REPORT ON CCAC'S REGULATORY REVIEW

January, 1993

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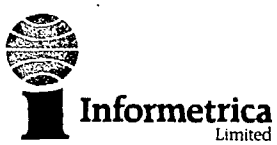

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Workshop on the CCAC Regulatory Review

Introduction

In free and open market economies, consumers ultimately determine what goods and services are produced, bought and sold. But governments play an important role. They set the rules by which the markets for goods, services, labour and capital operate. They provide essential services either directly, such as public security and education, or with private sector participation, such as health care. They intervene to cushion economic shocks and to yield a fairer distribution of income and opportunity to individuals, groups and regions.

With increasing global economic interdependence and competition, the challenges to governments and their citizens have become more complex. Despite enormous industrial and technological advances over the years since World War II, the pace of growth in Canada and the other major western nations has slowed. The growth of tax revenues has also slowed, and claims on governments to service and repay past debts have seriously impeded their ability to fund new or even existing programs.

To implement their policies, governments generally have four instruments: the powers to spend, tax, regulate or persuade. In the 1960s and early 1970s, the years of Canada's rapid real economic growth, most of the major federal spending programs were adopted or expanded - medicare, public pensions, social assistance, post-secondary education, manpower training, and regional development. Even as growth gave way to a form of stagflation in the late 1970s and early 1980s, federal spending grew at double-digit rates despite lagging tax revenues, creating a rising level of federal debt. Since then the government has struggled to contain the growth of debt, and since 1985 the annual growth of expenditures has been limited to less than 4%. Over the next five years expenditures are targeted to grow at only 3% annually, less than the combined rate of inflation and population growth.

1. Regulation and Competitiveness

An alternative to spending is to regulate, and with the escalation of public concerns over consumer and environmental issues both the federal and provincial governments have tended to respond with modest spending initiatives coupled with increased regulations. Many of these regulations have resulted in tangible benefits, but some have entailed increased costs and spending by producers and consumers. In the environmental field in particular, the potential impact of new regulations to control or eliminate severe degradation has been equated by one colourful observer to a veritable "green tsunami"(1).

Not surprisingly, as the 1980s progressed there has been a growing concern over the excessive use of regulation and its effect on Canadian competitiveness. There is the danger, as one critic has put it, that because regulation is administratively "a relatively cheap form of government intervention, it will be over-utilized in terms of both efficiency and distribution" (2). In 1984 the federal Task Force on Program Review (Nielsen Task Force) was created with the major objectives of "better service to the public and improved management of government programs". One of its priority areas was regulatory programs. Reporting in 1986, it concluded that Canadians are indeed over-regulated.

As a result, the government announced a Regulatory Reform Strategy which outlined the guiding principles of federal regulatory policy, and included a Citizen's Code of Regulatory Fairness that ensures a broad consultative process. This was followed by a Regulatory Process Action Plan aimed at "the streamlining of regulation with the objective of reducing intervention" and ensuring that new regulations would be accompanied by "a full assessment of their impact on society."(3) It called for a review by Parliamentary Committees of all regulatory statutes over a ten-year cycle.

The likely implication for the years ahead could well be that the federal government will rely less on command and control regulations to govern private actions, and more on the use of public consultation and suasion through initiatives such as industry self-regulation, voluntary guidelines or standards, consumer education or public "price signals" such as user fees or emission charges. (See Figure 1)

These initiatives reflect larger changes in the respective roles and responsibilities of the private and public sectors. Increasingly, citizens and businesses expect to be consulted and to participate in public policy choices. Indeed, as was indicated in a report to the recent Prosperity Initiative (4):

"With an increasingly well-educated, and well-informed population the role of governments in society is changing:

FROM	TO
an era of elite "accommodation"	an era of public participation and powersharing
commanding	informing, persuading, leading
doing things for people	getting people to do things for themselves
government regulation	voluntary standards, self-regulation
setting the rules	setting the example and providing the vision"

In the February 1992 Budget the government announced that:

> "We will implement a department-by-department review of existing regulations, beginning with Agriculture Canada, Transport Canada, and Consumer and Corporate Affairs. Existing regulations that should be kept will have to be publicly re-justified."

A purpose of the review is to reduce, eliminate or modify those regulations that are inconsistent with the government-wide objectives of prosperity, competitiveness, fiscal restraint and service to the public. "Re-justifying" means not just demonstrating the existence of a real problem to which the regulation is addressed, but also that the regulation is the best way to address that problem.

The major regulatory criterion is, of course, that all benefits exceed all costs, with these measures including qualitative as well as quantitative factors. However, there are other criteria as well. (See Figure 2)

Figure 1

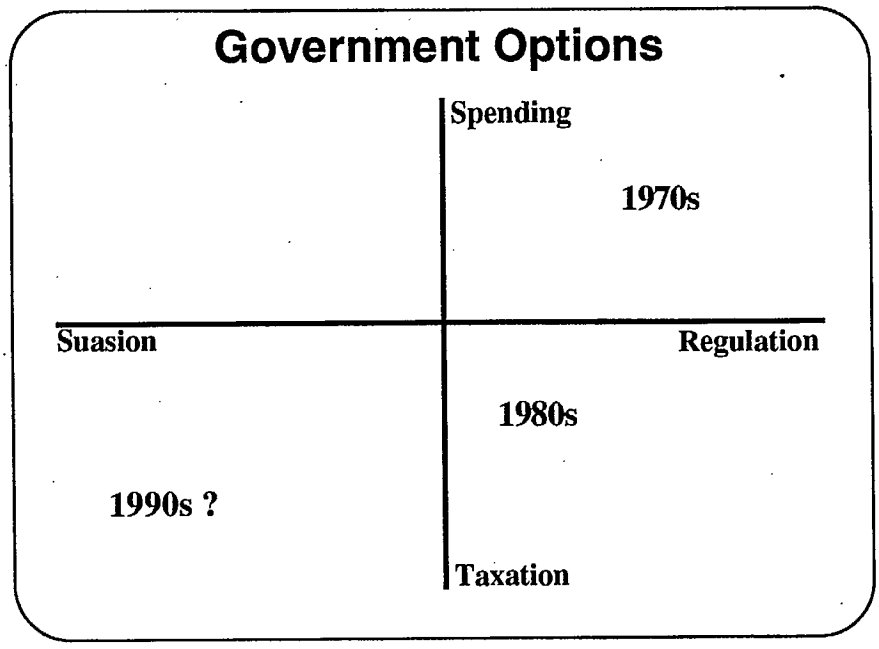


Figure 2

Regulatory Criteria

All benefits exceed all costs

Additional criteria - regulate 'smarter'

- improved fairness
- improved transparency
- effective oversight
- public scrutiny and input
- reduced paper burden

Efficiency

Benefits include direct to the targeted group, indirect to third parties, and savings to taxpayer.

