy makes inter-governmental regulatory conflicts more anachronistic and less affordable.

27. Canada today enjoys the dubious distinction of having possibly the most fragmented internal economy in the industrialized world. As noted in a recent OECD report on the Canadian economy, "Compared with other countries, the Canadian internal market is still highly fragmented. Other federations, such as the United States and Germany have been considerably more successful in preventing internal barriers. Even groups of nations participating in regional trade agreements, such as the EC or ANZCER (Australia and New Zealand), have made more progress towards unifying their markets."[4] A Conference Board of Canada study of internal trade barriers found that, in the wake of the Canada-U.S. Free Trade Agreement, "many Canadian firms are facing fewer barriers to trade with the U.S. than they face within Canada."[5] With the planned implementation of NAFTA, presumably Mexico would also be more open to many Canadian firms than the Canadian market.

28. Regulations are not the only barrier to interprovincial trade. Other barriers include government procurement and hiring practices, provincial liquor policies discriminating against out-of-province producers of beer and wine, and tax preferences for in-province investment. Conflicting regulatory requirements, however, are certainly a major factor. Supply management boards intentionally restrict interprovincial trade in dairy products, chickens, eggs and turkeys. Barriers also result from inconsistent regulatory requirements across the country with respect to product standards (divergent packaging and grading requirements, for example), transportation regulations (including different weight, safety and registration requirements for trucks), employment practices and environmental standards. Uneven enforcement practices across jurisdictions erect additional barriers to those that divergent regulatory standards generate.

29. While provincial policies and practices are the main cause of interprovincial trade barriers, federal involvement is often an indispensable accomplice, or further complicates the regulatory maze confronting businesses in many sectors of our economy. Provincial supply management policies, for instance, could not work without the support of federal legislation governing interprovincial trade. And federal regulations, instead of helping shape a common standard for use throughout the country, too often, according to our witnesses, become yet another regulatory requirement piled on top of all the provincial ones. The regulation of mining effluents, as related in Inco's submission to the Sub-committee, concisely illustrates this point. Prior to 1977, liquid effluents from mining operations were largely regulated by the provinces. That year, the federal government also entered the field through promulgation of the Metal Mining Liquid Effluent Regulations under the *Fisheries Act*. "Shared responsibility for effluent regulation has commonly meant that industry must: (a) meet different limits for the same discharges, (b) submit reports to both levels of government, (c) be

[4] OECD, *Canada: OECD Economic Surveys 1991/92* (Paris: OECD, 1992), p. 79.

[5] Stelios Loizides and Michael Grant, *Barriers to Interprovincial Trade: Implications for Business* (Ottawa; Conference Board of Canada, September 1992) p. 3.

monitored by both federal and provincial inspectors at times producing differing views on the same circumstance and, (d) conduct tests for pollution to satisfy the varying federal and provincial specifications."[6]

30. The costs of regulatory duplication and regulatory barriers to internal trade are hard to calculate with precision. They consist of increased administration and compliance costs, trade diversion (diverting production away from the most efficient source), higher operating costs owing to smaller scale of production, and reduced investment owing to lengthy approval requirements and increased uncertainty. Their aggregate effect is a less productive and less competitive economy overall. Beyond the dollar costs of internal barriers, however, it appears to us that there is something seriously rotten in the state of our Dominion when more barriers exist between provinces than between countries in regional trading blocks and when Canadian citizens and corporations often find it more difficult to operate across provincial than across national boundaries.

F. INADEQUATE LEGISLATIVE OVERVIEW

31. Under our system of government, Parliament is supreme, subject to limits imposed by the Constitution. In concrete terms, this implies that the Executive ("the government") cannot raise taxes that Parliament has not sanctioned, spend money that Parliament has not appropriated, or apply laws that Parliament has not approved. Regulations promulgated by government departments or agencies have the force of law just as much as primary legislation does. They can be promulgated lawfully only if appropriate authority has been delegated under a statute that Parliament has passed. However, when the delegated authority is broad and use of that authority is not adequately supervised by Parliament, the implied Parliamentary control is absent and the supremacy of Parliament is undermined. There is widespread concern, well-merited in our view, that Parliament has lost control of the regulatory process.

32. We are not so naive as to believe that Parliament can deal with every trifle or detail of public intervention. The demands of a modern society are too complex and the time of legislators too limited for that. Inevitably, a good many of the rules that govern us must be made by the government and government officials. But this does not imply that Parliament can issue blank cheques to the Executive and then fail even to review what use is made of those cheques. Yet this is largely the situation today. Writing over a decade ago, the Standing Joint Committee on Regulations and other Statutory Instruments (SJC) noted that "delegated legislation is now the ordinary and indispensable way of making the bulk of the non-common law of the land. It is beyond question that subordinate legislation is not confined to detail and more often than not embodies and effects policy."[7] In the years since the SJC reported, the tendency to enact "framework" or "shell" legislation, leaving not only details but substantive provisions and policy to regulations, has increased. With parliamentary reforms introduced in the mid-1980s, particularly those relating to the committee system, Parliament's ability to scrutinize the executive's use of delegated legislative authority has also increased. Unfortunately, to date, parliamentary scrutiny of regulations—with the notable exception of the SJC review, which however is confined to the legal probity of regulations and not their substantive merits—is all but absent: the task is normally dull and difficult, and the incentive to undertake it weak or non-existent. The Executive's formal accountability to Parliament for regulation making therefore amounts, in practice, to a dead letter.

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[6] Inco, *Submission to the Sub-committee on Regulations and Competitiveness* (October, 1992), p. 5.

[7] Parliament, Standing Joint Committee on Regulations and Other Statutory Instruments, *Fourth Report,* 1st Session, 32nd Parliament, July 17, 1980, p. 6.

33. The issues set out above are discussed further in Chapters 4 to 8 of this report, where we also make recommendations for responding to them. Chapter 2 of the report provides a brief review of the evolution of the regulatory process over the past two decades. Chapter 3 explores "competitiveness" and how regulation may affect it. This chapter also identifies ways of regulating more efficiently. The final chapter (Chapter 9) surveys the regulatory reviews undertaken by the departments of Agriculture, Consumer and Corporate Affairs, and Transport.

CHAPTER 2

Changes to the Federal Regulatory Process, 1972 to 1992

A. INTRODUCTION

1. This chapter briefly describes the major changes made to the federal regulatory process since the early 1970s. Most of these changes occurred during the past decade and in particular since 1986. The changes made between 1972 and 1983 are described in section B. Those made between 1984 and 1992 are described in section C. Section D briefly describes the regulatory process as it exists today. Figures 2-1 and 2-2 at the end of the chapter provide a summary of the reforms to the federal regulatory process from 1972 to date.

B. CHANGES TO THE REGULATORY PROCESS, 1972 TO 1983

1. Standing Joint Committee on Regulations (SJC)

2. The Standing Joint Committee on Regulations and Other Statutory Instruments was established in 1972 and first met for business the following year. Standing committees charged with the scrutiny of regulations already existed in a number of Commonwealth Parliaments. In 1969, the House of Commons Special Committee on Statutory Instruments recommended that such a committee also be established in Canada. The committee was authorized to review all regulations after they have been made and registered. Consistent with the recommendations of the Special Committee on Statutory Instruments, this review was confined to ensuring that the regulations are authorized by legislation, do not tresspass unduly on personal rights and liberties, and do not contain material that should be dealt with by Parliament in a statute.

3. In 1988, the name of the Standing Joint Committee on Regulations and Other Statutory Instruments was changed to the Standing Joint Committee for the Scrutiny of Regulations, its current name.

2. Periodic Evaluation of Regulatory Programs

4. Under Treasury Board Circular 1977-47 (September 30, 1977), "Evaluation of Programs by Departments and Agencies," both departments and agencies of the federal government were required to "periodically review their programs to evaluate their effectiveness in meeting their objectives and the efficiency with which they are being administered." Deputies were made responsible to ensure that all programs are periodically evaluated, that the results of the evaluations are communicated to the deputy as well as other levels of management, and that the evaluation reports are objective. The Circular specified that all programs are to be evaluated at least once every three to five years. In 1978, the newly created Office of the Comptroller General (OCG) was given the responsibility of overseeing the evaluation of all government programs including regulatory programs.

5. The Program Evaluation Branch of OCG was "to provide Ministers with information on the status of the program evaluation function in departments and agencies and on the quality of individual program evaluations."[1] The responsibilities of the OCG were to (a) develop and promulgate policy and guidelines on program evaluation; (b) develop and maintain a close working relationship with, and advise and assist, departments and agencies; and (c) comment upon the program evaluation function in departments and agencies and the resulting evaluation documents and reports. As the Standing Senate Committee on National Finance (1992, p. 46:13) pointed out over a decade later, "clearly, the powers given to the OCG to enforce program evaluation standards were quite limited." It must be emphasized that, from the beginning, program evaluations were seen by the departments and the Treasury Board as a tool for the senior management of departments and agencies to improve the performance of programs in reallocating resources and reporting on departmental performance. The process was never intended to provide independent evaluations of government programs that would be publicly reported.

6. The implementation of the policy of evaluating regulatory programs was slow. In 1981 the OCG completed its document setting out its principles and guidelines for program evaluation. However, it was not until March 1985 that the OCG published a draft of the guide, *Evaluating Regulatory Programs*. Between 1977 and 1984 only seven regulatory programs were evaluated. This prompted the Office of Privatization and Regulatory Affairs in 1987 to take steps to try to ensure that more regulatory programs were evaluated in a timely fashion.

3. Socio-Economic Impact Analysis

7. The Socio-Economic Impact Analysis (SEIA) requirement was announced by the President of the Treasury Board and the Minister of Consumer and Corporate Affairs on December 14, 1977, and came into effect on August 1, 1978. The SEIA provisions applied to all major new regulations in the areas of health, safety and fairness (HSF). The Treasury Board Secretariat's *Administrative Policy Manual* required that departments and agencies[2] (a) identify new major HSF regulations, (b) prepare the SEIA, and (c) pre-publish the terms of the legal authority for, and the purpose of, these regulations as well as a summary of the results of the SEIAs, in Part I of the *Canada Gazette* at least 60 days before their promulgation. Further, the departments and agencies were required to make the complete analyses publicly available, and to respond to comments from non-government groups.

8. The objectives of the SEIA provisions were as follows:

- to promote a more thorough and systematic analysis of the socio-economic impact of new health, safety, fairness and environmental protection regulations in order to improve the allocation of resources and the information available to the decision process on other socio-economic factors (i.e., effects on the distribution of income, regional balance, technological progress, market structure, balance of payments, output, employment, or inflation)
- to ensure uniformity (a) among departments and agencies currently administering statutes which confer the power to make regulations in the HSF area, and (b) in the methodologies and assumptions used to perform such analyses

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[1] Treasury Board Secretariat, *Guide on the Program Evaluation Function* (Ottawa: Treasury Board, Office of the Comptroller General, 1981), p. 77. The Guide identified four main issues to be addressed in each evaluation: the program rationale (whether the program makes sense); impacts and effects (intended and unintended); achievement of objectives; and alternatives: are there better (more cost-effective) ways of achieving the objectives and intended effects (*ibid.*, p. 7).

[2] The policy applied to the following departments and agencies: Agriculture Canada, Consumer and Corporate Affairs Canada, Energy, Mines and Resources, Environment Canada, Fisheries and Oceans, Health and Welfare Canada, Indian and Northern Affairs, Labour Canada, Transport Canada, the Atomic Energy Control Board, the Canadian Transport Commission, and the National Energy Board.

- to provide an opportunity for increased public participation in the regulation making process

9. Two important limitations on the scope of SEIA should be noted. First, it expressly excluded all cases of direct regulation, i.e., price and entry control regulation. Yet such regulation applied to over one-quarter of Gross Domestic Product. Secondly, only major regulations were included, that is, those where the social costs were estimated to exceed $10 million in one year (although the threshold was somewhat more complicated than this).

10. The SEIA requirement remained in place until the fall of 1986 when it was replaced by the Regulatory Impact Analysis Statement (see section C.6 below). During that period at least 19 SEIAs were produced,[3] a number which seems to be small relative to the number of new regulations during the period.

4. Office of the Coordinator, Regulatory Reform

11. Established in December 1979 within Treasury Board, the Office of the Coordinator, Regulatory Reform (OCRR) was the first entity within the federal government whose primary mandate was regulatory reform. It had two principal objectives: to improve public administration through reforms to the regulatory process, and to reduce the regulatory burden on the Canadian economy. The total staff of OCRR consisted of only about ten persons.

5. Regulatory Agenda

12. In May of 1983, the federal government published the first regulatory agenda, a document giving early notice of proposed major changes in federal regulatory activities. The regulatory agenda was to be published twice annually, in May and November. The Agendas were designed to implement the policy of the federal government "to provide the earliest possible notice of proposed or contemplated regulatory initiatives" for the purpose of fostering "constructive consultation" so as to produce "improved and less onerous regulation."[4] However, they were "not intended to provide detailed information on any particular initiative." Rather, readers were to be given enough information so that they could decide whether or not they wished to learn more or become involved in the consultative process. OCRR emphasized that the Agendas were "not promises of action or promises to enact legislation." They were information documents only.

13. When the fourth edition of the Agenda was published in December 1984, the President of the Treasury Board said that it might be the last, as the federal government wanted to assess the value of the program, which was said to cost about $200,000 per year. The program had been set up as a two-year experiment. The Progressive Conservatives under Brian Mulroney retained the idea of a regulatory agenda, but changed it slightly into the form of an annual Federal Regulatory Plan—see section C.5 below.

C. CHANGE TO THE REGULATORY PROCESS 1984-1992

1. Background

14. Regulatory reform, in a broad sense, was part of the present government's economic agenda from the time it came to office in September 1984. It was one of the themes in the Minister of Finance's *Agenda for Economic Renewal* issued in November 1984. The *Agenda* stated that government had

[3] W.T. Stanbury, *Reforming the Federal Regulatory Process in Canada, 1971-1992*, Paper prepared for the Sub-Committee on Regulations and Competitiveness (Ottawa, December 1992), Appendix 2.

[4] Office of the Coordinator, Regulatory Reform, *Regulatory Agenda*, Supplement to the *Canada Gazette*, Part I, May 31, 1983.

grown too large: "It intrudes too much in the marketplace and inhibits or distorts the entrepreneurial process. Some industries are over-regulated. Some are over-protected, not just from imports but also from domestic competition." The *Agenda* set the tone for the themes in the government's Regulatory Reform Strategy announced in February 1986, when it noted that reform would include more and better regulation in areas where there were notable gaps in federal regulation.

15. The government's view of regulatory reform can be seen in the words of the Minister responsible for Privatization and Regulatory Affairs, Don Mazankowski. He stated that "regulatory reform is not an ideological end in itself." Rather it was one of a number of policies designed "to promote the creation of new wealth and new employment opportunities."[5] He implicitly defined regulatory reform as simply part of the "ongoing requirements of good government." In his view, reform consisted of "weeding out ineffective programs and procedures and introducing improvements to keep in tune with the times."

2. Regulatory Reform Strategy

16. On February 13, 1986, Deputy Prime Minister Erik Nielsen announced the first elements of the government's Regulatory Reform Strategy "as a contribution to economic growth and job creation by improving the management of government, by removing obstacles to growth and by encouraging private initiative." These elements included the following:

- The appointment of a Minister for Regulatory Affairs
- The first ever federal regulatory policy based, like the Commandments, on 10 principles designed to help the government "regulate smarter"
- The Citizen's Code of Regulatory Fairness, "15 ground rules on how the government wants the public to be treated by federal regulators" (announced March 6, 1986). (see **Appendix III.**)
- The Regulatory Program Improvement Package comprised of 43 specific reform initiatives affecting regulatory programs in 16 federal departments and seven agencies

17. On March 6, 1986, the government announced another series of initiatives to reform the regulatory process. These were outlined in its Regulatory Process Action Plan which came into effect on September 1, 1986.

3. Guiding Principles

18. A review of the *Guiding Principles of Federal Regulatory Policy* indicates the following themes. The government wants to regulate "smarter," not necessarily less. The government wants to rely on the role of the marketplace and on entrepreneurial spirit to generate economic growth. The government's intention is to "limit, as much as possible, the overall rate of growth and proliferation of new regulation" by increased emphasis on economic efficiency. Priority is to be given to reforming ineffective or economically counter-productive regulation, but there will be "no. . . wholesale deregulation," and possibly "even intensified regulation where public protection demands it." Benefits and costs will be measured so as "to ensure that benefits clearly exceed costs before proceeding with new regulatory proposals." There is to be greater control over regulation by elected

[5] Office of Privatization and Regulatory Affairs, *Regulatory Reform: Making it Work* (Ottawa, 1988), p. 1.

representatives, "increased public access and participation in the regulatory process," and increased cooperation with the provinces to reduce the overall burden of regulation. Emphasis is placed on streamlining of the regulatory system to reduce costs, uncertainties, and delays.

4. Regulatory Process Action Plan

19. The new Regulatory Affairs Branch (RAB) of the Office of Privatization and Regulatory Affairs (OPRA)[6] issued a regulatory process action plan effective September 1, 1986. It had two predominant thrusts: the catalyst function, which "encourages and stimulates the streamlining of regulation, with the objective of reducing government intervention," and the challenge function, designed to "ensure that no new regulations or... amendments are approved without a full assessment of their impact on society."[7] There were five elements in the action plan:

- **Planning:** All departments or agencies (that recommend statutory orders to the Cabinet or have a Minister with the authority to enact regulatory instruments) must submit an annual regulatory plan to the Cabinet.

- **Impact Analysis:** All departments and agencies are required to prepare a Regulatory Impact Analysis Statement (RIAS) for each regulatory proposal submitted to Ministers for approval and "pre-published" in the *Canada Gazette* to solicit comments from the public.

- **Public Consultation and Information:** All departments and agencies are required to adhere to a consultation process including early notice, pre-publishing of all proposed regulations and amendments, and republishing new regulations as amended.

- **Regulatory Review and Evaluation:** This provision requires the review of all regulatory statutes over a ten-year cycle by parliamentary committees; a review of all regulations over a seven-year period by a committee of Cabinet; and evaluation of all regulatory programs for efficiency and effectiveness at least once every seven years.

- **Strengthening the Role of Parliament:** This is to be done by ensuring that all statutory instruments are within the scope of the *Statutory Instruments Act*.

5. Annual Regulatory Plan

20. The new annual *Federal Regulatory Plan* (which replaced the twice-yearly Regulatory Agendas) was held to be related to the *Citizens' Code of Regulatory Fairness* "to provide adequate early notice of possible regulatory initiatives" so that they have an opportunity to "participate by communicating comments to the indicated contact officials." The Plan indicates the department's proposed regulatory initiatives for the following year, including (1) statutes and policies with regulatory implications; (2) regulations as defined in the *Statutory Instruments Act*, which are made either by the Minister responsible, or by the Governor-in-Council; and (3) other policy actions that have the effect of regulating Canadian society or the economy. Initiatives are categorized as major,

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[6] OCRR (in the Treasury Board Secretariat), which was established by the Clark Government in December 1979, was replaced by OPRA on March 6, 1986. Then in August, RAB was established. The Ministerial Task Force on Program Review (the Nielsen Task Force) had recommended that OCRR be terminated, as it had met most of the objectives specified by Cabinet in November 1980. The Task Force recommended that a new Department of Regulatory Affairs be created to integrate the functions of several units dealing with regulatory activities.

[7] Office of Privatization and Regulatory Affairs, *Regulatory Reform Strategy* (Ottawa, March 1986), p. 22.

minor, or routine based on their "importance in meeting departmental objectives and their overall impact." Each initiative is described under the following headings: Title of Proposal, Description, Statutory Authority, Anticipated Impact, Anticipated Date of Final Notice, and Contact Person.

21. The first annual *Federal Regulatory Plan* was issued late in 1986 for the calendar year 1987.

6. Regulatory Impact Analysis Statement (RIAS)

22. The RIAS is "designed to provide a framework for the consideration and management of regulatory initiatives in departments and agencies" for both Ministers and the public. According to the Regulatory Affairs Branch (RAB), "the degree of analysis and description in a RIAS varies in proportion to the significance and likely impact of the regulatory proposal." Moreover, "the content of the RIAS is the responsibility of the department or agency sponsoring the regulation." The role of the Regulatory Affairs Branch is to provide both a service and a challenge function to ensure the government regulatory policy is carried out.

23. The elements of the RIAS are as follows:

- **Description:** This section explains why the proposal is being made, what is being proposed, and how it will be accomplished.

- **Alternatives Considered:** These may include the status quo, and such other governing instruments as taxation, direct expenditure, consensus standards, and marketable permits. The reasons the alternatives to regulations were rejected should be given.

- **Consistency with Regulatory Policy and Citizen's Code of Regulatory Fairness:** This must be substantiated.

- **Anticipated Impact:** The key points specified by RAB are the following:

    - A cost-benefit analysis is to be done for new regulations expected to have a major impact. (Each department decides what constitutes a major impact.)

    - A minor impact is defined as "where marginal cost implications are likely for one or two sectors of the economy and there is no threat to any segment of the population or to firm viability."

    - The distributional effects on industry, government, labour, consumers and the public at large are to be described.

    - Costs and benefits are to be described separately.

    - Other impacts which may be of interest to ministers or the public should be described.

    - Where full or partial cost recovery is contemplated, the method should be described.

    - The degree of sophistication and extensiveness of the analysis should be proportionate to the significance of the regulation and its potential impact.

- **Compliance:** The department or agency is to explain the strategy being adopted to ensure compliance and describe the enforcement mechanism in place or anticipated.

- **Contact Person:** The name of the person who can be contracted either by RAB or by other interested parties, for additional information should be provided.

- **Paper-burden and Small Business Impact:** Departments and agencies are to focus on changes in amount of paperwork and distinctive effects on small business.

- **Consultation:** The department or agency is to provide a summary of the interdepartmental, intergovernmental, and private-sector consultation that has taken place. Consultation should be conducted in the early stages of development before specific courses of action have been determined.

7. Efforts to Improve the Operations of PCOJ

24. On behalf of the Clerk of the Privy Council,[8] officials in the Privy Council section of the Department of Justice (PCOJ) review all proposed regulations to ensure that they: (a) are authorized under enabling legislation, (b) conform to the *Canadian Charter of Rights and Freedoms*, (c) do not constitute unusual or unexpected use of enabling authority, and (d) meet established style and drafting standards.

25. PCOJ's volume of work has expanded significantly over the past decade owing to an increased tendency, beginning with energy legislation in the early 1980s, to enact "framework legislation," leaving substantive provisions to be set out by regulations. The new regulations often directly affect the rights, duties, and obligations of citizens. This contrasts with the more traditional approach, under which only technical standards and details tended to be left to regulations.

26. A Cabinet directive in 1986 set a target of three months as the average turn around time for examination of proposed regulations by PCOJ. PCOJ has consistently met this target. However, this average refers to "active files" only. In the process of examination, PCOJ must often go back to a client department with questions on a file. If the department does not respond within 30 days, the file is deemed to be "inactive" by PCOJ.

27. PCOJ indicates that it has made the following improvements in its operations. First, a PCOJ drafting manual and an editing manual were developed and distributed in 1988 to assist support staff in client departments and the Departmental Legal Services Unit (Department of Justice). Second, since 1987, PCOJ has adopted the practice of assigning teams of experienced lawyers to work exclusively on a major project until it is completed. The practice is followed in cases where sets of new regulations demand intensive effort to complete, and might tie up the regular flow of regulations if examined as part of normal process. Assignments average three to six months. Other lawyers are hired to cope with normal flow in the meantime. The FTA, GST, bankruptcy, and pension reform are illustrations of projects where this approach has been used.

28. Third, more recently, PCOJ agreed to assign lawyers to Environment Canada to help the Department draft regulations and to improve the Department's capacity to draft and process regulations. This is a two-year pilot project. A similar project was expected to begin in late 1992 with Transport Canada for air transport regulations. The resources for these satellite teams are contributed by the client departments. While PCOJ is obviously willing to experiment with satellite teams to test their effectiveness, it is reluctant to generalize the practice to all major regulatory departments. An obvious concern is that a satellite system might dilute PCOJ's control and compromise the style,

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8 Under S.3 of the *Statutory Instruments Act*, the Clerk of the Privy Council must certify that proposed regulations (and other forms of subordinate legislation) are correct in form and constitutionally valid.

consistency and drafting standards that centralized examination designed to achieve. Further, a satellite system may also be impractical, given the limited number of skilled legislative counsel, editors and revisers available, and may not result in the most efficient use of these limited resources.

29. Fourth, PCOJ and RAD, in response to a recommendation by the Standing Joint Committee for the Scrutiny of Regulations, have instituted a policy of amending regulations emanating from several statutes by means of a single departmental omnibus regulation. The first such omnibus regulation was made in October of 1992. The regulations involve non-controversial or technical housekeeping amendments that would not otherwise be made.

30. Fifth, PCOJ initiated the *Online Access to Regulations and Statutes (OARS)* project in 1988. Its object is to develop a comprehensive on-line data base of current federal regulations and statutes, providing for electronic access to consolidated, up-to-date versions of all federal regulations and statutes. The project will also automate PCOJ functions and connect PCOJ with government departments, making possible the electronic transmission of documents within the federal government. The project should be operational by December 1993.

8. Recent Organizational Changes

31. In the Minister of Finance's February 1991 Budget Speech, the Office of Privatization and Regulatory Affairs (OPRA) was dissolved and the Regulatory Affairs function was moved into the Treasury Board Secretariat.[9] The central review of new regulations and preparation of an annual Regulatory Plan were continued. In May, some changes were made to the regulation-making process.

32. First, the briefing side and concern for the "fit" of regulatory initiatives with the government's larger agenda moved into the Privy Council Office from OPRA. The policy management function and responsibility for the overall regulatory process were retained by the Regulatory Affairs Directorate in the Treasury Board Secretariat.

33. Second, since May 1991 the Minister proposing a new regulation must sign the RIAS as well as the draft regulations, in an effort to make Ministers more accountable for the analysis. Previously, the RIAS was negotiated between relatively junior officials in the department proposing the regulations and the Regulatory Affairs Branch (RAB) in OPRA. The documents were not signed, simply "blue stamped" indicating RAB approval.

34. Third, Ministers themselves now decide whether or not to pre-publish Ministerial regulations using the criteria set down by the Treasury Board. All regulations going to the Governor-in-Council however require the approval of the Special Committee of Council to avoid pre-publication. The Minister's signature means that he is recommending the proposed regulations to the Special Committee of Council (a Sub-committee of the full Cabinet, currently comprised of 12 Ministers and chaired by the Government House Leader) will make regulations into law.

9. Standing Joint Committee for the Scrutiny of Regulations (SJC) and the Power of Disallowance

35. In 1986, the Standing Orders of the House of Commons were amended to incorporate a negative resolution procedure. The procedure is initiated by the SJC. Where the Committee considers that a regulation should be annulled, it can make a report to the House containing a resolution to the

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[9] The Privatization Branch was moved to the Department of Finance, which also houses the Crown Corporations Directorate (established in 1984), which advises both the Treasury Board and the Minister of Finance on the federal government's corporate holdings.

effect that that particular regulation be revoked. Unless the House considers the report and votes against it, the House is deemed to have concurred with the resolution contained in the Report at the end of 15 sitting days after the motion for concurrence with the report is placed in the Order Paper. The resolution is then treated as an order of the House that the regulation be revoked.

36. The disallowance power has been invoked four times since its introduction in 1986. The most recent occasion (the relevant report being tabled on November 19, 1992) dealt with regulations prohibiting demonstrations and the distribution of documents within 50 metres of an entrance to a parliamentary building.

D. HOW WE REGULATE TODAY[10]

37. In legal terms, regulation may be effected through a statute enacted by Parliament or a statutory instrument issued pursuant to a statute. In this section, we describe the process dealing only with the latter of these two forms, which is less well-known and also accounts for the vast majority of regulations in force and of new regulations made each year.

1. Legal Requirements

38. The basic legal process the government must follow in developing regulations is set out by the *Statutory Instruments Act*. The Act requires that:

- The Privy Council Section of the Department of Justice must examine proposed regulations to assess their legality.
- Regulations must be registered with the Registrar of Statutory Instruments within seven days of being approved.
- The government must publish its regulations in the *Canada Gazette*, Part II, within 23 days of registration.
- Regulations become law as soon as they have been registered. They can be enforced only after they have been published in the *Canada Gazette*, Part II, or, if they are exempted from publication, after the government has notified those whom the regulations will affect.

2. Administrative Process

Policy Objectives

39. As noted above, in 1986 the government introduced a new regulatory process. The principles underlying that process were set out in the Citizen's Code of Regulatory Fairness and the Guiding Principles of Regulatory Policy. The latter were revised and re-issued in February 1992 (see Appendix II). The Code and Policy set requirements that departments must meet in the conduct of their regulatory activities. Key requirements are the following:

- Regulate only when government intervention is justified and regulation is the best instrument.

10 Adapted from Treasury Board Secretariat, *How Regulators Regulate* (Ottawa: Minister of Supply and Services, 1992). See also Appendix I.

- Ensure that the regulatory method chosen maximizes net benefits.
- Establish a framework and allocate the resources necessary to implement regulatory programs.
- Provide for an open regulatory process, including opportunity for the public to participate in regulation making and clear communication of regulatory requirements.
- Establish clear accountability of officials for regulatory actions.

Administering the Process

40. In February 1991, the government designated the President of the Treasury Board of Canada as Minister responsible for Regulatory Affairs.

41. The Regulatory Affairs Directorate (RAD) of the Treasury Board Secretariat (TBS) is responsible for ensuring that departments and agencies follow the government's regulatory policy. The Directorate monitors regulatory proposals from departments and agencies for consistency with policy, and tries to help them develop the best possible regulations or devise altervatives that meet the same objectives.

42. RAD is also responsible for the publication of the *Federal Regulatory Plan*, issued each December and containing regulatory initiatives for the coming year.

The Approval Process[11]

43. (a) **Consultation**: The process of making regulation begins with the decision to regulate. At this point—ideally, even sooner, at the problem-identification stage—the department involved must provide notice and consult with affected parties. One form of early notice of a regulatory proposal is through inclusion of the proposal in the annual Federal Regulatory Plan published by Treasury Board Secretariat each December. A notice of intent to regulate may also be published in the *Canada Gazette*, Part I. In addition, departments may use newsletters, press releases, electronic bulletin boards, consultative committees, and other mechanisms for reaching the public.

44. (b) **Drafting the Regulation:** The department that originates the regulation is responsible for drafting it. The originating department also drafts a Regulatory Impact Analysis Statement (RIAS), which explains the purpose for the proposed regulation, the alternatives considered, and the expected effects. It also summarizes the results of consultations with interested parties and outlines the department's responses to concerns raised.

