

# **AN EVALUATIVE FRAMEWORK FOR VOLUNTARY CODES**

Office of Consumer Affairs, Industry Canada  
March, 2000

---

# CONTENTS

---

<b>FOREWORD</b> .....	<b>1</b>
<b>INTRODUCTION</b> .....	<b>2</b>
What Is a Voluntary Code? .....	3
Characteristics of Voluntary Codes .....	5
Voluntary Codes in a Regulatory Context .....	6
<b>SYSTEM MODELS AND ASSUMPTIONS</b> .....	<b>7</b>
Voluntary Codes May be Incomplete in Comparison to Regulatory Systems .....	7
Assumptions Underlying Regulatory Systems .....	8
<b>AN EVALUATION FRAMEWORK FOR VOLUNTARY CODES</b> .....	<b>9</b>
Due Process .....	9
Relevance .....	15
Success .....	17
Alternative Approaches .....	22
<b>INFORMATION REQUIREMENTS FOR EVALUATION</b> .....	<b>23</b>
Due Process .....	23
Relevance .....	23
Success .....	23
Alternatives .....	24
<b>CONCLUSION</b> .....	<b>24</b>

## FOREWORD

This document provides a framework that can be used by firms, industry organizations, workers, public interest groups, citizens, governments and others to evaluate the effectiveness of voluntary codes. By providing indicia of what constitutes an effective code, it can also benefit those who are involved in or considering code development. In this regard, it is a helpful companion to the Industry Canada publication, *Voluntary Codes: A Guide for Their Development and Use*. The *Guide* is available on the Internet at: <http://strategis.ic.gc.ca/volcodes>.

In developing this evaluative framework for voluntary codes, we have drawn on similar approaches that are used by governments to evaluate regulatory programs and non-governmental organizations to evaluate non-governmental programs. However, voluntary codes have distinctive characteristics which warrant development of a unique approach. The framework is not intended to provide quantitative, numerical assessments of codes, but rather is organized into clusters of questions designed to reveal strengths and weaknesses of current codes. In effect, application of the framework should offer insights and useful criteria for drafting, and potentially improving, voluntary codes.

## INTRODUCTION

The Voluntary Codes Project of the Office of Consumer Affairs, Industry Canada has been studying the use of voluntary codes in Canada and other countries, and, in this regard, has produced a Guide, research papers, a code inventory and an online research forum. Research suggests that there is considerable potential for industries and firms to make greater use of voluntary codes to address consumer, environmental, worker, investor, community, and other concerns. As the *Guide* notes, “The challenge is to know when voluntary codes are most likely to succeed and to establish solid development and implementation processes that are fair, effective and efficient.”<sup>1</sup>

The purpose of this document is to further this objective by providing firms, industry organizations, non-governmental organizations and governments with a framework to evaluate how well existing voluntary codes are working and how they could be improved. Through its questions and organization, the framework is also potentially useful to those who are developing or revising codes. The framework thus can be used in a number of ways:

- Code adherents can use the evaluation framework to assist in structuring the code and its development processes, and in integrating evaluation criteria and information collection into the terms of the code at an early stage. The question can be asked: What are the elements that should be built into an effective code? How should a code be developed?
- Government, non-governmental organizations (NGOs), targeted beneficiaries (e.g., workers, the community), investors, competitors, academics, think tanks, and independent evaluators can use the framework to assist them in determining the effectiveness of a code in protecting the public interest (e.g., consumer protection, worker protection, environmental protection, promotion of respect of human rights, etc.), its impact and interaction with legislation, and its effects on the particular interests of code proponents and other affected parties.

### *What Is a Voluntary Code?*

---

<sup>1</sup> *Voluntary Codes, A Guide for Their Development and Use*, Office of Consumer Affairs, Industry Canada and the Regulatory Affairs Division, Treasury Board Secretariat. March 1998. Preface.

The Office of Consumer Affairs defines voluntary codes as: “a set of non-legislatively required commitments that”:

- are agreed to by one or more individuals or corporations;
- are designed to influence, shape, control or benchmark behaviour; and
- are applied in a consistent manner and/or reach a consistent outcome by all participants.<sup>2</sup>

Voluntary codes may be developed with or without any direct government supervision or active encouragement.<sup>3</sup> Codes may constitute agreements among industry or NGO members (or employees in a firm), which may be embodied in contracts, and commit parties to adhere to the terms of the code. Sanctions or other consequences may be provided for breach of the code, and mechanisms may also be included to deal with disputes or noncompliance, such as mediation or independent third-party arbitration. There may even be provisions for independent auditors, competitors, community representatives, and members of civil society organizations to aid in code enforcement. The source of power to initiate and enforce a code lies primarily in the marketplace, in contrast to regulatory regimes where governments establish coercive-based laws, and are the source of enforcement authority.

