

Comitê Brasileiro de Regulamentação

"Os Impactos Econômicos, Sociais e Ambientais da Avaliação da Conformidade"



INMETRO Training Programme

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Speaker's background



Former UK Civil Servant, 32 years in government / one of top 5 lawyers in UK government

Huge experience in legislation at all levels – treaties, EU, Acts of Parliament, regulations – across 9 Ministries

Last post in Department for Environment and Agriculture – largest UK regulator – Director General for Law and Regulation

Innovative thinker in the UK Better Regulation programme

Now independent consultant on Regulation, working in UK, EU, Mexico and Brazil

Regulation and the Economy



The Growth Acceleration Programme (*Programa de Aceleração do Crescimento, PAC*) of January 2007 sees current levels of regulation in Brazil as barriers to growth.

It sees these barriers affecting not just domestic businesses but also discouraging foreign investment.

Business has a “love / hate” relationship with Regulation. It often sees it as a burden and a constraint and complains generally about “red tape” and bureaucracy. But it also recognises that business can’t exist without regulation.

The key issue is getting the right Regulation – not the amount of Regulation – and then getting the implementation right.



Business needs INMETRO for these benefits:

- Risk transfer for product liability
- Reducing unfair competition from dangerous products
- Access to international markets
- Inward investment and imports
- Driving innovation and raising standards

but INMETRO recognises there is more it can do.

Government and INMETRO



Government needs INMETRO for these benefits:

- Centre of Excellence for PACs strengthens skills
- Strong brand with the public builds confidence
- Filling the gaps between Agencies
- Risk transfer for Agencies when delegating a PAC
- Strengthening the Economy through:
 - Reducing unfair competition from dangerous products
 - Access to international markets
 - Inward investment and imports
 - Driving innovation and raising standards

but INMETRO recognises there is more it can do for Government.

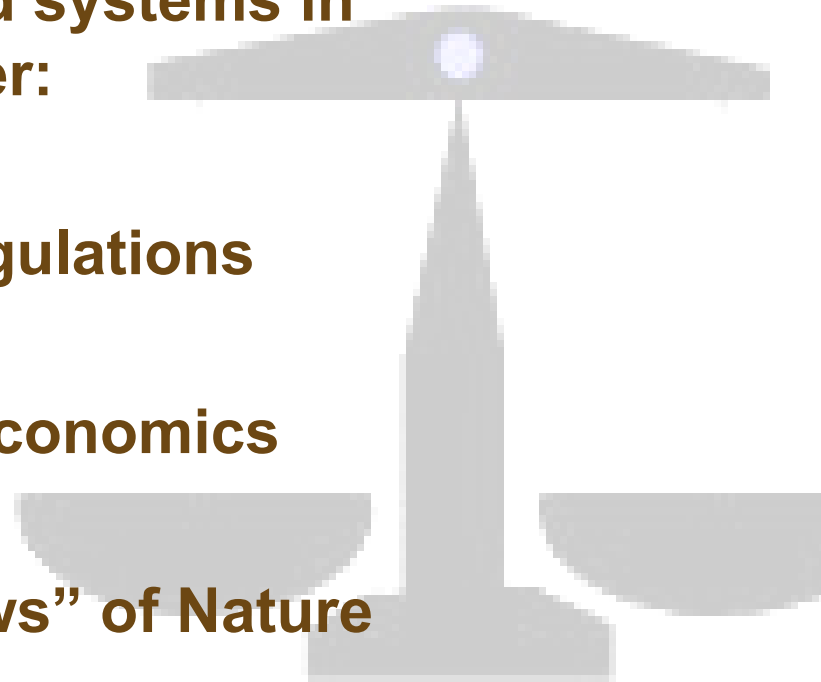
First, let us look at Impact Assessment.

Regulatory Systems

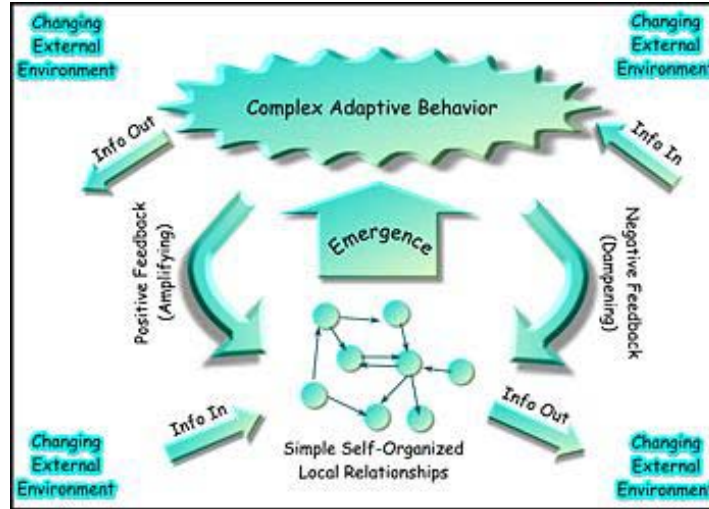
There are different rule-based systems in competition with each other:

- **Man-made rules – laws, regulations**
- **Market forces – “laws” of economics**
- **Natural eco-systems – “laws” of Nature**

Man-made systems are the most flexible and often the weakest.



