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“What Was Heard” Report

Cutting Red Tape...Freeing Business to Grow

Red Tape Reduction
Commission

Canada

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Message From the Minister of State (Small Business and Tourism)



“Red tape” frustrates entrepreneurship, raises prices and reduces choices for consumers. By impeding growth, red tape lowers people’s incomes and standards of living. It is a hidden tax on all Canadians. In the words of the 2011 federal budget, “businesses, especially small business owners and entrepreneurs, have told the Commission that the government must act now to begin addressing these concerns and to promote growth and competitiveness,” and that is what we intend to do.

Under the leadership of Prime Minister Stephen Harper, the Government of Canada is working to put in place the conditions that enable businesses all across our country to succeed—conditions that must involve the reduction of red tape. This objective became fully evident in the “one-for-one rule” respecting regulations that was introduced in the government’s recent election platform. The focus was continued in the 2011 Speech from the Throne, which committed to cutting red tape for small businesses so that they can focus their attention on growing their businesses and creating jobs. Budget 2011 also included many significant initiatives to reduce unnecessary costs and frustrations related to complying with regulations or other mandatory requirements such as filing taxes. We are on track to cut it even further through the work of the Red Tape Reduction Commission. Moreover, these aims will be achieved while maintaining the highest standards to protect our environment and the health and safety of Canadians.

The 2011 election platform statement, Speech from the Throne, and budget are key documents for this government. They set out, in clear and concise terms, our promises to Canadians—promises that we take seriously. The inclusion of red tape reduction commitments in these public statements indicates the importance that we are giving to regulatory red tape burden and the effort we are willing to put into addressing it in ways that work.

The government is committed to fostering a climate that supports small business development. The reality is that 98 percent of all Canadian businesses have fewer than 100 employees, and 75 per cent have fewer than 10 employees. They account for about a quarter of this country’s gross domestic product and, to stay focused on their growth, they need governments to take an approach to compliance burden that reflects an awareness of its impact on business, in both domestic and global markets.

When Prime Minister Harper announced the creation of our Commission in January 2011, he asked us to listen to the businesses that are confronted with red tape and to the associations that represent them. Through this listening process, we were to identify business concerns as well as

ways in which the government might address them—in both the short and long term. To clarify, we were asked to seek out information on immediate irritants and to solicit opinions on some practical means of addressing them. At the same time, we were asked to think about the systemic causes underlying many of the immediate irritants and to request input on solutions for these more deeply seated problems. It is this two-pronged approach—one aspect of which moves into the area of systemic changes—that we believe sets this initiative apart from other red tape reduction endeavours.

Our Commission has finished its consultations which, collectively, made up the first phase of the work. Through points raised at roundtables across Canada as well as in written submissions and comments sent in through our website, entrepreneurs gave us an array of experiences and observations to consider. They identified many examples of the challenges they face due to red tape—challenges that affect their ability to concentrate on their businesses and compete fully in the marketplace.

This report offers an overview of what we heard, faithfully capturing the core issues that were expressed. It also indicates how our Commission, the secretariat supporting us, and federal departments and agencies are beginning to analyze and address the comments we have heard. Our final report, due later in 2011, will include our analysis as well as recommendations on reducing red tape. We encourage all those interested in this issue to visit our website at www.reduceredtape.gc.ca to learn more about the Commission's work so far.

A team effort got us to this point and I want to thank my fellow Commission members for their commitment. We share a sense of common purpose respecting cutting red tape and freeing business to grow. I should also note the support of the Honourable Stockwell Day, who was Lead Minister for this initiative as President of the Treasury Board until his retirement from Parliament, as well as the work of the Honourable Rob Moore, who ably chaired the Commission through the consultation phase. Above all, I want to thank the men and women who took the time to meet with us or to provide comments in submissions and online. You have paid us the compliment of sharing your experiences and suggestions for change. We will work hard to respect your contributions and deliver what Prime Minister Harper has asked of us and what Canadian businesses and citizens deserve.

The Honourable Maxime Bernier
Minister of State (Small Business and Tourism)

Dean Allison, Member of Parliament (Niagara West–Glanbrook)

Lois Brown, Member of Parliament (Newmarket–Aurora) and Parliamentary Secretary to the
Minister of International Cooperation

Cathy McLeod, Member of Parliament (Kamloops–Thompson–Cariboo) and Parliamentary
Secretary to the Minister of National Revenue

The Honourable Rob Moore, Member of Parliament (Fundy Royal)

Chris Warkentin, Member of Parliament (Peace River)

Bill Aho, President and Owner, Central Mechanical Systems, Ltd., Northwest Territories

Bernard Bélanger, Chairman of the Board and CEO, Premier Tech, Quebec

Stirling MacLean, President, WearWell Garments Ltd., Nova Scotia

Gord Peters, President and Owner, Cando Contracting Ltd., Manitoba

Denis Prud'homme, former owner of Prud'homme Trucks and President of the Prud'homme
Group of Companies, Saskatchewan

Catherine Swift, Chairwoman, Canadian Federation of Independent Business

Executive Summary

In January 2011, Prime Minister Stephen Harper announced the creation of the Red Tape Reduction Commission. Our group consists of Members of Parliament as well as business people who represent, in different ways, the interests of Canadians across the country. A list of our members is provided in Appendix Aⁱ (appendices to this report are available online). The Prime Minister asked the Commission to identify irritants to businesses arising from federal regulatory requirements and to recommend responses that will address both the immediate irritants as well as the systemic issues underpinning them—all without compromising the environment or the health and safety of Canadians.

For our purposes, “red tape” includes unnecessary burden and frustration for businesses caused when complying with federal regulatory programs and activities or requirements of other mandatory programs. More specifically, it includes unjustified or undue burdens placed on business when, for example, they must plan, collect, process or report information; when they have to fill out forms, retain data or information; when they are required to respond to inspections or audits; and when they wait for decisions or feedback on applications, permits or licences they are required to obtain. Our Terms of Reference, which are outlined in Appendix Bⁱⁱ and which provide additional context for our work, give a more detailed explanation of our mandate, including the specific objectives the Prime Minister set for us.

In response to this tasking, the Commission has conducted an extensive consultation process. We received written submissions from people in business and from business organizations. We held 15 roundtables in 13 cities. The details of when, where and with whom these conversations took place are set out in Appendix C.ⁱⁱⁱ We covered a broad area, geographically, as well as a range of interests with numerous individuals. We also developed a questionnaire, reproduced in Appendix D,^{iv} that we posted on our website to enable people to share their experiences and suggestions with us. Together, these consultation approaches resulted in the identification of almost 2,300 irritants accompanied, in many cases, by suggestions on specific improvements that we might consider.

Although many participants acknowledged the importance of regulations, both to protecting the public interest and safety as well as to enabling businesses to succeed, they indicated that a better job could often be done of designing, implementing and monitoring their requirements. The comments about red tape irritants from businesses focused on broad but interconnected issues that are costly and frustrating to deal with. In overarching terms, their concerns related to overhead costs; the needs of small business in complying with regulations; administrative burden; service orientation and professionalism; timeliness, predictability and accountability; coordination among regulators and the resulting cumulative volume of requirements; and attention to industry realities.

To narrow the focus even further, for small businesses in particular, many comments on specific “top-of-mind” irritants pertained to the administration and filing of taxes—notably to what were perceived as cumbersome, expensive and complex filing processes (HST/GST); the lack of flexibility in handling late remittances and fines; inconsistency of interpretation and lack of written answers; cost of audits; and reporting burden, for example, the repeat filing of forms. There were also issues concerning the time required, in general, to complete multiple mandatory business surveys, access to government contracts, and the overall frequency of requests for information, often without pre-populated forms.

These red tape irritants, particularly when combined with bureaucratic processes and rules associated with other (non-mandatory) programs and policies, were perceived by participants to have direct and often negative impacts on key factors that small businesses must have under control in order to innovate and compete. These key “success factors” include the ability to minimize overhead costs; get and keep the right people; obtain funding through tax credits or other programs; compete on a level playing field; pursue innovation, research and development; and exploit new business opportunities and new markets.

Some of the solutions put forward were intended to address specific irritants. They included ideas such as eliminating specific regulatory requirements or substituting something else in their place; establishing requirements based on outcomes rather than processes; scaling down requirements; revising the thresholds at which regulations become applicable; ensuring coordination within departments; providing better appeals processes; simplifying in a variety of ways, and familiarizing regulators with industry issues.¹

¹. Reinforcement of what the Commission heard respecting irritant solutions has been provided by other bodies engaged in thinking about regulatory requirements and related red tape, as indicated in the studies, reports and other documentation they have produced. For example, please see material produced by the Standard Cost Model Network (<http://www.administrative-burdens.com/>).

In other cases, those who offered their comments described what they saw as the systemic issues that influence how governments approach their regulatory responsibilities—issues that they saw as root causes that should be addressed to achieve lasting reforms. Among these suggestions were the following:

- 4 Consultations should take place earlier in the process leading to new or changed regulations, with more people who are directly affected by the regulations, and on all aspects of a regulation. It is of particular importance that businesses have the opportunity to understand and voice their concerns respecting any impacts that changes may have on their costs.
- 4 Greater accountability is needed within the regulatory system, with more clarity about what regulated parties can expect from regulators. Transparency concerning processes, the performance of regulations and the status of client files is also required.
- 4 Regulatory design, decisions on compliance, and follow-up enforcement should be based in more thorough assessments of risk. These, in turn, should be founded in facts (e.g., science), a solid understanding of the actual state of play in the sector, and the past compliance performance of the firms in question. Often, what is most needed (but sometimes seems lacking) is common sense.
- 4 Regulators need to find the right balance between managing risk and enabling business interests (e.g., indicating how to comply more easily or at lower cost), recognizing that this balance may involve a culture change with increased emphasis on service and professionalism, and the development of more effective recourse mechanisms.
- 4 Regulators need to better understand the specific circumstances of the regulated parties and to use regulatory approaches that take into account the fast-changing pace of business and the competitive environment, rather than taking a one-size-fits-all approach.
- 4 Better coordination is needed across regulators to ensure that, with the consent of the regulated parties, information is collected, shared and used more efficiently and effectively. In addition, this principle should be extended outside the sphere of federal regulations; there is a real need to break down silos across federal, provincial and municipal boundaries.
- 4 Regulations need to be more predictable. This means changing them less frequently and signalling earlier that changes are coming.
- 4 The process of reform should be made ongoing; it is a long-term endeavour, and work cannot end with the mandate of this Commission.
- 4 It must be clear that the reform process requires careful analysis and change from the grass roots up. The “devil is in the details” is a truism that holds good for this initiative.

At this point, the irritants and proposals already mentioned are simply indications of what businesses suggest as issues that we should assess and consider. Having captured and reported what we heard, our task now is to work with regulators from across the Government of Canada to clarify the comments, confirm our findings, and spur the search for effective solutions that will address the most important issues. We have dedicated ourselves to doing that over the next few months.

For example, our secretariat is putting intensive effort into working directly with federal departments, agencies and other regulatory bodies to obtain additional explanations and advice and, in turn, to provide direction and guidance on how they should proceed. For example, all irritants have been divided into groupings by departmental responsibility and shared with the regulators in question. Currently, these organizations are involved in analyzing the irritants brought to their attention, determining root causes, and devising and submitting response plans on these issues. In all cases, traceability to original participant input has been maintained.

The systemic solutions proposed and the expert consultant papers being written on these solutions are also being shared with senior departmental working groups and are being revised with their help. In addition, a campaign has been run at the level of front-line regulators to solicit input on how regulations and regulatory processes might be improved from their perspective. All of this information will be synthesized to form the basis of the recommendations report that we put forward, to the Lead Minister and the government, in the fall.