45. (c) **Submission:** The deputy minister of the originating department sends the proposed regulation and supporting documentation to the head of the Privy Council Section of the Department of Justice (PCOJ). A copy is also sent to the Regulatory Affairs Directorate of the Treasury Board Secretariat (RAD) and the Privy Council Office.

46. (d) **Review by Central Agencies:** RAD reviews all proposals to ensure compliance with the government's regulatory policy. The Privy Council Office review proposals to ensure that they meet with broader government policies. PCOJ examines regulations to ensure that then have a proper legal basis.

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[11] A regulation may fall into one of three categories: Governor-in-Council (GIC) regulations, Ministerial Regulations (regulations that a Minister is authorized to make under an Act), and GIC or Ministerial Regulations that directly affect the government's spending. The process described here deals only with the first category of regulations, which accounts for the vast majority of the total.

47. (e) **Ministerial Approval:** The sponsoring department's Minister approves the regulation and supporting documentation and submits both to the Privy Council Office (Order-in-Council Section) for consideration by the Special Committee of Council.

48. The information available to Ministers in making decisions on proposed regulations includes at least the RIAS and a communications plan.

49. (f) **Pre-publication:** The regulation and the RIAS are then pre-published in draft form in the *Canada Gazette*, Part 1, to permit further consultation with the public.

50. (g) **Final Submission:** After pre-publication, the sponsoring department's minister submits the final regulation and the RIAS to the Privy Council Office for final approval by the Special Committee of Council.

51. If the Special Committee approves it, the regulation is registered.

52. (h) **Registration and Publication:** Both the regulation and the RIAS are published in the *Canada Gazette*, Part II.

53. (i) **Parliamentary Review:** Finally, the Standing Joint Committee for the Scrutiny of Regulations reviews all regulations. It can recommend changes to the government, report to Parliament on problems with regulations that members of the Committee have discovered, or propose to Parliament that a regulation be overturned.

Figure 2-1

SUMMARY OF REFORMS OF THE FEDERAL REGULATORY PROCESS, 1972-1992

1. Liberal Government of Pierre Trudeau 1972—June 1979

(a) Creation of the Standing Joint Committee on Regulations and Other Statutory Instruments
1972

(b) Periodic Evaluation of Regulatory Programs (every 3-5 years)
September 1977

(c) Socio-Economic Impact Analysis (of new major health, safety
Aug. 1, 1978 (to Aug. 1986)
and fairness regulations)

2. Progressive Conservative Government of Joe Clark, June 1979 to March 1980

(a) Institutional Changes: Office of the Coordinator, Regulatory Reform
Dec. 1979 (to March 1986)

3. Liberal Government of Pierre Trudeau, March 1980 to September 1984

(a) Regulatory Agenda (twice annually)
May 1983 (to Dec. 1986)

4. Progressive Conservative Government of Brian Mulroney, September 1984 to April 1992

(a) Guiding Principles of Federal Regulatory Policy
February 1986[5]

(b) Citizens' Code of Regulatory Fairness
March 1986[5]

(c) Regulatory Program Improvement Package (46 reform initiatives)
March 1986[5]

(d) Public Consultation Mechanisms - prepublication of draft RIAS
March 1986[5]
in Part I of the *Canada Gazette* to solicit comments

(e) Regulatory Impact Analysis Statement (RIAS)
September 1986[5]

(f) Periodic Evaluation of Regulations, Statutes and Regulatory Programs

- Regulatory statutes to be reviewed over a 10-year cycle by Parliamentary Committees
  March 1986[5]
- Regulatory programs to be evaluated at least every 7 years
  March 1986[5]
- Regulatory programs to be reviewed every 7 years
  November 1987[5]

(g) Disallowance of Regulations by Negative Resolution[4] of the Standing Joint Committee for the Scrutiny of Regulations
1986[5]

(h) Regulatory Plan (annual)
December 1987[5]

(i) Improvements in the process of legal review by PCOJ
1986-1988

(j) Institutional Changes

- Regulatory Affairs Secretariat in PCO for the Cabinet Committee on Privatization, Regulatory Affairs and Operations
March 1986 to Aug. 1986
- Regulatory Affairs Branch (in OPRA)[2]
Sept. 1986 to Feb. 1991
- Regulatory Affairs Directorate (in Treasury Board)[3]
February 1991 - to date

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1. Minister of State (Treasury Board) given responsibility for regulatory reform in 1979 by the Conservative government; President of the Treasury Board was given this task in 1980 by Liberal government.

2. Minister of Regulatory Affairs appointed in February 1986 (who was also President of the Privy Council and Government House Leader).

3. In February 1991, RAB became the Regulatory Affairs Directorate in the Treasury Board Secretariat; the Minister responsible for Regulatory Affairs became the President of the Treasury Board.

4. The resolution is prepared by the Standing Joint Committee for the Scrutiny of Regulations.

5. This reform was in place as of November 1992.

Source: See the detailed description in W.T. Stanbury (1992, Ch. 3, 4).

Figure 2-2

CLASSIFYING EFFORTS TO REFORM THE FEDERAL REGULATORY PROCESS, 1972-1992

1. **Efforts to Improve Proposed Regulations Before They are Made into Law**

   - SEIA requirement for major new HSF regulations (beginning in August 1978)
   - "Guiding Principles of Federal Regulatory Policy" (1986)
   - "Citizen's Code of Regulatory Fairness" (1986)
   - Regulatory Agenda—twice per year (beginning in May 1983)
   - Regulatory Plan, annual (beginning in late 1986)
   - Regulatory Impact Analysis Statement requirement for new regulations (1986)
     - advance consultation
     - examination of alternatives
     - anticipated impact, notably cost-benefit analysis
     - compliance strategy
     - pre-publication of draft regulations for notice and comment

2. **Efforts to Improve Existing Regulatory Programs or Regulations**

   - Periodic evaluation of all regulatory programs
     - originally every 3 to 5 years (1977)
     - cycle set at 7 years (1986)
     - period left up to the deputy head (1991)
   - Periodic review of regulatory statutes every 10 years by parliamentary committees (1986)
   - Review of recently enacted regulations by the Standing Joint Committee for the Scrutiny of Regulations (established in 1972)
     - primary focus is on form and legality
     - Committee given the authority to introduce a negative resolution to the House to disallow regulations (1986)

Source: grouped from **Table 2-1.**

CHAPTER 3

Regulation and Competitiveness

A. THE CONCERN WITH NATIONAL COMPETITIVENESS

1. The concern with national competitiveness is of relatively recent origin. The source of this concern differs from country to country. In the United States, it is the result of a large and persistent balance of payments deficit and a deficit in bilateral trade with Japan.

2. In other OECD countries, the concern with competitiveness is a consequence of the liberalization of international restrictions on trade and capital movements. It is becoming increasingly difficult for governments to protect domestic firms from international competition. While protectionism can hardly be said to have disappeared, governments are coming to the realization that the appropriate response for industries threatened by international competition is to adjust, either by becoming competitive or by shifting resources into activities in which they are potentially competitive. Moreover, it is now understood that the process of adapting to changing circumstances involves more than the firms or industries threatened with a loss of business. It involves a complex set of mutually reinforcing institutional linkages among educational institutions, research organizations, customers and suppliers, as well as a responsive public policy environment.

3. In essence, to focus on competitiveness is to focus on the fundamental determinants of economic growth. This focus implies a recognition that unsatisfactory national economic performance can not be remedied simply by more government spending.

B. DEFINING NATIONAL COMPETITIVENESS

4. There are many definitions of competitiveness. Most define competitiveness as involving a number of factors. Definitions differ from each other with respect to the factors they emphasize. Broadly speaking, there are two alternatives. One is to emphasize trade performance. The other is to emphasize productivity performance.

5. The trade-oriented approach defines good competitive performance to include a current account surplus, constant or increasing world market shares, and a shift in export composition over time towards higher value-added or high-technology products.[1] For example, in its current review of the impact of its regulations on Canadian competitiveness, the federal Department of Agriculture defines competitiveness as "the sustained ability to profitably gain and maintain market share".

6. The productivity and productivity growth-oriented approach proceeds from the assumption that the ultimate goal of national governments is to maximize per-capita wealth, that is, the incomes of present and future residents. Higher productivity necessarily implies higher per-capita income. Michael Porter, perhaps the leading student of competitiveness, adopts the productivity approach:

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[1] See for example, B. Scott and G. Lodge, *U.S. Competitiveness in the World Economy* (Boston: Harvard University Press, 1985); and J. D'Cruz and J. Fleck, *Canada Can Compete!* (Montreal: Institute for Research and Public Policy, 1985).

The only meaningful concept of competitiveness at the national level is national productivity. A rising living standard depends on the capacity of a nation's firms to achieve high levels of productivity and to increase productivity over time. . .. Sustained productivity growth requires that an economy continually upgrade itself. A nation's firms must relentlessly improve productivity in existing industries by raising product quality, adding desirable features, improving product technology or boosting production efficiency. . .. A nation's firms must also develop the capabilities required to compete in more and more sophisticated industry segments where productivity is generally higher. At the same time, an upgrading economy is one which has the capability of competing successfully in entirely new and sophisticated industries.[2]

7. Some definitions of competitiveness attempt to give equal weight to trade and productivity. For example, The President's Commission on Industrial Competitiveness defines productivity as follows:

The degree to which a nation can, under free and fair market conditions, produce goods and services that meet the test of international markets while simultaneously maintaining and expanding the real incomes of its citizens.[3]

8. In its recent survey of the Canadian economy (OECD, 1992), the OECD adopts this definition with qualifications. According to the OECD:

. . .the notion of competitiveness has both short-term and long-term aspects. The short-term aspect concerns the ability to meet the test of international markets. A nation can have difficulty meeting this test if its unit production costs become higher than those of other nations. This kind of loss of competitiveness occurs when increases in wages and other costs are not compensated for by productivity growth. The long-term aspect of the definition . . . concerns real income per-capita. A nation is considered to be competitive if, relative to other countries, it maintains or expands the real income of its citizens.[4]

9. The OECD study then goes on to focus virtually all of its attention on productivity growth, noting that ". . .the long-term competitiveness of a nation essentially depends on its ability to improve the level of labour productivity relative to that in other countries and, to a lesser extent on the proportion of the population working."[5]

10. The Economic Council of Canada (1992) takes a similar approach, arguing that measures of trade performance are relevant to national economic well-being only insofar as they affect productivity:

. . .rising export shares or an improved trade balance are appropriate measures of competitiveness only if they are associated with increased productivity and real income growth. Thus a nation's productivity growth, relative to that of its major competitors, is the critical factor in determining its long-term ability to compete in global markets.[6]

11. While public and political concern over competitiveness is frequently motivated by the perceived threat of job losses due to imports or loss of export markets, national prosperity is ultimately a question of productivity. Trade performance is not an end in itself. It is important only insofar as it

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2 M. Porter, *The Competitive Advantage of Nations* (New York, The Free Press, 1990), pp. 6-7.

3 Competitiveness Policy Council, *Building a Competitive America: First Annual Report to the President and Congress* (Washington, 1992).

4 OECD, *Regulatory Reform, Privatisation and Competition Policy*, (Paris, 1992), p. 52.

5 *Ibid.*

6 Economic Council of Canada, *Pulling Together: Productivity, Innovation and Trade* (Ottawa, 1992), p. 7.

relates to productivity and there is no necessary connection between the two. The causes of, and remedies for, balance of payments problems are distinctly different from the causes of, and remedies for, productivity problems.

12. Recent, comprehensive statistical studies have found that international differences in productivity growth rates are a function of per-capita income levels (poorer countries grow faster, implying convergence of income levels) and the ratio of investment to GDP. Given these two variables, there is no relationship between trade balances and productivity growth rates.[7]

13. There are a number of reasons to expect trade balances and productivity growth rates to be unrelated. First, trade is based on comparative rather than absolute advantage. The most productive nation can increase its income by importing the goods and services in which it is relatively less productive. The least productive nation can increase its income by exporting the products in which it is relatively more productive.

14. Second, national balances of payments do just that. They balance. This has the important implication that a current account deficit may be a consequence of a capital account surplus, that is, of a net capital inflow. A net capital inflow occurs if domestic savings are insufficient to finance either domestic investment or the government deficit, or both.

15. Thus, a country with especially good investment opportunities (for example, the United States in the 19th century, Canada in the first half of the 20th century) may have a current account deficit and its export and import competing industries will appear to be performing poorly.

16. Similarly, countries with large government deficits may also have net capital inflows and corresponding current account deficits. In essence, the current account deficit is simply the excess of the goods and services used by the government over that which can be drawn from taxpayers and savings. There is, for example, a considerable body of opinion to the effect that the United States current account deficit is a consequence of its federal government budget deficit and that only a decrease in the budget deficit or an increase in domestic savings can reduce the current account deficit.[8]

17. To summarize, the overwhelming weight of opinion would appear to be in favour of defining national competitiveness in terms of productivity levels and growth rates. Accordingly, a high productivity level and a high productivity growth rate are indicative of competitiveness while a low growth rate and a low level of productivity indicate a lack of competitiveness.

18. Competitiveness can be viewed as a continuous process of doing things better and of doing better things. The question for policy makers is how government regulation affects this process.

C. COMMAND AND CONTROL VS. INCENTIVE REGULATION

19. While there are a variety of methods of regulation, two approaches have received considerable attention in recent discussions. They are the command-and-control and the market-incentives approaches. Command and control specifies both performance objectives and the means of achieving them, that is, the form of compliance. Specification of the form of compliance involves specification of both product characteristics and the characteristics of the production process.

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7 Given the investment: GDP ratio, none of exports: GDP, imports: GDP, total trade: GDP, "excess imports": GDP or "excess exports": GDP are correlated with per-capita real GDP growth. All of the exports, imports and total trade: GDP ratios are correlated with the investment: GDP ratio.

8 See United States Department of Commerce, International Trade Administration, *Improving U.S. Competitiveness*, Proceedings of a conference held at the U.S. Department of Commerce, Tuesday, 22 September 1987; and Competitiveness Policy Council, *Building a Competitive America: First Annual Report to the President and Congress* (Washington, 1992).

20. Some examples of the specification of the means of compliance are provided by CP Rail in its submission to the Sub-committee:

> While some regulations take an objective-oriented "what to do" approach, such as by establishing standards, many take a more prescriptive "how to" approach. The latter has been favoured frequently in operating and safety regulation.
>
> For example, regulations governing the procedures to be used in train air-brake testing deal not only with how to test brakes but also with when and who is qualified to conduct a brake test.
>
> Trains must stop every 1500 miles so that all the cars can be inspected. This mileage interval has little to do with the need for inspection.
>
> Fleet utilization is reduced by the level of specific locomotive maintenance dictated by regulation. A locomotive must be taken out of service for inspection every 90 days regardless of the distance it has travelled during the period. The inspection process itself is also narrowly described in detail. (p. 12)

21. The market incentives approach to regulation specifies objectives but allows those governed by the regulation some freedom of choice as to how these objectives are achieved. This can reduce both enforcement and compliance costs. In the CP Rail example above, a market incentives approach would place an obligation on the railways to ensure that their rolling stock is mechanically sound but would leave the means of ensuring mechanical soundness up to the railways. A performance-based standard may, however, be more difficult to monitor and to verify.

D. THE IMPACT OF REGULATION ON COMPETITIVENESS

22. Regulation can have either a positive or a negative impact on competitiveness. For many years it was simply assumed that regulation was in the public interest, that is, that it rectified market failures and increased thus, productivity. Beginning in the late 1960s, economists, led by Professor George Stigler of the University of Chicago, began to question this assumption. Their studies found numerous examples of regulations and regulatory regimes that were demonstrably not in the public interest.[9]

23. Regulation is costly. The costs of regulation include administration, enforcement and compliance costs, as well as deadweight losses due to distortions in both input and product markets. Regulation also inhibits both economic adjustment and innovation, and thus reduces the rate of growth of productivity and per-capita income. If the costs of regulation exceed its benefits, properly measured, then regulation reduces aggregate productivity and per capita income levels. Conversely, when benefits exceed costs, productivity and income levels rise.

24. An example of how a regulation which passes an economic cost-benefit test must also improve productivity is provided by the U.S. Environmental Protection Agency's analysis of the consequences of the (virtual) elimination of lead as an additive in gasoline.[10] This regulation increased refining costs by roughly $500 million annually. This reduced productivity in petroleum refining. The regulation also had the following quantifiable benefits:

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[9] For an overview, see S. Jacobs, "Controlling Government Regulation: A New Self-Discipline", *The OECD Observer* 175, April/May, pp. 4-8.

[10] OECD, *Benefits Estimates and Environmental Decision-Making* (OECD: Paris, 1992).

- **Improved children's health:** Reduced lead levels in children's blood result in lower costs of both medical care and compensatory education. The value of resources saved is on the order of $400 million a year.

- **Improved blood pressure in adults:** Reduced lead levels in adults' blood reduce the incidence of high blood pressure, hypertension, strokes and heart attacks. The saving in medical costs and from lost income due to premature death is estimated at approximately $5 billion annually.

- **Reduced incidence of misfuelling:** Use of leaded fuel in engines not designed for it is reduced. This reduces both the the emissions of other pollutants (in particular, ground-level ozone) and damage to engines. The damages so avoided amount to approximately $700 million a year.

- **Reduced vehicle maintenance costs:** Reduced lead corrosion results in lower maintenance costs and lower tune-up costs. The resource saving on maintenance, tune-ups and from improved fuel economy is estimated at approximately $900 million a year.

25. The elimination of lead in gasoline resulted in **net** benefits (that is the excess of the value of resources freed up over the value of resources used) to the U.S. economy of approximately $6 billion annually, or net benefits of $1 billion annually, excluding the benefits attributed to premature deaths avoided as a result of improved blood pressure. Taking the latter figure, the EPA analysis shows that, properly measured, U.S. GDP is about a billion dollars higher every year with the regulation than without it. There is a corresponding increase in GDP per-capita and (aggregate) total factor productivity.

26. This example illustrates an important point. A regulation can pass a benefit-to-cost test even though it reduces the productivity of the industry on which it has been imposed, provided it results in more than offsetting productivity improvements elsewhere in the economy. In the case described above, the elimination of lead additives from gasoline reduces the productivity (increases the costs) of the refining industry, but more than makes up for this in savings in health care costs, savings in additional education costs, and savings in engine maintenance and replacement costs.

27. Regulation may also free up unpriced, open access resources. For example, emissions regulations may improve the recreational value of open-access land or water bodies. This increase in recreational value can be estimated by indirect means, and if the increase in value exceeds the cost of reducing emissions, the regulations produce a net benefit. Because users do not pay for access, however, the increase in recreational value will not be reflected in measured GDP and the regulation will appear to reduce GDP, GDP per capita, and productivity.

28. In summary, to the extent that the resources involved are priced, a regulation that passes a cost-benefit test also increases per-capita GDP or aggregate productivity. To the extent that unpriced resources are involved, a regulation can pass a cost-benefit test but reduce measured GDP per-capita. While per capita GDP is lower, Canadians are, nevertheless, better off with the regulation than without it. On the other hand, if the sum of priced and unpriced benefits is less than costs, the regulation in question reduces per capita GDP, and Canadians are the worse off for having adopted it.

29. It has recently been suggested that regulation may not only increase aggregate productivity but also increase the productivity of the firms on which the regulations are imposed, if it forces these firms to upgrade their products and processes. According to this view, the product and process improvements made by firms in order to comply with environmental, health, or safety regulations result in a competitive advantage in international markets which ultimately increases their profits. Thus, net compliance costs are zero and regulation is effectively free.

30. The evidence regarding the effect of regulation on aggregate productivity and productivity growth relates principally to the role played by increased social regulation in the slowdown in productivity growth experienced in most developed countries after 1970. Between 10 and 15 percent of the decline in the rate of aggregate productivity growth in the United States has been attributed to the direct and indirect effects of regulation.[11] There do not appear to any estimates of the effect of regulation on aggregate productivity growth in Canada.

31. The emphasis in this study is on the link between regulation and productivity because productivity is the ultimate measure of national economic performance. If competitiveness is to be a meaningful measure of national economic performance it must be defined in terms of productivity and productivity growth. This is not to say that regulation can not affect a nation's trade balance. It can and Kalt[12] has shown persuasively that, in the U.S. case, it has. Kalt finds that, given their other factor characteristics (capital, R&D, and skill intensity), U.S. industries with the higher direct and indirect costs of environmental regulation had lower net exports than industries facing lower environmental costs. It is important to understand that, while environmental and other regulation can reduce exports and employment in some industries relative to what they would be in the absence of regulation, the relevant question is whether this regulation produces gains (cost savings) elsewhere in the economy that are sufficient to offset compliance costs, that is, whether the regulation can pass a cost-benefit test.

E. REGULATORY ACTIONS THAT REDUCE COMPETITIVENESS

32. Regulation can reduce productivity and discourage innovation, thus reducing the rate of productivity growth. It is useful to distinguish between two classes of cases. In the first, regulation is intended to remedy a perceived market failure, but either does not do so or does so at a cost that is excessive. Cases of this nature might also be termed "deficient public interest regulation". Regulation may be deficient in the sense that a market failure does not actually exist or, if it exists, is not remediable by the form of regulation chosen, by any form of regulation. Alternatively, it may be that the costs of remedying a market failure by regulation exceed either the benefits ("the cure is worse than the disease"), or the costs of alternative remedies.

33. The second class of cases involves regulation that is intended to serve special interests rather than the public interest. Regulation of this nature is intended to transfer wealth rather than to increase it. This generally involves the suppression of competition with the attendant distortion of input and output markets.

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[11] W. Baumol and K. McLennan, eds., *Productivity Growth and U.S.: Competitiveness,* (New York: Oxford University Press, 1985), p. 9.
For a review of the U.S. literature, see E. Wolff, "The Magnitude and Causes of the Recent Productivity Slowdown in the United States: A Survey of Recent Studies" in Baumol and McLennan, op. cit.
For a survey of explanations for the slowdown in productivity growth in Canada, see G. Stuber, "The Slowdown in Productivity Growth in the 1975-83 Pèriod: A Survey of Possible Explanations" Bank of Canada Technical Report No. 43 (Ottawa, 1986). Stuber suggests that the uncertainty created by the National Energy Policy may have reduced the rate of productivity growth in the mineral fuels sector (p. 92).

[12] J. Kalt, "The Impact of Domestic Environment Regulatory Policies on U.S. International Competitiveness" in A.M. Spence and H. Hazard, eds., *International Competitiveness,* (Cambridge: Ballinger, 1985), pp. 221-262.

F. DEFICIENT PUBLIC INTEREST REGULATION

34. In the case of deficient public interest regulation, productivity is reduced because the regulatory process is more costly than is necessary or these costs exceed the economic benefits of regulation or both. This could involve the imposition of economic (public utility) regulation on a workably competitive industry in the mistaken belief that it is a natural monopoly. For example, in its submission to the Sub-committee, AGT argued that the maintenance by the CRTC of a lengthy approval process for the pricing of telecommunications services, for which rival suppliers now exist, protects competitors from each other rather than protecting consumers from natural monopoly as was originally intended.[13]

35. Deficient public-interest regulation could also involve either excessive safety or environmental standards or a command and control approach to regulation that results in excessive compliance costs. Compliance costs include the costs of product and process modifications, paperwork, testing, inspections, keeping up to date with new regulatory requirements, participating in the consultative process, and appealing regulatory edicts. Compliance costs can take the form of cash costs or opportunity costs or both:

> . . .the diversion of technical and managerial staff to administrative tasks; and the confusion, slowdowns, and lost efficiencies that naturally arise as companies respond to an increasing and sometimes inconsistent array of legal responsibilities.[14]

36. A recent study estimated that the compliance costs of U.S. federal social and economic regulation totalled $328 billion in 1990.[15] Large as these costs are, it is not their absolute magnitude which is of primary interest. The relevant questions are whether, in each case, the benefits of regulation exceed its costs and whether these costs could be reduced. If economic benefits exceed costs, the regulation in question increases productivity. If benefits do not exceed costs, competitiveness demands a change in the regulatory regime. This may involve partial or complete deregulation, or a change in the regulatory process so as to reduce its costs.

37. There are a number of well-publicized cases, particularly involving safety standards, in which compliance costs are wildly out of proportion to benefits realized.[16] There are a number of examples of regulatory safety standards in the United States (and probably elsewhere) that have compliance costs in excess (some well in excess) of $100 million for each life saved. (Economic Report of the President, February, 1992).[17] The implication is that many more lives could be saved if the same resources were spent in other ways.

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[13] Submission to the Sub-committee on Regulations and Competitiveness of the Standing Committee on Finance, AGT Limited, October 27, 1992, pp. 5-8. For more detail see Regulation and Competitiveness in the Telecommunications Industry (Submission by AGT Limited to the Government of Canada's Prosperity and Competitiveness Steering Committee, June 1992).

[14] Submission by Canadian Manufacturing Industries Forum to the Sub-committee on Regulations and Competitiveness of the Federal Standing Committee on Finance, House of Commons, Ottawa, November 3, 1992, pp. 3-4.

[15] R. Hahn and T. Hopkins, "Regulation and Deregulation: Looking Backward, Looking Forward", *The American Enterprise,* Vol. 3, No. 4, July/August, pp. 70-79.

[16] Product standards can also be used to protect special interests by increasing barriers to entry and to trade. See OECD, *Consumers, Product Safety Standards and International Trade,* (Paris, 1991); and Congress of the United States, Office of Technological Assessment, *Global Standards: Building Blocks for the Future,* (Washington, 1992).

[17] See also The Economist, October 10, 1992, pp. 21-4, and John F. Morrall III, "Control of Regulation—a Washington Perspective" in T.D. Hopkins, ed., *Regulatory Policy in Canada and the United States* (Rochester: Rochester Institute of Technology) pp. 9-12.

38. Studies of occupational safety regulation find that, while there are a number of cases in which benefits are either nonexistent or small relative to costs, benefits appear to have been roughly commensurate with costs in aggregate. According to Dewees and Trebilcock:

> . . .occupational health and safety regulation at the federal, state and local level has had a beneficial effect, but that the effect of the federal regulatory program has not been large. Arguably, the provision of information, the evolution of general public attitudes toward worker health and safety, and workplace negotiations regarding health and safety issues have had considerably more impact. In the workplace, where workers have a direct interest in their own health and safety and where the employer shares a portion of that interest, the need for remote government intervention is modest. The workers' compensation system appears to fulfill an important role in promoting workplace safety, both by creating incentives for the employer and by implicitly providing information regarding workplace risks to both employer and employee. Still, standards set by government provide information about risks and prevention and may help to shape the environment within which the workplace bargaining takes place, so that the abolition of those standards might have a substantial adverse effect.[18]

39. Experience-rated workers' compensation and the provision of information regarding workplace hazards appear to have been much more effective than regulation in reducing workplace accident rates.[19] Command-and-control regulations mandating the installation of "safe" equipment have been costly and ineffective:

> Substantial expenditures by companies for in-compliance equipment—in the billions of dollars—to pass OSHA [Occupational Health and Safety Administration] inspections did not bring about a reduction in numbers of accidents. The expenditures of thousands of smaller companies had limited accident-reducing effects in working conditions where less attention has been paid to workplace safety.[20]

40. In the area of environmental regulation, U.S. studies find that the costs of water quality regulation are well in excess of benefits. Some commentators conclude that air pollution regulations have resulted in substantial reductions in emissions of some pollutants and economic benefits may have been commensurate with costs in aggregate.[21] Others maintain that observed reductions in emissions have not been the result of regulation and that regulation has been ineffective.[22]

G. REDUCING THE PRODUCTIVITY DRAG FROM DEFICIENT PUBLIC INTEREST REGULATION

1. Use Cost-Benefit Analysis

41. Cost-benefit analysis has been helpful in guiding government decisions regarding what and how much to regulate. There is a considerable body of opinion to the effect that it can and, indeed, must be used more extensively. It is important to understand that a regulation that can pass a

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[18] D. Dewees and M. Trebilcock, "The Efficacy of the Tort System and its Alternatives: A Review of the Empirical Evidence", *Osgoode Hall Law Journal,* Vol. 30, No. 1, Spring, p. 129.

[19] *Ibid.,* p. 127-8.

[20] P. MacAvoy, P., *Industry Regulation and the Performance of the American Economy,* (New York: Norton, 1992) p. 92.

[21] Dewees and Trebilcock, op. cit., p. 120.

[22] MacAvoy, op. cit., pp. 99-104.

cost-benefit test necessarily improves productivity and competitiveness, and a regulation that fails a cost-benefit test reduces productivity and competitiveness. It is also important to understand that there are techniques of estimating the benefits of improving the quality of open access (unpriced) resources such as recreational land and wildlife species.[23]

42. There is evidence that significant regulatory decisions are being made in Canada without cost-benefit justification. An illustration of the failure of regulators to support their intervention with evidence that it will result in economic benefits that are commensurate with compliance and enforcement costs is provided by the ammendments to the Pulp and Paper Effluent Regulations made in May, 1991. The Regulatory Impact Analysis Statement (published in the *Canada Gazette,* Part II, in May 7, 1992) estimates the cost of the regulations at $4.1 billion in present value terms. It has this to say about the benefits:

> The benefits of these regulations though significant, are difficult to quantify. This non-quantification is related to the fact that there is not enough information either to estimate the increase in revenues connected with fishing or to estimate the impact of the amendments on recreational activities as well as on other affected areas.[24]

43. Environment Canada officials appearing before the Sub-committee acknowledged that the estimated benefits of these regulations were not quantified (6:14-1).

44. The literature on cost-benefit analysis (CBA) indicates that the benefits of these regulations could have been quantified to a greater degree than Environment Canada felt possible. The commitment of $4.1 billion in resources with no apparent sense of what the magnitude of the benefits might be provides no sense of what the net impact of the regulation is.

45. A prerequisite to the use of cost-benefit analysis is the accumulation of scientific evidence regarding the health or safety hazards associated with the phenomenon to be regulated. In some important cases, regulatory activity does not appear to be informed by scientific evidence. According to the submission of Inco, the proposed Ontario standards for exposure limits for 101 hazardous substances in the workplace were chosen by taking the lowest limit specified for each substance by any of the five countries (which did not include the U.S.) surveyed.[25] The U.S. was excluded on the grounds that its exposure limits were determined without union representation. According to Inco, there was no scientific basis, let alone cost-benefit basis for this method of selecting exposure limits.

