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Regulatory Impact Analysis in Regulatory Process, Method, and Co-operation

Lessons for Canada from
International Trends

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June 2006

Canada

**Regulatory Impact Analysis in Regulatory Process,
Method, and Co-operation:
Lessons for Canada from International Trends**

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PRI Project
North American Linkages

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Summary

Regulatory impact analysis has become a prominent tool by which governments learn how to deal effectively with increasingly complex public policy issues in an environment of competitive and open markets. Canada was a pioneer in implementing RIA in the 1970s, but its use of RIA should be periodically evaluated because the processes and methods of RIA are quickly evolving as, around the world, RIA is mainstreamed into policy processes.

This report examines current trends in the process and methods of RIA by Canada's peers and competitors in global markets. The particular contribution of this report is that it assesses the most recent trends in the most advanced countries, and identifies lessons that will enable Canada to stay at the forefront of good regulation practices.

Canada has a strong base of RIA experience, and does well in some areas, but in important areas is not keeping up. Whereas countries such as the United States, Australia, Ireland, New Zealand, and the European Commission are actively improving the rigour and quality of RIA as an integrated framework to deal with the complexity of modern public policy, the vision in Canada is much less clear about how RIA can improve public policy. Another major concern is weakness in the incentives and quality controls for good RIA in the federal government.

Résumé

L'étude d'impact de la réglementation (EIR) est devenue un outil important qui permet aux gouvernements d'apprendre à traiter efficacement les questions d'intérêt public de plus en plus complexes dans un environnement de marchés compétitifs et ouverts. Le Canada a été le premier à étudier l'impact de la réglementation dans les années 1970. Cependant, compte tenu de l'évolution rapide des processus et des méthodes à l'échelle nationale et internationale, et du fait que l'EIR est une procédure courante dans le processus d'élaboration de politiques, on estime que le recours à l'EIR devrait être évalué périodiquement.

Ce rapport examine les tendances actuelles concernant le processus et les méthodes d'EIR des pairs et des concurrents du Canada dans les marchés mondiaux. Il contribue particulièrement à évaluer les plus récentes tendances dans les pays fortement industrialisés, et détermine les leçons que le Canada pourrait tirer et qui lui permettraient de rester à l'avant-garde en ce qui a trait aux bonnes pratiques de réglementation.

Le Canada a une solide expérience en matière d'EIR; il réussit bien dans certains domaines, mais se fait devancer dans d'autres. Tandis que les États-Unis, l'Australie, l'Irlande, la Nouvelle-Zélande et la Commission européenne travaillent activement à améliorer la rigueur et la qualité du processus d'EIR pour en faire un cadre intégré permettant de composer avec la complexité de la politique publique moderne, le Canada n'est pas certain que l'EIR peut améliorer la politique publique. Le manque d'incitatifs et de contrôle de la qualité pour une EIR efficace au gouvernement fédéral est une autre préoccupation importante.

The following table summarizes the judgments in this report as to Canada's relative performance:

Assessment Table: Federal Canada's Performance in RIA Process (1999 Regulatory Policy) and Methods Compared to Other Advanced Countries

(- means lagging behind, = means average, + means ahead)

| RIA process/method | Canada's score | Top performers |
|--|-----------------------|--|
| Targeting and scope of RIA | - | Australia, United States, New Zealand |
| Public consultation processes associated with RIA | + | Canada, Australia, United Kingdom, European Commission |
| Data collection methods and data quality standards | - | United States, European Commission |
| <i>Quality control through independent review and other disciplines</i> | | |
| Strengthening the challenge function from a central RIA watchdog | - | United Kingdom, New Zealand, United States |
| Involvement in RIA quality control and monitoring by other institutions | = | United Kingdom |
| Early planning and preparation of RIA | + | Canada, United States, European Commission |
| More monitoring and reporting of RIA quality by central institutions, followed by "name and shame" | - | Australia, United Kingdom (top performer: Mexico) |
| Expert scrutiny from scientific peers | - | United States |
| Improving Ministerial Accountability | + | United Kingdom, Australia, Canada |

| | | |
|--|---|---|
| More training | = | Ireland |
| Improving written guidance on RIA | - | European Commission, New Zealand, Victoria State (Australia), United States |
| Providing Helpdesk assistance | = | Ireland, Sweden, New Zealand (top performer: Netherlands) |
| Increased individual ministerial accountability | + | Canada, United Kingdom, Australia |
| <i>RIA Methods</i> | | |
| Soft benefit-cost analysis and integrated analysis | + | United States, European Commission, Australia, New Zealand, Canada |
| Cost-effectiveness analysis | = | Australia, United States |
| Partial analyses | + | European Commission, United States, Canada, Australia |
| Risk Assessment and Uncertainty Analysis | - | United States, Australia |

Canada now needs a clear strategy to reach a sustainable level of RIA quality based on the institutionalization of capacities and incentives within the machinery of government. The recommendations for Canada are:

RIA Processes

Targeting and Scope of RIA

Canada should clarify its targeting strategy for more consistent and transparent application. It should then elaborate more clearly the various standards of analysis for categories of regulations. Good practice suggests that regulations of high significance should have monetized estimates of all important costs, at minimum, and quantification of all important benefits. Regulations of high significance also should examine more options, and contain more detailed information on risks.

Public Consultation Processes Associated with RIA

Canada's new consultation strategy could learn from international trends toward mixed consultation methods. Earlier and informal forms of consultation with key stakeholders should be followed by a multilayered consultation process based on minimum and consistent standards, and combined with tailored approaches geared toward more intensive dialogue and higher quality data collection.

Data Collection Methods and Data Quality Standards

The new regulatory policy should develop more stringent data quality standards for RIA and should encourage the use of scientific peer review when data are critical and highly uncertain.

Strengthening the Challenge Function From a Central RIA Watchdog

The challenge function is currently too weak in Canada. The draft directive makes some progress toward correcting this weakness, but is inadequate to create the stronger incentives and control processes that are being implemented in other countries. Even under the Directive, there is no apparent penalty for departments who fail to prepare adequate RIAs, fail to consult adequately with the Privy Council Office (PCO), or fail to respond to PCO comments. Canada should further strengthen the authority of the Regulatory Affairs Division, Privy Council Office (PCO-RAD), to require a minimum level of quality before an RIA goes to the Cabinet, and that a department unable to comply explain to the Cabinet why it is unable to meet minimum standards. Canada should also consider adopting the practice used in other countries to be more public in the RIA review process by making public RAD's formal comments to departments.

Involvement in RIA by Other Institutions

Canada ranks in the middle of its peers with respect to setting up a network of mutually supportive institutions around the good regulation agenda. There is no business advisory group on regulation who consistently monitors regulatory and RIA quality. There is no formal and structured network at the departmental level. Canada should consider whether a richer and more diverse set of institutions focussed on the quality of regulations and RIA could assist in sustaining this agenda.

Early Planning and Preparation of RIA

There seems to be potential for better and earlier starts to the RIAs. The annual Report on Plans and Priorities is a potential vehicle for beginning the RIA and for setting priorities. In addition, the practice in several countries to require an early screening RIA is one that Canada should consider to support a policy for proportional analysis and to open the way for earlier and more meaningful public consultation on alternatives and regulatory design.

Monitoring Compliance Followed by Public Reporting of Performance

Canada has no equivalent to the monitoring and reporting practices in several of its peer countries. Accountability for RIA performance should be boosted. By monitoring and reporting on RIA performance. Along with stronger RIA quality control, the PCO should develop a scorecard for RIA, and monitor performance

through a compliance database. Performance by regulator should be publicly reported at least annually.

Expert Scrutiny from Scientific Peers

The Canadian government might consider a more organized and top-down approach to peer review of technical material to ensure that good peer review practices are used and that scarce scientific resources are used efficiently. For example, a peer review group that built up expertise in a particular area, such as risk assessment or data quality, might produce better review results at lower cost than a series of ad hoc peer review groups scattered through the public administration.

Improving Ministerial Accountability

Canada is in the forefront in this area, and no recommendations are made for improvement.

More RIA Training

Training seems to be an area where the PCO could make a very effective contribution. The Irish approach to drawing up a training strategy for RIA might be an effective way of attracting more training resources to RIA, upgrading the quality and consistency of RIA training government-wide, and ensuring that good practices around the world are transmitted quickly and efficiently to Canadian civil servants.

Improving Written Guidance on RIA

The current RIA guidance used in Canada is among the oldest in any of these countries. Rewriting the 1995 guide should be a high priority in Canada.

Providing Helpdesk Assistance

Canada has been in the mainstream in this area, but will quickly fall behind as other countries increase quality standards for analysis. Once the skills and capacities of the PCO-RAD have been enhanced to support a challenge function, the PCO-RAD should consider formalizing the helpdesk function.

Data Collection Methods and Data Quality Standards

Canada's RIA program neglects the data collection and data quality issues. As part of its new regulatory policy, Canada should develop a data collection and data quality standards. The data collection strategy should include issues such as the creation and use of public-private partnerships; guarding against data capture; and reducing data collection costs. Data quality standards should rely on standards already in use by Canada's peers, and should aim to base RIA on high-quality information that boosts the credibility, transparency, and usefulness of RIA.

RIA Methods

Soft Benefit-cost Analysis and Integrated Analysis

- Canada should affirm that federal RIA will be based on the integrated analytical framework now used by its most advanced peers: a soft benefit-

cost analysis (BCA) in which quantitative and qualitative metrics for economic, social, and environmental impacts are combined and presented systematically. RIA should become the framework through which trade-offs are identified and benefits are maximized across a range of policy objectives. This framework produces the most rigorous, transparent, and consistent information for public policy decisions, and, because it emphasizes the need to present all major benefits and costs, is consistent with high standards of environment will, health, and safety protection.

- Canada should re-affirm the core RIA principles used in Canada for 20 years: regulations shall maximize net benefits and least-cost solutions shall be chosen.
- Analytical standards for RIA should be improved through more quantification, more precise requirements, and higher quality data for the most important regulations. This might require more careful targeting or an earlier start on RIA.

Cost-effectiveness Analysis

- There is no dispute among any of the most advanced countries that regulators should choose the lowest cost option needed to achieve the results. Any RIA policy should state that alternative approaches should be chosen on the basis of cost-effectiveness.
- Canada's 2005 draft guide calls for regulators to "identify the appropriate instrument or mix of instruments" but does not contain a clear analytical criterion to guide the choice of alternatives. This lack of clarity is supposed to be remedied with a new "Instrument Choice Framework" to be developed by the Privy Council Office. The new Instrument Choice Framework should contain clear and consistent criteria for the choice of alternatives to guide regulators.

Partial Analyses

- The Canadian government should maintain its current approach in assessing distributional affects, that is, requiring regulators to identify in general who pays the costs and who receives the benefits of the regulatory measure, rather than requiring more specific analysis of vulnerable groups.
- Canada should continue to avoid the mistake made by other countries that the RIA assess the macroeconomic impacts of individual regulations.
- Canada's current policy and a new draft policy seem to have mostly escaped the danger of fragmentation into partial analyses. However, as also noted, the analytical criteria and rigour needed to provide a transparent assessment of the various costs and benefits are not yet sufficiently defined in the 2005 draft policy. Canada should avoid the risk of biased and partial analyses by reaffirming that all specific impacts will be integrated into a

larger analytical framework, as the European Commission and the United States have done.

Risk Assessment and Uncertainty Analysis

- Sensitivity analysis, or uncertainty assessment, should be included as a technique to refine the expected future benefits and costs, but should not replace soft BCA as the analytical framework.
- In 2000, Canada adopted a detailed Integrated Risk Management Framework, but risk assessment scarcely appears in the framework, and is almost invisible in the 1995 RIA guide. In future versions of the RIA guide, risk assessment of environmental, health and safety risks should be elaborated as an input into the analytical framework.
- The clear distinction between precaution as a policy choice and RIA as an analytical tool should be maintained in the final Directive on Regulating.

RIA and Regulatory Co-operation

- Consistent with the approach in Australia, Canada should consider paying more attention in the RIA structure on assessing optimal levels of government for action, looking down (intergovernmental) and up (international). This could be a useful way to open the door to examining new co-operative relationships. Such an extension of RIA would require, at minimum, RIA training and guidance materials developed in co-operation with federal-provincial-territorial governments, and agreement on the method to be used to assess intergovernmental and international policy alternatives.
- Canada should prepare sample benefit-cost analyses of selected regulatory co-operation arrangements to demonstrate the methods and data collection strategies necessary for this work. Such pilot RIAs will help identify practical constraints to using RIA more broadly to assess these options.
- The EU-US forum on regulatory reform might usefully become a trilateral rather than a bilateral forum, in which Canada participates.
- Canada might consider proposing a US-Canada protocol on working arrangements between RIA reviewers (PCO, Office of Management and Budget (OMB)) in sharing RIAs with strong North American impacts. This sharing could be done initially as a kind of fact checking to see that impacts are understood, and then as a means of generating new ideas for lower-cost and more efficient forms of regulation.

I. Introduction: RIA as a Global Norm

1. In 1978, the Canadian federal government required “Socio-Economic Impact Analysis” for important regulations. In adopting this reform, Canada became one of the first countries in the world to mandate a systematic program of regulatory impact analysis (RIA). Canada’s current Regulatory Policy (1995, slightly modified in 1999) states that the intent of analysis is “to ensure that use of the government’s regulatory powers results in the greatest net benefit to Canadian society.”

2. Since Canada first adopted RIA, in response to widespread pressures for more effective and efficient governance, regulatory impact analysis (RIA) has become a global phenomenon. (See the spread of RIA in Annex 1.) In the mid-1990s, international bodies – the OECD, the WTO, and the European Commission – began to call for empirical methods of decision-making, or explicitly for RIA. Since then, some 23 of 30 OECD countries have adopted formal policies mandating the use of RIA in domestic policy-making. Today, RIA has become a norm of democratic governance in modern industrialized countries which are integrated into global trade and investment markets. As the techniques of RIA have developed, non-OECD countries are also beginning to adopt RIA, largely due to competitiveness pressures.

3. Canada was an RIA pioneer in this global movement, but Canada does not seem to be keeping up with the best international advances in the processes or methods of RIA. Concerns about the quality of RIA in Canada have been voiced over the past few years. A draft Government Directive on Regulating (2005), while responding to some of these concerns, raises new concerns about the future coherence and effectiveness of RIA policy. Moreover, the use of RIA methods to promote good decision-making in the critical cross-border regulatory issues that increasingly arise in the trade, environmental, health, and numerous other policy areas has been extremely slow in Canada.

4. Since 1980, RIA has been one element in the rapid development of the craft of good regulation, one of the distinguishing characteristics of modern public management. In Canada, as in other countries, RIA has evolved from narrow technical methods aimed at cutting costs toward more flexible and sophisticated techniques of problem-solving aimed at fostering a richer and more informed public debate about important public policy issues. The “smart regulation” movement is aimed at improving the performance of the “regulatory state” that is under pressure everywhere to produce more results at lower cost. Under this pressure, the scale of investment into RIA is substantial and growing. UK regulators, for example, produce 200 RIAs each year. The European Commission produced no RIAs in 2001, but in 2005, all initiatives (about 100) in the Commission’s Legislative and Work Programme were accompanied by RIAs. In the US federal government, of the 113,798 final rules adopted since 1981, 20,393 regulations were prepared with some kind of RIA for review by the OMB. Of these, some 1,119 were considered major and were to be accompanied by full benefit-cost analyses.

5. The Sputnik effect also continues to drive RIA. That is, while all of the countries reviewed in this report have high standards of social and environmental protection that they intend to protect, the strong competitiveness driver behind RIA is intensifying, not abating:

- In Australia, the business community noted in 2005 that “Many other countries have recognised the need to reform business regulation to keep their businesses competitive. If Australia does not match these efforts, we will fall behind and economic growth will slow.”¹
- In the United Kingdom, estimates of the cost of regulation to the UK economy of between 10%-12% of GDP – or over £100 billion p.a. – is, in 2006, driving a much more aggressive and top-down regulatory reform strategy, in which RIA and new methods of cost measurement are playing central roles.
- In late 2005, the Swedish Board of Swedish Industry and Commerce for Better Regulation stated that “the Swedish Government and Opposition alike see simplifying business regulations as a key issue of economic policy” and recommended that Sweden adopt “a new system of Regulatory Impact Analyses that gives decision-makers considerably better documentation for their decisions.”
- In Europe, the UK Presidency of the European Union stated in 2005 that “Reducing burdens on business by legislating better, reviewing and simplifying existing EU legislation and using alternatives to regulation will play an important role in strengthening competitiveness.”² The first strategy in the European Commission’s “Better Regulation for Growth and Jobs” was “further promoting the design and application of better regulation tools at the EU level, notably ... impact assessments and simplification....”³

6. The competitiveness driver is having both positive and negative effects on the evolution of RIA. On the positive side, competitiveness worries are drawing political attention to RIA as a potential solution to maintaining high levels of protection while promoting economic performance. On the negative side, such concerns are driving RIA into narrower varieties of business impact analysis, such as small business tests and administrative burden analysis, which are not in themselves reliable as guides to public policy decisions. There are good lessons here for Canada, which has a distinct tradition of balancing environmental and economic/social issues in policy-making, rather than narrower values of cost reduction. An integrated framework based on benefit-cost analysis is a better fit to Canadian values than narrower and less integrated RIA methods, as discussed below.

7. To provide a benchmark for how Canada is using RIA today, and to identify any gaps or weaknesses in current Canadian RIA policies, this report assesses

international trends in key regulatory process and methodological developments, focussing on three issues:

- Regulatory management and RIA processes;
- Methods of regulatory analysis, including the strengths, limits, and trends in analytical methods, data requirements, and the design of technical guides to regulatory analysis;
- Requirements for international regulatory co-operation.

8. This report draws conclusions for Canada’s use of RIA in its domestic and international policy-making at the federal level. Its conclusions sometimes parallel earlier reviews of Canada’s RIA performance, but some key conclusions are much more negative. The reason for this is that good RIA practices are quickly evolving, so quickly that what was best practice yesterday can be average practice today and lagging practice tomorrow. Regulatory reform today is the most dynamic element of public management, and just tracking the changes is a full-time job.

9. This paper is based on current RIA practices in seven selected OECD countries (including Canada), the European Commission, and one American state that recently published a new RIA guide. Assessment of each topic is structured around two elements. In each section, current practices and trends are generalized and interpreted, and implications for Canada are clarified. This assessment is followed by a table summarizing practices in each of the countries included in this report. The text focuses only on the key issues, but the tables provide a more complete picture that the reader can use to quickly compare practices among these countries. The conclusion then summarizes the recommendations.

10. The primary sources were the following 43 documents and guidelines, most of which date from 2004-2005, while other sources are cited in the footnotes.

Table 1: Primary Sources by Country

| Country | Reference documents used in this paper |
|------------------------------------|---|
| Australia, Commonwealth Government | <p>Productivity Commission (2005) <i>Regulation and its Review 2004-05, Annual Report Series</i>, Canberra.</p> <p>Office of Regulation Review (1998) <i>A Guide to Regulation</i>, Second Edition: December.</p> <p>Council of Australian Governments (2004) <i>Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies</i>, Endorsed by COAG April 1995, Amended by COAG June 2004.</p> <p><i>Protocol Between the Australian Government Office of Regulation Review (ORR) and the Regulatory Impact Analysis Unit of New Zealand’s Ministry of Economic Development (RIAU)</i> September 2004.</p> |

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| | <p>Argy, S., and Johnson, M. 2003, Mechanisms for Improving the Quality of Regulations: Australia in an International Context, Productivity Commission Staff Working Paper, July.</p> <p>Canadian External Advisory Committee on Smart Regulation (2004) <i>Regulatory Management Practices in Australia</i>, from a series of papers on regulatory management practices in selected OECD countries.</p> |
| Australia, Victoria State Government | <p>State of Victoria Department of Treasury and Finance (February 2005) <i>Victorian Guide to Regulation, incorporating Guidelines made under the Subordinate Legislation Act 1994</i>, Melbourne</p> |
| Canada | <p>Treasury Board Secretariat (August 1995) <i>Benefit-Cost Analysis: Guide for Regulatory Programs</i>, prepared by Consulting and Audit Canada, Ottawa</p> <p>Government of Canada (November 1999) <i>Regulatory Policy</i>, Privy Council Office, with the Regulatory Process Management Standards in Appendix B (slightly modified from the 1995 policy).</p> <p>Privy Council Office Regulatory Affairs Division (June 2004) <i>Regulatory process guide: developing a regulatory proposal and seeking its approval</i>, Ottawa.</p> <p>Government of Canada (2005) <i>Government Directive on Regulating, draft prepared for comment</i>, Draft released for consultation at http://www.regulation.gc.ca/docs/smartregint/gdrfinalv4_e.pdf.</p> <p>Canada. External Advisory Committee on Smart Regulation (September 2004) <i>Smart Regulation: A Regulatory Strategy for Canada</i>, Ottawa.</p> <p>OECD (2002) <i>Canada: Maintaining Leadership Through Innovation</i>, Chapter 2, Government Capacity to Ensure High Quality Regulation, Paris.</p> |
| European Commission | <p>European Commission (15 June 2005) <i>Impact Assessment Guidelines</i>, SEC (2005) 791, Brussels</p> <p>Commission of the European Communities (2005) <i>Better Regulation for Growth and Jobs in the European Union</i>, Communication from the Commission to the Council and the European Parliament, Brussels, 16.3.2005, COM(2005) 97 final.</p> <p>Commission of the European Communities (2005) <i>Annex to the Communication on Better Regulation for Growth and Jobs in the European Union. Minimising administrative costs imposed by legislation. Detailed outline of a possible EU Net Administrative Cost Model</i>, Commission Staff Working Document, {COM(2005)97 final}.</p> <p>Commission of the European Communities (2004) <i>Report from the Commission "Better Lawmaking 2004."</i> Brussels, 21.03.2005, COM(2005) 98 final (12th report).</p> <p>European Commission (2002) <i>Communication from the Commission: Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission</i> Brussels, COM(2002) 704 final.</p> |

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| | <p>Commission of the European Communities (2004) <i>Commission Staff Working Paper: Impact Assessment: Next Steps. In support of competitiveness and sustainable development</i>, Brussels, 21.10.2004, SEC (2004) 1377.</p> <p>Andrea Renda (2006) <i>Impact assessment in the EU: the state-of-the-art and the art of the state</i>, Center for European Policy Studies, Brussels.</p> <p>Italian, Irish and Dutch Presidencies of the Council of the European Union (May 2004) <i>A Comparative Analysis of Regulatory Impact Assessment in Ten EU Countries</i>, Report Prepared for the EU Directors of Better Regulation Group, Dublin.</p> |
| Ireland | <p>Department of the Taoiseach (July 2005) <i>Report on the Introduction of Regulatory Impact Analysis</i>, Dublin.</p> <p>Department of the Taoiseach (October 2005) <i>How to conduct a Regulatory Impact Analysis</i>, Dublin.</p> |
| New Zealand | <p>Business Compliance Cost Statements: Guidelines for Departments, Wellington, June 2001</p> <p>New Zealand Regulatory Impact Analysis Unit (undated) <i>Process for the Regulatory Impact Analysis Unit's Views on Adequacy of RIS/BCCSs to Be Included in Cabinet Papers</i>, Wellington.</p> <p>New Zealand Ministry of Economic Development (undated) <i>Hints & Tips for Writing a Regulatory Impact Statement / Business Compliance Cost Statement (RIS/BCCS)</i>, Wellington.</p> <p>Cabinet Office (2001, last updated: September 2005) <i>Step by Step Guide: Cabinet and Cabinet Committee Processes</i>, Department of the Prime Minister and Cabinet, Wellington.</p> <p>Ministry of Economic Development (1999) <i>A Guide to Preparing Regulatory Impact Statements</i>, Quality of Regulation Team, Competition and Enterprise Branch.</p> |
| Sweden | <p>Swedish National Audit Office (2004) <i>Regulatory Reform for Enterprises RIR 2004:23</i>, 18 October 2004.</p> <p>Swedish Ministry for Industry, Employment and Communications (February 2005) <i>The Swedish Government's Action Plan to reduce administrative burden for enterprises</i>, Stockholm.</p> <p>Board of Swedish Industry and Commerce for Better Regulation (NNR) (September 2005) <i>How high is the quality of the Swedish central government's Regulatory Impact Analysis (RIAs) in the business sector?</i> The NNR Regulation Indicator for 2005, Stockholm</p> |
| United Kingdom | <p>UK Cabinet Office Better Regulation Executive (BRE) (2005) <i>Regulatory Impact Assessment Guidance</i>, published on website of BRE.</p> <p>UK Better Regulation Task Force (2005) <i>Better Regulation – from design to delivery</i>, Annual report 2005, at</p> |

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| | <p>http://www.brc.gov.uk/publications/designdelivery.asp.</p> <p>UK Cabinet Office, Regulatory Impact Unit (January 2003) <i>Better Policy Making: a Guide to Regulatory Impact Assessment</i>, London.</p> <p>UK Better Regulation Task Force (March 2005) <i>Regulation - Less is More. Reducing Burdens, Improving Outcomes</i>, A BRTF report to the Prime Minister, London.</p> <p>UK Cabinet Office Better Regulation Executive (14 September 2005) <i>Measuring Administrative Costs: UK Standard Cost Model Manual</i>, London.</p> <p>UK National Audit Office (2005) <i>Evaluation of Regulatory Impact Assessments</i> Compendium Report 2004-05, Report by the Comptroller and Auditor General, HC 341 Session 2004-2005, 17 March 2005.</p> |
| United States | <p>US Office of the President (1993, 2002) <i>Regulatory Planning and Review</i>, Executive Order 12866, as amended by E.O. 13258 (67 Fed. Reg. 9,385 (2002)).</p> <p>Office of Management and Budget (2003) <i>Circular A-4, Subject: Regulatory Analysis</i>, Washington, D.C.</p> <p>Office of Management and Budget (January 9, 2006) <i>Proposed Risk Assessment Bulletin</i>, Washington, D.C.</p> <p>US Office of Management and Budget, Office of Information and Regulatory Affairs (2005) <i>Validating Regulatory Analysis: 2005 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities</i>, Washington, D.C.</p> |
| Other Sources | <p>Claudio M. Radaelli (2002) <i>The Politics of Regulatory Impact Analysis in the OECD Countries: Best Practice and Lesson-Drawing</i>, Delivered to the Workshop on Regulatory Impact Analysis in Comparative Perspective, ESRC Programme on The Future of Governance, CARR, LSE, London, 11 March 2002.</p> <p>OECD (2002) <i>Regulatory Policies in OECD Countries: From interventionism to regulatory governance</i>, OECD, Paris.</p> |

II. Current Problems With RIA Quality: The U-shape of Mainstreaming

11. Problems with RIA implementation had been well-known since RIA became a field of study in the 1990s. No government has been able to resolve all problems: indeed, as RIA becomes more studied, more integrated into policy processes and more mainstream, documented problems with RIA quality seem to be increasing.

12. Based on the experiences that we are seeing in the most advanced countries, it seems probable that evolution in RIA quality is not a linear upward trend, but actually follows a U-shaped curve. In the early years, relatively few RIAs were conducted, but were conducted under the scrutiny of a small cadre of RIA experts. As RIA becomes integrated into general policy processes, it is carried out by a larger and larger group of people with fewer skills. In this period of expansion, the quality of RIA seems to be declining. At some stage – the consolidation stage – the training and other quality control mechanisms catch up with the expansion, and the quality of RIA begins to rise again.

13. This cycle is probably also triggered by periods of lesser and greater political emphasis. RIA skills are rapidly lost in the normal dynamic of the civil service, and hence periods of neglect result in declines in quality before building again to higher levels of quality. Finally, RIA quality probably reaches a plateau once a critical mass of training, incentives, and quality controls is institutionalized into the machinery of government.

14. Many of the trends in RIA methods and processes that are documented in this report are actually attempts by governments to address the “mainstreaming” problems of RIA quality. The most advanced countries have succeeded in expanding RIA into policy processes, and are now engaged in a period of consolidation to institutionalize the tools needed to boost the quality of the RIA product (both processes and methods). Canada still seems to be in the phase of cyclical U-shaped curves, and has not yet reached a steady plateau. Some of the reasons for this are discussed in this paper.

15. Table 2 summarizes the criticisms currently being leveled at the quality and effectiveness of RIA. These criticisms must be understood in the context of the growing number and scope of RIA. Some of these criticisms suggest unrealistic expectations of what RIA can accomplish, but others seem perplexing in light of the commitment and investments that these governments have made in RIA over the past several years. These kinds of problems can often be understood as “mainstreaming” problems. In summary:

- In two governments, Australia and the European Commission, the quality of RIA seems to be declining. This remarkable development seems to have similar causes. In the European Commission, the decline is clearly due to the “mainstreaming” of RIA through a public administration unprepared to implement it. This is the lower part of the U-shaped cycle. In Australia, the decline appears to be due to more intense monitoring and broader application,

which has not been accompanied by sufficient investment in oversight and skills. Both governments are taking concrete steps to reverse the trend.

