Guidelines on International Regulatory Obligations and Cooperation
Table of Contents

1. Purpose .............................................................................................................................. 1

2. Context .............................................................................................................................. 1

   2.1  CDSR Commitment to Canadians and International Regulatory Obligations and Cooperation ................................................................................................................. 1

   2.2  Legal and Policy Requirements for Regulators ........................................................................ 2

   2.3  Regulatory Compatibility: An Opportunity for Regulators .................................................. 2

   2.4  Considerations in Choosing Partners for Cooperation .......................................................... 3

       2.4.1  North America .............................................................................................................. 3

       2.4.2  European Union ........................................................................................................... 3

       2.4.3  Emerging markets ........................................................................................................ 4

       2.4.4  International standards and multilateral engagement ................................................... 4

3. Guidelines to Interpreting CDSR Requirements .................................................................... 4

   3.1  Compliance With International Obligations ....................................................................... 4

       3.1.1  International cooperation .............................................................................................. 6

       3.1.2  International cooperation activities ................................................................................ 6

       3.1.3  Limiting specific Canadian requirements ...................................................................... 8

       3.1.4  Providing a rationale for specific Canadian requirements ............................................. 8

   3.2  Measuring, Evaluating, and Reviewing Regulation ............................................................... 10

4. Enquiries ............................................................................................................................. 10

Appendix A: Glossary of Terms ............................................................................................. 11

Appendix B: CDSR Requirements on International Trade Obligations Regarding Specific Requirements for the Design and Implementation of Technical Regulations, Conformity Assessment Procedures, and Sanitary and Phytosanitary Measures ........................................................................... 12
1. **Purpose**

These *Guidelines on International Regulatory Obligations and Cooperation* interpret the policy requirements in the *Cabinet Directive on Streamlining Regulation* (CDSR) pertaining to international obligations and international regulatory cooperation (IRC). They are intended to assist managers, functional specialists, and regulatory staff to understand and comply with these requirements. These guidelines also clarify expectations of the Treasury Board of Canada Secretariat when exercising its challenge function on regulatory proposals.

2. **Context**

2.1 **CDSR Commitment to Canadians and International Regulatory Obligations and Cooperation**

The CDSR begins with an overall commitment to Canadians: “The Government of Canada is committed to protecting and advancing the public interest by working with Canadians and other governments to ensure that its regulatory activities result in the greatest overall benefit to current and future generations of Canadians.”

This commitment will be met through a number of principles and actions:

- protect and advance the public interest;
- promote a fair and competitive market economy;
- make decisions based on evidence;
- create accessible, understandable, and responsive regulation;
- advance the efficiency and effectiveness of regulation; and
- require timeliness, policy coherence, and minimal duplication.

Respecting international obligations and international regulatory cooperation must be understood in the context of this commitment, and the principles and actions listed above. The CDSR and these Guidelines encourage greater regulatory compatibility when it can provide the greatest overall benefits to Canadians.

Under these guidelines and the CDSR, Canada will maintain its high regulatory standards, Departments and agencies will continue to pursue Canada's policy objectives and maintain required levels of protection, while identifying opportunities for greater international cooperation.

The activities that departments and agencies must undertake to meet the international regulatory obligations and cooperation (IROC) requirements of the CDSR should also be achieved in ways that maintain public confidence in the Canadian regulatory system.

---

1. IRC occurs in the context of broader coordination and cooperation requirements of the CDSR, including coordination and cooperation with other federal departments, provinces, and territories.

2. See Appendix A: Glossary of Terms.
As such, analysis supporting regulations that pursue greater compatibility and that aim to meet other IROC objectives should clearly demonstrate to decision makers the benefits, costs, and risks of these approaches.

### 2.2 Legal and Policy Requirements for Regulators

The CDSR committed the government, among other things, to “require timeliness, policy coherence, and minimal duplication throughout the regulatory process by consulting, coordinating, and cooperating across the federal government, with other governments in Canada and abroad [emphasis added], and with businesses and Canadians,” when regulating. This commitment is a recognition that:

- many problems require intergovernmental or even international solutions;
- multiple regulatory regimes can lead to duplication and waste;
- Canada has binding trade obligations that affect the way it can regulate; and
- regulatory cooperation can help regulatory departments and agencies enhance the effectiveness of the programs for which they are accountable.

