

REGULATORY COOPERATION BETWEEN GOVERNMENTS

FOREWORD

This is one of a number of regulatory affairs guides prepared to help departments interpret and apply the federal Regulatory Policy. The Treasury Board approved the policy in 1992.

The guide is based on a paper written for an Organization for Economic Cooperation and Development (OECD) symposium on managing regulatory relations held in Paris in October 1993.

To obtain a list of other available publications, including an annotated version of the policy itself, please phone Regulatory Affairs, Treasury Board of Canada Secretariat, at (613) 952-3459.

If, after examining the guide, you would like more information on regulatory cooperation between governments, we suggest that you consult the OECD publication *Regulatory Co-operation for an Interdependent World* (Paris, OECD, 1994). The book includes revised versions of the papers presented in Paris, and a summary chapter written after the symposium.

INTRODUCTION

WHY A GUIDE ABOUT REGULATORY COOPERATION?

Cooperating with other governments is a key requirement of the federal *Regulatory Policy* that the Treasury Board approved in February 1992. One of the six policy requirements states that "the regulatory burden on Canadians [must be] minimized through such methods as cooperation with other governments." Regulatory cooperation, both multilateral and bilateral, can be used to pursue the public interest in many ways, ranging from sharing technical information to negotiating and implementing detailed agreements that address non-tariff barriers.

Canada has adopted a policy that explicitly supports cooperation among governments for several reasons. Most obviously, effective collaboration between governments, particularly the harmonization of regulatory requirements, can facilitate trade, and the country benefits enormously from trade.

Sometimes full-scale harmonization may not be appropriate, but this need not prevent the pursuit of significant mutual gain through other forms of cooperation. Substantial collaboration in program management below the level of harmonization can also benefit all parties.

Governments should cooperate more in the future because doing so offers practical benefits.

- Many critical problems can be solved only by working together, particularly in areas such as environmental protection, nuclear materials control, and matters within the purview of international financial institutions.
- Markets, production, and financing are becoming global. Barriers to participation in the world economy would lower Canada's standard of living.
- Implementing agreements such as the North American Free Trade Agreement (NAFTA) and deals made in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) requires greater regulatory cooperation.
- Within Canada, intergovernmental barriers to trade have become too costly to sustain.
- The trade barriers of other countries have hurt Canadian economic opportunities.

- The gap between what citizens are prepared to pay for government and the cost of government is growing. Intergovernmental collaboration that leads to administrative savings must be pursued.

In short, good theoretical and practical reasons exist to pursue regulatory cooperation.

OVERVIEW

This guide identifies:

- problems that may arise when governments try to cooperate; and
- a strategy that may prove useful to governments in determining how best to pursue cooperation.

The following section examines some experiences Canadian officials have had in intergovernmental collaboration on regulatory issues. It also offers a few lessons based on those experiences. Building on these lessons, the guide next presents an approach that governments might use to identify opportunities for collaboration and guidelines they might apply to make success more likely. The guide ends with a few key conclusions.

LESSONS FROM THE FIELD

PROGRESS TAKES TIME

In many national governments, line regulatory departments have had an almost exclusively domestic or subnational focus. Issues that crossed borders were generally poorly understood and often beyond the mandate of regulators; habit led regulators to resist cooperation. Obviously, it takes time to overcome this resistance.

Canadian regulators have had some experience in trying to expand the focus of domestic regulatory programs to take into account cross-border issues, both between provinces and between Canada and the United States. At the international level, for example, the Canada-U.S. Free Trade Agreement (FTA) established technical working groups to promote harmonization. Previous experience in intergovernmental affairs contributed to success; progress was greatest when officials had been consulting with their counterparts for a number of years. Canadian participants found the experience useful and networks of Canadian and American officials with similar responsibilities have formed. Such on-the-job training does not happen overnight.

Time has also been needed to resolve internal (i.e. interprovincial) trade barriers within Canada. While these barriers have been an issue for provincial premiers and prime ministers since the mid-1970s, what was arguably the first important success in resolving them was a 1991 agreement on government procurement. Before then, work had generally addressed individual trade barriers, of which there are hundreds. In 1993, to try to make more rapid progress, Canadian governments launched a GATT-like comprehensive negotiation process. The next year or so will show whether a comprehensive approach is more effective than an issue-by-issue approach.