- The quality of analysis continues to disappoint. In country after country, RIA does not quantify enough impacts, and does not rigorously examine alternatives. Quantification of benefits is an enormous problem affecting the majority of RIAs in every country. Part of the reason for this seems to be a lack of investment in skills and incentives, as discussed, and part seems to be inattention to key constraints on good quality analysis, particularly the availability of good data at affordable cost. Another problem is ineffective prioritization, or targeting, of RIA resources. This is discussed at length below.
- There is no country in which the assessment of alternatives to classical forms of regulation is considered to be adequate. Indeed, in no country has this part of RIA ever been adequate. This suggests that this problem is not a cyclical problem, but a structural problem. The structural problem is probably that regulators simply do not have enough information to adequately assess alternatives because there is insufficient experience and case-study data on alternatives to allow analysts to assess key variables. For example, how do consumers react to new information? How do producers react to new incentives? How will new institutions such as self-regulators work in monitoring the market? More investment in case studies, evaluation, and analytical criteria for assessment of alternatives are needed to help regulators do a better job in this area.
- Complaints that regulatory costs are growing are probably accurate, but it is unrealistic to expect that RIA would reduce regulatory costs on net. Pressures for more regulation are constant and unrelenting in every country. RIA does not address the root causes of regulatory growth, and hence will be ineffective in stopping it. In some countries, the desire to produce net reductions has led to radical solutions. In 2005, the United Kingdom adopted a “one in-one out” approach in which the RIA must find compensating reductions in regulatory costs. The Netherlands and other countries have adopted radical cost reduction targets for administrative burdens. Whatever the merits of these approaches, they miss the real benefits of RIA: increasing the benefit-cost ratio of regulation. If RIA works well, societies should be getting more benefits for each dollar expended on regulation. The observation in the United Kingdom that “We found too few examples of better regulation in principle leading to less costly regulation in practice” is a quite legitimate and serious concern, because RIA should be leading to less costly regulation that produces more benefits.

16. There seems to be less independent evaluation of RIA in Canada than in any of the other countries included in this report, with the exception of New Zealand. The last evaluation of RIA commissioned by the Privy Council Office was in 2000. The OECD review in 2002 and the Smart Regulation report in 2004 were not able to adequately evaluate the details and contents of RIAs to reach any conclusions about their quality. However, anecdotal evidence suggests that Canada is not

exempt from the same patterns that are seen in other countries with respect to difficulties in quantification and inability to adequately assess alternatives.

17. What should be ahead for Canada is a clear strategy to reach a sustainable plateau of RIA quality based on the institutionalization of capacities and incentives within the machinery of government. This paper identifies some strengths and weaknesses of the current Canadian RIA system that should be considered in the move to the next phase in which Canada converges with the best RIA practices of its peers in the international economy.

Table 2: Problems with RIA

| Country | Date | Reviewer | Findings |
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| Australia, Commonwealth | 2005 | Productivity Commission In 2004-2005 | <p>In 2004-05, compliance by regulators with the RIA requirements was lower than in previous years.</p> <p>RIAs were prepared for only 84% of the 85 regulatory proposals that required them. Of those prepared, three were assessed as inadequate, giving an overall compliance rate of 80% (compared with 92% in 2003-04).</p> <p>Of the 19 Australian Government departments and agencies that were required to prepare RIAs in 2004-05, only 10 were fully compliant (compared to 18 of 24 in 2003-04 and 12 of 23 in 2002-03)</p> <p>Main reasons for non-compliance include:</p> <ul style="list-style-type: none"> • poor understanding of requirements and the broad scope of application; • poor understanding of the regulatory impacts of national decisions; • lack of contact with the ORR before consultation takes place and prior to decision making; and • failure to follow ORR advice. |
| | 2003 | Argy, S., and Johnson, M., Productivity Commission | <p>... Indicators suggest that the volume of Commonwealth regulation is continuing to grow — both in terms of the number ... and the average length Much of the growth appears to be in forms of regulation not subject to Parliamentary scrutiny, and perhaps also more likely to slip through the Regulation Impact Statement (RIS) net.</p> <p>... the standard of analysis in many RIAs, particularly of compliance costs and small business impacts, needs to be improved.... At present RIAs usually contain a relatively brief, and typically qualitative, assessment of the compliance cost burden.</p> <p>... there is a noticeably lower compliance rate for the more important regulatory proposals ...</p> |

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| | May 2005 | Business Council of Australia report on business regulation. | <p>The volume of regulation is growing by about 10% per year.</p> <p>Many regulations are not scrutinized properly and give rise to a range of unintended and undesirable impacts and costs on business and the community.</p> |
| Canada | 2000 | Regulatory Process Management Standards Review (from RAOICS) | Areas where improvements could be made included better prioritizing of regulatory proposals, improved capabilities to assess regulatory and non-regulatory alternatives and in conducting cost-benefit analysis, and more training. |
| | 2004 | Smart Regulation Report | In the current system, resources are not being used as “smartly” as they could. As a result, insignificant or low-impact proposals are subject to overly complex process requirements, while more significant proposals receive insufficient analysis. |
| European Commission | 2005 | Report from the Commission “Better Lawmaking 2004,” March | <p>A global reassessment of the needs and available resources [for regulatory reform] is required.</p> <p>... partly because of the increasing interest in regulatory reform, the problems of coordinating the different initiatives and respect for the prerogatives of each institution have grown ... the rationalization of structures and procedures is an issue which must be addressed as soon as possible.</p> <p>In 2004, the number of consultations increased significantly [but] the Commission still needs to make additional efforts on feedback to respondents and ... transparency. “Consultation fatigue” on the part of some stakeholders and having to apportion limited advertising and analytical resources among too many consultations have become real risks in some sectors.</p> <p>The Commission increased the number of [RIAs] completed in 2004 (29 against 21 in 2003) as well as their overall quality [but] delivery remained a problem, with fewer impact assessments completed than initially planned. ...there needs to be a more systematic application of the current methodology across Commission services and greater focus on competitiveness issues.</p> |
| | 2005 | Chair, Better Regulation Task Force, UK | We are aware that the number and quality of RIAs that the Commission has produced is improving. |

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| | 2006 | Andrea Renda, Centre for European Policy Studies | <p>Of the 70 extended impact assessments completed before July 2005, only a few quantified or monetized the expected costs and benefits.</p> <p>A number of problems have emerged: organizational problems (institutional conflict, excessive transactions costs, exposure to third-party capture), limited consultation, insufficient training of the Commission's employees, etc.</p> <p>The quality of Extended Impact Assessments performed by the Commission during the first years of implementation of the new IIA model has been consistently and remarkably declining</p> |
| | 2005 | UK Better Regulation Task Force | <p>Although there is increasing awareness that considering alternatives is a vital part of good policy-making, not enough is known about the range of options available and where they have been used.</p> <p>Some reluctance amongst officials and MEPs to consider flexible, non-legislative options.</p> |
| | 2005 | UK Better Regulation Task Force | <p>Both the Commission and its stakeholders could do more to promote a genuine dialogue.</p> <p>Many consultation exercises fail to meet the Commission's minimum standards and compliance is patchy both between and within Directorates General.</p> <p>The Commission fails to disclose how well it is meeting its own standards for consultation</p> |
| Ireland | RIA program began in 2005. No evaluation yet | | |
| New Zealand | 2005 | NZ Regulatory Impact Analysis Unit ⁴ | Many RIS/BCCSs are not meeting the publication requirements. |

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| Sweden | 2004, 2005 | Swedish National Audit Office, response to Riksdag mandate to speed up regulatory simplification | <p>Inadequate effort to simplify existing regulations.</p> <p>Inadequate knowledge about sources of regulatory burdens.</p> <p>Lack of clarity about roles in checking RIAs.</p> <p>No comprehensive picture of work to simplify regulations.</p> <p>Low standard of RIA due to a lack of quality control and sanctions; questions in the analysis chart do not give sufficient guidance or are not relevant</p> |
| | 2005 | Board of Swedish Industry and Commerce for Better Regulation (NNR) | <p>In general, compulsory RIAs are still of inferior quality.</p> <p>(2005) There have been improvements for 10 of the 11 quality factors measured. Unfortunately, this is happening ... from embarrassingly low levels, and mostly for variables that are relatively simple to change. The paramount aspects, such as costs to businesses, are still inadequately clarified.</p> <p>Total costs are reported in 9% of cases, against 5% in 2004.</p> <p>The proportion of cases in which the costs of the proposal for an individual company are reported is 17%, 10 percentage points higher than in 2004. ... only in a few cases do regulators attempt to elucidate their proposals' concrete effects on the companies concerned...</p> |
| | 2005 | Swedish Action Plan to reduce administrative burden for enterprises | <p>Impact assessments have been criticized as often being of low quality, done at too late a stage and even not done at all. ... the Government – which takes a very serious view of this criticism – will consider how the impact assessment method can and should be improved.</p> |

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| United Kingdom | 2004, 2005 | UK Better Regulation Task Force annual reports. | <p>9 out of 12 RIAs raised quality issues of concern (2004).</p> <p>Some RIAs were very difficult to get hold of (2004).</p> <p>Regulatory Impact Assessments are meant to describe the alternatives that have been considered, but often only one approach is considered (2004).</p> <p>Despite the UK being placed among the world's leaders in better regulation and even after eight years of intense BRTF activity, the volume, complexity and costs of regulation continued to grow. We found too few examples of better regulation in principle leading to less costly regulation in practice.</p> <p>The quality of impact assessments needs to be improved and they need to be used earlier and more strategically to influence decision-making and have credibility with stakeholders.</p> |
| | 2005 | UK National Audit Office. | <p>(Out of sample of 10 RIAs selected by Better Regulation Task Force) Eight of ten RIAs included some quantified assessments of costs. Only four RIAs out of ten quantified benefits.</p> <p>Some RIAs are produced after important decisions have been made.</p> |
| | 2005 | Tim Ambler, London Business School; Francis Chittenden, Manchester Business School. ⁵ | <p>There are only one or two examples of UK regulations being withdrawn as a result of the RIA system.</p> <p>The Small Business Service is a well-intentioned initiative but, like consultation, has added to the difficulty, partly due to the inexperience of its staff.</p> |
| | 2006 | Andrea Renda, Centre for European Policy Studies. | <p>The huge effort devoted by UK administrations in refining the RIA procedure has so far produced only limited visible improvements in the efficiency and accountability of the UK regulatory process.</p> <p>The cost-saving and efficiency-enhancing potential of the RIA model is still not confirmed by any empirical evidence.</p> |
| United States | 2004 | AEI-Brookings Joint Center for Regulatory Studies | <p>A significant percentage of the RIA do not provide some very basic economic information, such as information on net benefits and policy alternatives. For example, over 70% of the analyses failed to provide any quantitative information on net benefits.</p> |

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| | | | <p>There is no clear trend in the quality of cost-benefit analysis across time.</p> <p>There is a great deal of variation in the quality of individual cost-benefit analyses.</p> |
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III. Current Trends in Regulatory Policy, Processes and Management

III.A. Background: RIA as a Mechanism for Learning

18. Regulation is the defining characteristic of modern governance. Far from carrying out a deregulatory philosophy, the last 20 years has seen an explosion of regulatory functions of government. The modern democratic state is called the “regulatory state” for good reason. Most of the important public policy concerns facing governments – environment quality, consumer rights, definition of property rights, control of new technologies, and integration into global markets – are regulatory issues. The success of modern governance depends essentially on the performance of regulation.

19. The clearest lesson of the last 15 years is that modernizing the regulatory role of the state is a “good governance” agenda, not a narrow “deregulation” agenda. Regulatory reform has become a multifaceted strategy that includes better regulation, deregulation, re-regulation, simplification and institution-building (including public sector reforms). Regulatory reform is not about limiting the role of the state, but about re-defining the capacities and the role of the state to meet evolving needs. Governments must learn, for example, when and how to regulate in a market economy, not to abandon their legitimate roles in the face of market forces.

20. This is true not only at the national level but also at the international level. Regulations that cross borders are the sinews of the modern trade and investment system. This is easily seen in the development of free trade zones, which are essentially shared regulation zones, of which the most prominent example is the Single Market program of the European Union. The WTO is focusing on behind-the-border barriers, essentially regulations, in imposing increasingly strict regimes. In North America, NAFTA has important regulatory obligations in product standards, transport, and safety, while environmental and labour issues will be solved only by shared regulatory approaches.

21. This means that regulatory quality management must become as much a part of public management as have fiscal management and human resource management. The OECD, for its part, calls for a “pro-active ‘quality assurance’ role” for the regulatory functions of government.⁶ The Canadian government has called this agenda “smart regulation”, and promises in the new regulatory policy (due later in 2006) to “transition to a ‘life-cycle’ approach to regulatory governance” that appears to be based on a closer relationship between *ex ante* RIA, compliance monitoring, and *ex post* regulatory evaluation.

22. This kind of agenda requires substantial learning on the part of the public sector, as well as on the part of key stakeholders who interact in a new dynamic of public-private problem-solving and accountability. In this context, an important change in the function of RIAs can be seen in the past few years as it has become integrated into broader systems of results-oriented policy-making. In this kind of

system, the value of RIA is increasingly due to process rather than method. Functionally, RIA is now seen less as an analytical method of arriving at precise answers to quantitative questions, and more as a process of:

- asking the right questions in a structured format to support a wider and more transparent policy debate;
- systematically and consistently examining selected potential impacts arising from government action or non-action;
- communicating the information to decision-makers and stakeholders.

23. To restate this, RIA in contemporary use is not primarily a technical method for manipulating quantitative data, although an RIA contains important analytical components that require a certain level of skill and method. Rather, RIA is an extension of existing policy practices in many governments of asking the right questions, learning about the complexity of the problem and the consequences of action, and sustaining a richer and more productive public dialogue about options. That is, RIA is an evidence-based or scientific approach to decision-making. This process of asking, learning, and communicating through a systematic approach is the very core of a government that continually improves its capacities to solve the problems that face its citizens.

24. Essentially, RIA has become one of the methods through which societies speed up learning. Because it is an open and consultative technique, it stimulates social learning, in which various stakeholders involved in the issue gain a clearer sense of the options, and trade-offs, and the consequences of solutions, than in the past. Because it increases opportunities for debate, RIA contributes to the development of a degree of social consensus that allows difficult public policy decisions be made.

25. The essential question facing governments in their use of RIA, then, is: How can RIA be used most effectively to speed up learning in problem-solving? The answer to that question lies in the processes of RIA, and the techniques of RIA, which are discussed in the rest of this paper.

III.B. Processes for RIA

26. To answer those questions, this report reviews international trends in four elements of the RIA process:

1. Targeting and scope of RIA
2. Public consultation processes associated with RIA
3. Quality control through independent review and other disciplines
4. Data collection methods

27. These four elements were not chosen at random but are increasingly seen as the key design elements of an effective RIA program. For RIA to succeed in improving public policy, these four elements must work together within a systemic process. This point was clearly made in the 2004-2005 review by the UK's National Audit Office of UK RIAs. The review found that the RIAs that influenced policy were started early in the process, involved good consultation processes, and produced good assessments of the impacts of the policy proposals.⁷

28. This report tries to identify current trends in RIA processes and methods, rather than describing the practices of countries in a static sense. The practice of RIA is evolving so quickly that Canadian regulatory reformers are likely to find trends more relevant to future policy than practices at a particular point in time. Where trends can be seen in two or more important countries, Canada should take particular note, since this demarcates the probable direction of future reform.

III.B.1. Targeting and Scope of RIA

29. The most successful RIA programs are those that target scarce RIA resources to where they can do the most good. Current trends toward more targeting mean that every dollar spent on RIA has a bigger and bigger impact. The science of targeting is reviewed in this section.

30. Targeting does not mean opening loopholes for regulations. RIA has become more widespread at the same time that it has become more targeted, applying simultaneously to more regulations while a higher standard of quantitative analysis is applying to fewer regulations. This is accomplished through clearer application and elaboration of principles of "proportionality" and "significance":

- Light-handed RIA is being applied to more regulations. In most countries in this report, RIA has been generally applicable to most regulations for years. In the European Commission, however, RIA became a general requirement only in 2005 under a "proportionality" policy. The 2005 policy greatly expanded the scope of RIA. It is generally accepted now in all of the most advanced RIA countries that every regulation will undergo sufficient analysis to "allow for informed debate," as the European Commission puts it.

- In most countries in this report, standards of RIA quality and the depth of external scrutiny have increased significantly for the most important regulations. This selective targeting has shifted RIA resources to where they can do the most good.

31. Practice does not always follow good intentions. Canada's general policy of "proportionality" in RIA, in place since 1995, contains clear monetary triggers and tiered standards of analysis. Yet the 2004 Smart Regulation report concluded that RIA targeting was insufficient, leading to excessive costs for less important regulations. Similarly, the European Commission concluded in 2004 that the principle of proportionality had not been adequately implemented, leading to overly burdensome RIA procedures.⁸

32. The summary of targeting strategies presented in Table 3 shows that Australia, the United Kingdom, the European Commission, Ireland, New Zealand, and the United States are all using stricter and clearer targeting strategies, combined with higher analytical standards for important regulations. Most are using a monetary trigger to establish an objective threshold, in combination with subjective thresholds using words like "major" and "significant" applied to various kinds of impacts.

Table 3: Targeting of RIA

| Country | Targeting of RIA | Trends |
|------------------------------------|--|---|
| Australia, Commonwealth Government | <p>1998: Preparation of a Regulatory Impact Statement (RIS) is mandatory for all reviews of existing regulation, proposed new or amended regulation and proposed treaties involving regulation which will directly affect business, have a significant indirect effect on business, or restrict competition. In 1998, RIA was also required for “quasi-regulation.”</p> <p>2005: RIA is required for “new and significant” changes to existing regulatory proposals that impact on business. It is not required for proposals that do not impact on business or have only minor impacts on business.</p> <p>Classifying regulatory proposals provides a basis to apply the “proportionality rule.” The extent of RIS analysis should be commensurate with the magnitude of the problem and the likely impacts of any regulatory response.</p> <p>No specific guidance is provided on how “minor” should be defined. The criteria for classification are based on: the nature and magnitude of the problem and the regulatory proposals for addressing it; and the scope and intensity of the proposal’s impact on affected parties and the community. Impacts can be viewed from an economy-wide perspective, having regard to both their scope and intensity. The ORR classification involves just two categories – broad and narrow.</p> | <p>More targeting of “significant” changes and proportional analysis. More effort is being given to improving analysis of “significant” regulations.</p> <p>In 2004-05, RISs were required for 7% of new regulations, compared to 13% in 1999-2000.</p> |
| Canada | <p>(1995) RIA guide stressed importance of proportionality in the resources spent on analysis. A professional cost-benefit analysis should be undertaken for all proposals with a major impact (one whose estimated direct cost will be \$10 million or more, in present value terms), including quantitative estimates of costs and benefits.</p> <p>(2004) A “major” regulation is one that costs more than \$50M, or costs between \$100K and \$50M and has a low degree of public acceptance. A “significant” regulation has an annual impact on the economy of \$10M or more; or may adversely affect a sector of the economy, productivity, competition, jobs, the</p> | <p>Canada’s general policy of “proportionality” in RIA, in place since 1995, contains clear monetary triggers and tiered standards of analysis.</p> |

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| | <p>environment, public health or safety, provincial, local or Aboriginal governments; or creates a serious inconsistency or otherwise interferes with an action taken or planned by another federal department or agency; or materially alters the authorized levels of departments or budgetary impact of entitlements, grants, user fees, loans programs or the rights and obligations of recipients thereof; or raises novel legal or policy issues arising out of legal mandates or the governments' priorities.</p> | |
| <p>European Commission</p> | <p>(2002) Each new regulation required a preliminary impact assessment (PIA) and summary of the most important impacts. An extended impact assessment (EIA) was carried out for major legislation with “substantial” impacts.</p> <p>(2005) A two-stage process:</p> <p>The preliminary Impact Assessment has been transformed into a “Roadmap” to better inform other services and the public of the issue at hand, policy options, likely impacts, assessments and consultations to be undertaken, and their timing.</p> <p>The term “Extended” Impact Assessment has been replaced in the second step by the simpler “Impact Assessment”, in order to better reflect the principle of proportionate analysis and the fact that certain Impact Assessments may remain relatively limited also in the second stage.</p> <p>“An RIA need not involve a long and detailed study in every case.” Extent of analysis depends on “principle of proportionate analysis ... but should allow for informed debate in all cases.”</p> | <p>Significant expansion in the scope of RIA, combined with better targeting of RIA resources.</p> |
| <p>Ireland</p> | <p>(2005) To ensure that RIA is proportionate and does not become overly burdensome, the RIA model involves a two-phase approach. Regulations with relatively low impact are subject to a Screening RIA, a preliminary less detailed analysis. A Full RIA involving more extensive and detailed evaluation is applied to more significant regulations.</p> | <p>Two-phase approach is based on “significance” of several kinds of impacts, combined with monetary trigger.</p> |

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| | <p>A Full RIA must be conducted where the Screening RIA suggests that any one of the following applies:</p> <ul style="list-style-type: none"> (a) There will be significant negative impacts on national competitiveness (b) There will be significant negative impacts on the socially excluded or vulnerable groups (c) There will be significant environmental damage (d) The proposals involve a significant policy change in an economic market or will have a significant impact on competition or consumers (e) The proposals will disproportionately impinge on the rights of citizens (f) The proposals will impose a disproportionate compliance burden (g) The costs to the Exchequer or third parties are significant, or are disproportionately borne by one group or sector. Initial costs of €10 million or cumulative costs of €50 million over ten years (to include both enforcement costs borne by the State and compliance costs on business, consumers, etc.) should be considered significant. | |
| New Zealand | <p>(1999) A RIS/BCCS should be attached to all Cabinet and committee papers containing policy proposals that will result in government Bills, statutory regulations, or proposing that the government support or adopt a Members' bill.</p> <p>(2001) The level of quantification required will vary according to the importance of the proposal being analyzed, the availability of the necessary data, and the resource constraints.</p> <p>(2004) The level of analysis to be provided within an RIS must be commensurate with the likely impact of the proposal. For example, for a major regulatory proposal affecting a wide section of society, it may be expected that a formal cost-benefit analysis is provided within the net benefit discussion. On the other hand, for smaller proposals where there is likely to be a low impact, a lower level of analysis</p> | Stricter analytical standards for “major” regulations. |

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| | would be sufficient. ⁹ | |
| Sweden | <p>(1995) Regulators must prepare a problem and impact analysis for every regulatory proposal.</p> <p>(2005) No compulsory system for carrying out RIAs of the EU proposals for business regulations has been introduced.</p> | No targeting strategy, and no apparent trend. |
| United Kingdom | <p>RIAs must be completed for all policy changes, whether European or domestic, that could affect the public or private sectors, charities, the voluntary sector or small businesses. RIA affects any form of regulation – formal legislation, Codes of Practice, information campaigns, etc.</p> <p>The RIA should be proportionate to the likely impact of the proposal.</p> <p>A proposal requires an RIA if it is “significant,” that is if it falls into one or more of these criteria:</p> <ul style="list-style-type: none"> • the partial RIA suggests high costs (more than £20 million in any year); • the issue has high media topicality or sensitivity; • the issue is one on which the Better Regulation Task Force has reported or where there is Task Force work in hand; and • the proposal would have a disproportionate impact on a particular group, e.g., small businesses, charities or a particular ethnic group. | Clearer targeting strategy, with monetary trigger. Higher analytical standards for significant regulations. |
| United States | Prior to 1994: RIA and review applied to all regulations, more than 2,200 per year. | Much more stringent targeting strategy, reducing the rules needing full analysis, with more stringent |

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| | <p>1994: Significant rules fall to 900 per year when minimum thresholds are introduced for full RIA. RIA is required for all regulations to the extent needed to determine that benefits justify costs and if the rule meets the thresholds.</p> <p>Full cost-benefit analysis is required when rules:</p> <ul style="list-style-type: none"> • impose annual costs that are estimated to exceed US\$100 million or where rules are likely to impose major increases in costs for a specific sector or region, or have significant adverse effects on competition, employment, investment, productivity or innovation; • create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; • materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; • raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order. <p>2004-2005: Of 4,500 federal regulatory actions that occur on average each year, roughly 500 are judged to be “significant” and only about 70 are considered “economically significant.”</p> | <p>analytical quality standards for significant regulations.</p> |
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III.B.2. Public Consultation Processes Associated with RIA

33. Public debate is the most important learning tool in democratic governments. Public consultation is the means by which RIA fosters public debate. In Canada, as in all seven of the countries reviewed in this paper, RIA has become a cornerstone of the stakeholder consultation process on regulations. The Treasury Board Secretariat states that “encouraging stakeholder consultation early in the process is perhaps the most important feature of the RIA programme.”¹⁰

34. In the countries reviewed in this report, public consultation linked to RIA has become simultaneously more multilayered, which allows it to become both more open and more targeted:

- *More open* in the sense that RIA is pushing consultation to occur sooner, more systematically, and more transparently. For example, in 2002, the European Commission published a consultation communication¹¹ that lays out minimum standards of consultation, and in 2004 it reported that “Efforts to consult widely before proposing legislation reached record levels.”¹² The United Kingdom’s Cabinet Office reports that “We consult more extensively now than ever before. And, in the vast majority of cases, consultation periods are now at least 12 weeks long, enabling more time for responses and more people to be involved.”¹³ Ireland’s 2005 consultation policy states, “The introduction of RIA in Ireland means that public bodies will, in future, consult more widely and systematically.”¹⁴ In the United States, the United Kingdom, and the European Commission, draft RIAs are published on Internet sites for maximum public access. The record is far from perfect: in Sweden, only 48% of RIAs in 2005 reported on how consultation had occurred, up from 35% in 2004.¹⁵ In New Zealand, only final RIAs must be published on the Internet (since 2001).
- *More targeted* in the sense that some forms of consultation are structured to link information needs with particular stakeholders. Consultation with key stakeholders has become more structured in several countries, a welcome development given the difficulty of eliciting high quality information from the public. These structured approaches include test panels in Denmark, United Kingdom, Germany and the Netherlands, and focus groups (Sweden, Victoria State in Australia). The Victoria State RIA Guide (2005) states that preliminary consultation may occur through focus groups and briefing sessions with key stakeholders before deciding that a regulatory proposal is the most appropriate response to an issue. The European Business Test Panel (EBTP), an online survey asking companies representative of the European economy about certain areas of law, could be used in future for RIAs.

35. These newer multilayered consultation strategies – based on minimum and consistent standards but allowing more flexible adaptation – seem to be more effective and accessible than earlier consultation strategies based on standardized

consultation methods. The minimum standards for publication of RIA open up access by preparing the public to participate more effectively, while the more structured and tailored forms permit more intensive dialogue and better information collection. For example, the UK National Audit Office found in 2005 that “consultation was most effective where departments held ongoing discussions with stakeholders throughout the process, in addition to the formal consultations.”

36. The increased use of consultation has recently given rise, at least in Canada and in the European Commission, to concerns about consultation fatigue. But this concern probably has less to do with the quantity of consultation with the quality of consultation. Much of the consultation material that is released to the public is still turgid, poorly focussed, and difficult to understand. This point was made by the Chair of the UK’s Better Regulation Task Force in 2005: “We feel that the problem of consultation fatigue” could be mitigated if consultation exercises were better targeted in the first place and stakeholders could see that their responses had been listened to and had made a difference.”¹⁶

37. Accountability for responding to consultation is also improving. Regulators in Canada, the United States, the United Kingdom, Ireland (since 2005) and Sweden are required to give feedback on the answers received, explaining to what extent and how they have influenced policy development. The 2004 consultation code in the United Kingdom requires that regulators “clearly explain” how decisions have been reached. Responding to comments is not yet required in the European Commission.

38. The quality of consultation in Canada was considered to be a high point by both the OECD 2002 review and the Smart Regulation report of 2004. The OECD report found that “the effectiveness of consultation on decision-making was indicated by the number of times that changes were made in a regulatory proposal as it was being developed due to consultation.”

39. Despite Canada’s consultative culture, though, the Smart Regulation committee “often heard cases of dissatisfaction with consultation. There was concern, for example, that consultation occurred too late in the policy development process, that government consultation efforts were not coordinated or that certain stakeholders were at a disadvantage in dealing with the demands of consultation.”¹⁷

40. There is no question that Canada already enjoys a high level of openness and consultation. But the government could learn from international trends toward earlier and informal forms of consultation with key stakeholders, followed by a multilayered consultation process based on minimum and consistent standards, combined with tailored approaches geared toward more intensive dialogue and higher quality data collection.