46. As an analytic technique aimed at clarifying the effects of alternative actions, CBA can help decision-makers make better decisions. It has serious limitations, however, which must be recognized if it is to be used properly. In the most basic terms, CBA entails: (a) estimating all significant effects of a proposed action over time, (b) placing a monetary value on those effects and (c) discounting them to a given year using an appropriate discount rate. Depending on the proposed action, each one of these steps may be fraught with difficulties. On the cost side, estimating the effects of a proposed regulation requires not only determination of the costs of measures that regulatees must take to comply with the regulation, but also of the measures that they would have taken in the absence of the regulation, so as to calculate the difference that regulation would make. Estimation of the benefits requires similar projections of a world with and without the regulation; but the problems only begin at this point, particularly with respect to areas of social regulation. Benefits in these areas—a safer workplace,

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[23] OECD, *Benefits Estimates and Environmental Decision-Making,* (Paris, 1992).

[24] *Canada Gazette,* Part II, Vol. 126, No. 11, p. 2001.

[25] Inco Ltd. Submission to the Sub-committee on Regulations and Competitiveness, House of Commons (October, 1992), p. 7.

cleaner environment, unspoiled wilderness—are normally unpriced, since they are not traded in established markets. Methods for imputing values on such benefits do exist, but the information requirements may be formidable in practice. Quantification of benefits is further complicated by the high uncertainty often attaching to environmental impacts—and in particular the possibility of irreversable damage to environmental assets—and the distributional effects, between present and future generations, implicit in the choice of discount rates for environmental investments. Some of the most significant effects of regulatory actions may be the most difficult to quantify. Any temptation to ignore what is not easily quantifiable must therefore be resisted if the value of cost-benefit analysis to decision-makers is not to be compromised.

2. Use Economic Instruments

47. There is also ample evidence that the administration, compliance, and third-party costs of regulation could be reduced.[26] Rules can be written in plain language. Rules can be specified in terms of performance objectives leaving the parties involved free to comply in the most efficient manner or, in current parlance, economic incentives can be used in place of command and control.

48. The use of economic incentives in place of command and control in environmental regulation has received considerable attention.[27] Command and control generally mandates a form of emissions control, frequently the best available technology (BAT). Command and control regulation also tends to require that emissions from all sources be reduced by the same percentage. If the costs of reducing emissions from various sources differ, the total cost of meeting a given aggregate emissions target can be reduced by concentrating abatement effort where it is least costly. By requiring an equi-proportionate abatement effort, command and control increases the total cost of complying with a given aggregate emissions standard.

49. The advantage of economic incentives is that in some circumstances they allow for efficient compliance, that is, for the exploitation of the least costly of the existing forms of abatement and for the development of new, even less costly forms of abatement. Economic incentives can involve taxes or subsidies or tradeable emissions permits. Economic incentives are not "permits to pollute". They can achieve the same level of aggregate emissions as command and control regulation. They simply allow a greater percentage reduction in emissions from some sources than in emissions from others.

50. While Environment Canada appears favourably disposed to their possible application, Canadian experience with economic incentives has been limited primarily to municipal effluent charges. The Environmental Protection Agency in the United States has made greater use of economic incentives, especially tradeable emissions permits. Experience with them has been favourable in the sense that they have reduced compliance costs relative to command and control. They continue to fall short of the ideal largely because of political limitations on permit trading, driven by the fear, ironically enough, that permits will be seen as "rights to pollute".

51. A good example of tradeable permits in action is the use of lead permits during the phase-out of leaded gasoline in the United States. Instead of requiring that each refiner reduce lead content by the same percentage, each refiner was given a tradeable permit for a given lead content with the amount permitted declining over time to zero. Permits were traded, with the refiners that could reduce their lead content most readily selling permits to the refiners for whom lead content reduction was more costly. The aggregate cost of compliance was reduced in that the least costly lead content reductions occurred first.

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[26] For an overview, see S. Jacobs, op. cit.

[27] R. Hahn, "Economic Prescriptions for Environmental Problems: How the Patient followed the Doctor's Orders", *Journal of Economic Perspectives,* Spring, 1989.

52. The use of economic instruments in other areas of social regulation involves a wide variety of alternatives. As suggested above, workplace safety may be more efficiently encouraged by a regime of experience-rated workers' compensation rather than attempting to specify what constitutes a safe workplace in every employment situation. The key is to provide an incentive to avoid accidents and to allow employers and employees to achieve this goal in the manner most suitable to their own circumstances.

53. With respect to product safety, Dewees and Trebilcock conclude from their survey of the Canadian and U.S. experience that:

> As a general proposition, hazard labelling and other mandatory safety information appear to be underutilized responses relative to minimum safety standards.[28]

54. The issue is, again, whether the specification of product characteristics is necessary to achieve the goal that products be safe, efficacious, or easy to compare. Should the insulation factors for fibreglass be imposed at the manufacturers' level, or should fibreglass insulation simply be labelled with any required insulation factors being embodied in the building code?[29] Should the sizes of facial tissue packages be specified by regulation, or should packages simply carry the number of tissues and their size on the label?[30] In general, regulation should be designed so as to allow the parties involved a reasonable degree of latitude in meeting a performance objective.

55. In some cases, voluntary regulation may be more efficient than compulsory regulation. Voluntary product standards may be preferable in fields characterized by rapid product change. Voluntary standards can be put in place and altered more quickly than can government regulations. The disadvantage of voluntary standards is that they can also be used as a facilitating device to reduce competition among existing firms or to disadvantage new entrants. The flexibility of voluntary standards thus may come at a cost of not taking the interests of consumers and other affected parties into account.

3. More Expeditious Proceedings

56. According to an official of the Department of Health and Welfare, the process of amending the product quality regulations administered by the department involves 30 separate steps and the documentation associated with a minor amendment runs to 400 pages. The process is slow and costly, and this is due, in considerable measure, to the amount of consultation that takes place. A more efficient consultative process could therefore yield high benefits. One suggestion is to focus consultations on the early stages of the regulatory development process when the questions of whether and how to regulate are still open.

4. Limit Monopoly Regulation to Monopoly Situations

57. Economic regulation may not be required where competitive alternatives exist. This was emphasized in the submission of AGT.

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[28] Dewees and Trebilcock, op. cit., p. 103.

[29] Submission by Canadian Manufacturing Industries Forum, p. 8.

[30] Brief of Kimberly-Clark Canada Inc. to Consumer and Corporate Affairs Canada Regarding the Sheet Count Regulations Under the Consumer Packaging and Labelling Act, pp. 6-7.

58. Rules can also be specified so as not to dull the incentive to innovate.[31] This applies to both social and economic regulation. In regard to economic regulation, the Federal-Prairie Task Force on Telecommunications Regulation has recommended the substitution of Earnings Incentive Regulation for Rate of Return Regulation in the remaining monopoly segments of the telecommunications sector.[32] Earnings Incentive Regulation allows the regulated enterprise to keep some fraction of earnings in excess of its allowed rate of return. This provides an incentive to reduce costs and reduces the frequency of regulatory proceedings. The Canadian Association of Petroleum Producers indicated support for a similar kind of incentive regulation of pipelines by the National Energy Board.[33]

H. SPECIAL INTEREST REGULATION

59. The principal purpose of special interest regulation is to transfer wealth from one group in society to another. This can involve either social or economic regulation. An example of social regulation as special interest regulation would be safety or environmental standards that are set so as to disadvantage potential competitors and reduce competition.[34] Examples of economic regulation as special interest regulation would be the restriction of entry, and facilitation of joint price setting in industries in which competition, potential competition or both would otherwise discipline the exercise of market power. These industries could include energy, financial intermediation, telecommunications and others.

60. Much, if not all, of the deregulation movement that has occurred in OECD countries has involved the removal of competition-suppressing special-interest regulation. This has occurred in four major economic sectors: energy, transportation, telecommunications, and financial intermediation. There have been a number of studies of the consequences of deregulation.[35]

61. The use of cost-benefit analysis may assist in the reduction of special interest regulation. The latter would, by definition, fail a cost-benefit test. The ultimate solution is to reduce the influence of special interests in the democratic process. Procedural reforms which increase the transparency of the regulatory process are likely to be of some assistance in this regard.[36]

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[31] For example, price regulation under conditions of natural monopoly can be specified so as to allow the monopolist to keep the profits derived from above average efficiency gains. See E. Lacey, "The Sectoral Impact of Deregulation", *The OECD Observer* 175, April/May, pp. 9-12; and *Economic Report of the President* (Washington: U.S. Government Printing Office,1992), chapter 5.

[32] Report of the Federal-Prairie Task Force on Telecommunications Regulation, Appendix C to the AGT Limited Submission to the Standing Committee on Finance (October 27, 1992).

[33] Presentation of the Canadian Association of Petroleum Producers to the Sub-committee on Regulations and Competitiveness (November 2, 1992).

[34] See, for example, A. Bartel and L. Thomas, "Predation Through Revelation: The Wage and Profit Effects of the Occupational Safety and Health Administration and the Environmental Protection Agency", *The Journal of Law and Economics,* Vol. 30, No. 2, October, pp. 239-64; and L. Thomas, "Regulation and Firm Size: FDA Impacts on Innovation", *The Rand Journal of Economics,* Vol. 21, No. 4, Winter, pp. 497-517.

[35] Those studies show significant benefits from deregulation in terms of increased output and reduced service costs. See A. Kahn, "Deregulation: Looking Backward and Looking Forward", *Yale Journal on Regulation,* Vol. 7, No. 2, Summer, pp. 25-54; and OECD, *Regulatory Reform, Privatisation and Competition Policy,* (Paris, 1992); and *Economic Report of the President,* op. cit.; and E. Lacey, op. cit.

[36] The OECD has recognized the role of procedural transparency in reducing rent-seeking by special interest groups. See OECD, *Transparency for Positive Adjustment: Identifying and Evaluating Government Intervention* (Paris, 1983).

I. REGULATORY ACTIONS THAT IMPROVE COMPETITIVENESS

62. There is a body of opinion, due largely to Porter, that government regulation in the form of more stringent quality, safety, or environmental standards can improve competitiveness by forcing firms to upgrade.[37] Upgrading may take the form of producing higher quality products or using more efficient production processes. With respect to environmental standards, Porter writes:

> Even in the broader economy, strict environmental codes may actually foster competitiveness. Exacting standards seem at first blush to raise costs and make firms less competitive, particularly if competitors are from nations with fewer regulations. This may be true if everything stays the same except that expensive pollution control equipment is added.
>
> But everything will not stay the same. Properly constructed regulatory standards, which aim at outcomes and not methods, will encourage companies to re-engineer their technology. The result in many cases is a process that not only pollutes less but lowers costs or improves quality.[38]

63. The same reasoning is applied to regulatory performance and safety standards, particularly those standards that anticipate regulations that are ultimately adopted internationally. Anticipation of future international regulatory trends is the key to the argument. This can involve deregulation as well as regulation. Indeed, it could also involve anticipating the pattern of international regulatory harmonization. This is another form of picking winners. This time it involves picking "winning" regulatory regimes rather than picking winning firms or market niches.

64. According to Porter's reasoning, domestic firms benefit from anticipatory increases in domestic regulatory performance and safety standards in that they will have high quality products that appeal to discerning foreign buyers and in that they will be prepared to meet higher regulatory standards when they are ultimately adopted in foreign markets. Stringent standards may also create a demand for new products or services. Firms in the country which is first to adopt these standards may have a head start in the new industry as a consequence. Firms in jurisdictions that anticipate either international deregulation or the form of international regulatory harmonization also benefit from a head start.

65. After examining the Canadian record with respect to anticipatory health, safety and environmental regulation, Porter concludes that, with respect to environmental regulation:

> . . .it can be said that most past regulatory standards, whether federal or provincial, have not been anticipatory in a way that could have pushed Canadian companies more forcefully toward innovative processes and strategies.[39]

66. With respect to Canadian safety standards, Porter finds that they led the world in establishing a comprehensive set of toy safety standards in the early 1970's.[40] He does not investigate whether this anticipatory promulgation of regulatory standards gave the Canadian toy industry a competitive advantage in international markets. In fact, the Canadian toy industry is quite small. The

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[37] See also C. Stevens, "The Environment Industry", *The OECD Observer* 177, August/September, pp. 26-28.

[38] M. Porter, "America's Green Strategy", *Scientific American,* Vol. 264, No. 4, April, p. 168.

[39] M. Porter, *Canada at the Crossroads* (Ottawa: Business Council on National Issues and Supply and Services Canada, 1991), p. 245.

[40] This finding was also cited in the testimony of Ms. Nancy Hughes Anthony, Deputy Minister of Consumer and Corporate Affairs, before the Sub-committee (June 2, 1992, p. 5).

three major sellers in the Canadian market are foreign-owned. They produce relatively little in Canada. There are some smaller Canadian-owned firms. Some are principally importers. A few are niche exporters. One such niche is wooden toys, games, and puzzles; another is craft items. These niches are not the result of early and stringent safety standards. Canadian standards are higher in some respects than U.S. standards, and U.S. producers do conform to the Canadian standards. The Canadian standards have prevented injuries and fatalities among children. They have not resulted in any competitive advantage to Canada.

67. Porter cites two cases in which Canadian regulations have enhanced the competitiveness of Canadian firms. The first is the reserve requirements imposed on life insurance companies. These requirements are said to have given Canadian companies a strong reputation for financial stability, which is important to prospective policy holders. Porter does not say what this has meant in terms of penetration of foreign markets.

68. The second example is Canadian bio-pharmaceuticals standards. These are said to be among the highest in the world and are accepted in many countries. It is implied that these standards have enabled Connaught Laboratories (Connaught BioSciences) to increase its sales in the United States.[41]

69. In his testimony before the Sub-committee, Mr. Peter Ridout of the Canadian Standards Association (CSA) suggested CSA plywood standards as an example of a regulation that improves competitiveness.

> Through the National Building Code, which is developed by the National Research Council, the CSA standard was specified for plywood. The standard was a very stringent one. What it meant was that Canadian plywood sold at a premium in Japan and Europe. Canadian plywood more or less dominated that market again because of its superior qualities. As anyone who has been involved in the process knows, the reason the U.S. has been so adamant about getting the standards changed was not that they wanted access to the Canadian market but they wanted to be able to apply the Canadian markings on their products in order to impact on the markets in Europe and Japan. (June 16, 1992, p. 33)

70. Other sources indicate that Canadian producers (acting collectively through the Council of Forest Industries, COFI) have developed what some have described as a a good European market for premium plywood, which is chosen where appearance matters. Some Canadian plywood producers (working with COFI) have also been able to meet the Japan Agricultural Standard. The Canadian share of the Japanese market is very small. Total Canadian exports of plywood to all countries amount to approximately 15 per cent of Canadian production.

71. The difference between Canadian and American plywood is the size of the knots and internal defects allowed. The United States allows larger knots and larger internal defects in its plywood. This is partially a reflection of the type of wood from which most U.S. plywood is made.

72. The two countries also differ with regard to the the type of standards they have employed. For many years Canadian producers adhered to a prescriptive (product and manufacturing method) standard (CSA 0151), while for the last ten years U.S. producers have conformed to a more performance-oriented standard. In 1988 Canada introduced a consensus performance standard CSA 0325. About 65 per cent of U.S. exterior (CDX) plywood could have met CSA 0325 if it had been sorted out. Since it was not, U.S. plywood was deemed not to comply with Canadian building standards and was generally not used in Canada.

[41] Porter, *Canada at the Crossroads,* p. 251.

73. The U.S. postponed the tariff reductions on all types of wood panelling scheduled under the 1989 Free Trade Agreement until Canada provided it with a satisfactory mechanism for accepting plywood with larger (3 inches as opposed to two inches allowed in CSA 0325) knot sizes. Canada responded by proposing a bi-national committee which undertook a program of research and development to determine the performance consequences of allowing larger knot sizes among other things. The result of this research and development effort was the revision of CSA 0325 to allow for larger knot sizes, and the introduction of a new voluntary U.S. standard, PS292, which is to be deemed equivalent to CSA 0325. As a result of this agreement, all tariffs on wood panelling trade between the U.S. and Canada are to be eliminated either on January 1, 1993 or by January 1, 1998, depending on the product.

74. This episode illustrates the complex effects that product standards can have on international trade. Canadian producers have successfully sold premium plywood in overseas niche markets. In a North American context, divergent product standards have, after the expenditure of considerable time and effort, been harmonized, and may no longer be an impediment to trade.

75. The examples adduced by Porter and others do not provide strong support for his theory. There are also several logical problems with the theory. It requires that regulators correctly anticipate the regulatory standards that are ultimately adopted internationally. Porter concedes that government regulators are likely to lag behind the market when it comes to quality and performance standards:

> Sophisticated buyers will usually appreciate safer, cleaner, quieter products before governments do.[42]

76. The two countries cited as having the most stringent regulatory standards, Germany and Japan, are also cited as having the most demanding consumers. Thus, the high standards in these countries could be following the market rather than leading it.

77. The theory also requires that the ability to meet regulatory requirements be a proprietary asset. If it is not, and the firms in the leading jurisdiction can be readily copied, being first to meet the standard yields no advantage over later entrants.

78. The theory also begs the question of why firms must be forced by regulation to make better products and use more efficient processes, if these are intrinsically profitable. The evidence to date is that, while there may be some offsetting benefits from complying with environmental standards (especially with "clean" as opposed to "end of pipe" technologies), the net effect of environmental regulation has, in general, been to reduce profits.

79. Another difficulty with Porter's theory is that the strategic use of regulatory standards is open to abuse. The use of health, safety, or environmental regulation to exclude domestic fringe or potential competitors has been amply documented in the U.S.[43] Instead of getting environmental, health, or safety benefits and more efficient production as Porter predicts, the result can involve environmental, health, or safety benefits and less competition. Extended to the international sphere, there is a very real danger that regulatory standards that are not justified on environmental or safety or safety grounds could be used to restrict competition, particularly from less developed countries. The plywood standards dispute between the U.S. and Canada illustrates the role product standards can play as trade barriers.

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[42] M. Porter, *The Competitive Advantage of Nations* (New York: The Free Press, 1990).

[43] See, for example, L. Thomas, op. cit., and the references therein.

80. Notwithstanding its defects, Porter's theory does yield some common-sense conclusions regarding the form regulation should take if it is to have a chance of increasing competitiveness. As suggested earlier, quality, safety, and environmental standards should be results-oriented. Technologies should not be specified. More generally, if national regulatory standards do not lead, at least they should not be anachronistic (that is, command and control, based on outdated technologies). Standards should be rapidly, efficiently, and consistently applied. Slow or uncertain application retards innovation. At least in some areas, the Canadian regulatory process is already slow by international standards. Reconciling the need for rapid application of standards with the now almost obligatory requirement for "stakeholder consultation" is going to pose some serious problems in the future.

J. CONCLUSIONS AND RECOMMENDATIONS

81. It is best to define national competitiveness in terms of productivity levels and growth rates. Regulation can either increase or reduce competitiveness.

82. The productivity effects of health, safety, quality, and environmental regulation have been mixed with some regulations yielding benefits well in excess of their costs and others yielding virtually no benefits. The record is uneven, with some clear examples of excessive regulation and poorly designed regulatory mechanisms. There are also cases in which social regulation serves mainly to reduce competition. The resulting drag on the aggregate productivity of national economies may have been relatively small in the past, but as environmental regulation becomes more extensive, the productivity burden of excessive and poorly designed regulation is likely to increase substantially.

83. The incidence of excessive regulation can be reduced by making greater use of cost-benefit analysis in the evaluation of proposed regulations. Benefit-cost analysis is not a panacea, but it can help to discipline the regulatory process by forcing the proponents of regulation to recognize the magnitude and incidence of compliance costs, and to be more precise regarding the nature and magnitude of the benefits they anticipate.

The Committee therefore recommends that:

3.1 All the costs and benefits should be estimated for major proposed regulations.

84. The evidence suggests that there is considerable scope for improving the design of regulatory systems by reducing reliance on command and control techniques. This involves the specification of performance goals or objectives, leaving the parties involved free to find the least costly way of achieving these objectives.

The Committee therefore recommends that:

3.2 Where feasible, regulations should be expressed as functional outcome or performance objectives rather than detailed specification of the means of compliance.

85. While it is not always the case, economic regulation is increasingly regarded as suppressing competition and reducing productivity. Given the scale on which it has been applied in the past, it may have had a relatively large effect on productivity levels and growth rates in some countries. The gains from the elimination of price- and entry-regulation are only beginning to be measured but they appear to have been significant in some sectors in some countries.

86. There is much to be said for continuing the process of eliminating price- and entry-regulation in industries in which competition is possible. Even imperfect competition may be preferable to regulation. Abuses of competition can be limited by competition law. In sectors that are truly characterized by natural monopoly, regulatory techniques can be redesigned so as to encourage innovation and efficiency.

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5. CONCLUSIONS AND RECOMMENDATIONS

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CHAPTER 4

An Assessment of the Federal Regulatory Process and Proposals for Change

A. INTRODUCTION

1. This chapter provides an assessment of the efforts by the Mulroney Government to improve the federal regulation-making process. The organization of the chapter is as follows. Section B provides an assessment of the advance notice and consultation requirements. Section C discusses the weaknesses of the present regulation-making system in terms of counting the costs of proposed regulations. Section D discusses the requirements for economic analysis in regulation making. Section E is an assessment of the policy requiring the periodic evaluation of regulatory programs. Section F provides an assessment of the Regulatory Impact Analysis Statement (RIAS) and the work of the Regulatory Affairs Directorate.

B. ASSESSMENT OF THE ADVANCE NOTICE AND CONSULTATION REQUIREMENTS

1. Advance Notice

2. The annual *Federal Regulatory Plan* is not a plan at all in the sense of a coordinated and coherent set of proposed actions to be taken by the federal government. It is merely a compilation of lists of regulatory initiatives departments might seek to put into law in the next year.

3. The Plan has another notable weakness. Failure to give advance notice of a proposed regulation—even if it is not required by an emergency or unforeseeable situation—is no bar against its submission to the Special Committee of Council. Indeed, it is estimated that only about 40% of the regulations made in 1991 had been listed in a previous regulatory plan. In the United States, failure to list a proposed regulation in a regulatory agenda and then in the annual regulatory plan would almost certainly result in its rejection by the Office of Management and Budget, which reviews proposed regulations pursuant to Executive Order 12291 of 1981.

2. Consultation Process

4. There seems to be little doubt that the consultation requirement created in 1986 has substantially increased the quantity and quality of consultation on proposed regulations. While this adds to the time and cost of creating new regulations, most program branch officials are convinced that they are able to "regulate smarter" as a result of consultation. However, officials in regulatory departments indicate that some guidance from Treasury Board would be useful to ensure that the type of consultation processes and their scope comply with government policy.

5. There was also strong consensus among our witnesses that all groups affected by regulatory decisions should have an opportunity to participate in the development and implementation of regulations. Today, this is not always the case. According to many of our witnesses, consultation is uneven, sometimes being meaningful while at other times being perfunctory or non-existent. The Consumers' Association of Canada suggested that each department be obliged to adopt a "public consultation model" designed to facilitate participation in the regulatory process by all stakeholders. Other witnesses made similar suggestions. We think this view has much merit, and that some guidance on this score from Treasury Board would be useful. In particular, a policy which delineated a number of suitable approaches designed to match situations in which consultation is required would ensure that departments had a standard that reflected government policy to comply with, and it would help inform the expectations of stakeholders about what constitutes a reasonable method of consultation in relation to proposed regulations. Furthermore, under the present approach, some departments have been creative and have established processes which seem to work well. Other departments could benefit from their experience.

6. We also heard complaints that regulators frequently do not respond to comments by stakeholders on proposed regulations nor do they indicate the reasons for rejecting the comments made. A RIAS may give the impression that virtually all important interests have been consulted and that they are all "on side," when that may not have been the case; or the existence of strong dissenting views may have been "glossed over." This is not to say that the department should have changed the proposed regulation to reflect the dissenting view, but the dissent and reasons for rejecting it should be stated.

7. Finally, regulations may undergo many changes over their development cycle. To help stakeholder keep track of regulations as they proceed through the process, each regulation should have an identifier.

We therefore make the following recommendations:

4.1 The Treasury Board Secretariat should be required to develop a set of standardized consultation processes adapted to fit different types and scales of proposed regulations. These would be guidelines for departments.

4.2 All intermediate and major proposed regulations should be reported in at least the previous year's *Federal Regulatory Plan* before they can be sent to the Special Committee of Council.

4.3 Departments should be required to report in the RIAS a brief summary of views received during the consultation process and the reasons for accepting or rejecting them.

4.4 The annual *Federal Regulatory Plan* should be changed as follows:

- **The department or agency must provide a preliminary classification of the scale of the planned regulations in terms of their estimated costs to society: small/technical, intermediate, and major.**

- **The department or agency must indicate the method of the planned consultation process. (This is linked to 4.1 above.)**
- **Each proposed regulation must be given an identification number which will be used throughout the regulation-making process (that is for the estimated costs of federal regulations to be tabled with the *Estimates*, as proposed below, and when the draft regulation and RIAS are "pre-published" in the *Canada Gazette*, Part I).**

C. COUNTING THE COSTS OF NEW REGULATIONS

1. Inefficiency of the Present System

8. Despite the RIAS requirement, the federal cabinet has no estimates of the annual or cumulative costs that regulatory programs impose on the Canadian economy. While a regulatory budget may be the ideal approach,[1] it is possible to make some strides with a far less ambitious approach to counting the costs of each new regulatory initiative, and by keeping track of these costs over time, so the Cabinet can get some idea of the burden of regulation.[2]

9. In terms of system design for the purposes of achieving allocative efficiency and political accountability, the present regulation-making process has a number of fundamental flaws. First, it is not subject to any form of independent "oversight" regime. Second, the Special Committee of Council, which enacts hundreds of new regulations annually, and its public servant advisors have almost none of the necessary information with which to allocate the scarce resources of society being devoted to new regulations or existing ones.[3] Third, there is no central coordination or control of the federal government's agenda with respect to new regulations. Each department or agency determines its own priorities. As noted above, the annual *Federal Regulatory Plan* is not a plan at all. Moreover, even as an "early warning system" for new regulations, the annual *Plan* is quite imperfect, and not just because of unforeseen events or emergencies. Fourth, the current process is inefficient in the sense that more scarce resources (primarily in terms of private sector compliance costs) are devoted to achieving Canada's regulatory objectives than need to be. The same level of benefits—albeit not currently measured—could be achieved with fewer resources.

10. The present decision-making process results in inefficiency for several reasons. First, decision makers are not forced to choose among competing regulatory programs within the context of a limited budget, as they must do with respect to the traditional expenditure budget. Each department or agency regulates narrowly, incrementally and in most cases without reference to the interventions,

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[1] See the excellent discussion in John F. Morrall III, *Controlling Regulatory Costs: The Use of Regulatory Budgeting*, Regulatory Management and Reform Series, Public Management Occasional Papers, No. 2. (OECD, 1992)

[2] If the annual costs of government regulation in Canada are one-tenth the level in the U.S., then these costs amount to about $50 billion per year. See submission to the Sub-committee by Thomas D. Hopkins, September 15, 1992, *Minutes of Proceedings and Evidence*, Issue No. 15.

[3] Litan and Nordhaus point out that "From an economic viewpoint, federal regulations are akin to federal expenditure programs. Both require that resources be devoted to objectives the nation collectively deems to be important. The only difference is that, in the case of federal expenditures, the resources are first collected through taxation and then spent directly by the government. In the case of regulation, the government orders individuals or firms in the private sector to make such expenditures-a kind of balanced-budget expenditure program. From this economic perspective, the need for a centralized process for coordinating regulation to parallel that of expenditures becomes readily apparent. . .. require a systematic and continuous examination of the competing national goals sought through regulation." See Robert E. Litan and William D. Nordhaus, *Reforming Federal Regulation* (New Haven: Yale University Press, 1983), p. 4.

regulatory or otherwise, of other departments or agencies. This is largely attributable to specialization and division of labour necessary in such a huge organization as the federal government. Second—and most ironically—regulators often create large negative externalities because—aside from the administrative costs—they do not spend their own resources, or even their department's resources, in achieving compliance with their regulations. Rather, these costs fall on firms, individuals, and other organizations in the private sector. Thus, "in the absence of a mechanism that forces regulators to internalize these costs, they will engage in regulatory activities that require too much private expenditure for the results achieved"[4]

11. The third source of inefficiency is the fact that regulators are not required (in practice) to regulate only when and to the extent that the benefits to society exceed the costs. They are not (in practice) even required to ensure that the most cost-effective method of regulation is chosen—let alone the most cost-effective method of governing instruments.

12. Fourth, in most cases departments and agencies are constrained in adopting more efficient or cost-effective methods of intervention. One obvious reason for this is that in statutes, Ministers, the Cabinet, or both, are given the power to create various types of subordinate legislation (regulations). The imposition of a tax, the creation of a tax expenditure, or the payment of a subsidy would require approval of the Minister of Finance, the Cabinet and, ultimately, Parliament. Regulations are easier to create for they are still viewed as simply "technical" means to give effect to legislation. In contrast, raising taxes or raising expenditures is very likely to require a debate among ministers on the policy issues.

13. If regulation is to improve allocative efficiency, government must correctly address a hierarchy of decisions. These are (a) whether to regulate or not more generally, whether to intervene or not; (b) how to regulate or, more generally, which governing instrument should be used; and (c) how stringent the regulation should be. Litan and Nordhaus explain that

> Efficiency requires at each point that the overall benefits from the effort be compared with the costs. Regulation should occur, therefore, only when the total benefits outweigh the total costs. The type of regulation should be chosen that attains the highest net benefit. And the stringency of the regulation should be increased only as long as the incremental benefits are greater than the incremental costs.[5]

14. To optimize the allocation of society's scarce resources devoted to regulation, the federal government must

- determine the overall level of regulatory activity (perhaps measured by the social costs of this form of intervention) in a given period, say annually
- establish regulatory priorities across the many departments and agencies of the government
- establish criteria which all new regulations must meet, notably that the total benefits to society exceed the total costs to society ($B \geq C$)
- establish a process to evaluate and modify existing regulatory programs.

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4 Litan and Nordhaus (1983), p. 89.

5 *Ibid.*, p. 90.

2. Counting and Reporting the Costs

15. Ministers need to realize that the microeconomic effects of society's expenditures on new regulations or regulatory statutes are similar to the effects of budget outlays. The macroeconomic effects (output, employment, prices) are also similar. The federal government diverts resources from private to public use in three principal ways: (a) by taxation, (b) by borrowing, and (c) by imposing regulatory requirements necessitating outlays by firms and individuals in the private sector. The U.S. General Accounting Office[6] suggests that regulatory costs have an economic impact closer to that of excise taxes or user fees than to income taxes, but a major effect nonetheless. Thus if ministers are concerned about the micro-and macro-economic effects of the some 800 new regulations they make annually, they need to know not only how much each one costs (in the RIAS), but also the total amount of their regulatory spending.