Costs include administration and enforcement costs, compliance costs to the targeted group, and indirect costs to third parties.

In choosing among options, the largest net benefit should be the criterion.

Fairness

Fairness is the home of distributional concerns, as well as widening opportunities and reducing risks.

2. Consumer and Corporate Affairs Canada Regulatory Review

Consumer and Corporate Affairs Canada (CCAC) administers 66 pieces of legislation and a host of regulations. For the purposes of the review, CCAC selected regulations enacted under the following acts:

Bureau of Consumer Affairs

- Consumer Packaging and Labelling Act (CPLA)
- Hazardous Products Act (HPA)
- National Trademark and True Labelling Act (NTTLA)
- Textile Labelling Act (TLA)
- Weights and Measures Act (WMA)

Bureau of Corporate Affairs and Legislative Policy

- Canada Business Corporations Act (CBCA)
- Canada Corporations Act (CCA)
- Copyright Act (CA)
- Industrial Design Act (IDA)
- Patent Act (PA)
- Trade Marks Act (TMA)

The department conducted its regulatory review along two tracks. Both followed upon a searching review of the regulations by the department itself. Fact sheets were prepared for the selected regulations, either individually or in appropriate clusters. These fact sheets, in general, paralleled the new regulations policy passed by Treasury Board in March 1992. Questions were asked that dealt with what problem, risk or need the regulation(s) addresses, whether the regulation(s) is achieving its intended purpose, any alternatives to the regulation(s) that were considered, the impact on domestic and international competitiveness, the compliance/enforcement policies, and the implications of revoking the regulation(s).

On one track, lists of these regulatory factsheets were prepared and distributed widely to the firms, industry associations, consumer groups, government departments and other parties affected by, or interested in, the regulations. Provincial governments and CCAC employees were also asked for their input. These organizations were invited to review the findings of the individual factsheets that were of interest to them. The department has prepared a separate report on that process.

On a second track, CCAC commissioned Informetrica to hold a workshop for designated stakeholders to deal with the concerns and issues raised by the regulations under review, and the alternatives to them. On the strength of a thorough review of

the individual factsheets, and discussions with departmental officials and an advisory panel, Informetrica prepared four separate theme papers that addressed the following:

- o Alternatives to Regulations
- o Regulatory Harmonization and the Removal of Technical Barriers to Trade
- o Enforcement and Compliance Issues
- o Improved Service to the Public

These were distributed in advance to the participants, along with the list of the factsheets.

The Workshop was held on October 28, 1992 at the Plaza de la Chaudiere, Hull, Quebec. It was broken into a morning and afternoon session of four workshops, each of which dealt with the issues raised and questions posed by its respective theme paper. The Chairpersons of the four workshops reported their observations in a concluding plenary session. The results, together with concluding comments of the advisory panel the following day, are the subject of this report.

3. Alternatives To Regulations

CCAC, as the "department of the marketplace", has the delicate task of serving both consumers and the business community. The balancing of consumer and corporate interests is enshrined in the department's mission statement: "to promote the fair and efficient operation of the marketplace in Canada".

CCAC is active in a number of areas of modern marketplace regulation. Among other things, CCAC aims to protect the work of creators and inventors, ensure fair trade practices, address the health and safety concerns of consumers, and ensure sufficient product information to allow consumers to make informed choices.

The workshop on alternatives to regulations addressed the question of whether at least some of CCAC's traditional command and control regulations are excessively inflexible, difficult to enforce and costly to producers and consumers. Alternatives to such regulations: performance rather than design standards, voluntary standards, information policies, or simply allowing competitive markets to determine outcomes, with the legal system as a backdrop, were considered.

On the corporate side, businesses can incorporate under federal or provincial jurisdiction. Both levels of government set codes of conduct for incorporated firms, and define the rights and responsibilities of directors and shareholders. Many of the regulations are enabling, in the sense that they are there to facilitate compliance by the affected parties.

A number of regulatory modifications to the Canada Business Corporations Act (CBCA) were discussed. The thrust of these proposed amendments was largely housekeeping, to simplify the Act's application, to improve the Corporations Directorate's services (facsimile transmission and electronic filing of documents), to

clarify the text of certain sections, and make the Act more productive and less costly to administer (financial and audit requirements). In addition, changes were being introduced to bring the federal requirements on insider and financial reporting more into line with provincial corporate regulations, and with contemporary accounting standards accepted world-wide.

With respect to the intellectual property (IP) regulations, it was suggested that a balance of consistency and flexibility is the key. Every major country must have its own intellectual property regime in order to encourage economic and cultural growth and to encourage and reward the continuing development of modern technology. It was generally accepted that Canada's IP legislation, with one notable exception relating to industrial designs, was among the world's best, and there was support for Canada's membership in both the Patent Cooperation Treaty (PCT) and the World Intellectual Property Organization (WIPO). There was, however, a concern about the backlog of patent applications, and the length of time in processing them, although it was recognized that the recent patent legislation under which applications are now examined only on request, had gone some way to resolving these issues. There were also some misgivings about inconsistencies in the administrative review and adjudication of officials. And the legislation and regulations governing industrial designs were considered 'hopelessly' out of date.

As with corporate regulations, IP regulations are principally enabling. They are mainly intended to guide users on how to use the system, and they tend to have the support, for instance, of patent and trade-mark agents. The alternative to them would be administrative guidelines, which some participants favoured as being more flexible than regulations, especially regulations of a "housekeeping" variety, and more easily updated as automation takes hold. Guidelines may become more viable as the department's Intellectual Property Directorate (IPD) progresses toward Special Operating Agency status. They have the drawback, though, that they can be somewhat less transparent and that in the hands of sometimes autocratic officials they can be abused.