Table 4: Public Consultation Processes Associated with RIA

| Country | Scope of consultation | Timing of consultation | Method of consultation | Limits on consultation | Trends |
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| Australia, Commonwealth Government | <p>1998: Consultation with affected parties is a key requirement of the entire RIS process.</p> <p>2005: Consultation should occur as widely as possible but at the least should include those most likely to be affected by regulatory action to provide feedback on the costs and benefits of regulation and on the RIA generally.</p> | <p>2003 (Argy): The Office of Regulatory Review (ORR) encourages departments and agencies to prepare and release a draft RIA for public consultation, but there is no requirement to do so and the practice is rarely followed.</p> <p>(2004) Consultation should occur when the course of regulatory action is being considered and a draft impact assessment statement is being produced.</p> <p>Consultation is required at an early stage with a light “consultation RIA.” Focus of the consultation RIA is on identification of the problem and objectives, and a preliminary assessment of feasible options. The second RIA for the decision-making stage should reflect the additional information and views collected from those consulted, and provide a more</p> | <p>No mandatory methods.</p> <p>1998: Consultation may be promoted through techniques such as: holding meetings; producing consultative/discussion papers; publicizing an intention to deal with a particular problem and inviting comment; or setting up working groups.</p> <p>1998: A consultation statement should be incorporated into an RIS. It should contain a statement identifying those consulted and outlining the main views expressed.</p> | <p>RIAs considered by Cabinet are confidential and not consulted.</p> | <p>More attention to earlier consultation on light RIAs, as well as on more finished proposals.</p> <p>Some reduction in quality of the “consultation” RIAs.</p> <p>No plans to further improve consultation.</p> |

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| | | complete and robust impact analysis. | | | |
| Canada | <p>1995 and 1999 Regulatory Policies require federal regulators to ensure that Canadians are consulted and that they have an opportunity to participate in developing or modifying regulations and regulatory programs.</p> <p>Current practice requires “open, transparent and balanced consultations on the development, implementation, evaluation and review of regulation.”</p> | <p>(1995, 1999) Consultations should begin as early as possible in order to get stakeholder input on the definition of the problem, as well as on proposed solutions.</p> <p>(2004) Communications Assessment and Communications Plan developed for each regulation</p> <p>(2004) Before drafting a regulatory proposal, it may be necessary to involve the public in defining the problem and identifying a solution. Early notice improves the regulatory process, as affected parties are more likely to accept regulations ... than ones imposed without early and genuine consultation. Early notification can be done through:</p> <p>Report on Plans and Priorities (RPP): Each department and agency must prepare a one-</p> | <p>A systematic and standardized “notice-and-comment” process called pre-publication, requires that draft regulations be published for at least 30 days, and 75 days if rule has international trade impacts, together with the RIA, in the <i>Canada Gazette</i>.</p> <p>Final RIA must contain a summary of any comments received and how they were handled.</p> <p>1995, 1999 Regulatory Policy: Regulatory authorities must clearly set out consultation processes. Authorities must be able to identify and contact interested stakeholders...If stakeholder groups indicate a preference for a particular consultation mechanism, they should be accommodated, time and resources permitting.</p> | | <p>More open, earlier, and accessible consultation</p> <p>Trend toward more proactive consultation and participation, rather than passive listening.</p> <p>Trend toward attempts to bring in a wider range of stakeholders.</p> |

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| | | <p>year RPP to be tabled in Parliament to advise Parliamentarians, and interested groups and individuals, of upcoming regulatory initiatives. At a minimum, departments should include “major” and “significant” 3 regulations in their RPP.</p> <p>Departmental Regulatory Plan: Departments should develop a website and/or other information vehicles on their regulatory plans.</p> <p>Notice of Intent: A regulator can launch consultations by publishing a Notice of Intent in <i>Canada Gazette</i></p> | | | |
| European Commission | (2003) Impact assessments must go hand in hand with wide ranging consultation allowing for sufficient time to receive the views of all stakeholders who wish to contribute to the shaping of new rules. | Choice of consultation tools will largely depend on who needs to be consulted, on what and on the available time and resources. These tools include consultative committees, expert groups, open hearings, ad hoc meetings, consultation via Internet, questionnaires, focus groups, seminars/workshops, etc. | <p>European Commission published in 2002 minimum standards of consultation:</p> <ul style="list-style-type: none"> • Without excluding other communication tools, open public consultations should be published on the Internet and announced at the “single access point.” • The Commission should provide sufficient time for responses. Commission should strive to allow at least | Consultation is not mandatory: “a situation must be avoided in which a Commission proposal could be challenged in the Court on the grounds of alleged lack of consultation of interested parties. Such an over-legalistic approach [is] incompatible with | More transparent and consistent consultation methods. Earlier planning for consultation and integration into RIA data collection. “Efforts to |

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| | <p>(2005) "...all relevant parties [should be] properly consulted" on all regulatory documents</p> <p>No legal requirements for specific consultation strategies.</p> | | <p>eight weeks for responses to written public consultations and 20 working days for meetings.</p> <ul style="list-style-type: none"> • Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on the Internet. <p>Each RIA must establish a Consultation Plan to ensure input from interested parties and experts. Identify:</p> <ul style="list-style-type: none"> • objective of consultation(s) • the elements of the IA for which consultation is necessary • target groups • appropriate consultation tool(s) • appropriate time for consultation(s) | <p>the need for timely delivery of policy, and with the expectations of the citizens that the European Institutions should deliver on substance rather than concentrating on procedures."</p> | <p>consult widely before proposing legislation reached record levels" in 2004.</p> |
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| Ireland | <p>(2005) Consult all key stakeholders.</p> <p>Consultation should be balanced in terms of seeking views from different interests.</p> | <p>(2005) Consultation should happen sufficiently early in the life of the particular proposal to allow the widest range of options to be considered.</p> <p>(2005) Informal consultation must be conducted as part of a Screening RIA. Consultation with key stakeholders should take place as early as possible in the RIA process. Usually, consult with:</p> <p>Consumer interests and the National Consumer Agency</p> <p>Government Departments</p> <p>Social Partners and</p> <p>Relevant industry groups.</p> <p>Competition Authority</p> | <p>(2004) Ireland needs greater consistency in our approach to consultation....</p> <p>RIA must summarise all views expressed and respond to these views.</p> <p>(2005) Different methods of consultation suit different situations... Using a variety of methods can help to attract different groups to participate in the process.</p> <p>Formal (structured) consultation is a compulsory part of a Full RIA...at an early stage in the impact analysis. Formal consultation is usually based on a written document, encompasses a wider population and involves a specific period for response.</p> <p>Final RIAs are published and available on Department websites. Public bodies should have a dedicated section for consultations on their websites.</p> | <p>Consultation code is not mandatory.</p> <p>No minimum consultation period is fixed by the consultation code</p> | <p>More open, earlier, and accessible consultation</p> <p>Trend toward more proactive consultation and participation, rather than passive listening.</p> <p>Trend toward attempts to bring in a wider range of stakeholders.</p> |
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| New Zealand | <p>(1997) Public consultation should occur as widely as possible, given the circumstances, in the policy development process.¹⁸</p> <p>(2001) Quality assurance should be provided by the external consultation process as when the BCCS is subject to scrutiny from key stakeholders.</p> | <p>No requirement for specific timing.</p> <p>(1999) It is important to design consultation programs to avoid unnecessary costs, and at a stage in the policy process that best allows the results of consultation to inform policy development.</p> | <p>No standard method required. The RIA should outline who has been consulted in developing the regulatory proposal.</p> <p>A range of consultative approaches are used in NZ, including departmental advisory bodies, secondment of personnel from the private sector, public discussion papers, multi-stakeholder negotiations, focus groups, targeted briefings, workshops, questionnaires, public notice and comment, hearings and Select Committees. The appropriateness of each approach depends on the issues under consideration, the nature of the group being consulted, and the resources (including time) available for undertaking the consultation.</p> <p>The final RIS/BCCS is published on the responsible agency's website and a link published on a dedicated area of the Ministry of Economic Development website.</p> | | Earlier consultation, but no clear trends |
| Sweden | Stakeholders are entitled to express their views on the matter and on the | Consultation with the businesses concerned should take place before the proposal is circulated for official | In 86% of cases in 2005, against 75% in 2004, the official review period lasted at least three weeks. | | No clear trend. Non-compliance with existing |

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| | <p>investigation of regulatory impact.</p> <p>Regulators must consult on any data collection with an organisation that represents the firms providing the data (yet this occurred for only 25% of cases in 2004)</p> | comment. | <p>Minimum standards for consultation are established. Sweden has a two-step approach to consultation:</p> <p>The initial phase is where a Committee or Commission of Inquiry writes a report with a draft legislative proposal in close co-operation with concerned parties. Often, the Government appoints experts from stakeholders such as business organisations, trade unions, agencies and ministries</p> <p>The Government then circulates the report to a wider circle of stakeholders asking for comments. The time for comments should be three months. The final legislative proposal includes the results of consultation, reasons for the proposals and RIA.</p> | | procedures is too high. |
| United Kingdom | Consultation needed on any regulation that needs an RIA, that is, for all policy changes, whether European | Consultation occurs at an early stage when a partial RIA is done, before the full RIA is completed. Use informal consultation at an early stage to help identify groups likely | A mandatory Consultation Code ¹⁹ (2004) sets out high standards for consultation, including a minimum 12-week consultation period. | The code does not have legal force, [but] it should generally be regarded as binding, unless | Longer consultation periods, more standardized consultation practices, more |

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| | <p>or domestic, that could affect the public or private sectors, charities, the voluntary sector or small businesses</p> | <p>to be affected.</p> <p>A partial RIA must accompany the public consultation. It should be informed by more discussions, data gathering and informal consultations.</p> | <p>As well as using the Internet, regulators should consult in ways most appropriate for the groups involved. Respondents should be able to respond electronically if they choose.</p> <p>The final RIA must summarise the results of the consultation exercise, responses received from different sectors or types of business and set out any changes made to the RIA following consultation</p> <p>Regulators must record all the responses received to consultation, write a summary of responses and publish it on the web site.</p> | <p>Ministers conclude that exceptional circumstances require a departure from it.</p> | <p>response to the public</p> |
| <p>United States</p> | <p>All regulations covered by consultation requirements</p> | <p>RIAs are required to be published for public comment at both the proposed and final stages.</p> <p>(1994) Consultation begins at an early planning stage with annual publication of the Unified Regulatory Agenda. Each agency prepares a Regulatory Plan of all regulations under</p> | <p>Each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.</p> <p>The “notice and comment” process mandated by the Administrative Procedure Act allows all interested members of the public to comment on the assumptions and results of</p> | <p>No limits. All regulations covered.</p> | <p>Slight trend toward earlier consultation to verify facts</p> |

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| | | <p>development or review, containing a brief summary of the action, alternatives to be considered and preliminary estimates of the anticipated costs and benefits.</p> <p>(2003) Early consultation can be especially helpful. You should not limit consultation to the final stages of your analytical efforts.</p> | <p>the RIA.</p> | | |
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III.B.3. Quality Control Through Independent Review and Other Disciplines

41. Just as ministries of finance watch over budget estimates and expenditures, and are backed up by audits and performance reviews, quality control is necessary if RIA is to be carried out at a reliable level of consistency and quality. Incentives to conduct good RIA are weak and often perverse in traditional civil services, where no one was ever promoted for deciding NOT to regulate. Many RIA failures have been traced to the lack of an effective quality control and incentives system in the civil service.

42. Canada has usually been considered to be a good performer in controlling regulatory quality. The 2004 Smart Regulation report found that “A strong point of regulatory reform in Canada is the emerging practice of regulatory quality management: the development of policies, tools and institutions aimed at continuously improving the quality of the regulatory environment.”²⁰ Six years ago, a review of the impact of RIA on decision-making and the development of regulations concluded that it had “changed the decision-making process,” and greater attention was being paid to benefits and costs and to alternatives.²¹

43. These conclusions might have been true at the time, but now seem unduly optimistic. This report finds that, in fact, Canada is lagging significantly behind in best practices and quality control. As noted below, it is hard to determine the effect of this on the actual quality of RIAs.

44. In response to disappointing quality, most RIA-related reforms in recent years have focussed on increasing oversight and quality control of RIA through several methods:

1. Strengthening the challenge function from a central RIA watchdog;
2. Involvement in RIA quality control and monitoring by other institutions;
3. Earlier timing and preparation of the RIA to permit more discussion;
4. More monitoring and reporting of RIA quality by central institutions followed by public reporting of performance or “name and shame”;
5. Increased individual ministerial accountability;
6. Expert scrutiny from scientific peers;
7. More training;
8. Two other methods to increase quality – tighter criteria for data quality and more stringent analytical requirements – are discussed in more detail in other sections below.

45. It should be noted that these kinds of quality controls on RIA and the regulations that result are different from quality controls on most public sector activities. Controls on budgets and staffing, which are the primary tools for overseeing other public sector activities, focus on inputs. Controls on the quality of regulations, on the other hand, mostly focus on outputs, on the regulations and underlying policy decisions themselves. Hence, these kinds of regulatory reform

activities are closer to the ideals of New Public Management than more traditional quality control activities.

Strengthening the Challenge Function From a Central RIA Watchdog

46. Oversight of RIA quality is a continuing governance challenge. The location of the institution needed to oversee compliance with RIA policies has by now been well established: the oversight body is most effective when placed at the centre of government where authorities for inter-ministerial oversight are already well established. Canada is well in the mainstream by locating this function in the Privy Council Office. Even this general rule has its exceptions, such as in Australia where an independent commission external to the government works with a range of authorities located strategically in the Government apparatus (see Box 1).

Box 1: The Australian Exception: RIA Challenge as an External Function

Independent oversight in other countries means independence from the regulators, not from the centre of government. Australians have taken this one step further and seem to like the independence of RIA oversight from the Government itself:

- In the Commonwealth of Australia, the Office of Regulation Review (ORR), with 20 staff, is located within an independent statutory authority, the Productivity Commission, from where it watches over about 100 federal regulators and standard-setting bodies. This setting is unusual in that the Productivity Commission is an external watchdog not located within the central government structure. But the ORR works with the Treasury, which is formally responsible for regulatory policy, and with a range of “gatekeepers” located in the policy apparatus, such as the Cabinet Secretariat, Legislation Sections within each department, and the Federal Executive Council Secretariat.
- In Victoria State, the Victorian Competition and Efficiency Commission (VCEC) took over on 1 July 2004 the watchdog responsibilities formerly undertaken by the Victorian Office of Regulation Reform.
- The location of the New South Wales ORR in that state’s Cabinet Office is seen by businesses as actually weakening oversight. The conclusion from a business review was that “Consideration should...be given to relocating the regulatory review function outside of the Cabinet Office.”

The Australian experience does not seem very relevant to Canada, which has much less experience with statutorily independent watchdogs that have policy responsibilities. The mainstream experience – where the RIA watchdog is located directly within the policy structure – seems to be more familiar and more realistic in Canada.

47. Location and authority of the central unit are key formal elements, but actual and effective exercise of the challenge function is another matter. Most of what has been written about the challenge function has depended on formal analysis, which has been misleading. There is more *authority* to challenge than the *practice* of challenge. It is in the practice of challenge where we see most activity in improving the effectiveness of the central watchdog. These trends are directly relevant to Canada.

48. In the United States, the United Kingdom, New Zealand, and the European Commission, RIA oversight has been strengthened in the recent past. This has not always been accomplished by a watchdog agency acting alone, but also by a network of watchdog institutions.

49. In the United States, the Office of Information and Regulatory Affairs (OIRA) has become more aggressive since 1999 in reviewing RIAs, acting more as an “adversarial gatekeeper” in the words of the General Accounting Office.²² OIRA has done this largely through the mechanism of the “return letter,” in which OIRA publicly details its concerns and criticism about the regulation in the RIA. While OIRA does not have any formal approval authority, its central role in the process of regulatory development and its proximity to the White House makes it difficult for a regulator to ignore its public advice. Furthermore, OIRA has moved to increase its authority by setting a higher level of data quality standard, and it has multiplied the challenge function through scientific peer review.

50. The United Kingdom moved quickly in 2005 to restructure and strengthen its RIA review and challenge capacity to create what the Chair of the Better Regulation Executive calls a “rigorous and systematic approach to the difficult task of turning political commitments and aspirations into good regulation.”

51. The UK government now has no fewer than three challenge units at the centre, and a series of challenge functions built into the policy making-making process.

- First, in 2005, the Better Regulation Executive (BRE) in the Cabinet Office replaced the Regulatory Impact Unit. The BRE is intended to provide stronger central coordination of delivery and implementation of regulatory reforms, challenge departments on their progress with regulatory reform; and work with departments to change regulatory culture and processes. The incentives of the Cabinet Office to monitor RIA are strengthened by a Public Service Agreement target (performance measure) for the Cabinet Office to achieve 100 percent compliance with the RIA requirements.
- Second, a Small Business Service reviews proposals that affect small firms.
- Third, all regulatory proposals likely to impose a major new burden on business require clearance from the Panel for Regulatory Accountability, chaired by the Prime Minister. The Panel will monitor the new requirement for “compensatory simplification” – the “one in-one out” approach to new regulations – for every new proposal, and has stated aggressively to national regulators:

*You will be challenged if you do not include offsetting simplification measure/s for all major proposals. It is important that plans for simplification are broadly equivalent to new proposals where ever possible. The Panel for Regulatory Accountability may reject regulatory proposals if it concludes that satisfactory compensatory simplification measures have not been considered.*²³

52. At the level of the government departments (ministries), “better regulation” ministers and “better regulation” units are accountable for delivering reductions in administrative burdens and achieving regulatory simplification. Finally, the Better Regulatory Task Force became permanent in January 2006 as the new Better Regulation Commission, with additional responsibilities to challenge departments and regulators on their performance against the better regulation targets.

53. New Zealand is also strengthening the RIA challenge function. The Regulatory Impact Analysis Unit (RIAU) of the Ministry of Economic Development (with a staff of eight) reviews all draft RIAs with business compliance cost statements (but not RIAs without a BCCS) and prepares “adequacy comments” that are used as a basis for discussion with the regulator. When the regulatory document goes to Cabinet, the Unit’s final “adequacy comments” are attached for the information of the Cabinet.

54. The review and advisory function evolved by 2005 toward a tougher review and challenge function. In April 2005, RIAU warned regulators that “the current guidelines infer a greater degree of discretion than is available when consulting with RIAU. This is likely to be a direct function of the fact that the guidelines were written prior to the establishment of the RIAU and that the RIS regime has evolved since its introduction in 1999.”²⁴ By 2006, regulators were told that the RIAU must “certify that the RIS/BCCS meets the criteria for an adequate RIS/BCCS,” a very different role than its 1999 advisory role.²⁵ The RIAU clearly intends to play an activist role in improving RIA quality:

...contact the Unit as early as possible in the policy development process. This allows time for several successive sets of comments from the Unit and iterations from departments of an RIS/BCCS that can be required before adequacy is reached.

55. In early 2006, the RIAU was rewriting the 1999 RIA guidelines. The key change being considered is extension of the class of Regulatory Impact Statements that are reviewed by the RIAU from only those with a BCCS to all those for proposals that will impact on business. The RIAU explained that this change will align the focus of RIAU “with the government’s broader objective of improving the regulatory environment for business.”

56. By contrast, the Irish government has chosen not to create a central challenge function, instead using existing processes such as inter-ministerial coordination and scrutiny by the Ministry of Finance to check the adequacy of RIAs. No single body is responsible for RIA scrutiny, and the Irish approach is too new to be assessed for effectiveness. Two new bodies have more general duties: an internal Better Regulation Group will promote good regulation and a public-private Business Regulation Group under the Minister for Enterprise, Trade and Employment will create a dialogue between business interests and the government on regulatory reform. This decentralized approach seems unlikely to work. A reasonable prediction is that in two years the Irish government will find that the quality of RIAs is too low, and will then create more formal quality control functions.

57. Sweden, too, has a weak quality control system for RIA, which has severely damaged performance. The NNR Regulation Indicator for 2005 shows very low RIA quality, which the Swedish audit office believes is due to the lack of quality control and incentives for quality. Even the longstanding SimpLex Ordinance and its SME cost test has poor compliance due to lack of any sanctions for non-compliance. The report concluded in 2005 that, while “four different ordinances

govern work on RIAs....there are no sanctions against agencies that carry out inferior RIAs or refrain altogether from performing RIAs on their proposals.”²⁶ Sweden’s system resembles the new Irish approach: it depends on a variety of bodies to carry out bits and pieces of quality control that should be coordinated into an effective quality system:

- Compliance with RIA is the responsibility of each ministry, and each Swedish Ministry has a legal secretariat responsible for drafting the ministries’ legislation. However, these units have no formal responsibility for the quality of RIA.
- From 1999-2004, the SimpLex Team in the Ministry of Industry, Employment and Communications was in charge of implementing policies on regulatory simplification, but in any case did not have an RIA review function. In 2004, the Simplex Team was eliminated and its duties given to an economic think tank (Swedish Business Development Agency) that is outside the ministries and poorly placed to do RIA quality reviews. Responsibility inside the Government has now been assigned to the Ministry’s business section, which serves as a taskforce for regulatory matters, but without authority to operate a challenge function for RIA.
- When public administration is affected by a proposal, the Division for Public Management in the Ministry of Finance is supposed to ensure that a better regulation perspective is included.

58. The Board of Swedish Industry and Commerce for Better Regulation found in 2005 that “vigorous steps must be taken to enhance the quality of proposals for new or amended regulations.” The Board called for the Swedish government to reinstate a body in the Government Offices with primary responsibility for regulatory simplification, and to introduce a comprehensive, uniform system of RIAs, with scope for applying sanctions.

59. Strengthening the challenge function in the European Commission has been difficult due to complex governing relations, the relatively decentralized structure of the Commission and the weakness of horizontal management functions. An Inter-institutional Agreement (IIA) on Better Law-Making, agreed in December 2003 by the three EU institutions (European Parliament, Council and Commission,), established a global strategy for better lawmaking throughout the entire EU legislative process. But there was no creation in the IIA of a central RIA oversight body in the Commission or anywhere else. As an alternative, the Commission has stated that “it is important to reinforce the quality control by Commission departments of impact assessments before releasing these for inter-departmental scrutiny.”

60. Today, the European Commission suffers from what a 2006 assessment called the “absence of a clear-cut sanction mechanism for cases of insufficient quality of impact assessment.... the absence of a dedicated, individual oversight body is certainly one of the evident limits of the current IIA model.”²⁷ The evaluation calls “urgently” for establishing an *ad hoc* agency to supervise and coordinate impact assessment activities.

61. There is much resistance to creation of a single challenge function for European RIA. Such concerns were typically expressed in 2005 by the Chair of the UK's Better Regulation Task Force:

We would be wary of recommending a new body to oversee regulation in the EU. There may be a case for extending the powers of an existing body – possibly the Secretariat General – but there is a danger that creating a brand new body would simply create another level of bureaucracy. In any event, the EU institutions work under fairly independent autonomous remits, managing differences thorough consultation and dialogue. Introducing an overseer onto this structure would be counter-cultural and may be counter-productive.²⁸

62. It seems inevitable that the European Commission will over time move to create a more organized quality control capacity. Even though there is still no real equivalent of OIRA or the ORR, external scrutiny and accountability for quality is getting stronger in the European Commission. Indeed, the IIA led to a proliferation of bodies working on better regulation and RIA. This has aroused legitimate fears of lack of coherence and coordination, but is also strengthening accountability and monitoring of quality:

- The Secretariat-General has clearer responsibilities for RIA, including the issuance of guidance documents, organization of training, exchange of good practice and monitoring the final quality of RIAs.
- Under the Directorate General Enterprise and Industry, a multidisciplinary working group has been established to shadow proposals that could have a significant impact on competitiveness.
- A new competitiveness group of Commissioners under DG Enterprise and Industry chairmanship is intended to act as the ultimate forum for reconciling different policy interests. It will also report to the Competitiveness Council, which has been encouraged to conduct “competitiveness proofing” of all proposed regulations, in effect carrying out a challenge function for the competitiveness dimension of RIA. The Council has not yet been proactive in carrying out this rule, however.
- RIA is being used as a tool to better manage co-operation and coordination among European institutions,²⁹ and therefore the new coordinating bodies that are emerging are acting as *de facto* RIA auditors. This is primarily the *ad hoc* inter-service coordination groups created for important RIAs.
- The quality of RIA is a continuing concern of a range of other bodies including the Economic and Financial Affairs Council, the High-Level Group on Competitiveness, and particularly several committees of the European Parliament.

63. In the context of these experiences, quality control for RIA is too weak in Canada. The focus of the oversight function has, since 1991, moved away from a

strong challenge (previously, the central unit had a formal veto over RIA) towards performance management based on certifications by ministers that RIAs meet Regulatory Management Process Standards.³⁰ Staff of the central unit continued to challenge RIAs at the Cabinet level, but staffing was cut back after 1991 and capacity for challenge was eroded.

64. The 1995 and 1999 Regulatory Policies assigned responsibility for assessing its implementation and effectiveness to the Privy Council Office, specifically the Regulatory Affairs Division (PCO-RAD) in the Regulatory Affairs and Orders in Council Secretariat (RAOICS) of the Privy Council Office. This function was transferred from the Treasury Board Secretariat in hopes that the PCO would prove to be a stronger watchdog.

65. Yet the PCO-RAD did not see its role as a challenge function. Its role with respect to RIA as described in the 1995 and 1999 Regulatory Policies is a monitoring exercise rather than quality control: there is no description of a challenge function or the PCO's responsibility to control quality of individual draft RIAs. There is nothing in Canada's Regulatory Policy similar to the strong review function of the Office of Information and Regulatory Affairs in the United States,³¹ nor even of the new Competition Council in the European Commission. A 2001 evaluation of RIA in Canada correctly stated that, "There is no bureaucratic "gatekeeper" created under the programme; that is, the Regulatory Affairs Directorate (RAD) ... that administers the programme does not have the authority to block regulatory proposals that do not conform to the policy."³² This was seen as a strength of Canada's RIA program, because it put emphasis on cultural change in the departments rather than external controls.

66. The OECD did not agree in its 2002 review: "A vigorous challenge function is also considered an effective means of promoting improved RIA quality since departmental standards will be constantly challenged by experts in the RIA challenge function.... For its success, the task needs enough competencies, standing and prestige to compete with ministers and regulators." The OECD concluded that Canada needed a central challenge function at the centre of the government, and that the resources and skills in RAOICS were insufficient for this task.

67. Even so, the role of the PCO-RAD as an internal advisor rather than quality controller was reiterated in the 2004 Regulatory Process Guide. This Guide states that the PCO-RAD analyst will "review the draft RIAs for consistency with the Regulatory Policy, requests for exemption from pre-publication, and for clarity and completeness of information." The analyst will then "discuss any concerns with the department." When the draft is submitted to the Treasury Board for approval, the PCO-RAD may prepare "a briefing note for the ministers of the TB," presumably advising against approval if the RIA is poor. Strangely, there is no requirement in Canada's Regulatory Policy nor the 2004 Process Guide that the regulator actually respond to the concerns of the PCO, nor does the PCO have any authority to delay a bad regulation or to respond publicly.

68. The 2004 Smart Regulation report did not find this role satisfactory. Similar to the OECD report from two years earlier, it found that stakeholders and government departments emphasized the need for more thorough and consistent enforcement of the Regulatory Policy and more leadership from central agencies on regulatory reform. It recommended that the Privy Council Office strengthen its challenge function, particularly if a new Regulatory Policy is adopted by the government.

Canada should put more emphasis on the “challenge function” of the PCO if it wishes to take significant steps in RIA quality. Canada could learn another lesson from the central RIA oversight bodies that ensure that their review activities are in the public view rather than behind closed doors. For example, the US OIRA and the Mexican COFEMER publish information on their web pages on current proposals under review. In addition, OIRA’s “return letters” criticizing a proposed regulation or RIA are public documents. This is not done in Canada, since the reviews by the PCO-RAD are considered to be internal and advisory in nature, rather than an accountable and separate step in the regulatory development process. The public nature of RIA oversight is probably better suited to the separation of powers in the American system than to the Canadian parliamentary system, but more transparency and accountability in the RIA quality control process are powerful tools for improvement. PCO-RAD should carefully consider how to enhance transparency and accountability in RIA oversight in Canada.

Involvement in RIA by Other Institutions

70. The central quality control unit does not work in splendid isolation. In almost all of the countries in this report, a network of institutions works through the entire policy process to oversee and encourage better quality. The champion of this is the United Kingdom, which has for years designed and adeptly used multiple public-private bodies to push forward the regulatory reform agenda.

71. Other than the central reform body, institutions with quality control functions can be divided into four categories:

1. Political level and policy-level bodies that provide oversight of the regulatory reform program as a whole, and of the work of the central unit. These include committees of the Cabinet (such as the Special Committee of Council in Canada), high level commissions (such as the Competitiveness Council in the European Commission), high level inter-ministerial bodies (such as the Implementation Group of Secretaries General in Ireland), and activist committees and bodies of the parliament (such as the General Accounting Office in the United States; the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations in Canada; and Committees of the European Parliament).
2. Ad hoc inter-ministerial working groups that are put together to coordinate and advise on major regulatory initiatives. These include the cross-departmental steering groups in Ireland and hoc inter-service coordination groups in the European Commission.