The regulation of the transportation of dangerous goods in Canada is an example of the way effective collaboration between governments can grow over time. While the courts have never established exactly where federal authority ends and provincial authority begins, the administrative system that has emerged works well. The regulations themselves are developed federally in consultation with the provinces and referenced in provincial legislation. The division of administrative responsibilities varies by province, but full coverage is offered everywhere, and almost everyone seems to be happy with the system that has evolved. For example, industry faces just one set of regulations on the transportation of dangerous goods throughout the country.¹ However, joint responsibility requires substantial consultation, and the complexity of the system makes changes to it especially difficult to implement.

¹ The problem of duplication between federal and provincial regulations is dealt with in a different way under the *Canadian Environmental Protection Act*. Federal regulations do not apply if agreement can be reached on the adequacy of provincial regulations on a province-by-province basis.

Amendments to the *Transportation of Dangerous Goods Act* initiated in 1990 were not enacted until two years later, due in large part to the time required to ensure that all provinces supported the new system. Substantial time and effort is also needed to coordinate day-to-day enforcement activities between Ottawa and the provinces.

Intergovernmental cooperation requires an understanding of the interests and practices of other participants, and it requires trust. These things take time. It is a mistake to assume that anticipated mutual benefit is sufficient to bring about change.

PROGRESS REQUIRES TAKING INTO ACCOUNT CULTURAL AND OTHER DIFFERENCES

Differing social, legal and cultural perspectives can make harmonization difficult, as the following example shows.

Article 708 of the Canada-U.S. Free Trade Agreement states that:

consistent with the legitimate need for technical regulations and standards to protect human, animal and plant life and to facilitate commerce between the Parties, the Parties shall seek an open border policy with respect to trade in agricultural, food, beverage and certain related goods.

The goal was:

to harmonize their respective technical regulatory requirements and inspection procedures, taking into account appropriate international standards, or, where harmonization is not feasible, to make equivalent their respective technical regulatory requirements and inspection procedures.

This was an ambitious objective, one unlikely to be fully attained. What were the barriers to harmonization? Canadian participants felt that cultural and administrative differences hampered progress toward harmonization between the two nations. Here are a few examples:

- **policy preferences:** American approaches to labeling tend to emphasize informed consent, consistent with their reliance on tort liability as a regulatory tool. Canada tends to give more scope to the judgment of government officials, downplaying the role of the courts. This is just one example of where a policy difference made harmonization difficult;

- **priorities:** Given limited resources, governments must be selective in the issues they pursue. Canadian and American priorities did not always coincide;
- **legal systems:** Different approaches to defining liability made harmonization of regulatory requirements impossible in some areas;
- **language:** The federal government's commitment to bilingualism is beyond question in Canada, and this fact made complete harmonization impossible in a number of areas;
- **the authority to negotiate in areas of subnational jurisdiction:** The authority of each federal government relative to subnational governments is complicated and often very controversial. Understandably, it was very difficult to reach agreement on issues largely beyond the control of the negotiators. Beyond the jurisdictional questions, both countries were reluctant to make the first move, since the disruption of domestic industries protected by trade barriers at the subnational level would in some cases have been substantial; and
- **different interpretations of the same science:** In many health and safety areas, knowledge is uncertain. Uncertainty requires the exercising of political judgment and the factors affecting Canadian and American decisions are usually different.

As compared to the FTA, the North American Free Trade Agreement (NAFTA) includes a more detailed, yet less ambitious, approach to harmonization. For agri-food products, for example, existing international health and safety standards are the baseline. However, each government has the right to set higher standards, provided they are scientifically based, internally consistent, and grant national treatment to firms from all signing nations. Unique standards can be challenged before a neutral commission, and retaliation is permitted if these requirements have not been met. While the FTA goal was harmonization, the NAFTA recognizes the need for exceptions, but introduces discipline into the system to ensure that arbitrary standards are not implemented in order to create trade barriers.