Much of the discussion focused on alternatives to the regulations on the consumer protection side. It was acknowledged that recent reforms such as the Citizen's Code of Regulatory Fairness, and requiring Regulatory Impact Assessment Statements (RIAS) for all new regulations, have been steps in the right direction. But the time, paperwork and intricate steps involved in consulting with interested parties, formulating and changing even the most minor of regulations, remains boggling. While the practice of introducing new regulations tends to be a negotiable rather than an adversarial process as in the United States, the need to have third parties at the table leads to a lengthy round of consultations. The Consumers' Association of Canada, among others, has several recommendations for strengthening the RIAS process, such as improving the quality and widening the alternatives examined by individual RIASs, and requiring the inclusion of a "public interest test" in order to identify the true winners and losers from the regulatory initiative.

One view is that the RIAS is in many cases a costly ex post rationalization of decisions already made, often in response to political or other interest pressures. Similarly, some of the time-consuming consultations often pit consumer advocates against industry spokesmen, American style, and are considered a waste of time. Another view is that while the RIAS process is desirable, there is little consistency or comparability between them, especially in estimating degrees of risk, third party or downstream costs or benefits, and putting a value to matters of qualitative importance. Often the alternative is not the status quo, but another course of action that the RIAS does not take into account. On the other hand, there is also the view that 'just having the numbers run out' would deter the introduction of the most costly regulations. Moreover, to ensure independence and transparency, departments should use outside analysts to prepare, or at least review, the RIAS.

It was generally agreed that to date most consumer risk-related regulation has been beneficial especially in the areas of food and drugs and hazardous consumer products. In critical matters where the risks to health and safety are considerable, and where the public may not be well informed, it will continue to be necessary to implement and enforce traditional command and control regulations, such as those under the Hazardous Products Act. Where the norm is 'zero tolerance' or where vulnerable groups such as small children are at risk, the alternatives to regulation are socially and politically unacceptable.

In relatively low-risk cases, however, many took the view that public education and individual prudence were preferable to the application of regulations. An example cited was foods that contain allergy-inducing ingredients, such as peanuts. As long as the ingredients are properly identified and labelled, and assuming that the allergy is limited to a relatively small proportion of the adult population, one should leave it to the allergy sufferers themselves to exercise discretion.

Considerable interest was expressed in the British approach of using a general safety requirement rather than a set of prescriptive regulations. There, manufacturers are simply required to produce a safe product. However, the government has inspection powers and can order a product to be taken off the market, and injured consumers are entitled to sue manufacturers on the grounds that the product is unsafe. The advantage of the system is that government restricts itself to setting broad health and safety objectives and leaves more scope to producers to decide how to achieve those objectives. In short, shift from an emphasis on rules to an emphasis on results.

This led to a discussion of whether more weight should be given to performance standards instead of design standards. This might be less intrusive on manufacturers and producers and promote innovation while maintaining the same level of health and safety protection.

Moreover rapid technological and other changes often make cumbersome design regulations problematic or render them out of date. On the other hand producers often prefer a regime that gives them clear directions as to what is, or is not, a safe

manufacturing design or product, in order to minimize the possibility of expensive litigation. And sometimes the two concepts overlap, i.e., even defining a standard of performance safety requires product design or ingredient specifications.

The alternative of adopting a caveat emptor stance to consumer health and safety concerns, and depending on the use of tort liability actions, including class actions, to force industries to produce safe products, drew little support. There was a clear endorsement of the use of regulations such as those of the Hazardous Products Act to prevent accidents. Industry knew where they stood and consumers were reassured. There was little sympathy for a more individualistic system such as in the United States that emphasized private litigation, contingency liability and the potential for huge punitive lawsuit awards against producers from which 'only the lawyers benefit'.

There are occasions too where business takes the lead in pressing for formal mandatory regulation. The rationale here may be the quite legitimate one of controlling unsavoury practices or products of marginal or 'fly by night' firms, or the more self-serving one of protection of markets or avoidance of legal responsibility.

Most participants acknowledged that the thrust of CCAC's recent activity in the consumer product safety and labelling area has tended to favour the use of non-regulatory, partnership, voluntary self-enforcement and informational instruments, although ironically there are instances where CCAC has considered a voluntary standard but consumers and the business sector preferred the adoption of formal mandatory regulation. Clearly, much depends on the nature of the product, the structure of the industry and the strength and inclusiveness of the industry association. (On the Corporate side of CCAC as well, there have been instances where representations by The Canadian Bar Association and other clients have prompted the retention of certain CBCA regulations).

Some concern was expressed that where voluntary standards are in effect how certain is government that they are in fact being complied with? This concern deepens the more that imports enter the market. The observation was made that Canada imports a very large percentage of its products and, in the absence of effective international regulations, cannot rely on voluntary standards or the market alone to reassure Canadians. Indeed in the absence of regulations does the government have the legal authority to require that firms adhere to the voluntary standards in place? At some point the enforcement arm of the government must be prepared to step in. If CCAC, for instance, relies on industry associations to provide a certification process to deal with product health and safety issues, and limits its role to periodic audits and spot checks, should it not have the power to impose stiff sanctions if firms are in violation of their voluntary codes? Moreover, is the public ready to accept that certain critical food safety issues could, for example, be handed over to a private association?

Generally speaking, on the supply side the weaker the industry association or the greater the number of firms, particularly smaller firms and foreign suppliers,

competing in the industry, the more the need to regulate for safety. Equally, on the demand side, the greater the number of consumers at risk, especially those who are vulnerable - very young, elderly and new Canadians - the more the need to regulate. By the same token, the stronger the industry association and the more concentrated the industry, with each firm having a reputation and market share to protect, the more likely one could rely on suasion, voluntary standards or market forces alone, in combination with tort liability. Similarly the fewer, more concentrated and more discerning the users, the more likely they could respond to educational or informational programs without the need for formal regulations.

One could conceive, for instance, of product and consumer matrixes such as Figure 3 and Figure 4, where the relationship of industry structure and consumer sophistication to the need for consumer protection instruments runs diagonally from laissez faire to an outright ban. Indeed the same matrix concept could be developed relating the instruments used on one axis to product characteristics and degrees of hazard tolerance on the other axis. Relatively benign products require little government intervention other than, say, the provision of public information. Highly toxic products need to be regulated if not banned.