3. Ministerial or departmental regulatory reform units who are responsible for carrying out the regulatory policy and RIA quality oversight at the level of the Ministry or regulator. This is not formalized in New Zealand but the regulatory policy requires a special RIA quality control in each Ministry: “Departments should ensure the internal departmental peer review processes adequately focus on the quality of the BCCS.” It is much more formal and structured in United Kingdom, where a Minister for Regulatory Reform is appointed to each key regulatory department and is responsible for the quality of RIA within the department. Moreover, Departmental Better Regulation Units are established in each department as satellites of the central Cabinet Office.
4. Private sector groups, advisory bodies, think tanks, or other research bodies who support the regulatory reform agenda can be helpful in identifying priorities and proposing reforms. The OECD highlighted the UK’s Better Regulation Task Force (BRTF) as an example of an oversight body that has played a ‘large role’ in advocacy of regulatory reform, that is: ... the promotion of long-term regulatory policy considerations, including policy change, development of new and improved tools and institutional change.”³³ The BRTF and its successor, the Better Regulation Commission, are independent advisory bodies established to advise the Government on actions to improve the effectiveness and credibility of regulation. Its advocacy and monitoring functions have been highly effective in the United Kingdom in maintaining attention on RIA quality. Another example is Sweden’s Board of Swedish Industry and Commerce for Better Regulation (NNR) which has published for four years an evaluation of regulatory quality called *Regulation Indicator*.

72. The general trend in recent years seems to be for bodies in these four categories to be more proactive at higher levels (in the sense of more intense monitoring and higher expectations) but without a parallel activism at lower levels (in the sense of more effective decentralized departmental and regulatory RIA bodies). This top-down-first sequence is a normal part of the process, but the U-curve will be unnecessarily elongated unless parallel attention is given to building the skills, constructing the incentives and quality controls, and changing the culture at lower levels of the public administration.

73. Canada ranks in the lower middle of its peers with respect to setting up a network of mutually supportive institutions around the good regulation agenda. The regulatory reform agenda does have support at the Cabinet level, in the Treasury Board, and in the Parliament, but there is a paucity of institutions elsewhere. There is no business advisory group on regulation which consistently monitors regulatory and RIA quality. There is no formal and structured network at the departmental level. Canada should consider whether a richer and more diverse set of institutions focussed on the quality of regulations and RIA could assist in sustaining this agenda.

Early Planning and Preparation of RIA

74. Some of the problems summarized in the preceding section stem from poor timing of the RIA process, in particular the failure to start to RIA earlier enough to integrate its results into policy decisions. Australia’s diagnosis of why RIAs are of poor quality found that “Where RIS compliance has fallen short, in many cases it

is because regulators have failed to prepare RISs or have prepared them too late in the policy development process to make a meaningful contribution.”

75. Failure to start an RIA early enough seems to be less a problem in countries with annual regulatory planning activities. A regulatory planning process provides early notification to the public about regulatory initiatives at a time when it is still possible to fundamentally revise the regulatory decision. In the governments reviewed for this paper, only three have such plans.

- In Canada, each department and agency must prepare a one-year Report on Plans and Priorities (RPP) to be tabled in Parliament. The RPP offers an opportunity to advise Parliamentarians, and interested groups and individuals, of upcoming regulatory initiatives. The RPP is supplemented by the more detailed Departmental Regulatory Plan, which is placed on a website.
- The United States has had, since 1984, a regulatory planning process in which very early RIA summaries are published twice a year in the Unified Agenda of Federal Regulations (also known as the Semi-annual Regulatory Agenda). The Unified Agenda summarizes the rules that each Federal agency expects to issue during the next six months. The agenda is also placed on a central web site.
- The European Commission (2005) has put considerable effort into earlier preparation and planning for the RIA. Major impact assessments are integrated into the Commission’s annual Strategic Planning and Programming (SPP).

76. The countries who have issued recent guidance demonstrate a clear trend toward earlier planning and launching of RIA, particularly the preparation of early “light” RIAs, called “initial” RIAs in the United Kingdom, “Screening RIAs” in Ireland, “Roadmaps” in the European Commission, and “Consultation RIAs” in Australia:

- To help plan the RIA work, European Commission regulators must, since 2005, develop early “Roadmaps” that determine what data are available, what complementary data are needed, and how they will be produced. Among other things, the Roadmap must provide an estimate of the time required for completing the RIA, a brief statement on the likely impacts of each policy option and on who is likely to be affected, and which impacts warrant further analysis.
- In Victoria State (2005), departments are now advised to allow around six months between the beginning of an RIA process and the making of the associated statutory rule.
- The new arrangements (2005) in the United Kingdom require that RIA be started “as early as possible...after you hear about the policy idea” so that it is an integral part of the policy making process. The RIA process consists of three phases: an initial RIA that is prepared as soon as a

policy idea is generated; a partial RIA produced as a consultation document, and a final RIA for decision.

- Ireland (2005) states that RIA must be conducted at an early stage and before a decision to regulate has been taken. A Screening RIA should be done at an early stage to determine if action is justified.

77. Canada ranks well in this category. The important role of the RPP is noted above. When they begin actual regulatory development, regulators are encouraged to start consultations early on potential alternatives and impacts, and even have a formal mechanism called the “Letter of Intent” to do so.

78. Yet there seems to be potential for better and earlier start to the RIA. The practice in several countries to require an early screening RIA is one that Canada should consider to both support a policy for proportional analysis and to open the way for earlier and more meaningful public consultation on alternatives and regulatory design.

Monitoring Compliance Followed by Public Reporting of Performance or “Name and Shame”

79. Closely related to the challenge function is the RIA monitoring function. There seems to be a close relationship between the central RIA units who are more proactive in challenging low-quality RIAs and the units who actively monitor compliance and report on performance. In the most advanced RIA systems, regulators with poor RIA performance are identified publicly and regularly, and follow-up action is planned.

80. The most public regulatory review on a case-by-case basis is that carried out by OIRA in the United States. OIRA’s “return letters” containing the results of its reviews, including blunt criticism of the quality of the analysis, are publicly available on its web site. Such an approach is more difficult in a parliamentary system, where it is hard for one part of the government to publicly criticize another part, and in fact none of the other countries in this review make public the results of individual RIA reviews.

81. A more common and perhaps even more effective approach is to issue performance evaluations based on the quality of RIA. The US OIRA, the European Commission, and Australia’s ORR issue annual reports on RIA quality and compliance status.

- The ORR is required by statute to produce an annual report, *Regulation and Its Review*. This report is an exhaustive and hard-hitting review of the Commonwealth’s regulatory reform program with a detailed naming of regulators who are performing well and those who are not. In 2004-05, the ORR also began to use a checklist to measure the features and characteristics of each RIA. This also allows changes in the quality of RIAs over time to be documented and measured, which greatly strengthens the monitoring and reporting functions of the ORR.

- The US government does not have a systematic assessment of RIA quality by regulator. However, OIRA issues an annual report called “Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities” that estimates the aggregate costs and benefits of the most significant regulations for the past decade and in the year of publication. The report assesses the completeness of selected RIAs by regulator, and so contains some performance information. The report is limited in that it does not offer an assessment of the quality of analysis in the RIA. A prominent academic institute has noted, “OMB offers no independent assessment of the quality or usefulness of agency analyses, and correspondingly, the estimates presented in this report. The reported benefits and costs are based on agency estimates, without independent verification or any assurance that assumptions and methods are consistent across programs and activities.”³⁴ The institute recommended that OMB produce a “report card” on each analysis.
- The European Commission issues an annual report called “Better Lawmaking”³⁵ that does not report RIA performance by regulator, but does draw general conclusions about the performance of the RIA process and provides anecdotal information about cases. Furthermore, the Commission has announced that in 2006 its Impact Assessment program will be subjected to a comprehensive review.
- In Sweden, the National Audit Office (through 2004) and now the Swedish Business Development Agency is responsible for preparing an annual assessment of the regulatory simplification program including the quality of RIA.

82. Probably the most advanced institution in the world in monitoring and reporting is Mexico’s COFEMER, which has implemented a simple internal RIA scoring system and sends fortnightly reports on RIA compliance to the Comptroller General.

83. A country not included in this list is the United Kingdom. The UK’s Better Regulation Executive says that it “carries out regular exercises to establish the level of compliance” with RIA processes, and publishes the results. Compliance ranges from 92 percent in 2002 to 100 percent in 2004 and 2005. This monitoring is not, however, nearly as detailed as that carried out in Australia or the United States, and the score of 100percent for two years raises doubts as to its rigour.

84. Canada (like New Zealand) has no equivalent to these reports. Monitoring of RIA quality and compliance is still considered to be an internal matter, rather than a public responsibility important to effective governance, and hence a matter to be tracked publicly.

85. Accountability and reporting should be boosted. This report agrees with the recommendation in the OECD 2002 review of Canada: “The regular assessment and publication of performance data in relation to RIA compliance would not only increase confidence in the achievement of standards and, therefore, RIA’s

contribution to regulatory quality, it would also tend to encourage improved performance over time.” Along with stronger RIA quality control, the PCO should develop a scorecard for RIA, and monitor performance through a compliance database. Performance by regulator should be publicly reported at least annually.

Expert Scrutiny From Scientific Peers

86. Regulatory matters have become increasingly technical and science-based over the past decade. This trend has placed increasing strains on regulators who often do not have the skills needed to access, interpret, and apply the science underlying a regulatory decision. Increasing access to scientific expertise in regulatory decision-making has become, in a few countries, an important quality strategy. One technique for this is called peer review.

87. As noted, the US government has issued government-wide guidance aimed at enhancing the practice of peer review of government science documents to improve the quality of published information.³⁶ The guidance requires that important scientific information be peer reviewed by qualified specialists before it is disseminated by the federal government, recognizing that different types of peer review are appropriate for different types of information. OMB announced its belief that:

The use of a transparent process, coupled with the selection of qualified and independent peer reviewers, should improve the quality of government science while promoting public confidence in the integrity of the government’s scientific products.

88. The European Commission announced in 2005 its intent to use scientific peer review, not of data quality, but of the RIA methodology designed for specific major regulations. It announced that it would “improve the intrinsic quality of the impact assessment of EU legislation by ensuring on a case-by-case basis the *ex ante* validation by external scientific experts of the methodology used for certain impact assessments.”³⁷ This peer review process has not yet been launched.

89. The Canadian government might consider a more organized and top-down approach in order to ensure that good peer review practices are used and that scarce scientific resources are used efficiently. For example, a peer review group that built up expertise in a particular area such as risk assessment or data quality might produce better review results at lower cost than a series of ad hoc peer review groups scattered through the public administration.

Improving Ministerial Accountability for RIAs Under Their Jurisdiction

90. In the early days of RIA, it was common that RIA was considered to be a technocratic discipline suitable for analysts, economists, and other low-level drones, but not sufficiently important to come to the attention of the minister. This meant that ministers were rarely aware of the contents of RIA, and other members of the bureaucracy quickly realized that RIA was a low priority.

91. As RIA became mainstreamed, and as the quality of RIA became a concern not only for analysts but for Cabinets and Parliaments, a technique adopted in

Westminster parliamentary systems was to make ministers or high-level civil servants personally accountable for the quality of the RIAs in their departments. The logic was that if the Minister was personally responsible, he or she would actually read the RIA, and any case would want to be sure that the RIA was up to standard.

- In Canada, ministers with regulatory responsibilities must personally sign off the impact assessment;
- In New Zealand, officials preparing Cabinet papers on behalf of the Minister must include a certifying statement in the Cabinet paper that the RIS and Business Cost Compliance Statement (BCCS), where relevant, comply with the requirements;
- In the United Kingdom, ministers with regulatory responsibilities must personally sign off the impact assessment: “I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”

92. This approach has generally worked in the sense that ministers are aware of the RIA and the quality issues around RIA take a higher profile. In some countries, however, this has become little more than a paperwork exercise, and ministers seem to be generally unaware of the content and quality of the RIA.

93. Canada is in the forefront in this area, and no recommendations are made for improvement.

More RIA Training

94. Quality of RIA is dependent on the skills of the regulators. It is fairly clear now that building the skills needed for good RIA takes time and investment, which most governments have failed to provide. Following years of neglect of RIA training, this review suggests that there is a small but growing emphasis on better RIA training.

- The Australia ORR provides training and guidance to regulatory officials and “plans to enhance its ongoing RIS training for departments and agencies” (2005). Training is at a robust level: In 2004-05, the ORR provided formal training on RIA and regulatory best practice to 415 officials, a slight reduction from previous years. However, this may be insufficient, since businesses complain that “greater education, skill development, resources and priority within agencies is needed” to address problems of “poor RIS compliance and policy design.”
- The European Commission is investing a small but growing amount in RIA training. Most of this training is decentralized to the various Directorates General and hence there are no consolidated figures on the number of officials trained.
- The Irish Department of the Taoiseach is drawing up a “detailed training strategy for RIA” probably using the Centre for Management and Organisation Development (CMOD) in the Department of Finance, as well as academic institutions.

- In the United Kingdom, the RIU runs seminars, formal training sessions and workshops on RIA. RIU is also involved in training officials through the Civil Service College's training courses on policy making.
- The US government has no organized RIA training program. This is partly because the pool of trained analysts is adequate to supply highly trained economists to regulatory bodies, partly because consultants are used for hiding technical work, and partly because the scale of regulatory activity is so large that regulatory bodies have been able to set up analytical offices with in-house training. But it is odd that there is no organized training in RIA requirements or good RIA practices such as the requirements of Circular A-4.

95. Canada seems to be in the mainstream in terms of training, but the international benchmark is low. Departments are said to offer in-house training to their staff, but there is no monitoring of the content, quality or quantity of this training. General training courses on making regulation are provided by Consulting and Audit Canada. The PCO itself partners with the Canadian Centre for Management Development to provide regulatory best practice seminars. Training seems to be an area where the PCO could make a very effective contribution. The Irish approach to drawing up a training strategy for RIA might be an effective way of attracting more training resources to RIA, upgrading the quality and consistency of RIA training government-wide, and ensuring that good practices around the world are transmitted quickly and efficiently to Canadian civil servants.

Improving Written Guidance on RIA

96. Following a period of relative quiet in the early 2000s, there has been in the past two years considerable investment in producing new and better guidance on RIA. Several of the countries reviewed in this report have developed in 2005 or are developing in 2006 more detailed and more accessible guidance for policymakers and RIA analysts government wide.

97. There appear to be three major trends in the content of the new RIA guides. First, compared to earlier guides, there is much more attention to the process of RIA. More guidance is given about when to start RIA (early), the consultation process, and the review process. This illustrates the point that the process of RIA has become just as important to the process of government learning as the quantitative content of RIA. Second, there is more detail and assistance in quantifying impacts. All of the evaluations of RIA have shown that lack of quantification continues to be weak. These guides provide more examples of how to quantify and more precise instructions on how to present qualitative impacts. Third, there is more attention to assessing alternatives, although this aspect continues to be the weakest part of every RIA guide.

98. The current RIA guidance used in Canada is among the oldest used in any of these countries. The 1995 *Benefit-Cost Analysis: Guide for Regulatory Programs* was an adequate guide at the time, but has not been revised to reflect new techniques, new priorities, and the new procedures and policies laid out in

Canada's *Regulatory Policy* and in the 2004 *Regulatory Process Guide*. Considerable material useful for training has been made available online on the site of the PCO-RAD, there is a difference to providing voluminous background material and providing an integrated guide that helps produce consistent and high-quality RIA across the entire public administration. Rewriting the 1995 guide should be a high priority in Canada.

Providing Helpdesk Assistance

99. A technique that has been used effectively to increase RIA quality is providing access for RIA analysts across the government to high-quality technical support in preparing individual RIAs. A country not reviewed in this report, the Netherlands, pioneered this technique in the 1990s by setting up a help desk staffed by both the Ministry of Economy and the Ministry of Justice.

100. This technique has been carried out informally by all the countries reviewed here. In the United States for example, OIRA has been involved earlier with the regulatory agencies in order to provide its advice and feedback before a formal review is requested.

101. Some countries have gone further in formalizing and investing in a helpdesk function. In Ireland, the Better Regulation Unit in the Department of the Taoiseach offers its advice, and intends to establish an RIA network to provide an opportunity for officials to share best practice and experience in conducting RIAs. In Sweden, the Ministry of Industry, Employment and Communications has special responsibility for giving advice and support on RIA implementation.

102. Canada has been in the mainstream in this area, but will quickly fall behind as other countries increase quality standards for analysis. If the skills and capacities of the PCO-RAD are enhanced in order to support a challenge function, the PCO-RAD should consider formalizing the helpdesk function. It might, for example, detail a person to work directly in another department on a very major RIA. It might develop specialists in data collection, quantification techniques, and alternatives to regulation in order to advise in those areas.

Table 5: Quality Control of RIA

| Country | Independent Unit | Other quality controls | Trends |
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| Australia, Commonwealth Government | <p>Explicit challenge function is carried out by the Office of Regulatory Review, a unit within the independent Productivity Commission. The Parliamentary Secretary to the Treasurer is responsible for Regulatory Best Practice, and the ORR advises the Parliamentary Secretary.</p> <p>The ORR has two weeks to provide independent advice about whether an RIA is required for the regulatory proposal and, if so, whether the analysis contained within each RIA meets ‘adequacy’ standards. ORR assesses RIAs at two stages: before they are released for public consultation and again prior to a decision.</p> <p>The regulator may ignore ORR advice, but should explain its response “to any issues that have not been dealt with [as] recommended by the ORR.” ORR should inform Heads of Government if an RIA is “seriously inadequate.”</p> <p>Limitations on the quality review are:</p> <p>“In undertaking this role, the ORR is generally not in a position to verify the underlying data or methodology.” (1998)</p> | <p><i>RIA Standards:</i> The ORR has progressively raised the minimum information requirements of RIAs. Since 2004, the ORR has advised regulators that quantitative data about such costs must be included in RISs.</p> <p><i>RIA Guidance:</i> ORR has published extensive RIA guidance, although it is somewhat out of date. The most recent is (1998) <i>A Guide to Regulation</i></p> <p><i>Monitoring:</i> The ORR maintains a compliance database and reports annually to government on the adequacy of RIA in a report called “Regulation and its Review.”</p> <p><i>Training:</i> ORR trains about 450 regulators each year.</p> <p><i>Other institutions:</i> For RIAs prepared at intergovernmental level, a request from two or more jurisdictions for a review of a proposed standard triggers an independent review of the RIA by a designated body.</p> | <p>In 2005-06, the ORR intends to continue to raise minimum adequacy standards for RIAs, with a focus on regulatory compliance costs and the quality of cost/benefit analysis.</p> <p>Public reporting of performance – identify those bodies where there are systemic issues in achieving compliance with RIA requirements.</p> <p>Improve “help desk” function by continued regular contact with regulators to ensure ongoing awareness of the scope of the RIA requirements, the required level of analysis and the role of the ORR.</p> <p>Improve information. The ORR’s website will be enhanced to ensure that it remains a reliable and comprehensive source of information on RIS requirements and role of the ORR.</p> <p>Boost training.</p> |

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| | <p>“The absence or inadequacy of a [RIA] does not preclude Government consideration of a proposed regulation...”</p> <p>In some cases, regulators request advice on RIAs in a few days and sometimes a few hours, without prior notice or warning.</p> <p>Some Commonwealth regulators have not introduced internal RIA quality control processes (Argy, 2003)</p> | | |
| Canada | <p>(1995, 1999) Regulatory Policy assigns responsibility for assessing RIA implementation and effectiveness to the Privy Council Office Regulatory Affairs and Orders in Council Secretariat (RAOICS), within which is the Regulatory Affairs Division (PCO-RAD).</p> <p>(2004) PCO-RAD receives RIAs at both pre-publication and final publication stages to “review each regulatory proposal from an overall policy perspective.” Role on RIA is, however, more monitoring than quality control.</p> | <p><i>Gatekeeping (2004):</i> A regulatory submission accompanied by an incomplete RIAS will not be accepted on the Treasury Board agenda.</p> <p><i>Other institutions:</i> Regulatory Cabinet Committee (The Special Committee of Council) is responsible for oversight, review and overall government co-ordination of regulations. The Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations (SJC) carries out an oversight role.</p> <p><i>Accountability:</i> Ministers with regulatory responsibilities must personally sign off the impact assessment. The RIAs “in effect serves as the recommendation to the Cabinet and is signed by the sponsoring Minister.”</p> <p><i>Guidance:</i> The most recent guidance is the 1995 <i>Benefit-cost Analysis Guide for</i></p> | Quality control has been weak for several years. |

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| | | <p><i>Regulatory Programs.</i> Since then, PCO and departments have provided guidance and training materials on-line. This includes a process guide and interactive access to Government policies and information on best practices. A webpage on Instrument Choice contains many useful case studies on various instruments, although the lessons learned for RIA are not very accessible.³⁸</p> <p><i>Training:</i> Training courses on regulation making are provided by Consulting and Audit Canada. The PCO partners with the Canadian Centre for Management Development provides regulatory best practice seminars. Departments also offer in-house training to their staff.</p> | |
| European Commission | The Office of the Secretariat General is formally charged with the challenge function, but does not have the staff or the procedures to carry out this function on a day-to-day basis. | <p><i>Other institutions:</i> The Secretariat-General issues guidance documents, organizes training, exchanges good practice and monitors the quality of finished RIAs.</p> <p>DG Enterprise and Industry chairs a multidisciplinary working group to advise on RIAs that could impact on competitiveness.</p> <p>A competitiveness group of Commissioners under DG Enterprise and Industry should reconcile policy interests. Competitiveness Council, which has been encouraged to conduct “competitiveness proofing” of all proposed regulations. <i>Ad hoc</i> inter-service coordination groups are created to work on important RIAs. Committees of the European</p> | The European Commission is slowly strengthening a series of quality controls and oversight of RIA, but has not yet reached a consensus on a new institutional capacity to review and challenge RIAs prepared across the complex and decentralized Commission structure. |

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| | | <p>Parliament oversee general work.</p> <p><i>Guidance:</i> Commission has issued two updated guides in 2002 and 2005, with progressively more detail.</p> <p><i>Monitoring and reporting:</i> European Commission issues annual report called “Better Lawmaking” that draws general conclusions about the performance of the RIA process. EC will carry out “comprehensive review” of its RIA program in 2006.</p> <p><i>Training:</i> General training sessions organized by DG Admin and the Secretariat General. Some DGs also offer specialized training.</p> <p><i>Peer review:</i> Commission intends to use external scientific experts to review the methodology for important RIAs before they are carried out.</p> | |
| Ireland | <p>(2005) Ireland’s new RIA system is evolving, but the government is constructing a multi-layered quality control function that is not based on a challenge unit:</p> <p>The Government Secretariat within the Department of the Taoiseach (responsible for approving Memoranda to Government) scans each Memorandum to ensure that an RIA is attached.</p> <p>Quality assurance is decentralized to individual Government Departments who “are</p> | <p><i>Gatekeeping:</i> All Memoranda to the Government must have the appropriate RIA attached.</p> <p><i>Other institutions:</i> Full RIAs are overseen by a cross-departmental steering group. If necessary such a steering group will involve external experts. The Implementation Group of Secretaries General, composed of the heads of all Government departments and offices, is responsible for managing overall implementation, monitoring and development of the “better government” program and reporting progress across departments to the</p> | <p>Ireland is attempting to set up an RIA quality control process that relies on existing institutions and procedures, without creating a challenge function.</p> |

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| | <p>best qualified to ensure that impacts in their own policy areas are covered.” Quality control will occur through the inter-ministerial consultation process. Each ministry is “responsible for ensuring that any impacts relevant to their Department are covered” in the RIA.</p> <p>The Public Expenditure Division in the Department of Finance checks cost estimates to ensure they are accurate, based on sound assumptions, that the methodology is appropriate and that calculations are correct (particularly a CBA within an RIA).</p> | <p>Congress.</p> <p><i>Training:</i> Training program to be launched in 2006 to enable officials to conduct Screening RIAs “without recourse to the employment of external consultants or other ‘experts’ except in a small minority of cases.” (2005)</p> <p><i>Helpdesk:</i> Further guidance and advice in applying RIA can be obtained from the Better Regulation Unit, Department of Taoiseach. It intends to establish an RIA network to provide an opportunity for officials to share best practice and experience in conducting RIAs.</p> | |
| New Zealand | <p>(2001) The Regulatory Impact Analysis Unit (RIAU) in the Ministry of Economic Development reviews and provides “adequacy comments” to departments on all RIS/BCCSs.</p> <p>Although the Unit will primarily have an education role, on an exceptions basis, the Unit can bring to the Chair of the Officials Committee concerns that it has with specific RIS/BCCSs. The Officials Committee, chaired by the Department of the Prime Minister and Cabinet, and comprising Treasury, State Services Commission, Ministry of Economic Development, and other departments, coordinates and monitors the effectiveness of Business Compliance Cost Program, including the RIS/BCCS regime.</p> <p>(2001) Departments must send the draft</p> | <p><i>Gatekeeping:</i> All policy proposals submitted to Cabinet that result in government bills or statutory regulations must be accompanied by a regulatory impact statement (RIS), unless an exemption applies. Where a proposal has business compliance cost implications, a business compliance cost statement (BCCS) should be incorporated into the RIS</p> <p><i>Other institutions:</i> (2001) Departments should ensure the internal departmental peer review processes adequately focus on the quality of the BCCS. This could involve separate consideration in departmental quality assurance processes – such as report sign-off procedures or internal management QA groups.</p> <p><i>Accountability:</i> Officials preparing Cabinet papers on behalf of the Minister must include</p> | <p>The challenge function has been gradually strengthened in New Zealand from an advisory function to an approval of the quality of RIA.</p> |

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| | <p>RIS/BCCS to RIAU, at latest, before drafting a Cabinet paper. RIAU recommends that it be consulted earlier to permit the RIA to be revised based on the comments. Moreover, there should be enough time for departments to consider and discuss with the Unit the proposed adequacy comments.</p> <p>(2004) “Once the adequacy criteria are met,” the views of the Regulatory Impact Analysis Unit in the Ministry of Commerce on the adequacy of RIS/BCCSs must be included in Cabinet papers.</p> <p>(2006) The Unit is responsible for providing an adequacy statement to be included in the Cabinet paper certifying that the RIS/BCCS meets the criteria for an adequate RIS/BCCS.</p> | <p>a certifying statement in the Cabinet paper that the RIS and Business Cost Compliance Statement (BCCS), where relevant, comply with the requirements.</p> <p><i>Monitoring:</i> There is no public reporting of RIA non-compliance in New Zealand,</p> <p><i>RIA Guidance: Business Compliance Cost Statements — Guidelines for Departments</i> lays out the requirements for the contents of RIA and business cost compliance assessments. New Zealand is issuing new RIA guidance in 2006.</p> <p><i>Training.</i> Ministry of Economic Development offers training on practical methods to quantify compliance costs.</p> <p><i>Helpdesk:</i> The Regulatory Policy team, part of the Regulatory and Competition Policy Branch of the Ministry of Economic Development, promotes effective regulatory design by advising on good practices and sharing knowledge on best practice regulatory design across government. A “regulatory portal” will go live in 2006 to give regulators more information on good regulation practices.</p> | |
| Sweden | <p>Sweden does not have a challenge function for RIA.</p> <p>The special section for regulatory simplification at the Ministry of Industry, Employment and Communications (the SimpLex section) was abolished in 2004. A regulatory unit in the Ministry of Industry,</p> | <p><i>Guidance:</i> Communications and guidance documents for various aspects of RIA are issued by a state secretary group with special responsibility for work on regulatory reform.</p> <p><i>Monitoring and reporting:</i> The National Audit</p> | <p>Sweden is looking for ways to strengthen quality incentives, but has not strengthened the review and challenge function</p> |

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| | <p>Employment and Communications is responsible for monitoring and updating the administrative simplification action plan.</p> <p>(2005) The Government has appointed the Swedish Business Development Agency (Nutek) to assist the Ministry in the regulatory simplification. The Agency “will coordinate business consultations, receive information on the impact assessments done by other agencies under Ordinance 1998: 1820, and provide advice and support in work on such assessments.” Nutek is also responsible for the measurement of administrative burden.</p> | <p>Office (through 2004) and now the Swedish Business Development Agency is responsible for preparing an annual assessment of the regulatory simplification program including the quality of RIA.</p> <p><i>Helpdesk:</i> Ministry of Industry, Employment and Communications has special responsibility for the impact assessment method and for giving advice and support in this work.</p> <p><i>Training:</i> Ministry of Industry, Employment and Communications is holding courses in RIA methods with the Swedish Business Development for at least 10 half days during 2005 and 2006. The aim is to reach at least 200 officials working on enterprise-related regulation.</p> | |
| United Kingdom | <p>The UK has three separate challenge functions in place for new regulations: the Better Regulation Executive (BRE), the Small Business Service, and the Panel for Regulatory Accountability.</p> <p>In 2005, the BRE replaced the Regulatory Impact Unit. The BRE is intended to:</p> <p>provide stronger central coordination of delivery and implementation of reforms;</p> <p>support the Prime Minister’s Panel for Regulatory Accountability by challenging departments on their progress with regulatory reform; and</p> | <p><i>Political commitment and monitoring:</i> In April 2003, Cabinet Office reaffirmed Government’s commitment to RIA, and to improving compliance with the requirements through six-month reviews. The BRE has published annual results of monitoring of RIA compliance.</p> <p><i>Networks:</i> Minister for Regulatory Reform is appointed to each key regulatory department, responsible for the quality of RIA within the department. Departmental Better Regulation Units are established in each department as satellites of the central Cabinet Office.</p> <p><i>Other institutions:</i> The Better Regulation Task Force was created in 1997 as an</p> | Stronger challenge functions at technical and political levels, and a series of tougher quality control measures to boost the compliance and administrative cost assessments. |

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| | <p>work with departments to change regulatory culture and processes.</p> <p>The Small Business Service reviews proposals that affect small firms.</p> <p>All regulatory proposals likely to impose a major new burden on business require clearance from the Panel for Regulatory Accountability, chaired by the Prime Minister. The Panel's consideration is based on a thorough RIA for the proposal being agreed by the Cabinet Office BRE, before the proposal can be put to wider ministerial approval.</p> | <p>independent advisory group with representation from businesses, consumers, and the voluntary sector. The BTRF has been active in overseeing regulatory reform identifying best practices in RIA.</p> <p><i>Accountability:</i> Ministers with regulatory responsibilities must personally sign off the impact assessment: "I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."</p> <p><i>Guidance:</i> Guide to Regulatory Impact Assessment (published in 2000 and updated in 2003) provides detailed guidance on procedural aspects, consultation and methodological issues, as well as approaches toward small firms. Detailed guidance is provided on assessment of compliance costs.</p> <p><i>Training:</i> The RIU runs seminars, formal training sessions and workshops on RIA. RIU is also involved in training officials through the Civil Service College's training courses on policy making.</p> | |
| United States | <p>Explicit challenge function is carried out by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) in the Executive Office of the President. OIRA has substantial authority under a Presidential Executive Order to review rule-making proposals. OIRA reviews the most important regulations three times:</p> <p>at the planning stage during preparation of the</p> | <p><i>Other institutions:</i> Each major regulatory body as an analytical office that is the primary location for RIA development. The General Accounting Office and the Congressional Budget Office provide oversight of both the quality of regulation and the activities of OMB.</p> <p><i>Monitoring and Reporting:</i> OIRA publishes detailed information (updated daily) on the</p> | <p>Since 1999, the number of 'return letters' has increased substantially, a measure of the strength of the gate keeping role. This has strengthened incentives for agencies to involve OIRA earlier in RIA quality control.</p> |

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| | <p>annual Regulatory Plan;</p> <p>before they are published for comment in the national gazette; and</p> <p>at the final stage before publication as a finished rule.</p> <p>OIRA reviews RIA to identify decisions and policies that are not consistent with the President's policies, principles and priorities; to coordinate among agencies; to discuss any inconsistencies with the regulators; and to suggest alternatives that would be consistent.</p> <p>OIRA can return regulatory proposals to agencies for reconsideration if there are significant concerns or it is not supported by adequate RIA.</p> <p>Limitations on the quality review are:</p> <p>OMB cannot instruct an agency not to proceed if the RIA is inadequate.</p> | <p>OMB website about the regulations and RIAs it has reviewed. This includes a table of regulations by agency and type of action taken. Return letters with OIRA's criticism are publicly available.</p> <p><i>Peer review:</i> OIRA recommends that draft RIAs be subjected to formal, external peer review by independent experts.</p> | |
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III.B.4. Data Collection Methods and Data Quality Standards

103. The most expensive and time-consuming component of the entire RIA process is the collection of relevant and reliable data. Collecting data was once the domain of researchers. Now it is something that all regulators must do in the course of their day-to-day activities. Therefore, they must develop the skills and the contacts to identify data needs, identify data sources, and present the inevitable uncertainties associated with data. The choice of which data to collect and the data collection method are not isolated decisions in the regulatory process, because they influence the whole process.

