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**Small Business
and Regulatory Burden
October 2003**



**Small Business Policy Branch
Industry Canada**

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Abstract

Regulatory burden is the intervention of government in the operation of a business and the cost of complying with regulatory requirements. When dealing with government regulations, small businesses often face proportionally higher costs than larger businesses due to economies of scale, resulting in a disadvantage for the sector as a whole. Measuring the compliance costs from the firm's point of view is difficult, considering the range of requirements imposed by all orders of government through legislation, regulations or administrative policies. Governments distinguish restrictive regulations from enabling regulations, which confer a clear benefit to businesses and outweigh their costs. Policy responses to reduce regulatory burden may be aimed at easing the compliance process; reducing compliance costs by changing the way regulations are delivered ("regulatory flexibility"); or favouring small business in the application of regulations ("regulatory tiering"). The paper concludes with a number of questions the federal government may want to consider in addressing this issue.

1. Introduction

Regulatory burden, like tax, is often cited as a major irritant for small businesses. In a 2001 survey by the Canadian Federation of Independent Business, government regulation and paper burden was identified as the highest small business priority after tax burden and employment insurance. For the past several years, this issue has been accorded such a high importance that a small business framework would not be complete if it were not addressed.

Compliance imposes a cost and businesses generally do not like regulations that restrict their activities. For small business organizations, their concern is that small businesses proportionally face higher costs than larger businesses due to economies of scale, producing an unwarranted disadvantage for the small business sector. Small businesses are less likely to have the expertise to deal with regulatory requirements whereas larger businesses often have functional departments such as accounting and legal services to handle compliance issues. As a result, the concern is that managers or operators of small businesses are distracted from their core business activities. This inefficient diversion of resources has a potentially negative impact on productivity and competitiveness.

The purpose of this document is to delineate the issues surrounding regulatory burden. Such an examination is intended to provide a foundation for further analysis of this issue to support small business policy development. The first section discusses what is meant by regulatory burden. The second section looks at difficulties of measuring the impact of regulatory burden on small business. Over the years, several governments in Canada and in other jurisdictions have developed initiatives to address the concerns. The third section, therefore, looks at the various policy responses and evaluates the underlying rationale for each. The last section poses questions that should be addressed in determining an appropriate follow-up to the issues raised in this document.

2. What is regulatory burden?

Regulatory burden is essentially government burden. *Breaking Through Barriers*, a 1994 report of the Small Business Working Committee, offers a definition:

The burden of government is the intervention and interference of government in the operations of a business. ... It is the cost involved in complying with regulatory requirements, collecting taxes and responding to information demands from government. And it is the administrative hurdles, the lack of customer service, the delays, the uncertainties and the frustration involved in dealing with public bureaucracy.

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The above definition recognizes that government burden goes beyond regulations to administrative practices such as policies, guidelines and other requirements imposed by a government department. The definition, however, focusses only on one aspect of regulatory burden.

Defining regulatory burden can be approached in two ways. The first is to look at the issue from a firm-level view, which the above definition does. The second takes a more macro perspective. Both are important since regulatory burden is a complex issue that must be evaluated from all fronts.

From a firm's point of view, compliance costs are important and comprise the collection of requirements imposed by all orders of government through legislation, regulations¹ or administrative policies.² This includes the costs of meeting the requirements of the regulatory system, including the administration and paperwork costs. Often, the compliance aspect of regulatory burden is referred to as paper or information burden. The focus here is on regulatory requirements³ and what additional cost they impose on businesses beyond normal commercial activities.

The macro approach recognizes that regulations are needed to achieve a range of economic and social objectives. Businesses bear a portion of the costs but they also benefit from them. The regulatory burden not only includes the compliance costs described above but also disincentives and other factors that may adversely influence business' productivity and competitiveness. For instance, the efficiency costs and, perhaps, transfer costs⁴ would be considered. An efficiency cost reflects the value of the resources forgone (the value of the product or service lost) due to the regulation. A transfer cost refers to the redistribution of income or wealth in direct response to a regulation.

¹The bulk of requirements are imposed by regulations since they spell out the details of policy decisions embodied in statutory provisions. Legislation is still important because it sets out the regulatory-making authority. Often, the regulatory framework cannot be fundamentally changed without amending the legislation.

²Administrative policies include guidelines, codes of conduct, standards and other requirements imposed by government. Unlike legislation and regulation, administrative policies generally do not have the force of law. However, small business must still comply with the requirements imposed by policies since the alternative would be to challenge them, necessitating significant resources.

³While very much interrelated, there is a distinction between a requirement and a regulation. Requirements are the discrete procedures that a small business must follow to comply with a given regulation. This distinction is useful when attempting to quantify the impact of a regulation on small business. For instance, a regulation requiring a corporation to file an annual report to the relevant government authority can be broken down into two procedures (1) completing and submitting the report (measured in the time taken) and (2) paying the filing fee (measured in the amount of fee paid). It is not too surprising, therefore, that the government of British Columbia recently found nine regulations to be the source of thousands of requirements.