Of course, there are always exceptions. In some cases, small niche producers for the upscale market may be the quality and safety leaders. In other cases monopoly or oligopoly conditions in a market may require more rather than less regulation, especially in terms of price and levels of service. Figure 4, for instance, is indicative only and should not be misinterpreted. It takes as given the existence of hazardous products about which the public and their governments are concerned, and spells out on the vertical axis the alternatives consumer protection actions government may or may not employ given different industry conditions. It should not be read as implying that monopolies or concentrated industries per se produce relatively safe products or that imports are likely to be unsafe and should be regulated or banned. Quite the contrary. What it attempts to convey is that where there are one or a few identifiable dominant producers with market share and reputations to preserve, adequate consumer protection may be achieved through no more than the threat of legal action by individuals, bad publicity, or even a phone call to the president(s) of the offending firm(s), without the need for more obvious government intervention. The recent Tylenol case in the U.S., for instance, comes to mind.

At the other end of the spectrum, where the hazardous products are entirely or almost entirely imported, with the foreign producers not subject to Canadian standards or safety concerns, the only immediate consumer protection recourse may be to regulate, or, in serious cases, ban. Certain foreign-produced firearms come to mind.

Consumer Safety

Figure 3

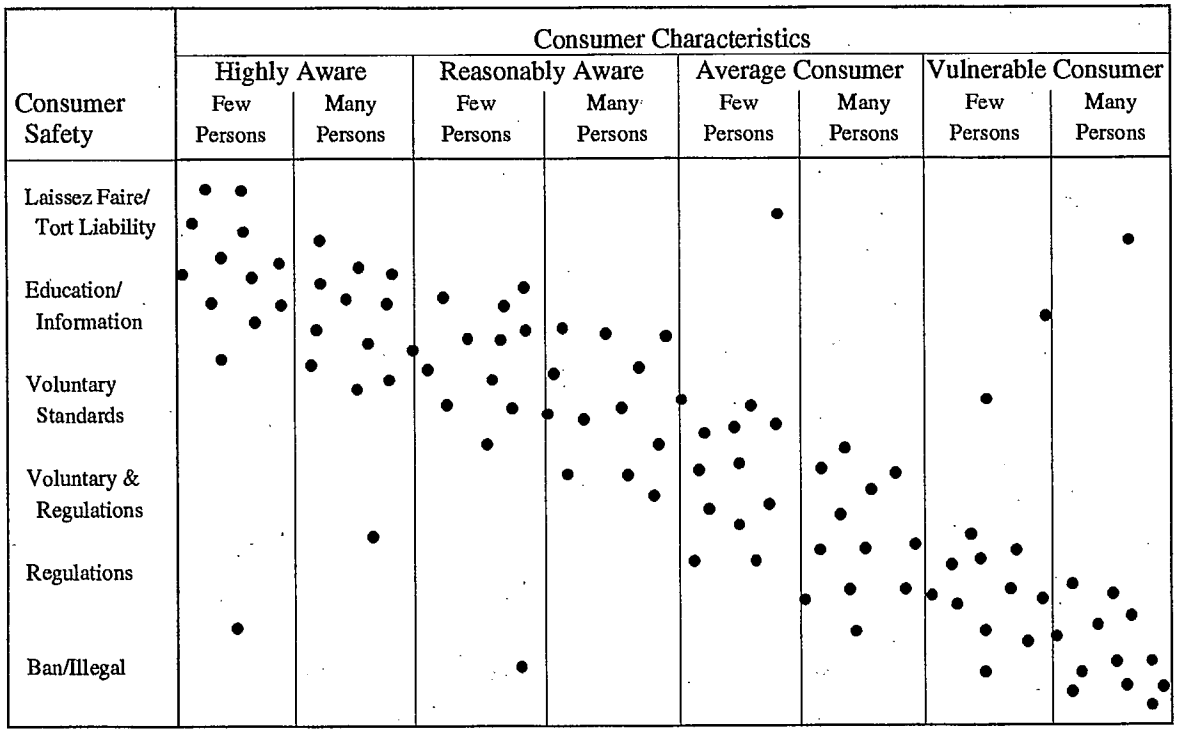
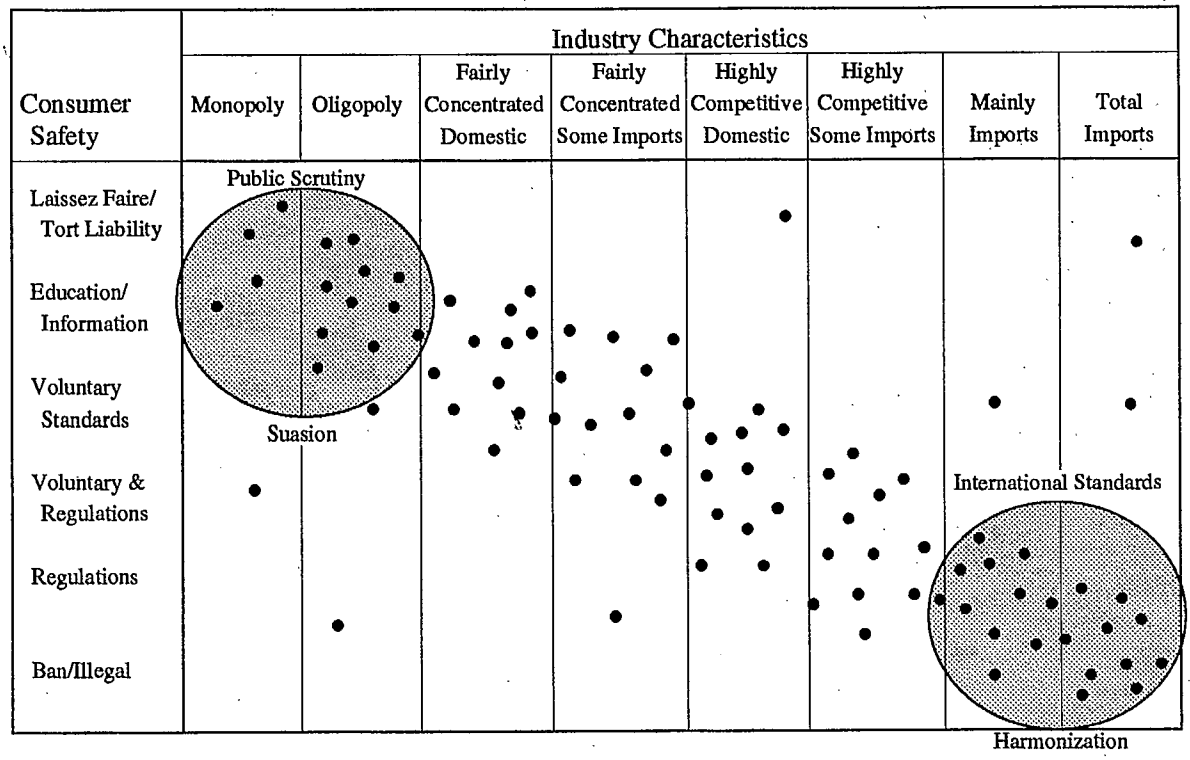