Some codes apply to single company,<sup>4</sup> others apply to entire industries,<sup>5</sup> and some only deal with a limited aspect of an industry’s operations.<sup>6</sup> Individual companies sometimes develop

---

<sup>2</sup> *Voluntary Codes, A Guide for Their Development and Use*, Office of Consumer Affairs, Industry Canada and the Regulatory Affairs Division, Treasury Board Secretariat. March 1998, p. 2.

<sup>3</sup> Discussed in Kernaghan Webb and Andrew Morrison’s, “The Legal Aspects of Voluntary Codes”. *Voluntary Codes: Exploring the Role of the Market in Promoting the Public Interest*. (publication forthcoming) p. 79. A Summary of the paper is available at: <<http://strategis.ic.gc.ca/SSG/ca00793e.html>>; and Robert B. Gibson, ed. *Voluntary initiatives: the New Politics of Corporate Greening* ch. 10; and Kernaghan Webb and Andrew Morrison, “Voluntary Approaches , The Environment and the Law: A Canadian Perspective”. *Voluntary Approaches in Environmental Policy*, p. 229. Carlo Carraro and François Lévêque. Kluwer Academic publishing, The Netherlands 1999.

<sup>4</sup> E.g., the Gap, Inc.’s Sourcing Guidelines and Principles. This code requires suppliers to meet certain labour-related standards; compliance with the code is part of the contract between the Gap, Inc. and its suppliers.

<sup>5</sup> E.g., the Code for Consumer Debit Card Services, which was prepared by a government-industry-consumer working group to apply to the financial industry. The Canadian Marketing Association has developed a number of codes that apply to its members, including a code to protect privacy of consumers and limit the sharing of personal consumer information. The Responsible Care Program of the Canadian Chemical Producers Association is a system of rules and principles designed to achieve safe and environmentally sound management of chemicals over their life cycle.

<sup>6</sup> This was the case with the Canadian Care Labelling program, for example, which was developed by government with industry and consumers, but voluntarily applied by the garment industry. Labelling is not mandatory, but incorrect labelling could be considered to be a deceptive or misleading practice

codes that mirror or elaborate wider industry codes.<sup>7</sup> Internal codes of conduct for employees are also becoming increasingly common and a number of companies are creating a new position, an ethics officer, who is responsible for compliance with the company's code of ethics.<sup>8</sup> Codes at the international level have also been encouraged.<sup>9</sup>

### *Characteristics of Voluntary Codes*

A number of distinctive characteristics of voluntary codes have been identified in ***Voluntary Codes: A Guide for Their Development and Use***:

- Codes can be initiated and developed by the private sector (individual firms or industry organizations), government, non-governmental organizations, and standards development organizations. A wide range of interests may be involved in code development.
- Single firms, as well as entire industries and industry organizations, develop and use codes.
- Although codes are often voluntary in the sense of not being statutorily mandated, there may be strong reasons for compliance. They are often initiated in response to consumer pressure, competitive pressure, or a real or perceived threat of new regulation or trade sanctions.
- Typically, voluntary codes are amended and improved over time.
- A *standard* -- a particularly formal type of voluntary code (in terms of procedures for development and techniques for implementation) – can be developed through the National Standards System by standards development organizations.<sup>10</sup>

---

<sup>7</sup> E.g., privacy codes developed by individual banks based on the Canadian Banking Association's Privacy Code. The Canadian Standards Association, with government encouragement, developed a Privacy Code that has since been adopted by a number of major companies and which form the basis for federal legislation.

<sup>8</sup> For more information see the Ethics Officer Association at: <<http://www.eoa.org/>>.