16. Some of the flaws identified in the analysis above could be addressed by having the Federal Government first adopt a policy of publishing the cost of individual regulations and their cumulative costs, and then making an effort to control the total costs of regulations. While the ideal might be a regulatory budget, the federal government could start with the following much more modest steps.

- In advance of each fiscal year, RAD, on behalf of the Cabinet, would compile a list of proposed major regulations that each department or agency anticipated they would request the cabinet to enact in the forthcoming year. Almost all of these would have been listed in a previous *Federal Regulatory Plan*.

- The "estimated costs and benefits of federal regulations" (ECBFR) would be tabled in the House of Commons at the same time as the *Estimates*.

- The ECBFR would be sent to the Commons Standing Committee on Finance for review. The Committee's report, tabled in the House, would provide the Cabinet with advice on the general scale and growth in the costs of federal regulations.

17. This approach would provide a very gentle introduction to the idea that the Cabinet should start to think of the total costs to society of new regulations in much the same fashion as it does about traditional expenditures or taxes. The ECBFR would, in effect, be a tally of the estimated social costs of new regulations (a) over the past few years, and (b) for the coming year based on proposed major regulations. The costs could be broken down by year, by department or agency, by government administrative costs, and by private sector compliance costs, broken down by major industry sector.

18. At the outset, these figures would be simply "background information" provided by the President of the Treasury Board to Ministers, Parliament and the public. The data would be part of the larger context they would be encouraged to consider when making new regulations. In a few years, it may be possible to move from the "tally" approach to the one outlined below.

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6 U.S General Accounting Office, 1992.

19. A second step toward ensuring that regulations improve economic efficiency would be the following:

- The Cabinet or one of its committees would carefully review the ECBFR with the objective of establishing (a) a limit on the total costs to society[7] (in present value, annualized or other terms), and (b) indicating which proposals it recommends to Parliament. This might be called the "cost of proposed regulations" (CPR) budget.
- The CPR budget would be submitted to the House of Commons Standing Committee on Finance after being tabled with the *Estimates*. The Committee would hold hearings on the set of proposed major regulations and the limit. The Committee would prepare a report with its recommendations.
- Before the Committee's report was considered by the House of Commons, the Minister responsible for Regulatory Affairs (now the President of the Treasury Board) would consult with his or her colleagues concerning possible revisions to the CPR budget.
- The House of Commons would be asked to vote on the CPR budget submitted by the Minister responsible after receiving the report of the Standing Committee on Finance.
- No department or agency could submit any major proposed regulation to the SCC which had not been included in the approved CPR budget.[8]
- The Auditor General would later audit the estimated costs of the major regulations as enacted and report to the House discrepancies between the CPR budget and actual costs. If this proposal were adopted, Canada would go a long way towards controlling the total costs of regulations and allocate such costs more efficiently.

The Committee recommends the following procedure for counting the costs of regulations:

4.5 The President of the Treasury Board should be required to compile the "Estimated Costs and Benefits of Federal Regulations" (ECBFR) annually, to be tabled in the House of Commons with the *Estimates*. (This would require that departments and agencies submit to the Regulatory Affairs Directorate the following information: (a) the estimated costs and benefits of every proposed major regulation expected to be made in the next fiscal year (or the following two years); (b) the number of "intermediate" proposed regulations for the next fiscal year; and (c) for major proposed regulations, the estimated costs and benefits should be categorized by government administrative costs and by private sector compliance costs, broken down by major industry sector.

20. The ECBFR would include an updated and expanded version of the information published in the annual *Federal Regulatory Plan*. This would give the costs and benefits of each major proposed regulation a context. It might even be possible for some proposed regulations to include a summary of the problem definition and a summary of the options to regulation being considered.

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7 Litan and Nordhaus (1983, p. 150) state that "Conceptually, the definition of regulatory cost is straightforward: it is the marginal cost to the economy of meeting a regulation. In some cases, such costs are easy to define: if a utility is forced to add a scrubber to an existing plant, the costs can be estimated with minimal difficulty. In a dynamic framework, however, the picture becomes more blurred. It may be difficult to anticipate changes in technology and, therefore, changes in costs over time." However, "Another methodological issue concerns whether the budget should cover transfer payments in addition to resource costs and/or dead weight losses.... Yet a third definitional issue is whether the costs measured in the budget would be limited only to "direct" costs or would also include "indirect" costs" (p. 151).

8 Litan and Nordhaus (1983, pp. 149-150) noted that "The problems of designing effective sanctions for noncompliance stems primarily from the funny money nature of private mandated expenditures, which are purely accounting dollars and never show up in the agency's (or anyone's) bank balance. For this reason, there is no precise way of measuring costs and keeping an automatic control on the agency's running out of regulatory appropriations."

D. ASSESSMENT OF FEDERAL REGULATORY POLICY

1. Must Proposed Regulations Pass a Benefit-Cost Test?

21. One of the principles of federal regulation, found in both the Regulatory Policy adopted in February 1992 and the *Citizen's Code of Regulatory Fairness* in force since 1986 is that the government will ensure that the benefits of regulation exceed the costs. Also the *RIAS Writers' Guide* notes that "The Government's *Regulatory Policy* states, not just that the benefit of a regulation must exceed its cost, but that the regulation should be designed to maximize gains in relation to costs. This means that the benefits of the regulatory action chosen must be greater than the benefit of any other type of regulatory or non-regulatory action."[9]

22. In theory, these statements provide a strong criterion ($B \geq C$) against which to assess the Government's performance with respect to new regulations. However, in practice, it has amounted to empty rhetoric for several reasons. First, only for major new regulations is it necessary for departments to prepare a cost-benefit analysis—although the definition of the crucial word "major" is imprecise. Second, it is common for new regulations to be enacted without any estimate of the economic benefits or even to measure the benefits in physical terms, e.g., the number of premature deaths averted, although this is required in the RIAS. Further, with the exception of the Department of Transport, no federal department or agency uses an economic value for human lives saved (premature deaths avoided) as a result of new health or safety regulations. Thus, the best they can do in completing the RIAS is to prepare a cost-effectiveness analysis. Third, neither RAB (in OPRA) nor its successor RAD (in TBS) attempt to keep track of (a) whether new regulations are major or minor and (b) the number of major regulations for which a proper CBA is done. Therefore, Ministers lack knowledge of the extent to which the $B \geq C$ requirement is met—even for major new regulations.

2. Economic Value of Premature Deaths Averted

23. In many cases, the objective of regulation is to prevent premature death in the nation's residents. Without an economic value of life it is not possible to conduct a cost-benefit analysis of a proposed regulation whose primary object is to prevent premature death. Yet only the Department of Transport uses a specific number for the economic value of life. Other departments do a type of cost-effectiveness to avoid putting a dollar value on human life because of the political sensitivity of this issue. An examination of federal regulations indicates that there are huge variations in the value of life implicit in different health and safety regulations.

24. Recently, the *Economic Report of the President* (February 1992, p. 190) included a graph illustrating the cost for each premature death averted by U.S. federal health and safety regulations between 1967 and 1991. Between 1967 and 1987 in about half the new regulations, the cost per death averted was $1 million or less, and in no case was the cost over $100 million per death averted. However, between 1987 and 1991, for very few new regulations was the cost of per death averted under $1 million. Most new regulations fell into the range of $5 million to $100 million. However, for seven new regulations, the cost was over $100, million while for four regulations the cost for each death averted exceeded $10,000 million!

25. While no one can authoritatively specify the economic value of human life, it is clear that more premature deaths could be averted for the same total cost to society if the Cabinet forswears new regulations which have a huge cost per death averted while adopting other regulations which are far

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9 Treasury Board Secretariat, Regulatory Affairs Directorate, *RIAS Writers' Guide* (Ottawa, June 1992) p. 22.

more cost-effective (lower cost per death averted). In the U.S., information on the estimated costs to society per death averted for proposed health, safety, and environmental regulations is deemed by participants to be very useful. Such information is rarely provided in the Canadian RIAS. It ought to be included as a matter of course.

3. Need for High Quality Analysis

26. It is easy for governments to be "penny wise and pound foolish" when they have to decide on how much to spend on the necessary data bases and impact assessments for proposed regulations. To most officials, and particularly to their political masters, spending $1 million to ascertain the scientific basis of whether and how government might intervene to address a perceived health, safety, or environmental problem seems like a great deal of money. But failing to do so could easily result in regulating in haste and regretting in leisure.

27. The Department of the Environment indicates that the cost of doing the economic assessment for three sets of major regulations in the past two or three years was about $400,000 each. These sums exclude the costs of the data and analysis of the scientific assessment of the nature and extent of the environmental problem at which the proposed regulations were directed. It appears that far less was spent on the "scientific analysis" than was spent on the economic assessment. Yet, in the case of the pulp and paper regulations, the cost was estimated to be $4.1 billion in present-value terms. If an additional $1 million was spent on more or better data and analysis, it could be justified if the total costs were reduced by only a fraction of 1%. Given that no estimate of the benefits was prepared in either physical or in economic terms, it is hard to believe that doubling or trebling the expenditures on analyses would not be money well spent. It should be emphasized that spending a million dollars on analysis when the decision is not to proceed with proposed regulations is also often very sensible. Without such analysis, the decision might well have been to impose a hopelessly inefficient and ineffective regulation.

28. The federal government needs to strengthen the ability of departments to do high quality policy and economic analysis. It may be better for departments to create a centralized analytic unit to do the RIAS, particularly the CBA, rather than having this work done on a decentralized basis by program branch officials. In other words, hire or move people who already have the skills into a central unit rather than trying to train those in the program branches. In the case of smaller departments, they could have their CBAs done by a central analytic agency, by outside consultants, or the Bureau of Management Consulting.

29. Finally, a necessary element of any effort to improve decisions in the regulation-making process is to greatly strengthen the professional staff of RAD by hiring at least another five or six policy analysts or economists with training and experience in economic assessment of government programs. They are needed to act as a filter for the SCC and thus to increase the odds that the RIAS which goes to SCC is a credible piece of analysis.

30. Adding more well trained people is not enough, however. The Cabinet, at the behest of the President of the Treasury Board, must make a credible commitment to make new regulations more efficient in the allocative, technical and dynamic sense.

4. Annual Report on the State of Government Regulation in Canada

31. The central purposes of an annual report on the state of government regulation are to (a) increase the stock of knowledge of government regulation, to keep it up to date and to make it available in a convenient fashion; (b) raise the visibility and amount of analytical thinking about

regulation as one of the most important governing instruments; (c) provide information to Ministers, officials, Parliament, the media, and the public; and (d) assist the legislature, and particularly the public, in holding Ministers responsible for their actions in respect to government regulation.

32. There are some precedents for such an annual report, i.e., the report on state of Canada's forests, and the report on the state of Canada's environment. The U.S. federal government since the mid-1980s has produced an annual statement entitled the *Regulatory Program of the United States Government*.

33. An outline of the possible contents of an annual report on the state of government regulation is contained in **Appendix IV.**

As a means of clarifying federal regulatory policy we make the following recommendations:

4.6 For proposed major regulations where the estimated costs measured outweigh the benefits measured, departments should be required to summarize in the RIAS the reasons why the regulation should nevertheless be adopted.

4.7 The President of the Treasury Board should be required to prepare and publish an "Annual Report on the State of Federal Regulation" with a view to increasing public awareness of the growth, scope, and costs of federal regulations. The report would include review of the policies and experience of other countries, notably those with which Canadian firms compete and into whose markets they export.

E. ASSESSMENT OF THE PERIODIC EVALUATION OF REGULATORY PROGRAMS

34. As noted in Chapter 2, the first effort to improve the federal regulatory process occurred in September 1977 when the Treasury Board adopted a policy requiring that all government programs—including regulatory programs—be evaluated every three to five years. The Office of the Comptroller General (OCG) was given responsibility for the administration of the 1977 policy shortly after the Office was created in 1978.

35. That responsibility, however, is quite a limited one. It is to develop and maintain the policy framework, provide technical assistance, urge departments to establish a schedule, provide assessments of studies, and monitor the activities of departments—but the deputy head retains responsibility for virtually the entire process, that is, the deputy minister is the owner of the evaluation and the process by which it is done. The 1981 Guide on Program Evaluation specifies three purposes: "to produce credible, timely and objective findings on programs appropriate for resource allocation, program improvement and accountability."

36. In his recent testimony before the Standing Senate Committee on National Finance, the Comptroller General emphasized that "program evaluation is a departmentally situated function. . . working for a management team of the department. . ." It is "an internal system to serve the executive as opposed to providing competing views for challenge in a political forum" (quoted in Standing Senate Committee on National Finance, 1991, p. 46:15). He went on to say that while OCG establishes a policy framework for the evaluation function, "we do not superintend departments. We do not tell them what to do. We simply ensure that they are in general compliance with the policy." Because the program evaluation policy, by design, is intended to meet the needs of deputy heads to measure performance to facilitate internal accountability, the OCG does not provide critiques of these evaluations to Parliament or otherwise make them public. It is not even clear whether the Minister responsible obtains a copy of the OCG's quality assessments.

37. The evaluators of regulatory and other programs are middle-level employees of the department whose program is being evaluated. Their careers depend very heavily upon pleasing the deputy head to whom their report goes and who—in theory—is responsible for the management of the program being evaluated. The OCG was slow in preparing analytical and methodological materials to assist departmental officials in conducting the evaluation. For example, while the OCG was given policy responsibility for period evaluations of all government programs, it was not until March 1985 that it produced a draft of the Guide to Evaluating Regulatory Programs. The final version appeared a year later.

38. Program evaluations amount to a form of self-evaluation by government departments.[10] This violates the axiom that "no person should be a judge in their own cause." Officials in the OCG argue that fidelity to the rigorous principles of program evaluation means that it doesn't matter if the analyst sits inside or outside the department being evaluated. The focus is on hard data and careful analysis. Such studies do not offer a judgment on the deputy head. This perspective seems rather idealistic.

39. Although the 1977 Treasury Board Policy specified that all government programs were to be evaluated every three to five years, only seven of at least 100 regulatory programs had been evaluated under the aegis of OCG by 1984 according to a 1986 tabulation by Regulatory Affairs Branch (RAB). In May 1986, as part of its "regulatory process action plan" the government announced that all regulatory programs were to be evaluated at least once every seven years. This goal has also not been met. It appears that a total of about 77 regulatory programs have been evaluated between 1977 and mid-1992.[11] Using RAB's list of 93 regulatory programs compiled in 1986, it is clear that a substantial number of regulatory programs have not yet been evaluated or have been evaluated only once in a 15-year period. If the Ministerial Task Force on Program Review's list of 146 federal regulatory or regulatory-related programs is used as the "base," the gap between what the 1977 policy required and what has happened is even greater.

40. The 1977 program evaluation policy was modified in August 1991. The effect of these modifications is to further reduce the centre's influence over the period evaluation of all government programs. For example, it is now left up to deputy ministers to decide how frequently any program should be evaluated. Previously, every program was to be evaluated at least every seven years. The change is consistent with PS 2000 and "lets the managers manage," giving them more autonomy. It is not clear, however, whether the deputy heads are more accountable.

41. We conclude that the present method of program evaluation, while it may be useful to deputy heads, is not useful as a vehicle of information to Parliament and the public so as to enable holding the Government accountable for its regulatory programs. In the following chapter, we make suggestions to redress this shortcoming.

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[10] Outside evaluators would have more independence, but they probably would know less about the program, players, and larger political context in which the program has been operating. On the other hand, they may bring a wider range of knowledge that would be very useful in conducting the evaluation. However, there is some danger of being insufficiently sensitive about the consequences of their recommendations, as they will not be around to implement them or live with the fall out.

[11] Stanbury, 1992, Chapter 7.

F. ASSESSMENT OF THE RIAS AND THE REGULATORY AFFAIRS DIRECTORATE

1. Overview Weaknesses in the Regulatory Impact Analysis Statement

42. The weaknesses in the RIAS go to its heart and impugn its central purpose: making subordinate legislation more efficient and the government more accountable. First, very few cost-benefit analyses (CBAs), or other types of detailed economic analyses, are being done despite the requirement in the RIAS. The quality is questionable in some cases (e.g., pulp and paper regulations in May 1992 do not attempt to quantify the benefits of these costly regulations). It appears that proper CBAs are often beyond the skills of many program branch officials who are usually responsible for preparing the RIAS. They need to get help from economists (but not all economists have expertise in CBA, which is a specialized skill). Further, program branch officials often fail to appreciate the value of economic analysis in the earliest stages of developing new regulations.

43. Second, there is no evidence of enforcement of the policy statement that the benefits to society must exceed total social costs as specified in the 1986 Guiding Principles. Third, RAD lacks the power to force departments to do proper CBAs and does not have the resources to help regulatory departments do proper CBAs. Fourth, the RIAS cannot cope with regulations whose primary objective is to redistribute income because, by their very nature, they will impose a deadweight loss on the economy.[12]

44. Fifth, officials indicate that solutions to policy (political) problems are often chosen before the economic analysis is done. Thus the RIAS is often viewed as a form-filling exercise which is done after the decision has been made to propose new regulations and even after they have been drafted. Thus, what was seen as a tool to assist departments in deciding whether, when, and how extensively to intervene, by focusing on defining the problem, and by generating alternatives and evaluating them, has become in many cases an exercise in ex-post-facto rationalization for decisions taken on other grounds. It should be noted that some officials in some departments have come to see that the RIAS is not a reporting form, but an ex-ante mode of analysis, the end product of which may be a set of specifications for new regulations. In other words, the RIAS's greatest value may lie in determining that the real problem is far less than it was originally perceived, hence no action is justified ("the game is not worth the candle"). Or the product of the RIAS may be a non-regulatory and far less intrusive or costly method of government action, e.g., a set of voluntary guidelines worked out with various stakeholders.

2. Definition of a "Major" Proposed Regulation

45. The importance of what constitutes a "major" proposed regulation lies in the fact that, as the RIAS Writers' Guide makes clear, new regulations and amendments having a major impact[13] "require a full cost-benefit analysis. In such cases, quantification of costs and benefits is necessary".[14] The 1991 interim procedures manual for new regulations states that "a major impact occurs where there is a significant impact on any sector of the economy or where a minor impact is experienced over

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[12] In the U.S., in August 1983, the "Regulatory Policy Guidelines" condemned price, output and entry control regulations as per se violations of Executive Order 12291. See Presidential Task Force on Regulatory Relief, *Reagan Administration Regulatory Achievements* (Washington, D.C.: USGPO, August 11, 1983).

[13] The *RIAS Writer's Guide* (p. 23) indicates that "roughly speaking, there are three categories of regulations and amendments; those which will have a major impact, those which have some impact and those which have a trivial impact."

[14] *Ibid.*, p. 32.

a large segment of the economy or population." By comparison, a minor impact occurs "where marginal cost implications are likely for one or two sectors of the economy and there is no threat to any segment of the population or to business viability".[15]

46. It should be apparent that the two definitions are (a) are vague, (b) are loose, (c) rely on other important undefined terms, most notably "a significant impact" and "large segment of the economy or population," and (d) are not complementary, that is, the definition of a minor impact refers to the absence of a "threat to any segment of the population or to business viability." This concept is not included in the definition of major. In normal English usage, major and minor are antonyms.[16]

47. The contrast between the fuzziness and imprecision of the Canadian approach and that of the U.S. can be seen by examining the definition of a major rule in the U.S. since February 1981, which is as follows:

48. 'Major rule' means any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.[17]

49. It is essential that there be a clear definition of a major regulation and of the other two categories, small/technical and intermediate. The proposed threshold for a major regulation is $100 million in total costs to society measured in present value terms. The threshold would also include a measure in terms of the costs relative to the output of the sector(s) likely to be most affected by the proposed regulation.

3. Discussion of the Problem Situation in RIAS

50. It would be very useful to require a more extensive analysis of the problem situation as part of the RIAS, or prior to it, as that is often the key to obtaining an efficient and effective solution. While there is much literature on CBA, there is little on how to determine the scope of a potential public policy problem. This analysis would include an assessment of the following:

- What is the anticipated duration of the problem? Is it cyclical?
- What is the problem's scope? What fraction of the population is affected?
- What are symptoms or signals that a problem exists?
- Who says it's a problem? What is their interest in this issue (don't overlook non-pecuniary motivation)?

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15 Treasury Board of Canada, *The Federal Regulatory Process,* 1991, p. 64.

16 Major is defined as "greater in quantity, number or extent; having a primary or greater importance." Minor is defined as "'less in quantity, number or extent" (Funk & Wagnalls Standard College Dictionary, 1974).

17 See Executive Order No. 12291, February 17, 1981, section 1.

- Can perceptions be distinguished from hard data?
- Who is pushing for government action on this issue?

4. Discussion of Alternatives

51. It is often said that departments do not do a good job of considering alternative ways of regulating or of using other forms of government intervention, e.g., taxing pollution instead of regulating the volume of effluent. They should be required to show that they have considered the alternatives at two levels: (a) broad policy instruments, e.g., taxes versus regulations versus subsidies versus Crown corporation; and (b) way of regulating such as codes of practice, voluntary guidelines, and the design of regulations. However, using other governing instruments raises further questions: if substitutes for regulations are available, do Ministers have the legal authority to use these other instruments? Moreover, there is a conflict between fiscal restraint and possible use of economic incentives, e.g., taxes, subsidies, or tax expenditures.

52. As noted in section C.1 above, it is clear that the assessment of the problem situation, the generation and evaluation of alternatives, and the economic assessment of various forms of intervention are inter-dependent. Further, they need to be done as early as possible in the process of determining whether government intervention is called for. In general, the Committee suggests that

- The analysis of alternatives should be conducted earlier in the consultation phase.
- There is a need for more analysis to select the best alternative.
- There is need to review major regulatory departments' authority to use other governing instruments.
- Government needs more work by central agencies (e.g., TBS; RAD; Finance) to develop practicable substitutes for traditional command and control regulation.
- Departments need to specify clearly (if briefly) the alternatives to regulations considered, with a short statement as to why they were rejected.

5. Limits on RAB/RAD as a "Controller" Agency

53. As a central or "controller" agency, RAD/TBS has certain obvious weaknesses:

- It has a vague mandate, particularly since May 1991.
- It does not have sufficient staff to oversee the RIASs and other aspects of the regulation-making process, in the sense of providing a critical assessment of the RIAS.
- The officials in RAD are most unlikely to be rewarded for "taking the heat" for strongly criticizing the regulatory initiatives of departments.
- RAD's power depends on the strength of its Minister (President of the Treasury Board) and the Minister's willingness to advocate more efficient regulation.

54. The 1991 procedures manual for proposed regulations makes it clear that "the content of the RIAS is the responsibility of the department or agency sponsoring the regulation, and Deputy Heads will be held accountable" (p. 60). RAD's role is described as reviewing the RIAS "to determine

whether the potential impact of a regulatory proposal and other aspects of the government's regulatory policy have been properly addressed." The manual gives no indication of either the criteria RAD employs or, more importantly, what adverse consequences follow if the RIAS fails to pass muster with RAD. Yet, in general, government agencies have more difficulty controlling other government agencies than entities in the private sector.

55. Political imperatives generally dominate the regulation-making process in Ottawa. Unless the President of the Treasury Board is wholly supportive, the best RAD officials can do is to hold up proposed regulations in an effort to have departments rethink their proposed regulations. Then the outcome depends largely upon the relative power, on the particular issue in question, of the President of the Treasury Board and that of the Minister proposing the regulations. In general, however, RAD is probably stronger by reason of being located inside the Treasury Board Secretariat than was its predecessor located in OPRA.

56. The fundamental characteristics of government by cabinet necessarily limit reforms to the regulation-making process which take the form of administrative directives, because they amount to self-regulation by the Cabinet of the Cabinet. In practice, Ministers are often very reluctant to reduce their discretion in making regulations. Yet they say they are committed to "regulating smarter." It is clear that if regulations are to be more efficient, then the Cabinet will have to impose credible constraints on its own behaviour. This conclusion has influenced many of our recommendations.

The Committee recommends the following changes in the RIAS and the responsibilities and authority of the Regulatory Affairs Directorate:

4.8 Clear definitions of major, small/technical and intermediate categories of regulation should be developed. The proposed threshold for "major" is $100 million in total costs to society measured in present value terms. The threshold would also include a measure in terms of the costs relative to the output of the sector(s) likely to be most affected by the proposed regulation.

4.9 For intermediate and major regulations, the RIAS should indicate the planned process of monitoring and evaluation of the proposed regulation.

4.10 The RIAS requirement for the deletion of regulations should be simplified.

4.11 The RIAS should disclose the set of alternatives that were considered by the department and rejected, with a brief explanation why the alternative chosen is superior.

4.12 The RIAS should include an assessment of the proposed regulation's impact on the competitiveness of the firms in the sectors where the majority of the compliance costs are expected to occur.

4.13 The *Statutory Instruments Act* should be amended to provide that RAD must certify that (1) the methodology employed in preparing the cost-benefit analysis accompanying each proposed major regulation meets professional standards, and (2) that all proposed regulations are properly classified in terms of their impact as small/technical, intermediate, or major. This would be closely analogous to the requirement that the Clerk of the Privy Council certify that proposed regulations are legally correct in form and not *ultra vires*.

4.14 The President of the Treasury Board should have the power to delay proposed major or intermediate regulations which have not previously been reported in the annual *Federal Regulatory Plan*, except where the regulation is in response to an emergency arising since the deadline for submissions to the last plan.

CHAPTER 5

The Role of Parliament in the Creation and Review of Regulations

1. Parliament currently plays an apparently very modest role in the federal regulatory process. This appearance flows from a preoccupation with the review of regulations once they are made. Little attention is given to the enabling authorities Parliament so routinely hands out to the Executive. It is these powers which are the very essence of regulation. All regulatory programs have their basis in statute.

A. REVIEW OF ENABLING CLAUSES IN BILLS

2. The enabling clauses in bills under which regulations will be made are crucial, especially because the tendency to enact skeletal legislation is so entrenched. The birth of every regulatory program may occur in Parliament but both the gestation and the behaviour of the infant will be largely uncontrollable if Parliament does not concern itself with the enabling powers. Neither those powers nor other machinery provisions in bills (e.g., the penalty sections, and those relating to search and seizure) receive the attention they deserve. A concern for the effects of any regulatory program, whether from the perspective of competitiveness or the liberty of the subject, must begin with the enabling Act.

3. It is uncommon in Canada for a statute to embody a full-blown regulatory scheme or even to sketch out its basic parts. The common technique is to confer legislative power on the Executive, usually in the person of His Excellency the Governor General-in-Council, to deal with a loosely identified problem in accordance with a very loosely defined type of machinery. Very broad powers of delegated law making are given and—eventually or rapidly—a substantial body of regulations appears. Sometimes the content, means of enforcement, and effect of these regulations cause surprise but they are very, very rarely found to be *ultra vires*.

4. Self-restraint in subordinate law making has not generally been thought to be the hallmark of Canadian governments. The only safe assumption to make about enabling powers in statutes is that they will be used, and used to the fullest extent the wording will allow—even if this results in legislation that few, if any, people would have envisaged when the enabling act first appeared as a bill.

5. It is not a little surprising, therefore, that enabling powers in bills receive so little scrutiny and attention. Some people in business and industry do appreciate the actual and potential significance of enabling powers, and are rightly anxious to participate in the formulation of the projected statutory solution to a problem. They know that once the Bill is passed, the footings of the regulations to come are set in place and the structure to follow will be hard to influence.

6. How can Parliament concentrate attention on enabling powers? There are doubtless many ways, and doubtless the Standing Committees spring first to mind. Australian experience, however, has shown that even with a tradition of less skeletal drafting and a truly triple-E Senate, a forum is

necessary to concentrate attention on enabling powers in bills. The Australian Senate has a Scrutiny of Bills Committee for the purpose. It is true that its terms of reference are oriented to liberty of the subject issues, but there is no reason why the model should not or could not be adopted to enjoin scrutiny for effects and consequences of an economic kind.

7. Whether the task of scrutinizing enabling powers is appropriate to a separate committee or to the existing Standing Joint Committee for the Scrutiny of Regulations, as knowledgeable of the products of enabling powers or to the Standing Committees, some particular committee attention should be paid to these powers. The Standing Committees appear more appropriate to policy considerations, and the Standing Joint Committee to the liberty of the subject issues handled by the Australian Senate's Scrutiny of Bills Committee.

8. Any parliamentary committee faced with a mass of particularized enabling clauses or a few clauses of great breadth will be at a loss to know what to make of them without information concerning the intent of those who instructed the draftsman. It is essential, therefore, that every bill containing enabling clauses be accompanied by a memorandum setting out precisely why the particular regulation-making powers included in the bill are sought, and what form the sponsoring Minister sees the regulations taking, e.g., the traditional proscription and prescription, the use of internationally accepted standards, and so on. This information will give the relevant standing committee or the Standing Joint Committee or both a starting point for effective and expeditious examination of the enabling powers.

B. REVIEW OF REGULATIONS BEFORE THEY ARE MADE

9. The idea of reviewing regulations before they are made (or come into effect) is very attractive. And Canada has travelled a long way down this road through consultation, pre-publication, notice and comment and RIAS. Oddly, parliamentary involvement in the review of proposed regulations has not been actively promoted. This parliamentary reticence needs to be rethought.

1. Examination of Proposed Regulations with the Enabling Bill

10. Occasionally a cry goes up for the regulations to be made under an act to be made available when the bill for the act is before committee. It has also been suggested that an act should not be proclaimed before the regulations to be made under it have been reviewed by the parliamentary committee. Apart from the difficulties which may arise due to the unavailability of statutory powers pending proclamation, these proposals raise the question of the completeness and immutability of the draft regulations.

11. There is also a conundrum. If the regulations can be ready with the bill, or soon after its passage, why should not the policy material in them be included in the bill and the policy debate take place in the usual way? While there have been occasional instances of draft regulations being available with bills, this will not often be easy to achieve. Bills may be amended in their passage through Parliament, and it is probably more efficient management of resources to wait until their final form is established before writing the final drafts of the regulations. With the added weight being given now to genuine consultation, hurrying to produce the regulations may be counterproductive. And where will it leave all the RIAs effort and publication in draft in the Gazette? If, after consultation, the regulations are different from those before the standing committee with the bill, the House will have been deceived. If the regulations must stay in the form presented to the standing committee with the bill because that was the basis of their consideration of the bill, then there is no integrity to the public consultation procedure.

2. Affirmative Resolution Procedure

12. The better solution would appear to be the application of affirmative resolution procedures to major regulations, and to provide that work may not proceed on an affirmative resolution before receipt of a report on the regulations from the appropriate standing committee. The affirmative-resolution procedure also has the advantage that once it is affixed in the enabling act to the exercise of a particular enabling power, it will be available whenever that power is used. It is not confined to first time use as is the *ad hoc* reference to committee of draft regulations with a bill. The procedure would allow examination as to merits by the appropriate standing committee, and examination as to legality and propriety by the Standing Joint Committee.