It is important to set realistic goals, taking into account the many barriers to progress that may arise. Even if harmonization is not possible or desirable across the board, mutual benefit can still be gained by going part way — examples include providing for national treatment or mutual recognition of regulatory standards. Finally, harmonization may cost more than it is worth — a thorough cost-benefit analysis needs to be done.

PROGRESS MAY REQUIRE POLITICAL INVOLVEMENT

The FTA technical working groups tended to be most successful on technical matters. They made real progress in many areas from the point of view of harmonization and facilitating trade. For example, the vast majority of differences in technical standards for veterinary biologics were resolved.

Commodity-based working groups made more progress than those that dealt with a number of different and often unrelated products. In part, progress was slower on non-technical issues because officials were not prepared to deal with differences in policy. Differences in scientific interpretation can be resolved by experts, while policy differences require the participation of elected officials.

Policy matters and political issues inevitably arise as governments try to work together. The resolution of non-technical issues requires the development of procedural mechanisms to ensure rapid access to elected officials. Moreover, elected officials should be made aware of emerging issues continually.

PROGRESS REQUIRES INDUSTRY AND PUBLIC INVOLVEMENT

In pursuing regulatory cooperation, governments will often face one obstacle above all others: the ceding of some sovereignty to have more say over the actions of other governments. Members of the public are understandably concerned when the people they elect lose some control over matters that are important to them. Even if governments can resolve these issues between themselves to the satisfaction of all participants, public support for specific cooperative arrangements is unlikely if the benefits of restricting sovereignty remain unclear.

Clearly, the citizens of different countries or regions have different conceptions of the role of government regarding what should be done and how it should be done. For example, governments in Canada place restrictions on the provision of private health care that in the United States would be viewed as inappropriate. The Canadian public believes that the market place should not operate in the area of primary health care and that governments should allocate scarce health resources in accordance with social insurance principles. Similar circumstances may arise in regulating other activities; it is not always appropriate to promote standardization in the face of national or regional preferences. Governments must be clear about the issues over which they wish to retain complete sovereign control.

The first lesson, then, is that governments have to be careful when examining actions that might limit sovereignty. The second lesson is that the costs associated with entrenched approaches to policy and the potential benefits of more cooperation between governments must be made known to the public. Politically unacceptable proposals will emerge from intergovernmental negotiations if the public is not brought along. The technical demonstration of mutual benefit may not always be sufficient — the public must see that intergovernmental cooperation is in the public interest.

Besides political acceptability, there are other sound reasons for ensuring adequate public input. Most importantly, officials may make mistakes; input from groups representing a broad range of interests and expertise is needed to make sure that government officials are aware of all the issues at stake. For instance, Canada discovered, after it had already signed an international convention on the movement of hazardous waste, that the agreement had a significant and unintended impact on the trade of scrap materials between Canada and the United States. Consultations with industry had been insufficient.

During the negotiation of the FTA, a number of Canadian businesses complained that the value of investments made under the existing regulatory environment would decline significantly in some cases if certain changes under discussion were implemented. This complaint placed Canadian negotiators in a difficult situation; in some cases it led to the removal of particular proposals from the table. To what extent should governments take these concerns into account? It does seem unfair to punish businesses for making decisions in response to what they assumed would be a stable environment. To mitigate the effect of these changes, governments could extend phase-in periods if the value of existing investments would otherwise decrease substantially.

The experiences of the federal department of Consumer and Corporate Affairs² with nutrition labeling demonstrate the importance of consultation. The United States Congress established a new system in 1993. It was quite clear that the only way Canada could achieve harmonization was by accepting the American approach. Through consultation with industry and public interest groups, however, it became clear that applying the American system in Canada would make little sense, because of excessive costs and the public's acceptance of existing approaches to promoting good nutrition. Where harmonization did make sense was in standards for the composition of products; having the same such standards in Canada and the U.S. will promote trade. On the other hand, the information presented to consumers will probably continue to reflect values that differ in the two countries.

² The responsibilities of Consumer and Corporate Affairs Canada have since been moved to the departments of Industry, Health, and Agriculture and AgriFood.

It makes little sense to support regulatory cooperation when it runs against the legitimate concerns of industry and the public.³ Harmonization should be employed carefully and only after sufficient consultation.