The requirements of the CDSR detailed in Section 3 below are a reflection of this broad commitment.

### 2.3 Regulatory Compatibility: An Opportunity for Regulators

By taking a strategic, proactive approach to achieving greater regulatory compatibility with key international counterparts, departments and agencies can reach policy goals more readily, with lower costs to the government and to Canadians.

Furthermore, IRC is necessary to facilitate compliance with applicable international treaty law and its implementation in Canada. It can result in better-informed decision making through access to regulatory resources of international bodies and other countries (e.g. assessment results, analysis, people). It can lead to greater transparency and predictability of regulatory practices and allow Canada to contribute its expertise and promote its best regulatory practices internationally, thus influencing standards elsewhere.

By reducing obstacles to trade, IRC can also enhance the competitiveness of Canadian goods and services. Improved government efficiency and more effective resource allocation in the development, implementation, and enforcement of regulations can follow.

The CDSR and these Guidelines also set out expectations regarding the way IRC is to be achieved. They encourage departments and agencies to:

- take IRC into account throughout the entire life cycle of regulating—development, implementation, evaluation, and review;
- think strategically about how IRC can assist in achieving regulatory outcomes;
• establish regulatory compatibility as a goal for regulators to achieve through the design of regulations and through ongoing regulatory cooperation activities with key international counterparts;

• actively consider IRC in the ongoing management of regulatory programs, e.g. when developing or renewing compliance and enforcement policies, technical guidelines, and procedures that are put in place to implement regulations; and

• regularly assess the effectiveness of their IRC activities, determine which have yielded positive outcomes, and make adjustments as needed.

In striving for greater regulatory compatibility with our key international counterparts, it is recognized that there are cases where the pursuit of sound policy objectives may require unique Canadian standards or regulations. In these cases, a clear rationale for this unique approach must be evident in the regulatory analysis.

2.4 Considerations in Choosing Partners for Cooperation

IRC includes a wide range of activities or practices such as the sharing of information; collaboration on scientific work; common data collection, risk assessment, or compliance methods; joint reviews; and development of standards. It also includes work with international counterparts to build regulatory capacity or provide technical assistance, thus contributing to the improvement of international regulatory governance practices. Departments and agencies have a wide range of existing and potential international partners to choose from to engage in cooperation.

2.4.1 North America

The United States is Canada’s largest economic partner and we share one of the world’s largest and most comprehensive trading relationships. North American Free Trade Agreement (NAFTA) working groups carry out a number of initiatives to further regulatory cooperation between Canada, Mexico, and the United States. NAFTA countries share many of the same regulatory objectives and have extensive networks of cooperation within and outside of the NAFTA structure. However, opportunities for greater regulatory cooperation remain. A more deliberate approach to regulatory cooperation within North America will provide additional benefits by eliminating unnecessary duplication and differences in regulatory measures, and by improving regulatory outcomes through enhanced information exchange and coordination.

2.4.2 European Union

While regulatory cooperation within North America is important, the European Union is also a major trading partner. It often leads in setting international standards. This relationship has been recognized in agreements such as the Government of Canada–European Commission Framework on Regulatory Cooperation and Transparency. This agreement seeks “[…] to address new challenges and opportunities by enhancing regulatory co-operation, and to work towards preventing and eliminating unnecessary barriers to trade and investment while ensuring better quality and effective regulations to achieve public policy objectives.”
2.4.3 Emerging markets

Departments and agencies should also be aware of the competitive challenges and opportunities from emerging and expanding economies (e.g. China, India, Brazil, or Russia). IRC efforts should be geared to ensuring that Canadians receive adequate protections on the products and services imported from these countries and that Canadian products, services, and investors have ready access to these emerging markets.

2.4.4 International standards and multilateral engagement

Canada has a long-standing record as an important contributor to multilateral fora (e.g. the Codex Alimentarius Commission, the Organisation for Economic Co-operation and Development [OECD], and the International Telecommunications Union). Departments and agencies should continue to actively engage in international standard-setting and harmonization initiatives aimed at improving international regulatory consistency and finding cooperative approaches to global challenges.