<sup>9</sup> The United Nations, for example, has produced two codes of practice aimed at securing voluntary compliance by manufacturers marketing their products worldwide: the International Code of Practice for the Marketing of Infant Formulas and the International Code of Conduct for the Distribution and Use of Pesticides. In addition, the Organization for Economic Co-operation and Development has recently issued a Draft Principles of Corporate Governance for comment. For more information on the pesticide code see: <[http://www.fao.org/ag/agp/agpp/pesticid/code/PM\\_Code.htm](http://www.fao.org/ag/agp/agpp/pesticid/code/PM_Code.htm)>. Copies of the book on the International Code of Practice for the Marketing of Infant Formulas can be obtained through the World Health Organization at: <<http://www.who.org/dsa/cat98/mat8.htm#The International Code>>. A copy of the OECD's draft principles of corporate governance can be found on the OECD website: <<http://www.oecd.org/daf/governance/principles.htm>>.

<sup>10</sup> ***Voluntary Codes, A Guide for Their Development and Use***, Office of Consumer Affairs, Industry Canada and the Regulatory Affairs Division, Treasury Board Secretariat. March 1998, p .4.

### *Voluntary Codes in a Regulatory Context*

Many voluntary codes are developed without assistance or guidance from the government. In most cases, however, the codes exist within a legal context including statutes, regulations, guidelines and enforcement and compliance policies. The legislative and private law environment within which voluntary codes are particularly associated includes statutes dealing with consumer protection, competition, health and safety, labour and the environment, as well as contract and tort law.<sup>11</sup> A code dealing with customer relations, for example, operates within a context of contract law and consumer protection legislation.<sup>12</sup> Environmental voluntary codes co-exist with a complex array of federal and provincial laws and regulations pertaining to environmental, occupational, health and safety and product liability protections.<sup>13</sup> Voluntary codes pertaining to the protection of personal information operate within a broader framework of legislation and contract law.<sup>14</sup>

One cannot evaluate codes (in particular, their effectiveness) without recognizing the legal landscape within which they operate. Voluntary codes can thus be used as adjuncts to existing legal schemes, as substitutes for laws, or as a source of interstitial detail in a legal regime. The existence and content of a code can have legal implications, particularly in defining such concepts as “due diligence” (the customary or expected behaviour in an industry).<sup>15</sup>

The desire to avoid additional regulation is often a strong incentive for the development of

---

<sup>11</sup> Kernaghan Webb and Andrew Morrison, “Voluntary Approaches , The Environment and the Law: A Canadian Perspective”. *Voluntary Approaches in Environmental Policy*. Carlo Carraro and François Lévêque. Kluwer Academic Publishing, The Netherlands, 1999.

<sup>12</sup> For example, the voluntary codes of the Canadian Marketing Association relate primarily to matters of contract and consumer law. For more information see the CMA website <at:<http://www.the-cma.org/>>, and its voluntary code at <<http://www.the-cma.org/new/ethics.html>>.

<sup>13</sup> For example, the Canadian Chemical Producers’ Association’s Responsible Care program operates within this sort of environment. See John Moffet and François Bregha, “Responsible Care: A Case Study of a Voluntary Environmental Initiative”. *Voluntary Codes: Exploring the Role of the Market in Promoting the Public Interest*. (publication forthcoming), p. 111. A summary of this paper is available at: <<http://strategis.ic.gc.ca/SSG/ca00797e.html>>.

<sup>14</sup> Personal information protection standards for the private sector operate in a context of regulatory, contract law and, in some provinces, tort liability as discussed in Colin J. Bennett’s, “The Protection of Personal Financial Information: an Evaluation of The Privacy Codes of the Canadian Bankers Association and the Canadian Standards Association”. *Voluntary Codes: Exploring the Role of the Market in Promoting the Public Interest*. (publication forthcoming) p. 146.

<sup>15</sup> Kernaghan Webb and Andrew Morrison, “The Legal Aspects of Voluntary Codes”. *Voluntary Codes: Exploring the Role of the Market in Promoting the Public Interest*. (publication forthcoming) p. 86. A summary of the paper is available at: <<http://strategis.ic.gc.ca/SSG/ca00793e.html>>.

a code.<sup>16</sup> In some cases, the impetus for codes is a desire to act as a “good corporate citizen” or to gain a competitive advantage — indeed, these are often mutually reinforcing goals.<sup>17</sup>

---

<sup>16</sup> The Responsible Care Program is an example of this and is discussed in Bregha and Moffet’s, “Responsible Care: A Case Study of a Voluntary Environmental Initiative”. *Voluntary Codes: Exploring the Role of the Market in Promoting the Public Interest*. (publication forthcoming) p. 111. More on the Responsible Care Program is available at: <<http://strategis.ic.gc.ca/SSG/ca00797e.html>>.

