

## **International Regulatory Cooperation, 20 Years Later: Updating ACUS\* Recommendation 91-1**

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Summary

In 1991, the Administrative Conference adopted Recommendation 91-1, Federal Agency Cooperation with Foreign Government Regulators, which set out principles for how U.S. regulators should engage with their foreign counterparts. As trade in goods, services, and information has expanded in the past decades, the need for U.S. regulatory agencies to work together with foreign counterparts has grown. In April 2011, the Administrative Conference and the U.S. Chamber of Commerce co-sponsored a discussion of global regulatory cooperation, its challenges, and potential solutions. Following up on this meeting, **ACUS commissioned this study to review international regulatory cooperation in federal agencies and consider updates to Recommendation 91-1.**

**This study reviews how U.S. regulators interact with their foreign counterparts to better accomplish their domestic regulatory missions and reduce unnecessary non-tariff barriers to trade. The study examines developments in global trade; U.S. participation in international regulatory partnerships; how global regulatory cooperation is pursued by the Executive Office of the President and several regulatory agencies; and the perspectives of business, regulated entities, and other stakeholders.**

Based on interviews with government and non-government officials and review of studies and documents, **this report identifies key issues that hinder regulatory cooperation, and the legal and practical obstacles to resolving these difficulties.** These include lack of legal authority to account for international trade implications of regulatory decisions; the challenge of ensuring accountability when relying on foreign regulators; hesitation of agency leaders to pursue international cooperation due to resource constraints, high risks, and uncertain rewards; **potential conflicts between regulatory goals and international cooperation;** and coordination issues within the U.S. government.

The study analyzes Recommendation 91-1 and identifies portions that have been implemented or have become obsolete and other portions that might be restated or expanded. The study proposes a new recommendation for consideration by the Administrative Conference on the following topics:

- Promotion of U.S. regulatory principles to foreign counterparts
- Review of legal authority for international cooperation
- Mutual reliance between U.S. agencies and trusted foreign regulators to reduce costs and duplication
- Exchanges of information, training, and employees between U.S. and foreign regulators
- Transparency and public input in U.S. engagements with foreign regulators
- Coordination and leadership on international cooperation within the U.S. government

... Incompatible regulatory requirements in different countries persist. Sometimes regulations are different for non-substantive reasons – regulators share common goals and methods of regulation, but for historical or other reasons, regulations remain inconsistent. Sometimes regulations differ because regulators in different countries do not agree on important substantive issues, such as how to weigh scientific evidence or balance competing priorities. **When differences are substantive, the differences can sometimes be ascribed to countries asserting legitimate national goals such as protecting health, safety or the environment at the levels that they consider appropriate. Other substantive differences, however, serve no national policy goal, and operate as de facto protectionist measures. Moreover, even when regulations themselves are aligned, different national requirements for conformity assessment, such as testing, certification, or accreditation, frequently impose their own costs and delays.**

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#### Appendix (p.37)

#### *Individual Agencies' Perspectives on International Regulatory Cooperation*

##### **Federal Trade Commission...**

... The Federal Trade Commission engages in international activity across its functions of antitrust enforcement, consumer protection, and privacy. The FTC's Office of International Affairs has a staff of 25. (p.37)

... Like other officials interviewed, FTC staff support convergence of regulatory policy in areas such as antitrust, but believe that total harmonization should not be the goal, since the U.S. and EU have reached different policy judgments in areas such as antitrust and privacy. (p.38)

... The FTC provides training and technical assistance to other countries in developing their regulatory policies. For example, the FTC helped Eastern European countries write their competition laws and establish their competition agencies, and, more recently, has been training officials in China and India in connection with the design and implementation of competition laws and policies. **FTC staff sees the EU also actively working to export European-style regulations to new economies as they develop, in areas such as privacy protection. Because the EU regulatory system tends to adopt formal, rigid rules – as opposed to the flexible guidelines approach of the U.S. in this area<sup>77</sup> – they are easier for developing countries to adopt, since these countries tend to have limited institutional capacity and a civil law tradition.**

**<sup>77</sup> See Lawrence A. Kogan, *The Extra-WTO Precautionary Principle: One European "Fashion" Export the United States Can Do Without*, 17 TEMP. POL. & CIV. RTS. L. REV. 491, 521 (2008).**

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