104. The analyst will usually need much highly specific data that is tailored to the questions raised by the specific regulation. That is, most RIAs will require a mix of already available information and very specific information that is tailored to the micro-impacts of the proposal in terms of benefits, costs, or risks. This means that some original data collection is usually needed, either by formal means, such as statistical methods, or by informal means such as by public consultation. Usually, a mix of formal and informal means will be needed. The OECD has noted that “A well-designed and implemented consultation programme can contribute to higher-quality regulations by providing a cost-effective source of data on which to base decision-making, assisting...”³⁹

105. Yet regulators are almost always poorly prepared to collect high-quality data. There is a rampant *ad hocism* evident in the data collection phase of RIA that is worrisome, because it results in lower quality RIAs that are also much more vulnerable to “data capture” by those groups with asymmetrical information resources. Criticism of RIA in specific proceedings often appears as concerns – not about method or process – but about low data quality.

106. The European Commission increasingly faces this kind of criticism in even its best RIAs. An environmental NGO noted that “the use of ‘external expertise’ in IA raises concern of undermining the environmental and social dimensions due to a potential heavy reliance on the use of industry-supported/sponsored experts to conduct analysis data gathering.”⁴⁰

107. The 2005 Irish RIA pilot found that “identification of costs proved to be difficult and time-consuming due to a lack of reliable data...obtaining increased certainty in relation to costs would have involved much more detailed research to collect the required data....” It recommended that an RIA network identify significant data gaps for RIA and catalogue available information resources. Yet the Irish RIA guidance, published only a few months later, has almost nothing on data collection and quality issues.

108. There is no apparent reason for this gap in good RIA practices, since there is much experience with good data identification and collection methods. Many of these, summarized in Box 2, will both increase the quality and reduce the cost of RIA.

Box 2: Summary of Data Collection and Presentation Practices for High Quality IA

- Plan ahead and create public-private relationships.
- Map out data needs and collect data throughout the IA in an iterative process.
- Consider a variety of methods to collect scarce data, and shift data costs through structured stakeholder consultation.
- Use good data quality techniques. Carefully document data. Leave a trail in the IA that a careful reader can follow to connect the input data with the outputs (i.e., the estimated effects) .
- Make weaknesses transparent and deal with uncertainties openly.
- Use diverse sources to guard against “data capture”.

Source: Jacobs and Associates, 2006, prepared for DG SANCO, European Commission.

109. Defining standards of data acceptability in advance, as well as the quality control process for data use, are critical to avoid “junk RIA” and to boost RIA credibility and reliability. The most common data quality standard is “transparency.” Several countries require that underlying data and assumptions be made explicit in the analysis so that readers can easily understand how conclusions were reached.

110. The United States has adopted general information quality standards based on “objectivity, utility and integrity.” Both the United States and the European Commission require that “best available data” be used. Other data quality standards used by Canada’s peers include: reproducibility, acceptance by independent experts, collected according to good statistical practices such as random sampling, and presentation of best estimates reflecting expected values (as distinct from “worst case” or conservative estimates), along with plausible ranges. A general rule is that survey data should not be used for RIAs unless the sampling method, the instrument itself, and the raw data are available to the regulator for quality checking.

111. Data needs and quality should be a focal point of RIA design. The means by which data are collected and the standards of quality that define acceptable data should not be ad hoc decisions decided for every RIA, but a matter of RIA policy that aims to produce the best quality data at the lowest cost possible. Here, the United States is at the cutting edge with adoption of the *Information Quality Act* in 2001 that substantially increased data quality standards and improved oversight through peer review and reports to OMB. OMB has pointed out after a year of implementation that data quality issues are often confused between inadequate treatment of uncertainty and accuracy of information. Both data problems should be addressed in a data quality strategy.⁴¹

112. Canada’s RIA program neglects the data collection and data quality issues. The 56 pages of the 1992 RIAs Writers Guide states simply that

- Costs are often easier to quantify than benefits. If industry costs cannot be quantified, at least provide some data to indicate the scope of the potential impact, for instance, the number of firms in the industry, their respective size, and their regional concentration.

113. Likewise, the 110 pages of Canada's 1995 benefit-cost assessment guidelines do not offer any strategic approach to data collection, but only propose a few examples and practical pointers. For example:

- Rather than assess consumer costs, as a practical matter, you may find it most effective, and certainly easiest, to examine costs to business without worrying about who ends up paying the bill.

114. The more recent RIA policies – the 1995 and 1999 Regulatory Policies do not mention data collection methods or data quality, though others have raised concerns about the quality of scientific evidence. The Office of the Auditor General (OAG) recommended in 2000 that the Regulatory Policy be clarified with regard to health and safety regulatory programs to safeguard the credibility of science in government, in particular its use to identify risks and to support risk-rating of activities.⁴²

Table 6: Data Collection and Data Quality Standards

| Country | Data collection methods | Data quality standards | Trends |
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| Australia, Commonwealth Government | <p>None specified.</p> <p>1998: Qualitative, quantitative and scientific evidence all have a role to play in the impact analysis of a particular option.</p> <p>Victoria State (2005) lists several sources of data including consultation, government data, surveys, experts, and insurance claims.</p> | <p>1998: Data sources and assumptions made when conducting the impact analysis should be recorded so that they can be referred to at a later date when the proposal's effects are being assessed.</p> <p>2004: Any assessment process for the development of regulations and/or standards should be scientifically rigorous...</p> <p>Victoria State (2005) requires that "...all assumptions should be made explicit and all data used should be made transparent – if necessary in a technical appendix" and "All the main sources of data/information, including quoted research, should be listed in an appendix."</p> | Unclear. |
| Canada | To improve data collection for RIA, Canada has developed two cost-estimation aids, an interactive, software-based "Business Impact Test" and a "Business Impact Cost Accounting Protocol" | No data quality standards for RIA are established. | Unclear. |
| European Commission | The Commission's 2005 IA Guidelines contain little advice on how to prepare for good data collection except to recommend a "consultation module" and a "Yellow Pages" section to quickly contact scientists with specific | <p>2005 IA Guide recommends that regulators use "best data available..." Data should be:</p> <ul style="list-style-type: none"> • Transparent: it must be clear to others how you arrived at your estimation of impacts. • Reproducible: others must be able to arrive at the same | <p>Little progress in improving data collection methods.</p> <p>EU IAs are based on much unreliable and</p> |

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| | expertise. | <p>results, using the same data and approach.</p> <ul style="list-style-type: none"> • Robust: if using different methods or assumptions to estimate the impacts gives very different results, this may call into question the reliability of your analysis. <p>If results depend on the choice of a specific analytical method, or if the data used are not fully reliable, it is essential to set this out. (p 38)</p> | low quality information that makes conclusions vulnerable to pre-conceived notions and political agendas. |
| Ireland | <p>National Statistics Board has identified government sources of social and equality statistics.</p> <p>Pilot project found “considerable scope for collaboration with existing groups and initiatives in identifying and, where necessary, commissioning data for use in RIAs.”</p> | <p>Particularly when the cost data comes from those affected by the regulations, data should be verified through the use of other independent sources. Sensitivity analysis or ranges may also be used to take account of different cost estimates.</p> <p>Regulators must provide a reference to any data sources or data analysis methodologies used.</p> | More attention to data problems and transparency. |
| New Zealand | Regulators should explore innovative ways to use electronic technology in information collection to reduce paperwork burden and to improve the quality, timeliness, and utility of the data received. | <p>(2001) Statistics New Zealand should be consulted on proposals that have implications for the collection, analysis and release of statistical information from surveys or administrative databases, or that relate to monitoring and evaluation.</p> <p>(2001) In presenting the results of the CBA, it is important to document the methods used to calculate the costs and benefits, including:</p> <ol style="list-style-type: none"> a. all major assumptions; b. deficiencies in the information used.... | More attention to data problems and transparency. |
| Sweden | No data collection methods are recommended. | No data quality standards are set | No improvement |

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| <p>United Kingdom</p> | <p>Several sources of data are suggested to quantify impacts:</p> <p>Treasury Green Book</p> <p>Environmental Appraisal Guidance</p> <p>Cost of Injuries Guidance</p> <p>National Air Quality Strategy</p> <p>Public Services Threshold Test</p> | <p>No data quality standards are set.</p> <p>(2005) Regulators should spell out and test any assumptions, and provide references to any data sources or methodologies used.</p> <p>All the evidence and information gathered during the RIA process must be included in the RIA (Freedom of Information Act).</p> | <p>More attention to transparency.</p> |
| <p>United States</p> | <p>No particular data collection methods are recommended.</p> | <p>Under OMB 2002 guidelines, “information quality” means “utility” (usefulness to its intended users), “integrity” (security), and “objectivity.” “Objectivity” focuses on whether the disseminated information is accurate, reliable and unbiased as a matter of presentation and substance.</p> <p>OMB’s government-wide guidelines cover the quality of information disseminated by federal agencies. More critical “influential” information is subject to higher quality standards. Each agency must issue its own guidance to ensure the quality, objectivity, utility and integrity of information distributed by the agency. Data and analytical results presented in RIA will generally be taken to have satisfied the objectivity criterion if they have undergone formal independent external peer review.</p> <p>(2006) Federal regulators are increasingly adopting the risk assessment data standards contained in the 1996 amendments to the <i>Safe Drinking Water Act</i> that “ensure that the presentation of information [risk] effects is comprehensive, informative, and understandable,” information supporting regulations should specify, to the extent practicable – each population addressed by any estimate [of applicable risk effects];</p> | <p>Substantial movement toward more stringent data quality standards and more oversight from external sources.</p> |

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| | | <p>the expected risk or central estimate of risk for the specific populations [affected];</p> <p>each appropriate upper-bound or lower-bound estimate of risk;</p> <p>each significant uncertainty identified in the process of the assessment of [risk] effects and the studies that would assist in resolving the uncertainty; and</p> <p>peer-reviewed studies known to the [agency] that support, are directly relevant to, or fail to support any estimate of [risk] effects and the methodology used to reconcile inconsistencies in the scientific data.</p> | |
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IV. Trends in Analytical Methods in RIA

115. RIA has always been characterized by a search for the perfect method, one that reliably answers the questions posed by increasingly difficult public policy questions, but that does so in a low-cost, transparent, and rapid manner. The importance of the policy issues at stake is strong reason to use methods that are robust, flexible and well-proven to work in a wide variety of public policy areas. There are such methods, but very few of them.

Experimentation with new RIA methods must meet a very strong burden of proof in order not to undermine policy effectiveness.

116. The four main analytical methods in RIA programs used in the countries included in this report are:

- forms of benefit-cost analysis, integrated impact analysis (IIA) and sustainability impact analysis (SIA) to integrate issues into broad analytical frameworks that can demonstrate links and trade-offs among multiple policy objectives;
- forms of cost-effectiveness analysis based on comparison of alternatives to find lowest cost solutions to produce specific outcomes;
- a range of partial analyses such as SME tests, administrative burden estimates, business impact tests and other analyses of effects on specified groups and stemming from certain kinds of regulatory costs;
- risk assessment, aimed at characterizing the probability of outcomes that result from specified inputs.

117. The economics thrust of RIA has always favoured benefit-cost analysis (BCA) as the most inclusive and socially responsible method of public decision-making. BCA also offers the important advantage of comparing costs and benefits occurring at different points in time. “Sustainability impact analysis” is, methodologically, BCA with a long time horizon and a weighting scheme for irreversible effects. BCA is the method long used by governments in assessing investment projects such as roads and dams, and adapted to regulatory policy issues in the 1970s. In 1992, and again in 1995 and 1999, Canada adopted the core principle of social benefit-cost analysis, “maximising the net benefit to Canadians,” as the United States had in 1981.⁴³

118. While there are continual concerns about over-monetization of impacts that can be legitimately presented in other metrics, this is a concern that is easily met. Mainstream benefit-cost analysis as used in RIA today in the most rigorous countries is a soft form of BCA, in which quantitative and qualitative metrics are combined and presented systematically. There is no country in which modern BCA insists on the monetization of all benefits and costs, although critics of BCA in RIA usually ignore this fact in favour of an exaggerated and theoretical version of BCA that lends itself to caricature. Even in the United States, which emphasizes quantitative analysis more than most others, the OMB reported in 2005 that

“Many...major rules have important non-quantified benefits and costs, which may have been a key factor in an agency’s decision to promulgate a rulemaking.”⁴⁴

119. Indeed, BCA is the method best adapted to protecting a broad range of interests. One of the key advantages of benefit-cost frameworks is that they encompass the broadest range of impacts across the social-economic-environmental spectrum, hence they are in line with nearly universal political demands that RIA methods address a wider range of public interests. In response, RIA methods are embracing more and more impacts, including operational, capital, and dynamic costs, and all major benefits using methods based on social welfare theory.

120. But the move toward more integrated forms of RIA through soft BCA is only one strand in current trends in RIA methods. RIA trends today seem to be a diversification, sometimes even a fragmentation,⁴⁵ among the four analytical methods listed above.

121. The reason for this diversity of methods is not, at bottom, any reasoned dissatisfaction with benefit-cost analysis, although criticisms of formal BCA continue to be voiced. Rather, the main reason for the divergence of methods is that RIA is entering the mainstream of policy, and is coming under pressure from the many groups who now understand that they have a stake in RIA. That is, RIA is being democratized from its origins as a rather technocratic tool into a political and policy tool. Table 7 below shows how the different sources of interest in RIA lead to different goals and kinds of analysis.

Table 7: Pressures on RIA Methods

| Pressures on RIA | = | Goals | = | Analytical method |
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| Neoclassical economics | = | Maximization of social welfare among multiple goods and bads (Pareto optimum) | = | Benefit-cost analysis, integrated impact assessment including multiple policy objectives |
| New public management | = | Cost and performance disciplines | = | Cost-effectiveness analysis on various options |
| Competitiveness, microeconomic policies | = | Minimizing business costs | = | Business impact, SME tests, administrative burden tests, |
| Social consensus, interest group pressures | = | High valuation of impacts on selected groups | = | Distributional analysis, partial analyses |

Source: Scott Jacobs, Jacobs and Associates, 2006.

122. Diversification is not a bad trend, as long as the other RIA methods act as inputs into a broader benefit-cost framework. There are sound reasons for some aspects of analytical diversification, such as concerns about how regulations will affect larger social goals and concerns about the disproportionate effects of fixed regulatory costs on small businesses. In some cases, a focus on specific kinds of impacts is merited because regulators have neglected those impacts in the past. Canada adopted its Business Impact Test (BIT) because regulators did not do a good job in this area. A similar rationale was given for the SME test in the United Kingdom: regulators did not seem to understand the effects of their actions on small businesses in particular. In such cases, partial analysis can be seen as an attempt to rebalance the inputs into good regulatory decisions. But of course these kinds of partial effects can be understood only in the context of the other benefits and costs of government action. No one argues today that government regulations should be adopted only on the basis of minimizing SME impacts.

123. Some governments are trying to ensure that various RIA methods are complementary and supporting tools. The European Commission is a good example of an RIA regime that has tried hard to maintain the integrity of the IIA model and protect it from fragmentation into smaller, competing analyses, which was a real danger only a few years ago. As the Commission explained in 2004:

The Commission's new Impact Assessment procedure cuts across all sectors and has integrated and replaced all previous single-sector type Impact Assessments (business, gender, environmental, health, etc.). It provides policy-makers with a better and more coherent analysis of all relevant impacts across the various policy dimensions.⁴⁶

124. The success of the European Commission in this regard has placed European policymaking on a much sounder foundation for the future.

125. Unfortunately, in more and more countries, diversification, driven in part by competitiveness issues and in part by political intent to serve vocal constituencies, has actually meant fragmentation into competing policy agendas, because the larger integrated framework is not clearly defined or emphasized. Without the integrating framework, such methods do not rebalance RIA but unbalance RIA. In such cases, RIA is weakened by over-reliance on partial, uncertain, and inappropriate analytical methods that are not based on a coherent view of the use of RIA in public policy. Reliance on such methods creates risks of systematic errors in policy decisions. Such errors reduce the benefits of government action and increase the likelihood of policy failure.

126. Canada exhibits all four of the trends toward analytical diversification. The Canadian federal government should turn in 2006 toward what the European Commission calls Integrated Impact Analysis (IIA), in which economic, social, and environmental impacts are assessed together within a transparent benefit-cost framework. If Canada chooses this approach, the RIA should become the framework through which trade-offs are identified and benefits are maximized across a range of policy objectives. There is no clear analytical distinction between economic and social impacts, but Canada's federal government can be

forgiven for perpetuating, in its draft Directive, the fiction of distinct “economic” and “social” goals as long as they all fall under the same analytical framework.

127. Method is an important issue, but another important issue is analytical quality within the method chosen. In the countries with the most investment in RIA, there are continual efforts to increase the quality of RIA through more quantification, more precise requirements, and higher quality data. In Australia, for example:

- Since the mid-1990s, the ORR has progressively raised the minimum information requirements of RISs, with the objective of improving the quality of RISs and their usefulness to decision makers. For example, for regulatory proposals that generate additional compliance costs on business, since 1 July 2004, the ORR has advised regulators that quantitative data about such costs must be included in RISs (or, alternatively, a clear statement be made that the regulator is unable to estimate such costs).

128. Similarly, OMB’s 2003 guidelines for RIA increased emphasis on cost-effectiveness analysis as well as benefit-cost analysis. Specifically, the new guidelines emphasize monetization and “net benefits” criteria, while clarifying the presentation of non-quantifiable factors. Cost-effectiveness analysis was mandated for all major health and safety standards to prevent a clearer comparison of the cost for risk reduction. This step was intended to increase incentives for regulators to set priorities addressing more important risks or risks which could be mitigated at lower cost, and reducing incentives to address high profile but less important risks with higher costs. In 2005, OMB issued a draft bulletin, to be finalized in 2006, “to enhance the technical quality and objectivity of risk assessments prepared by federal agencies by establishing uniform, minimum standards.” These quality standards are utility, objectivity, and integrity.

129. The global trend toward more rigour and more quantification in RIA is a good indication of its importance in helping governments produce the kind of cost-effective policies they need in today’s climate, but Canada has not engaged in any similar examination or improvement of its RIA methods for many years. The Privy Council Office has, however, announced that it will launch a program to study the state of regulatory analysis practices (new analytical tools and related data needs. Such a study will be useful in re-orienting the federal government’s RIA methods based on a clearer view of good international practice, the contributions of each method to good governance, and the need to increase analytical quality.

IV.A. Soft Benefit-cost Analysis and Integrated Analysis

130. As noted above, the BCA framework is the most inclusive and integrated form of RIA, and provides the best information on which to make sound policy decisions. The most advanced RIA countries are putting a great deal of effort into improving the quality and rigour of integrated frameworks that are all variants on soft benefit-cost analysis:

- Australia (2005): The Office of Regulation Review “intends to further raise the minimum adequacy standards for RISs, with a particular focus on improving the standard of analysis of costs and benefits, and of compliance costs for business.”
- In March 2005, the European Commission decided that, within the RIA process:

“the assessment of economic impacts must be strengthened so as to contribute to the objectives of the renewed Lisbon strategy. Deepening the economic pillar of impact assessment does not compromise the importance of ‘sustainable development’ and the integrated approach, which remains the basis of the Commission’s approach. Deepening the economic analysis, which also includes competition aspects, should improve the quality of the assessment of the true impact of all proposals.”⁴⁷

To implement this decision, the Secretariat General issued new RIA guidance in 2005 to “improve quality and quantity” of analysis, particularly of competitiveness issues such as costs. It explained that “Continued efforts are being made to improve Impact Assessments, for example, through better assessment of trade-offs and inter-linkages between impacts; improved quantification and a possible further monetisation of impacts...” Compared to previous RIA guides, the 2005 RIA guidelines put more emphasis on economic performance and competitiveness over social and environmental aspects. The draft stirred up a debate with the College of Commissioners in summer 2005, leading to an agreement to use the RIA to fully assess the costs and benefits of environmental policies, including the costs of non-action, in attempts to reduce the price tag of environmental policies without reducing protections.

- As the US government has reduced the number of regulations considered “significant,” it has increased attention to the standards applied in performing BCA. This is a good example of the targeting trend seen overall.

131. As noted, over a decade ago, Canada adopted the principle of maximizing net social benefits. This is the only analytical standard that can integrate a wide range of public policy goals. The fact that countries with strong environmental protection standards and records are pushing toward more integrated RIA frameworks based on soft benefit-cost analysis and stronger emphasis on quantitative measures of impacts should suggest that such a framework is fully consistent with values of social and environmental protection in Canada. Indeed, the integrated framework approach is much closer to reality than the spurious contrast between economic and social values that are sometimes contained in Canadian discussions of good regulation.

132. The clear principle that regulations shall strive to produce maximum net benefits for Canadians has been replaced in the 2005 draft guidelines with two other criteria:

- The criterion in the preamble that “benefits justify the costs” seems to be a soft BCA principle and within the mainstream of good practice IF it is further elaborated as part of an integrated “soft BCA” framework such as the United States, the European Commission, and Australia have done. Unfortunately, the 2005 draft guidelines do not further elaborate on the BCA principles or on the nature of the integrated framework.
- Indeed, the draft goes on explicitly reject the “net benefits” criterion: “[Regulators] should look at the overall benefits and costs to Canadians, business and government, and choose the option that is the most appropriate, not necessarily the one that offers the greatest benefit at the lowest cost.” The mean of the word “appropriate” is not defined, and has no analytical content. This criterion returns Canada to the pre-1978 period of policy-making.
- The criterion that “Departments and agencies are expected to demonstrate that the recommended option maximizes the benefits in relation to costs and results over time in greater overall benefits than any other type of regulatory or non-regulatory action” is an awkward phrase that seems to be a cost-effectiveness principle. It is surely not the clear standard analytical quality that other countries are adopting.

133. The draft guidelines are not clear about the key issues of the integrated framework, the need for more rigorous quantitative analysis, and explicitly reject the existing Canadian principle that new regulations should produce net benefits. On these issues, the draft signals a regression from good RIA practices and benefit-cost standards toward a less transparent, less rigorous, and less integrated RIA framework.

134. Canada should reaffirm its intent to use an integrated analytical framework to assess the various impacts of a regulation. The framework increasingly used by Canada’s peers is a soft benefit cost analysis framework. This framework produces the most rigorous, transparent, and consistent information for public policy decisions, and, because it emphasizes the need to present all major benefits and costs, is consistent with high standards of environment will, health, and safety protection.

IV.B. Cost-effectiveness Analysis and Comparing Policy Options

135. The cornerstone of Canada’s draft regulatory policy seems to be, in general, “cost effectiveness,” but, even here, the draft directive explicitly rejects the idea that alternative approaches should be chosen on the basis of cost-effectiveness. This fundamental confusion must be cleared up in order not to throw the RIA program into disarray.

136. Cost-effectiveness analysis (CEA) is a technique that used to compare the costs of different options with the same or similar outputs or benefits. It is a useful but limited method, because it does not determine if the action is worth taking (that benefits justify costs) and does not resolve the choice of the optimal level of benefits. But it can reduce the costs of problem solutions to the lowest

level. That is, whereas BCA helps governments decide *what* to do, CEA helps governments decide *how* to do it.

137. There is no dispute among the countries in this report (or anywhere else that the author knows about) that regulators should choose the least cost option needed to achieve the results. This is a time proven principle and one that should not be questioned.

138. One of the primary functions of CEA is to systematically and transparently compare the many options that are regulator has. Comparing options is among the most difficult tasks of RIA, and one that no country has performed very well. The formal RIA requirements to accomplish this are formidable:

- The most rigorous and data-intensive approach is taken by Australia which requires that the RIA “assesses feasible options and include a cost-benefit, impact and risk analysis of each option.”
- The United States requires a broad (soft) “net benefit” approach: “In choosing among alternative regulatory approaches, agencies should select approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity.”
- New Zealand opts for clarity and brevity: “Achieve objectives at lowest cost, taking into account alternative approaches to regulation.”

139. Canada’s current Regulatory Policy also adopts the “net benefit” standard to “ensure that use of the government’s regulatory powers results in the greatest net benefit to Canadian society” and it requires that “Alternative regulatory solutions must be analyzed to ensure the most effective and efficient is chosen.”

140. The timing of the RIA process is also important to RIA quality in comparing alternatives. This review of experiences in the most advanced countries even suggests that the *timing* of RIA, perhaps more than the *method* of RIA, is the most important determinant of how well the assessment of options is done.

141. Surprisingly, many countries do not require that RIA be done *before* the options are considered and chosen. RIAs that are multi-staged seem to encourage earlier use of RIA, and lend themselves to better consideration and selection of options. For that reason, the discussion above on the earlier timing of RIA and public consultation is critical to a fuller and more honest appraisal of alternatives.

IV.C. Partial Analyses, such as Distributional Assessments, Business Impact Analysis, SME Analysis, and Administrative Burden Analysis

142. All impacts are not equal. It is perfectly permissible in RIA methods to assign different weights to different kinds of impacts. For example, impacts on animals that are endangered are much more important than impacts on animals that are not endangered. Analytical methods themselves provide little guidance for assigning different weights, and therefore the decision to weigh some impacts

more heavily than others is mostly a political decision based on policy priorities and values.

143. It should be clear that assigning weights in the analysis to different kinds of impacts has the effect of biasing policy decisions toward results that favour those impacts. Because of the systematic neglect of non-weighted impacts, governments should be very careful in ensuring that such a bias produces policy results that are desirable over many policy areas and over time.

144. In addition, it is vital that such weights do not develop into partial analyses, that is, analysis *only* of those particular impacts. Partial analysis is the most extreme version of weighting. Such partial analysis poses a higher risk of incorrect policy conclusions because it does not provide the full, undistorted picture of the consequences of actions. Partial analysis should be considered as a fragmentation of complete analysis.