We are confident that departments are strongly committed to finding lasting solutions to specific issues that fall within the mandate of this exercise. We are also confident that where the irritants raised during our consultations fall outside of our mandate, as is the case, for example, with requirements related to non-mandatory program and policy issues or federal–provincial issues, we will be able to refer them to the responsible ministers or bodies for their consideration and action, as appropriate. Most of all, we are confident that businesses across federally regulated sectors have provided us with the focus and the core information we need to propose lasting solutions to reduce the compliance burden. These will be included in our final report in late fall 2011.

Background

Our Mandate

On January 13, 2011, Prime Minister Stephen Harper announced the creation of the Red Tape Reduction Commission. Chaired by the Honourable Maxime Bernier, our Commission comprises six business leaders from regions across Canada and five Members of Parliament. In his remarks announcing the Commission, the Prime Minister captured the key reasons that businesses, small and large, are concerned with the regulatory demands of government. He outlined the need for action:

When governments over regulate, bureaucracies expand and the paper burden grows, the red tape becomes too much for individual entrepreneurs to bear alone. And they have needed to turn to a growing number of lawyers, accountants and consultants for help.

Those billing costs are adding up, reducing opportunities for growth, and being passed on to us as consumers at the cash register in practically everything we buy. It is a hidden tax and a silent killer of jobs.²

In response to this situation, the Prime Minister gave us two tasks:

- 4 “To identify irritants to business stemming from federal regulatory requirements. The focus is on irritants that have a clear detrimental effect on growth, competitiveness and innovation”; and
- 4 “To recommend options that address the irritants on a long-term basis, while ensuring that the environment and the health and safety of Canadians are not compromised in the process.”

For our purposes, “red tape” includes unnecessary burden and frustration for businesses caused by complying with federal regulatory programs and activities or the requirements of other mandatory federal programs. More specifically, it includes unjustified or undue burdens placed on businesses when, for example, they must plan, collect, process or report information; when they have to fill out forms, retain data or information; when they are required to respond to inspections or audits; and when they wait for decisions or feedback on applications, permits or licences they are required to obtain.

². “PM announces Red Tape Reduction Commission” (<http://www.pm.gc.ca/eng/media.asp?id=3894>)

Our Context: The Scale of Federal Regulation Today

Regulation is one of the most widely-used tools that governments have at their disposal to ensure the achievement of policy objectives. Because of this importance, a great deal of time, work and complexity are involved in establishing and managing regulations, and so the scale of the effort required to successfully address the related red tape may not be well understood. Although we cannot discuss these issues in the way they require in a report of this relatively short length, an understanding of the multi-faceted nature of federal regulatory aims and processes is essential to the ongoing analysis of what we have heard and to our producing useful recommendations in fall 2011. We have therefore provided an overview of federal regulatory processes in Appendix E.^v

What may also be misunderstood, to some extent, is the scale of the problem. It is the breadth and depth of the issue as well as its cost to the economy that underlie the current intense activity on the part of governments, both at the federal level in Canada and within many other national and provincial jurisdictions. There are about 2,000 federal regulations in place in Canada at the moment, covering approximately 14 sectors and business activities and overseen by about 13,000 individuals working in regulatory areas. Although roughly a dozen departments are responsible for most of this regulatory activity, there are, in fact, almost 70 departments overall that have regulatory authority. In 2007, the government committed to establishing an inventory of regulatory requirements and information obligations and to reducing it by 20 per cent. This commitment led to the finding that the total inventory consisted of approximately 400,000 “asks.” The reduction target of 80,000 requests was achieved in 2009. Nevertheless, for small firms, and in some cases even for those that are not so small, the remaining burden can be very difficult to carry.

In 2010, the Canadian Federation of Independent Business estimated a \$30.5-billion cost to businesses, every year, for regulatory compliance with obligations coming from all three levels of government. A 2008 study by Statistics Canada reported that the cost to comply with 12 of the most common federal, provincial and municipal regulations in 5 economic sectors alone worked out to \$1.1 billion per year, with tax-related obligations accounting for 71 per cent of those costs. It also reported that small businesses generate more than 17 million regulatory submissions annually.

The Government Is Taking Action on Federal Regulation

According to a written submission from Canadian Manufacturers & Exporters, “business recognizes that government must play a role as regulator and...provide a public good in doing so.” However, it is also widely recognized that there is substantial room for streamlining regulatory requirements. Our Commission is responsible for one of a number of initiatives

(others are outlined briefly in Appendix F^{vi}) that the Government of Canada is pursuing to cut the red tape burden that businesses face, especially small businesses. The foundations have been laid by recent initiatives. In 2007, the government introduced the *Cabinet Directive on Streamlining Regulations*,^{vii} which put in place a comprehensive, modern regulatory policy framework. In 2009, it fulfilled the Budget 2007 commitment to cut paperwork by 20 per cent through the Paperwork Burden Reduction Initiative.^{viii} In the same year, the Canada Revenue Agency's Action Task Force on Small Business Issues^{ix} completed work on 57 commitments to simplify and improve interactions with small businesses to reduce administrative burden. More recent initiatives have been built upon these earlier efforts. For example, in February 2011, Prime Minister Stephen Harper and U.S. President Barak Obama announced the creation of the Canada–United States Regulatory Cooperation Council,^x tasked with simplifying rules and cutting the red tape that affects cross-border trade. The government has also established the Major Projects Management Office,^{xi} offering a single window into the federal regulatory process for large-scale resource projects. The government has likewise recommitted to reducing red tape in the 2011 Speech from the Throne and has acted in Budget 2011 by including commitments on the following:

- 4 Tasking regulators with examining the effects of their regulations through a small business lens to ensure that regulatory requirements do not have unintended impacts on small businesses and are administered as fairly and efficiently as possible;
- 4 Mounting a new advertising and outreach campaign to point small businesses to the right information about the programs and regulations of relevance to them;
- 4 Posting consultations on regulations on the Consulting With Canadians Web portal;^{xii} and
- 4 Directing the Canada Revenue Agency to provide written answers to tax questions received online at My Business Account.^{xiii}

Our Work: Reaching Out to Canadian Businesses and Stakeholders

On occasion, citizens have been known to develop commission “fatigue.” When this happens—when a particular issue appears to require multiple passes to address, when changes are seemingly slow and incremental, and when problems appear to be creeping back despite successes—a certain skepticism can result. Because we heard this skepticism expressed throughout our consultations and are continuing to hear it from the business community, we want to address it here. We believe that we can avoid these responses because the efforts of this Commission are characterized by three important perspectives and approaches.

First, the direction we were given to listen to people has been fully respected, and what we heard has been made real for us through our approach at the grass roots. We went to small businesses and asked for their perspectives before we did anything else. We wanted our understanding of the issues to be grounded in theirs and to ensure that this perspective guided the rest of our work. We believe that we achieved this objective.

Second, we have a strong commitment to structural change. We are not aiming at accomplishing immediate one-off fixes only. Because they will undoubtedly be useful in removing immediate pressures for a range of businesses, these short-term, targeted solutions are not to be discounted—they are important. Our longer-term interest, however, lies in improving those regulatory processes that played a role in creating the problem in the first place. This commitment on our part means that where good processes, practices and supporting structures exist, we will focus on the feasibility of broadening them across government. Where our additional research and analysis lead us to believe that the underlying policies or processes are outdated, inefficient or ineffective, we will concentrate our efforts on recommending ways to do away with them as soon as possible, and on eliminating any structural impediments that might stand in the way of better regulations that result in a lower compliance burden on business.

Our third and most important area of focus is cultural change. We believe strongly that an understanding of the importance of small business within the Canadian economic context, as well as the needs of this group with respect to regulatory compliance, must become ingrained aspects of professionalism and service provision across government. This understanding and the approach to clients that grows out of it must be instilled across the public service to the point of being second nature. We also believe profoundly in the value of accountability for all service organizations, from the smallest to the largest. Our focus, therefore, will be to determine how to embed accountability for positive change, in terms of professionalism and providing service, throughout those organizations tasked with supporting and ensuring small business compliance with regulations. Our thinking will centre on ways to ensure that every employee, from the most senior levels of regulatory organizations down to front-line service providers, is accountable for his or her actions with respect to these important aspects of organizational performance.

In terms of commencing our work at the grass roots, three approaches helped us to get the views of small business people on the top-of-mind irritants they see in complying with federal regulations. First, we connected with business through our website consultation, which has attracted well over 600 small business participants to date. Almost 450 people submitted responses to a questionnaire on the site that asked them to identify the regulatory irritants they deal with. Second, we organized 15 face-to-face roundtables in 13 cities across Canada. Some of these focused on federally regulated sectors of particular interest (e.g., energy in Calgary, agri-food in Saskatoon, finance in Toronto and biotechnology in Charlottetown), with attention paid

to small business concerns at all sessions. This approach allowed us to hear directly from 189 people in business or the associations that represent them and to gain a deeper understanding of impacts and options. Third, we received 61 written submissions, many from business associations in federally regulated sectors.

All three approaches resulted in a rich body of comments on which to base our thinking. Almost 2,300 irritants were identified, accompanied, in many cases, by suggestions on specific improvements that we might consider. In order to show the significant numbers in which businesses responded to our requests, as well as the resulting input, we have set out some statistics in Appendix G.^{xiv}

The Scope of Our Work and How We Have Proceeded

We received extensive and at times passionate input on a whole spectrum of issues—from simple to complex, from narrow to broad. Our first task is to report on what we heard, capturing to the extent possible the true voice and concerns of those who participated while remaining within our mandate. We have decided to do so by organizing what we heard into four broad categories.

The first section deals with the top-of-mind irritants that relate specifically to federal regulatory requirements that businesses must meet, either because they are directly linked to regulations or are related to the administration of the tax system, or because they involve the compulsory completion of forms or surveys asking for information that firms must provide. Under this category, we have grouped the irritants into a number of broad themes to capture the full range of red tape, namely: a focus on small business realities; administrative burden; service orientation and professionalism; timeliness, predictability and accountability; coordination among regulators and the resulting cumulative burden; and attention to industry realities.

In the second section, we set out what we heard in a number of areas that fall outside the mandate of our Commission, but which, nonetheless, are important to business and will need to be looked at by those responsible for these issues. Under this category, we have included top-of-mind irritants associated with four areas. These include issues related to regulatory policy, rather than the compliance burden arising from those regulations; non-mandatory program policies or requirements where participants pointed out that rules and regulations (in the small “r” sense, i.e., not related to legislative requirements) came into play and where a heavy burden of red tape was also a factor; federal–provincial coordination and cooperation on regulations and non-mandatory programs; and regulations and non-mandatory programs already being examined or addressed under existing federal initiatives.

In the third section, we set out a number of potential consequences that the burden created by irritants (those described in the first two sections) could have on the ability of firms to innovate, remain competitive and succeed. These key success factors include minimizing overhead costs; getting and keeping the right people; obtaining funding through tax credits or other programs; competing on a level playing field; engaging in research, development and innovation; pursuing new business opportunities; and reaching new markets. Although we recognize that many factors contribute to helping or hindering a firm's ability to succeed, we feel that it is important to document what we heard about the consequences of red tape—defined both narrowly (when attached specifically to regulations) and broadly (when attached to non-mandatory programs and policies)—to a firm's ability to grow, innovate and compete.

Having set out, as faithfully as we can, the concerns raised by businesses, we then turn to the next important section—their proposed solutions. We were struck by the creativity that our participants showed as well as by their commitment to offering meaningful, practical, affordable solutions to the priority red tape irritants they identified. Although we have not yet had time to assess these ideas—that task makes up a good part of our future work plan—we have been able to separate them into two categories:

- 4 **Changes that might be made by specific federal regulators, in specific sectors, to reduce red tape.** This first category of proposed solutions might include eliminating specific regulatory requirements or substituting something else in their place; establishing requirements based on outcomes rather than processes; scaling down requirements; revising the thresholds at which regulations become applicable; ensuring coordination within departments; providing better appeals processes; measuring success in reducing red tape; familiarizing regulators with industry issues and realities, and simplifying in a variety of ways.
- 4 **Changes targeted at the regulatory system in general to improve the regulatory activities undertaken by all departments in all sectors through lasting reforms.** These proposed changes could include enhancing regulatory design; measuring and reviewing the burden of both existing regulations and those that are new or amended; enhancing interdepartmental cooperation; encouraging professionalism and the implementation of service improvements with respect to regulatory enforcement; increasing the understanding of small business realities; and strengthening transparency, predictability, accountability and sustainability across the regulatory system.