Market Forces and Eco-systems



The “market” and eco-systems are **complex adaptive systems**. They operate with some degree of rules and predictability but neither is fully understood and the complexity of how their rules interact make them even less predictable.

It is easy to change bits of either system with man-made rules but – because they are adaptive systems – their complexity adapts to that change in ways that are often unpredictable, leading to wholly unintended consequences.

Impact

Human intervention in markets or nature – or in some other societal patterns – is hardly ever neutral. It will bring about a change but that change will probably bring about another change.

That is why we need Impact Assessments.

Quite simply, regulators need to know the full effect of what they do. Impact assessment aims to do that.

What is an impact assessment?

It is a tool / an approach / a way of thinking

. that helps make the right decisions

. but it does not make the decision.

Its purpose is to raise awareness of the complexity of the issues involved in regulating, to provide a structure for engaging with them and a method for getting data and assessing the plus and minus aspects of the proposal.

The stages of an RIA

- Purpose and Intended Effect
- The Policy Problem
- Options
 - 2 minimum – do something or do nothing
- Assessment
 - Cost Benefit Analysis
 - Cost Effectiveness Analysis
- Consultation
- Compliance
- Monitoring and Evaluation

Benefits of RIAs

Improve understanding of real-world impacts, including both benefits and costs

Integrate multiple policy objectives

Improve transparency and consultation

Improve general government accountability

Centre for Regulatory Effectiveness



This is a new website, extending to Brazil a successful organisation in Washington. Its mission is to ensure that:

- 1) the data which governmental agencies disseminate to the public is of the highest quality; and
- 2) the public has access to the data used to develop governmental policies.

As part of that mission, it is proposing to establish an Institute of Regulatory Journalism, as a way of raising the level of public awareness and debate on issues concerning the Brazilian autarchies



Decree 6 062 of 16 March 2007 set up the Programme for the Strengthening of Institutional Capacity for Regulatory Management (*Programa de Fortalecimento da Capacidade Institucional para Gestão em Regulação*) (PRO-REG) under the Casa Civil and the Ministry for Planning, Budget and Management.

Its aims are to:

- Strengthen the regulatory system
- Strengthen the capacity for policy-making in regulated sectors
- Improve co-ordination and strategic views between sectoral policies and regulatory process
- Strengthen autonomy, transparency and performance of regulatory agencies
- Develop and improve mechanisms for social accountability and transparency during the regulatory process.

Influence of OECD



Although not a member country of OECD, Brazil asked OECD to review its progress on Regulatory Reform. Working closely with the Casa Civil and Ministry of Planning, Budget and Management and the development of the PRO-REG programme, the OECD Review was published on 28 May, 2008.

In accordance with established OECD principles of Regulatory Reform, it strongly recommends a programme to establish Regulatory Impact Appraisal, together with a legal basis, and a central authority to oversee its development and operation.

OECD Recommendations

The OECD Review recommends:

- Maximise political commitment to RIA
- Establish central oversight body
- Train the regulators
- Use a consistent but flexible analytical methodology
- Target RIA efforts in particular areas before becoming universal
- Develop and implement data collection strategies
- Integrate RIA into the policy-making process, as early as possible
- Publish RIAs along with the proposals
- Involve business and the public as much as possible
- Apply RIA to the current stock of regulation, as well as new proposals



ORGANISATION DE COOPÉRATION
DE DÉVELOPPEMENT ÉCONOMIQUE

The OECD Review has a good piece of advice on how to start:

“RIA should serve more as a process of asking the right questions of the right people early enough in the policy-making process, thus creating a framework for regulatory policy making, than about technically precise impact statements that might be difficult to fulfil.” page 320

First comes the concept, then gradually the discipline and partnerships, then – eventually – the skills.



OECD checklist for regulatory decision-making

- 1. Is the problem correctly defined?***
- 2. Is government action justified?***
- 3. Is regulation the best form of government action?***
- 4. Is there a legal basis for regulation?***
- 5. What is the appropriate level (or levels) of government for this action?***
- 6. Do the benefits of regulation justify the costs?***
- 7. Is the distribution of effects across society transparent?***
- 8. Is the regulation clear, consistent, comprehensible and accessible to users?***
- 9. Have all interested parties had the opportunity to present their views?***
- 10. How will compliance be achieved?***



PRO REG and RIAs

PRO-REG agrees the importance of a programme of RIA.