Figure 4



Over the longer run, however, the latter response is probably not the preferred option. Indeed the sense of the discussion on imports and trade in both the Alternatives and Harmonization sessions of the workshop tended to coincide with the following observations by one commentator:

> "Many imports into Canada are sold in highly competitive global markets where well-informed consumers and industrial customers are demanding the best quality possible... If we accept that imports require greater regulation, this would lead us to argue for greater regulation in the marketplace of the future. This is because import penetration and the number of players in Canadian markets will continue to expand with freer international trade, globalization and NAFTA. There must be a better response to higher imports and globalization than ever more costly and interventionist forms of regulation. In fact... the appropriate response is not more regulation, but rather greater international harmonization, the adoption of international standards, and international agreements to establish minimum standards and ensure that 'the race to the regulatory bottom' does not result in a flood of unsafe products in the global marketplace." (5)

Yet despite this aversion to more regulation there was a general view that public pressure for more regulation would continue, with concerns about fraudulent financial services and telemarketing, and ethical problems with biogenetic products and processes being given as examples. The market is constantly changing, and CCAC, in conjunction with the industry associations and some of the provinces, is currently looking at some of these areas. The recent cooperative development of The Canadian Code of Practice for Consumer Debit Card Services was cited.

As to business concerns about regulatory 'overburden' the fact that most of CCAC's consumer legislation and regulations were put in place some years ago and there have been few major revisions in the recent period, has meant that CCAC is now seen as a 'relatively marginal nuisance', since most costs of compliance have been absorbed long ago. CCAC's efforts to consult widely, while undoubtedly consuming time and resources, have been noted and are appreciated by business and consumer groups.

There was some discussion of consumer education and CCAC's initiatives on that front. There was broad support for the department's efforts, with industry and consumer groups, on nutritional and ecological labelling, and with the Kids Care program identifying products and conditions that could potentially be unsafe for children. There was widespread support for more consumer education in the schools, but an appreciation that this was primarily a provincial responsibility, and one in which the Consumers' Association of Canada (CAC) would, with increased funding, like to become more active. Indeed the suggestion was advanced that since the CAC is very highly respected by the public, the department should make more use of it in its informational campaigns. The point was raised, however, that in matters of health

and safety, information and educational programs should be seen as complementary to, and not as a substitute for, voluntary or regulatory compliance.

The cost of deregulation was also raised. In some cases, it can involve a slow process of consultation, and, in keeping with the foregoing concerns, brings into question the net benefit of shifting to a voluntary standard or public information campaign. Nonetheless there was support, particularly among industry participants, for 'review windows' and sunset clauses in forcing regular periodic reassessments of all CCAC legislation and regulations, on both the corporate and consumer sides. Such occasions would presumably allow concerned parties to challenge or suggest new approaches to the issues. The same principle could be applied to voluntary standards.

Finally, as an example of the background of support work that contributes to CCAC's regulatory, voluntary, educational and other preventative activities, it was noted that CCAC has built up a good working relationship with Health and Welfare Canada with respect to the Canadian Hospitals Injury Reporting and Prevention Program (CHIRPP), funded by Health and Welfare Canada. CHIRPP has had its initial three-year demonstration program (1989-92) converted into a five-year program. It collects data from children's hospitals which facilitate the identification of dangerous products and processes and provide information as to the magnitude and extent of injuries caused by a dangerous product. CCAC also has its own more limited Canadian Accident Injury Reporting and Evaluation System (CAIRE) that collects injury data from general hospitals on all age groups.

4. Regulatory Harmonization and the Removal of Technical Barriers to Trade

The globalization of markets and information systems, and the formation of integrated trading blocs in Europe and North America, have been accompanied by efforts to harmonize rules, practices, compliance and enforcement initiatives, and product specifications to encourage and speed up trade.

In this context of increased harmonization in the trade of goods and services, international manufacturing standards are tending to converge. Not only do they thereby provide assurances to the consumer, they give rise to manufacturing economies of scale. The development of international standards is primarily the responsibility of the International Organization for Standardization (ISO) of which Canada is a member. ISO is the world's largest international organization for technical and industrial collaboration, comprising representatives of the business sector from more than one hundred countries around the world. To date, more than 5000 international standards have been developed through the rigorous international approval process of ISO and each year nearly 600 new and revised standards are published. In addition, the ISO 9000 series of quality management (QM) provides for certification of both products and services through a unique system of initial assessment and regular monitoring by an independent registration body.

While there was a general endorsement of the ISO process some workshop participants took the view that ISO often takes too long to develop and approve a

standard, by which time, in some cases, technology had moved on. Because of the large trade volume between Canada and the United States it often paid off for CCAC officials, along with Canadian industry, to work with their U.S. counterparts directly rather than ISO in developing harmonized standards. And many participants saw value in the European system of mutual recognition of each other countries' standards, combined with E.C. directives to ensure an acceptable level of consumer protection.

Other issues were raised in the context of regulatory harmonization and the removal of technical barriers to trade.

To begin with, there was widespread agreement that the lack of harmonization of regulations, standards etc. within Canada was a major problem for business. There appeared to be a general sense that a single source of regulations/standards would be better, and that given the federal government's constitutional responsibility for trade and commerce the logical place is at the federal level. Overlapping and duplicative regulatory regimes and regulatory differences across provinces appear to be of significant concern.