Engaging multilaterally informs Canadians of regulatory practice and can improve Canadian regulatory outcomes. For example, Canada’s engagement in the OECD enhances Canada’s leadership role by building international partnerships and influencing the development of international standards and regulatory best practices at the international level. In addition, regulators should be aware of how international standards development may affect regional markets (e.g. NAFTA) and commerce with major trading partners (e.g. the United States, the European Union, and emerging economies).

In some cases, Canada may be the first country considering a regulatory response to address an issue. While exercising leadership is important, departments and agencies should consider if it would be more beneficial to work in collaboration with international counterparts to develop a solution.

3. Guidelines to Interpreting CDSR Requirements

These guidelines are to be used with the Tools for International Regulatory Cooperation (the Tools; under development) when implementing and assessing IRC strategies, and include further explanation of the various forms of IRC.

3.1 Compliance With International Obligations

This section of the CDSR refers to obligations that are not discretionary and are legally binding on the Government of Canada. The CDSR lists a number of requirements relating to compliance with international obligations and identifies which departments and agencies can best provide advice on them (see Appendix B).
Canada’s trade obligations do not prevent Canada from regulating products and services for the protection of human health or safety, the environment, animal and plant life or health, prevention of deceptive practices, and national security. However, Canada is obligated to regulate in these areas in a way that does not arbitrarily or unjustifiably discriminate against other jurisdictions and that does not restrict trade more than necessary.

For instance, under the World Trade Organization Technical Barriers to Trade Agreement (WTO TBT), Canada is obligated to base technical regulations and conformity assessment procedures on available international standards where they would achieve the intended regulatory outcomes. Departments and agencies have the primary accountability for taking these obligations into account in the design and implementation of regulations within their areas of accountability.

In meeting trade and other international obligations, it is essential to know which department has responsibility for oversight of a given international agreement (see the Tools for a listing of agreements, and responsible departments and agencies) and to consult with that department if a regulatory proposal may impact this agreement.

Foreign Affairs and International Trade Canada has oversight responsibility for all of Canada’s international agreements. It is also often the lead department in implementing obligations related to these agreements. However, other departments and agencies can also have delegated or lead responsibility for international agreements.

So that departments know what Canada’s international obligations are, and which department or agency has the lead, the CDSR requires the following:

To ensure the compliance of regulatory proposals, departments and agencies should seek the advice and assistance of:
• the Legal Bureau of Foreign Affairs and International Trade Canada—the Legal Bureau is responsible for the negotiation, creation, and interpretation of Canada’s international legal obligations and provides advice concerning the interpretation and application of such obligations for regulation;
• Foreign Affairs and International Trade Canada, which is responsible for coordinating the implementation of Canada’s international trade obligations, including the implementation of the World Trade Organization (WTO) Agreement and the North American Free Trade Agreement (NAFTA);
• the Department of Justice Canada, with its specialized sections, and its departmental legal services units that are responsible for advising departments and agencies on legal matters, including consistency of regulatory proposals with Canada’s international obligations; and
• the Trade Law Bureau of Foreign Affairs and International Trade Canada and the Department of Justice Canada, which provides advice on Canada’s international trade obligations.

CDSR, pages 6–7

4. See the Management Framework for International Trade Litigation for clarification of the departmental and agency roles and responsibilities in relation to initiating, responding to, and funding trade litigation and to ensure that ministers are informed of the trade litigation risks associated with new or revised policies, programs, and initiatives, including new or revised trade agreements.
To obtain further clarification, departments and agencies should consider consulting other divisions within the Legal Bureau of Foreign Affairs and International Trade Canada as appropriate, as well as the department’s Technical Barriers and Regulations Division. Foreign Affairs and International Trade Canada is responsible for coordinating the implementation of Canada’s international trade obligations, including the implementation of the WTO TBT Agreement and NAFTA.

In meeting Canada’s TBT obligations on international standards development, mutual recognition of testing and certification, and conformity assessment, departments and agencies should seek guidance from the Standards Council of Canada, which is charged with implementing the Government of Canada’s Canadian Standards Strategy.

Departments and agencies are expected to demonstrate in regulatory impact analysis statements, when relevant, that their proposals do in fact meet Canada’s international trade and other obligations.