Ensuring that agreements are both realistic and acceptable requires the participation of the public, special interest groups, industry and other levels of government.

PROGRESS REQUIRES THAT OBLIGATIONS BE SPELLED OUT

The FTA, as noted, set an ambitious goal (harmonization) without defining in detail the responsibilities and duties needed to achieve it. Many Canadian participants in the technical working groups felt that, in the absence of well-defined obligations, both sides were reluctant to make commitments that might be viewed as restricting national sovereignty. Defining a set of principles to which both countries could refer during disputes might have facilitated the search for compromise leading to mutual benefit.

More explicit obligations are a part of the NAFTA. Signatories must provide national treatment, i.e. they must apply regulatory requirements in the same way to firms from all three nations. In addition, signatories may be required to show the need for regulatory requirements that may serve as barriers to trade, even if there is national treatment. If the FTA had contained similar arrangements, this might have avoided some of the problems that arose during implementation of the agreement.

All governments, of course, prefer to avoid limits on future actions, but failure to set such limits can frustrate harmonization efforts. One of the technical working groups created under the FTA, for instance, spent a considerable amount of time examining nutritional labeling with a view to establishing similar regulations in Canada and the United States. During these discussions, the United States Congress passed the *Nutrition and Labeling Education Act*, which set out an approach significantly different from the one that was emerging from the negotiations.

Successful regulatory collaboration will sometimes require that all parties agree to specific restraints on future behaviour. Even if agreement is possible on objectives, no benefits will be obtained unless:

³ Determining whether a given concern on the part of industry is "legitimate" can be rather difficult, of course. Industry may fight against harmonization for three reasons: to preserve markets through trade barriers; to avoid unnecessary costs involved in meeting higher or different standards; and/or to avoid short-run costs associated with change (the latter may be particularly important during recessions). The right response to concerns expressed by industry will depend on which factor predominates.

- **restraints on behaviour are identified and agreed to; and**
- **all parties subsequently respect them.**

PROGRESS MAY REQUIRE NEW ADMINISTRATIVE CONTROL SYSTEMS TO ENSURE THAT OBLIGATIONS ARE MET

Economic decisions take place within a wider context where political, legal, social, and attitudinal factors are very much in play. Institutional development at national and subnational levels in the industrial world has been complex, often with little attention to intergovernmental issues, with the result that intergovernmental collaboration in mature regulatory areas can be quite difficult. Stating that regulatory cooperation is a government priority is a start, but it is not enough in itself to bring about results.

For instance, in trying to remove internal trade barriers in Canada, the federal government has worked with the provinces for more than 15 years. Despite the commitments of provincial and federal leaders to avoid introducing new barriers, progress has been limited. This frustration led to the adoption of the GATT-like negotiation approach noted above.

Government commitments to cooperation must be more than words — actions matter most. Governments must recognize that implementation will not take care of itself. In some cases, new mechanisms may be needed to ensure that officials deliver the intended results.

AN APPROACH TO REGULATORY COOPERATION

Based on the experiences reviewed in the previous section, the following factors appear to be important precursors to effective collaboration among governments:

- a positive attitude, patience, and mutual understanding and trust;
- an awareness of cultural and other differences;
- realistic assessments of achievable goals;
- active political involvement in policy questions;
- clear obligations and restraints to meet stated objectives;
- administrative control systems; and
- industry and public interest group acceptance.

In this section, we outline a strategy designed to help identify areas where cooperation is likely to succeed, and what can be done to make success more likely. This strategy was developed taking into account the lessons outlined in the previous section.

Regulatory cooperation is best understood as an arrangement among a loose network of partners, each with its own aspirations and agenda. To help decision-makers, we offer the following five-part strategy. You should think of each part as a task that all participants need to carry out.

1. Figure out what you want to achieve through regulatory cooperation.
2. Determine whether cooperation is worth trying.
3. Set the stage for success — encourage the development of responsive laws and mutual trust.
4. Identify which approach to cooperation is best.
5. Seek practical and enduring agreements.