13. The affirmative resolution procedure is very little used in Canada although its use was anticipated when the *Statutory Instruments Act* was first passed in 1972. That Act includes in the *Interpretation Act* a detailed procedure for an affirmative resolution whenever the expression "subject to affirmative resolution of Parliament" or "subject to affirmative resolution of the House of Commons" is used in an act in relation to any regulation.

14. Use of affirmative-resolution procedures was recommended by the Standing Joint Committee on Regulations and other Statutory Instruments in its first and tenth reports, where the exercise of enabling norms may

- substantially affect the provisions of the enabling or any other statute,
- lay down a policy not clearly identifiable in the enabling act or make a new departure in policy,
- involve considerations of special importance.

The need for such a procedure is no less in 1992 than it was in 1977 and 1980.

15. If Parliament is to assert its interest and control as delegator in and over major regulations, two provisions are lacking. First, the words "subject to the affirmative resolution of Parliament" must be included in the enabling powers in bills. Second the necessary rules of the House must exist to ensure that a vote on the resolution to affirm the regulations is not taken until the relevant standing committee and the Standing Joint Committee have considered and reported on them or have allowed a reasonable time period to elapse without making a report.

3. General Ex-Ante Review of Proposed Regulations not Subject to Affirmative Resolution Procedure

16. Major regulations—in terms of their potential economic effects, or otherwise—might in any case be reviewed by standing committees of the House of Commons.

17. In general, standing committees of the House of Commons are "empowered to examine and enquire into all such matters as may be referred to them by the House. . ." per S.108 of the *Standing Orders* of the House of Commons. S.108 also provides that standing committees may "send for persons, papers and records" (except when the House otherwise orders). Thus a standing committee could decide to review new draft regulations of the departments within their jurisdiction. They might, for example, choose to hold hearings on draft regulations shortly after publication in the *Canada Gazette, Part I,* as required since 1986 under the RIAS policy. The purpose of such "pre-publication" is to give notice to interested parties and give them an opportunity (in 60 days) to

comment on the draft regulations before they become law. Who else ought to be more interested than the Parliament which enables their making comments by or before a standing committee might result in changes before the regulations are submitted to the Governor-in-Council.

18. The main elements of this approach could be as follows:

- Ex-ante review of proposed regulations would be assumed or not at the discretion of each of the subject-area committees of the House of Commons, since they already have expertise in the activities of a department or number of related departments.

- The committees should focus on proposed major regulations or regulations which employ new techniques of regulation, but could review any proposed regulation which appears to have special significance.

- A committee would have 30 days to decide whether or not to conduct a review.

- The main role of a committee would be to conduct a policy review of the proposed regulation. It could hold hearings and invite interested groups and experts to testify or submit a brief.

- A committee would have 60 days in which to submit its report to the House.

19. In proposing any form of review by Parliament of proposed regulations, one final point needs to be borne in mind. While the number of regulations made each year is large, the overwhelming bulk of these are amendments and minor changes. The number of major regulations is not so formidable as to rule out a careful selection of regulations for study.

C. REVIEW OF REGULATIONS AFTER THEY ARE MADE

20. Once an enabling act is framed, little can be done in the short term to change its contribution to the regulatory scheme for which it provides. Attention necessarily passes to the regulations to be made under the act. If Parliament does not become involved with the proposed regulations, it can and should be involved with them after they have been made. This has long been accepted in so far as the legality and propriety of regulations is concerned.

1. The Standing Joint Committee for the Scrutiny of Regulations

21. As noted in Chapter 2, the Standing Joint Committee for the Scrutiny of Regulations (previously the SJC on Regulations and other Statutory Instruments) was created in the early 1970s. The SJC does not deal with the policy underlying new regulations. The Committee tries to work on a consensual basis and jealously guards its nonpartisan approach. Its scrutiny is of statutory instruments, which include all regulations.

22. To say that it might be time to consider a somewhat wider role for the Committee is not to disparage its work and achievements, especially when it had to establish itself at first against a particularly hostile Executive environment, and has always had to engage in work usually thought of as parliamentary drudgery.

2. The Power of Disallowance

23. Experience with the disallowance procedure now contained in the Standing Orders is limited and it is too early to tell of what use it may be. What can be said is that the procedure has serious deficiencies, for example:

- The practice is not statutory. It is a half-way house. Because it is embodied in the Standing Orders, it is limited to instruments the Governor-in-Council or a Minister has authority to revoke. It does not apply to all statutory instruments, and most notably does not apply to regulations made by agencies. Nor does disallowance take effect automatically. The Governor-in-Council or Minister must act in the sense ordered by the House.

- There must be a report recommending disallowance from the Standing Joint Committee. As its criteria for scrutiny are so limited to issues of legality and propriety, disallowance can never be invoked on grounds of policy or of the general merits of, or necessity for, a statutory instrument.

- Debate is severely limited-to one hour, and no member may speak for more than ten minutes.

24. The disallowance procedure contained in S.O. 123-128 also contains three highly desirable features:

- The House may disallow a statutory instrument at any time and is not restricted to a period within a certain number of sitting days following making or laying of the instrument.

- The resolution for disallowance may be in respect of a portion of a statutory instrument, thus obviating the need to choose between swallowing an objectionable feature of an instrument and disallowing it in its entirety.

- If the resolution is not brought on for debate and voted on within a limited time, it is deemed to have carried, and the Order of the House calling for revocation is deemed to have been made. "Deemed disallowance" is an essential part of any rational disallowance procedure; otherwise, a government may simply prevent the resolution being voted upon.

25. It is desirable that these positive features, properly reflective of parliamentary supremacy, should find their way into a statutory expression of the power of the House of Commons to disallow regulations. The limitations on the present power to move disallowance should be removed.

3. A New Approach to Scrutiny?

26. The mandates of the standing committees under the Standing Orders may enable them to become involved with the consequences, costs and application of regulations. But there is another way to approach the need for a forum to look into regulations in a more general way than has been the practice of the Standing Joint Committee.

27. For over twenty years Section 26 of the *Statutory Instruments Act* has been in place. It runs:

> "Every Statutory Instrument issued, made or established after the coming into force of this Act, other than an instrument the inspection of which and the obtaining of copies of which are precluded by any regulations made pursuant to paragraph (d) of Section 27,

shall stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments."

28. Every regulation is a statutory instrument, and while there has been long-standing disagreement between the Standing Joint Committee and the Department of Justice as to just what is a *statutory instrument*, for practical purposes, the overwhelming bulk of delegated legislation falls within Section 26.

29. What is noteworthy about this provision is its breadth. It covers most delegated legislation and all regulations. It is unrestricted as to the criteria for review and scrutiny. It permits review and scrutiny by more than one committee, whether of one House or of both Houses. It is wide enough to permit review of the operation or application of statutory instruments. The statutory instruments stand permanently referred: they can be taken up for review and scrutiny at any time, or from time to time; they can be dealt with more than once; there is no time limit from the time of making within which review and scrutiny must take place.

30. It is true that when the Standing Joint Committee was established in 1972, it proceeded to confine its review and scrutiny within narrow limits. The Standing Joint Committee's criteria for scrutiny, which it gave itself, were approved by both Houses; and the custom has arisen of submitting those criteria, sometimes loosely called "terms of reference," to both Houses for approval in each Session. However, the real terms of reference are the statutory ones set out in Section 26 of the *Statutory Instruments Act* and the criteria for scrutiny are by way of being a self-denying ordinance. They were written and adopted for use in the first place as a defensive or protective device precisely to prevent a new committee with a huge backlog of work being swamped with substantive complaints about the content and application of regulations. It was a practical necessity, as well as being in keeping with the established tradition of scrutiny committees looking into delegated legislation, to confine review to matters of legality, propriety and the rights and liberties of the subject. Those original criteria have been modified a little over the years, but the basic thought is the same: no review on the merits.

31. There are at least four reasons why review of regulations on their merits by parliamentary committees has occasioned such general disapproval.

32. First has been the fear that in straying into policy the committees will lose the benefits of non-partisanship which have traditionnally attended their efforts to review for legality, propriety and the rule of law.

33. Secondly, there has been the idea that since Parliament has delegated the job of law making to someone else, that person ought not to be second-guessed, but simply checked to ensure the limits of the delegation, the rule of law, and our general constitutional ethics are observed.

34. Thirdly, there is the supposition, very largely out of touch with the Canadian reality, that Parliament has settled policy in the enabling act, and the methods used to fill in the administrative details are largely the delegates' business.

35. Fourthly, review on the merits is too big a job. If Parliament delegates because it does not have time to settle the details of a scheme of regulations, it is inconceivable that a parliamentary committee will have the time to review the details later. This proposition does tend to confuse the pressures of the parliamentary timetable—the government's view of time—with the time and techniques available to a modern standing committee.

36. Is it time to look at the situation again in Canada? The matter could be accomplished easily enough. A simple decision that the existing Standing Joint Committee or some other committee should review regulations on a basis wider than that now employed is all that is required. But would it be a good idea?

37. Those who would confine parliamentary scrutiny of regulations to legality and propriety believe that there is no ground between such scrutiny and policy review or second-guessing. This is not necessarily so. If scrutiny of any instrument were conducted for economic or competitive impact or on any ground of merits, the process would be investigative, allowing a forum to exist in which doubts and grievances about regulations could be ventilated. No recommendation as to the policy or future of the instrument need be made by the committee. The evidence, summarised or not, would speak for itself.

38. If it is considered that widening the scope of the review conducted by the Standing Joint Committee would jeopardise its effectiveness in its present sphere or detract from the necessary work of ensuring legality, propriety and the rule of law in regulation making, why should each of the existing standing committees not be constituted a committee "for the purpose of reviewing and scrutinizing statutory instruments" in terms of Section 26 of the *Statutory Instruments Act*?

39. The Sub-committee concludes that the whole question of sedulously avoiding examination of the policy of regulations should be looked at again. By the passage of skeletal enabling acts, Parliament has *delegated* its policy settling and policy arbitrating function; it has not *abdicated* it. Review may well be partisan, but so in our parliamentary system would be settling policy by a bill in the Chamber.

40. If nothing else is done, the existing Standing Joint Committee should be encouraged to examine regulations more closely for matters more appropriate for parliamentary action, and to hear witnesses on this point who wish to point out the difficulties caused by the substance of regulations. The Committee might also be encouraged to look into an adjustment of its criteria for scrutiny to allow review of the consequences and application of regulations, falling short of examination of the regulations as to their policy.

4. Is Committee Scrutiny of Regulations Realistic?

41. This chapter contains a number of suggestion for more committee work of a particular kind. The principal question is this: will any parliamentary committee take up this sort of work with relish? A second question is: will those affected by regulations come forward to provide necessary evidence?

42. This is a touchy subject. Despite the sterling work done by the Standing Joint Committee over the last almost 20 years, it has hardly set the heather ablaze. The Committee is unattractive to parliamentarians. It has been resorted to very infrequently by businesses or individuals who wish to make an issue of some new or existing regulations. And this despite the fact that on several occasions over the years such interventions were encouraged.

43. It would be easy to say that a less technical review of regulations will encourage participation in, and resort to, a scrutiny committee. It might, but factors militating against this include:

- Committee work is time-consuming and most of it lacks glamour.
- Any sort of review of regulations, in accordance with any criteria, requires hard work. It is not easy to read and master a set of regulations and it is not a job a legislator can effectively, pass to staff. There is a limit on parliamentarians' time and the amount they can spend listening to grievances and witnesses.

- Business in particular is often very reluctant to make an issue of anything until every recourse within the administration, and politically, has been tried. There is a natural fear of the consequences of exposing silliness, obduracy, and so on, in public.

44. Each one of these factors is important, and the third may be the most important. Witnesses, especially business witnesses, spoke in generalities a great deal before this Sub-committee. It will take a lot to persuade such people that a parliamentary review committee on regulations is an effective forum and worth their time. But if a start is not made, the persuasion can never begin.

45. Given the pressures on members of the House of Commons, there may well be a role for the re-confirmed Senate and its Committees in acting as the forum for the airing of views and concerns about particular regulations.

5. Power in Parliament to Amend or Substitute Regulations

46. A power in Parliament to amend regulations, rather than disallow them, in whole or in part, or to substitute new regulations for old ones, ensures true control by Parliament over the content of Executive lawmaking. It also recognizes the proper nature of delegation, namely that the delegation of a power does not prevent the exercise of the same power by the person who delegates.

47. This novel power, contained in the New Zealand 1989 Statutory Publications legislation, is one that should be further examined for possible application in a jurisdiction with a bi-cameral legislature. The Standing Joint Committee is the appropriate body to examine and report upon our mechanisms for parliamentary control of delegated legislation.

D. EVALUATION OF REGULATORY PROGRAMS BY PARLIAMENT

48. As with proposed regulations, it is not possible to deal with regulations only and to ignore the statutes under which they are made. A regulatory program and regime includes both, and both need to be examined.

1. Review of Statutes and Programs

49. The "Regulatory Process Action Plan," released in May 1986 as part of the present government's Regulatory Reform Strategy, specified that "Parliamentary Committees will review all regulatory statutes over a ten-year cycle and recommend sunsetting action to the government." Six and one-half years later, this process has not been started. Further, the Action Plan stated that "a Committee of Cabinet will ensure the review of all regulations over a seven-year period and recommend sunsetting action to the Cabinet." It was not until February 1992 that the Minister of Finance announced that the government was beginning a "department-by-department review of existing regulations to ensure that. . . they result in the greatest prosperity for Canadians."

50. There are, it is true, the existing reviews conducted by the Office of the Comptroller General (OCG). As we argued in the previous chapter, from the start these have been designed as a tool to assist the top management of a department to carry out their responsibilities. They have never been seen as a means by which "outsiders" (e.g., Parliament or citizens) would gain insights into the performance of regulatory programs and therefore use the information to try to hold those responsible (notably the minister) accountable.

51. Systematic program evaluations are a necessary step in moving toward improved accountability and more rational decision making about regulation. But it is essential to create procedures for an external review or audit of evaluation reports. External review could be carried out

through three mechanisms: (a) publication and public scrutiny of the Comptroller General's reports, (b) audit of selected evaluation reports, and (c) general parliamentary review of regulatory programs with or without an OCG evaluation report. The first mechanism speaks for itself. The second could appropriately be invoked and effected by the appropriate standing committee. The third calls for use of standing or special committees.

52. The Sub-committee notes that the Auditor General also evaluates regulatory programs and that he will in future be referring his evaluations to the Standing Joint Committee for the Review of Regulations.

53. What matters is not the forum of review, but that it take place in a systematic way and that it provide an opportunity for those who chafe under a burden of regulation they consider unnecessary, intolerable, or ill-administered, to express themselves openly.

54. In every case, evaluations should address the following questions:

- What are the present objectives of the program?
- Are the original objectives still relevant?
- What are the priorities and trade-offs if multiple objectives exist?
- What means are used to achieve the objectives?
- What are the effects, intentional or unintentional, of the program? (This would include economic and non-economic considerations.)
- Should the program continue?
- What other means could be used to achieve the same objectives?
- In what ways can the administration of the program be improved?

55. It should be recognized that the evaluations will raise essentially political issues (i.e., broad-value choices) similar to those which were, or ought to have been, addressed by legislators when the statute underlying each program was enacted. The review of regulatory programs is proper to the role of elected representatives.

56. All OCG evaluation reports should be tabled in Parliament and be referred automatically to the appropriate subject-area standing committees which should also be free to undertake evaluations on their own initiative. The committees should be empowered to hold hearings, receive briefs and commission their own analytical work with respect to the regulatory programs they choose to scrutinize in detail. Upon completion of an evaluation, a standing committee should submit its report to Parliament with recommendations for action.

The following is a summary of the recommendations discussed in this chapter:

5.1 Every bill containing an enabling clause should be accompanied by a memorandum setting out precisely why the particular delegated law-making power contained in the clause is sought, and the form the sponsoring Minister sees the delegated law taking.

5.2 Consideration of major proposed regulations by standing committees as to merits, and by the Standing Joint Committee for the Scutiny of Regulations as to legality and propriety, should be encouraged and undertaken. As a necessary sanction, the

requirements of an affirmative resolution for the coming into force of regulations should be imbedded in the grant of enabling powers, where the exercise of those powers may

- **substantially affect the provisions of the enabling or any other statute,**
- **lay down a policy not clearly identifiable in the enabling Act or make a new departure in policy, or**
- **involve considerations of special importance.**

The Standing Orders should be amended to make the affirmative-resolution procedures of the *Interpretation Act* operable, and to ensure that a vote on the resolution to affirm any regulations is not taken until the standing committee and the Standing Joint Committee have reported on it or have allowed a reasonable time period to elapse without report.

5.3 Provide each subject-area standing committee with an opportunity to review the proposed regulations after pre-publication in *Canada Gazette Part I.* The committee's report would be tabled in the House, but its primary role would be to provide advice to the Special Committee of Council. PCO could notify each committee in respect to every proposed regulation (classified by size of economic impact). The committee would then have 30 days to decide which ones it would review and another 60 days in which to conduct its review.

5.4 The present disallowance procedure under S.O.'s 123-128 should be replaced by a statutory procedure covering all statutory instruments (and any part of a statutory instrument) not subject to affirmative-resolution procedure. The deemed disallowance feature of the present procedure when a resolution is not disposed of should be retained and given statutory force.

5.5 The Standing Committee on Finance should review the "Estimated Costs and Benefits of Federal Regulations" tabled with the *Estimates*.

5.6 Standing committees in each subject area should be encouraged to undertake periodic evaluations of regulatory programs in order to hold the government accountable for the performance of such programs. The periodic evaluation or assessment might be triggered by (a) an indication by the OCG that a regulatory program has been evaluated pursuant to the program evaluation policy 01-01-92 in the *Treasury Board Manual*; (b) publication of an evaluation by the Auditor General, or (c) information received by the committee suggesting that an evaluation should be conducted.

CHAPTER 6
Standards

1. Standards and their relation to regulation played a very important role in the Sub-committee's deliberations. Many witnesses suggested voluntary standards as alternatives to regulation, the use of output rather than input regulatory standards, and quality assurance standards to improve the regulatory process. The Sub-committee therefore approached the issue of standards with three basic questions in mind:

- Should product and process standards developed in the private sector substitute more for government-promulgated standards or regulation?

- Should regulatory standards be more performance orientated, with details left to industry and firms through the consensus process?

- Can standards of quality management and assurance be applied to regulatory programs?

2. We received evidence from a group that addressed the first question exclusively: Peter Ridout and Robin Haighton from the Canadian Standards Association (CSA), an independent, not-for-profit, standards-writing, certification, testing and inspection organization. The CSA strongly supported the "voluntary" private sector consensus process to standards development, leaving regulation to deal "with the exception rather than the rule". (10:31) Several witnesses addressed the second question, including the Canadian Manufacturing Industries Forum and the Canadian Chemical Producers Association (16:12), encouraging use of more performance orientated standards. The third question, including witnesses comments thereon, is reviewed in Chapter 7.

A. STANDARDS EXPLAINED

3. Economists generally tend to view standards as an agreed-upon set of specifications that define a particular product or process. Government officials often view standards as the means to address a societal concern or to achieve a social end. They often equate standards with regulations. However, standards can be described and categorized in a broad variety of ways.

1. Different Purposes

4. Standards can be classified and described according to what they define. The following is an example of possible groupings:

- *Product Standards* specify the characteristics of a product.

- *Control Standards* define a range of acceptability with respect to the design, performance or use of a product. These standards often take the form of regulations.

- *Input Standards* often specify the means of achieving objectives.

- *Output Standards* specify performance objectives, but not the means of achieving them.

- *Process Standards* facilitate and support socioeconomic transactions and interactions. They define roles and relationships and establish the rules for interpreting behavior.

- *Service Standards* specify policies, procedures and methods with respect to performance of a service.

- *Quality Standards* refer to the systems that produce the products or provide the service rather than to the technical specifications of the products or the procedures involved in the service. The ISO 9000 standards discussed in Chapter 7 are generic examples of this type of standard.

2. Different Development Processes

5. Standards can also be classified and described by how they are developed. In simple terms, there are three different ways in which standards can be set:

- spontaneously, through the interplay of market forces (de facto standards-setting process)

- through organizational processes (voluntary consensus process), which includes

  - guidelines by involved associations or by a government department with the cooperation of interested associations

  - consensus standards developed within the private sector, and

  - consensus standards developed by a public agency.

- through political choices (bureaucratic process)

3. Different Applications — Voluntary versus Mandatory

6. Standards can be mandatory or voluntary. However, it was clear from testimony before the Sub-committee that the meaning of voluntary standards and standardization can be fairly elastic. In particular, while it applies to market-driven, consensual arrangements among participants in an industry or sector, often it is also used to refer to voluntary standards or guidelines promulgated or underwritten by the government. In the latter case, standards are in effect no less binding on the private sector than regulations, since they always carry the threat of government enforcement behind them.

7. Examples of such voluntary codes given to the Sub-committee included performance standards for baby walkers (they must be so designed as to prevent them from passing through basement doors) and practices for the use of debit card issuers. In each case, the responsible Department made it clear that, in the absence of agreement among market participants, the government would regulate (4:16 and 4:18).

8. Thus, not all mandatory standards are legislated; some non-legislated standards may in effect be mandatory. Consider, for example, the National Standards of Canada. The Standards Council of Canada was established to coordinate voluntary standardization in Canada. However, it is

clear that, although the process of developing and formulating the standard may be voluntary, the voluntary standards developed by the consensus process become mandatory in application if the force of legislation, or threat of government enforcement by legislation, exists. It appears, therefore, that the term "voluntary" can be more accurately interpreted to mean merely that consensus was the process that developed the standard.

B. THE STANDARD-SETTING ENVIRONMENT

1. Canada's National Standards System

9. The Standards Council of Canada (the SCC) reports to Parliament through the Minister of Consumer and Corporate Affairs Canada (CCAC). The SCC is a Crown corporation created by an act of Parliament in 1970. It is independent of government in its policies and operations, although it is financed partially by parliamentary appropriation. The SCC consists of 57 members, 41 from the private sector and 16 from the provincial and federal governments.[1] The objectives of the SCC, as set out in the *Standards Council of Canada Act*, are to:

> Foster and promote voluntary standardization in fields relating to the construction, manufacture, production, quality, performance, and safety of buildings, structures, manufactured articles and products and other goods, including components thereof, not expressly provided for by law, as a means of advancing the national economy, benefiting, assisting and protecting consumers, facilitating domestic and international trade and furthering international cooperation in the field of standards. (p. 992)

10. In examining how to give effect to its mandate, the SCC conceived of a national federation, known as the National Standards System (NSS). Overall policy is achieved through consensus agreements by the participants in the NSS. The SCC has historically[2] had the authority to accredit three types of organizations (the operational elements of the NSS):

- *Standards Writing Organizations (SWOs)*, which write standards, some of which are accepted by the SCC as National Standards of Canada (NSC). The 1991/1992 SCC Annual Report lists five SWOs.

- *Certification Organizations (COs)*, which have registered trademarks certifying that products or services meet a standard. The 1991/1992 SCC Annual Report lists seven COs.

- *Testing Organizations (TOs)*, which test products or services to determine whether they meet the standard for that product or service and report the results of their tests. They also analyze substances to determine their content or attributes, test products to determine various parameters, etc. The 1991/1992 SCC Annual Report lists 86 TOs. The SCC's many publications explain criteria, procedures, conditions and guidelines for these member organizations. Controls to ensure compliance by the members of the NSS are also explained in the documents. For example, the SCC regularly audits these organizations to ensure that they continue to meet the requirements for accreditation.

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1 SCC, CAN-P-2E (January 1992), p. i.

2 The SCC 1991/1992 Annual Report indicated that an accreditation program for organizations that register the quality systems of Canadian companies was launched in the year ended March 31, 1992.

2. Standards-Setting in Some of Our Major Trading Partners

11. Many of Canada's major trading partners, including the United States and the European Community, are rethinking their standards setting processes in light of a changing global environment.[3]

12. In the United States, the standards-setting processes is in favor of the marketplace. Generally, American participants must pay their own way in standards development. In other countries, participants are generally supported, at least in part, by their national governments. For example, all European governments routinely support national standards-setting to some degree and in one form or another. But the relationship between government and the private sector and the extent of government involvement in standards differ from country to country. In Denmark, Spain, France, Italy and the United Kingdom, standards organizations are organized under private law but given a public-service function by the state. In Germany and the Netherlands standards organizations are private.[4]

13. Britain and France have recently produced national strategies based on standards and quality management. Several countries are using standards development programs in developing countries as a means of improving exports to those countries.

14. In Japan, the standards system is centralized under the control and direction of the government. The system works by consensus, but the consensus is reached at the direction, supervision and final approval of the government to ensure that the standards promote the goals of the system itself and Japan as a whole.[5]

C. AN EVALUATION OF STANDARDS ISSUES

1. Framework for Assessing Standardization Issues

15. In developing its framework for assessing standardization issues, the Sub-committee considered a Canadian study[6] analyzing Canada's NSS and the issue of voluntary standards as a regulatory device. Although the NSS has greatly improved over the ten years since the study was conducted, certain of the findings are still particularly relevant.

16. In developing its framework for assessing standardization issues, the Sub-committee also considered developments in countries with which Canada regularly trades, and reviewed in depth a recent United States study.[7] Key findings[8] in that study (with respect to the U.S. standards system) were:

- the growing national stake in standards issues
- the insufficient support for standards setting

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[3] See excellent discussion of structural changes in the standards setting environment in U.S. Congress, Office of Technology Assessment, *Global Standards: Building Blocks for the Future*, TCT-512 (Washington, D.C.: U.S. Government Printing Office, March 1992), Chapter 4.

[4] For a discussion of standards setting in the United States and Europe, see ibid., Chapters 2 and 3.

[5] See Lecraw, D.J., "Voluntary Standards as a Regulatory Device," *Working Paper No. 23*, Economic Council of Canada, July 1981, Appendix B for discussion of standards system in Japan. Also see ibid., pp 17, 23, 34, 84 and 90.

[6] Lecraw, op. cit..

[7] U.S. Congress, op. cit..

[8] Ibid, pp. 7 to 18.

- the need for cooperation rather than conflict
- the need to strike a more appropriate balance between the public and private sectors
- inadequate federal coordination and policymaking
- the need for greater attention to how other governments use standards to create markets for their nations' industries

17. Most of the foregoing findings are relevant for Canadian consideration. The Sub-committee used the following orientation[9] in evaluating its own policy strategies and options with respect to the proper relationship between the regulatory and the standards systems:

- *Consistency*: For political viability, the use of standards and their processes must reflect economic and cultural conditions and constraints.
- *Equivalency*: To benefit fully from growth in trade, standards must also have equivalent, but not necessarily the same, standards-setting norms, procedures and institutional mechanisms as the international community.
- *Flexibility*: Standards processes must allow for a flexible response in light of needs:
    - to be more timely,
    - to take into account varying standards-setting processes, and
    - to have form of government promotion and involvement.
- *Capability, Legitimacy and Survivability*: Standard-setting bodies must have an ongoing capability to evaluate their performances and to assess and plan for their futures, if they are to perform effectively in the rapidly changing national and international environment. To achieve this capability, the standard system requires a broad base of legitimacy. In addition, if standards are not only to be legitimate, but also survive, standards processes must be open, involve all interested parties and result in standards that distribute the benefits of the process on a broad basis.

2. Market Orientation

18. The Standards Writing Organizations (SWOs) in the Canadian standards system are commercially orientated. The stakeholders in a standard, including government, must be willing to pay the costs of its development by the SWO. Because of this orientation, there is still almost total reliance on a bottom-up demand for standards in the NSS. This has likely led to overdevelopment of standards in some industries (where a firm, group of firms or the industry as a whole may gain competitive advantage) and under-utilization of the standards development process in some others (where buyer concentration is low or where large oligopolistic producers may lose some of their competitive advantage).

19. Although the voluntary-consensus process partially reduces the likelihood of over-standardization, the pro-standardization orientation of the organizations in the NSS may

9 Adapted from ibid., pp. 20 and 21.

somewhat offset this reduction. The bottom-up approach has benefits as well as dangers, however. For example, such an approach increases responsiveness to market demand for standards as well the cost efficiency in standards production and administration.[10]

3. Incorporation of Standards by Reference in Regulation[11]

20. Where standards are referenced in legislation or regulations, otherwise voluntary standards become mandatory under the authority of the federal, provincial or municipal governments or other regulatory bodies. Compliance with standards is the responsibility of the agency enforcing the legislation or of those invoking standards through contracts, and not of the SWO or any part of the NSS. Even where Certification Organization's (COs) determine whether or not a product or activity meets a standard, the enforcement of the standard still remains with the regulating body or contracting agency.

21. Reference to standards is a very controversial issue in the world of standards. Use of reference to standards by government in its legislation and regulations has increased in Europe and the United States and has been recommended by the Economic Community for Europe and the ISO. Standards organizations both in Canada and abroad are firmly committed to encouraging reference to standards by government in legislation and regulations, after these organizations have developed a standard through the consensus process. In fact, the SCC has a document for just that purpose, providing guidelines for regulatory authorities on incorporation of standards by reference in regulations.[12] Governments, however, are sometimes wary of reference to standards for three reasons:

- Consensus standards may not represent the public interest.
- Consensus standards may take too long to develop.
- There are legal concerns regarding delegation of the responsibility for consensus standards.[13]

22. Making more extensive use of reference to standards developed within the NSS should improve coordination of regulatory and standards activities between government departments and between the three levels of government. This still leaves unaddressed the exact nature of the reference. The reference to a standard can be open, dated, written into the regulation, or written into the act. Factors to consider are:

- *An open reference* allows continuous, rapid updating of the standard used in the legislation but might remove government control of the standard as it appears in the legislation.
- *A dated reference to a standard* provides complete certainty of the specification, but is more restrictive and reduces the flexibility of the standard in meeting changing conditions.
- *A standard written into a regulation* can be changed more easily by the government department, although it is more costly to write and adjust.
- *A standard written into an act* gives Parliament absolute control, but may retard change and improvement of the standard.

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10 See discussion in Lecraw, op. cit., Chapter IV and pp 92 and 93.
11 Ibid., pp. 9, 37 to 45, 94 and 95.
12 SCC, CAN-P-1014, December 1987.
13 Maintenance of standards may also be improved as the SWO has strict responsabilities in that regard.

23. It can be seen that the trade-off with respect to the method of referencing a standard is between flexibility and progress, and surety and control. The ISO preference for open reference to standards[14] is the preferable method to use if competitiveness is the primary objective.