<sup>17</sup> The Gap, Inc.’s Sourcing Guidelines and Principles were developed in response to criticism of the use of labour in substandard conditions in developing countries. See Greg Rhone, John Stroud and Kernaghan Webb, “The Gap’s Code of Conduct for Treatment of Overseas Workers”. *Voluntary Codes: Exploring the Role of the Market in Promoting the Public Interest*. (publication forthcoming) p. 136. A Summary can be found at: <<http://strategis.ic.gc.ca/SSG/ca00787e.html>>.



## SYSTEM MODELS AND ASSUMPTIONS

Voluntary codes perform similar functions to regulations in that both are designed to influence, shape, control or benchmark behaviour. Codes are unlike regulations in that they are not rules directly backed by the power of the state. Both codes and regulations are intended to be applied in a consistent manner. In creating a framework for evaluation of codes, it is useful to examine the structures of both regulation and codes to determine whether lessons learned from evaluation of regulatory programs can be helpful in the design of an evaluation framework.

In comparing voluntary codes with regulations, it is important to remember that neither regulatory nor voluntary approaches are flawless in their design or operation. While it is true that voluntary approaches may not always achieve their objectives, full compliance with regulatory regimes is also rare. Each approach has its strengths and weaknesses. Evaluators who are concerned about the ability of a code to substitute for or complement government regulation should keep these points in mind.

### *Voluntary Codes May be Incomplete in Comparison to Regulatory Systems*

Both regulations and voluntary codes are intended to affect behaviour of the private sector. Both involve rules and communication of rules to the parties whose behaviour is to be changed. Not all the elements of a regulatory system, however, may be present in a voluntary code. A complete regulatory system includes:

- *Rulemaking*: the development of the rules that will guide behaviour.
- *Communication of rules*: making the regulatees aware of the behaviour expected or required by the rules through such means as publication, education.
- *Monitoring*: oversight to ensure compliance with the rules, e.g., inspections, audits, self-reporting.
- *Enforcement*: taking action when noncompliance is identified, e.g., warning, ticketing, legal action.
- *Adjudication*: official decision making about the consequences of noncompliance or the settlement of disputes (complaints); often done by a court, tribunal, arbitrator or mediator.
- *Sanctions*: negative consequences for noncompliance, e.g., fines, negative publicity, dismissal from an organization, revocation of a licence, and incarceration.
- *Evaluation and Revision*: ideally, a regulatory system will be evaluated regularly and changes made in the rules or the program, or both.

With the exception of the penal sanctions, which remain the responsibility of the state, all the elements of a regulatory system can be found in many voluntary codes. Rulemaking is necessary since it creates the code. Communication is likely to be part of a voluntary code system. Such elements as monitoring, enforcement, adjudication, sanctions or consequences, and evaluation and revision may be missing in voluntary codes, however, and if so, this is quite likely to impact on their effectiveness.

### *Assumptions Underlying Regulatory Systems.*

There are certain assumptions which tend to be made about government regulatory systems:

- Rulemaking is open, transparent, consultative and inclusive.
- Rules are publicly available and communicated to regulatees and other interested parties.
- Rules are precise and impose clear obligations on regulatees.
- There is a compliance policy and enforcement capacity in government.
- There is a mechanism for settling disputes and dealing with noncompliance.
- Monitoring, enforcement, adjudication and sanctioning are carried out in a fair manner with appropriate due process.
- There are mechanisms for independent evaluations or audits.
- There is public reporting on evaluations and performance results.

These assumptions do not necessarily apply with equal force to voluntary codes.<sup>18</sup> For example, there may be less transparency, fairness and openness in the creation and implementation of a code. Evaluative frameworks for regulatory regimes take for granted the existence of fair and open rule development and implementation regimes. To address these additional elements, the voluntary code evaluation framework is therefore more extensive than those commonly developed for regulatory programs. It examines such issues as fairness, transparency and due process relating to rulemaking, monitoring, enforcement, adjudication, and sanctioning.

There are evaluation requirements that apply to regulatory systems, however, that do not apply to voluntary codes. Regulation is an exercise of the power of the state and government policy requires that it be justified by asking is there a need for regulation, are less intrusive alternatives available, and do the benefits outweigh the costs? An industry, firm or organization establishing a voluntary code implicitly asks whether it is worthwhile and answers in the affirmative. While the effectiveness and objectives of a code may require re-examination from time to time through evaluation, the challenge function of a regulatory evaluation (should

---

<sup>18</sup> See a general comparison of rule-making and implementation in Kernaghan Webb and Andrew Morrison's paper, "The Legal Aspects of Voluntary Codes". *Voluntary Codes: Exploring the Role of the Market in Promoting the Public Interest*. (publication forthcoming) p. 86. A Summary of the paper is available at: <<http://strategis.ic.gc.ca/SSG/ca00793e.html>>.

regulation exist?) does not apply with the same force.