145. Unfortunately, as discussed below, there is a growing tendency for governments to make three critical mistakes in RIA:

- They are requiring regulators to pay special attention to distributional impacts on specific groups, without specifying how such impacts are to be assessed (for example, should such impacts consider only costs or net effects?), integrated into the broader RIA framework, or weighted against impacts on other groups. This tendency reduces the consistency and transparency of RIA analysis.
- They are requiring regulators to assess the macroeconomic impacts (such as trade or poverty impacts) of specific regulations, which are microeconomic interventions. This kind of “fake analysis” has little methodological basis. Except for the very largest regulations, such as perhaps the new EU regulatory framework for Registration, Evaluation and Authorisation of Chemicals (REACH), no method is capable of determining the macroeconomic impacts of isolated microeconomic intervention, except in its most static and short-term dimension. This mistake signals a fundamental confusion about the purpose and limits of RIA.
- They are adopting partial analyses, or methods that are capable only of assessing specific kinds of impacts, usually costs, without defining how those partial analyses are to be integrated into a broader analytical framework. Clearly, using a single test to guide policy decisions raises the risk of serious policy failure.

Distributional Impacts

146. Distributional issues have always been difficult to handle within the RIA framework, because it is usually analytically difficult to trace the specific effects of a single regulation on specific groups through the complex interactions of society, the environment, and the market. Yet countries are including in their RIA

requirements assessments of effects on gender, regional development, and other distributive effects.

147. Australia's RIA handles distributional issues well, because it requires that distributional effects be documented from an economy-wide approach, rather than zeroing in *a priori* on specific groups. In Australia, RIA should document which groups benefit from regulation and which groups pay the direct and indirect costs of implementation. As noted, a similar approach is taken in the European Commission and in the United States where emphasis is placed on an integrated approach and overall comparison of benefits and costs rather than on non-transparent weighting of selected impacts. Canada's current 1995 RIA guidance handles distributional effects similarly. RIA analysts are told that "decision makers should be informed about the distribution of costs and benefits," without specifying particular groups for special consideration.

Assessing Macroeconomic Impacts of Microeconomic Interventions

148. A key assumption of social welfare analysis is that a consistent commitment to better public policy that produces more results at lower cost will produce better macroeconomic outcomes. Over time, more efficient microeconomic interventions produce big positive effects on the macroeconomy. For that reason, RIA should have positive macroeconomic impacts.

149. Yet this relationship does not mean that macroeconomic impacts for single regulatory interventions can be assessed. Micro interventions are part of a complex economic system, and tracing the marginal effects of a single intervention is usually impossible. What RIAs actually do when they attempt this task is identify very short-term and static effects on specific industries. Secondary, longer-term and dynamic effects are ignored because they simply cannot be assessed. Hence, the practical and unfortunate result of this kind of analysis is to drive policy decisions toward static and short-term results, which almost always leads to the wrong policy solution.

150. Table 8 shows a few examples of attempts by even the most advanced countries to use RIAs to assess macroeconomic outcomes.

- RIAs in the European Commission must assess "Impacts on existing inequalities" by comparing regional, gender and ethnic impacts of the proposed action. This is analytically incorrect because "inequality" is a product of the macro environment, not of a single government policy or intervention.
- Ireland repeatedly makes this mistake in its new RIA guide (2005). RIA analysts must assess impacts on "innovation and creativity" and a "poverty impact assessment should examine impacts on poverty through employment, income maintenance, education, health and housing policy." Again, innovation and poverty are not the result of a single government intervention or regulation, and there is no analytical technique for assessing these impacts in an RIA.

- Australia comes very close to this error when it requires a “Trade Impact Assessment (TIA)” because trade flows and market competitiveness are the result of many factors, and the impact on trade of a single regulation, except perhaps the most enormous, such as Europe’s REACH, cannot be assessed.

151. Canada avoids this kind of mistake in its current RIA guide, which requires that “all of the benefits associated with the preferred action justify all of the costs.” No impacts that can be considered macro are singled out for analysis.

Partial Analyses

152. Partial analysis, such as administrative burden analysis, and business or SME impact analysis, can either strengthen RIA or weaken RIA:

- Partial analysis strengthens RIA if it reinforces attention to important impacts that have been neglected, but only if those impacts are considered within an integrated analytical framework. That is, partial analysis is useful primarily as an input into broader RIA.
- Partial analysis will degrade RIA quality if it is not integrated into a wider analytical framework, and therefore is given undue weight in the policy decision. This approach fragments RIA into special interests, and renders it useless as a general policy tool.

153. Partial analysis is a politically attractive development, sometimes even more so than RIA itself. Requiring specific tests as part of the RIA demonstrates political commitment to addressing problems facing specific groups, such as competitiveness concerns for the business sector. In this sense, specific RIA tests are often the equivalent of constituency services. Political appeal can be a good thing if it strengthens commitment to broader RIA, but damaging if it erodes support for good RIA.

154. SME and business impact tests have always been popular for this reason. The Business Impact Test (BIT) used in Canada has its equivalents almost everywhere: Australia (Effects on small businesses should be explicit), Victoria State (Business Impact Assessments), New Zealand (Business Compliance Cost Statement), Sweden (SME test); United Kingdom (Small Firms Impact Test), and the United States (regulatory flexibility test). This kind of test can boost attention to disproportionate regulatory costs on SMEs, but is damaging if it diverts public policy decisions away from those that produce net benefits toward those that are less beneficial in general, but more beneficial to business or small business interests. In the United States and in the European Union, these kinds of tests are explicitly included within the integrated BCA framework, and are not considered as a separate or external test.

155. There seems to be more awareness in Europe of the damaging effects of fragmentation. In Sweden, which has had a small business (SimpLex) test for years, the Board of Swedish Industry and Commerce for Better Regulation

recommended in 2005 that impacts on SMEs should be included in the RIA, but that there was no need for a special test. It concluded sensibly, “The SimpLex Ordinance does not fit in with the new integrated approach to impact assessment in the EU.”

156. The most prominent emerging example of partial analysis is the costing of administrative burdens contained in regulations. Reducing administrative burdens has always been a popular element of regulatory reform, but it has taken on a disproportionate role in the past two years. The United States has required since 1980 that “paperwork burdens” be separately assessed, but such burdens are included in the RIA as any other cost element and are given no special weight. In 2005, the Australian government considered an administrative cost test but reached the correct conclusion that “the compliance costs of regulation to business should not be viewed in isolation – other costs (including distortions in production and investment decisions) and, importantly, the benefits of regulation, both to business and wider community, should be considered. As such, the use of such tools has the greatest potential to assist policy makers as part of a broader RIS framework.”⁴⁸

157. Quite a different trend began in 2002, when the Dutch Government committed itself to measuring and reducing the administrative burden on business by 25 percent using a method called the “Standard Cost Model” (SCM), which is a bottom-up method of measuring the time needed to comply with administrative requirements and extrapolating from firms to entire economies. Several countries are developing this method for their own use, and the SCM is spreading rapidly:⁴⁹

- In the UK, an independent advisory group – the Better Regulation Task Force (BRTF) – examined the feasibility of measures to reduce the regulatory burden on business. It concluded that the Government could considerably reduce the regulatory burden by adopting the Dutch approach to reducing administrative burden. In July 2005, the UK Government accepted the recommendations of the BRTF report.
- Belgium is using it for Value Added Tax (VAT) and business permits.
- Denmark is using it to measure all regulation.
- France and Italy are adopting it for business permits.
- Hungary is using it for VAT.
- Norway and Sweden started to use the Dutch approach for VAT costs and are broadening its use.
- The European Commission decided in October 2005 to develop an EU common methodology based on the SCM and integrate that method into its own RIA guidelines. The analysis will assess net administrative costs (new costs imposed by an act minus costs suppressed by the same act at EU or Member State level). The “net cost” approach is justified as

consistent with the Commission's RIA guidelines and the OECD guiding principles for regulatory quality and performance.⁵⁰

- In 2005, the OECD's Red Tape Scoreboard project began developing a method for measuring administrative burden across OECD members, using the SCM as a starting point.

158. The SCM is still fairly new and the few governments that now apply it have only just begun. The danger is that this and other partial analyses will become so dominant that they will overwhelm the integrated analysis that is so important to balance various impacts and benefits with costs. The need to move away from partial analysis to full analysis was explicitly recognized in the United Kingdom, when the Chair of the Better Regulation Task Force announced the decision to adopt the SCM methodology, but warned that "What gets measured gets done" and concluded that:

Measuring administrative (or red tape) costs is a good start, but they account for only around 30% of total regulatory costs. The remaining 70% are policy costs and we also need to find ways to measure them and to compare them systematically with the benefits that good regulation can bring.⁵¹

159. Similarly, the European Commission has expressed its reservations about the potential of the administrative costing to distort the integrated impact assessment:

In the EU's approach to better regulation, the preparation of new legislation and simplification of existing legislation take into account the overall benefits and costs. Therefore, regulatory costs, of which administrative obligations are just one element, must be analysed in a broader context, encompassing in an integrated way the economic, social and environmental costs and benefits of regulation. This is why the assessment of administrative burdens must continue to form a part of the Commission's integrated impact assessment procedure. Measuring administrative costs can help to improve the regulatory environment, but it cannot take a disproportionate weight in that broader analysis.⁵²

160. The dangers of administrative burden tests taking a disproportionate weight in the RIA should be clear. For example, it would discourage the use of information and disclosure as alternatives to regulation, since these alternatives usually impose relatively high administrative burdens. It would systematically bias decision-making away from regulatory solutions in which administrative requirements are the most efficient solution.

161. Canada's current policy seems to have mostly escaped the danger of fragmentation into partial analyses. Specific mention is made of particular impacts, such as environmental impacts, but, as noted, these could be contained within a larger RIA framework, rather than separated out as stand-alone analyses. Canada should avoid the risk of biased and partial analyses by reaffirming that all specific impacts will be integrated into a larger analytical framework, as the European Commission and the United States have done.

IV.D. Risk Assessment and Uncertainty Analysis

162. Three aspects of risk assessment and uncertainty analysis are included in the RIA programs of the countries included in this review:

- The usual and most precise use of the term means assessment of probability of an effect due to a specified cause, for example, if a person breathes one gram of a substance, the probability of contracting cancer is 10 percent. Here, the purpose of the analysis is to identify that causal probability. The risk assessment is then used to assess the impacts of any particular intervention. The risk assessment does not measure uncertainty but probability.
- Uncertainty analysis projects the likelihood of a range of possible outcomes due to estimation errors. For example, we can determine the worst-case scenario by substituting the most pessimistic estimates for each variable simultaneously, and see how much the outcomes change. We can also pinpoint the source of uncertainty by varying each variable one at a time, holding all other variables unchanged, to see which are the most important. Uncertainty analysis is used to provide policymakers with a more accurate understanding of the likelihood of impacts.
- A variation of uncertainty analysis is the use of precaution to address unknown risks that are potentially serious and irreversible. The precautionary principle essentially requires that, for certain kinds of impacts and even where uncertainty is very high, worst-case scenarios should be used to justify intervention.

163. Risk assessment in the first sense seems to be either well elaborated in RIAs or almost entirely neglected. Risk assessment is well elaborated in the RIAs in Australia, United Kingdom, and the United States. In the RIAs in the other countries reviewed in this report, risk assessment takes only a minor role and is only briefly mentioned. Even where these countries have specific risk policies, they seem to be poorly integrated into the RIA. In 2000, Canada, for example, adopted a detailed Integrated Risk Management Framework, but risk assessment scarcely appears in the framework, and is almost invisible in the 1995 RIA guide.

164. Table 8 shows that the most common aspect of risk included in RIA is the second – uncertainty analysis. What most countries mean by “risk” is uncertainty.

165. Precaution is not integrated into RIA in these countries. The reason for this is that precaution is not an analytical concept, but a policy to react in certain ways under uncertainty. The RIA can produce information to inform the decision to use precaution, but the RIA cannot itself demonstrate whether precaution is appropriate. Canada has adopted the precautionary principle as a public policy option, but the clear distinction between precaution as a policy choice and RIA as an analytical tool should be maintained.

Table 8: Current Methods of Regulatory Impact Analysis

| Country | Analytical methods used | | | |
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| | Benefit-cost and integrated analysis | Cost-effectiveness and alternatives | Partial analyses and distributional effects | Risk Assessment and Uncertainty Analysis |
| Australia, Commonwealth Government | <p>1998 Guide: The benefits of any regulation to the community should outweigh the costs.</p> <p>1998: RIAs for proposals that affect business by restricting competition should demonstrate that the benefits of restricting competition outweigh the costs, and that the benefits can only be achieved by restricting competition.</p> <p>2004: RIA should demonstrate that the benefits of introducing regulation outweigh the costs.</p> <p>2004: Regulation should not restrict competition unless it can be demonstrated that: the benefits to the community from a restriction on competition outweigh the costs.</p> <p>2005: Impact assessment</p> | <p>1998: RIA should test alternative non-regulatory and regulatory measures and help regulators select the most effective and efficient approach. Hierarchy of options is:</p> <ul style="list-style-type: none"> • self-regulation • quasi-regulation • explicit regulation <p>2004: Regulatory instruments should be performance-based, that is, they should focus on outcomes rather than inputs.</p> <p>Adequacy criteria for RIAs: Is a range of</p> | <p>1998: The cost-benefit analysis should document the likely impact of each option on each group affected.</p> <p>Competition analysis: What is the impact of the proposed regulatory measure on competition, including the introduction of new processes and techniques?</p> <p>Trade Impact Assessment (TIA) should be included in RIAs for all proposals that have a direct bearing on export performance.</p> <p>An assessment of ecologically sustainable development (ESD).</p> <p>Effects on small businesses of proposed new and amended legislation and any other regulation should be explicit in the RIA.</p> <p>2002: Cost Recovery Impact Statement (CRIS) included in RIA</p> <p>2004: RIA should document which groups benefit from regulation and which groups pay the direct and indirect</p> | <p>It is important to undertake risk analysis in RIAs, especially for environmental, national security and safety problems</p> <p>Risk analysis is used in addressing the threshold issue of whether or not to regulate. Risk analysis should involve:</p> <ul style="list-style-type: none"> • an appraisal of the current level of risk to the exposed population due to the specific cause under consideration; • the reduction in risk that will result from the introduction of the proposed measures; • consideration of whether the proposed measures are the most effective available to deal with the risk; and whether there is an alternative use of available resources which will result in greater overall benefit to |

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| | <p>should attempt to assess all costs and benefits to the greatest extent possible, that is, not just economic ones. Social and environmental, public health and consumer safety effects should be considered. The level of assessment will depend upon an estimation of the likely impact. Regulations with significant net costs or benefits will need detailed quantitative assessment.</p> <p>2005: Regulators are encouraged to use quantitative cost/benefit analysis when appropriate. Regulators should undertake more robust cost-benefit analysis.</p> | <p>viable options assessed including, as appropriate, non-regulatory options?</p> <p>The RIA should assesses feasible options and include a cost-benefit, impact and risk analysis of each option.</p> <p>(2004) Hierarchy of preferred options:</p> <ul style="list-style-type: none"> • Do nothing • Suasion • Pure market approaches (create a market by defining property rights) • Economic approaches (incentive-based approaches) • Regulatory approaches | <p>costs of implementation.</p> <p>2005: The ORR intends to improve the role of RIA in “reducing red tape and the regulatory burden on business...This will include working with the Office of Small Business to integrate business compliance cost measurement systems with RIA....</p> <p>Adequacy criteria for RIAs: Are the groups in the community likely to be affected identified, and the impacts on them specified? There must be explicit assessment of the impact on small businesses, where appropriate.</p> <p>2004-2005 Adequacy criteria for RIAs: The RIA must include quantitative data and analysis of regulatory compliance costs on business and the community, or an explicit statement that such costs could not be estimated.</p> | <p>the community.</p> <p>Risk assessment should be used in conjunction with other quantitative assessment techniques.</p> <p>No mention of precautionary principle in RIA guidelines.</p> |
| Australia, Victoria State Government | (2005) Requires an analytical cost-benefit framework that examines the economic, social and | (2005) RIA must include “scrutiny and evaluation of policy options via cost/benefit analysis | For primary legislative proposals that may have significant effects on competition and/or business, Business Impact Assessments (BIAs) need to be | A cost-benefit analysis should contain an assessment of risk to assist decision-makers in the choice between different options. |

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| | <p>environmental impacts of legislative proposals. The Government will not impose regulation on businesses, markets or consumers without establishing that the benefits outweigh the costs.</p> <p>Those proposals with a net benefit result are potentially attractive; the proposal with the greatest net benefit should be selected and implemented.</p> <p>RIA is focused on market failures: Government intervention will focus on recognized market failures and measures in the public interest, including information asymmetry, unmanageable risks and consumer safety.</p> | <p>framework”</p> <p>All feasible forms of regulation and regulatory alternatives that could achieve the desired objectives/outcomes should be considered.</p> | <p>undertaken.</p> | <p>Risk analysis is a valuable tool in addressing the threshold issue of whether governments should intervene. It helps determine:</p> <ul style="list-style-type: none"> • whether the risks that government intervention is intended to address are of significant magnitude compared with other risks; and • the extent to which government intervention reduces the initial risk problem. <p>Efforts at reducing risks are best directed to areas where gains are greatest and the risks are regarded as unacceptable ... The objective of implementing a proposal to deal with risk should not be to reduce the risk at all costs, or to reduce it to a minimum level, but rather to balance the marginal benefits and costs to society of lowering the risk.</p> |
| Canada | <p>1992 Regulatory Policy adopted objective of “maximising the net benefit to Canadians.”</p> | <p>1995 and 1999 Regulatory Policies: “Alternative regulatory solutions must be analyzed to ensure the most effective and</p> | <p>1995 and 1999 Regulatory Policies: “Decision makers should be informed about the distribution of costs and benefits...”</p> | <p>1995 and 1999 Regulatory Policies: “when managing risks on behalf of Canadians, regulatory authorities must ensure that the limited resources available to government are used where they do the most</p> |

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| | <p>1995 and 1999 Regulatory Policies: Regulation should result in “greatest net benefit to Canadians... It must be demonstrated that the benefits of regulatory requirements are greater than their costs. When regulations address health, social, economic or environmental risks, it must also be demonstrated that regulatory effort is being expended where it will do the most good. For all regulatory proposals, a benefit-cost analysis must be carried out to assess potential effects...”</p> <p>2004 Regulatory Process Guide: The Policy is designed to ensure that use of the government’s regulatory powers results in the greatest net benefit to Canadian society.</p> | <p>efficient is chosen.”</p> | <p>“Information and administrative requirements are limited to what is absolutely necessary and that they impose the least possible cost [and] the special circumstances of small businesses are addressed... The Business Impact Test, or equivalent analysis, must be undertaken to assess the effect that major regulatory proposals will have on Canadian businesses.”</p> <p>Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals: “Conduct a preliminary scan to determine whether important environmental impacts, either positive or negative, are likely to arise from implementing the proposed regulation and its alternatives. If so.... identify the potential positive and negative environmental impacts of regulatory proposals....”</p> | <p>good.”</p> <p>1999 Regulatory Process Management Standards: When health, safety and environmental risks are involved, regulatory authorities must consider whether the relative and absolute risks posed are such that intervention is required at this time.</p> |
| <p>European Commission</p> | <p>(2001, 2005) Assess the potential economic, social and environmental impacts.</p> | <p>RIA should show that policy options do not go beyond what is necessary to achieve objectives (Treaty-</p> | <p>(2005) “Identifying impacts on different groups in society is a crucial part of IA. ...[the RIA] should consider two distinct types of distributional impacts:</p> | <p>(2005) Assign likelihoods (e.g., low, medium or high probability) that the identified impact will occur (or conversely the risk that</p> |

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| | <p>(2005) Benefit-cost analysis is an option, but not required. Minimum analysis is “a simple multi-criteria analysis, which compares positive and negative impacts expressed in a mixture of qualitative, quantitative and monetary terms.” (i.e., soft BCA)</p> <p>(2005) RIA should result in a comprehensive picture of the potential effects of the policy option...</p> <p>(2005) Assess the impacts in qualitative, quantitative and monetary terms where possible and appropriate.</p> | <p>based principle of Proportionality)</p> <p>The criteria by which policy options are screened are:</p> <ul style="list-style-type: none"> • effectiveness. The extent to which options can be expected to achieve the objectives of the proposal. • efficiency: The extent to which objectives can be achieved for a given level of resources/at least-cost (cost-effectiveness). • consistency. The extent to which options are likely to limit trade-offs across the economic, social, environmental domain. <p>Options should include:</p> <ul style="list-style-type: none"> • no EU action | <p>Impacts on different social and economic groups.</p> <p>Impacts on existing inequalities. You should for instance compare regional, gender and ethnic impacts of the proposed action....</p> <p>(2005) Impacts may differ significantly between Member States or regions.</p> <p>(2005) Identify likely impacts inside and outside the EU, primarily economic impact on third countries and international relations.</p> <p>(2005) Guidelines explicitly require the assessment of competition impacts.</p> <p>(2006) Administrative burden test.</p> | <p>the impact will not occur).</p> <p>(2005) RIA should consider how the impacts of the best option will vary if one or more key parameters change (“fine-tuning”), for example allowing more time for objectives to be met or aiming for more or less ambitious objectives (this method is called “sensitivity analysis”)</p> <p>Risk assessment and valuation: No requirement to use risk assessment, but when used (2005): “We can identify the value individuals place on small changes in risk....It is recommended that you use a figure of €1.0 M as a best estimate.... figures of €2.5 M and €0.65 M are recommended for the upper and lower bounds in sensitivity analysis.”</p> |
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| | | <ul style="list-style-type: none"> • alternative approach to “classical” forms of regulation, • streamlining or simplification of existing regulation | | |
| Ireland | <p>(2005) RIA model aims to promote the quantification of impacts on society, on marginalized groups, on consumers and the environmental costs and not just the compliance cost to business.</p> <p>(2005) Are we satisfied that the advantages outweigh the disadvantages of the regulation?</p> <p>In the Screening RIA, formal cost-benefit analysis is unnecessary but where possible monetize cost/benefits and impacts (place a monetary value on them) and/or quantify them.</p> <p>RIA must summarize the costs, benefits and impacts, specifying the cost-benefit ratio where possible.</p> | <p>All RIAs must include an analysis of options. These may be alternatives to regulation, alternative forms of regulation or alternative implementation options.</p> <p>The level of costs relative to the benefits of each option should be summarized. A number of decision rules can influence the choice of option, but as a general rule the greater the ratio of benefits to costs the better.</p> <p>The “do nothing” or ‘no policy change’ option should be included as an option. Even where doing nothing is not a</p> | <p>(2005) Distribution of costs (i.e., who bears them) should be described ... Distribution of benefits must be examined, i.e., which individuals/groups/regions/sectors will reap the benefits associated with each option.</p> <p>(2005 RIA guidance) Most Full RIAs will rely on a qualitative description of the distribution of costs and benefits, but the Full RIA must measure costs and benefits for:</p> <p>a. National competitiveness and negative impacts on:</p> <ul style="list-style-type: none"> • Ireland’s business and work environment • economic and technological infrastructure • education and skills • entrepreneurship and enterprise | <p>Techniques can be used to ensure that uncertainty and risks are specifically taken into account in analysing impacts. These include sensitivity analysis, scenario analysis and the use of ranges.</p> |

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| | <p>(2005) The analysis of benefits and costs is the central analytical element of the RIA. It necessitates an analysis of all the costs and benefits which are likely to result from a regulation/policy proposal. The costs and benefits must then be compared. Where the costs exceed the predicted benefits, the proposal should be refined or in certain circumstances abandoned.</p> <p>Use formal Cost-Benefit Analysis where costs of €50 million over ten years are likely.</p> | <p>viable option, it can serve as a useful benchmark against which other options can be compared.</p> <p>Full RIA requires a more detailed analysis of options. An alternative to regulation or alternative form of regulation to command-and-control must be included.</p> <p>Any Policy Review Group must consider the potential for the use of alternatives to regulation prior to recommending regulatory solutions.</p> | <p>development</p> <ul style="list-style-type: none"> • innovation and creativity. <p>b. Socially excluded or vulnerable groups</p> <ul style="list-style-type: none"> • poverty impact assessment should examine impacts on poverty through employment, income maintenance, education, health and housing policy. • vulnerable groups include women, children and young people, older people, people with disabilities, travellers, prisoners and ex-prisoners, migrants and ethnic minorities. • access to employment, and access to goods, facilities and services. <p>Health Impact Assessment (HIA) is carried out on all new relevant policies. RIA should, where appropriate, examine potential impacts on health and health inequalities.</p> <p>c. Impacts on the environment</p> <p>d. Whether the proposals involve a significant policy change in an economic market including an examination of the impacts on consumers and competition</p> | |
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| | | | e. Impacts on the rights of citizens f. Whether the proposal involves a significant compliance burden. | |
| New Zealand | <p>Regulatory benefits should outweigh costs: in general, proposals with the greatest net benefit to society should be selected and implemented.</p> <p>(1998) New Zealand moved from a compliance cost assessment framework to a more comprehensive cost-benefit framework. RIAs must include a statement of net benefit.</p> <p>(1998) RIA must include statement of the net benefit of the proposal, including the total regulatory costs and benefits (including non-quantifiable benefits) of the proposal. A fundamental purpose of the RIS is to demonstrate that the benefits of the regulatory proposal exceed the cost and that the net benefits to society are maximized.</p> <p>It is important that benefits and costs not be restricted</p> | <p>Achieve objectives at lowest cost, taking into account alternative approaches to regulation.</p> <p>(1999) Cost effectiveness analysis can be used on those occasions when Government specifies an objective below which it will not be willing to trade off other objectives.</p> <p>RIA must include a statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s). Set out the various options (including the preferred option) that could wholly or partly achieve the policy objective(s). Alternative options may rely on the market in conjunction with</p> | <p>(1999) The groups likely to be significantly affected by the regulatory proposal should also be separately identified. Where the proposal will have different effects on different sub-groups, each sub-group should be identified.</p> <p>(Since 2001) A Business Compliance Cost Statement (BCCS) is also needed for all policy proposals submitted to Cabinet that require an RIA and have compliance cost implications for businesses. The BCCS includes, among other information:</p> <ul style="list-style-type: none"> • the parties likely to be affected, by sector and size of firm; • quantitative or qualitative estimates of compliance costs. | <p>Risk assessment: regulatory proposals should be subject to a risk assessment which should be as detailed as is appropriate in the circumstances.</p> <p>(1999) RIA guide recommends sensitivity analysis, or altering the main assumption(s) of the analysis to determine the extent to which results depend on assumptions and their reliability. It is particularly useful where:</p> <ul style="list-style-type: none"> • analysis shows large absolute net benefits, but the benefit cost ratio is small; and • there is considerable risk or uncertainty surrounding the estimates of the main cost(s) and or benefit(s). <p>Where there is considerable uncertainty, NPV and BC calculations should be repeated using other reasonable assumptions on the value of the major impacts. A regulatory option should demonstrate a positive outcome under most of</p> |

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| | <p>to tangible or monetary items (that is, non-monetary outcomes should be included).</p> <p>(1999) A full CBA is desirable wherever a major regulation is proposed and reasonable data is available or derivable.</p> | <p>existing law, information and education campaigns, market-based instruments (including taxes, subsidies, performance bonds and tradable property rights) and self-regulation.</p> | | <p>the scenarios tested.</p> |
| Sweden | <p>Sweden has not adopted benefit-cost criteria in its two RIA requirements: a problem and impact analysis under the Government Agencies and Institutes Ordinance and a special SME analysis under the SimpLex Ordinance.</p> | <p>RIA should include an account of alternatives to regulation</p> | <p>(1999) Administrative burden assessment included in RIA. A special RIA is needed for new or amended regulation that may affect conditions for SMEs. Under the SimpLex Ordinance (1998), agencies must draw up a special RIA for a new or amended regulation if the proposal may affect SMEs. But in 2005 only 35% of RIAs had this analysis.</p> <p>RIA must also report whether the proposal can lead to the distortion of competition.</p> <p>Financial impacts on businesses affected by the proposal must be described in monetary terms.</p> <p>The RIA must make sure that all interests are taken into account and assess impacts on gender equality and integration of immigrants.</p> | <p>No specific requirement for risk assessment or uncertainty analysis.</p> |

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| <p>United Kingdom</p> | <p>(1990s) RIA based on Compliance Cost Assessments</p> <p>(1998) Move to benefit-cost analysis. A policy proposal should be accepted only where the benefits justify the costs.</p> <p>(2005) RIA must:</p> <ul style="list-style-type: none"> • recommend a preferred option, giving reasons based on the elements of the RIA, in particular the analysis of the benefit and costs. • include the full range of potential impacts – economic, social and environmental. • consider and record separately the “other” costs and benefits – i.e., to consumers/individuals and to the economy at large, taking account of the economic, social and environmental effects. | <p>An RIA must set out the issue to address and the options available to do this. Options must include a ‘do nothing’ option and non-legislative options such as Codes of Practice, industry standards or accreditation schemes.</p> <p>A partial RIA should:</p> <ul style="list-style-type: none"> • identify regulatory and non-regulatory options • consider the pros and cons of each option and the fit with existing requirements on the relevant sector • estimate the benefits and costs and identify the key risks associated with each option <p>A final RIA should:</p> <ul style="list-style-type: none"> • describe the remaining | <p>“Treasury Green Book notes that benefits to the poorest quintile would be worth about double what they are worth to the middle of the distribution.”</p> <p>RIA should:</p> <p>– identify who is affected, including the business sectors and groups on which there may be a disproportionate impact:</p> <ul style="list-style-type: none"> • consumers and citizens • voluntary organisations and charities • people in different social groups – including ethnicity, gender, age, health and income. Proposals may also have different effects on disabled people, those living in different regions or in rural communities. • race equality – as part of the statutory duty of the Race Relations Amendment Act 2000, assessment of race equality impacts is required. • public sector. <p>– Accompany total cost estimates with analyses showing the effects on a “typical” business, on small businesses, and on charities or voluntary</p> | <p>In setting out the objective of policy intervention, the RIA should:</p> <ul style="list-style-type: none"> • identify the situation that causes harm, what that harm is and the probability it will occur. • set out the enforcement arrangements for securing compliance with each of the proposed options, as well as a consideration of the risks involved. • to deal with risk and uncertainty, state clearly what assumptions are made. Identify any specific risks or areas of uncertainty that may impact on the levels of costs and benefits. • for risks where it is possible to assign a probability to an event happening (e.g. the risk of fire or accident), use this to estimate the expected costs and benefits. • use sensitivity analysis to analyse the impact of a number of different scenarios in which |
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| | <p>(2005) Costs and benefits must be quantified wherever possible as monetary values where. The direct costs of must be expressed as monetary values. Also use other forms of quantification (number of lives saved, increased manpower requirements, changes in emission levels or number of new bits of equipment needed). Record benefits in qualitative terms only when the above are not possible.</p> | <p>options ... describe the key risks associated with the options, and how these can be mitigated.</p> | <p>organizations.</p> <ul style="list-style-type: none"> – include the Small Firms Impact Test and comments from the Small Business Service. – provide a competition assessment that includes a clear statement of anticipated competition impacts for each option, according to the result of the filter test. <p>In July 2005, the UK Government adopted the Dutch SCM to reduce administrative burden. As of May 2006, regulators must use the SCM to provide a systematic measurement of administrative burdens.</p> <p>(2005) RIA process for major regulatory proposals should consider compensatory simplification measures. Where it is not possible to include any simplification measures, there should be a reasoned explanation in the RIA of why not.</p> | <p>assumptions vary.</p> <ul style="list-style-type: none"> • consider the impact of optimism bias on your benefits and costs. • using these techniques, produce ranges of benefits and costs. • use estimates of the value of a statistical life (no specific value recommended). |
| United States | <p>(1993) EO 12866: ...recognizing that some costs and benefits are difficult to quantify, the RIA must make a reasoned determination that the benefits of the intended regulation justify its costs.</p> | <p>(1993): The proposed action will be the most cost-effective...</p> <p>In choosing among alternative regulatory approaches, agencies should select approaches that maximize net benefits, including potential</p> | <p>Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities).</p> <p>Each agency shall assess the effects of Federal regulations on State, local, and tribal governments.</p> | <p>It is usually necessary to provide a sensitivity analysis to reveal whether, and to what extent, the results of the analysis are sensitive to plausible changes in the main assumptions and numeric inputs.</p> <p>(2003) Regulations projected to have one billion-dollar impacts must be accompanied by formal,</p> |

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| | <p>The RIA must show that the proposed action will maximize net benefits to society (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)...</p> <p>Costs and benefits include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but essential to consider.</p> <p>(2003) Benefit-cost analysis is a primary tool used for regulatory analysis.</p> | <p>economic, environmental, public health and safety, and other advantages; distributive impacts; and equity.</p> <p>(2003) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behaviour, such as user fees or marketable permits, or providing information upon which choices can be made by the public.</p> | <p><i>Regulatory Flexibility Act:</i> take appropriate account of potential impact on small business.</p> | <p>probabilistic uncertainty analysis.</p> <p>(2003) Health and safety rules must be accompanied by risk assessment and cost effectiveness analysis for reductions in both mortality and morbidity.</p> <p>The value of a statistical life saved is between \$1 million and \$10 million.</p> |
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V. Review of Regulatory Co-operation Requirements in Regulatory Policies, Processes and Management

166. The role of regulatory impact analysis in international regulatory co-operation is slowly developing. For 20 years, from 1980-2000, RIA was almost entirely a domestic tool, aimed at improving the domestic impacts of public and regulatory policies. RIA began in Canada, the United States, and the United Kingdom as a domestic discipline, aimed at purely domestic concerns such as inflation, job creation, and high business costs.