We also appreciate that some of the examples we have used in this report, including those that fall entirely within the Commission's mandate, may not be completely accurate or comprehensive. Most contributors acknowledged that they were able to offer only their own perspective on a situation, although that perspective was a very important one to the

Commission's mandate. To the extent possible, we have tried to convey the views of our contributors accurately and in their own voices, without adding our own analysis or perspectives. We are, however, committed to having a comprehensive, global understanding of red tape irritants and proposed solutions before we make any recommendations. Developing this understanding will require more targeted engagement with federal regulators and other stakeholders.

We hope that those who participated in the consultation process and those reading this report will also understand that the examples we have used to make the themes real and relevant are only a small sampling of what we heard. Although we felt it was important to provide some concrete examples to capture, as best we could, the concerns of those who contributed ideas, the constraints of report writing do not allow us to include all comments. The written submissions we received, as well as the summaries of the roundtables and the comments that individuals posted in answer to our questionnaire are available on our website (www.reducedredtape.gc.ca).

As Commission members, we have listened to everything that was said to us within a broad context. One of the government's overarching objectives, in many of its recent undertakings, is to support the development and maintenance of a strong, sustainable economy—for example, through the Economic Action Plan and the ongoing strategic and operating reviews of departments and agencies. This is a large multifaceted undertaking of which our efforts make up only a part. However, because small businesses play an important role within that broader context, we heard much that touched on the whole continuum of issues that might be impeding the sought-after success.

We will therefore ensure that our work and recommendations are coordinated with other government efforts to improve the competitiveness of the business sector and to deal with regulatory issues. These include ongoing initiatives led by ministers of various departments as well as by whole-of-government organizations such as the Major Projects Management Office, the Regulatory Affairs Sector within Treasury Board of Canada Secretariat and the Regulatory Cooperation Council tasked with developing an action plan to align regulatory approaches in a range of sectors for both Canada and the United States.

In summary, what lies within the terms of our mandate, i.e., to address red tape related to federal regulatory requirements and mandatory programs, will be dealt with by the Commission, working with others, in its final report. What lies outside will be forwarded for consideration and action, where appropriate, to those who have the responsibility and authority to do so. As the body to which consultation participants brought their concerns in the hope of having them heard and genuinely considered, we are committed to giving them due consideration and to ensuring

that our efforts are coordinated with others working to improve the competitiveness of Canadian businesses and the effectiveness of the regulatory regime.

What We Heard: Irritants, Impacts and Possible Solutions

Regulatory Red Tape: Top-of-Mind Irritants

Focus on Small Business Realities

Our mandate directs us to find “solutions to control and reduce regulatory compliance burden with special attention to the impact on small business.” This is an important qualifier because small business is a key driver of Canadian economic success. Statistics Canada has provided some telling figures in its 2008 report *Key Small Business Statistics—July 2008*.^{xv}

On average in 2007, just over 5.1 million employees on payroll, or 48 per cent of the total private sector labour force, worked for small enterprises (those with fewer than 100 employees). More than 1.7 million, or 16 per cent, worked for medium-sized enterprises (those with 100 to 499 employees). In total, therefore, small and medium-sized enterprises employed just over 6.8 million, or 64 per cent, of private sector employees covered by the survey. Small firms (those with fewer than 100 employees) make up 97 per cent of goods-producing employer businesses and 98 per cent of all service-producing employer businesses.

Given the importance of small and medium-sized enterprises to our economic well-being, it is vital to ensure that they are supported in their efforts to remain strong and viable. As we heard in our consultations, red tape—or the unnecessary and unproductive burden attached to complying with regulations or the requirements of mandatory programs—makes these objectives more difficult for entrepreneurs to achieve.

Much of the concern respecting compliance activity was related to the administration of the tax system, which is not always done via regulations. Nevertheless, filing taxes is mandatory for all businesses and hence was treated as falling within the mandate of the Commission. A survey undertaken by the Canadian Federation of Independent Business in 2010 provides some background. A full 65 per cent of respondents cited government regulations and paperwork burden as their greatest concerns. Among this group, 70 per cent indicated that time, effort and cost associated with the administrative aspects of GST/HST were among the top irritants, 69 per cent identified payroll taxes such as the Canada Pension Plan and Employment Insurance, and 67 per cent identified personal and corporate income taxes. This focus on taxation requirements of one sort or another was echoed throughout our consultations as well.

Participants noted **cumbersome, expensive and complex filing processes**. One website contributor, referring to payroll taxes, criticized the current process which, he said, involved the government in receiving a cheque by mail, doing the physical handling, crediting the right account, fixing mistakes when the wrong account is credited, and repeating the whole process 12 times per year per small business. It would be much more efficient, he suggested, to allow the filing to be done entirely via electronic means and suggested further that businesses would be willing to pay for this service, thus offsetting any added costs to the government of setting up the systems to make it work. This approach to reducing the “hassle of paying payroll taxes and issuing T4s” would also, he believed, increase compliance.

The issue of **flexibility** respecting tax regulations was also raised. “Is it possible,” an online respondent asked, “to have the CPP and EI rolled into a single deduction. And is it possible to have more flexibility on how often we file our GST? We spend so much time preparing returns, and then pay huge costs if we are a day late.... How about a grace period?” At the Calgary roundtable, an attendee noted that small staff numbers make it difficult to deal with “firm and unforgiving deadlines” from the government. “If the bookkeeper is ill, for example, over a particular remittance deadline, the business could be subject to a stiff penalty, even if it [is] typically compliant and punctual in its filings. There is a 10-per-cent fine or \$500 if late, which does not take into account the past record of the company.”

Because consultation participants reported finding taxation policy and administration to be complicated, **requests for guidance and interpretation** were said to occur frequently. However, numerous problems were described in obtaining this support. In Vancouver, examples included encountering unresponsive personnel on phone-in lines, and leaving messages without receiving a follow-up. One participant recounted an 18-month wait for a decision related to a simple tax matter. In Winnipeg, it was claimed that solving a tax issue “can drag on for years, not just months.” Recourse to website information was said to be an inadequate solution because the information posted is, reportedly, less than clear.

Costs of audits were said to be high and, in many cases, the process was considered unnecessary. One business owner providing comments online recounted his experience in getting a different picture each time a tax auditor came to do the semi-annual audits. Others complained of mistakes made in calculations by auditors and other officials, requiring a great deal of time and effort to correct.

Aside from irritants related to the administration of tax, consultation participants did not seem to think that regulators had **an appreciation for the realities of small businesses** and therefore could not take them into consideration when establishing compliance requirements. It is useful to note here that the burden of complying with regulatory requirements is borne disproportionately

by small businesses. A 2007 Statistics Canada study found that regulatory compliance costs per employee for businesses that have 1 to 4 employees are 7 times greater than for businesses that have 20 to 99 employees and 11 times greater than for medium-sized businesses. Small businesses have **too few people to undertake the paperwork required**, and so complying with regulatory requirements often means that someone is taken away from serving clients. Some business owners claimed that the only way to avoid such situations is to carry out the compliance activities on their own time, a decision that then has a negative impact on personal, social and family life.

Moreover, many small firms claimed that it is not simply an issue of having enough people to work on the compliance requirements. It is also **a question of expertise**. Regulatory requirements can be complicated and technical. Small firms where employees have skill sets that are focused on the manufacturing, service or trade activities comprising their work can find themselves overwhelmed when it comes to navigating the complexities of tax, environmental or trade laws. Their only alternative, they told us, is to contract with people outside the firm to do the compliance work. These individuals tend to be, for example, lawyers, businesses consultants, accountants or specialized engineers—experts whose services small businesses cannot easily afford. One website entry explains the situation clearly:

I don't understand the requirements, expectations, status, or nature of it. I just know how to paint a wall. My husband knows how to install flooring.... These are trades that force you to become a business whether you have the innate capability to understand forms and accounting or not, yet do not earn enough to pay professionals, nor leave you enough spare time to learn [to] handle it for yourself.

As further indication of regulators' perceived tendency to overlook small business realities, contributors told us that **cost–benefit considerations** are frequently not undertaken, or at least do not appear to be. In Halifax, a participant from the tourism sector recounted that one federal department had begun asking for periodic inventory lists related to the ferry business. Good inventory systems were said to be expensive—about \$100,000. Although the benefit to the regulators of having these lists was not clear, there was reportedly no doubt among regulated parties as to the large and, for the most part, unproductive financial impact that this kind of expenditure would have on their operations. Another example from the same discussion centred on the import of fish oil in bulk tankers. The firm stated that it must notify the inspecting agency when a tanker comes into port in order to have labelling approved. Reportedly, delaying a ship in port when no inspector is available costs the company, in total, \$18,000 per day. This participant therefore argued that, because the risk underpinning the inspection requirement is very low, the consequences to the firm are highly disproportionate. The conclusion on the part of participants

in both of these cases was that the essential requirement to maintain low overhead was something that regulators simply did not perceive.

Administrative Burden

It was often reported that **the problem of administrative burden originates in the cumulative volume of demands that small businesses are expected to manage**; government, it was thought, simply requests too much information, too often. This work requires hours of time and effort that are, essentially, unproductive overhead for businesses. One description of this situation came from the real estate industry in Kamloops, which pointed out the increasing burden in complying with regulations for reporting financial transactions, compliance with requirements under the *Privacy Act*, and requests from the Competition Bureau for information related to fixed commission rates. In Winnipeg, the amount of apparently needless paperwork requested, of all types, was said to have actually driven some entrepreneurs out of business. A Québec attendee informed us that a rising tide of import and export regulations, often related to security, was damaging relations with offshore clients that had taken years to build.

Mandatory surveys seeking input for statistical studies on business were considered particularly problematic. A Vancouver roundtable participant told us that his firm was getting two or three requests every month. Each of these was said to be four to five pages long and to require approximately three hours per form to complete. It was reported that surveys were being issued even to inactive holding companies. On the other coast, in St. John's, roundtable attendees complained that compliance costs related to these mandatory surveys are ongoing rather than occasional because the information is required every month. Moreover, it seems that some businesses are approached to participate more often than others, a situation that was seen as unfair. Businesses say that exemption from these requirements is virtually impossible to obtain but, even if it were possible, it was suggested that exemption processes are so paperwork-heavy and time-consuming that there would be no point in applying.

Other input highlighted a concern with **having to do work that entrepreneurs really believed the government should do for itself**. "I give my time to fill in your paperwork," noted one website contributor, "and I am not paid. I do not even get credit for time spent for all the months over the last 15 years." Another stated that "any business is working for the government by collecting taxes on merchandise, rentals, etc."

Related to work undertaken without remuneration is the perception by firms that they must sometimes keep and manage **information that is of no benefit** to them solely because government insists that they do so. One financial institution, contributing online, noted the aggravation in "storing insurance 'dead' files for a lifetime." A small bakery owner told us that "storing records for seven years is very difficult because we don't have an office at our bakery so

we have to store them at home. Also, cash register receipts tend to fade over time, to the point of being illegible, so what is the point of keeping them?”

In the case of input to statistical studies, contributors reported that they cannot even get **access to the completed reports**—work that uses their data—without paying for it. They also suggested that the demands can be so onerous and require information that is so different from what they normally track that they essentially give up trying to comply; as a result, they implied that information that does go back to the regulator can be relatively weak.