4. Due Process

24. Another controversial standardization issue is due process. In a global economy, questions will arise about who should participate in standards setting, and in which organizations standards activities should be centered.[15] Costs of international participation are higher than the costs of national participation. As more standards are set at the international level, many public interest groups and small businesses will be left out of both the international policymaking processes and the domestic ones.

D. VOLUNTARY STANDARDS AS A REGULATORY DEVICE

25. That standards play a significant role in the economy does not, of course, imply that governments should set them. As stated at the outset, there are non-governmental ways to standard setting, and most standards in the market today are in fact privately set (whether by firms, industries or the consensus process). Government intervention is most likely to be demanded where:

- the risks associated with a product or a process are great, and
- the requirements for informed judgement by consumers or other affected parties are difficult.

26. Thus, one tends to find government-mandated standards in food processing, for example, where the consequences of careless practices could be disastrous. But one also finds them in food packaging where the rationale is much less clear. The Minister of Agriculture, for example, told the Committee that there are regulations prescribing the size at which one can retail potatoes in bags; it must be done in bags of one, two, five or ten pounds (11:11).

1. The Effects of Standards

27. The ultimate effect of voluntary standards will depend on the level of standards usage; the specification of standards; the process of testing and certifying products to standard; the mechanisms by which standards are administered; and the economic, political, social, technological, and international environment.[16]

28. However, it was clear from the testimony of witnesses that, just like regulations, standards (whether voluntary or not) can affect administration and compliance costs, technical and allocative efficiency, structure, conduct, performance, dynamic efficiency and equity. Standards may inhibit development and improvement, or deny access to a new product or an innovation altogether, thereby limiting consumer choice and possibly excluding from the market lower quality but less expensive alternatives.

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14 Lecraw also preferred open reference to standards as he felt the advantages of flexibility and progress outweighed the disadvantages of reduced surety and control.
15 U.S. Congress, op. cit., p. 19.
16 Lecraw, op. cit., p. 89.

29. Vernon Smith commented that product standards are often set by private industry (though they may subsequently receive regulatory sanction) as a competitive strategy: to gain market position for a product by establishing the standards which allow that product to be sold in that market (13:5-7). The Retail Council of Canada argued that product or commodity standards can be a useful means of providing customers with quality assurance, particularly where safety is an issue or quality determination by the customer is difficult or expensive. But the Retail Council also noted that commodity standards:

> . . . can be a two-edged sword. By their nature they may inhibit development and improvement; they may lessen the rewards of the truly innovative and entrepreneurial, to the extent they require disclosure of ingredients or manufacturing practices; they may deny access to a new product or an improvement altogether. (Brief pp. 7-8) Generally. . . [the determination of package sizes] should be left to the marketplace (17:11).

30. While standards may be every bit as effective as regulations, they may also have virtually all the drawbacks of regulations. Furthermore, where no legislative authority is given to the standard, it appears to lack most of the procedural safeguards of formal regulations. As the Auditor General pointed out in his testimony before the Sub-committee:

> Unlike formal regulations, there is no requirement for such [voluntary] agreements between government and industry or among the interested parties to be disclosed to Parliament, or in the government's annual regulatory plan or in the *Canada Gazette* or for the agreements to undergo an impact assessment (7:6).

31. To lessen the negative impact of standards, the Consumers' Association of Canada indicated that standards

> should be developed pursuant to a balanced public participation process and should be reviewed on an on-going basis to assess their current need, conformity with other jurisdictions and enforcement (19:21 and Brief, p. 14-15).

32 The consensus-standard system appears to meet the requirements cited by the Consumers' Association of Canada.

2. Flexibility, Quality and Funding Considerations

33. The perspective that, where public interest may be affected, government should be involved and can best serve that interest, was disputed by many witnesses. Rather there was a pronounced preference among many of our witnesses for the use of voluntary standards as an alternative to regulation. For example, the CSA strongly endorsed the use of this alternative to regulation, stressing the advantages of flexibility and consensus that is offered in contrast to the rigid and coercive nature of regulations (10:28 and Brief, p. 2).

34. Officials from Consumer and Corporate Affairs Canada (CCAC) stated that the department relies on voluntary codes for the achievement of its objectives, in preference to mandatory regulation, whenever practical (4:5). The Canadian Chemical Producers Association stated that regulation making is time-consuming, rigid and costly. The government ought to encourage voluntary approaches to risk containment, such as the Responsible Care initiative originated in the Canadian chemical manufacturing industry (Brief pp. 5-11). The National Dairy Council of Canada stated that wherever possible, reliance should be placed on a voluntary approach to good manufacturing practices, rather than regulation (12:5).

35. Some witnesses indicated that the consensus process used by standard writing organizations was an efficient means of obtaining representation of diverse interests and assembling the technical expertise necessary to write standards with a minimum of overhead and wasted resources. Mr. Haney, Director, Policy Research, Consumers Association of Canada (CAC) indicated in follow-up discussions that the CAC prefers the "multi-lateral" consensus process over the "often rushed, bi-lateral" regulatory process.

36. However, he expressed concerns about sufficient funding for the multi-lateral consensus process, if government turned over more of its activities to the voluntary standards system, or relied more on the CAC to lobby on behalf of consumers for government. (Currently, CAC obtains expenses from SWOs; however, only some SWOs pay per diem fees because of their own financial constraints.) Studies reinforce the concern that a consensus system can discriminate against underfunded, non-technically orientated groups. [17]

37. Witnesses explained that although consensus standards take longer to develop, the end result was better (that is, more technical and precise). Studies also indicate that voluntary (non-legislated) standards are generally more efficient, relevant, flexible and less costly than mandatory regulation (legislated standards). As Lecraw has noted, the potential cost of the bureaucratic process for the formulation of standards is two-fold:

- Sources of information and expertise may not be known, utilized, or taken into account
- The diverse interests of all those affected by the standard may not be reflected in the standard.

38. Thus according to Lecraw, bureaucratic standards may be more easily captured by one interest group and are more likely to conflict with other standards or not be uniform across jurisdictions. [18] The consensus standards system is likely not to have these problems because the SCC's policies and practices are designed to prevent them.

3. Balance Between Public and Private Sectors

39. We have seen that standards serve both public and private functions, and countries differ in the way they assign responsibility between government and the private sector. We have also seen that there is a spectrum of standards development and application processes, each with its own problems. The progression of a standard along the spectrum from no standard, to standard of use, to voluntary standard, to legislated standard, is one of the most important processes in the standards system, especially since it appears that the establishment of standards, whether for health and safety, or for quality reasons, is the major driving force behind the promulgation of new regulations. (Vernon Smith, 13:4-5) The question is at what stage in the process is it best to halt the progression. The answer will vary depending on various factors.

40. For example, factors affecting adherence to the standard must be considered, if the standard is much more than merely an informational guideline and compliance is the goal. According to the Retail Council of Canada, voluntary (non-legislated) approaches are most likely to be effective when the following conditions exist:

- the parties being regulated are not so numerous as to weaken mutual knowledge and peer pressure

[17] Ibid., p. 32.
[18] Ibid., p. 33.

- infractions can be quickly identified
- transgressors are subject to some penalty or stigma
- market forces can be brought to bear in support of the guideline
- the process is assisted by dissemination of information
- disputes can be settled by parties other than the offender and its competitors
- applicable sanctions are administered by a disinterested third party
- the business stakes relating to rules adherence are not disproportionately high (17:5 and Brief pp. 5-6)

41. The foregoing conditions are relevant where non-legislated, but government-promulgated, guidelines or standards are being contemplated. However, even if all the factors existed and compliance could therefore be achieved with relative confidence, that still may not confirm that the approach was proper. To determine whether reliance on a non-binding approach was appropriate in a particular circumstance, what must be considered is whether the government would be fulfilling its responsibilities (both social and legal) if the approach were implemented. Following is a suggested model for evaluating when non-legislated approaches should be encouraged and when binding or legislated approaches should be implemented:

A MODEL FOR DETERMINING RESPONSIBILITY

No Standard	Standard of Use	Voluntary Standard	Legislated Standard*
Factors:			Factors:
End-product.			Product that has to be interchangeable with other products.
Small purchase price.			Large purchase price.
Frequent repeat purchases.			Infrequent acquisitions.
Information readily available to the consumer at low cost.			Information not available or very costly to disseminate.
Health, safety or environmental impacts are minimal.			Health, safety or environmental implications are significant in the use of the products.
Product development is new and rapidly changing.**			Product development is relatively static.

* Legislated standard should further be divided into four categories, from left to right: open reference to standard, dated reference to standard, standard written into a regulation and standard written into an act.

** Unlike the above factors, which relate to the demand for regulation, this factor affects the supply side: generally, the more static product development is, the easier it is to establish and impose a standard for the product.

42. Where all the factors on the left are present, the conclusion likely should be to let the market factors operate with no intervention, voluntary or legislated. Where all the factors on the right are present, the conclusion likely should be to consider a legislated standard. Where a mix of the factors is present, the conclusion will be to intervene somewhere along the line between no standard and legislated standard (with respect to use or application of the standard).

43. The Committee suggests use of a model like the foregoing in determining when private sector voluntary standards should be applied in place of government-promulgated standards or regulation. Further, wherever possible, the consensus process and the committees of the NSS should be used to formulate the necessary standards, whether the standard will ultimately be legislated or not. Although government may have to set a temporary standard or create a temporary regulation if the consensus process is not working with respect to a particular matter, and a true voluntary consensus standard can not be arrived at in the desired time frame, the threat of a highly restrictive bureaucratic standard may in itself force the consensus process towards obtaining a standard that reflects all interests.

44. The Committee feels that Canada's exemplary voluntary standard-setting system should be supported and utilized wherever possible. However, government control is necessary if the standards developed become effectively binding, either by legislative reference or government threat of such.

The Committee therefore makes the following recommendations:

6.1 When legislated standards are deemed necessary, governments should increase their effort to coordinate standard requirements and activities by mandating more extensive use of reference to standards (particularly undated reference) developed within the National Standard System (NSS). Specifically, when identifying and assessing alternatives in the regulatory process, regulatory authorities should review the available listings of existing standards (Canadian, international and foreign standards) to ascertain what may be suitable. If an acceptable standard exists, then reference to it should be made when drafting the regulation. If no acceptable standard exists, regulatory authorities should arrange for the development of a standard through either the Standards Council of Canada's National Standardization Branch or the NSS's member standard writing organizations.

6.2 Government should be reticent about promulgating standards outside the health, safety and environmental area. Furthermore, a program should be established, and a person accountable for achievement by a specified target date should be designated, to review existing government promulgated standards with this principle in mind.

6.3 Wherever possible, government-promulgated standards must specify to system standards and, where applicable, to performance (output) standards. Specifying to design (input) standards should be avoided and decisions about the details delegated to regulated enterprises. Furthermore:

- **Where performance standards are not possible, government-promulgated standards should be required to outline broad essential requirements that products must meet. If standards writing organizations are retained to write more detailed standards that meet these requirements, industry should be allowed to choose whether to follow the SWOs standards or meet the government directive using another approach.**

- **The program mentioned in recommendation 6.2 should also review existing government-promulgated standards with the foregoing drafting principles in mind. Where adjustments are necessary, regulatory authorities should arrange**

for the rewriting of the standard through either the Standards Council of Canada's National Standardization Branch or the National Standards System's member SWOs.

6.4 Development of any standards that are effectively binding (either by legislative reference or government threat of such) should be subjected to the key features of the regulatory process. Accordingly, all government-promulgated standards should be disclosed to Parliament through the government's annual regulatory plan, and the following policies of the National Standards System should be made mandatory: review of costs versus benefits and independent review of these assessments, and review of standards on a continuing basis to assess their current need and conformity with other jurisdictions.

E. BILATERAL AND INTERNATIONAL HARMONIZATION

45. The Canadian Standards Association indicated that more than 80% of Canadian exports to our five largest trading partners are subject to a standards evaluation of some kind. (Brief, p. 1) Recognizing that misapplied standards can act as barriers to trade, Mr. Ridout of the CSA stressed that Canada, a country heavily dependent on trade, ought to participate actively in international standards activities, "working to ensure that international standards meet Canadian expectations, and harmonizing technical requirements where possible". (Brief, p. 2) Linkages between standardization and international trade impact on Canada's competitiveness and prosperity, were also stressed by the SCC (Standards Council of Canada) in its 1991/1992 annual report:

> The drive to liberalize international trade, and ultimately to create a global market, relies heavily on the harmonization and mutual recognition of standards and procedures for conformity assessment, a broad term encompassing such processes as testing, certification, inspection and quality systems registration. Standardization and conformity assessment are important factors in the *Canada/U.S. Free Trade Agreement* (FTA) and in negotiations for a *North American Free Trade Agreement* (NAFTA). They also figure prominently in developments surrounding the creation of Europe's Single Market (Europe 1992), in the *General Agreement on Tariffs and Trade* (GATT), and in Canada's pursuit of greater trade with Japan and the Asian market. (p. 5)

46. Representatives from industry also emphasized the need for bi-lateral and international harmonization. For example, the Retail Council of Canada indicated that its members support the FTA and NAFTA mutual recognition and harmonization of standards objectives: Canadian importers now frequently find that the costs of testing and possible adjustment of product for Canadian standards add disproportionately to the cost of merchandise sold in Canada, given the smaller size of our economy (17:9-10 and Brief pp. 10-11). The National Dairy Council of Canada supported international harmonization, stating that regulation or guidelines for food quality standards should be based on the international *Codex Alimentarius* guidelines (12:5 and Brief, p. 1). The Council also stated, however, that

> "Canada is noted for agreeing to the Codex standards and then making variations to them, so ours are always slightly different from everybody else's." (12:9)

47. The CSA felt that Canada's progress towards adopting international standards could and should be improved, however "Canada needs to step up its activity in most industry sectors" (Brief, p. 1). It noted:

> . . . Canadian industry participation in international standardization has not been well coordinated nor readily supported by most industry sectors. . .. Canada and the U.S. are not well represented at these [international] meetings and as a result most of the

ISO/IEC [international] standards tend to reflect the European requirements. The U.S., recognizing this, are considering a recent congress report to "get on track" and put a strong effort forward to influence the international standards community. (Brief, p. 2 and p. 3)

48. The SCC, in its 1990/1991 annual report, also indicated a need for more government and industry support of Canada's National Standards System to face the pressures of regional and global markets (p.17). The SCC states in its 1991/1992 annual report:

> Budgetary constraints have in recent years necessitated a reduction in financial support from SCC for Canadian representation on international standards committees. As was reported last year, however, increased support from industry and individual volunteers is helping to maintain these involvements (p. 14).

49. According to the SCC's 1991/1992 Annual Report, in that year, 192 new National Standards of Canada (NSC) were approved, bringing the total of NSC by the year end to 1749. Adoption of new NSC is apparently the first step towards increasing Canada's influence in international standards development.

50. Although the process of harmonization is indeed slow, progress is at least being made, and improving. For example, although the SCC 1990/1991 annual report mentions only two international standards that were approved as NSC (out of 185), the 1991/1992 Annual Report indicates that 65 of the 192 new NSC approved were *adoptions* of ISO and IEC (i.e., international) standards, and another 14 were *based* on ISO and IEC standards. The increase is a significant improvement and results in the following comment in the 1991/1992 annual report:

> The increase in international standards submitted and approved as NSC reflects a heightened awareness among members and users of the NSS that Canadian companies will increasingly be required to meet internationally-accepted standards to maintain existing markets or to broaden into new markets abroad. (p. 12)

51. Despite this positive remark, a statement in the CSA brief was of interest. Commenting on the necessity of Canada being an active player in the international standards arena, the CSA indicated:

> This work requires investment, in both financial and human resources, which at the same time under the current situation may reduce some current revenue sources through the sale of standards where international standards become the documents of choice. (Brief, p. 2)

52. The SCC normally does not sell NSC: that right is given to the member SWO who drafted the standard. However, the publication of an adopted international standard as a NSC may create financial uncertainty for the SWO since, although SWOs can sell the national version of an international standard,[19] pursuant to international agreements only the SCC can sell the preferred ISO version.

53. Furthermore, where bilateral standards are developed, agreements for the rights to sell the technical documentation are also negotiated. As a result, the market for the Canadian SWOs with respect to standard documentation may be reduced from a Canadian and a potential non-Canadian market to just the Canadian market (that is, normally the rights are split so that each organization retains only the rights to its own country).[20]

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[19] Normally, the publication of an international standard adopted with or without change as a NSC is done by the SWO responsible for the second level review.

[20] The market for certification services may also be reduced.

54. Because of the foregoing, and the fact that the sale of standards is an important revenue-producing activity for the accredited SWOs, there is a financial disincentive to promoting both bi-national and international harmonization of standards.

55. The Committee is concerned with the apparent disincentive to both bilateral and international harmonization and recognizes the importance of standards to Canada's ability to trade competitively.

The Committee therefore recommends that:

6.5 Financial priority should be given to Canadian participation in relevant international standards development activities and to incentives for standards writing organizations (SWOs) if they make their standards international standards. Perhaps funding can be achieved for the incentive program by levying fees across the board to member SWOs and then using these levies to reward harmonization successes, thereby partially compensating for potential sales revenue losses.

6.6 The reporting mechanism to Parliament of the Standards Council of Canada should be reviewed in light of the importance of standards to Canada's ability to trade competitively.

CHAPTER 7

Implementation and Enforcement

1. Within the regulatory environment, implementation means the act of administering a substantive policy, and encompasses all activities engaged in to achieve compliance, including enforcement, training programs and negotiations.[1] If implementation is to be successful, structure, policies, strategies and activities must all be subject to scrutiny and continuous improvement. The Committee put particular emphasis on examining the enforcement aspect of implementation since regulations are only as effective as their enforcement. Also, to some witnesses, enforcement was in fact the major problem with our regulatory system.

2. To obtain compliance without the need for close inspection and major penalties, the quality and extent of consultation with stakeholders was determined to be critical. Effective consultation means better informed and more accepting stakeholders, through their involvement throughout the entire regulatory process, including involvement to establish policy and guidelines, to identify problems, to design compliance techniques, to prepare impact assessments, and to draft the wording of the regulations. In the absence of effective consultation, stakeholders will perceive the system negatively and compliance will suffer.

3. Even the best tools and methods can be ineffective in unskilled hands or the wrong environment. An effective and efficient regulatory process depends crucially on the human factor. One way to deal with the human factor is to implement a quality service approach into the regulatory process. This approach is explained and considered later in this chapter.

A. AN EVALUATION OF THE ISSUES

4. One of the strongest themes to emerge from the hearings was that it was not the regulations themselves that people found unacceptable, but the manner by which they are introduced, made known and applied. In the words of Chris Kyte, Executive Director of the Food Institute of Canada:

> Canada doesn't have a regulatory problem; it has an application problem. . ..The application of regulation is more costly than the regulations themselves. The silent killers that we've identified, which costs companies time and money, are decentralization and inconsistent decision-making (1:26).

1. Trade-off Between Consistency and Flexibility

5. The problem is that fairly broad, blanket legislation or regulations, often desired for flexibility purposes, leave considerable administrative responsibilities to officials. Not always prescribed are how that discretionary power is to be used or related to the regulatory activities of other

[1] Adapted from Kernaghan Webb and Peter Finkle, *"Compliance and Enforcement of Consumer Protection Policies: Where the Rubber Meets the Road,"* Consumer Policy Framework Secretariat, February 8, 1991, p. 10.

agencies. The problem is made critical when no written policy or process regarding implementation and enforcement exist, and, compounded when different jurisdictions are involved. As we stated in Chapter 1, currently each department and agency is left on its own to determine the best way of enforcing the regulations within its scope. The result is inconsistent application of the rules and competitive advantage or disadvantage for particular firms or regions.

6. However, regulatory consistency does not necessarily mean equal treatment or enforcement of identical standards everywhere. As Bardach and Kagan have argued:

> . . .the imperatives of the regulatory process force trade-offs: for example, between punishment of the guilty and protection of the innocent, between appropriate consistency and appropriate flexibility, between the rule of law and the rule of reason.[2]

7. The application of regulations must be sufficiently flexible to take account of local conditions and the needs of small business. That regulation should be sensitive to small business was emphasized by the Canadian Federation of Independent Business (CFIB)(21:106), the Canadian Organization of Small Business (COSB) and the Canadian Chamber of Commerce. The question is how to achieve both consistency and flexibility. Still relevant is an observation made by the Economic Council of Canada in a paper, now ten years old:

> The desire for consistency is not incompatible with that for flexibility, but it requires a fine balance of judgment and a willingness to respond on both sides.[3]

8. The Committee termed this judgement and willingness to respond on both sides the "human factor". It includes the perceptions and expectations of the regulator and the regulatee, the resulting relationship between them and their ability to adapt to change.

2. The Human Factor—Expectations Versus Perceptions

9. It was apparent from the Sub-committee hearings that a substantial gap existed between customers' (that is, the regulatees, beneficiaries of the regulatory programs and the affected or interested public) expectations of the regulatory service they deserve and their perceptions of the regulatory service they actually received. In particular, businesses continue to complain that they are not made aware of the rules of the game. For example, the Canadian Federation of Independent Business (CFIB) stated:

> Often business owners do not hear about new regulations until they've been audited or are facing penalties. CFIB's research show that business owners do not look to government for information. Governments should work out some sort of strategy to work either with sector associations or other groups to disseminate regulatory information. (21:107)

10. CFIB further commented regarding customer service:

> A concern frequently expressed by our members is that often the attitude of the regulatory officials, rather than the regulations themselves, is the cause of their frustrations. There appears to be considerable room for improvement in the quality of customer service within government. One suggestion we have looked at is a government

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[2] Eugene Bardach and Robert A. Kagan, *Going by the Book, the Problem of Regulatory Unreasonableness*, a Twentieth Century Fund Report, Temple University Press, Philadelphia, 1982, p. 304.

[3] Economic Council of Canada, *Reforming Regulation*, 1981, p. 127.

telephone hot line where people who have concerns could identify red-tape problems such as problems with uncooperative attitudes of government officials, unreasonable requirements or other complaints. Also, there is a need for a department-wide total quality management program (21:107).

B. STANDARDS OF QUALITY ASSURANCE AND MANAGEMENT

11. An important part of the Committee's investigations to improve implementation was to consider the use of standards for quality assurance and management in the regulatory process, as well as the use of approaches such as Total Quality Management or Total Quality Service, to ensure that such standards are adhered to.

12. The purpose of the Committee's review was to determine whether the standards of quality management and assurance could be applied to regulatory programs, both:

- *in the government*: to improve the regulatory implementation and management process and ensure policies and procedures are being adhered to and the service quality is as intended; and
- *in the regulated parties*: to reduce need for government inspection in enforcement while still ensuring companies are complying with regulations, standards and/or guidelines.

13. Three witnesses before the Sub-committee specifically addressed these aspects and the concept of Total Quality Management or Total Quality Service: Stanley Brown from the Total Quality Service consulting practice of Price Waterhouse; Jan Ruby, Assistant Deputy Minister from the Ontario government, who is involved in the beginning phases of trying to implement a quality service approach in that province's government; and Larry Rogers from the Quality Management Institute (QMI), an independent, third-party auditor for quality assurance registration in Canada and abroad.

1. ISO 9004-2 Explained

14. Larry Rogers talked to the Committee about ISO 9000, a series of five standards issued by the International Organization for Standardization (ISO) that establish requirements for the quality systems of organizations. These standards specify a management system designed to ensure that plant inspection, and design and process procedures are such as to guarantee quality without the need for inspection of the finished product (7:21). Specifications for management systems for service organizations also exist.

15. The ISO 9000 series has been adopted for use as national standards by our major trading partners, including the United States and the countries of the European Community (EC) as a framework for quality assurance in cross-border trade. While the standards are not mandated by government, more and more purchasers require use of the standards, including industries, institutions and governments. After 1992, the ISO 9000 standards will apply to almost all suppliers of goods and services to the EC. Registration to ISO standards is also increasingly becoming a condition of access to our other export markets and therefore, necessary for businesses to stay internationally competitive. Some countries, such as Japan, have mounted major national efforts to get their companies registered.

16. Just as companies require an impartial auditor to examine financial systems, a third party auditor must assess the quality system if registration is desired and verify that the system, as documented, is in place and that certain requirements are met.

2. ISO and the Regulatory Process

17. Can ISO standards be usefully applied to the regulatory activities of government? This question was drawn to the Committee's attention by Jim Martin Director, Regulatory Affairs, at the round-table discussion of May 7, 1992. Whatever reforms the Committee might recommend to the regulatory process, Mr. Martin said, their success in the end will depend on the way regulatory programs are managed, particularly with respect to the relationships between the regulators and the regulated. Perhaps, he suggested, quality management standards, such as the ISO 9000 series, could force on regulators the behavioral changes necessary to achieving more cost-effective regulation (1:32-3). The Canadian Chamber of Commerce made a similar recommendation (10:57). Mr. Rogers, from QMI, agreed that quality management systems could be implemented in government, pointing out that they are already being applied in a number of public sector organizations in the United States (7:2). Support for the idea of applying ISO standards to regulatory programs was also expressed by Gilles Loiselle, President of the Treasury Board, who saw in those standards the promise of altering the culture or attitude of regulators.

18. While the Committee was investigating the use of the ISO 9000 "guidelines for services", the Treasury Board began interpreting what these ISO guidelines for quality management in service organizations would mean in the context of current federal regulatory policy, and produced a draft document entitled "A Framework for Managing Regulatory Programs (draft)" (Treasury's Framework) based on those standards.[4] It represents an excellent attempt at describing the type of system that would meet internationally recognized standards for good management, including enforcement. However, as Mr. Brown explained:

> The ISO standard... doesn't ensure that an organization is a quality organization or exhibiting TQM [Total Quality Management] practices. What it does is ensure the company has documented to the specifications of the ISO standard that which they are willing to put forward. (17:18)

19. Therefore Treasury's Framework puts the mechanism in place for improvement in regulatory implementation by documenting the regulatory process to the specifications of international quality assurance standards (ISO 9000). Each department now needs to design strategies, policies and procedures with its stakeholders, consistent with Treasury's Framework, and to measure performance, especially customer perception of the performance, against the documented expectations.

3. TQM Explained—A Service Quality Model

20. The Committee was interested in determining whether a quality service approach would assist in cultivating a service attitude and narrowing the gaps between the expectations of the stakeholders and their perceptions of whether those expectations are being met. It therefore reviewed

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[4] Treasury Board, Regulatory Affairs Directorate, October, 1992.

a variety of literature[5] discussing the TQM (Total Quality Service) approach and its implementation. Basically, a quality service approach requires moving from an organization orientation to a process orientation—a process designed to improve the way products or services are produced and supported by accomplishing the following:

- a customer-first approach to all aspects of the organization's operations to enhance its competitiveness
- effective use of the organization's resources and the individual talents of its people
- meeting or exceeding customer expectations

21. A quality system for services must respond to the human aspects involved in the provision of a service by:

- managing the social processes involved in a service
- regarding human interactions as a crucial part of service quality
- recognizing the importance of a customer's perception of the organization's image, culture and performance
- developing the skills and capability of personnel
- motivating personnel to improve quality and to meet customer expectations

22. To achieve quality service, the first step is to identify service gaps (that is, differences that arise when needs and expectations of customers are not accurately perceived by service providers). Usually, after an evaluation is done, there is a design phase where typically individuals within the organization (functional and cross-functional teams) work together to design possible solutions to fill the service gaps. The mechanism used to communicate and reinforce the service message to the employee base on a regular basis are training and reward incentive programs. Underlying the system, is the concept that the service delivered to the ultimate customer is no stronger than the weakest link in the service delivery chain.

5 Discussion in sections B.3., B.4. and B.5. of this chapter is adapted from the following books and articles: Brown, Stanley A., (also by Marvin B. Martenfeld and Allan Gould), *Creating the Service Culture, Strategies for Canadian Business*, 1990; Clemmer, Jim, *Firing on All Cylinders, The Service/Quality System for High-Powered Corporate Performance*, (with Barry Sheehy and Achieve International/Zenger-Miller Associates), 1992; Gibb-Clark, "Quality practices not for all: study", *The Globe and Mail*, October 2, 1992; Government of Ontario, *Best Value for Tax Dollars: Improving Service Quality in the Ontario Government*, A Report to the Ontario Public Service, Continuous Improvement Services Inc. and Erin Research Inc., February 1992; Harrington, H. James, *Business Process Improvement, The Breakthrough Strategy for Total Quality, Productivity, and Competitiveness* (sponsored by the American Society for Quality Control), 1991; Port, Otis, (also by Smith, Geoffrey), "Quality", *Business Week*, (with Carey, J., Kelly, K., Forest, S.A. and bureau reports, November 30, 1992; Price Waterhouse ,"North American perspective on Quality Service practices", *Pulse*, 1991; and Stanleigh, Michael, "Accounting for quality", *CA Magazine*, Canadian Institute of Chartered Accountants, Vol 125, No. 10, October 1992.

4. Adapting TQM/TQS to Government

23. There are several approaches to achieving a quality system:

- *cosmetic-based*: e.g., posters, newsletters, smile training and other motivational/training methods
- *standards-based*: numerous variations of the concept
- *culture-based*: focus on the social context of the workplace

24. Although the cosmetic approaches are integral parts of the initiative, they are not the process itself. The difference between the cultural-based and the standards-based approaches is that the former encourages an environment that operates more by culture, motivation and shared values rather than coercion, mandate and standards. The latter, on the other hand, emphasizes more a logical methodology for implementing quality improvement processes in those areas where objective standards are possible.

25. A key question the Committee faced was whether the private and public sectors are so different that the quality service approach, developed for the private sector, can be transferred successfully to the public sector. Some witnesses expressed support for the use in government as we note in paragraph 19 above. The COSB indicated that one limiting factor may be the lack of profit motive. In a recent article in the Public Administration Review, Prof. James E. Swiss of North Carolina State University identified a number of other factors limiting the usefulness of TQM in government: the emphasis on products rather than services; on well defined consumer groups; on inputs and processes rather than results; and on a culture in the organization with a single-minded preoccupation with quality.[6] Swiss stated:

> In sum, orthodox TQM can easily do more harm than good [in government] because it can encourage a focus on the particularistic demand of direct clients rather than the needs of the more important (but often inattentive) customers, the general public. Orthodox TQM can also cause an organization to neglect or even—if Deming's advice is followed—dismantle such established systems as MBO [Management by Objective], program budgets, and performance monitoring systems that set clear output goals and monitor results. Finally, orthodox TQM makes a number of demands for output uniformity and strong, continuous organizational culture that government is intrinsically unable to meet. Despite all these major problems, a great deal is worth saving in TQM. However, public managers must adapt the system drastically to gain the advantages.[7]

26. A reformed TQM in Swiss's view would emphasize client feedback, performance monitoring, continuous improvement, and worker participation, but de-emphasize orthodox TQM's demands for output uniformity and organizational culture continuity and ensure managers were sensitized to the dangers of satisfying just an immediate clientele, rather using them as one consideration in decision making.[8] His analysis seems to indicate a more standards-based approach is necessary for successful implementation in government.