It proposes a programme of training in RIAs, starting with the Casa Civil officials , MPBM, etc., so INMETRO is ahead of the game.

It also recommends spreading awareness of RIA wider than regulators, including businesses and academics – again this INMETRO project is ahead of the game.

Being here today, to share with FIESP the innovative thinking in INMETRO's initiative, shows that INMETRO is serious about reform – and recognises that it cannot do it on its own. It needs its stakeholders, such as FIESP.

INMETRO can contribute strongly to PRO-REG through:

- *Strengthen the capacity for policy-making in regulated sectors – its independent initiative in adopting an Impact Assessment approach will enhance its position as a Centre of Excellence*
- *Improve co-ordination and strategic views between sectoral policies and regulatory process – INMETRO's role in filling gaps can help co-ordination*
- *Strengthen autonomy, transparency and performance of regulatory agencies – it is doing this for itself*
- *Develop and improve mechanisms for social accountability and transparency during the regulatory process – Impact Assessment depends entirely on transparency, which leads to accountability – INMETRO's brand has to be maintained*
- *Strengthen the regulatory system – should result from all this.*

INMETRO has powerful capabilities to affect markets and, through consumer choices, affect policy outcomes, e.g. low energy goods.

In deciding how to use its capability, it first has to understand the full extent of its impact, not just on product safety but on all the other consequences of its actions on markets and human behaviours. For that, it needs systematic impact assessment. For that, in turn, it needs better data.

It also needs to be clear on its mission and purpose. Simply promoting product safety is less than it could achieve. Work on low energy products also shows that it already looks beyond product safety

Impact assessment will be difficult to develop because of lack of available data but *ex post* assessment of actual impact may be easier and should be started.

INMETRO has significant impact on many people and businesses, beyond managing product safety, but is not fully aware of the extent of that impact. Therefore it does not know all that it could do – or is doing.

Its brand is hugely influential and must be very carefully protected. Its capacity to influence consumer choice makes it a significant partner to various Ministries in their policies.

Its testing work for the TV programme, Fantástico, is three times its official output in terms of products. It needs to recognise that this is a major quasi-regulatory function and an alternative to formal CAPs. Impact assessment, as a discipline, also needs to be applied to this work. With a regular audience of 50 million, it is a phenomenal communication channel.

INMETRO has good enforcement practices and monitors well its core function of product safety. However, that core function has ripple effects well beyond producers and consumers which need to be understood. Present *ex ante* and *ex post* assessments are limited to a narrow view of its impact.

A major stakeholder presently unrecognised is the retail business, who have to carry risk of retailing non-compliant products and whose goods are affected by INMETRO restrictions. On international trade, maritime and domestic transport and storage may also be impacted.

A major benefit of INMETRO to business is risk transfer in terms of public perception. The strength of the INMETRO brand must be maintained, as a high priority.

INMETRO can also assist business if it can be involved when another regulator is proposing a CAP, even although it is outside its remit. It's Centre of Excellence status, enhanced by better impact assessment techniques and stakeholder engagement make a powerful case for its being involved.

It needs to improve its stakeholder engagement and start to gather the data needed for impact assessment by continuous engagement, not just consultation *ex ante*. The people bearing the impact are the best people to provide evidence of impact. Studying the actual impact of regulation is easier than gathering evidence for proposed regulation but it has to be studied across a wider spectrum than just producers, consumers and product safety.

INMETRO needs to develop an ongoing engagement with business as part of its new perspective on the impact of its work.

INMETRO's engagement with Ministries and Agencies could be improved. Its capacity to shape markets as well as open them and its capacity to influence consumer behaviour make it a far more useful partner than appears to be the present perception.

These capacities can be enhanced (from a presently high base of excellence anyway) by adoption of impact assessment and risk assessment disciplines in advance of other Ministries and Agencies. In this respect, it is taking forward the PRO-REG programme on its own initiative, including better engagement with business and the public. The PRO-REG Management Committee ought to be interested and supportive in improving relations with other bodies.

As it enhances its approach to CAPs through Impact Assessment, INMETRO could have a more frequent advisory involvement in the development of CAPs by other Agencies.

INMETRO's Mission is

- *to promote the well-being of the Brazilian people and the competitiveness of the Brazilian economy through its use of metrology and Conformity Assessment Procedures.*

The current project to develop impact assessment skills has shown that its contribution to well-being and to competitiveness may be greater than previously thought and may be capable of being enhanced, through use of impact assessment disciplines and techniques – with confidence in its quality and an increased level of ambition

Can it look to colleagues in the Agencies – and especially CBR – for support in that project?

OBRIGADO POR SUA ATENÇÃO!

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