Duplication was another problem that businesses reported. Different departments, it was claimed in Saint John and Winnipeg, repeatedly demanded the same information, unaware that some other part of the government already has the required data in response to previous requests. In Montréal, one participant recalled that resolving issues pertaining to various aspects of water management—environmental issues, fisheries, navigation—might require dealing with up to 17 federal departments.

Frequent changes to regulatory requirements were described by many contributors as increasing the administrative burden. Farmers in Saskatoon told us that they needed a “CFO-like full-time individual” to track tax changes, identify new compliance requirements and determine how to meet them. A website contributor claimed to be inundated by, “paper, paper, disclosures, disclosures galore!” He reported that he had had to “print a small book for the clients, only for it to change because of one or two factors and redo everything over and over. A change form used to be a 2-page affair, now it can run up to 75 pages of print.” He believed that “thanks to all the red tape everyone must go through, costs to operate keep going up.”

Contributors to the website stressed that **the complex language of regulations and the time and effort it takes to decipher it or to seek interpretations** typifies administrative burden for them. These observations were said to apply to legislation, regulations, guidance documents and websites. One comment from an online entry, dealing specifically with the *Income Tax Act*, echoed many comments on a variety of subject matter areas. The Act, it was said, “is far more complicated than it needs to be, and surely could be written in language that a normal human being can be expected to understand.”

Not only is the language seen as difficult, but respondents also thought that the **mandatory processes often stipulated for regulatory compliance are needlessly complex**. It was frequently suggested that these difficulties were at least partly the result of a **high degree of risk aversion** that the government tends to manifest in virtually every aspect of regulation.

For example, in Kamloops we heard that the regulator in question has implemented certain reporting requirements for Aboriginal businesses as part of its funding for programs aimed at increasing the number of these businesses across Canada. However, the same types of requirements have been put in place for new, untried businesses as for those that have an established 20-year working relationship with the department. Demands were said to be particularly onerous respecting any business dealings that involved land transactions on First Nation reserves.

A view expressed in Calgary was that the current approach to regulation is “one that protects against bad things, rather than enabling good things.” This perspective produces a “gotcha” attitude among regulators who are “focused on catching non-compliance rather than working towards positive solutions.” A website contributor summed this attitude up somewhat differently, as “a culture of ‘can don’t’ as opposed to ‘can do.’” The written submission from the Investment Industry Association of Canada suggested that the reason for this attitude is simple: “Many of the staff conducting reviews have little understanding of the real risk factors and instead, focus on micro-issue gotchas.” A website contributor agreed, observing that “it seems that the culture...is to suspect every taxpayer of being negligent or corrupt. [The government] needs to change its culture to acknowledge that for the most part, the majority of Canadians try to remain compliant and that it does not need to ‘wield a big stick’ in dealing with every issue.”

A formal brief from the Ontario Chamber of Commerce suggested that when significantly different degrees of risk and/or impact can be identified, there is **a need for flexibility in the design of regulations to focus resources on those activities that pose the highest risk**. “The government should,” it was argued, “make regulatory tiering a mandatory feature of its assessment criteria by developing alternative compliance thresholds for smaller-scale and lower-risk activities.”

Service Orientation and Professionalism

Participants in our consultations told us, many times, that they did not believe they were getting what they would characterize as good, professional service from regulatory bodies. It was recognized that the work of regulators requires that they inspect, audit and, at times, even force regulated parties to comply with regulations. However, it was also suggested that this admittedly challenging work needed to be done, in all cases, with professionalism and in a respectful and courteous manner.

Many participants believe that **regulators should help businesses understand what to do and how to do it** in order to be compliant; however, they also seemed to doubt that this was the perspective of all regulators, all the time. At one of the two Ottawa roundtables, an attendee informed us that small businesses repeatedly report to industry associations (in this case the

Canadian Federation of Independent Business) that government inspectors tell them it is not their job to help businesses comply with regulations. Some participants identified what they perceived as a sense of entitlement among regulatory personnel, without a related understanding of the need to perform in a way that showed appropriate concern for the business situation.

Other **attitudinal issues** were identified as having even more immediate impact. The public face that the government presents to citizens was mentioned frequently as an aspect of professionalism. For example, with respect to mandatory business surveys, multiple phone calls were said to have been made to business owners informing them that failing to complete the survey is against the law. In fact, these entrepreneurs claimed, they are trying to comply; the red tape burden is simply making it difficult to do so while trying to run a business. An accounting firm representative at the Saskatoon session commented that, recently, there seemed to be “a very aggressive approach to small business audits on very minor issues (e.g., percentage of business use of vehicles, salaries to spouses, etc.). Appeals can be delayed by a year because of administrative paperwork (i.e., consent forms), resulting in heavy billings to small business.” It was suggested that few small businesses request direct help or guidance on taxation matters and, in many cases, do not do so at all, even through consultants, because they view the regulatory authority as an adversary.

Contributors thought that many service issues were the result of **the absence of service standards or, if there were standards, lack of sufficient effort to meet them** by regulators. For example, one website contributor noted that regulations for medical devices had been linked with service standards for years. However, the standards were reportedly not being met, with response times approaching double the waiting period specified (150 days for response versus the 90-day standard). In Saskatoon, we were told that regulators need “a culture of performance measurement...so that government [can] set internal objectives to make things measurably easier, cheaper and faster for businesses to comply with. Regulators should be required to establish and adhere to timelines and service standards.” Finally, the government was not seen as being in a particularly good position to enforce standards upon businesses when it often had difficulty in meeting its own. In Toronto, frustration was expressed that businesses face penalties if they are late in their dealings with federal regulators, but regulators face no such penalties if they are late responding to businesses. “This is unfair,” one respondent claimed. “Where is the customer service?”

Difficulty in obtaining advice or information—also linked, in many cases, to service standards and timelines—was perceived as a service issue as well. At the Montréal roundtable, participants indicated that businesses, in their attempts to seek clarification or information and thus to save themselves time, aggravation and money, are sometimes given incorrect or outdated information or do not receive return phone calls. Occasionally, it was claimed, businesses could not get in

touch with anyone at all. One online comment suggested that “too much is left to chance when the government is so heavily dependent on clients choosing the correct voice mail, instead of being able to talk to someone whose job it is to ensure that the client is reaching the correct office.” The result is that clients can get caught in a seemingly endless feedback loop. Some participants told us that it would help greatly if they could have **continuity on their files**, i.e., if one person were assigned with whom they could communicate on all issues.

Business owners told us that their attempts to find answers often resulted in **repeated referrals to other departments**. One website contributor provided a description:

If a business (for whatever reason) becomes involved in any matter that requires clarification or assistance [on taxation issues] then it can look forward to spending many, many hours in conversation with many, many civil servants. These good-hearted civil servants will provide you with Internet websites, toll-free phone numbers, fax numbers, other government office addresses, etc. Unfortunately, you never actually get any help from the multitude of sources to which you are directed—you just get redirected to another website, toll-free number, etc.

At least some of the time, difficulty in getting answers was thought by businesses to be rooted in a **lack of knowledge on the part of front-line government workers and in a related absence of training**. This lack, in turn, affects the amount of time businesses have to spend searching for answers. It was claimed that in the past, the federal government had sector specialists who were able to provide clear instructions on the steps to be followed. The observation, however, was that “today, finding a public servant who can provide correct and helpful information is difficult, and in fact, knowledgeable specialists are no longer available....” A website entry claimed that a business owner has “to know the [tax] law better than the [government] employee, which is clearly unacceptable. However, it is a necessity; otherwise [the owner] will pay far more than [he] should.” Another online comment reads, “I...ask different government employees the same question and get different answers. I own a bakery/café and the tax rules are complicated; however, I’ve had to figure them out myself because the government employees don’t understand them either.” At the Halifax roundtable, attendees reported having received several different answers to a tax question and electing to go with the majority response as their best option.

Contributors indicated that this lack of knowledge and training might account for the perceived **reluctance among front-line employees to make decisions** that are based, to even a small degree, on situational factors. This unwillingness, it was suggested, often leads to an unnecessary lack of flexibility in the rules. One online entry reads, “Some of your people are so rule-bound, it’s like talking to robots. Maybe give them some more flexibility to assess the situation and lend

a hand in bringing a successful conclusion. You hired them to do the job, trust them to do it.” At the Charlottetown roundtable, a participant spoke about the import/export of food and bio-products. Regulators, he said, are seen as putting up barriers; emails and letters from the departments involved are, reportedly, very legalistic in tone. The conclusion was that “more common sense is required in dealing with issues before [they get] to the legal level.” Many areas of food regulation were acknowledged to be grey, and yet it was said that some regulators do support businesses by exercising the flexibility required to make decisions on the spot when appropriate.

Several business owners claimed that **failure to respond to complaints** was an indication that regulators are not meeting an important part of their responsibilities. In the health products industry, for example, complaints made to the regulatory authority were said to be the only mechanism for curbing the sale of health products that are unlicensed or against which false advertising claims have been made. The processes of the regulator, however, were perceived by the business involved to lack transparency and any service standards, resulting in a failure to provide feedback or redress to applicants.

Other participants had reportedly complained about the unfair impacts on their businesses of the government’s adherence to the list of controlled and dual-use goods, widely said to be outdated by international standards. However, the department to which the complaint was made had reportedly told the complainant to approach the Department of Justice, arguing that it was a legislative matter. Another firm, communicating with a departmental regulator about a restraint of trade issue, had reportedly been told that it could file a formal complaint, but that it would take seven years to be adjudicated. The conclusion was that “either Canada has a policy on illegal restraint of trade or it doesn’t. We expect that in some countries, but not from Canada.”

Timeliness, Predictability and Accountability

Timeliness of government response was cited many times and within many different contexts as a key issue for businesses. The truism that “time is money” is one that holds for small businesses. Real estate representatives in Kamloops highlighted the problems with delays in approvals for waterfront developments or other areas where federal regulations apply. Reportedly, these delays can mean that by the time the approval is obtained, market conditions have changed in ways that impact the original proposal. Land developers also raised the drawn-out approval times for pest management approaches and the need to better understand, from officials, why applications are denied so that they can be resubmitted quickly and successfully.

A roundtable attendee in Calgary described the requirement to obtain 10 permits, spanning 21 organizations—9 federal, 8 provincial, and 4 municipal—in order to move forward with a wind power project. The multiple permit processes reportedly caused a two-year delay and

prevented the entrepreneur from adopting the most up-to-date technology for his project because some components were out of date by the time he received the required approvals. Had he wished to include the newest technology, he would, reportedly, have had to recommence the entire approval process.

A representative from the pharmaceutical industry related, in Toronto, how regulators reportedly have failed in many cases to meet the government's own performance targets for approving new drugs. The departmental target was said to be 9 months, but in some cases approvals were said to be taking up to 18 months, costing the industry money and restricting access to products for Canadians. The industry pays a user-fee cost but perceives that it is not getting the promised service.

Predictability was also cited as a key element in business's ability to comply with regulations without experiencing negative side effects for themselves. Many contributors to our consultations claimed that revised regulations, or interpretations of regulations, put in place—as it seemed to them—without warning, consultation, consideration of impact or stated rationale, could cost them heavily.

An example was provided in Vancouver, where a business owner relayed frustration with a regulator's decision to change the classification of her product (stuffed animals with microwavable rice-filled heat packs) from a medical device to a consumer product. Because a child consumer had, the regulator said, seriously overheated the device and because the seeds were said to constitute a choking hazard, the regulator had prohibited it from being sold and had instructed the business owner, on very short notice, to issue letters to that effect to stores across the country. This occurred despite the fact that, according to the businesswoman, similar devices are being actively sold—as medical devices—in Canada.

In Toronto, representatives of the financial industry seemed to have been unaware of consultations conducted on the use of the National Do Not Call List which, they reported, restricts service-provider access to clients and potential clients. In addition, it was claimed that the government had failed to take into account that, for this industry, client-to-service provider communications were already regulated. The contention was that this new set of rules has restricted business opportunity because the industry relies heavily on client referrals, in addition to being required to communicate regularly with its existing clients.