The remainder of this section includes questions to ask when considering a specific initiative and guidelines for each part of the strategy. The goal is an approach that will allow for achieving mutual gain wherever it is possible to do so.

FIGURING OUT WHAT YOU WANT TO ACHIEVE

Governments throughout the world have been criticized in recent years for taking a narrow view of the public interest, one overly focused on abstract economic considerations rather than on the wider range of issues that citizens view as important in their daily lives. Decisions about whether to cooperate, and how to cooperate, should be based on both economic and non-economic considerations.

Before seeking partners for regulatory cooperation, you have to consider carefully what you want to achieve. The discussion below focuses on four areas: social welfare, economic welfare, government efficiency and democratic participation.

It is, of course, impossible to achieve all objectives to the fullest simultaneously. There will be tension between improving welfare according to purely economic and purely social criteria, between improving economic well-being and retaining national sovereignty, between stability and responsiveness, and between democratic values and administrative efficiency. Tradeoffs are inevitable. Before making them, however, it is important to take a broad look at all potential benefits and costs. In the end, of course, the most important consideration should be the net effect that governments have on the lives of those they represent.

i) Social welfare objectives

When considering cooperation with other governments, the very first thing is to determine what is not negotiable; governments must know the extent to which they are willing to cede sovereignty in order to gain more control over the actions of other governments. All participants will be frustrated if they do not know the boundaries of the negotiations — a frustration that could reduce the desire to enter future negotiations, to the long-run detriment of all parties concerned.

Relinquishing national sovereignty is always a difficult decision. Different jurisdictions have chosen different approaches to regulation because of cultural differences. "Regulatory diversification" is a fact of life and often very positive. But when does it cross the line into undue sentimentality or outright trade protectionism? Each jurisdiction is likely to have a somewhat different perspective on that issue, but decision-makers need to understand on which side of the line they are standing and why.

- ✓Q1 What fundamental communal values or preferences must continue to be reflected in whatever formal or informal agreement that emerges?
- ✓Q2 Are there non-regulatory ways that, along with more regulatory cooperation, could effectively protect these values?

- ✓Q3 Have the costs and benefits of achieving social welfare objectives been clearly identified? Are the options for regulatory cooperation acceptable to the public?
- ✓Q4 Would cooperation help realize longer-term social benefits, such as greater openness or better communication among governments?

ii) Economic welfare objectives

From a purely economic growth perspective, specific national or subnational requirements are difficult to justify. Market distortions may cause welfare losses or restrict consumer choice if it becomes difficult or expensive to import goods from other jurisdictions. To these potential costs of not cooperating, one might add the potential benefits of cooperating, including lower administrative costs for regulators.

- ✓Q5 What evidence is there that regulatory cooperation will increase the benefits or lower the costs associated with the specific regulatory program area under consideration?
- ✓Q6 Would cooperating redistribute income? If so, might disadvantaged parties be compensated?
- ✓Q7 Would cooperating make it easier for firms to innovate?

iii) Government efficiency objectives

Taxpayers are entitled to get value for money in the management of their regulatory programs. Regulatory cooperation can save governments money, but can prove costly too.

- ✓Q8 What money-saving arrangements will be needed to support the cooperative agreement?
- ✓Q9 What new institutional objectives, roles, duties, and mechanisms will be required to implement and maintain regulatory cooperation? Will these be cost-effective?
- ✓Q10 Will regulatory cooperation improve organizational learning within the bureaucracy? Is there a strategy to ensure that officials understand the rationale for cooperation and are enthusiastic about making it work?

iv) Democratic participation goals

Public acceptance of regulatory cooperation is fundamental to success. Governments can do a number of things to make acceptance more likely. Most importantly, they can provide special interest groups and the public with information that shows:

- the real risks of cooperation;
- the potential benefits of obtaining access to resources and markets in other jurisdictions instead of relying exclusively on the home market;
- the benefits to consumers of greater standardization;⁴
- the acceptance of cooperative practices by other jurisdictions;
- that contingency planning and monitoring systems are in place to minimize risks if the actions of other governments fall short of expectations; and
- that sovereignty is protected where absolutely necessary.