### 3.1.1 International cooperation

The CDSR also introduces a broad set of requirements covering IRC activities throughout the regulatory life cycle. These can be broken down into three areas, each of which will be covered below.

Departments and agencies are to take advantage of opportunities for cooperation, either bilaterally or through multilateral fora, by:

- reviewing and influencing international best practices, sharing knowledge, adopting or contributing to the development and updating of international standards and conformity assessment procedures, and developing and pursuing compatible approaches with international counterparts;
- limiting the number of specific Canadian regulatory requirements or approaches to instances when they are warranted by specific Canadian circumstances and when they result over time in the greatest overall benefit to Canadians; and
- identifying the rationale for their approach, particularly when specific Canadian requirements are proposed.

### 3.1.2 International cooperation activities

This first requirement listed in the CDSR under “International cooperation” captures a wide array of possible activities. To meet this requirement, departments and agencies are expected to do the following:

- Consider opportunities for IRC at every stage in the life cycle of regulation—development, implementation, evaluation, and review. This includes consulting, selecting, designing, and assessing regulatory responses, the implementation of regulatory programs, performance measurement, evaluation, and review of regulatory frameworks.
• Demonstrate how regulations contribute to both high standards of environmental, health, and citizen protection and building a strong and competitive economy, while minimizing adverse impacts on trade.

• Identify regulations, standards, and decision-making processes that produce similar results, with a view to moving towards joint conformity assessment and review processes, especially with countries that are major markets for related goods and services.

• Engage stakeholders when developing IRC approaches and explain to interested and affected parties why cooperating with other governments or adopting international standards can benefit Canadians. The Guidelines for Effective Regulatory Consultations provides further guidance in this regard.

• Systematically discuss proposed regulatory approaches with key international counterparts at an early stage in the regulatory life cycle to prevent unnecessary differences and promote compatibility with approaches that will meet Canada’s policy objectives.

• Maintain Canada’s long-standing involvement and influence in, and commitment to, international standard-setting bodies.

• Consider recognizing equivalency where the regulations, standards or tests, inspections, and certifications of other countries provide the same level of protection as Canadian health and safety standards.

• Be proactive in monitoring regulatory developments in the national systems of our key trading partners (e.g. NAFTA countries, the European Union, and emerging markets) involved in regulation or standard setting to assess how other jurisdictions are using regulatory instruments to address a similar issue.

• Select the appropriate form of IRC prior to selecting a course of action (e.g. joint technical or working groups, joint research, common procedures, and enforcement policies; see the Tools for more examples).

• Consider what new institutional objectives, roles, duties, and mechanisms may be required to implement and maintain regulatory cooperation, and what short-, medium-, and long-term benefits are expected.

• Assess the risks and benefits of setting a precedent if Canada were the first country to establish a regulatory standard or framework.

• Actively consider IRC in the ongoing management of regulatory programs, e.g. when developing or renewing compliance and enforcement policies, technical guidelines, and procedures that are put in place to implement regulations.

In demonstrating compliance with the CDSR, departments and agencies are expected to track their IRC activities, explain how these demonstrate proactive engagement as described in this
section, and explain the relationship of the activities to either proposed or existing regulatory requirements.

### 3.1.3 Limiting specific Canadian requirements

In meeting the second requirement listed in the CDSR under “International cooperation,” departments and agencies are expected to use international standards or guidelines (e.g. those of NAFTA, the European Union, or other international standards), unless they would be an ineffective or inappropriate means of achieving Canada’s policy objectives and required levels of protection.

When using international standards or guidelines, departments and agencies must respect their legal obligations under the *Official Languages Act*.

In addition, they should:

- actively pursue approaches that are compatible with those of our key international counterparts in order to prevent and reduce unnecessary regulatory differences and improve the timeliness and predictability of the regulatory process (e.g. through joint or parallel reviews);

- adopt a unique approach only when the approach of NAFTA countries, the European Union, international organizations, or another relevant counterpart does not meet Canadian policy objectives and required levels of protection; and

- even in cases where valid objectives have led to unique Canadian regulations, continue to pursue forms of regulatory cooperation over the long term in order to reduce the impact of regulatory differences and move towards greater compatibility.