The interplay of federal consumer and health regulations and provincial environmental regulations was cited as a potential problem area. An example was given of the different environmental waste practices of provinces and municipalities. By prescribing the composition and disposition of packages and containers these were becoming serious barriers to trade. Moreover, there was the danger with foodstuffs that packaging recycling could, through cross-contamination, lead to serious health risks.

A lack of political attention on both sides of the border, together with differences in Canadian and U.S. approaches to regulation and therefore harmonization, appeared to contribute to the slow progress. For example, in the U.S., Congress is much more directly involved in regulating matters which, in Canada, would likely involve only orders-in-council. Moreover the role of the regulatory and enforcement agencies operating in the two countries differs. For example, the U.S. customs service plays a much more important direct enforcement role in the administration of consumer regulations than does the Canadian customs service. Indeed the strictness of the U.S. border controls, compared to the relative looseness of controls at the Canadian border, was cited as an irritant.

Another irritant to business, and possibly an impediment to effective harmonization internationally, are the different regulatory regimes, each with its own set of inspectors, within the federal governments of both countries. For example, there were some suggestions that the CCAC regulatory review should have been held jointly with departments having related mandates, most notably, Health and Welfare, Agriculture and Fisheries and Oceans. This might have permitted more effective discussion on how better to integrate and harmonize their related activities. For example, food products destined for the food services market are subject to Health and Welfare (H&W) inspection, abattoirs and dairy establishments by Agriculture

Canada (AC) inspection, and meat labelling is subject to both AC and CCAC approval. It was acknowledged though that these departments had a Memorandum of Understanding that divided up responsibilities, and that there was a good working relationship among their field personnel.

The point was made that if certain standards, such as those relating to packaging and labelling, are not more harmonized than at present across provinces and internationally, it will become increasingly difficult to enforce the regulations. Already the volume of new products arriving on the market from diverse sources outside Canada, together with the hundreds of thousands of outlets, was seriously straining Canada's monitoring and enforcement capabilities.

One example cited was that of the trend to large grocery warehouses in Canada that import in bulk from the United States and elsewhere. Many of these imported products do not comply with Canadian packaging and labelling requirements; but the warehouses' consumers obviously do not care. And the volume of business was so great that CCAC inspectors could not effectively enforce the regulations.

Some participants held that the costs of testing and standards certification in Canada seem to be unnecessarily high. There was general support for cooperative efforts internationally in such areas as the development and testing of new products, notably drug development programs. For example, regulatory agencies constantly watch the testing and regulating activities undertaken in other industrial nations, and much of the recent regulatory activity in Europe and North America reflects the most recent health, safety and environmental protection standards in the leading economies. For example, the administrators of the Hazardous Products Act, the Workplace Hazardous Materials Information System (WHMIS) and related regulatory programs managed by CCAC and Health and Welfare Canada are in regular contact with their counterparts who administer the Consumer Product Safety Act, the Hazardous Substances Act, and the U.S Toxic Substances Control Act. Similarly, officials responsible for Canadian regulatory programs in the agri-food safety and prescription drug fields liaise frequently with the U.S. Food and Drug Administration (FDA).

Canadian officials also maintain close relations with the Codex Alimentarius Commission, which is a joint subsidiary body of the Food and Agriculture Organization (FAO) of the United Nations and the World Health Organization (WHO). "Codex" refers to the compilation of all food-related standards, codes of practice, guidelines and recommendations of 130 participant countries. The Commission exists to facilitate world food trade, and to develop internationally accepted standards for food products. CCAC chairs the Codex Commission's Food Labelling Committee.

The point was made that in some matters of safety and other consumer concerns Canada leads the United States and other countries, e.g., regulations requiring daytime running lights in automobiles, and that harmonization under the FTA or GATT should not be interpreted as diluting our standards. Both GATT and the FTA call only for national treatment - each party exercises its own standards but agrees

to treat the products of the other as it treats its own - not similar standards. The same observation holds for IP regulations which are currently the subject of GATT negotiations. There the United States is deemed to be out of step with both Europe and Canada.

On matters of packaging and labelling there was some discussion of 'a level playing field' for Canadian producers, particularly vis-a-vis U.S. competitors importing into Canada. Two clear Canada-U.S. differences were cited: Canada's conversion to the metric system and requirements for bilingual labelling. Under the FTA, both these issues have been resolved by the principle of national treatment, but, as noted, many imports, including cross-border purchases, enter Canada that do not comply with Canadian regulations. One approach, currently under review, is to certify importers who agree to comply with Canadian regulations, thereby concentrating the enforcement efforts more selectively. The difference in net quantity declaration requirements may resolve itself over time since the pressures of international commerce are prompting the United States to move to the metric system, and indeed Congress has passed a bill to require that labels include metric measures. While CCAC enforces the use of metric units for net quantity declaration on consumer pre-packaged items, the requirements of using metric units in media and in-store price advertising has not been enforced for some time.

The final point that was made was that harmonization is a moving target, and in areas in which several levels of government can regulate, it is perhaps inevitable that the barriers to trade they represent will persist. Nonetheless, if one of the results of the current round of GATT is, as expected, that exporters must certify that their goods meet stipulated health and safety standards, it will greatly ease the import inspection responsibilities for each country. However, the requirement for export certification will grow.

5. Enforcement and Compliance Issues

Several participants observed that, as with the U.S. where customs officials are much more vigilant and linked in with the various consumer protection agencies, CCAC should work much more closely with Canadian customs officials to prevent the entry of non-complying products at the border. They also suggested that points of entry into Canada could perhaps be limited, provided this was not perceived as a barrier to trade. However, limiting the entry points could adversely affect the prices of goods in some regions, by increasing transportation distances and costs.

Alternatively, if the Canadian regulations could not be effectively enforced at the border, consideration should be given to having them revoked, thereby giving more flexibility to domestic producers, and reducing enforcement and compliance costs. Regulations that are not enforced will be unevenly effective, or not be effective at all. Revocation should not occur, though, without public consultations and a complete evaluation of the consequences. Another suggestion called for importers to pay an automatic fine if the imported goods are improperly labelled, which they would then deduct from the supplier's bill. Another, picking up from the

preceding session, urged greater harmonization. In this connection, the massive regulatory changes to product labelling now being introduced in the U.S. was seen as yet another irritant for Canadian exporters and regulators.