## **AN EVALUATION FRAMEWORK FOR VOLUNTARY CODES**

An evaluation framework for voluntary codes can deal with many of the same issues that may be evaluated in regulatory programs, namely:

- relevance (does the program address an actual need?);
- success (is the program effective in meeting objectives?); and
- cost-effectiveness or an examination of alternatives (are the most appropriate means being used to achieve objectives relative to other means?).

Because of assumptions underlying regulatory systems that do not necessarily exist for voluntary codes, an additional evaluation factor, due process, is required. The activities that will be examined are the same as those that comprise a regulatory system (e.g., rulemaking, communication, monitoring, etc.). Issues and performance indicators will be identified for each area.

In examining performance indicators, there is not always a simple and self-evident “right answer.” For example, wide coverage of an industry by a code is generally thought of as an indicator of success. However, if only major industry players formally adhere to a code and thereby establish standards of behaviour and due diligence for the industry, the code may still be successful in achieving its objective. Judgment must therefore be applied. The performance indicators simply provide guidelines for the questions that might be asked to determine whether due process is respected, or whether the code is still relevant or successful, or whether an alternative should be explored. All questions will not be equally relevant for all evaluators. For example, questions about industry-wide coverage will not apply to codes developed by individual firms; and governments may be more interested in achievement of public policy objectives than firms or industry organizations evaluating their own codes that were developed to enhance consumer confidence.

### *Due Process*

The evaluation framework for voluntary codes examines due process issues that generally receive less emphasis in evaluations of regulatory programs because laws and regulations are subject to governmental process requirements. Due process issues and indicators examine such matters as openness, transparency and fairness. It includes due process towards:

- industry members (e.g., did they all have a say in the contents of the code that binds them?);

- affected stakeholders (e.g., labour, suppliers; were their views solicited?); the interested public (e.g., is there a process for public complaints? was there public involvement in drafting of the code and its implementation?); and
- special interest groups (e.g., did they have support to enable meaningful participation in code development and implementation?).

Some of the questions are aimed at differential treatment of industry players, particularly SMEs (small and medium-sized enterprises). Some differences may be inevitable, but efforts to reduce the burden of code development and implementation on SMEs and other groups with limited access to resources can be an important indicator of appropriate due process. Some questions may not be applicable to all codes (e.g., questions relating to industry codes are not relevant to codes developed by single firms).

## Due Process

Issues	Performance Indicators
1. Has code development been open, transparent, fair and meaningful?	<ul style="list-style-type: none"> <li>▶ Have all the players in the industry, including SMEs, been meaningfully involved in industry code development?</li> <li>▶ Has the affected public (including workers, consumers, public interest groups) been involved in code development?</li> <li>▶ Has funding or support been available for involvement of SMEs or the affected public?</li> <li>▶ Was government involved in code development?</li> <li>▶ Is the code publicly available (e.g., publications, websites)?</li> <li>▶ Did a standards development body develop the code?</li> <li>▶ What was the decision-making process (e.g., consensus, majority vote, voting by classes of participants)?</li> </ul>
2. Is the implementation of the code fair?	<ul style="list-style-type: none"> <li>▶ Is there an imbalance of power among the players in the industry?</li> <li>▶ Does the code impose different burdens on different industry members?</li> <li>▶ Are the rules clearly communicated to the industry and the affected public?</li> </ul>
3. Are the requirements of the code clear?	<ul style="list-style-type: none"> <li>▶ Does it use plain language?</li> <li>▶ Are there clear obligations placed on industry?</li> </ul>

## Due Process

<b>Issue</b>	<b>Performance Indicators</b>
4 Are there fair procedures for monitoring and enforcement?	<ul style="list-style-type: none"><li data-bbox="672 457 1409 527">▶ Is there a compliance policy to govern monitoring and enforcement?</li><li data-bbox="672 569 1300 638">▶ Are there independent and knowledgeable third-party audits?</li><li data-bbox="672 680 1419 749">▶ Is there an approval of the internal audit process by independent third parties?</li></ul>