While governments can try to bring the public along, they have an additional, more fundamental responsibility to listen. All interested parties should have the opportunity to communicate their concerns to the officials working with other governments. Governments have a responsibility to take these views into account as they negotiate, implement, and review intergovernmental arrangements.

- ✓Q11 What new communications links and participation strategies will be required to ensure the meaningful participation of affected and interested parties? In particular, have the potential costs and benefits of regulatory cooperation been adequately communicated to the public?
- ✓Q12 Are there procedures to ensure an open and transparent decision-making process — a process characterized by quality information for citizens?
- ✓Q13 If regulatory cooperation does not work out, will it be possible to disengage?
- ✓Q14 Do potential partners have procedures to ensure that *their* citizens accept regulatory cooperation?

⁴ In practice, of course, individual consumers are unlikely to get involved since they gain very little from each proposal. But since there are many proposals and many consumers, governments may have a special responsibility to promote the interests of consumers as a group.

DETERMINING WHETHER IT'S WORTH TRYING

Even in areas where governments are quite prepared to consider cooperating, it may not be in the best interest of the province, country or region to do so, either because the costs of entering into cooperative arrangements would be excessive or because developing a regulatory solution would not be the best way to tackle the problem at hand.

Many factors can discourage the move to more cooperation among governments. These factors include bureaucratic resistance, entrenched special interests that prefer the status quo to the uncertainty of a new environment, and ignorance about the advantages of working together. Given such problems, governments would do well to focus their efforts on those areas that offer the greatest net benefit. Asking the following questions should help to identify promising areas:

- ✓Q15 Where are the gains for all sides highest? Where are there few, if any, interest groups, entrenched bureaucracies or firms that have something to lose?
- ✓Q16 Are there areas of immediate interest where other governments have significant experience and expertise? Governments should normally look first to international standards and regulatory approaches to see whether they can adopt what is already current practice elsewhere.

Generally speaking, the existence of long-established regulatory institutions makes it more difficult to pursue all forms of regulatory cooperation. Consequently, cooperation among governments is more likely to succeed in the regulation of new industries or product markets.

In the near future, biotechnology is one obvious candidate for regulatory cooperation. At present in Canada, many departments are contemplating new regulatory requirements to address potential risks. Work at the international level might lead to more consumer protection and more open markets for emerging products. Governments should at least get together to see whether agreement is possible on a set of objectives to guide the development of national regulatory programs. In fact, the OECD is developing common principles for the hazard assessment of bio-engineered products.⁵ Other areas that may be worth examining in the future include:

⁵ The OECD expert group on biotechnology safety, involving 100 experts from 20 countries, has been working for more than 10 years. See, among other reports, the recent "Preamble to Reports on Scientific Considerations Pertaining to the Environmental Safety of the Scale-up of Organisms Developed by Biotechnology," OECD (Paris, 1993), [OCDE/GD(93)92].

- all pre-approval regulatory programs (drugs, food additives, pesticides, etc.) that are essentially science-driven and which typically govern markets dominated by multinational firms;
- any area where problems are clearly without borders (global warming, ozone depletion, banking, etc.) and which individual governments cannot solve;
- all health and occupational safety areas where governments can benefit at least from sharing information;⁶ and
- transportation safety — much is being done now but more could be done to help shippers cross borders.

SETTING THE STAGE FOR SUCCESS

Cooperating with representatives from other jurisdictions can be a bit of a novel experience, especially if there are cultural differences — which, of course, there are most of the time. Representatives are paid by different governments, and have spent most of their time focused almost exclusively on the interests of their employers. In other words, there are barriers to overcome in order to identify and achieve mutual benefit. We will consider two particular barriers and what can be done to overcome them.

i) Establishing trust

The need for trust is obvious. Governments considering regulatory cooperation need both to establish and to maintain openness and trust. Many attempts at regulatory cooperation in the past have failed because participating governments were unable to do this.

To a great extent, of course, trust must be earned. Cooperative arrangements must be structured so that each participant is confident that the others will respect the terms of the agreement.

✓Q17 Have all the partners clearly identified and agreed to the rules of behaviour?

✓Q18 What procedures are in place to verify concurrence with the requirements of the cooperative arrangement?