In the face of increased international trade and countless products, tight budget restraint and limited enforcement resources, uneven enforcement and compliance is likely to occur. On top of that, recent court decisions have increasingly been ascribing liability to regulating departments if injury has occurred and their regulations have been unenforced. CCAC is searching for ways to respond to these pressures.

One way is to "regulate smarter" through more selective inspection and enforcement. Another way is for more private- or self-enforcement by industry, provided that the process is transparent. Reference was made, for example, to the Canadian Advertising Foundation (CAF) as an illustration of how industry self-regulation can help. The CAF has apparently been effective in dealing with advertising issues by working with a voluntary dispute settlement process that includes a panel of consumer, industry and media representatives. If the complaint is upheld the media will immediately drop the advertising. The result is "quick and dirty" justice.

CCAC is in fact working with industry to promote voluntary agreements and self-compliance, particularly on the packaging, labelling and information reporting side. However, as indicated earlier, the voluntary approach has its own limitations, particularly when many domestic and foreign firms lie outside the ambit of the industry association that administers it. The limitations of the CAF process for retailers, and others who advertise locally and for short periods, are evident. In addition, food safety and health matters clearly require public enforcement mechanisms.

Moreover there were concerns that while self-regulation may be successful in some areas it is important that the public perceive this approach as being fair and open. The concept of transparency needs to be maintained for self-regulated efforts as well as those conducted by government. A closed process will not engender public trust of the decisions of the process. And in matters of product safety, while the onus of responsibility is with the producing firm or industry, government has a vital role to play in ensuring compliance.

The point was strongly made that if consumer regulations are to be effective, those committing the infractions must be warned or punished quickly. This brought up the broader issue of criminal versus civil law enforcement. CCAC's legislative authority is founded on criminal law. There was broad agreement that CCAC should shift away as much as possible from the less flexible, more cumbersome criminal law approach and move toward civil law remedies.

Bill C-46, the Contravention Act was given Royal Assent on October 15 and there was general support for its use by CCAC in its many areas of activities, including violations of the Canada Business Corporations Act. It effectively could provide for fines analogous to parking tickets when a person/firm commits an offence

under any CCAC legislation, and it could provide a simpler option to the current Criminal Code procedure for offenses which are not criminal acts in the traditional sense. Persons or organizations committing the misdemeanour would have recourse to the courts if they so choose.

There was some discussion of how the CCAC could better assist consumers in achieving redress. The current legislation, based on criminal law, does not provide for individual redress, which must be pursued separately by the injured party. Voluntary mediation and arbitration mechanisms were one answer, perhaps analogous to the Ontario Motor Vehicle Arbitration Plan or to the special arbitration procedure under the federal Electricity and Gas Inspection Act.

Dealing with consumer complaints and concerns was often a local problem and one which provincial consumer agencies and the Better Business Bureau could deal with more effectively. Consumers' Association of Canada offices at all levels tend to act as clearing-houses for consumer complaints, referring them to federal or provincial offices as appropriate. Possible approaches also include the use of a 1-800 or 1-900 telephone line and the creation of a central information system.

Greater use might also be made of administrative and non-criminal enforcement techniques. These include a much greater use of the media to educate the public and to publicize infractions. There is, of course, a danger, of which CCAC is acutely aware, that adverse publicity disproportionate to a violation which had not been proven in court, could be the subject of a damage action. Other more extreme administrative measures include cease and desist orders, and consent orders.

There was also discussion of how CCAC could implement a less intrusive mechanism for ensuring compliance with health and safety-related standards. For example, with respect to manufacturing processes, something similar to the innovative ISO 9000 program is already being used by Health and Welfare Canada. Critical points in the manufacturing process are identified and an acceptable safety level established. Then, all that is required is a periodic audit of these critical points, rather than the imposition of complex design standards or recurrent inspections of the final products.

There are, of course, limitations to the application of this type of monitoring program. Application would be difficult, for example, in industries whose manufacturing processes are not susceptible to the establishment of critical points.

Also, use could be made of compliance certificates issued by industry that would state that a certain product meets all Canadian regulations. Any supplier, domestic or foreign, could apply for the certificate, but the decision would be optional. Those not adopting it would be inspected. And those having adopted it could be challenged by competitor firms through a private court action. (It was noted that intellectual property issues are essentially addressed through private (civil law) enforcement.)

A CCAC official summarized the processes and possibilities as follows:

> "...at the present time regulatory responsibilities are both being globalized -- embodied in international agreements and dispute settlement procedures -- and localized -- through devolving responsibilities to provincial, municipal and non-government local groups and encouraging direct action by consumers and other stakeholders. For [CCAC's Bureau of Competition Policy] this means... allocating more and more... enforcement resources towards high profile national cases which involve key sectors, important jurisprudence and potentially large demonstration effects. This perhaps could provide a useful model for other CCAC regulatory functions." (6)

One might add, this would especially be effective if coupled with the use of fines under the Contravention Act and warnings for minor offenders.

6. Improved Service to the Public

Many diverse themes emerged out of the workshop on improved service to the public, in part a reflection of CCAC's many-faceted activities. CCAC's mandate involved serving both the consumer and corporate constituencies, and the two roles entailed considerable reconciliation.

There was an appreciation of the pressures on CCAC and support for the direction being set by CCAC in terms of what it regulated, what industry self-regulated, and what with better public information could be left to prudent consumers. In this connection, it was felt by some that the public - both consumers and producers - could play a larger role in this priority-setting activity. The Consumers' Association of Canada, for example, was concerned about the occasional lack of coordination among the various regulatory departments of both levels of government, but acknowledged CCAC's willingness to consult widely.

Several participants supported the creation of a National Consumer Council. Unlike, for example, the Consumers' Association of Canada, it would function primarily as a research arm that would examine issues, review legislation, and report on consumer activities of other countries. Reference was made to the Swedish Consumer Protection Agency which undertakes these functions and represents not only the consumer side, but also industry and government.