When relevant, departments and agencies are expected to demonstrate that regulatory proposals have limited specific Canadian requirements and explain how the use of international standards achieves the desired regulatory outcomes in the regulatory impact analysis statement.

### 3.1.4 Providing a rationale for specific Canadian requirements

The third aspect listed in the CDSR under “International cooperation” relates to the analysis underpinning decisions to develop specific Canadian regulations. In meeting this requirement, the following questions should be answered at an early stage in the regulatory life cycle:

- Do relevant international standards exist or is their completion imminent? If so, would such international standards be an effective and appropriate means for achieving Canada’s stated policy objectives? If this is the case, then such international standards should be used as a basis for domestic regulation. If not, has the rationale been fully and transparently documented?\

5. See the World Trade Organization Technical Barriers to Trade Agreement, Article 2.4.
• Is the proposed regulation compatible with existing regulations of Canada’s NAFTA partners? If not, are there practical ways to promote greater compatibility without compromising the achievement of Canada’s policy objective? Would the different approach used by our NAFTA partners be equally effective and appropriate in the Canadian context?\(^6\)

• Does the proposed regulation create an unnecessary obstacle to trade? Is the policy objective underlying the proposed regulation legitimate in the context of trade obligations? Is the proposed regulation rationally connected to the achievement of a legitimate policy objective in the context of trade obligations? Are there less trade-restrictive alternatives that would equally achieve the legitimate policy objective? Is there sufficient documentation to support the conclusions and analysis of each of these steps?

• Does the proposed regulation discriminate against imported products or services either on its face or in its effect? If so, is this discrimination justified under applicable exemptions from trade obligations?

• Is the proposed regulation a legitimate exercise of governmental regulatory power? Could it constitute expropriation?\(^7\)

• Does the regulation comply with other international obligations, such as those found in environmental treaties?

• If the proposed regulatory approach differs from international standards or the approaches of key international counterparts, how is it different and why are the specific Canadian requirements necessary? How does this approach provide greater overall benefits to Canadians?

• Where proposed regulations may have a significant effect on trade, have the appropriate international bodies been notified in accordance with the notification obligations set out in Canada’s trade agreements?

• Are resources and a strategy in place to reduce the impact of regulatory differences on regulated parties in the implementation of the regulation?

---

6. See the North American Free Trade Agreement, Article 906.

7. Canada’s international trade and investment treaties typically contain a provision prohibiting the nationalization or expropriation of an investment of an investor from another party to that agreement, except where certain conditions have been met, including the payment of compensation at fair market value. Expropriation can be either direct or indirect. Indirect expropriation typically involves such a substantial interference with the investment as to support a conclusion that the investment has been taken from the investor. It is Canada’s position, accepted by numerous international tribunals, that non-discriminatory regulations designed and applied to protect legitimate public welfare obligations, such as health, safety, and the environment, do not constitute indirect expropriation but are legitimate exercises of governmental “police powers.” However, given that expropriation can be very fact-specific, in situations where a proposed regulation has the potential to substantially interfere with the operations of an investment in Canada, the regulatory body proposing such a regulation should seek legal advice from the Trade Law Bureau to ensure compliance with Canada’s international obligations.
When regulatory proposals contain specific Canadian requirements, departments and agencies are expected to demonstrate why these are needed in the regulatory impact analysis statement.

### 3.2 Measuring, Evaluating, and Reviewing Regulation

Requirements for performance measurement apply to the full regulatory life cycle; attention should be paid therefore to performance measurement of IRC activities. Often IRC activities aim at achieving long-term objectives and expend significant resources to produce measurable outcomes.

The evaluation of regulatory programs is required according to the time frames and cycle established in the Treasury Board *Policy on Evaluation* to demonstrate results for Canadians (see the CDSR, 4.6 “Measuring, Evaluating, and Reviewing Regulation”). Further guidance on measuring the performance of IRC strategies is provided in the Tools and the publication *Implementing the Cabinet Directive on Streamlining Regulation: Performance Measurement, A Fact Sheet*.

Evaluations of regulatory programs are expected to address the elements of the CDSR on international obligations and IRC when relevant. In particular, when regulatory programs contain specific Canadian requirements instead of using international standards, evaluations are expected to address whether these remain relevant and cost-effective.