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[6] Swiss, James E., "Adapting Total Quality Management (TQM) to Government", *Public Administration Review*, July/August 1992, Vol. 52, No. 4, pp 358 and 359.

[7] Ibid, pp 359 and 360

[8] Ibid, p. 360

27. If successful, the program costs would be more than outweighed by improvements in the efficiency and effectiveness of regulatory programs. The quality service approach has the potential to improve employee morale and customer satisfaction, and decrease regulatory costs and response time. It is interesting to note that the very first action (of fifty-four) recommended by the Steering Group on Prosperity was:

> a coordinated national effort to adopt a quality approach in all areas of Canadian society through the creation of "a National Quality Institute to make Canadian private sector companies *and public sector organizations* world leaders in quality." (emphasis added)[9]

28. The Committee concurs with this recommendation. However, we feel caution is necessary in its application to government and the regulatory process.

The Committee therefore recommends that:

7.1 Quality service principles should be used in the regulatory process. However, an approach such as a modified TQM should be fully implemented only if the necessary commitment of resources to such a program is made and continued. If the commitment is made, a supporting structure must be in place before full implementation of the approach is attempted, including training for the required new skills, recognition and rewards systems to effectively reinforce desired behavior, and measurement systems to quantify results.

29. The Committee recognizes two excellent recent government initiatives: Treasury's Framework and "A Strategic Approach to Developing Compliance Policies" (Department of Justice, November 1992).[10] Each discusses factors which are general in nature and have to be interpreted to each specific situation. What is needed now are for the various regulatory departments and agencies to develop and document their implementation strategies, policies and procedures based on the guidelines provided. This will help to control discretionary action and lead to more consistent but flexible application of the regulatory programs.

The Committee therefore makes the following recommendations — *whether or not* the quality service approach is fully implemented:

7.2 In conjunction with stakeholders, a policy manual for implementing regulations should be developed by each department, subject to continuous change and improvement as experience accumulates and consistent with the over-riding policies and guidelines set out in the Treasury Board and Department of Justice recently produced management and compliance frameworks. The manual should be accessible to all interested parties and include:

- **consultation strategy, policy and procedures consistent with Treasury Board guidelines developed along the lines proposed under the Committee's recommendation 4.1**
- **guidelines for frequency and extent of regulatory reviews**
- **compliance strategy, policy and procedures considering the objectives of the regulatory program, the rules and design of the program, the roles and functions of key authorities, the regulated group, potential allies, the factors that affect**

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9 Steering Group on Prosperity, *Inventing Our Future: An Action Plan for Canada's Prosperity*, October 1992, p. 13.
10 Discussed in B.2 of this chapter.

compliance and the compliance profile. It should outline inspection procedures, criteria for undertaking prosecutions and other enforcement actions, and permissible deviations from legislative and regulatory standards, including discretionary action related to inspections, decisions to prosecute, persuasion and negotiation activities

5. Application to Reduce Need for Government Inspection in Enforcement

30. The Committee considered whether it might be practical and desirable to establish a policy whereby if a company is certified to show that it is a total quality management company and has documented that it is conforming to ISO standards, inspection and monitoring by public officials could be decreased or eliminated. Stanley Brown indicated that such an approach was possible, and is being done in the private sector (17:17). He also argued that acceptance of the approach would not cause any disadvantage to small business since

> There's no reason why a small company cannot exhibit quality practices the same way that a large company could. (17:18)

31. Mr. Brown explained that some ongoing monitoring and recertification would be necessary. The Chairman questioned the impact of such a procedure on competitiveness, to which Mr. Brown responded:

> . . . if you don't start doing it pretty soon, you're going to be at a competitive disadvantage because the other countries are doing that now. (17:25)

32. The Committee recognizes the need to allocate internal compliance resources more efficiently through interdepartmental coordination, and by concentrating inspectors in priority areas. It supports the concept of both decreasing the need for government inspection and monitoring, and increasing the competitiveness of Canadian business internationally by encouraging, although not requiring, the adoption by companies of quality assurance standards and quality management practices.

33. The Committee also recognizes that substantial support for this approach could be obtained from the National Standards System, with its accredited certification and testing organizations, as well as the soon-to-be-accredited organizations carrying out the registration of quality systems. We also note the widening scope of quality assurance audits, for example to verify that a sample of products tested does comply with specified requirements, or to reach conclusions on a company's environmental impact or liability risk.

34. The Committee understands the concerns of small business and the need for flexibility in compliance mechanisms. It acknowledges innovative compliance techniques being adopted by some of our major trading partners, such as the EC directives indicating that conformity assessment requirements will vary with the degree of hazard presented by the product: in some instances, requiring simple declaration of conformity to the applicable standard, in other cases, requiring third-party certification.

The Committee therefore recommends that:

7.3 A policy should be adopted and communicated stating that, if a regulated company is certified to show that it is a total quality management company meeting ISO quality management standards, inspection and monitoring by government officials will be decreased so long as the regulated company provides proof of periodic audits verifying that the quality system is in place and is operating.

7.4 The regulated parties be allowed *options to prove conformance* to regulations, including the options of:

- **submitting their products to testing by an independent certified laboratory or consulting technicians able to determine non-conformity with standards and recommend improvements; and**

- **declaring conformity and demonstrating conformance in reports after testing and certifying their products themselves (that is, self-certification) where the degree of hazard presented by the product is minimal and the company is certified as having met service standards stated in recommendation 7.3).**

To encourage the use of private sector certification and testing (especially the accredited organizations in the NSS), or self-certification, consideration should be given to charging for public sector inspection and monitoring this as a cost of doing business.

C. OTHER STRATEGIES TO IMPROVE IMPLEMENTATION

1. To Improve Perception of the Regulated

35. Small business tends to regard regulation and red tape as interchangeable terms. Thus, if the government's efforts to reduce the burden imposed on business by regulation and the regulatory process is to be perceived as effective by people in business, the government has to take explicit account of the perceptions, and respond by dealing with the symptoms as well as the underlying causes. Partially for this reason, Mr. Eastcott from COSB recommended the establishment of an easily accessible and expeditious regulatory appeal process, possibly along the lines of the UIC adjudication panels (10:10). Similarly Mr. Whyte from CFIB indicated that all regulations should have mechanisms for business to appeal regulatory decisions or to obtain special waiver (21:107). The Canadian Exporters Association made a similar recommendation for an appeal process (22:87).

36. Having had some success in dealing with paper work, the government could, as a first step toward reducing the burden (both perceived and actual), reorganize the Small Business Secretariat to reincorporate an office of advocacy for small business. This suggestion was provided by George Steiner in follow-up discussion by the Committee with COSB membership. Mr. Steiner emphasized that the office "must have teeth"; therefore, "its powers and procedures should be identical to the very successful 1978 to 1980 Office for the Reduction of Paperburden". The purpose of the office would be to assist small business, by interceding on their behalf, by helping those firms who have a specific problem with federal government regulations or reporting requirements, and by aiding business generally to develop specific measures to simplify procedures. Currently, it is felt by some members that criticism tends to get suppressed or handled at the level most immediately affected, and the response is ritualized: "we are working on it", "your problem is being studied", "we only administer the laws", etc. An Office that serves as a focal point to receive complaints, suggestions, enquiries and requests for assistance from business and others should improve perceptions.

37. The Committee understands that whatever response is structured to address the concerns, both the perception of the issues and the facts they present must be dealt with. It recognizes the limits in the powers of administrative appeal tribunals, but also recognizes that preparing and presenting a good case for complaints takes expertise, money, time and an understanding of the decision processes in government, things that are not often readily available to the small business community.

The Committee therefore recommends that:

7.5 Treasury Board should study the feasibility and practicality of establishing both:

- **a rapid, inexpensive and informal mechanism to deal with complaints from regulatees. It would complement existing means of resolving complaints by providing regulatees with a body independent of the regulator to which they could bring unresolved concerns. The regulatee, in initiating its complaint, should include evidence that an unsuccessful attempt has been made to resolve the disagreement with the regulatory department or agency. The appeal procedure could be designed to be similar to the one existing in the National Standards System or the regulatory complaints settlement and process outlined in Appendix V;**

- **a special advocacy to assist small business in simplifying compliance, and understanding procedures, and to guide them through the appeal process.**

2. Improved Communication and Enforcement

38. A key complaint of regulated parties was the uneven enforcement of regulations and inconsistent application of policies by different agencies and even by the same agency over time. For example, the National Dairy Council of Canada indicated that retail compliance of metric conversion should be enforced to bring that sector in conformity with the processing sector (Brief, p.2).

39. We also heard concerns about inadequate enforcement of regulations at the border placing domestic firms at a disadvantage. The Food Institute of Canada (1:27). Leonard Lee, President of Lee Valley Tools (8:8), the Grocery Products Manufacturers of Canada (22:8)and other witnesses voiced such concerns, stating that inadequate enforcement of regulatory standards (and tax laws) at the border leads to uneven treatment for imported versus Canadian goods.

40. If compliance is costly and enforcement lax, compliance will become increasingly marginal: those who comply will either join those who don't comply or be replaced by them. There may be little purpose, then, in having regulations that cannot be enforced. If we are to have regulations, we will also need mechanisms for enforcing them.

41. Several witnesses noted that delays in receiving permits and approvals may negatively affect cash flow, investment and competitiveness (Inco Limited, 22:73). Possible reasons for the problems with enforcement appear to be:

- the discretionary nature of the existing regulatory regime because enforcement standards are rarely specified in statutes (or policy manuals)

- the apparent lack of uniform training of inspectors to ensure consistent enforcement practices for the same regulatory standard, and to ensure understanding of the broad aspects of the industry they are meant to inspect, audit and rule on

- inefficiencies in the use of the limited resources that can be devoted to enforcement

42. Problems of regulatory compliance and developing a strategy for dealing with them have been the object of a government-wide initiative—the Compliance and Regulatory Remedies Project—since the mid-1980s. One result of this project was the development of a manual entitled "A

Strategic Approach to Developing Compliance Policies."[11] The purpose of the manual is to provide guidance to departments in designing compliance strategy and policy. It establishes a set of basic principles and a step-by-step guide to putting in place an effective compliance mechanism. Once adopted by departments, it should help address many of the deficiencies in compliance enforcement that witnesses brought to our attention. We urge its adoption as expeditiously as possible.

The Committee believes the following recommendations complement that strategy:

7.6 Wherever possible, stakeholders should be brought together at the problem-definition stage of regulation development to reach a consensus on goals, priorities, and allocation of resources for achieving them. Consultation at this stage should be most effective.

7.7 Those instructing the drafters of the regulations (both program people and legal advisors) should review legislated offenses and associated penalties for their adequacy and appropriateness in light of: the Charter, other available compliance instruments; the increased sentencing options which are now available, and information arising from public consultations. Increased emphasis should be put on the use of civil sanctions or monetary penalties, and civil penalty or administrative tribunal mechanisms, wherever possible.

7.8 Wherever possible, reliance should be placed on educational strategies to enhance regulatory compliance.

7.9 Regulations should be written in language understandable by those affected.

7.10 The data base being developed by the Privy Council Office of the Department of Justice (PCOJ), and to be operational by December 1993, should be made affordably accessible to all interested parties.

7.11 Enforcement of regulations at the border should be strengthen to ensure that imports do not escape requirements imposed on domestic products.

3. To Reduce Overlap and Conflict

43. We heard from witnesses that insufficient interdepartmental, interagency and intergovernmental cooperation results in duplication of effort, conflict, inconsistent decision-making and increased costs. We also heard that new regulations have been implemented without regard for the impact on existing regulations. Because of the significant impact of federal/provincial duplication on business competitiveness, a separate chapter of our report is devoted to it.

44. It is a telling fact, however, that regulatory duplication and inconsistent regulatory requirements exist even within the federal sector itself. To illustrate, a food processing firm may be simultaneously regulated and inspected by the Departments of Agriculture and Health and Welfare (for food quality and safety), Environment Canada and Fisheries and Oceans (for the issue of pollutants into the environment), and Consumer and Corporate Affairs (for packaging and labelling). Many of the complaints the Committee heard about inconsistent regulatory requirements and excessively dispersed regulatory authorities—making it hard for the regulated to identify the agency responsible for a particular regulatory policy or action—related to regulations issuing from the federal government only.

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[11] Mentioned in section B.5. of this chapter.

We therefore recommend:

7.12 The government should redouble efforts to streamline and coordinate regulatory activities within the federal sector. Specifically, it should consider making Treasury Board responsible for:

- **identifying and assessing opportunities for the consolidation of regulations pertaining to common elements of federal responsibility**
- **working with departments to achieve the same interpretation of federal regulations and standards across the country**
- **ensuring federal departments develop administrative agreements to share enforcement so as to minimize imposition of unnecessary costs on regulatees**
- **ensuring that agreements with provinces to administer federal regulations lead to consistent interpretation across the country and minimizes duplication (e.g., of measurement and inspection)**

CHAPTER 8

Federal/Provincial Overlap

1. The federal government of course is not the only jurisdiction in Canada that issues and enforces regulations. The provinces and municipalities are also very much in the field. According to one witness before the Committee, these other levels of government account for 80% of all regulations in Canada (1:44). Overlapping regulations exist in many areas of economic activity-agriculture, health and safety, the environment and financial services being prominent examples. Lack of coordination among the various regulatory authorities can therefore result in costly duplication and inconsistent regulatory requirements.

A. REGULATORY COMPETITION

2. Diversity in regulation-making, as in policy-making generally, is inherent in a federal system of government. The reason for federalism, after all, and for the division of powers that it entails, is to accommodate better the diversity of preferences among the constituent communities making up the national polity. Differences in regulatory policies and standards across the country therefore are not necessarily bad. Even overlapping government programs can have beneficial consequences, as some of our witnesses pointed out. Having more than one government agency involved in the delivery of a public service can introduce an element of competition and facilitate program evaluation for operational efficiencies, thereby contributing to more cost-effective program delivery. It can also allow experimentation in the form of the service provided, resulting over time in a service that is better or more attuned to public demand.

3. David Brown, Senior Policy Analyst at the C.D. Howe Institute illustrated this point with an example from banking regulation in the EC. The EC's second banking directive allowed retail banking services sold in one member state to be sold in all member states. Prior to that directive coming into force, "Belgium outlawed variable rate mortgages while Britain allowed them. Afterwards, British banks could sell variable rate mortgages in Belgium while being supervised by British banking authorities. Belgian authorities could have opted to continue the ban on variable rate mortgages offered by Belgian banks, but this would clearly put their own domestic banks at a competitive disadvantage. They were induced to change their domestic regulation." (Brief to the Sub-committee, p. 5)

B. PROBLEMS OF REGULATORY OVERLAP

4. The downside of divided jurisdiction and diversity of standards is that—through inadvertence or design—they can increase compliance costs, create uncertainty and fragment the domestic market, making it more difficult for businesses to operate across provincial boundaries. The existing regulation of financial institutions in Canada illustrates this point well. Unlike in the EC, where as a general rule a financial institution established in one member state can operate freely throughout the Community, in Canada financial institutions-other than banks-are regulated

separately by each province in which they operate and by the federal government if they are federally incorporated. Thus a federally incorporated trust company may be subject to eleven separate sets of regulation, not all of them consistent with one another. At one extreme, Ontario, under its so-called "equals approach" to regulation, requires that any trust company operating in Ontario must abide by Ontario rules not only inside the province but throughout Canada. Some concrete implications of this regulatory approach were spelled out in a brief by Canada Trust to the House of Commons Standing Committee on Finance during that Committee's hearings into proposed reforms to legislation governing financial institutions: "federal trust and loan companies operating in Ontario must comply with two sets of rules concerning such fundamentals as investment powers, capital adequacy and liquidity standards, related party transactions and corporate governance. They have to adhere to Ontario's quantitative constraints on "quality" assets, securities, personal lending, commercial lending, real estate and subsidiaries—which differ from the federal regulations. Ontario also prohibits the issuance of letters of credit and restricts the use of guarantees-powers which would otherwise be available to companies under the new federal legislation."[1]

5. It is instructive to compare Canada's approach to the regulation of financial institutions with that of the European Community. In the EC, a financial institution is subject to a single set of regulations and a single regulatory authority-that of the home jurisdiction. In Canada, it may be subject to as many as eleven separate regulatory approaches and regulators. In the EC regulatory diversity operates in a way that encourages competition, by allowing institutions established in one country to conduct business on the same basis in other member states. In Canada, competition is discouraged because each province insists on conformity to its own rules, thereby establishing barriers to out-of-province competition. In the EC, regulatory requirements are relatively lean and simple; in Canada, there is needless duplication and complexity.

6. The problem is not unique to financial institutions. According to the Canadian Trucking Association, "a trucker operating across Canada faces a jungle of transport regulations in 11 provincial and federal jurisdictions, plus the territories." (20:18) The Canadian Soft Drink Association complained that the diversity of packaging reduction requirements across the country "and the overlap between federal and provincial requirements have created a gridlock in this country that is bleeding our competitiveness." (22:19) The Grocery Products Manufacturers of Canada expressed similar concerns with regard to the "uncoordinated and costly" packaging regulations being imposed by the provinces. (22:7) The Mining Association of Canada reported that, in addition to two federal departments (Environment Canada and Fisheries and Oceans), every province has a ministry of the environment with powers to regulate liquid effluents. "The lack of harmonization at the federal and provincial/territorial level causes serious problems for the mining industry, including: conflicting regulations; different reporting information requirements; and lack of communication between regulators."[2]

7. Partly as a consequence of overlapping jurisdictions, the number of months required to have a mining project approved in Bristish Columbia (24) is twice that required in Nevada and four times that required in Australia. Australia has streamlined its approval process by eliminating the duplication of state and commonwealth assessment efforts.[3]

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1 Canada Trustco Mortgage Company. *Bill C-83 and the Policy Proposals Concerning the Reform of Federal Financial Institutions Legislation*, Submission to the House of Commons Standing Committee on Finance, November 15,1990, p. 3.

2 The Mining Association of Canada, *Regulation and Competitiveness*, Submission to the House of Commons Standing Committee on Finance, September 1992, p. 11.

3 Ibid. p. 8.

8. In a 1991 survey on regulation sponsored by the Canadian Chamber of Commerce, a solid majority of respondents (61%) cited conflicting regulations or regulations with sufficiently different requirements as having the greatest impact on business operations. A large majority (69%) identified conflict between the federal and provincial governments as the main cause of this. Higher compliance costs resulting from overlapping and conflicting regulations were the main complaint of respondents to the CCC survey. Many also complained of the confusion created by the lack of harmonization and consequent conflicting and ambiguous regulatory requirements.[4]

C. TACKLING REGULATORY CONFLICT

9. Federal/provincial duplication of regulatory activities is not an easy problem to address since no single government can do so adequately by itself-short of unilaterally vacating the field where duplication exists. Attempts at solution in the past have taken basically two forms: delegation of administrative responsibilities by one level of government to another and intergovernmental coordination of overlapping activities.[5] The federal/provincial tax collection agreements, whereby the federal government collects personal and corporate income taxes for most provinces, is a prominent example of the first type of solution. (The lack of similar agreements respecting sales taxes is the current bete noire of small business in Canada.) Examples of intergovernmental coordination include of course the ubiquitous federal/provincial meetings and conferences as well as federal/provincial agreements in a wide range of areas, from agriculture, fisheries and the environment to housing, jobs training and regional development.

10. Efforts to streamline government programs and reduce areas of federal/provincial overlap or conflict have intensified in recent years. They have born some fruit. Most notable has been the Intergovernmental Agreement on Government Procurement, which came into effect on April 1, 1992. The agreement commits the federal and provincial governments to a non-discriminatory, open tendering of purchase contracts valued at $25,000 or more. While not strictly a regulatory area, preferential procurement practices have long been identified as one of the most significant barriers to interprovincial trade.

11. More recently (on November 17, 1992), the federal and provincial Agriculture ministers agreed to a number of initiatives aimed at reducing interprovincial barriers to trade in agricultural and food products. More specifically, the ministers agreed to:

a) work towards the adoption of common national technical standards within the next five years (these would include product and grade standards, plant and animal health regulations, and transportation policies);

b) consider the interprovincial trade implications of new or revised regulations and to give advance notice of proposed regulatory changes;

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4 The Canadian Chamber of Commerce, *Overburdened by Overgovernment*, Submission to the Sub-committee on Regulations and Competitiveness, June 16, 1992.

5 Treasury Board Secretariat, *Federal-Provincial Overlap and Duplication: A Federal Program Perspective*, November 22, 1991, pp. 23-5.

c) refer any disputes over specific barriers that cannot be resolved through consultation between governments to a pre-established dispute settlement process.[6]

12. These examples illustrate not only that progress towards reducing internal trade barriers and conflicting regulations is possible, but also some of the ways for bringing it about. Nevertheless, as the evidence that we received amply attests, progress to date has been painfully slow. Indeed, there is a real risk that unless we intensify our efforts to move forward we will slip back, because some of the main areas of regulatory growth nowadays, such as the environment and health and safety, are areas of shared jurisdiction between Ottawa and the provinces. In the absence of coordination, therefore, the potential for regulatory conflict between the two orders of government will likely increase.

13. Past efforts in this area have proven largely barren for the same reason that reform of harmful regulations generally has been difficult: the opposition of vested interests. Firms that have adjusted to and have made investments on the basis of the present rules are loath to see them changed; ditto for groups that derive benefits from the current system, including the bureaucrats who have also invested heavily in mastering it and derive considerable power from administering it. And governments are naturally reluctant to relinquish any rights or power over the discretionary use of the regulatory apparatus. The combined force of these interests has prevented meaningful reform to date. That force may now be waning in the face of the recognition that, in a world of open borders and global competition, the present structure of divergent standards and overlapping regulations is no longer sustainable. If so, a major obstacle to forward movement on this front would have been removed.

14. It would still be wise to proceed in small steps. We risk failure again if we attempt to scale the full mountain at once; and in the end it may not be necessary. Here we may take a chapter from the Europeans who travelled this road before. For years, progress towards a single market in Europe was stalled by the inability of Community members to agree to common technical standards. The logjam was broken in the mid-1980s, when the EC abandoned its pursuit of technical harmonization in favour of a new "strategy based on selective harmonization and mutual recognition."[7] Under the principle of mutual recognition, if a product meets the regulatory requirements of one jurisdiction it must be accepted in the other jurisdictions of the Community. The principle reconciles the co-existence of different regulatory approaches across jurisdictions with full access for the producers of one member state to the markets of the other member states. It avoids saddling industry with duplicative or contradictory regulatory requirements, since each firm is only subject to the regulations of its home jurisdiction.

15. In the EC, the principle of mutual recognition has been applied in standards for many industrial products, financial services and professional qualifications. More recently, it has also been adopted by Australia, to unify its internal market, and by Australia and New Zealand in the free trade agreement between them. (21:135) A number of our witnesses suggested adoption of mutual recognition as the basis for removing interprovincial trade barriers and achieving a single market within Canada.

6 "Agriculture Ministers Move to Eliminate Barriers to Trade and Competitiveness," *Federal-Provincial Communiqué*, November 17, 1992.

7 Richard Owen and Michael Dynes, *The Times Guide to 1992: Britain in a Europe without Frontiers: A Comprehensive Handbook*, 2nd ed. (London: Time Books, 1990), p. 58.

16. We also heard support for another operating principle adopted in the EC, namely the substitution of voluntary technical standards for government-established ones. Since 1985, the task of establishing Community-wide product standards in the EC has been left largely to private standards organizations composed of industry experts and consumer representatives.[8] As a recent report explains:

> Where beforehand ministers struggled to achieve unanimity over technical specifications of products, the new approach allows reference to voluntary standards with only the essential requirements to protect public health and safety being laid down in legislation. The European standards. . .are voluntary. Manufacturers may choose whether to observe European standards, or international standards, or indeed no standards at all; but products satisfying European standards are guaranteed access to the market throughout Europe.[9]

17. An obvious advantage of privatising standards-setting is that it depoliticizes the process and disburdens intergovernmental relations in Canada of one needless irritant. Other benefits stressed by CSA officials appearing before the Committee are its reliance on consensus and sensitivity to market dynamics, in contrast to the more bureaucratic and coercive nature of government regulation-making. In section 6.D above, we recommend greater reliance on standards developed through our National Standards System (see recommendations 6.1 and 6.2).

18. For a final principle towards better coordination of regulatory policies between governments in Canada, we draw on a chapter from the Canada-U.S. Agreement, chapter six in particular. Under that chapter, which deals with technical barriers to trade, the Canadian and U.S. governments commit themselves to efforts to make their respective standards-related measures more compatible, so as to reduce obstacles to trade, and to provide each other with advance notice of and opportunity to comment on proposed standards-related measures. If this principle is acceptable within an international context, it should find acceptance among governments within Canada.

19. Before any of these principles can be effectively applied, of course, governments need to know where regulatory overlap exists and where divergent regulations create conflict.

We therefore recommend that:

8.1 Identification of areas of overlap and incompatibility between federal and provincial regulations should be included among the main objectives of the departmental reviews of regulations that are currently underway.

8.2 The Online Access to Regulations and Statutes system currently under development (see section 2.C7) should be expanded to include information on regulations of all governments in Canada.

8.3 Government departments and regulatory agencies should be required to notify provincial governments of proposed regulatory initiatives and provide them with adequate opportunity for comment.

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8 Ibid. p. 60.

9 Vivienne Kendall, "Standardisation and Its Problems," *EIV European Trends*, No. 3 (1991), p. 70.

8.4 The RIAS should include a statement concerning how the proposed regulation relates to provincial government intervention in the same or closely-related areas.

8.5 The federal and provincial governments should adopt mutual recognition of product standards as a general principle of interprovincial trade.

CHAPTER 9
The Departmental Reviews

1. When the federal budget of February 1992 was tabled in the House of Commons, the Minister of Finance announced that the government would be undertaking a major examination of federal regulations. This was to include a review of the regulatory process as well as a review of the stock of existing regulations on a department-by-department basis. Three departments were singled out in that budget; Agriculture Canada (Agr Can), Transport Canada (TC) and the Department of Consumer and Corporate Affairs (CCA). These departments were furthest along in the process of review and could be thought of as providing valuable lessons for the other departmental reviews.

2. The first task for each department was to identify sets of regulations to be reviewed. This was not an easy task. For example, Transport Canada identified 600 to 1000 sets of regulations (depending upon the manner of classification) to be examined. Once this was done, each department established criteria which were to govern the examination. Although the basic criteria were common to all departments, some need existed for departmentally specific criteria. The regulations were then examined by the employees of the departments and by a wide range of external stakeholders. These reviews also made extensive use of external advisory panels to guide the departments. All this was then to culminate in the development of recommendations to the government.

3. In all cases, the government departments met extensively with regulatory stakeholders (external clients as well as departmental employees) to review and assess the broad range of regulations now in place and:

- to determine whether the perceived problem which led to the regulation was sufficiently large to justify government intervention;
- to determine whether the regulatory approach was in fact the best choice in that case, with benefits examined in relation to costs;
- to see if the government intervention could be carried out with existing or realistically anticipated resource levels; and
- to make sure that the government intervention was consistent with the aim of enhancing the competitiveness of the private sector.

4. Of the three departments undertaking reviews, Agriculture Canada was the most advanced, having completed its final reports in September and having made these public in November. Consumer and Corporate Affairs Canada made public its interim report in October while Transport Canada has just completed a progress report on its regulatory review.

A. TRANSPORT CANADA

5. When the Minister of State (Transport), the Hon. Shirley Martin, appeared before the Sub-committee, she described a four part plan for regulatory review, starting with an inventory of regulations, the establishment of review criteria, consultation with stakeholders through external review panels as well as departmental officials, and finally an internal review of the findings.

6. As was the case with the other departments, the review process at Transport Canada took into account the criteria specified above. In addition though it considered the extent to which regulations put into effect international agreements and conventions signed by Canada, as well as its impact on safety and the environment.

7. To date, the Transport Canada review has received 200 responses. Some typical comments included complaints about the slow pace of the regulatory process, leading to obsolete technical regulations. A preference for performance standards, industry practice and international conventions was also expressed. The bureaucratic organization of the department's regulatory regime was also criticized, with respondents suggesting that the department's organization should resemble more closely the structure of the industry.

B. CONSUMER AND CORPORATE AFFAIRS

8. Ms. Nancy Hughes Anthony, Deputy Minister of Consumer and Corporate Affairs, outlined to the Committee what her department was planning to accomplish by way of its departmental review. She noted that this department had a habit of conducting periodic reviews of major regulations and undertaking consultation with the private sector, but this new initiative provided the opportunity to undertake a thorough review. As part of that presentation, the department left with the Committee a "Regulatory Review Fact sheet" that was prepared for the department's study.

1. A Summary of Stakeholder Responses

9. The Department has produced an interim report on the regulatory review consultations, consisting of a compilation of stakeholder responses to the existing CCA set of regulations. In a number of areas, no response had been received at the time the draft report was written.

10. The *Consumer Packaging and Labelling Act* (CPLA) was generally supported by stakeholders although they wanted greater harmonization, more industry participation and were concerned about the ability of imported products to avoid the requirements of this Act. Bilingual labelling requirements engendered a wide range of responses. Stakeholders generally supported such requirements but complained about insufficient enforcement with respect to imports, putting domestic producers at a disadvantage. But these regulations also cause Canadian consumers to face higher costs as products cannot take advantage of the economies of North America wide labelling.

11. Ethnic products and regional production were viewed by some as obvious areas for exemptions from the bilingual labelling requirements.

12. A general comment about government labelling regulations noted that these requirements are becoming more onerous and bilingual requirements essentially halve the space available to meet other labelling requirements.

13. In a number of areas industry responses were less critical of labelling regulations than were employee responses. Whereas business respondents were content to leave requirements as is, CCA employee respondents noted sections which were unneeded or potentially misleading. In some instances this inertia might be explained by the fact that domestic producers have undertaken substantial costs to meet current regulations and a relaxation of the rules might simply make it easier for new entrants to compete with existing players.

14. With respect to standardized container sizes, the stakeholder responses varied widely. Consumer representatives argued for continued restrictions-presumably the value of reduced consumer misunderstanding outweighs the costs of reduced consumer choice. But producers were also of two minds on this. Current restrictions act as a potential trade barrier-if they were eliminated, American producers might be able to supply the market with production in the U.S. in sizes that are current there but might have been previously restricted here. On the other hand, the current laws make it more difficult for existing Canadian producers to innovate in container sizes and to penetrate the American market. This point was also made clear to our Committee when Kimberly-Clark appeared as a witness.