A website contributor described frustrations, again in dealing with regulators for natural health products. **An inconsistent approach in the review of these products** was said to make it “impossible to make consistent, informed business decisions.” The writer described “persistent changes and reviews of once approved, ‘pre-cleared’ information”—changes that “interfere with

product development and effective commercialization as well as long-term business plans.” In fact, there were said to be “years of delays” in assessing applications filed with the regulator. These in turn, it was claimed, reduce a company’s ability to react to market changes and thus affect its competitive advantage. They also increase the financial burden, for example, by making it necessary to re-cost raw materials or change suppliers, given that so much time has passed since the original proposal.

Lack of predictability was also said to be evident in situations where **the same rules seem to be applied by the same regulators but in different ways**, depending on who is interpreting them and to whom they are being applied. For example, a view was expressed by two participants in the first Vancouver session that a federal regulator of fish management appears to take a different and more stringent approach to enforcement in British Columbia than it does in some other provinces. A website contributor made a similar claim with respect to tax auditors: “what is ‘OK’ in one province is deemed a non-compliance in another,” it was said.

In Québec, a small aviation firm claimed that, at one point, a regulator had required small planes to use accredited maintenance firms in order to retain their own certification. However, upon discovering that most of the smaller maintenance firms could not manage the volume of paperwork or related expense, the department had cancelled the requirement, except, it was claimed, for those firms that had already complied at considerable cost to themselves. These firms reportedly had to continue meeting the obligation, making it impossible for them to compete on price with those firms that were excused.

The issue of **accountability** was another major area of irritation. At the most basic level, respondents in our consultations process wanted regulators to be held to account when it came to adherence to timeliness standards. At this level, accountability is linked very closely to service orientation and professionalism. In some cases, the impacts are mainly frustration and wasted time; an example might be waiting for follow-up phone calls. In others, there can be more serious business and financial impacts. Examples include long waiting periods for new product approvals that cause delays in getting goods to market in time to compete effectively.

Other accountability issues can have broader impacts still when, for instance, the issues pertain not simply to one business but are industry-wide. A website entry describes a situation of this sort, where customs issues have arisen respecting the movement of crude and natural gas products across the United States border. The entry claims that, several years ago, contradictions were identified between the *Customs Act* and the *Excise Tax Act* and, as a result, conflicting positions were taken by tax and customs officers. This lack of alignment reportedly led to much uncertainty and confusion within the industry. According to the respondent, “over two years ago (February 2009), industry met with tax officials to rewrite CN-438 to provide proper guidance

and clarity to the industry. [They] were promised a draft by June 2009. There has been no progress to date as the people on this project are constantly being reassigned to other ‘more pressing’ assignments, leaving [the] industry to continued uncertainty. Considering that the movement of crude and natural gas accounts for a substantial part of imports and exports, [regulators] should recognize its importance and commit to finishing this project. They should be held accountable to reasonable timelines established.”

Lack of accountability for interpretations or clarifications provided was another major irritant. From the comments we heard, this seems especially to be the case when that advice pertains to taxation issues. Being able to rely on the interpretation and direction they receive is crucial to small businesses because they do not have the in-house expertise to navigate complicated regulatory requirements or the ability to absorb the financial penalties when they make errors. This issue was raised numerous times in roundtable discussions and website entries.

In Calgary it was claimed that, even when employees (as opposed to automated messaging) are successfully contacted respecting taxation issues, it is difficult to find someone willing to offer definitive advice or to be accountable for the guidance offered, nor is it possible to obtain staff members’ names. An online entry suggested that “written answers that bind [the department and] correspondence by email” should become the norm. It should be noted that the government committed in Budget 2011 to having the Canada Revenue Agency provide written answers to tax questions received online at My Business Account.^{xvi}

In another online entry, a business owner claimed that he had requested and received an explanation on how to deal with the resale of used items in terms of tax regulations and had proceeded according to the guidance he had received. However, upon audit, he had been informed that he was in error and that tax was owed. Although he claimed that the initial opinion, provided—in this case—in writing, had been reproduced for review, the auditor reportedly informed him that he should have realized that the opinion was in error and so he had no choice but to remit the additional taxes. The conclusion to his entry was “that is why I asked in the first place.”

In a related set of concerns, business owners also indicated that **regulators should be accountable for correcting their own mistakes**. One entrepreneur reported, online, that although he had filed his taxes properly, he was told that because his year-end dates had changed by one day (a claim he disputed), he would have to re-file. He claimed to have paid accounting fees and to have spent much time himself in re-filing, submitting zero returns for one day and re-filing under the incorrect dates “to please the government agents.” He also claimed to have provided proof that the dates on which the regulators were basing the decision were incorrect. “They did not care,” he reported, “and even said that it can’t be changed and what are you going

to do about it? Too much attitude,” he concluded, “and no proper way to resolve issues with them. There is no accountability and no proper channels to resolve issues which are the government’s mistake in the first place.”

Many of those who commented indicated that the regulatory departments and agencies themselves had **a duty to stand behind the decisions of their employees**. “There needs to be greater government accountability,” noted one website entry, “in terms of the people they hire and an improved ‘visibility’ factor. Unfortunately, many times the processing of all of the program payments are dependent on the individual opinions of the individual person(s) going over the forms and making a decision based on their particular bias. This allows for huge discrepancies....”

There was some consensus, as well, that an **inadequate appeal processes for government decisions** was a factor in the lack of accountability. If there were better access to effective appeal mechanisms—stipulated in the regulations and available in practice—participants thought that front-line regulators would take more care in providing decisions for which they might have to answer.

Coordination Among Regulators and Cumulative Burden

The issue of coordination among regulators has been touched upon briefly in the discussion on administrative burden because it underlies that irritant to a considerable extent. Our participants told us many times that **government seems to operate, frequently, in silos** when it comes to regulations. This redundancy results in situations where many different regulators are seen as analyzing issues and requirements; designing, consulting on, implementing and enforcing regulations; and adjudicating issues and hearing appeals—all largely in isolation, even though the issues often overlap and are applicable to the same businesses and industrial sectors. The potential for **redundancy, inefficiency, confusion and contradiction** is high.

In Charlottetown, a construction analogy was used to describe the overlaps; when re-shingling roofs, it is said to be much simpler in the short run to lay layer after layer on top of the ones that lie beneath, never taking the underlying layers off. Should the house catch fire, however, it becomes much more difficult to deal with the serious problems that result.

A participant in Vancouver complained of federal overlap respecting private language-instruction institutions: “Industry Canada plays a role in promoting the sector, the Department of Foreign Affairs and International Trade...plays a role in helping promote the sector abroad, Canadian Heritage is involved as it has a role in language education in Canada, and Citizenship and Immigration Canada...has a role in approving visas for foreign students to come to Canada.”

However, according to participants, their thinking does not always align and they do not necessarily work together.

In Charlottetown, participants from the biosciences sector told us that at least three separate organizations are responsible for regulations related to their business but that they seem to work separately. Businesses said that, often, they cannot determine **which organization is the lead on any given issue**. The organizations were reported as saying different things, using different language in communicating and providing different interpretations, even when, essentially, they are asking for the same information. Companies, especially small companies, do not have the resources to interact with government when it is this complicated. The advice provided was that if a particular department is the lead organization for environmental approvals, for example, then it needs to be “more than a gatekeeper.”

A website contributor described his business as manufacturing aquaculture feeds for use in Ontario. His contention was that it is not clear whether this industry is regulated as a fishery, a form of agriculture, a type of natural resource or whether aquaculture was, overall, viewed as an environmental issue. His conclusion was that “there is no clear regulatory body, regulations or means of appeal in the unclear regulatory environment.”

In Halifax, a port authority representative noted that in the marine transportation industry, federal authority also crosses environmental, fish management, transportation and customs boundaries, and that regulators in all four areas have unique approaches and make different information requests. As a result of these multi-layered and horizontally overlapping situations, one online contributor commented that “departments and ministries spend seven to eight months asking each other’s permission to approve a proposal that has come to them so they have their departments ‘covered.’”

Lack of timeliness and clarity, and multiple requests for the same information were not the only consequences of these duplicative situations. **Perceived misalignments and inherent contradictions** were even more difficult to deal with. Concern was expressed, for instance, with respect to the import and export of natural health products. It was claimed that regulations for health products are viewed differently by the department that generates the regulations, than by the agency that interprets them for customs purposes. The contention was that “the spirit of the laws and rules [as understood by] the department and how they are interpreted at the border can be quite different.”

The government’s requirement to increase security at airports has necessitated hiring more staff, a demand that, in turn, leads to efforts to obtain additional security clearances. According to one St. John’s participant, however, it takes three to six months to get government security

clearances, and so the government is standing in the way of quickly accomplishing its own objectives. Security companies would be willing to provide more and faster service but reportedly are prevented from doing so.

A second security example also came from St. John's. Personnel working in this industry must be certified and, to obtain certification, must meet medical status and mobility requirements. Employees who are no longer able to perform all of the functions of their positions because of medical conditions or disability cannot, participants claimed, maintain their certifications, and so cannot legally perform the tasks that constitute most of the available work. At the same time, however, under the *Canadian Human Rights Act*, businesses have a duty to accommodate employees suffering from injuries, illness or disabilities. This then becomes a legal and human rights issue. The contention was that situations such as this cost the security business approximately \$200,000 per year and that the certification process and the human rights requirements need to be aligned; firms report that they currently cannot comply easily with both sets of demands.

Concluding comments on the issue of jurisdictional overlap among federal regulators came from one website contributor who suggested that "the right hand does not know what the left hand is doing.... No one at the federal level understands...others from different departments, so there is no one to help decipher the whole picture. Lawyers can't even figure it out anymore!" A second entry advised that there has to be "somebody that has jurisdiction to delegate specific responsibilities and to coordinate the activities of the various regulators."

Cumulative burden, to a significant extent, comes from having many federal players regulating in the same or overlapping areas and for the same industries, as well as from a perceived tendency on the part of regulators to have low risk tolerance. Both of these sources have been discussed. There are, however, a number of other observations that can also shed light on the issue.

Sometimes, the source of difficulty seems to be a simple, **apparent inability to share information among regulators**. A St. John's participant, for example, told us that "50 per cent of the information requested in the regular business surveys duplicates information already sent for taxation and revenue tracking," and a website entry suggested that "departments that have overlapping responsibilities should have to share databases and review regulations so that they don't conflict."

At other times, the issue appears to be an **unwillingness to work jointly or perhaps a lack of mechanisms for doing so**. The federal procurement process, for instance, was identified at the Ottawa roundtable as cumbersome and inefficient because it is still largely paper-based and

especially because there is no coordination of procurement requirements among departments; individual companies, it was said, must approach each department separately. A similar example was provided by a representative of the construction industry, speaking at the Vancouver roundtable, on the frustrations inherent in encountering multiple, uncoordinated security screening processes for workers on government-tendered contracts. It was identified as “costly and time-consuming to undergo different screening processes for each federal department.” In light of these costs, it was suggested that many small contractors simply refrain from bidding on federal projects. The Vancouver Regional Construction Association and the Canadian Construction Association, in their joint written submission, agreed strongly, terming the redundant screenings “extremely costly, and a process that most departments do not require.” They conjecture that “if an employee can work at a DND base or a nuclear power plant, there is no reason why [he or she] should have to resubmit to the security process when working at a national airport.”

Participants at roundtables noted that burden was sometimes related to a general **lack of avenues through which businesses might obtain exemptions**, even when it would seem logical to grant them. In Halifax, one attendee advised that “common sense needs to prevail sooner. There needs to be an overt commitment to being open and flexible rather than force-fitting everything. For example, exemptions from regulations or certain aspects of them should be broadened, especially when it is determined that little risk exists.” In St. John’s, however, participants speculated that “it is easier to complete a [mandatory business] survey, for example, than to go through the process of being exempt from it.” Very little flexibility was perceived to exist in the regulatory system.