167. RIA was not, during those two decades, used as an instrument of international economic policy, an instrument to improve regulatory co-operation between countries, or even as an instrument to determine the international implications of domestic policies. For example, no trade negotiation has ever used RIA to determine which regulatory arrangements will produce the highest benefits.

168. There were, of course, international competitiveness concerns in the background. Adoption of RIA in the United States fueled adoption in Canada and United Kingdom a few years later as tools for competitiveness. The Business Council of Australia, in its 1992 report “Liberating Enterprise to Improve Competitiveness,” urged governments to place more attention on the impacts on competitiveness of business regulations. The spread of RIA across borders is an excellent demonstration of how international competition for performance promotes dissemination of policies across borders. Even today, RIA is adopted and used mostly because of international *competition* goals, not international *co-operation* goals.

Even today, RIA is adopted and used mostly because of international *competition* goals, not international *co-operation* goals.

169. On the one hand, the emphasis in RIA on domestic concerns and issues has produced a conflict between domestic policies and emerging capacities for regulatory quality management at national and even sub-national levels. On the other hand, rapidly expanding international regulatory systems without even rudimentary tools of analysis, consultation, and quality control, has slowed deeper integration of national regulatory regimes. Those groups most often involved in cross-border discussions are also those groups *least* familiar with good regulation tools such as RIA. As a result, regulatory decisions that reach across borders in OECD countries are likely to be less efficient, less transparent, and less likely to achieve good results than regulations made at lower levels, even though the economic impact of such decisions is likely to be larger and longer-lasting.

170. Despite these impediments, regulatory co-operation across borders is likely to increase as an instrument of public policy. Already, domestic instruments of smart regulation are beginning to be applied to cross-border regulatory issues:

- Co-operation on regulatory policies, instruments, and processes has already become an integral part of efforts in the international trade and investment system to reduce behind-the-border barriers to trade over the past decade. The rise of the regulatory state domestically has produced a need for more transparent and similar regulatory systems among trading partners. For this reason, an increasing focus of WTO instruments is on using smart regulation tools such as transparency and empirical analysis to reduce the negative trade impacts of divergent regulations. This will further deepen in the Doha round of World Trade Organization negotiations. The European Single Market Program is entirely a regulatory program aimed at convergence and co-operation across borders.
- Co-operation on regulation is also beginning to be seen as an important instrument to improve the effectiveness and efficiency of public policy. The Kyoto Accord was dramatic evidence of the need to address cross-border problems with cross-border solutions, which are often regulatory in nature. Indeed, the benefit cost analysis developed in this Accord and the continuing debate about the correct baseline to use in this analysis has promoted much more efficient forms of regulatory co-operation, such as the capacity to trade climate warming emissions permits across borders. Similarly, in Europe, reducing barriers to trade and investment has revealed new requirements and opportunities for regulatory co-operation such as, for example, in product approvals and market auditing.

171. On a theoretical level, it seems that RIA does offer a mechanism to promote regulatory co-operation more systematically and empirically. For example, cross-border regulatory co-operation should be treated as simply another alternative regulatory option that offers benefits and costs that can be assessed and compared to other options. Yet international co-operation is rarely included as a regulatory option in national RIA systems.

RIA offers a mechanism to promote regulatory co-operation more systematically and empirically.

172. One reason is that the division between national and international tools and styles of regulation is a powerful impediment to the use of RIA to promote regulatory co-operation. The international dimensions of RIA are still underdeveloped and uneven. The RIA guidelines used in the US federal government make no mention of any assessment of costs or benefits outside the United States, and the alternatives recommended for analysis are entirely silent on cross-border co-operation. It is as if NAFTA and other cross-border market arrangements do not exist for US RIA. By contrast, the new EU guidelines are much more explicit on cross-border regulatory arrangements as alternatives to single-government solutions to be considered in the RIA. The Single Market program provides much more opportunity to use domestic regulatory tools in cross-border regulatory arrangements.

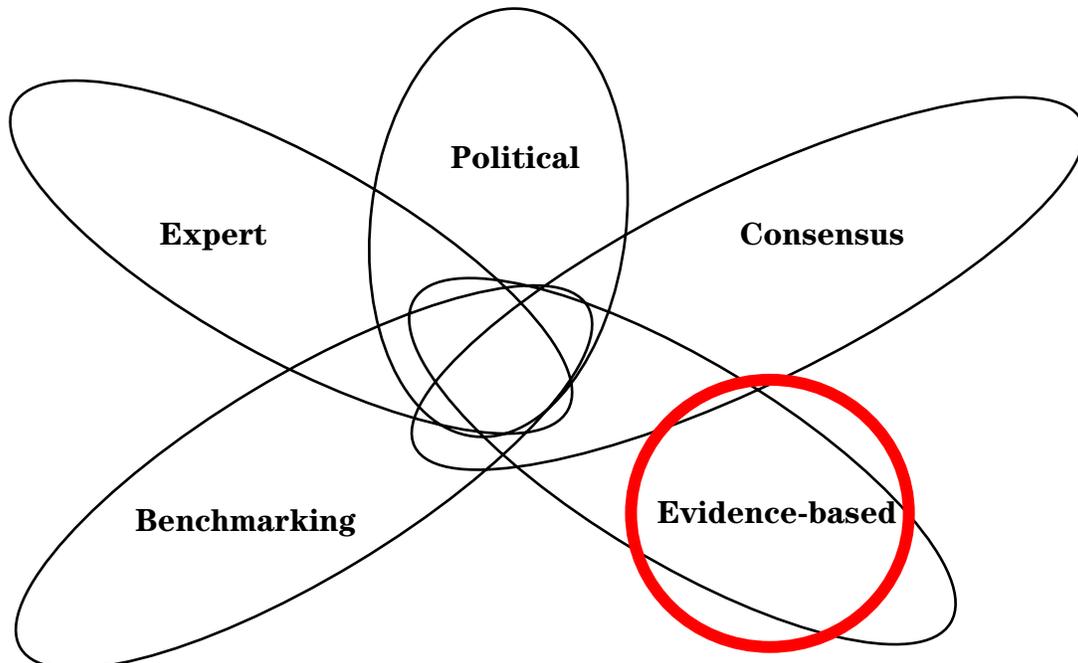
173. While the body of experiences is still small, there seem to be five main categories of RIA use in international regulatory affairs:

1. RIA as a way to accelerate convergence of regulatory styles and values toward empirical methods.
2. RIA as a way to clarify sources of regulatory costs and benefits.
3. RIA as an input into international regulatory discussions connected with trade and investment.
4. RIA as a way to identify new opportunities for integration and co-operation between countries, and as a negotiating tool to develop co-operative agreements.
5. Developing joint RIAs as a beginning step to joint regulatory actions.

V.A. RIA as a Way to Accelerate Converge of Regulatory Styles and Values

174. Regulatory co-operation is easier if the basic values of policy decision-making move closer together. Jacobs has documented elsewhere the growing importance of empirical modes of decision-making in national regulatory processes formerly dominated by consensual, expert, and political modes of decision-making. The various styles of decision-making are illustrated in Figure 1 below:

Figure 1: Methods of Regulatory Decision-making



175. Empirical methods of decision-making (of which RIA is the most prominent tool) are inherently more conducive to international economic integration and policy co-operation because they are more transparent and more accessible to outsider groups than other methods, and more focussed on policy results so that accountability is stronger. Therefore, the more developed the role of RIA in domestic policy processes, the more opportunities there will be for regulatory co-operation across borders.

Empirical methods of decision-making (of which RIA is the most prominent tool) are inherently more conducive to international economic integration and policy co-operation.

176. OECD good regulatory practices have driven an international convergence toward empirical methods. Italy, for example, closely followed the OECD recommendations in introducing its formal RIA process with law no. 50 in March 1999. So did Korea in 1997. There are many other examples.

177. Indeed, establishing the legitimacy of RIA at domestic levels of government probably is a precondition to the use of RIA within relations between countries. A high level of RIA acceptance and quality must be the foundation for wider use of RIA as the platform for international discussions on regulatory co-operation.

V.B. RIA as a Way to Clarify Sources of Regulatory Costs and Benefits

178. RIA is used in some countries to clarify where international obligations impose regulatory costs and constraints. This is a very useful role in that it begins to incorporate the benefits and costs of international methods of regulating into domestic RIAs. Therefore, it can draw attention to the areas where co-operation might yield the most benefits.

- The EU “Detailed outline of a possible EU Net Administrative Cost Model” calls for clarity on the origin of regulatory obligations (international, EU, national). When working at EU level, the cost model requires regulators to distinguish between international obligations and EU obligations. Among other things, the EU needs to know what it can do alone and what requires the agreement of the other signatories of international treaties.
- The Irish RIA guidelines require that “The RIA should begin by describing the policy context. This...may necessitate reference to relevant EU or international obligations.”
- The Australian checklist requires that the RIA show that the regulation is “integrated and consistent with other laws” and that the proposal “recognises existing regulations and international obligations.”

179. The Canadian government shows a mixed approach to using RIAs to assess the impact of international regulations on domestic regulatory options. The current Regulatory Policy requires that federal regulators “are aware of and take account of obligations” from international sources and that “full advantage is

taken of opportunities for coordination with other governments,” but there is no explicit requirement that such impacts be included in the RIA, or that using international forms of regulation should be assessed as an option.

180. Agriculture and Agri-Food Canada has taken the issue further in its Regulatory Process Assessment (“Regtool”) that is intended to ensure that the department complies with the Regulatory Process Management Standards. The Regtool, a checklist designed to help policy analysts assess the need for government intervention and the most appropriate means of intervening, provides guidance to analysts “on assessing issues of international trade and consistency with international agreements.” While the language of Regtool is aimed at compliance with international agreements, inclusion of this analysis opens the door to analytical comparisons of international regulatory arrangements with other options.

V.C. RIA as an Input into International Regulatory Discussions Connected with Trade and Investment

181. There are few examples of the use of RIA in international trade and investment negotiations. No RIA is required in WTO procedures, nor is RIA required by the Codex Alimentarius Commission nor by any international standards-setting body.

182. The striking absence of empirical methods in international discussions is an important constraint on the use of RIA as a tool to develop regulatory co-operation across borders. This is because cross-border issues are normally handled by institutions outside of the regulatory reform program. At the very least, if regulatory reformers wish to examine cross-border issues, and wish to justify co-operative arrangements using empirical methods, they must convince a community that is more familiar with negotiation, consensus building, and political methods of making decisions.

183. At the national level, the United Kingdom, Ireland, New Zealand, and Australia require RIA in order to prepare national positions on international regulatory negotiations.

- The UK RIA guidelines state that “For legislative or non-legislative proposals which originate outside the UK, you should prepare an RIA in order to obtain policy clearance for your Minister’s negotiating stance when attending international meetings and to support UK negotiations.” This is a natural extension of the UK use of RIA when negotiating European legislation or an agreement that will have to be implemented in the UK.
- Ireland has adopted a similar approach for EU legislation “so as to ensure Ireland’s best interests are reflected in EU legislation.”
- In Australia, negotiators prepare a National Interest Analysis (NIA) for treaties, which identifies the likely impacts of the agreement on States and Territories and is tabled in Parliament with the treaty.⁵³ The NIS is

integrated into the RIA. Australian RIA guidance (1998) states “Treaties which are likely to involve domestic regulations affecting business or restricting competition are subject to RIS requirements...the draft RIS would need to include analysis of the likely impacts on different groups within the Australian community...” The 2005 report states, “Under the Australian Government’s RIS requirements, a RIS should be prepared at three stages of the treaty-making process – before the formal policy decision to pursue treaty negotiations, prior to Australia signing a treaty and, finally, when the treaty is tabled in Parliament for ratification. Where Australia is considering acceding to an existing treaty, RISs are required prior to accession and when the treaty is tabled in Parliament.”

- New Zealand requires RIAs for “treaties that would result in domestic regulation.”

V.D. RIA as a Way to Identify New Opportunities for Integration and Co-operation Between Countries, and as a Negotiating Tool to Develop Co-operative Agreements

184. A possible model for using RIA to advance international regulatory co-operation is to look at how RIA has been used to advance internal single markets across borders. Here we find a richer set of experiences that seem very similar to international issues of cross-border market interactions. These experiences demonstrate that RIA can in fact be a realistic mechanism for assessing the optimal relationship of regulatory regimes across borders.

185. The two most important examples come from Australia and the European Union. In both cases, RIA was intended simply to identify the optimal level of government for regulatory action, but in both cases the RIA evolved to examine more sophisticated issues of sharing of regulatory responsibilities, setting up new co-operative institutions, or using alternatives to government regulation to avoid cross-border constraints. This suggests that putting more attention in the RIA on optimal levels of government could be a useful way to open the door to examining new co-operative relationships.

- The Australian Competition Review was a cross-border regulatory review program that tried to harmonize regulations across state borders and to assess the benefit and costs of differences. RIA was the central tool used to examine how state-state and state-federal regulatory systems should optimally inter-relate. An RIA in Queensland, for example, should have examined “restrictions that have the effect of limiting or preventing participation in a particular business activity by interstate or overseas participants, for example, by way of preferential purchasing arrangements for State-based suppliers, statutory restrictions on supply or purchase arrangements outside the Queensland market and product standards that differ significantly from interstate or international standards.”

- Since 1995, RIA has been required for all national or inter-jurisdictional level regulatory activities by 40 Ministerial Councils and standard-setting bodies involving the Australian, State and Territory governments. The Council of Australian Governments (COAG)⁵⁴ agreed on a set of Principles and Guidelines for such RIAs. At the direction of COAG, the ORR monitors and reports on compliance by Ministerial Councils and national standard-setting bodies with the Guidelines.
- Determining how governments should relate to each other on regulatory issues is an issue of great importance in the impact assessments prepared in the European Commission. The new 2005 IA guidelines state that, “When the action under consideration concerns an area that was previously left to Member States or an entirely new area, the IA will usually have to be particularly developed. Special care will be needed to determine whether EU intervention is justified (principle of subsidiarity).” The assessment of subsidiarity is not done very consistently or very well, but many of the co-operative arrangements between the Commission and EU Members arise from the discussions of subsidiarity as a core efficiency principle in the IA.

186. These two examples illustrate that application of empirical methods, even weak methods, to assess opportunities of cross-border regulatory arrangements can change policy design. The systematic consideration of the optimal level of government leads inevitably to consideration of shared arrangements, and these are justified by analysis that shows the net benefits of such designs.

187. Some years ago, Canada’s government attempted to use RIA to address cross-border issues in the domestic market. The 1986 Guiding Principles of Regulation promised that the federal government would cooperate more with provinces to address “the overall regulatory burden” by eliminating “wasteful duplication” and provincial consultation was added as an element of the federal Regulatory Impact Assessment.⁵⁵ However, the RIA approach has not been effective in Canada in driving federal-provincial co-operation. The 1992 revised Regulatory Policy again supported the goals of creating an internal single market by removing inter-provincial trade barriers. Again, however, RIA was not used as a mechanism for exploring alternatives. The current RIA policy exempts regulations from RIA if “RIAs publication would be injurious to the conduct of federal/provincial or international affairs.” The implication is that RIA is harmful, not supportive, of intergovernmental co-operation.

188. The need for more effective action in this area was emphasized by two important reports in recent years:

- The 2004 Smart Regulation report noted that, in the 2003 edition of Portraits of Canada, 70 percent of Canadians identified improved federal-provincial-territorial co-operation as the second most important priority for government after health care. The Smart Regulation report supported

a more systematic approach to federal-provincial-territorial regulatory co-operation.

- The 2002 review of regulatory reform in Canada by the OECD highlighted federal-provincial-territorial co-operation as a major priority. It found that “important inter-provincial barriers to trade still exist in Canada.” Interestingly, the OECD recommended that Canada consider using RIA for proposals for regulatory harmonization and other regulatory agreements to identify the costs and benefits of freeing versus inhibiting trade. It suggested that Canada explore the approach used in Australia.⁵⁶

189. The draft Directive (2005) makes progress toward using RIA as a mechanism for more thorough and systematic assessment of co-operative options. While it does not explicitly link RIA to co-operation, it would require regulators to:

identify and assess similar or related provincial and territorial requirements to determine the likelihood for aggregate impacts, duplication and conflicting requirements ... assess federal, provincial and territorial requirements to determine the potential for cooperative arrangements such as the mutual recognition of requirements, the adoption of consensus-based standards and symmetry in reporting requirements.

190. This implies that such co-operative arrangements should be assessed as regulatory options in the RIA. The draft guidance also limits “the number of specific Canadian regulatory requirements or approaches to instances where they are merited by specific Canadian circumstances and when they result over time in the greatest overall benefit to Canadians,” which again suggests that the net benefits of international co-operation and recognition arrangements should be considered in the benefit-cost analysis.

V.E. Developing Joint RIAs as a Beginning Step to Joint Regulatory Actions

191. Clearly, a joint reliance on RIA as a discussion mechanism for joint regulatory action would be greatly advanced if countries were capable of preparing joint RIAs. There is almost no international experience in collaborating on the preparation of RIAs. However, there seems to be a small but emerging trend in this direction.

192. The 2004 EU-US Declaration on Enhancing Transatlantic Economic Integration and Growth commits the two sides to “Promote Regulatory and Standards Cooperation.” It states that:

We recognize the importance of EU-U.S. regulatory cooperation for the well-being of our citizens and commercial relations, and note the rich network of cooperative exchanges already underway. Our aim is to build effective mechanisms to promote better quality regulation, and minimize unnecessary regulatory divergences to facilitate transatlantic trade and investment and increase consumer confidence in the transatlantic market.

193. A 2005 Roadmap for EU-US Regulatory Co-operation includes establishing senior-level dialogue on best regulatory policies and practices, and identifying resources and mechanisms to support exchanges for EU and US regulatory experts. An EU-US high-level Regulatory Co-operation Forum will promote an exchange of views between senior US, European Commission and other European Community regulators on regulatory co-operation approaches. Priorities for EU-US regulatory co-operation would be agreed at the annual EU-US Summit.

194. RIA is a core part of this EU-US co-operative program, since one of its goals is to expand assessment of regulations from a purely US or EU approach to include potential transatlantic impacts. The first EU-US joint meeting on regulatory impact analysis took place in September 2005 in Washington, DC. This first meeting was seen as a process of mutual familiarization with RIA practices on both sides of the Atlantic. Familiarization might take some time, but already participants are looking forward to more concrete activities, such as exchanging information for RIAs, and using RIA to assess the benefits and costs of joint regulatory activities. Canada is not currently part of these discussions, but perhaps could make a case for trilateral rather than bilateral discussions on RIA.

195. The Australian and New Zealand governments have developed joint RIA activities much further, in line with the extensive regulatory and standards co-operation between the two governments that is meant to promote “better and more effective co-ordination of policy development between Australia and New Zealand.”

196. A 2004 protocol details working arrangements between the Australian Government Office of Regulation Review (ORR) and the Regulatory Impact Analysis Unit of New Zealand’s Ministry of Economic Development (RIAU) on preparation and assessment of Regulatory Impact Statements (RISs). The protocol states that, “Where a trans-Tasman issue is involved, the ORR will refer the Consultation RIS to the RIAU for comment.” The RIAU has five days to provide its comments. The purpose of the RIAU comments is to ensure “that potential impacts to New Zealand industry, consumers or society generally are identified within the cost-benefit analysis of the RIS.”

VI. Lessons for Canada

197. This review of RIA practices in trends among Canada’s peers in the global economy has partly confirmed earlier conclusions that Canada continues to rank among the leading countries in its use of RIA to improve public policy.

198. But it has also identified weaknesses and gaps in Canada’s RIA program, and particularly in its plans for the future. Whereas other countries such as the United States, Australia, and the European Commission are actively seeking ways to improve the rigour and quality of RIA as an integrated framework to deal with the complexity of modern public policy, proposals from the Privy Council Office are much more timid, and even confused about how RIA can improve public policy in Canada.

VI.A. Recommendations and Implications for Proposed Revisions of Canada's Regulatory Policy

199. In late 2005, the Privy Council Office published for public comment a draft "Government Directive on Regulating" that would be the first major revision to its regulatory policy since 1995. This review of international practice and trends in regulatory impact analysis is directly relevant to the content of that draft since, in many cases, the draft seems to be moving in the opposite direction of Canada's peers. The key comments on that draft are presented below.

200. A particular area of concern is that, just as other countries are developing more rigorous and integrated analytical frameworks capable of bringing together a wide range of public policy interests, Canada's new draft RIA policy is reducing the standards for rigour and quality, in other words, "dumbing down" rulemaking. The draft Directive, if accepted, will put Canada back into the pre-1978 period, and far out of the mainstream of current RIA practices. The fact that countries with strong environmental protection standards and records are pushing toward more integrated RIA frameworks based on soft benefit-cost analysis and stronger emphasis on quantitative measures of impacts should suggest that such a framework is fully consistent with values of social and environmental protection in Canada.

Targeting Strategies

201. Most countries are using a monetary trigger to establish an objective threshold, in combination with subjective thresholds using words like "major" and "significant" applied to various kinds of impacts. Canada, by contrast, seems to be moving in the opposite direction: away from clearer targeting strategies and higher quality standards for more important regulations.

202. As noted, Canada's general policy of "proportionality" in RIA, in place since 1995, contains clear monetary triggers and tiered standards of analysis. The 2005 draft directive proposes to replace it with a more subjective assessment. The Privy Council Office states in the draft regulatory policy: "The resources and effort committed to managing regulation should reflect the significance of the public policy issue and the level of regulatory intervention involved. In consultation with the Privy Council Office, departments and agencies are expected to assess at an early stage the significance of a regulatory proposal in a consistent, open and transparent manner and according to the following factors:

- the magnitude of the risks being addressed by the regulation;
- the potential impact of the regulation on health, safety and security, the quality of the environment, and the economic and social well-being of Canadians;
- the cost of implementation and compliance by government, business and Canadians; and
- the degree of interest and contention among Canadians.

203. These criteria for the categorization are very general, with no quantitative triggers or definition of terms such as “significance,” “potential impact,” or “degree of interest.” This lack of clarity seems to leave the decision about categorization up to the Privy Council Office, which must be consulted. This approach seems designed to reduce transparency while maximizing conflict and transactions costs, because the Privy Council Office will have to repeatedly argue about its interpretation of these general criteria.

204. A more important problem is that the purpose of the categorization is not clear since the policy does not establish different standards of analysis for the separate categories. The only extra requirement for more important regulations is that regulators must “develop time-based performance indicators for significant regulatory activities....”

205. By contrast, other countries have clear demarcations about the standard of analysis required for more important regulations.

206. Canada should clarify its targeting strategy for more consistent and transparent application. It should then elaborate more clearly the various standards of analysis for categories of regulations. Good practice suggests that regulations of high significance should have monetized estimates of all important costs, at minimum, and quantification of all important benefits. Regulations of high significance also should examine more options, and contain more detailed information on risks.

Public Consultation

207. Perhaps in reaction to criticism from the Smart Regulation committee, the new regulatory policy commits to preparation of a “Guide for Effective Regulatory Consultations” that will improve consultation. Consultation techniques are supposed to be both passive (publication of proposals in the *Canada Gazette*) and active (“meaningful”), and hence seem to reflect the multi-layered approach that is evolving elsewhere.

208. Canada’s draft Government Directive on Regulating (2005) states that consultation should go beyond data collection into broader issues of regulatory goals, implementation, and performance:

When developing a consultation strategy, departments and agencies are expected to provide information and opportunities for Canadians and affected parties to contribute to identifying and assessing public policy issues and the setting of policy objectives; developing and assessing regulatory and non-regulatory options; developing plans for implementation and compliance; and monitoring, evaluating and reviewing regulatory performance.

209. The new guide seems to be a good step forward, and should incorporate the lessons learned here from other countries. Canada’s new consultation strategy could learn from international trends toward mixed consultation methods. Earlier and informal forms of consultation with key stakeholders should be followed by a

multilayered consultation process based on minimum and consistent standards, and combined with tailored approaches geared toward more intensive dialogue and higher quality data collection.

Data Collection Methods and Data Quality Standards

210. The new regulatory policy should develop more stringent data quality standards for RIA and should encourage the use of scientific peer review when data are critical and highly uncertain.

Strengthening the Challenge Function from a Central RIA Watchdog

211. Perhaps in response to recommendations, the draft Government Directive on Regulating places more emphasis on the “challenge function” of the PCO “as guardian of the policy.” The draft guidance states clearly that “the Privy Council Office (PCO) is responsible for ensuring that the analysis provided by departments and agencies on policy and regulatory proposals is consistent with the commitments and directions set out in this Directive” and that PCO-RAD must “review regulatory proposals, challenge departments and agencies on the quality of regulatory analyses and advise them when the directions set out in the Directive have not been met.” The TBS, for its part, announced that, “It is important for PCO and other central agencies such as the Treasury Board to exercise the challenge function and management oversight throughout the policy cycle, from development to implementation and enforcement.”⁵⁷

212. If put into operational practice by the PCO, this clearer statement of responsibility (ensuring that analysis meets quality standards) and of process (review and challenge) can help close the gap with other countries that are serious about using RIA to drive a process of regulatory improvement.