⁶ Canadian officials report, however, that concerns about sovereignty tend to be raised especially about health and safety issues. In this respect, public resistance may be as important as the power of those groups that benefit under the existing system. As noted, the benefits of greater cooperation must be explained to the public.

- ✓Q19 What sanctions can be applied for non-compliance with the terms of the arrangement? If there are none, how will non-compliance be addressed? What must the arrangement include so that it is credible in the eyes of the public?
- ✓Q20 Have the pressures leading to non-compliance been identified? Can anything be done to relieve them?
- ✓Q21 What contingency plans are needed to cope with a breakdown in cooperation?

ii) Promoting flexibility

The law can be a barrier to effective regulatory cooperation. Laws may create problems inadvertently (e.g. access to information laws that make all information given to other governments public); or they may prohibit the delegation of authority needed to make progress; or they may simply lack the flexibility needed to enter into or implement cooperative relationships.

Having a flexible regulatory process would make it easier to cooperate with other governments. It should be reasonably easy to change regulatory programs in response to problems and opportunities.

Another way to achieve flexibility, and thus support regulatory cooperation, is by working with all interested parties to identify effective and reasonably low-cost solutions acceptable to all participants. Experience suggests that using a little creativity can protect the public interest and reconcile what may, at first glance, appear to be irreconcilable positions.

Having more flexible regulatory programs might also make it easier for governments to cooperate. For example, the ISO-9000 quality management system standards, which focus on the way regulated goods and services are produced, might be applied.⁷ Third party registrars might be used to satisfy regulatory authorities in different countries.

Quality management principles might also be applied to managing regulatory programs. The registration of regulatory agencies in an ISO-9000 series standard could help to overcome doubts about the effectiveness of the systems of other governments, especially if third-party registrars were used.

The search for more flexibility and responsiveness is based on the belief that governments must respond more quickly to changes in the environment and that policy

⁷ The ISO-9000 series of standards refer not to product specifications, but to the systems that produce the product or service. A registrar assesses the methods the firm uses in a number of areas, including design, development, production, installation, service, inspection, and testing, to see whether they are consistent with the ISO standards.

essentials matter more than technical details. A review of the examples presented in the previous section shows that rigidity can make it difficult or impossible to collaborate, even in areas of recognized mutual gain. Intergovernmental success is more likely if each participant's own regulatory regime is flexible.

- ✓Q22 Is there something about the specific program area under consideration that would preclude, or make very difficult, regulatory cooperation? If so, would using a more flexible approach make it easier to cooperate?
- ✓Q23 Are there administrative practices (or administrators) in the way?
- ✓Q24 Should specific laws or regulations be altered to make it easier to cooperate?

IDENTIFYING WHICH APPROACH IS BEST

The OECD's Public Management Service has identified four main types of regulatory relationships: cooperative, negotiated, delegated, and semi-governmental. Identifying which type of relationship is best suited to deal with a given program area is important. Each kind of relationship is discussed briefly below. Some general guidelines are offered regarding where and how each relationship might be applied. The problem of matching different kinds of relationships with different program areas is as complicated as it is important. You should consider the material that follows as a limited solution to only part of the problem.

Cooperative regulation

Sharing data and resources to achieve shared objectives is worthwhile, and could and should be done considerably more than it is done now. For example, all governments, especially those with comparatively small economies, would benefit from dividing up the work involved in analyzing technical and scientific questions. Cooperative arrangements, which are feasible across virtually the entire spectrum of regulatory programs, can make many, if not all, aspects of program management more cost-effective. Cooperation will progress slowly until partners come to understand and trust each other, but bureaucratic resistance to change or concern for job security shouldn't get in the way of trying.

- ✓Q25 What aspects of current regulatory programs duplicate efforts elsewhere? Where can more be accomplished by combining forces with other jurisdictions?

Negotiated regulation

The identification of mutually acceptable actions will increase in difficulty as the number of participating governments increases. The obligations of participating governments will need to be clearly spelled out. To reach an accord, participants will have to define their objectives in relation to the collective interest, which is not always obvious. As a

result, because of the time and effort required, the scope for negotiated regulation is much less than for cooperative regulation.