A last issue that might be noted as part of the cumulative burden discussion is the perceived **refusal of Canadian regulators to accept product approvals issued by our trading partners**. Numerous examples were provided indicating that, if the risk were low, and the science or other approval requirements were as rigorous as the ones we would apply ourselves, then the standards of the trading partners should be accepted as equivalent to Canadian standards. According to entrepreneurs in many sectors, this decision would be of huge benefit in speeding up the various processes to support research and development, encourage innovation, bring new products to market and import goods into Canada. It would also facilitate the use of input products (such as agricultural pesticides) and would level the playing field for our own producers. As one website contributor pointed out, “Good science is universal and if our trading partners have regulatory processes similar to ours which test, evaluate and license a product for use in their fields, then here in Canada we should accept those scientific findings and fast track acceptance of the product to keep our industry competitive.”

Attention to Industry Realities

Numerous examples were provided, throughout the consultations, of how **regulators have difficulty in understanding the industries they are regulating**—or, more specifically, the impact that various aspects of the regulatory requirements would have, or were already having, on the sector. Most of these dealt not with the burden of complying with the requirements of the regulations, but with the regulatory policies themselves. We will touch on these in the section “Irritants Outside of Our Mandate.”

As far as the administration of regulations was concerned, many respondents believed that regulators simply could not keep up with changes in the industry because of the speed at which they take place—especially in the technology, biological substances, health products and pharmaceutical industries—and because of the expertise required to understand the innovations and the industry context. As a result, contributors indicated, **decisions are delayed for long periods of time and the approvals system becomes backlogged.**

For example, a representative of the health products sector in Quebec, contributing on the website, claimed that the regulator “has struggled to achieve any significant output since 2004; their backlog of around 10,000 applications has been relatively constant since 2006. The net result is that most companies [that] used to offer a broad selection of innovative products are now cutting their product line down by at least 50 per cent. New products coming to market are no longer innovative—and small businesses are going out of business. The black market for unlicensed [natural health products] is expanding enormously, and consumers are being forced to order from other markets (such as the USA) instead of buying locally.”

An importer of omega-3 fish oils for use in manufacturing health products noted at the Halifax roundtable that regulators appeared to have no idea how to classify their product and so had decided to regulate it as seafood, a category for which clear rules and regulations already existed. This kind of impediment, it was reported, causes the industry to bypass Canada as a location to manufacture, taking potentially millions of dollars out of the economy.

Phytosterols—naturally occurring cholesterol-reducing substances—were reportedly developed for market in Canada in 1998, only three years after their initial development in Finland. Although approved for sale in the United States in 1999 and the European Union in 2000, they did not, reportedly, receive approval to go to market in Canada until 2010—a full 15 years after first being synthesized. Questions were raised as to the reason for such long approval delays in Canada, given that the science is presumably the same in all of these jurisdictions.

In Charlottetown, we were told that in the pharmaceutical and biotechnology industries, active ingredients must be categorized into chemical and biological entities and registered on the government's Domestic Substances List. In the early 1980s, when updates to the regulations were made, a process was undertaken to put together a comprehensive list of already existing materials in order to facilitate compliance. Since that point, whenever a material is introduced, a submission must be filed in order to have the substance added to the list. The problem as cited was that biologic substances were largely omitted from the original Domestic Substances List; there were, reportedly, 30,000 chemicals but only 30 biological organisms included. Consequently, each time a company works with a new biologic product for fermentation, it was said to face a lengthy process to prepare the required information and to file a submission with the regulator. Considerable ongoing frustration was identified respecting this process because biologics were said to represent the recent technology of choice for the industry and because companies are required to spend their own resources to complete the filing.

An online entry argued that “‘Ottawa-centric’ thinking, along with a **lack of operational knowledge** on the part of policy/law drafters” was a problem. “If these things are not tested for reality of cost and effectiveness, what you have,” he said, “[is] a group [that] write[s] rules, but [is] not necessarily subject to them.” This, in his opinion, was “a perfect prescriptive for bad rules. If those who promulgate them have to share the pain, they may have a different notion about ‘how.’” He went on to say that the regulators need “some people who have actually worked in the real world to reality test” and concluded that they also “need better selection and training of those involved, with that training to include getting to know the operating side of their organizations.”

Irritants Outside of Our Mandate

As noted, we asked businesses that were participating in our consultations at roundtables, via our online questionnaire and through written submissions, to provide us with their top-of-mind red tape irritants. As set out in the previous section, many of these dealt directly with requirements of regulations and other mandatory government programs. These fall squarely within our mandate. Other concerns raised by participants, although very important to businesses, are not specifically related to our mandate. The irritants of this type that we heard can be sorted into four basic categories:

- 4 Issues related to regulatory policy itself, rather than the compliance burden arising from the regulations;
- 4 Requirements of non-mandatory programs or policies where participants indicated that rules and regulations (in the small “r” sense) placed a heavy burden on businesses applying for the program;

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- 4 Issues related to federal–provincial coordination and cooperation on regulations or the requirements of non-mandatory programs; and
 - 4 Issues related to the requirements of regulations or non-mandatory programs that are already being examined or addressed under existing federal initiatives to streamline or improve processes.

As a Commission, we are committed to ensuring that these issues, which businesses have identified as priority concerns, are brought to the attention of those who have the authority and responsibility for the relevant programs. Therefore, we felt it was important to briefly illustrate in this report what we heard in each of these four areas. We will be recommending to the government that these concerns be referred to the responsible ministers or bodies for consideration and action where appropriate.

Irritants Related to Policy Issues Underlying Regulations

Regulations exist at two levels. First, they are important policy statements, linked to parliamentary acts and having the force of law. At this level, regulations are one principle way the government has to achieve its objectives. Although businesses often understand this aspect of regulations, they have much more hands-on involvement at the practical level of day-to-day implementation. At this level, regulations are a set of rules to be observed and requirements to be met. It is largely the burdensome activities related to these rules and requirements that are causing the concerns we have presented to this point.

However, participants also brought forward issues that were related to the policy objectives themselves and to the thinking lying behind them. Many had concerns with tax policies and the implementation of the harmonized sales tax. Other participants voiced their concerns regarding minimum wage levels and still others with the fact that the regulator of prescription drugs, over-the-counter drugs, and natural health products had chosen to categorize and regulate them differently. The issue of aquaculture being regulated under the *Fisheries Act* was also brought forward. The foundational act and related regulations, it was argued, are inadequate because aquaculture is better treated as an aspect of farming.

In these cases, the issue was not the regulations themselves or even the associated compliance burden but the underlying policy positions and the way in which the nuances or interpretations of those positions were being applied to specific businesses.

Irritants Related to Other Programs and Policies (Non-Mandatory)

Participants also provided input on irritants related to programs and policies with which businesses engage voluntarily but where bureaucratic processes and rules are encountered once the application has been made. Because these programs and policies were, in many cases, established to support businesses, many of our participants had extensive experience with them.

For example, bringing temporary foreign workers into Canada to address the problem of finding and keeping employees was said to be mired in administrative burdens, with visa renewals reportedly taking longer than the initial applications. Ever-changing sets of “minor technical disqualifications” were identified as a problem, resulting, we were told, in workers often returning to their countries of origin—at employer expense—and having to restart the entire application process. A further serious irritant was the need to obtain rulings, from yet another department, on the appropriateness of accessing the program, with approvals based on wage and unemployment rates for the target areas of the country.

Many small businesses reported that tax credit and other financial support programs were necessary to their financial viability and that, to be useful, this support needed to be timely, stable and predictable. Numerous times throughout our consultations, however, we heard that administrative burden, long waits for decisions, inconsistent application of criteria and fluctuating funding amounts were causing problems to the point that organizations were, in some cases, ceasing to request the support. These reports applied to a range of voluntary programs, from regional development agency programs to tax credits such as those offered under the Scientific Research & Experimental Development (SR&ED) program and by means of GST rebates.

Irritants Related to Federal–Provincial–Territorial Coordination and Cooperation (Regulations and Non-Mandatory Programs)

Many of the issues we heard about, in both program and regulatory areas, were not entirely federal responsibilities; rather, jurisdiction was shared with the provinces. The government is actively working in partnership with the provinces and territories on issues of this type, and we will be bringing them to the attention of the appropriate ministers or federal–provincial–territorial bodies, such as the Committee on Internal Trade,^{xvii} which has a subcommittee for harmonizing standards and regulations.

A wide range of concerns was raised. For example, the difficulties in dealing with the requirements of multiple levels of government on environmental assessments were among the most common complaints, with participants asking if the federal government could defer to provincial standards or assessments, thereby eliminating duplication for some projects. Also brought forward were problems in dealing with numerous security regulators and in shipping

alcohol across provincial boundaries as a result of the federal *Importation of Intoxicating Liquors Act*; contributors on this latter issue asked the federal government to “step in and reverse the archaic liquor laws” that, although federally generated, are implemented by the provinces.

Another frequently raised jurisdictional issue was the hours-of-service rules that make up part of the *National Safety Code* governing truck transport in Canada. These rules, which are different from provincial rules, are nevertheless enforced at the provincial level and were said to place federally regulated businesses at a competitive disadvantage in relation to those regulated provincially. Weights and measures regulations were likewise said to fluctuate from province to province, with contributors asking the federal government to take a lead role in addressing these cross-boundary deterrents to business success.

Irritants Associated With Regulations and Programs Being Examined Under Existing Federal Initiatives

As we have noted, the federal government has many initiatives underway that are related to streamlining regulations with a view to reducing compliance burden. In all cases, we recommend referring, to the organizations that are administering these initiatives, all irritants we heard that fall under their areas of responsibility. We will be working collaboratively with these organizations to support their own thinking and analysis whenever our assistance might prove useful.

For example, the numerous comments we received respecting the SR&ED program are being communicated to the Minister responsible for the expert panel^{xviii} on the Review of Federal Support to Research and Development. This group’s mandate is to examine federal government research and development support for private sector innovation. All concerns dealing with major environmental assessments and Aboriginal consultations, as they affect major resource projects, are being forwarded to the Major Projects Management Office.^{xix} On issues respecting the regulatory burden associated with Canada–U.S. import-export processes, we are working with the Regulatory Cooperation Council,^{xx} the vehicle for both countries to use in simplifying rules and cutting the red tape that is affecting cross-border trade and raising costs for business and consumers. Examples of issues relevant to this group include programs that facilitate cross-border traffic in terms of customs requirements, and the harmonization of technological and/or scientific standards for products that are moving between Canada and the United States.

Impacts of Irritants on Business Success

Many contributors told us that **the unnecessary cost and frustration associated with complying with the requirements of some regulations or mandatory programs were causing them to be less competitive, within Canada and internationally**. We understand that there are many factors involved in supporting or standing in the way of success for businesses. Red tape is just one of them. That said, we were struck by the prevalent view that when regulations are poorly designed, implemented, monitored or enforced, they act as a drag on a firm's ability to compete. This conviction is even stronger when the effects of red tape are combined with the concerns raised by business regarding other bureaucratic practices which, strictly speaking, are not related to the requirements of regulations or mandatory programs.

We were told that **red tape and other burdensome bureaucratic requirements can make it more difficult for firms to succeed**. In addition to the challenge of **minimizing overhead** already discussed, it was said that they make it more costly or frustrating to get and keep the right people, access funding, compete on a level playing field, undertake research and development in order to innovate, grow and pursue opportunities, and reach new markets.

Throughout our consultations, we were told by businesses that the government's employment-related regulations and mandatory program requirements make **getting and keeping the right people** more difficult than it could be.