213. But the draft directive seems inadequate to create the stronger incentives and control processes that are being implemented in other countries. Even under the Directive, there is no apparent penalty for departments who fail to prepare adequate RIAs, fail to consult adequately with the PCO, or fail to respond to PCO comments. Canada should further strengthen the authority of the PCO-RAD to require a minimum level of quality before an RIA goes to the Cabinet, and that a department unable to comply explain to the Cabinet why it is unable to meet minimum standards. Canada should also consider the practice in other countries to be more public in the RIA review process by making public RAD’s formal comments to departments.

Involvement in RIA by Other Institutions

214. Canada ranks in the middle of its peers with respect to setting up a network of mutually supportive institutions around the good regulation agenda. There is no business advisory group on regulation which consistently monitors regulatory and RIA quality. There is no formal and structured network at the departmental level. Canada should consider whether a richer and more diverse set of institutions focussed on the quality of regulations and RIA could assist in sustaining this agenda.

Regulatory Planning

215. The 2005 draft Directive requires, as did earlier regulatory policies, that departments and agencies “assess at an early stage the significance of a regulatory proposal in a consistent, open and transparent manner.” Regulators shall also “use performance information to set priorities and a regulatory agenda.” However, there is no mention in the Directive of the annual Report on Plans and Priorities as a potential vehicle for beginning the RIA and for setting priorities.

216. There seems to be potential for better and earlier starts to the RIA process. The annual Report on Plans and Priorities is a potential vehicle for beginning the RIA and for setting priorities. The practice in several countries to require an early screening RIA is one that Canada should consider to support a policy for proportional analysis and to open the way for earlier and more meaningful public consultation on alternatives and regulatory design.

Expert scrutiny from Scientific Peers

217. The Canadian government is cautiously moving toward limited use of peer review. The draft Directive “encourages” regulators to organize independent reviews of risk assessments by science advisory boards.

218. The government might consider a more organized and top-down approach to peer review of technical material to ensure that good peer review practices are used and that scarce scientific resources are used efficiently. For example, a peer review group that built up expertise in a particular area such as risk assessment or data quality might produce better review results at lower cost than a series of *ad hoc* peer review groups scattered through the public administration.

More RIA Training

219. Training seems to be an area where the PCO could make a very effective contribution. The Irish approach to drawing up a training strategy for RIA might be an effective way of attracting more training resources to RIA, upgrading the quality and consistency of RIA training government-wide, and ensuring that good practices around the world are transmitted quickly and efficiently to Canadian civil servants.

Data Collection Methods and Data Quality Standards

220. The 2005 draft regulatory policy does not mention data collection methods or data quality. As part of its new regulatory policy, Canada should develop a data collection and data quality standards. The data collection strategy should include issues such as the creation and use of public-private relationships; guarding against data capture; and reducing data collection costs. Data quality standards should rely on standards already in use by Canada’s peers, and should aim to base RIA on high-quality information that boosts the credibility, transparency, and usefulness of RIA.

Monitoring Compliance Followed by Public Reporting of Performance or “Name and Shame”

221. Canada has no equivalent to the monitoring and reporting practices in several of its peer countries. Accountability for RIA performance should be boosted by monitoring and reporting on RIA performance. Along with stronger RIA quality control, the PCO should develop a scorecard for RIA, and monitor performance through a compliance database. Performance by regulator should be publicly reported at least annually.

Improving Written Guidance on RIA

222. The current RIA guidance used in Canada is among the oldest used in any of these countries. Rewriting the 1995 guide should be a high priority in Canada.

Providing Helpdesk Assistance

223. Canada has been in the mainstream in this area, but will quickly fall behind as other countries increase quality standards for analysis. Once the skills and capacities of the PCO-RAD have been enhanced in order to support a challenge function, the PCO-RAD should consider formalizing the helpdesk function.

Analytical Methods

224. In contrast to the sustained efforts in Europe, the United States, Australia, and New Zealand to increase analytical rigour and quality Canada’s draft 2005 Directive would reduce the standards for quantification and other aspects of analytical quality, and return Canada to the pre-1978 era:

225. In 2006, the Canadian federal government should turn toward what the European Commission calls Integrated Impact Analysis (IIA), in which economic, social, and environmental impacts are assessed together within a transparent benefit-cost framework. The draft Government Directive on Regulating does indeed seem to place economic, social, and environmental impacts in the same general framework: benefits should justify costs, and least cost options should be chosen.

226. However, the draft Government Directive on Regulating generates new concerns about the direction of RIA methods in federal Canada. It is ironic that, just four years after the OECD concluded that “cost-benefit analysis is well-established” in Canada,⁵⁸ and only 18 months after the Smart Regulation report concluded that “Regulatory intervention must generate “net benefits” for society,” and while Canada’s peers are moving toward more rigorous forms of “soft BCA,” the concept is losing ground in Ottawa.

227. The key problems in the draft are these:

- There is a blurring at best, and weakening at worst, of the emphasis of RIA from optimizing net social benefits for Canadians to finding least-cost options. The clear 1999 statement, “It must be demonstrated that the benefits of regulatory requirements are greater than their costs,” has disappeared from the draft. It is not clear what has replaced it. In the

preamble, the Directive states the intent that “the benefits of regulation justify the costs,” but this is contradicted in the text. When RIA is discussed, this statement is replaced by a less demanding requirement that RIA should do an “analysis of the overall benefits and costs to Canadians, business and government” and “maximize benefits in relation to cost compared to the other options....” The clear reading of this is that, under this draft, regulators no longer have to demonstrate that regulation increases social welfare, but only that it is the lowest cost way to produce results. This “dumbing down” of regulatory quality standards increases the risks of systemic policy mistakes and, if actually adopted, would greatly reduce the benefits of government regulation for Canada.

- It may be that too much is made of a partial technique – called “risk assessment” in the draft – that is not itself a measure of benefits or costs, but seems to be proposed as a tool for measuring uncertainty. (The term used in the draft Directive – “risk assessment” – is not precise, because risk assessment measures the likelihood of an effect from a defined cause, not the level of uncertainty about outcomes. The draft seems to mean “uncertainty analysis” instead, or what the Smart Regulation report called “risk-based policy analysis”).⁵⁹ Risk assessment (or uncertainty analysis) cannot itself be a basis for RIA. At best, it can be used to refine the likelihood of anticipated benefits and costs, a useful but secondary role. This is what the Smart Regulation report meant by noting, “Risk-based thinking would *expand and complement* existing analytical requirements (which are primarily based on the economic analysis of costs and benefits) to provide information that the Committee believes decision makers need” (emphasis added). The risk assessment or uncertainty analysis approach in the draft Directive is quite different from the “risk-based” approach announced by the United Kingdom in 2005. The UK approach focuses on prioritization of all regulatory activities toward highest risks, whereas the Canadian proposal seems focused on measuring the uncertainty of outcomes.

228. Analytical standards for RIA should be improved through more quantification, more precise requirements, and higher quality data for the most important regulations. This might require more careful targeting or an earlier start on RIA.

Soft Benefit-cost Analysis and Integrated Analysis

229. The draft 2005 Directive would effectively reduce the standards for quantification and other aspects of analytical quality. The Directive does not propose any general goal to increase analytical quality, and does not even propose higher analytical standards for the most important regulations identified. Quantification is not emphasized, and is only mentioned in the ambiguous requirement that regulators “identify and, where possible, quantify the benefits and costs...” Although there is almost no discussion of the need for the analysis to be more accurate, quantitative or complete, the text does emphasize the application of precaution when there is insufficient information. Moreover,

blurring the decision criteria further reduces the standards for analysis and quantification.

230. Canada should re-affirm the core RIA principles used in Canada for 20 years: regulations shall maximize net benefits and least-cost solutions shall be chosen. That is, Canada should affirm that federal RIA will be based on the integrated analytical framework now used today by its most advanced peers: a soft benefit-cost analysis in which quantitative and qualitative metrics for economic, social, and environmental impacts are combined and presented systematically. RIA should become the framework through which trade-offs are identified and benefits are maximized across a range of policy objectives. This framework produces the most rigorous, transparent, and consistent information for public policy decisions, and, because it emphasizes the need to present all major benefits and costs, is consistent with high standards of environment will, health, and safety protection.

Cost-effectiveness Analysis

231. Except in Canada's new directive, there is no dispute among any of the most advanced countries that regulators should choose the least cost option needed to achieve the results. The RIA policy should state that alternative approaches should be chosen on the basis of cost-effectiveness

232. Canada's 2005 draft guide calls for regulators to "identify the appropriate instrument or mix of instruments" but does not contain a clear analytical criterion to guide the choice of alternatives. This lack of clarity is supposed to be remedied with a new "Instrument Choice Framework" to be developed in future by the Privy Council Office. The new Instrument Choice Framework should contain clear and consistent criteria for the choice of alternatives to guide regulators.

Partial Analyses

233. The Canadian government should maintain its current approach in assessing distributional affects, that is, requiring regulators to identify in general who pays the costs and who receives the benefits of the regulatory measure, rather than requiring more specific analysis of vulnerable groups.

234. Canada should continue to avoid the mistake made by other countries that the RIA assess the macroeconomic impacts of individual regulations.

235. Canada's new draft policy seems also to have mostly escaped the danger of fragmentation into partial analyses. The draft guide even seems to move away from the SME-oriented Business Impact Test into a softer cost-effectiveness requirement to "consider the specific needs of small business and identify the least burdensome but most effective approach to addressing those needs." However, as also noted, the analytical criteria and rigour needed to provide a transparent assessment of the various costs and benefits are not yet sufficiently defined in the 2005 draft policy. Canada should continue to avoid the risk of biased and partial analyses by reaffirming that all specific impacts will be integrated into a larger analytical framework.

Assessing Macroeconomic Impacts of Microeconomic Interventions

236. The draft Directive states that the RIA should “identify the potential positive and negative social impacts of regulatory proposals on, for example, health and safety, security, vulnerable social or economic groups or region of Canada.” Because this text requires that the RIA assess impacts on these groups, rather than on macroeconomic outcomes such as innovation and poverty, it does not make the mistake of Ireland and the European Commission.

Risk Assessment and Uncertainty Analysis

237. In its draft 2005 guide, Canada is considering the wider use of “risk assessment”, by which is meant a measure of policy uncertainty that, presumably, can be used to adjust expected costs and benefits of alternatives. The guide states that, “Using risk assessments, governments make decisions on whether to intervene in situations and what action to take... Understanding and quantifying risk can help decision-makers focus public policy analysis, cope with the uncertainty inherent in government activities, assist in the appropriate application of precaution and foster more rational approaches to regulating.” This would be more correctly termed “uncertainty analysis.”

238. The Privy Council Office has announced that it is seeking a “Regulatory Impact Analysis Based on Risk: A pilot project to integrate the analysis of risk factors into the regulatory development process...to complement the existing economic analysis framework.” The PCO says that this will:

- Help forecast and explain to Canadians the change in risk levels before and after the implementation of a regulation.
- Increase awareness and transparency of the risk elements considered in regulatory development... to enhance transparency regarding risks being mitigated by the proposed regulation, thereby providing improved information on which to base the decision to proceed with the regulatory initiative. In turn, this will enhance public protection as the rationale for introducing new regulations will be stronger. Policy makers [will have] a greater understanding of the risk being mitigated will develop improved compliance strategies.

239. If not better articulated, this new policy will introduce confusion into Canada’s RIA methods. Uncertainty analysis is a partial analysis. It is not itself a measure of benefits nor costs, but a tool for measuring uncertainty. It can be used to adjust benefits and costs to expected measures, and hence is best seen as a refinement to improve the accuracy of anticipated benefits and costs. It cannot itself be a basis for RIA.

240. Sensitivity analysis, or uncertainty assessment, should be included as a technique to refine the expected future benefits and costs, but should not replace soft BCA as the analytical framework. In future versions of the RIA guide, risk assessment of environmental, health and safety risks should be elaborated as an input into the analytical framework.

241. The precautionary principle is recognized in the 2005 draft directive. It does not seem, though, that the directive anticipates that precaution will be included in the RIA itself as an analytical concept. The clear distinction between precaution as a policy choice and RIA as an analytical tool should be maintained in the final Directive on Regulating.

Choice of Alternatives

242. Canada's 2005 draft guide calls for regulators to find "identify the appropriate instrument or mix of instruments" but does not contain a clear analytical criterion to guide the choice of alternatives. The word "appropriate" is particularly troubling in an analytical context. This lack of clarity is supposed to be remedied with a new Instrument Choice Framework" to be developed in future by the Privy Council Office. The new framework is aimed at improving consistency and transparency in instrument choice.

Distributional Effects

243. By contrast to current Canadian policy, the proposed new policy handles distributional effects badly. The 2005 draft guide requires regulators to "identify the potential positive and negative social impacts of regulatory proposals on, for example...vulnerable social or economic groups or regions of Canada..." and to "identify how the benefits and costs are distributed across the affected parties, the economy and society, and whether one particular group may experience the benefits or bear the cost more than others..." The implication is that the regulator should avoid placing costs on vulnerable groups or even disproportionate costs and benefits across groups.

244. There are three reasons why these instructions would result in poor and irrelevant analysis:

- It seems naïve. Every regulation has winners and losers – groups who bear a disproportionate share of the costs and benefits. It is impossible to try to avoid such allocations. It might indeed be relevant to the government to know whether the regulatory system *as a whole* has a progressive or regressive effect in society, much as it is useful to know whether the taxation system has progressive or regressive effects. But to assess these effects at the level of individual regulations is difficult or impossible, and almost always irrelevant, since the marginal effects of individual rules are so small. This is similar to the points made above: efforts to assess the macro effects of micro interventions always lead to short-term and static effects, which almost always lead to incorrect policy decisions.
- It is unclear what is meant by vulnerable groups or regions. Clearly, the notion of social and economic vulnerability is open to very different interpretations – for example, economic status, age, gender, race, medical status, and other ways of distinguishing between people. This lack of precision will result in incoherence and inconsistency across regulations, reducing the transparency and accountability of public policy.

- It is unclear how the regulator should weigh effects across these groups. In effect, this draft guidance permits regulators to choose any weighting or value scheme that they wish, which undermines the transparency and accountability of the entire RIA process.

245. The Canadian government should maintain its current approach, which requires regulators to identify in general who pays the costs and who receives the benefits of the regulatory measure, rather than requiring more specific analysis of vulnerable groups.

VI.B. Lessons for RIA and Regulatory Co-operation

246. This scan of the role of RIA in international regulatory arrangements suggests that a policy of using RIA to promote regulatory co-operation might consider the following actions:

- Consistent with the approach in Australia, Canada should consider placing more attention in the RIA structure on assessing optimal levels of government for action, looking down (intergovernmental) and up (international). This could be a useful way to open the door to examining new co-operative relationships. Such an extension of RIA would require, at minimum, RIA training and guidance materials developed in co-operation with federal-provincial-territorial governments, and agreement on the method to be used in assessing intergovernmental and international policy alternatives.
- Canada should prepare sample benefit-cost analyses of selected regulatory co-operation arrangements to demonstrate the methods and data collection strategies necessary for this work. Such pilot RIAs will help identify practical constraints to using RIA more broadly to assess these options.
- The EU-US forum on regulatory reform might usefully become a trilateral rather than a bilateral forum, in which Canada participates.
- Canada might consider proposing a US-Canada protocol on working arrangements between RIA reviewers (Privy Council Office, OMB) in sharing RIAs with strong North American impacts. This sharing could be done initially as a kind of fact checking to see that impacts are understood, and then as a means of generating new ideas for lower-cost and more efficient forms of regulation.

Notes

- ¹ Business Council of Australia (2005) “Business Regulation Action Plan for Future Prosperity,” Melbourne.
- ² <<http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1114071804875>>.
- ³ Commission of the European Communities (2005) “Better Regulation for Growth and Jobs in the European Union,” Communication from the Commission to the Council and the European Parliament, Brussels, 16.3.2005, COM(2005) 97 final.
- ⁴ See <http://www.med.govt.nz/templates/Page___13763.aspx>.
- ⁵ <<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/33/33we02.htm>>.
- ⁶ OECD (2002) “Regulatory Policies in OECD Countries: From interventionism to regulatory governance,” OECD, Paris.
- ⁷ UK National Audit Office (2005) “Evaluation of Regulatory Impact Assessments” Compendium Report 2004-05, Report by the Comptroller and Auditor General, HC 341 Session 2004-2005, 17 March 2005.
- ⁸ European Commission (2004) “Impact Assessment: Next Steps.”
- ⁹ New Zealand Regulatory and Competition Policy Branch of the Ministry of Economic Development (2004) The Regulatory Review: Issue 1 – August, at <www.med.govt.nz/templates/Page___9427.aspx>.
- ¹⁰ See Treasury Board Secretariat, website (undated) Number 14: “Regulatory Reform through Regulatory Impact Analysis”: The Canadian Experience, at <http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/manbetseries/VOL14-1_e.asp>.
- ¹¹ European Commission (2002) Communication from the Commission: “Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission,” Brussels, COM (2002) 704 final.
- ¹² Commission of the European Communities (2005) Report from the Commission “Better Lawmaking 2004,” Brussels, 21.03.2005, COM (2005) 98 final (12th report).
- ¹³ The UK consultation code is at <<http://www.cabinetoffice.gov.uk/regulation/consultation/documents/pdf/code.pdf>>.
- ¹⁴ Ireland Department of the Taoiseach (2005) “Reaching Out: Guidelines on Consultation for Public Sector Bodies,” Dublin.
- ¹⁵ The reviewer lamented that “It is, for example, inadequate merely to write that ‘consultations with the sector have taken place,’ as unfortunately happens in many cases.”
- ¹⁶ <<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/33/33we03.htm>>.
- ¹⁷ Smart Regulation, p. 55.
- ¹⁸ New Zealand Code of Good Regulatory Practice, Quality of Regulation Team Competition and Enterprise Branch, November 1997.
- ¹⁹ <<http://www.cabinetoffice.gov.uk/regulation/consultation/documents/pdf/code.pdf>>.
- ²⁰ Smart Regulation report, p. 28.
- ²¹ The Regulatory Consulting Group Inc./The Delphi Group (2000) Assessing the Contribution of Regulatory Impact Analysis on Decision Making and the Development of Regulations., August 2000, pp. 5-6.

²² General Accounting Office (2003) “OMB’s Role in Reviews of Agencies’ Draft Rules and the Transparency of Those Reviews.” GAO-03-929.

²³ UK Better Regulation Executive (2005) “Compensatory Simplification: interim guidance” at <http://www.cabinetoffice.gov.uk/regulation/documents/ria/pdf/cs_interimguidance.pdf>.

²⁴ New Zealand Regulatory and Competition Policy Branch of the Ministry of Economic Development (2005) The Regulatory Review: Issue 3 – April, at <www.med.govt.nz/templates/Page_____9505.aspx>.

²⁵ Hints and Tips for Writing a Regulatory Impact Statement / Business Compliance Cost Statement (RIS/BCCS), at <www.med.govt.nz/templates/MultipageDocumentPage_____9492.aspx>.

²⁶ Board of Swedish Industry and Commerce for Better Regulation (NNR) (September 2005) How high is the quality of the Swedish central government’s Regulatory Impact Analysis (RIAs) in the business sector? The NNR Regulation Indicator for 2005, Stockholm, p. 20.

²⁷ Renda, p. 124.

²⁸ Comments to the House of Lords, May 2005, at <<http://www.publications.parliament.uk/pa/1d200506/1dselect/1deucom/33/33we03.htm>>.

²⁹ See Claudio Radaelli (2005) What does regulatory impact assessment mean in Europe?, Related Publication 05-02, Brookings-AEI Joint Center for Regulatory Studies, Washington, DC.

³⁰ OECD (2002).

³¹ Executive Order 12866 on Regulatory Planning and Review, February 26, 2002

³² Treasury Board of Canada Secretariat (2001) Number 14: “Regulatory Reform through Regulatory Impact Analysis: The Canadian Experience,” at http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/manbetseries/VOL14-1_e.asp#4e

³³ OECD (2002) “Regulatory Reform in the United Kingdom,” Background Report on Government Capacity to Assure High Quality Regulation, Paris.

³⁴ See <http://www.mercatus.org/regulatorystudies/article.php/1249.html>

³⁵ The latest is Commission of the European Communities (2005) Report from the Commission “Better Lawmaking 2004,” Brussels, 21.03.2005, COM(2005) 98 final (12th report)

³⁶ US Office of Management and Budget, US Office of Information and Regulatory Affairs (December 16, 2004) “Final Information Quality Bulletin on Peer Review,” at <<http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf>>.

³⁷ Commission of the European Communities (2005) “Better Regulation for Growth and Jobs in the European Union,” p. 12.

³⁸ <http://www.regulation.gc.ca/default.asp?Language=E&Page=instrument>

³⁹ See OECD (2002) “Canada: Maintaining Leadership Through Innovation,” Chapter 2, Government Capacity to Ensure High Quality Regulation, Paris.

⁴⁰ European Environmental Bureau (2004) at <http://www.eeb.org/activities/integration/comp-council-11-19-04.pdf>

⁴¹ US Office of Management and Budget, Office of Information and Regulatory Affairs (2003) “Information Quality: A Report to Congress,” Fiscal Year 2003 at <http://www.whitehouse.gov/omb/inforeg/fy03_info_quality_rpt.pdf>.

⁴² Report of the Auditor General of Canada (2000), Chapter 24: “Federal Health and Safety Regulatory Programs,” (December).

⁴³ Canada's "socio-economic impact analysis" requirement changed in 1986 to "general impact analysis" and to the use of formal cost-benefit and cost effectiveness analyses in 1992.

⁴⁴ OMB pointed out that 15 of 26 social regulations reviewed October 2003 and September 2004 did not quantify either benefits or costs, but these regulations were nonetheless finalized. 2005 US Office of Management and Budget, Office of Information and Regulatory Affairs (2005) "Validating Regulatory Analysis: 2005 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities," Washington, D.C.

⁴⁵ A European Commission official at a 23 January 2006 meeting on Impact Analysis at the Center for European Policy Studies (CEPS) characterized the fragmentation of IA as "degeneration" of IA methods.

⁴⁶ Commission of the European Communities (2004) Commission Staff Working Paper: "Impact Assessment: Next Steps," Brussels, 21.10.2004, SEC(2004)1377.

⁴⁷ Commission of the European Communities (2005) "Better Regulation for Growth and Jobs in the European Union," p. 5 EN.

⁴⁸ Productivity Commission (2005).

⁴⁹ BRTF (Better Regulation Task Force) 2005, "Regulation – Less is More: Reducing Burdens, Improving Outcomes," Report to the Prime Minister, London.

⁵⁰ Commission of the European Communities (2005) "Communication from the Commission on an EU common methodology for assessing administrative costs imposed by legislation," Brussels, 21.10.2005, COM (2005) 518 final.

⁵¹ UK Better Regulation Task Force (2005) "Better Regulation - from design to delivery," Annual report 2005, at <<http://www.brc.gov.uk/publications/designdelivery.asp>>.

⁵² Commission of the European Communities (2005) "Minimising administrative costs imposed by legislation: Detailed outline of a possible EU Net Administrative Cost Model," Commission Staff Working Document, Annex to the Communication on Better Regulation for Growth and Jobs in the European Union, Brussels, 16.3.2005, SEC (2005) 175, {COM(2005)97 final}.

⁵³ Argy (2003), p. 36.

⁵⁴ The Council of Australian Governments (COAG) comprises the Prime Minister, Premiers, Chief Ministers and the President of the Australian Local Government Association.

⁵⁵ Smart Regulation, p. 26.

⁵⁶ OECD, p. 32.

⁵⁷ See footnote 2.

⁵⁸ OECD (2002) "Canada: Maintaining Leadership Through Innovation," Paris, p. 11.

⁵⁹ Canada's Integrated Risk Management Framework (2000) defines risk as "the uncertainty that surrounds future events and outcomes. It is the expression of the likelihood and impact of an event with the potential to influence the achievement of an organization's objectives." Risk assessment, however, is a term of art that has a more precise meaning. It is not interchangeable with "uncertainty assessment."

Annex 1: The International Spread of Regulatory Impact Analysis (RIA)[©]

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| National governments adopting RIA |
| Sub-national governments adopting RIA |
| International or Supranational bodies adopting RIA |

| Country | Year that RIA was adopted and revised |
|-------------------------------------|--|
| United States | Initially adopted 1974, substantially strengthened in 1981 by Executive Order of the President, reaffirmed in 1993 and 2000 |
| Canada | Initial benefit-cost analysis adopted in 1978, expanded in 1986, reinforced by Regulatory Process Management Standards in 1995 |
| State of New York, United States | 1983, State Administrative Procedure Act required assessment of costs and benefits but was universally ignored. Reaffirmed 1995 (Executive Order #20) |
| State of Victoria, Australia | 1984 (Subordinate Legislation Act 1984) |
| United Kingdom | Initially adopted in 1985, strengthened in 1996 and 1998 |
| Netherlands | 1985, substantially strengthened in 1994-95, currently “Business Effects Analysis” |
| France | 1987, Prime Minister decree required assessment of budgetary and employment impacts. Government Circular of 26 January 1998 extended RIA to economic impacts. Implementation still underway. |
| State of New South Wales, Australia | 1987 (Regulation Review Act) 1987, strengthened in 1989 (Subordinate Legislation Act 1989) |
| Korea | Adopted administratively in 1993, legislated in 1997 (Basic Act on Administrative Regulations) |
| Denmark | 1993 Government Circular, substantially strengthened in 1995 and 1998 (Prime Minister’s Department circular on law-drafting) |
| WTO | 1994, General Agreement on Trade in Services (GATS) requires that standards be “based on objective and transparent criteria” and |

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|---------------------------|--|
| | be “not more burdensome than necessary to ensure the quality of the service.” |
| Germany | 1994, 1995 Guide to RIA (<i>Leitfaden zur Gesetzesfolgenabschätzung</i>), strengthened 2000 |
| OECD Countries | 1995, RIA recommended for all OECD Members in the OECD Recommendation on Improving the Quality of Government Regulation, repeated in 1997 OECD Report to Ministers |
| Sweden | 1995 (Government Agencies and Institutes Ordinance required agencies to perform RIA for proposed regulations; 1997 (Checklist for Regulators issued by Prime Minister’s Office, and “Legislative Bill Handbook”); 1998, (<i>SimpLex Ordinance</i> required special RIA for new or amended regulation if the proposal affected SMEs, with checklist of 12 questions) |
| New Zealand | 1995 (Compliance Cost Assessment Framework), 1998 (Regulatory Impact Statement (RIS)), 2001 (Regulatory Impact and Compliance Cost Statement) |
| South Africa | 1995 (National Small Business Act mandated review of the impact of proposed legislation on small businesses) |
| Mexico | 1995 (Presidential Decree for Business Deregulation), strengthened and legislated in 2000 |
| Commonwealth of Australia | 1995, Council of Australian Governments (COAG) required proposals going to Ministerial Councils and national standard-setting bodies to be accompanied by regulation impact statements; 1997 (Cabinet directive mandates preparation of Regulation Impact Statements for regulation that affects business or inhibits competition) |
| Hungary | Initial steps taken in 1987, but adopted as RIA in 1996 |
| Spain | 1997, regulators may use Evaluation Questionnaire for Norms (<i>Cuestionario de Evaluacion de Proyectos Normativos</i>) to comply |
| Italy | 1999 (effectively abandoned in 2002), 2005 Annual Simplification Law, Art 14, restated RIA requirement |
| Czech Republic | 2000 (Analysis of Financial Impacts and Impacts on the Economy), implementation is still underway |
| Estonia | Government decree of 1 January 2000 |
| Poland | 2001, RIA principles adopted by the Council of Ministers, RIA review mandated by 2001 amendment to the Law on Organisation |

| | |
|---------------------------|---|
| Greece | 2001 (decision to develop RIA program), Implementation pending. |
| European Commission | 2002, RIA program expanded in 2004 (Integrated Impact Assessment (IIA)) |
| Ukraine | 2002 (Regulatory Policy Law requires RIAs for national and local laws and regulations) |
| Slovakia | 2002 (legislative proposals submitted to Cabinet must include assessment of financial, economic, environmental and employment impacts). Implementation pending. |
| Finland | 2003, but still developing in 2006 |
| Bulgaria | 2003 (Law on Reduction of Administrative Regulation and Administrative Control of Economic Activity), but enforcement has been delayed |
| Ireland | 2004 (pilot launched based on Government's White Paper Regulating Better, full implementation mandated by Prime Minister in July 2005) |
| Japan | 2004 (19 March 2004 Cabinet Decision on the Three-Year Programme for Promoting Regulatory Reform, and mandate for Council for the Promotion of Regulatory Reform). Implementation pending |
| Bosnia (Republika Srpska) | 2005 (Government endorsed RIA), implementation pending |
| Moldova? | 2006? Law of Republic of Moldova on basic principles and mechanisms regulating entrepreneurial activity |
| Vietnam? | 2006? |
| Kenya? | 2006? |

Source: Jacobs and Associates, 2006.