### 4. Enquiries

Please send any questions about these guidelines to:

Treasury Board of Canada Secretariat—Public Enquiries  
Telephone: 1-877-636-0656  
Email: info@tbs-sct.gc.ca  
Website: [http://www.regulation.gc.ca](http://www.regulation.gc.ca)
Appendix A: Glossary of Terms

Accreditation
The formal verification, often based on internationally recognized criteria or procedures, of an organization’s competence to carry out a specific function.

Certification
The procedure by which an official certification body or other recognized body provides written or equivalent assurance that control systems conform to requirements, where this includes, as appropriate, continuous online inspection, auditing of quality assurance systems, and examination of finished product.

Compatibility
A state existing between two or more equivalent regulations if they have been designed and implemented in such a way as to minimize or eliminate conflicting or duplicative requirements, processes, administration, and/or procedures in achieving compliance. This has the effect of permitting goods or services to be used in place of one another or to fulfil the same purpose.

Conformity Assessment Procedure
The determination that a product, process, or service conforms to particular standards, specifications, or regulatory requirements, where this includes certification (pre- and post-market), testing, quality management, and environmental management systems registration.

Regulations
A form of law—they have binding legal effect and usually set out rules that apply generally rather than to specific persons or situations. Often referred to as “delegated” or “subordinate legislation,” regulations are made by persons to whom or bodies to which Parliament has delegated authority, such as Cabinet (the Governor in Council), a minister, or an administrative agency. Authority to make regulations must be expressly delegated through enabling legislation (CDSR, page 2).

Standard
A set of rules, guidelines, or characteristics approved by a recognized body and intended for repeated use for goods or related processes and production methods, or for services or related operating methods or manner of supply with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, process, or production or operation method.

Technical Regulation
A measure that lays down goods’ characteristics or their related processes and production methods, or services’ characteristics or their related operating methods or manner of supply, including the applicable administrative provisions with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, process, or production or operating method.8

---

8. WTO TBT, Annex I (“Terms and their Definitions for the Purpose of this Agreement”), p. 2.
Appendix B: CDSR Requirements on International Trade Obligations Regarding Specific Requirements for the Design and Implementation of Technical Regulations, Conformity Assessment Procedures, and Sanitary and Phytosanitary Measures

The Cabinet Directive on Streamlining Regulation establishes the responsibility of departments and agencies to seek advice and comply with Canada’s international trade obligations. This appendix draws attention to certain specific requirements applicable to technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures contained in the World Trade Organization (WTO) Agreement on Technical Barriers to Trade, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, and Chapter Seven (“Sanitary and Phytosanitary Measures”) and Chapter Nine (“Technical Barriers to Trade”) of the North American Free Trade Agreement.

In particular, with respect to technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures that affect trade, departments and agencies are to:

- specify, where possible, technical regulatory requirements in terms of performance rather than design or descriptive characteristics;
- consider accepting as equivalent the technical regulations and conformity assessment procedures of other countries, even if different, provided they achieve the intended regulatory objective and offer an equivalent level of assurance of conformity with domestic technical regulations and standards;
- ensure that technical regulations and conformity assessment procedures treat products from one jurisdiction no less favourably than like products from other jurisdictions;
- ensure that sanitary and phytosanitary measures are based on scientific principles and evidence, that they do not arbitrarily or unjustifiably discriminate against other jurisdictions where identical or similar conditions prevail, and that they are based on international standards, guidelines, or recommendations where they exist;
- accept the sanitary and phytosanitary measures of other countries as equivalent, even if different, provided they achieve Canada’s appropriate level of sanitary or phytosanitary protection;
- use available international standards, guidelines, and recommendations as a basis for technical regulations and for conformity assessment procedures where they achieve the intended regulatory objective;
- treat regulatees and products from one jurisdiction no less favourably than those from other jurisdictions when assessing conformity to technical regulatory requirements, providing they are in comparable situations;
• have in place a process to review complaints concerning conformity assessment procedures and must take corrective action when justified; and

• publish proposals for new or changed technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures that may affect international trade for a comment period of at least 75 days and take into account the comments received.