People told us that payroll reporting and tracking were time-consuming and costly—in fact, so onerous that they sometimes prevented companies from hiring. We heard about confusing approaches to taxable benefits that differ across the *Income Tax Act*, the *Employment Insurance Act* and the Canada Pension Plan. Some requirements, for example, reporting on EI every week when 80 per cent of companies pay employees every two weeks, were thought to impose a burden without rationale.

Issues related to the Temporary Foreign Workers Program, discussed previously under “Irritants Related to Other Programs and Policies,” also impacted businesses' ability to get and keep employees.

The government provides **financial support** of several types—for example, grants, contributions, tax credits and rebates—that are crucial to small businesses, especially during start-up. Although participants acknowledged that none of these involved regulations and that participation was not mandatory, we heard many concerns respecting the compliance burden related to these voluntary programs.

Some contributors found communications on how and where to apply to be confusing and programs to be “poorly calibrated to their target audiences.” The amount of information requested for an application was thought to be over and above anything required for due diligence, and requests were seen as lacking in flexibility. For example, low-risk, established businesses operating successfully for many years were, reportedly, required to go through the identical application and scrutiny processes as new start-up firms for various granting programs offered by some federal regional development agencies.

The most serious concerns pertained to delays in making funding decisions. Businesses claimed that waiting times were so long that they overshot their own internal deadlines, were forced to go into debt for bridge financing, missed windows of opportunity for getting goods to market and, in some extreme cases, even went bankrupt. Funding amounts were said, in some cases, to be so variable and unstable that they interfered with planning.

Finally, funding concerns from businesses included the impact of some regulations on private sector financing: the time, effort and money that goes toward non-productive overhead to meet government regulations was said to be a significant disincentive to private sector investors.

Where a level playing field exists, businesses that compete in the same market by selling the same goods and services are subject to the same rules. Having an equal chance to succeed encourages entrepreneurial effort, competition, productivity, investment, innovation, job creation and economic gain. However, consultation participants indicated that there were **irritants that slanted the field against them**.

We heard about differences between regulations, notably those of Canadian regulators versus those of foreign regulators, as well as those of the federal government versus those of provinces and territories. These differences, we heard, often put businesses that are subject to federal regulations at a competitive disadvantage. This was particularly relevant with respect to imports and exports. Examples were put forward with respect to electronics, sports equipment, police gear, agricultural produce and pesticides. It was claimed that it would be better for a supplier of health products to manufacture offshore and import back into Canada than to produce the same goods here. Business owners told us that goods that were acceptable for export, in the view of the destination country, had sometimes been refused exit from Canada because of our own regulations. They also told us that some very effective input components for agricultural production are not approved for sale under Canadian regulatory requirements but that they can be used in growing produce in the United States. That produce is then imported back into Canada to be sold in the same markets as our homegrown fruits and vegetables. In the service area, we were told that Canadian airports and tourist destinations sometimes cannot compete with their U.S. counterparts because of uneven regulatory practices.

Research and development (R&D) is about systemic, creative study designed to increase knowledge. **Innovation** is about putting this knowledge to work. R&D and innovation can be major drivers of the economy and can strengthen businesses in all sectors because any business that can attract new clients and keep existing ones satisfied with fresh ideas will have a competitive edge.

Governments often play pivotal roles in R&D and innovation when approvals are required. However, during the consultations phase, we learned of concerns with the **unpredictability of decisions and delays in getting approvals, to the point where problems are reportedly blocking commercialization**. Much of the delay in obtaining approvals, we heard, is related to risk aversion, whereas what businesses need are regulations that can properly manage risk while enabling the development and marketing of innovative products. Much of the frustration, we were told, is related to the uncertainty respecting when approvals will be received and the difficulty in finding out exactly where a firm's project is in the approval process. The government can also play a role in supporting the financing of innovation. However, in this area, paperwork—for applications and for follow-up reporting—was considered so complex that businesses were spending a significant portion of the returns from the SR&ED tax credit, for example, on consultants to help them with applications and compliance.

Overlap and duplication among the many regulatory authorities were again cited as contributing factors, as were the **growing expertise gaps between regulators and business** in advanced technology fields. The perception was that the regulatory system cannot handle new science or groundbreaking technology—not the regulators themselves and not the processes currently in place—with the price paid by businesses that want to innovate. Regulators, we were told, offer little direction on what companies need to do or which programs or processes exist to bring new products to market.

In general, growth enables businesses to remain healthy, and yet our Commission was told of situations in which **red tape tied to regulations or other bureaucratic processes seems to limit growth**. Largely, this is a timeliness issue, with the regulatory approvals reportedly taking so long that the business opportunity has substantially changed or passed by. This was cited as a problem for projects related to land and resource development, aquaculture, oil and gas, pharmaceuticals, health products, and auto manufacturing.

Sometimes the delays, complexity, confusion and rework were said to be arising from lack of alignment and coherence among regulators and regulations. In some cases, contributors identified related gaps in knowledge and expectations. For example, a website entry noted that a particular department asking for compliance with regulations had no standards of evidence in

place. “How can we comply,” the contributor asks, “when the department doesn’t even know what we are to comply with?”

Federal, provincial and/or territorial overlap was cited as another problematic factor, particularly for environmental assessments. A businessman from Gatineau, Quebec, suggested that using the federal procurement process could involve a business in weeks of preparation to bid on a single project. As with several other success factors, many contributors linked these experiences to risk aversion on the part of regulators and departments.

Canada has a strong interest in building exports and fostering businesses that are open to international markets, customer needs and wants, and new technologies, ideas and competitors. However, our consultation participants frequently indicated that **regulatory burdens impede efforts to develop new markets**.

For instance, although several participants noted the improvements that have been made to programs to speed cross-border movement of people and goods, they are reportedly still producing unnecessary red tape. There are compliance concerns about the “trusted shipper” programs, intended to make Canada–U.S. cross-border trucking easier. Attendees in Montréal raised the issue of administrative burden in the context of border security issues that have led to additional workloads for all transportation modes, and a Québec attendee informed us that a rising tide of import and export regulations was damaging relations with offshore clients.

In other instances, it was suggested that regulations—the dual use goods list, again—need to be updated more promptly to improve export performance. By far the greatest number of observations respecting getting products to new markets, however, centred on the issue of **harmonization across jurisdictions**. Examples underpinning these comments came from several different industries—notably wine producers, those engaged in trans-Canada trucking, and business owners dealing with the differences in tax rules and regulations across federal, provincial and territorial boundaries.

Best Practices to Be Replicated

Although, by design, the Commission largely heard the concerns and complaints of businesses as they confronted red tape, it should be noted that we also received unsolicited compliments. They touched on the way in which some departments implemented their regulations, policies and programs and were held up as best practices that could be followed or replicated as departments respond to the concerns presented to the Commission.

A number of federal programs were singled out as helping businesses navigate government programs or make applications for assistance. The Industrial Research Assistance Program, with its well-trained industrial technology advisors, and the BizPaL website, with its single window for information on federal, provincial and territorial permits, were named as examples. Certain other e-services were applauded, with improvements to CRA's My Account, My Business Account and HST online filing being cited. The Major Projects Management Office was acknowledged as having assisted businesses in dealing with environmental assessments across federal regulators, speeding up the process considerably. Some of the trusted shipper and traveller programs such as FAST, NEXUS (a Canada-U.S. program designed to let pre-approved, low-risk travellers cross the border quickly), Customs Self Assessment, the Customs-Trade Partnership Against Terrorism, and Partners in Protection were seen as having reduced border congestion and having allowed border officers to focus limited resources where they are most needed. Close collaboration between Health Canada and Environment Canada on the new Chemicals Management Plan was mentioned. A more performance-based approach to regulations at Transport Canada was lauded. Many participants noted that, most often, they encountered courteous and professional public servants who were doing their best to serve all clients; for example, officers of Health Canada's Food and Drugs Act Liaison Office were said to be very helpful.

Specific Responses to Top-of-Mind Irritants

The solutions proposed for specific regulatory red tape issues fell into several overarching categories.

One suggestion was that regulations might, in some cases, be eliminated altogether or that another approach might be substituted. Some regulatory requirements were considered by participants to be obsolete. To address such cases in an ongoing fashion, regulators were advised to carry out periodic reviews to determine meaningful purpose and ongoing usage for any information requested. Proposals were made to **exchange regulations for non-regulatory approaches** when actual elimination was not practical. In some cases, it was suggested that a general rule might replace a reporting requirement. Other substitute options included self-regulation, voluntary adherence to stipulated requirements or reliance on approvals provided by other jurisdictions. It might also be possible to substitute mandatory licensing or approval processes with simple notifications. Direct data collection might be exchanged for approaches that involve obtaining required information from sources other than surveys.

Given that establishing complicated, prescribed processes was seen as the government's primary response to perceived risk, some participants suggested that there be a **much greater focus placed on outcomes**; in one contributor's opinion, we "need to ensure that regulations become more performance-oriented, focused on outcomes, not too prescriptive," and to couple this

alternative approach with “swift and severe penalties for breach of performance-based regulation.” A website contributor suggested that if process must be prescribed, it should be “reviewed by average people. Can they follow it? Can they make recommendations on how to make it better?”

The **scaling down of regulatory requirements** was also thought to be a feasible solution in certain cases. Reductions, it was suggested, could be accomplished by cutting back on the frequency of information submissions or the number of different formats used to collect essentially the same information, assuming that this downscaling could occur without compromising the government’s capacity to mitigate risks to health, safety and security of the environment. In some cases, regulatory requirements specify that businesses have licences or engage in other activities for which the government recovers its costs. Scaling down could, it was suggested, also include reducing fees for smaller businesses.

In some cases, regulations do not come into force until a business has passed a certain threshold (financial, sales volume, number of employees, etc.). Consultations revealed the view, on the part of many businesses, that these **thresholds need to be rethought**—that they are not taking into consideration the difficult circumstances of many small and new businesses. Often, the opinion was that the thresholds at which regulations become relevant should be reviewed and possibly raised, allowing more businesses to be exempt when no additional risk was posed by doing so.

As part of the broader issue of coordination—across jurisdictional boundaries and interdepartmentally, for example—contributors told us that it would be useful if **departments could begin by making sure that their own internal positions and processes were aligned**. This means that regulations are understood in the same way in all sectors of the regulatory organization and that they are applied in the same way, regardless of regulated party, geographic location, or inspector or auditor responsible for enforcement. It also means that the regulator is not contradicting itself or enforcing compliance with rules or standards that are not well developed.

The need for **better appeals and complaints mechanisms** was also noted. As one website entry stated, “a fast-tracked complaints process” is required “that allows an immediate hearing to determine whether a...remedy is called for.”

Simplification was also considered a solution to many of the specific irritants mentioned. Participants asked for better and more accessible guidance, provided in plain language, in order to minimize the need for businesses to hire specialized external consultants to help them comply with regulations. They also wanted forms that were shorter, or at least clearer, and they wanted

the submission processes reduced in length and complexity or made easier, with fewer steps or “hoops” to jump through. The same was true for processes related to generating reports, keeping records and paying fees. In many cases, entrepreneurs indicated that better, more interactive information technology on the part of government would go some way toward helping them with their red tape frustrations.

To address these issues, businesses and industry associations indicated that it was **crucial for regulators to become familiar with industry realities**. In Halifax, regulators were advised to get out into the field more often so as to have a better appreciation of the real cost–benefit results attached to their decisions and processes. A roundtable participant in Calgary said that regulators “should be better educated and informed about the industries which they regulate (it’s frustrating to deal with a regulator in Ottawa who has never seen an oil rig).” The government, he said, “should encourage the secondment of federal regulators into regulated industries and vice versa.” We need to “build a shared understanding of issues from both the regulator’s perspective and that of the business”—a need that “will become all the more acute as the generation of experienced regulators begins to retire.”