Responding to crossborder problems that are beyond the capacity of individual governments would seem to require this approach. Potential areas of application include environmental problems, arms control, and the regulation of international and inter-regional transportation, communications and finance.

- ✓Q26 Where is it difficult to meet the public interest because of an inability to control the behaviour of individuals, firms or governments in other jurisdictions?
Where are all jurisdictions affected in more or less the same way?

Delegated regulation

Formally granting authority to another government to establish regulatory requirements is a difficult proposition for most governments, given the obvious restriction on sovereignty. In some cases, however, delegation can be achieved without transferring authority, as shown by the example of the regulation of the transportation of dangerous goods in Canada.⁸ Ways can be found to share duties and responsibilities while maintaining sovereignty. Clarity respecting rights, obligations, and what limits, if any, should be placed on sovereignty is absolutely critical when making use of this approach to regulatory cooperation.

- ✓Q27 Where does it make sense to allow administrative authorities in other jurisdictions to manage regulatory programs in whole or in part?
- ✓Q28 What quid pro quo arrangements, if any, are needed with other jurisdictions to justify entering into administrative or formal legal arrangements that delegate authority?

Semi-governmental regulation

International standards are an alternative to national standards and other approaches to regulation. There are obvious benefits to world commerce from using international standards, as all countries eventually benefit when trade is promoted. Governments need to support the efforts of international standards writing bodies such as the ISO and CENELEC. **Whenever governments plan to write their own standards, they should consider adopting either international standards or those of their major trading partners.**

Two points of caution are necessary. First, *mandatory* national or international standards can restrict innovation if they are introduced too early. Consequently,

⁸ The federal Minister of Transport can enter into agreements with individual provinces to deal with disagreements. In this way, the provinces maintain some control, even though the regulations are primarily the responsibility of the federal government.

international standards should not be made mandatory before examining the costs and benefits of doing so. If cost-benefit analysis is insufficient at the international level, individual governments will be less inclined to sign agreements that make international standards mandatory. Second, there is the danger of cartels being formed as firms cooperate more internationally. Competition policy, which may become a global issue soon if it is not already, may be a candidate for negotiated regulation.

- ✓Q29 Have adequate international standards already been developed? If not, are trading partners willing to work together to create such standards?

SEEKING PRACTICAL AND ENDURING AGREEMENTS

We emphasized earlier that having flexible and responsive regulatory processes and programs makes it easier to incorporate cooperative relationships with other governments. The terms of cooperative arrangements should also be made flexible for the same reasons outlined earlier, especially if the goal is harmonization among the laws, regulations, or standards of different jurisdictions.

Harmonization offers advantages, but it can create problems if the harmonized approach cannot be amended easily to take changed circumstances into account. In Canada at least, it is difficult enough to amend a single regulation, even though there are well established policies and procedures for doing so. Changing the terms of international agreements is normally even more difficult. Ensuring that cooperative arrangements are adaptable should make them more useful and enduring; stability may be useful in promoting investment and confidence, but at some point it leads to stagnation.

- ✓Q30 Does the arrangement strike the right balance between stability and responsiveness to change?
- ✓Q31 What procedures or conditions are needed to make it possible to amend the arrangement to reflect future changes, such as those resulting from the introduction of new technology?

CONCLUSION

The preceding analysis indicates that regulatory cooperation is not easy — the reasons do not need to be repeated. But cooperating with other governments can help address many of the biggest concerns of governments worldwide, including weak productivity growth, increased government debt and excessive regulatory costs.

Given the potential for mutual benefit from regulatory cooperation and the many factors that can interfere with achieving it, regulators should focus on ways to make success more likely. They should:

- explore opportunities for mutual gain while being realistic about the limits of what can be achieved;
- give the negotiation and implementation of agreements a higher priority than they have had up to now, recognizing the need for a government-wide approach,
- explain to the public why cooperating with other governments can benefit everyone;
- ensure that there are no statutory barriers to cooperation; and
- invest in building long-term relationships and in creating a positive climate, both inside government and with the public, that is favourable to collaboration.

It is in the interests of all governments and of the public to cooperate more often and more effectively. Let's learn how.