5. Are there fair procedures for dispute settlement/complaints/sanctions?

- ▶ Is there an industry ombudsman?
- ▶ Is there an opportunity for mediation?
- ▶ Is there an independent arbiter or adjudicator?
- ▶ Is there a process for public complaints?
- ▶ Is there a process for industry complaints?
- ▶ Are there procedural rules for dispute resolution or adjudication?
- ▶ Do the rules follow requirements of fairness or natural justice?
- ▶ Do complainants learn the outcome of their complaint?
- ▶ Is the outcome public?
- ▶ Is there a regular public report dealing with complaints and outcomes?
- ▶ Are privacy rights respected?
- ▶ Is the industry response to complaints timely?
- ▶ Are outcomes proportional and consistent?
- ▶ Does the industry understand the dispute settlement procedure?
- ▶ Does the public know of the existence and understand the dispute settlement procedure?

<p>6. Is there a range of appropriate negative consequences and incentives for compliance?</p>	<ul style="list-style-type: none"><li>▶ Are consequences of noncompliance proportional to noncompliance?</li><li>▶ Are consequences of noncompliance a sufficient deterrent to noncompliance?</li><li>▶ Are there incentives for compliance?</li></ul>
<p>7. Are the negative consequences and positive incentives used?</p>	<ul style="list-style-type: none"><li>▶ When are they used?</li><li>▶ Are they used consistently?</li></ul>



### *Relevance*

The need for a voluntary code or its objectives may change over time. In some cases, codes develop and become more elaborate as experience is gained in applying them. An evaluation of an existing code should question these basic issues to allow for reconfirmation or, if necessary, adjustment of objectives.

Competing codes may indicate that a code has lost its relevance. It may also indicate, however, a vibrant marketplace with industry members differentiating their services on the basis of adherence to competing codes. In areas where legislation has overtaken code requirements, codes may require adjustment, but they may still provide evidence of public commitment to the law and their implementation programs can be a significant factor in the industry's achieving legal compliance.

### Relevance

Issues	Performance Indicators
1. Does the voluntary code address a fundamental problem or an actual need?	<ul style="list-style-type: none"> <li>▶ Are the objectives of the code still relevant?</li> <li>▶ Can the behaviour that needs to be changed be identified?</li> <li>▶ Does the problem the code addressed still exist?</li> <li>▶ Has the code been updated to reflect changing conditions?</li> <li>▶ Is there a process in place for evaluation and revision of the code?</li> </ul>

2. Are there competing codes or legislative instruments?

- ▶ Is there evidence of similar objectives and targets in other instruments?
- ▶ Is there evidence of confusion among consumers or other interested parties?
- ▶ Has the significance of a logo or other quality indicator been diluted?
- ▶ Are competitive instruments raising the quality or stringency of the code requirements? reducing them?

### Success

Success deals with the effectiveness of a code: has the code achieved its objectives? Is it likely to achieve its objectives? Consumers, labour or other interest groups and NGOs will be interested in the success of a code. The effectiveness of a code will be an important indicator of whether it is, or is likely to be, an effective alternative to government action.

As with other performance indicators, the indicators of success must be evaluated within a particular context. For example, a well-established industry organization with resources and expertise is often a good indicator of an industry's ability to develop and administer a code. The task of code development and implementation, however, might be the stimulus for the establishment of a new organization that brings energy and zeal to its responsibilities. In general, such factors as wide industry coverage, strong incentives for compliance, an established industry organization, accountability mechanisms, and sanctions for noncompliance indicate a greater likelihood of an effective code. But the examination must be made on a case-by-case basis. A key evaluation issue will be the development of results-based indicators that will provide information about the achievement of objectives, such as whether accidents are reduced, customers are more satisfied, or environmental quality is improved.

### Success

Issues	Performance Indicators
1. Have the objectives of the code been achieved?	<ul style="list-style-type: none"> <li>▶ Have consumer complaints decreased/increased?</li> <li>▶ Have complaints from stakeholders, e.g., workers, decreased/increased?</li> <li>▶ Have regulatory violations increased/decreased?</li> <li>▶ Have industrial accidents increased/decreased?</li> <li>▶ Has the public reputation of the industry improved (polls, media reports)?</li> <li>▶ Have legal costs been reduced?</li> <li>▶ Have measurable objectives, such as emissions limits, been achieved?</li> </ul>