Underlying Systemic Issues: Processes, Practices and Policies

Over our consultations, it became clear that many contributors believe that the way forward requires more than just attention to single irritants or replication of best practices, important as these are. We heard comments on the need for more fundamental change to the way that governments create and manage regulations. We have grouped these potential changes into six areas. Although we have not yet reviewed the comments and proposals in depth or had the opportunity to assess their applicability, we believe that there is value in summarizing what we heard.

We received suggestions that the government needs to **change regulatory design to improve the effectiveness of new regulations and minimize additional red tape**. Businesses proposed that consultations on new regulations should be conducted earlier than publication in the *Canada Gazette*, Part I, and should be held more frequently, be more standardized, and take place at the “grass roots,” rather than at the association or executive levels only. A need to set out, up front and in plain language, the purpose of regulations and how businesses might comply was identified as a pressing need. Related suggestions included ensuring that regulators understand the industries they are regulating through training, assessing business impacts more carefully, undertaking more and better risk-based cost–benefit analyses, and thinking through implementation strategies and reporting approaches in more detail in the design stage. It was also recommended that government consider alternatives to regulation more frequently—for example, self-regulation, self-certification and adherence to codes of practice—in order to achieve its policy goals. Some business representatives called for greater use of “performance” or

“outcome-based” regulation in some cases to supplement and even replace the current focus on mandatory processes.

Overall reduction of both the stock and flow of regulations (i.e., existing regulations and those that are new or amended) was also proposed as a means of reducing the compliance burden on businesses. Government was advised by participants to concentrate on several approaches. These included performing a regular, systemic review of existing federal laws and regulations to reduce the overall volume, and introducing measures to control the creation of new regulations. Business owners also told us that measuring regulatory compliance costs over time and benchmarking costs against those of other jurisdictions might build cost awareness among regulators. Measures could provide essential information for setting red tape reduction targets and help meet accountability and transparency commitments to citizens and parliamentarians. Information requests, in particular, were recommended for closer, more thorough analysis to assess costs and benefits.

One of the main pieces of advice we received was that **improved interdepartmental cooperation** is essential to addressing the fact that many agencies at all levels of government regulate in the same fields. To address this problem, contributors suggested identifying areas where increased coordination is needed among federal regulators—for example, on inspections, audits, requests for information and associated forms—and then devising practical solutions. It was suggested, for instance, that the government could appoint lead departments where particular approval processes overlap; food inspections and environmental assessments were two examples. Also recommended was the submission of regulatory information to a common database from which all regulators could draw, rather than making separate requests. We received suggestions on a single-window approach that would allow businesses to obtain, by departmental portfolio or business sector, information and guidance on all regulatory requirements relevant to them; the BizPaL website hosted by Industry Canada was given as an example. The government might, in addition, consider using a risk-based approach to cut the frequency or quantity of information updates. For major projects, it could adopt the Major Projects Management Office approach—i.e., a one project, one review process—which allows the substitution of provincial proposals or results where applicable.

Business owners consider **service improvement and professionalism when ensuring compliance** and undertaking regulatory enforcement to be critical across the board of regulatory programs and activities. They want regulators to move from a perspective that is often seen as largely adversarial to one that is more oriented to problem solving and professional service in order to encourage business compliance. At the service level, they want front-line staff to be available by phone so that they are not caught in endless voice-mail loops, particularly when trying to learn how and when to comply or where their case sits in an approval process.

Moreover, they want these front-line individuals to have a solid understanding of the regulations and the business issues in their assigned areas. They want continuity on their files as well, i.e., to deal with the same person every time they interact with a department, and they want staff to be accountable for the advice and interpretations they give. Other suggestions included provision of interpretations and decisions in writing and the establishment of a client bill of rights for regulated entities, as well as codes of conduct or charters for regulators. In a few instances, it was suggested that firms might be prepared to pay **fees for specific services** if appropriate service standards were set and respected.

A **focus on small businesses**, given the disproportionate cost that regulatory burden has on them, was another area where business owners recommended action. Suggested solutions were, in some cases, linked to proposals in other systemic areas. For example, consultation participants suggested that giving more attention to regulatory design should include consideration of issues unique to small businesses. A number of business owners pointed to the type of small business “lens” or checklist used in British Columbia. It should be noted that the government has indicated, in Budget 2011, its intention to introduce such a lens for use at the regulatory design stage.

Other solutions included applying a risk-based approach to compliance that could reduce reporting for businesses that have excellent compliance histories, and fostering a stronger service orientation among regulators, given that small businesses need more support than businesses that have more people, time, money and expertise. Service improvement suggestions made by small businesses included better use of e-services, launching a “pathfinder” office to help in navigating the web of regulations across departments, establishing a small business advocacy function to ensure that small business views are addressed in the development of new regulations, creating ad hoc “tiger teams” within government to deal with key regulatory concerns, and setting up a permanent government and small business forum to engage small business in issues throughout the regulatory life cycle.

Contributors to our process told us that they wanted the option of complying with requests both by paper and online. They wanted plain language used in documents, correspondence and other interactions to enable non-experts to understand the requirements. They also believed that professional training should be provided to regulators in order to emphasize service orientation and to prepare front-line staff to make some decisions themselves, based on a careful assessment of risk.

Our consultations indicated a strong belief that the federal regulatory system needs more **transparency, predictability, and accountability**. To achieve transparency, businesses told us they want procedures and practices that give them access to information on regulators' plans and decisions. They want to know with reasonable certainty what regulators intend to do in the future in order to guide their own long-term planning. They want the government to ensure that a particular person or organization is always answerable for a regulation's performance, administration, interpretation, monitoring and enforcement.

Respecting predictability, business owners suggested establishing commitments that have fixed time frames for responding to questions and deciding on submissions, making linkages between performance standards and budgets, and providing advance notice of plans to establish, amend or repeal regulations. To achieve accountability, businesses suggested that regulatory outcomes be tracked to determine whether policy objectives were being met and non-compliance reduced. They also wanted information on results, i.e., whether the regulatory impact statements developed during the design phase were, with time and experience, proving accurate or whether unintended consequences might be evident as well. To ensure sustainability, contributors proposed that regulators set objectives for making compliance with regulations progressively easier, cheaper and faster.

To oversee all of this activity, some contributors suggested that a minister be responsible for the efficiency and effectiveness of regulations and to act, in the regulatory area, as an advocate for small and medium-sized enterprises.

Next Steps

The consultation phase was extremely productive. More information on this phase of our work is provided in our appendices to this report, available on the Commission's website at www.reducedredtape.gc.ca.

We sincerely thank all those who have helped us by commenting on key red tape irritants, both at the level of individual business activities and at the level of systemic issues. We were impressed with the quantity and quality of contributions; they were very clear, candid and insightful. They have given us a basic body of evidence to use in moving on to the final phase of our work, which is to analyze and assess this evidence, look for solutions to individual irritants and make recommendations to the government on how best to provide lasting, systemic solutions.

As part of this analysis, we are making sure that we have the whole story. To ensure clarity and accuracy, we are going back to some stakeholders and approaching others to obtain more information. We want to fully understand the significance of specific proposals for the economy, for particular industries, and for small businesses, and we want to ensure that health, safety,

security and the environment are appropriately safeguarded. We are seeking the perspectives of regulatory experts so that our eventual recommendations will be sound and useful.

Our secretariat is also putting intensive effort into working directly with federal departments, agencies and other regulatory bodies to obtain additional explanations and advice and, in turn, to provide direction and guidance on how they should proceed. For example, all irritants have been divided into groupings by departmental responsibility and shared with the regulators in question. Currently, these organizations are involved in analyzing the irritants brought to their attention, determining underlying departmental issues, and devising and submitting response plans on those issues. In all cases, traceability to original participant input has been maintained.

The systemic solutions proposed and the expert consultant papers being written on these systemic solutions are also being shared with senior departmental working groups and are being revised with their help. In addition, a campaign has been run at the level of front-line regulators to solicit input on how regulations and regulatory processes might be improved from their perspective. All of this information will be synthesized to form the basis of the recommendations that we put forward, to the Lead Minister and the government, in the fall. Our aim in all of this work is to focus on possible improvements that would be most in line with our mandate from Prime Minister Harper—to effect the improvements likely to have the greatest impact on reducing the unnecessary compliance burden that is standing in the way of businesses being innovative, competitive and successful.

Where we have identified irritants that our Commission is particularly well placed to address, we are taking action now. For example, we are holding follow-up, targeted discussions with industry associations from key federally regulated sectors that are focused on identifying lasting solutions to the challenge of red tape. We saw during our consultations that these organizations have the depth of understanding to help us get closer to workable solutions rapidly. As well, our Commission is launching an online consultation process to seek views on the proposed solutions to systemic challenges that participants have identified. Finally, we will also be seeking practical advice from jurisdictions that have already worked to reduce their own compliance burden. Some of these initiatives are described in Appendix H.^{xxi}

A key element of our work during this phase is to engage federal departments and agencies on specific irritants where the evidence seems to show apparent room from improvement. We are asking them to aim for results that will be cost-effective, sustainable, feasible in practice, timely to implement and, ideally, applicable to small and large companies. We are challenging them to dig deeper to find ways to address the red tape irritants under their control.

We are pleased that departments are responding. They are looking at issues we have shared with them and are developing approaches to improve clarity and consistency—approaches that, in some cases, may include developing simplified regulations. They are considering how to improve their understanding of risk factors and to use that understanding in setting requirements and standards. They recognize the value of enhancing their service orientation and the importance of better communications.

This work has only just begun, but our Commission is reassured with the results to date. We are particularly grateful to the people in business across Canada who responded to our call for comments and ideas. We now have a starting point from which to examine red tape issues in depth and to consider the best recommendations for improvements. The overarching timeline for the remainder of our work is outlined in Appendix I.^{xxii} We look forward to that work—and to the benefits it will bring to businesses and citizens across Canada.

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| i | Appendix A |
| ii | Appendix B |
| iii | Appendix C |
| iv | Appendix D |
| v | Appendix E |
| vi | Appendix F |
| vii | <i>Cabinet Directive on Streamlining Regulations</i> , http://www.tbs-sct.gc.ca/ri-qr/directive/directive00-eng.asp |
| viii | Paperwork Burden Reduction Initiative, http://www.reducingpaperburden.gc.ca/eic/site/pbri-iafp.nsf/eng/Home |
| ix | Action Task Force on Small Business Issues, http://www.cra-arc.gc.ca/formspubs/pbs/rc4483-ctntmspdt-eng.html |
| x | Regulatory Cooperation Council, http://www.borderactionplan-plandactionfrontalier.gc.ca/psec-scep/regulatory_cooperation_council-conseil_cooperation_matiere_reglementation.aspx |
| xi | Major Projects Management Office, http://www.mpmo-bggp.gc.ca/index-eng.php |
| xii | Consulting With Canadians Web portal, http://www.consultingcanadians.gc.ca/cpcPubHome.jsp?lang=en |
| xiii | My Business Account, http://www.cra-arc.gc.ca/esvc-srvce/tx/bsnss/myccnt/menu-eng.html |
| xiv | Appendix G, [URL to come] |
| xv | <i>Key Small Business Statistics—July 2008</i> , http://www.ic.gc.ca/eic/site/sbrp-rppe.nsf/eng/rd02304.html |
| xvi | My Business Account, http://www.cra-arc.gc.ca/esvc-srvce/tx/bsnss/myccnt/menu-eng.html |
| xvii | Committee on Internal Trade, http://www.ic.gc.ca/eic/site/ait-aci.nsf/eng/h_il00069.html |
| xviii | Expert panel on the Review of Federal Support to Research and Development, http://rd-review.ca/eic/site/033.nsf/eng/home |
| xix | Major Projects Management Office, http://www.mpmo-bggp.gc.ca/index-eng.php |
| xx | Regulatory Cooperation Council, http://www.borderactionplan-plandactionfrontalier.gc.ca/psec-scep/regulatory_cooperation_council-conseil_cooperation_matiere_reglementation.aspx |
| xxi | Appendix H |
| xxii | Appendix I |