Support for such an agency, was far from unanimous however. One alternative would see an expanded research, policy development and advocacy capability role for the Consumers' Association of Canada, or within CCAC's Consumer Bureau, although the latter would appear out of step with the government's current restraint program. Another would have ad hoc groups pulled together from time to time to offer

comment on specific issues or groups of issues which were then topical. There were arguments pro and con which were summed up as follows:

> "A semi-permanent council develops a sense of history. Its members form confidence in each other by working together and it establishes a good understanding of the dynamics of government and how government interfaces with its various publics. On the other hand, a standing group runs the risk of becoming inbred, institutionalized and to some extent captured by the agency it advises. Ad hoc advisory groups take some time to get up to speed, tend to be somewhat simplistic in their approach to issues, and often have difficulty achieving any synthesis of the differing positions of their members. The working groups do, however, bring in fresh and independent opinions and they are not trammelled by history." (7)

There was a sense that there were many technologically new areas and products where CCAC was 'running to catch up' and where the lines between its responsibilities and those of the other departments or the provinces were unclear.

The inconsistency in the interpretation and enforcement of CCAC consumer products and product safety regulations across provinces and regions was also seen as a problem. Sometimes, because of overlapping mandates producers experience inconsistencies and contradictions between CCAC activities and those of other departments or agencies at both the federal and provincial level. One participant referred to a situation where an application (with respect to labelling) had been pre-approved by one agency, the packaging completed, the promotion done, and then the labelling was rejected by another agency.

It was appreciated that CCAC was trying to get speedier decisions and be closer to its clients by increasing the amount of decision-making in the field and regional offices. But the downside of this was inconsistencies in decisions. For instance, most food companies market nationwide. But interpretations with respect to labels are often made at the regional level, and these occasionally differ from those of head office. Efforts are being made to smooth this out; a combination of training of local inspectors, region by region, and an electronic data base of decisions would help.

There was also some frustration with the IP regime, in part caused by delays and perceived inconsistencies of decisions about application approvals. The nature of the IP system, of course, is designed to protect the uniqueness of a person's or firm's patent, trade-mark, copyright or industrial design. In the patent area, there was some perceived lack of transparency in guiding principles behind application approvals, probably due, in part, to the confidentiality which has been a part of the patent system for so many years. However, any transparency problem has been overcome with the new patent legislation which publishes the patent application soon after filing.

Inconsistency was seen as a problem in the trade-mark area, perhaps because the importance of protecting one's trade-mark is not well understood by many companies and firms, and there is a critical requirement for IP training in the business community. Automated trade-mark databases currently being built will help.

Participants were generally in favour of the conversion of the Intellectual Property Directorate to the status of a Special Operating Agency, in the expectation that it may operate on its own revenue base and respond more quickly to client needs.

Overall, there was a fairly positive feeling among the consumer and the industry participants about both the level of CCAC service and the quality of consumer standards in Canada. And while there was some concern on the enforcement side, there was a general sense that apart from housekeeping changes, and changes to keep pace with technological developments, the current mix of consumer and corporate regulations is in keeping with the nation's competitive aspirations.

7. Summary and Conclusions

(1) Prosperity is enhanced by vigorous and open competition between and within domestic markets;

- Competition disciplines the behaviour of market participants,
- It helps provide consumers with high quality products and services that are safe and 'user friendly',
- It fosters increased productivity that leads to higher standards of living,
- But competition can be abused and it requires government-set rules and conditions and international agreements.

(2) CCAC legislation and regulations are crucial to making Canadian markets function efficiently;

- They contribute to fair and safe transactions,
- They promote competition in Canadian markets,
- They encourage innovation by giving protection to intellectual property,
- They need to be kept up to date, and efficiently and consistently enforced,
- Dismantling them, in a significant way, could mean major costs to industry and heightened uncertainty to consumers.

(3) Canadians support CCAC's regulatory and service mandate;

- Canadians want high standards and safe products,
- They prefer prevention to ex post liability actions,
- They want enterprise and innovation to be rewarded,
- They want their savings handled prudently,
- They want a national common market,

- o And when laws or regulations are being introduced or materially changed, they want openness and consultation.

(4) Trade is expanding world-wide;
- o International sourcing is growing,
- o GATT and FTA are encouraging lower trade barriers, including international standards and regulatory harmonization,
- o Which promote economies of scale and scope, technological advances and higher incomes.

(5) CCAC is being asked to 'regulate smarter';
- o Competition is bringing a continuous flow of new products, from diverse sources, to Canadian markets,
- o Along with other federal departments, CCAC is responsible for ensuring that they meet Canadian standards with respect to health, safety and representation,
- o Industry in particular wants consistent decisions and 'a level regulatory playing field',
- o But budgets are being constrained, staff cuts introduced,
- o Regulating agencies are increasingly being held legally responsible where enforcement is lax.

(6) One way to 'regulate smarter' is to enlist the participation of business, other levels of government, and the public at large;
- o Canada can learn from international research and experience,
- o Industry agreement, international and domestic certification, and voluntary standards help,
- o So do public education programs,
- o But only under certain market conditions and for certain products,
- o Governments must always exercise public responsibility of last resort.

(7) Canadian border controls on traded goods are relatively loose;
- o Not all imported (or domestic) goods meet Canadian safety and packaging and labelling requirements,
- o This creates some problems of inspection and enforcement,
- o Which may be partly met by putting more responsibility on importers and wholesalers,
- o Or by international standards that may include foreign export certification to standards acceptable to Canadians,
- o And closer working relations between CCAC, National Revenue (Customs), the Canadian Importers Association, and selected other trade associations.

(8) Non-compliance must be treated swiftly, particularly where safety is concerned;
- o Reliance on criminal prosecution is a slow and costly last resort,
- o It should be limited to 'high profile' cases,
- o Supplemented by other non-criminal law restraints and sanctions,
- o These include the range of inspection and enforcement activities now being undertaken by CCAC,
- o The Contravention Act will help,
- o So will voluntary standards or certification combined with selective audits,
- o With stiffer fines for those who cheat.

(9) CCAC services can be improved;
- o By selectively targeting surveillance and enforcement activities,
- o By using private intermediaries, including the Consumers' Association of Canada,
- o By increased staff training, automation, and continuous feedback from the public,
- o By adhering to the federal government's policy calling for RIASs and public consultation when major regulations are introduced or changed,
- o By giving preference in matters of consumer safety and where appropriate, to performance standards over design standards,
- o By providing the public with periodic 'review windows' which would eventually encompass all CCAC legislation and regulations,
- o By continuing to work closely with other government and non-government agencies in areas where new technologies, processes or products may be putting some Canadians at risk.

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