Success

Issue	Performance Indicators
2. Are the firms capable of compliance?	<ul style="list-style-type: none"> <li>▶ How sophisticated are the firms?</li> <li>▶ Do they have the necessary expertise?</li> <li>▶ Do firms provide training to employees on code implementation and compliance?</li> <li>▶ Do they have adequate internal compliance regimes?</li> <li>▶ Do they devote adequate resources to internal monitoring and compliance?</li> <li>▶ Does the industry organization train and share information with industry members, especially SMEs?</li> <li>▶ Does the industry organization devote adequate resources to monitoring, enforcement and adjudication?</li> <li>▶ Do firms have a history of regulatory compliance?</li> <li>▶ Are the firms familiar with the code requirements?</li> </ul>

<p>3. Are there incentives for compliance?</p>	<ul style="list-style-type: none"><li>▶ Are there industry rewards for compliance (e.g., access to services, logos)?</li><li>▶ Are there financial advantages to compliance (e.g., increased productivity, reduced insurance premiums, and reduced legal costs)?</li><li>▶ Is there a competitive advantage for compliance?</li><li>▶ Are there regulatory incentives for compliance (e.g., reduced inspection, faster licensing)?</li><li>▶ Are there high exit costs from the industry? from the industry organization?</li><li>▶ Can noncompliant behaviour be sanctioned or subject to negative consequences?</li><li>▶ Is noncompliance easily identified by consumers?</li><li>▶ Is noncompliance easily identified by other industry members/competitors?</li><li>▶ Do independent legal liability regimes exist that could enforce compliance?</li><li>▶ Is compliant behaviour highly valued by consumers or the general public?</li><li>▶ Is there peer pressure for compliance?</li><li>▶ Are there complementary regulatory regimes?</li></ul>
--	--

## Success

Issue	Performance Indicators
4. Is there an industry organization or another group to develop and administer the code?	<ul style="list-style-type: none"> <li>▶ Is it well established?</li> <li>▶ Does it have a history of cooperation with government?</li> <li>▶ Does it have adequate resources, including expertise?</li> <li>▶ Does it have a wide membership?</li> <li>▶ Are there competing organizations?</li> </ul>
5. Are there mechanisms to hold the industry/firm accountable for compliance with the code?	<ul style="list-style-type: none"> <li>▶ Is there a public complaints process?</li> <li>▶ Is there an industry ombudsman?</li> <li>▶ Are there annual reports to industry and the public?</li> <li>▶ Are there regular compliance reports from the industry organization to the firms, the industry, and the public?</li> <li>▶ Is there a privacy code for confidential matters?</li> <li>▶ Are there independent third-party audits?</li> <li>▶ Is there certification by a standards body?</li> <li>▶ Is there a consumer/interested public advisory body?</li> </ul>

6. Are there sanctions or negative consequences for noncompliance?	<ul style="list-style-type: none"> <li>▶ Do sanctions/consequences include: dismissal from industry organization? removal of organization logo? negative publicity? fines? restitution? implementation of correction action (e.g., introduction or improvement of compliance systems)?</li> </ul>
7. Are sanctions or negative consequences used?	<ul style="list-style-type: none"> <li>▶ Are the sanctions/consequences used consistently?</li> </ul>
8. Are there unintended or negative impacts of the code?	<ul style="list-style-type: none"> <li>▶ Does the code limit competition?<sup>19</sup></li> <li>▶ Does the code place different burdens on different parties in the same sector (e.g., SMEs versus big business)?</li> </ul>
9. Are there champions of the code?	<ul style="list-style-type: none"> <li>▶ Have leaders in the industry supported and publicly endorsed the code?</li> <li>▶ Do industry leaders apply pressure on their peers to implement and comply with the code?</li> </ul>
10. Has an industry code achieved wide coverage?	<ul style="list-style-type: none"> <li>▶ Does an industry code apply to entire industry?</li> <li>▶ Does an industry code apply to the most important players in the industry?</li> <li>▶ Are there importers not governed by industry code?</li> </ul>

---

<sup>19</sup> For an extensive discussion of the competitive implications of voluntary codes, see companion paper by John Moffet and François Bregha.