15. Where respondents support existing regulations, it was often stated simply that consumers are not able to judge safety of products (car seats, exploding 1.5 litre glass pop bottles, flammable carpets and eye glass frames, etc.). Similarly the statements outlining implications resulting from removal of a regulation are not very explicit, stating merely that it may cause increased injury, etc. In addition, little indication was provided as to how alternatives might better solve the problem at hand.

16. Similar sentiments were expressed with respect to the *Hazardous Products Act* (HPA). Having undertaken the costs necessary to comply with these regulations, domestic producers see deregulation as a means by which lower cost imports could enter the market and be detrimental to Canadian suppliers.

17. It is also notable that many of the regulations under this Act did not generate responses on the part of private sector stakeholders. Producers did respond to regulations concerning defective matches. One producer felt disadvantaged by regulations on safety and supported instead the use of ISO 9000 standards. These can only be properly implemented at point of manufacture and might resolve the problem of non-compliant matches being imported into Canada.

C. AGRICULTURE CANADA

18. Appearing before the Sub-committee to discuss initiatives at Agriculture Canada, were Minister William McKnight and his officials in June. In September, officials from the Grains and Oilseeds Branch testified once again.

19. The Agriculture Canada review was put in place early and completed this fall. As part of the information package sent to stakeholders was an elaborate regulatory review grid by which stakeholders could assess regulatory packages and by which the results could be compiled.

20. This department has now completed its examination and has reported to the government.

21. The context of the Agriculture Canada review was similar to that of the other departments; great importance was placed on the competitiveness aspect, they were concerned with the government's ability to enforce regulations in a world of cutbacks, etc. But in addition there were some further issues under consideration because of characteristics unique to the agricultural sector. For example, it is one in which great structural change has taken place. There are far fewer primary operators and fewer processors today than there were 50 years ago. The ratio of Agriculture Canada employees to farmers has increased almost elevenfold in fifty years, reflecting both the changes in the industry and the growth of regulatory intervention over that time. The other thing that distinguishes the agricultural sector is the importance of the supply managed component.

22. Agriculture Canada produced two reports, one covering the regulations governing grains and oilseeds while the other dealt with food production and inspection.

1. Grains and Oilseeds

23. The regulations in this field were assessed according what was referred to as the four pillars of Agriculture Canada policy, namely that the industry should: 1. be responsive to market signals; 2. try to be self reliant; 3. consider regional sensitivities; and 4. be environmentally sustainable.

24. More specifically, the criteria that were used to judge regulations included the following: obsolescence, direction of benefits, impact on innovative activity, environmental sustainability, the economic climate, trade effects, and the costs to society, among a variety of others.

25. This study made a wide range of recommendations. Some regulations are to be eliminated, largely because they are obsolete. Some are to be modified, some enhanced and others to be maintained as they now stand.

26. The report also provides an indication as to the appropriate time frame within which the recommended course of action is to be fulfilled. These range from one or two months to a year or more.

27. The grains and oilseeds report is organized in a very systematic way. It starts out with the purpose or problem to be solved, followed by statutory authorities for the regulations. Included also are a background analysis, a discussion of issues, the alternatives considered and their implications. Concluding the assessment are the recommendations and their rationale.

28. If we examine the major priority issues for the Canadian Grains Commission (CGC), the report recommends that current standards of quality for grains be maintained while alternative systems be examined to promote more innovation. In some instances these services are to be made optional while an overall desire to streamline the system was expressed.

29. The report also recommended that maximum tariffs for elevators be removed and that this deregulation be monitored. It also maintained the right of producers to freight cars, as a way of ensuring competition with elevators.

30. The report also dealt with the workings of the Canadian Wheat Board (CWB). The most important aspect under review consisted of issues related to the marketing of barley. At present it must go through the Canadian Wheat Board. The report concluded that the single desk marketing should continue for offshore sales-as a way of maintaining some sort of monopoly power-while alternatives should be examined for the North American market. This latter conclusion rests on the fact that there may be little opportunity to make use of market power in the North American market, plus the fact that continental trade decisions could affect the ability to do so.

31. The Canadian Wheat Board also maintains a system of crop quotas designed to make efficient use of the transportation and handling system. It has recommended that non-Board grains and off-Board grains not be subject to any quota.

32. With respect to the CWB allocation of rail cars and import/export licensing, the report did not recommend major changes.

2. Food Production and Inspection

33. This sectoral study was largely consistent with the grains and oilseeds report. The nature of the beast though was somewhat different with much more emphasis on safety and health considerations rather that more economic oriented matters.

34. Again, the recommendations in this report run the full gamut from complete elimination to retention of existing regulations. Where further discussion has been recommended, a sunset procedure is to be put in place to control the total length of time for such discussions.

35. In summary, several key points can be taken from this report. Safety concerns are to be best met by placing inspection emphasis at critical control points within the production process. And to speed up the approval of food additives, it is recommended that the concept of a Generally Regarded as Safe (GRAS) list be used, as is the case in the United States. Where federal regulations are duplicated, entire sets of regulations are to be eliminated. For example, the Processed Poultry Regulations were seen as superfluous as they were already covered by Meat Inspection Regulations.

36. The government will also examine through a pilot project the concept of a single window for government contact, a recommendation made frequently by stakeholders.

37. Some major changes are expected on the grading side. The study found that little benefit can be attributed to society at large, as consumers often find the grading system quite confusing. Consequently the beneficiary pays approach has led the report to recommend greater recovery of costs from producers. It also suggests greater use of voluntary systems and more consistency.

38. In the future the department is to concentrate more on health and safety, leaving grading as a purely commercial matter.

39. With Health and Welfare, and Consumer and Corporate Affairs, Agriculture Canada is responsible for a variety of labelling regulations. Not only will these be re-assessed, a single window is to be examined, with labelling in the future to be subject to full cost recovery or privatization.

40. Market considerations are to be the primary determinant for container sizes. Standard container requirements are to be revoked within six months for fresh fruits and vegetables sold at the consumer and wholesale levels. Other revocations and amendments are also planned.

41. Agriculture Canada also certifies a number of products for export. The international trend, though is for the establishment of third-party accreditation and the department will consult with the industry in efforts to move in this direction.

42. A similar approach is to be used for registration and licensing. Certain products require government approval up front for health and safety reasons or because product failure can cause severe economic hardship and the market cannot produce the proper safeguards. The government will continue to regulate in this area but will give priority to measures that do not hinder competitiveness. On the other hand, quality assurance and quality determination are to be the sole responsibility of the industry.

3. The Delivery of Regulatory Services

43. Consistent with the testimony before the Sub-committee, many industry participants complained about the manner in which imports were treated relative to domestically-produced goods. The department is proposing, subject to further consultation, a system whereby a single-window approach is applied to imports; where all commodities are treated consistently and equitably; and where import inspection services are concentrated and rationalized in areas of greatest risk.

44. Furthermore it is often the case that in areas of non-compliance the system works so slowly that those who flout the law can gain a competitive advantage. The use of Administrative Monetary Penalties (AMP), which the department is considering, could ameliorate some of these shortcomings. They would make the system more responsive, equitable and flexible.

45. And finally, all future changes are to be guided by the principle that beneficiaries who can be clearly identified should shoulder the cost of these services.

D. SOME CONCLUDING OBSERVATIONS

46. The three departmental reviews appear to have been organized in a generally efficient manner, taking advantage of in-house and external expertise as well as industry practice to produce commentary on the regulations. Although some reservations have been expressed above, the Committee is generally satisfied with the review processes. There are, however, some specific issues that need to be addressed.

47. We are concerned that some regulations might "fall through the cracks" so to speak and thus miss a full review. Grain transportation is a crucial element to the competitiveness of the industry, yet the *Western Grain Transportation Act* was not studied by Agriculture Canada. Undoubtedly other instances of jurisdictional uncertainty also exist, and the Committee feels that future reviews should be structured in such a way that all regulations are examined. Each department should be satisfied that its own regulations are being examined as well as regulations which may infringe upon the jurisdictional matters of that department.

48. Other areas were not examined as a matter of policy, for example, the role of supply management in the agricultural sector. Moreover, regulations represent the tool by which an Act of Parliament's policy is conducted. The fault may lay not so much with the regulation but with the inherent policy of the legislation. It is our opinion that the reviewers should not fear to delve deep into the source of the regulatory problem, and we suggest that the future reviews and the uncompleted ones look beyond the specific regulatory instrument.

49. Finally, we think these reviews should not be a one time affair. They should be part of the usual regulatory cycle. The consultation process should take place early in the review and it should be extensive. And for the greatest impact and widest dissemination of recommendations, the departments should report to Parliament in addition to the government.

The Committee therefore recommends that:

9.1 A review calendar should be established which would require each department to conduct an extensive policy and regulatory review, including extensive public consultation, every seven years. Moreover, the Committee further recommends that these efforts be coordinated so that every policy and regulation affecting each subject area be covered.

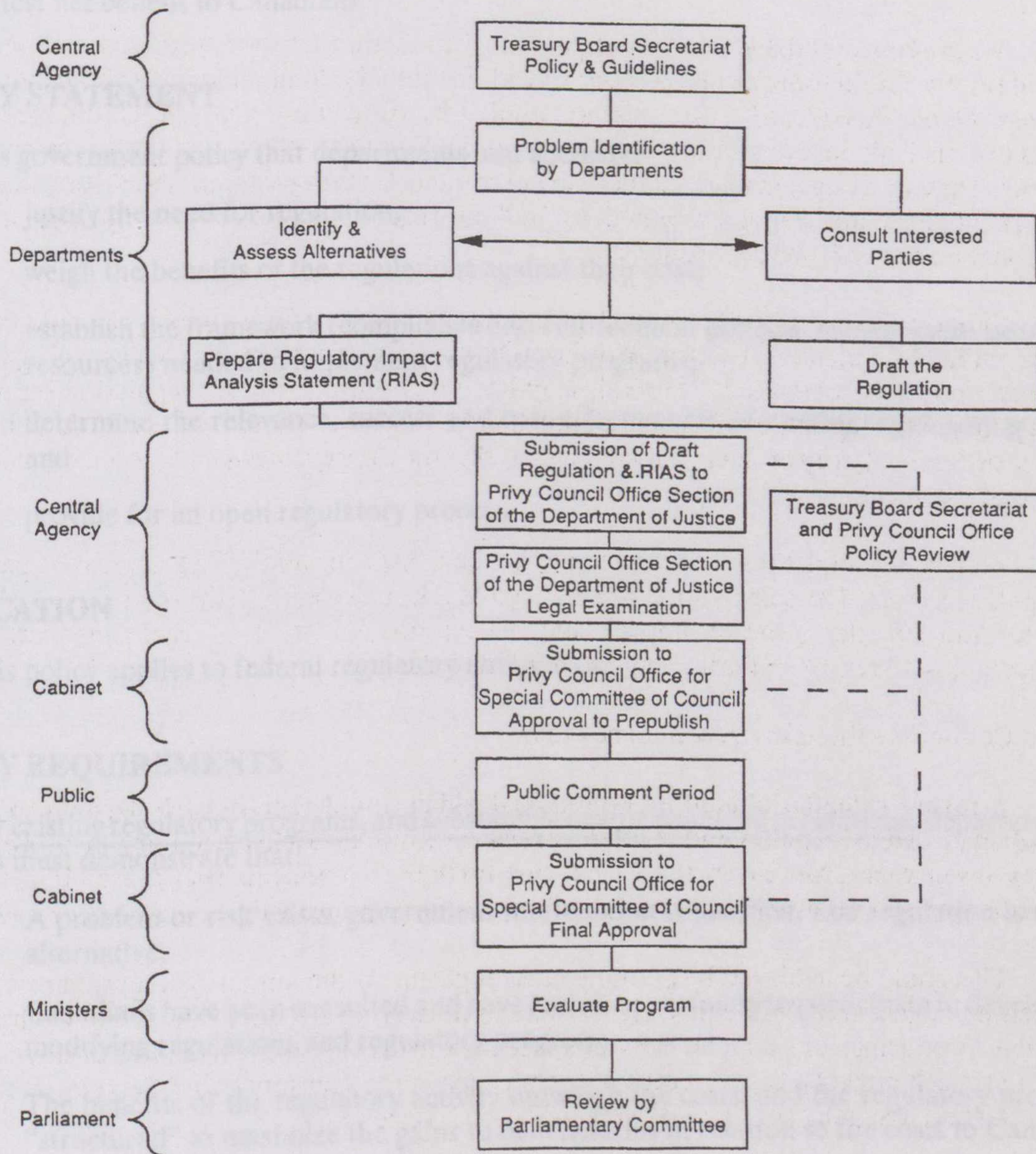
50. This could be achieved by granting each department the authority to examine everything that affects its subject area. While this might create some overlap and duplication, that might actually be desirable, producing, for example, two views as to the worth of the *Western Grain Transportation Act*. Another approach might be to give a central agency such as the Treasury Board Secretariat the job of coordinating and assigning specific tasks regarding such reviews.

Finally, we recommend that

9.2 The departmental reviews should be undertaken under the authority of legislation, not just administrative practice, and that the departments report to Parliament as well as the government.

APPENDIX I

Federal Regulatory Review Process



Source: Treasury Board of Canada, *The Federal Regulatory Process: An Interim Procedures Manual for Departments and Agencies, 1991.*

APPENDIX II

Regulatory Policy

POLICY OBJECTIVE

The objective of this policy is to ensure that use of the government's regulatory powers results in the greatest net benefit to Canadians.

POLICY STATEMENT

It is government policy that departments and agencies:

- justify the need for regulation;
- weigh the benefits of the regulations against their cost;
- establish the framework (compliance and enforcement policies, management systems and resources) needed to implement regulatory programs;
- determine the relevance, success and cost-effectiveness of existing regulatory programs; and
- provide for an open regulatory process.

APPLICATION

This policy applies to federal regulatory authorities.

POLICY REQUIREMENTS

For existing regulatory programs, and substantive new or amended regulations, departments and agencies must demonstrate that:

1. A problem or risk exists, government intervention is justified, and regulation is the best alternative.
2. Canadians have been consulted and have had an opportunity to participate in developing or modifying regulations and regulatory programs.
3. The benefits of the regulatory activity outweigh the costs, and the regulatory program is "structured" to maximize the gains to beneficiaries in relation to the costs to Canadian:
   - governments;
   - businesses; and
   - individuals.

4. Steps have been taken to ensure that the regulatory activity impedes as little as possible Canada's competitiveness.

5. The regulatory burden on Canadians has been minimized through such methods as cooperation with other governments.

6. Systems are in place to manage regulatory resources effectively. In particular:

   - compliance and enforcement policies are articulated, as appropriate; and

   - resources have been approved and are adequate to discharge enforcement responsibilities effectively, and to ensure compliance where the regulation binds the government.

RESPONSIBILITIES

Central agencies have a responsibility to assist departments to implement the above Policy Requirements and to ensure an efficient and timely regulatory process.

MONITORING

The Treasury Board Secretariat will monitor departmental performance and the effectiveness of this policy.

To do this, the Secretariat will rely on existing sources of information, including, where appropriate, the Federal Regulatory Plan, the departmental Multi-Year Operational Plans, Treasury Board submissions, major regulatory initiatives for Cabinet consideration, proposals going through the regulatory process, formal program evaluations and results of internal audits.

In addition, where appropriate, the Secretariat will utilize the work of third parties (e.g., Office of the Auditor-General) to assist in determining the degree of compliance with this policy.

Source: Treasury Board of Canada Secretariat, *Regulating in the 90s*, Ottawa, October 1992.

APPENDIX III

Citizen's Code of Regulatory Fairness

1. Canadians are entitled to expect that the government's regulation will be characterized by **minimum interference with individual freedom** consistent with the protection of community interests.

2. The Government will encourage and facilitate a **full opportunity for consultation** and participation by Canadians in the federal regulatory process.

3. The Government will provide Canadians with **adequate early notice** of possible regulatory initiatives.

4. The Government will take measures to **ensure greater efficiency** and promptness in discretionary and adjudicative regulatory decision-making.

5. Once regulatory requirements have been established in law, the government will communicate to Canadians, **in clear language,** what the regulatory requirements are, and why they have been adopted.

6. The rules, sanctions, processes, and actions of regulatory authorities will be **securely founded in law.**

7. The government will ensure that officials responsible for developing, implementing or enforcing regulations are **held accountable** for their advice and actions.

8. The government will take all possible measures to ensure that **businesses** of different size are **not burdened disproportionately** by the imposition of regulatory requirements.

9. The government will ensure that the **governments of the provinces** and territories are **given early notice** of and an adequate **opportunity to consult** on federal regulatory initiatives affecting their interests.

10. The government will **not use regulation unless** it has clear evidence that a problem exists, that government **intervention is justified** and that **regulation is the best alternative** open to the government.

11. The government will ensure that the **benefits of regulation exceed the costs** and will give particularly careful consideration to all new regulation that could impede economic growth or job creation.

12. The government will **avoid introducing regulations that control supply, price, entry and exit** in competitive markets except when overriding national interests are at stake.

13. The **sanctions and enforcement** powers specified in federal regulatory legislation will be **proportionate and appropriate** to the seriousness of the violation.

14. The government will **enhance the predictability of the exercise of discretionary powers** by federal regulatory authorities and ensure to the maximum extent possible inter-regional consistency in the administration of regulations.

15. The government will **encourage the public** to exercise its duty **to criticize ineffective or inefficient regulatory initiatives** and to offer suggestions for better or "smarter" ways of solving problems and achieving the government's social and economic objectives.

Source: OPRA (1988b, pp. 67-68).

APPENDIX IV

Possible Contents of an Annual Report on the State of Government Regulation in Canada

The proposed Annual Report, which would be prepared by the President of the Treasury Board, could contain the following major sections:

- Analysis of initiatives announced in the annual *Federal Regulatory Plan*: which ones were implemented and which are in process or dropped or delayed
- Categorization and counting of proposed new regulations by
  - department
  - type (legal definition)
  - size of economic consequences
- Estimates of total costs of federal regulation
  - proposed regulations
  - new regulations for each of the past five years
  - stock of regulatory programs

  This would need to be grouped by department and type of regulation.
- Assessment of the RIAS accompanying proposed regulations in the previous year:
  - classification in terms of the type of economic impact assessment: full CBA; partial CBA (e.g., costs only); cost effectiveness analysis
  - determination of number of regulations for which costs exceeded benefits and by how much
- Budgetary outlays (and PYs) on the administration and enforcement of all regulatory programs (grouped by departments or agencies) for each of the past five years. (This is presently done for the U.S. by the Center for the Study of American Business, Washington University at St. Louis—see Warren (1991).)
- Listing a brief description of all new regulatory statutes and major amendments to existing ones in the past year and those which are currently before Parliament.
- Listing of all regulatory programs evaluated in the past year.

- One-page summary of the major findings of all *ex post* evaluations of regulatory programs completed in the previous year.

- Listing (and one-page summary) of articles, studies and reports on regulation, the regulatory process and regulatory programs published by academics, government, or other private sector bodies during the past year.

Source: Stanbury (1992).

APPENDIX V

Possible Regulatory Complaints Settlement Process

1. Each department or agency would establish (and publicize) the position of Regulatory Complaints Officer (RCO). This title would be attached to an experienced person at the ADM level. Ideally, the RCO would be a person who could move easily within the department to acquire facts and propose resolution of complaints made by regulatees.
2. Complaints by regulatees which cannot be resolved at the operating level (e.g., program branch officials) would be referred to the RCO by the regulated. The RCO would have 30 days in which to try to obtain a solution (resolution) satisfactory to the department and the regulated. In the last instance, the RCO would request a decision by the Minister. Most of the RCO's work would consist of acting as a mediator trying to find a way of resolving the conflict.
3. If the RCO is unable to resolve the regulated's complaint, the regulated could request that a Regulatory Complaints Arbitrator (RCA) be appointed to hear the case within 30 days.
4. RCAs would be individuals (lawyers, former public servants, academics) chosen from a set of such persons knowledgeable about regulation and its processes and who stand ready to arbitrate such disputes.
5. The basic rules of the arbitration would be as follows:
   - The hearing would be limited to one day. Each side would have no more than 3.5 hours to present its case and question the other side's witnesses. Each side could submit up to 30 pages of documents in advance of the hearing and a similar amount during the hearing.
   - The parties would <u>not</u> be represented by lawyers so as to reduce the costs and keep the process more "user friendly."
   - With the permission of the parties, the RCA could interrupt the hearing so as to attempt to <u>mediate</u> a settlement. If unsuccessful, the hearing would resume and the RCA would render a decision.
   - The decision of the RCA would be handed down within two days of the hearing and it would include brief reasons (say 5-6 pages).
   - The decision of the RCA would not impair the legal rights of either party. Either could use traditional remedies, e.g., the courts.
   - The department would pay the fees and expenses of the RCA and would make all reasonable efforts to have the hearing in a city convenient to the regulated. RAD should prepare a report on the feasibility of this proposal. RAD's report should be reviewed by the Commons Standing Committee on Finance (as the Subcommittee on Regulations and Competitive- ness will have completed its work and be disbanded).

Source: Stanbury (1992).

APPENDIX VI

List of witnesses

Associations and Individuals	Issue No.
Air Transport Association	
Gordon Sinclair, President and Chief Executive Officer	15
Alberta Government Telephone	
J.H. Pratt, Vice-President, Regulatory Affairs	21
C.D. Howe Institute	
David Brown, Senior Policy Analyst	10
C.P. Rail	
M.D. Apedaile, Assistant Vice-President, Government and Industry Affairs	22
Faye Ackermans, Acting Director General, Regulatory Affairs	22
Canadian Association of Petroleum Producers	
Verne G. Johnson, President, LASMO Canada Inc. and member of CAPP Board of Governors	20
Robert M. Feick, Vice-President	20
Canadian Association of Regulated Importers	
Robert de Valk, General Manager	13
Canadian Cattlemen's Association	
Jim Caldwell, Assistant Manager and Director of Government Affairs	21
Mary Dean, Director, Public Affairs	21
Canadian Chamber of Commerce	
Timothy E. Reid, President	10
Canadian Chemical Producers Association	
Jean M. Bélanger, President	16
David W. Goffin, Vice-President, Business Development	16
Gordon Lloyd, Vice-President, Technical Affairs	16
Canadian Council of Grocery Distributors	
John F. Geci, President and Chief Executive Officer	16
Norman Lesh, Member of the Ontario Regional Council	16
Canadian Exporters' Association	
The Honourable Gerald A. Regan, Chair of the Board	22
James D. Moore, Vice-President, Policy	22
Canadian Federation of Agriculture	
Sally Rutherford, Executive Director	22
Canadian Federation of Independent Business	
Garth Whyte, Director, National Affairs	21
Brian Gray, Vice-President, Policy and Research	21
Canadian Fertilizer Institute	
Dr. Gordon Ross, Chairman of the Board	12
Jim Brown, Managing Director	12
Roger Larson, Assistant Managing Director	12

Associations and Individuals	Issue
Canadian Manufacturers of Chemical Specialties Association	
Michael Cloghesy, General Director	1
Canadian Manufacturing Industries Forum	
Phillip Nance, President, Medical Devices Canada	21
Stephen Van Houghton, President, Canadian Manufacturing Association	21
Canadian Meat Council	
David M. Adams, General Manager	20
Canadian Organization of Small Business	
Don Eastcott, Managing Director and Corporate Secretary	10
Canadian Passenger Vessel Association	
Ian Campbell, Executive Director	22
Canadian Soft Drink Association	
Paulette Vinette, President	22
Wayne Mailloux, Executive Committee Member	22
Canadian Standards Association	
Peter Ridout, Director, Government and Industry Relations	10
Robin Haighton, Manager, Government and Industry Relations	10
Canadian Trucking Association	
Gilles J. Bélanger, President	20
Laura Scott Kilgour, Executive Director	20
Ken MacLaren, Legislative Consultant	1
Consumers' Association of Canada	
Marilyn Lister, National President	19
Mark Haney, Director, Policy Research	19
Department of Agriculture	
The Hon. William Hunter McKnight, Minister	11
George Pearson, Acting Director, Impact Analysis Division, Grains and Oilseeds Branch	14
Patti Miller, Senior Advisor, Industry Relations, Grain Marketing Bureau, Grains and Oilseeds Branch	14
Dr. H. Bjarnason, Associate Deputy Minister, Grains and Oilseeds Branch	11, 14
Dr. A. Olson, Assistant Deputy Minister, Food Production and Inspection Branch	11
A. Cocksedge, Executive Secretary, Departmental Regulatory Review Secretariat	11
Department of Consumer and Corporate Affairs	
Nancy Hughes Antony, Deputy Minister, Executive Committee	4
David Watters, Assistant Deputy Minister, Consumers	4
Jean Gariépy, Director, Product Safety Branch	4
Department of Environment	
John Buccini, Director, Commercial Chemical Branch	6

Associations and Individuals	Issue
Caroline H. Iwacaki, Economist, Regulatory and Economic Affairs Division Environmental Protection	6
Hugh Cook, Senior Program Engineer, Industrial Programs Branch Environmental Protection	6
Department of Industry, Science and Technology	
Robert G. Blackburn, Assistant Deputy Minister, Policy	9
Ron Harper, Director, Environmental Affairs Directorate	6
Department of Small Businesses and Tourism	
The Hon. Tom Hockin, Minister of State	9
Department of Transport Canada	
The Hon. Shirley Martin, Minister of State	5
Dave Bell, Assistant Deputy Minister, Review	5
Fair Access to Canada's Transportation System (F.A.C.T.S.) Coalition	
Donald Paterson, Co-Chairman	18
Federally Regulated Employers — Transportation and Communication	
Jack A. McGuire, Acting Chairman	21
Donald V. Brazier, Assistant Vice-President, Industrial Relations, CP Rail	21
Food Institute of Canada	
Christopher J. Kyte, Executive Director	1, 15
Henry Penner, Vice-President, Manufacturing Nabisco Brands Ltd.	15
Further Poultry Processors Association of Canada	
Robert Bishop, Chairman	13
Robert de Valk, General Manager	13
Grocery Products Manufacturers of Canada	
Dr. Dewey Peterson, Vice-President, Corporate Affairs Kellogg Canada Inc.	22
Sandra Banks, Vice-President, Government Relations	22
Laurie Curry, Director, Technical	22
INCO Limited	
R.J. Hilton, Manager, Occupational and Environmental Health	22
Thomas C. Burnett, Director of Government Affairs	22
Individuals	
Larry Martin, Professor of Agricultural Policy, University of Guelph	1
Michel Boucher, Professor, University of Québec	1
Cheryl Knebel, Consultant	1
D.G. McFetridge, Professor of Economics, Carleton University	1
Vernon Smith, Private Consultant	13
Bryne Purchase, Senior Research Director, Economic Council of Canada	1
W.T. Stanbury, Professor, University of British Columbia	1
Thomas D. Hopkins, Professor, Rochester Institute of Technology	15
Dionigi M. Fiorita, Lawyer, Lavery DeBilly	1
Scott Jacobs, Administrator, Public Management Service, Organization for Economic Co-operation and Development	21
Stanley Brown, National Director, Price Waterhouse	17
International Association of Great Lake Ports	
S. Paul Kennedy, Director of Marketing, Thunder Bay Harbour Commission	21

Associations and Individuals	Issue
Kimberly-Clark Limited	
Joe Kilkenny, Business Director, Household Products	22
The Honourable William H. Jarvis, P.C. Q.C., Counsel, McCarthy Tétrault	22
C. Roderick MacKenzie, Partner, McCarthy Tétrault	22
Lee Valley Tools Ltd.	
Leonard Lee, President	8
Mining Association of Canada	
George Miller, President	21
Henry Brehaut, Vice-President, Environment Placer Domer Inc.	21
John Primak, Acting Vice-President, Environment and Health	21
National Dairy Council of Canada	
Dale Tulloch, Vice-President	12
Pierre Nadeau, Vice-President	12
National Farmers Union	
Wayne Easter, President	18
Kevin J. Arsenault, Executive Secretary	18
Office of the Auditor General of Canada	
Denis Desautels, Auditor General	7
Alan Gilmore, Principal, Audit Operations Branch	7
Ontario Government	
Jan Ruby, Assistant Deputy Minister	19
Prairie Pools	
Anders Bruun, Corporate Secretary and General Counsel	1
Ray Howe, Director	21
Patty Townsend, Manager, Communications and Public Affairs	1, 21
Quality Management Institute	
Larry Rogers, President	7
Retail Council of Canada	
Alasdair J. McKichan, President	17
The Prosperity Secretariat	
Dawnita A.K. Spac, Director, Domestic Markets, Competitiveness	1
Treasury Board of Canada Secretariat	
The Hon. Gilles Loiselle, President	2
James K. Martin, Director, Regulatory Affairs	1, 2, 3
Western Canadian Wheat Growers Association	
Hubert Esquirol, President	18
Alanna Kock, Executive Director	18
Dan Cutforth, Director	18

A copy of the Minutes of Proceedings and Evidence to this report (*Issues Nos. 1 to 23, of the Sub-Committee on Regulations and Competitiveness and Issue No. 53 of the Standing Committee on Finance, which includes this report*) is tabled.

Respectfully submitted,

MURRAY DORIN,
Chairman.

Minutes of Proceedings

THURSDAY, DECEMBER 10, 1992
(68)

[*Text*]

The Standing Committee on Finance met at 3:30 o'clock p.m. this day, in Room 253-D, Centre Block, the Chairman, Murray Dorin, presiding.

Members of the Committee present: Murray Dorin, Steven Langdon, Diane Marleau, René Soetens and Greg Thompson.

In attendance: From the Research Branch of the Library of Parliament: Basil Zafiriou and Marion Wrobel, Senior Analysts.

Pursuant to Standing Order 108(2), the Committee proceeded to the consideration of a draft report.

On motion of René Soetens, it was agreed,—That, the Committee adopt the First Report of the Sub-committee on Regulations and Competitiveness, concerning regulations and competitiveness, as the Seventeenth Report of the Standing Committee on Finance and that the Chairman present the report to the House.

On motion of René Soetens, it was agreed,—That, the Committee print an additional 300 copies, over and above the usual 1,000 copies, of the Seventeenth Report concerning regulations and competitiveness, and the cost of these extra copies be reimbursed by the Treasury Board of Canada.

On motion of René Soetens, it was agreed,—That, the issue of the *Minutes of Proceedings and Evidence* containing the Seventeenth Report concerning regulations and competitiveness be printed in tumble format with a special cover.

At 3:31 o'clock p.m., the Committee adjourned to the call of the Chair.

Susan Baldwin
Clerk of the Committee

Minutes of Proceedings

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(58)

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Susan Baldwin

Clerk of the Committee