### *Alternative Approaches*

When government examines regulatory programs, the third criterion used is cost-effectiveness: are the most appropriate and efficient means being used to achieve objectives, relative to alternative delivery approaches? Industries will be concerned about the cost-effectiveness of their voluntary code programs, but a primary concern in an evaluation of a voluntary code is whether alternative approaches are desirable. Codes have advantages over legislation, particularly where legislative powers are split among several jurisdictions; codes can provide harmonization when a government lacks the jurisdictional competence. Codes can also allow for competing self-regulatory regimes to develop which can allow for flexibility and experimentation. On the other hand, legislation can require adherence to regulatory requirements and provide the broad coverage that may be lacking with a code. Legislation may also have credibility with the public or foreign governments that codes may not have, although some codes have established high levels of credibility. Examining these issues will produce variable results, but the basic questions remain relevant to voluntary code evaluations.

### Alternative Approaches

<b>Issues</b>	<b>Performance Indicators</b>
1. Has the coverage been as wide as anticipated?	▶ Would legislation produce wider coverage?
2. Are sanctions in the voluntary code adequate?	▶ Has noncompliance resulted in significant harm?
3. Does the code provide an opportunity for interjurisdictional coverage?	▶ Are there overlapping (federal-provincial or international) jurisdictions relating to subject matter of code?
4. Is there a need for uniformity of rules?	▶ Would legislation produce uniform rules?
5. Does the voluntary code require additional credibility?	▶ Would legislation add to the credibility of the rule and rule-enforcement regime?



6. Is independent monitoring, enforcement or adjudication required?	<ul style="list-style-type: none"> <li>▶ Would a legislatively based regulatory program provide the necessary independence?</li> </ul>
7. Are sufficient resources being devoted to the code (rulemaking, communication, monitoring, enforcement, adjudication, sanctioning, and revision)?	<ul style="list-style-type: none"> <li>▶ Could another industry organization provide the necessary resources?</li> <li>▶ Could government provide the necessary resources?</li> </ul>

## INFORMATION REQUIREMENTS FOR EVALUATION

### *Due Process*

Information is required about the process of code development: who was involved? How did they participate? Was there funding for some participants? What was the decision-making process?

Evaluation of due process dealing with code implementation involves some knowledge of the composition of the industry, and activities undertaken both by industry organizations and firms to achieve compliance with the code. The complaint/dispute resolution procedures of both the firms and any industry organization are important. This includes procedures to deal with complaints of customers or the interested public as well as procedures within the industry to deal with noncompliant peers. The incentives for compliance and negative consequences or sanctions for noncompliance are also important factors.

### *Relevance*

To determine the continuing relevance of a voluntary code, the evaluator must be able to identify the original objectives and purposes of the code. A purpose clause, documentation about the development of the code, publicity regarding code implementation, and annual reports are important sources for this information.

### *Success*

An evaluation of the success of a voluntary code will require knowledge of the industry

and the firms involved, as well as the elements of the implementation program. The appropriate questions to be asked and the type of information required will depend on the objectives of the code, e.g., improved customer relations, improved product safety, improved worker safety. It involves answering such questions as: does the industry provide training to firms to aid in compliance? Do the firms have internal compliance systems? Are there self-audits? Are there third-party audits? What is the reaction of the industry to a noncompliant firm? Does the code limit entry into the industry? Are there complaints from customers or labour? Have they increased or decreased? Have the nature of the complaints changed? Are industrial accidents reduced? Is there a reduction in the production of toxins? Have the problems the code was intended to address decreased or changed in anyway? What other factors might account for changes? Has productivity improved? Has public perception of the industry improved?

The code-development process must take into consideration the information required for later evaluation of the code. It may be necessary to identify information needs and design collection systems early on so that meaningful evaluation can be conducted. The information requirements should also be aimed at providing information about outcomes and results so that performance indicators can be developed to identify the degree of success achieved by code implementation.

### *Alternatives*

An evaluation of alternative methods of achieving the code's objectives involves knowledge of the objectives (see "Relevance") and some of the comparative strengths and weaknesses of the code, including coverage and public perception of its relevance and success.

## **CONCLUSION**

The framework presented in this paper can be applied to a variety of codes to evaluate their success in meeting objectives, as well as whether they continue to be relevant and the appropriate instrument to meet certain objectives. Because code development and implementation involves a wide range of practices and processes, due process evaluation issues are also included in the framework.

The framework can be used by industry, firms, organizations, NGOs, labour and other interested groups to evaluate existing codes. It can be used by these same groups to increase the likelihood of the success of codes that are under development and to guide the processes by which they are developed and implemented. Just as regulators have difficulty in assessing the impact of regulations, however, the developers and users of voluntary codes will not always be able to ascertain the full range of effects (including success) of codes. The framework nonetheless should provide assistance in this endeavour.