⁴There is a debate over whether and to what extent regulation-induced transfers should be included as a real cost. See Crains and Hopkins, *The Impact of Regulatory Costs on Small Firms* (2001), for details.

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For policy purposes, the question to ask when examining regulations from a firm-level perspective is whether the regulations are most efficient and impose the least cost. For instance, if many of the requirements appear to overlap, attempts could be made to rationalize the requirements. Similarly, confusion over how to fill out a form suggests efforts should be made to simplify the forms in user-friendly terms and/or provide clearer guidelines. From a macro perspective, i.e., when evaluating the regulatory framework, the question is whether it is achieving the government's economic and social purposes and whether the costs are allocated in a manner consistent with those objectives.

3. Impact on Small Business

Difficulties of measurement

Addressing the issue of regulatory burden is not easy. Demands by small business to reduce information burden suggest that something should be done by government officials. However, good policy needs to be supported by data -- both qualitative and quantitative.

In Canada, there is some qualitative data. Over the years, the Canadian Federation of Independent Business (CFIB) has conducted a number of member surveys on tax compliance, the cost of government regulation in the agri-business sector, etc. All point to problems with regulatory burden. They do not, however, provide an objective measure of the costs faced by respondents.

This is not to say that qualitative data is not useful. If small firms articulate unique regulatory and information problems or impediments, there may be a justification for a policy targeting small business. However, if the same issues tend to bother small, medium and large firms and to more or less the same extent, a broad-based policy approach might be more appropriate. Qualitative data can also point to potential areas where regulatory simplification and better delivery may reduce overall costs.

As for quantitative data, very little exists in Canada. At least one attempt at the federal level has been made to quantify compliance costs (firm-level approach).⁵ However, no effort has been made to objectively measure costs from a macro point of view. The likely reason is the difficulty of measuring the intangible costs of regulatory burden – the opportunity costs and disincentives. The U.S. Small Business Administration recognized there was an information vacuum and commissioned several studies to measure regulatory burden at the macro level. A 2001 study's most important finding was that small businesses bear a disproportionately large share of federal regulatory burden.⁶ As described below, the methodology used to reach this conclusion illustrates the difficulties in measurement.

⁵ Information Management & Economics, Inc.: *Federal Information Costs for a Panel of Small & Medium Enterprises*, December 1995. (This benchmark study was commissioned by the Joint Forum on Paper Burden Reduction, formed in December 1994 by the Treasury Board of Canada.)

⁶Crains, W.M. and Hopkins, T.D., *The Impact of Regulatory Costs on Small Firms* (2001), a report for the The Office of Advocacy, U.S. Small Business Administration.

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The U.S. study relies on estimates that were obtained with varying rigour. On the one hand, it uses costs estimates by the Tax Foundation. Its approach was to multiply the compliance time required to fill out forms and the number of filings, and then multiply the total by various hourly wage rates that reflected the value of the preparer's time or the rate for a tax professional. On the other hand, to determine the efficiency costs of domestic commerce regulations, the report uses OECD's estimate that reforms in the transportation, energy, and telecommunications sectors would lead to an increase in U.S. GDP of 1 percent. The report calculates 1 percent of the country's GDP in 2000 to approximate the costs. The reliance on less than robust data potentially overstates the problem. In addition, many assumptions had to be made to separate the regulatory burden that fell on business from the burden that fell on individuals and government. Further assumptions were made to allocate the costs by firm size. Clearly, not an easy task and subject to differences of opinion.

Measuring firm-level compliance costs is less problematic. Two components of these costs are:⁷

- the time costs of internal staff on collecting, maintaining and understanding regulatory requirements; completing forms and preparing the necessary information; and dealing with the relevant government authority;
- the external financial costs of professional fees.

The measurement of these costs is, however, far from straightforward. Businesses that are asked to provide information about costs can have difficulty determining and identifying these costs. In a study for the Department of Finance on tax compliance burden, the authors surveyed members of the CFIB. They had hoped that the survey would solicit quantitative information about the size of the compliance costs. CFIB elected to elicit qualitative information instead. Based on past experience, the CFIB felt that many respondents would have found it too difficult to provide an accurate quantitative measure of their costs.⁸

Another aspect to consider is the overlap between the administrative activities a business would do as a part of its operations and regulatory requirements. The compliance burden is the paperwork and compliance activities that the government requires of small business over and above normal business practices. However, it is likely difficult for businesses to separate the compliance costs from these activities. As a result, the costs reported could be misleading.

Additionally, the underlying reason for high compliance costs may not be the regulatory system. For instance, firms that do not incorporate best business practices may have more difficulty meeting regulatory requirements, thereby leading to the conclusion that there is a compliance problem rather a management skills one. The Small Business Deregulation Task Force (1996) in

⁷Bickerdyke, I., and Lattimore, R., (1997), *Reducing the Regulatory Burden: Does Firm Size Matter?*, Industry Commission Staff Research Paper, AGPS, Canberra, December.

⁸Erard, B., (1997), *The Income Tax Compliance Burden on Small and Medium-sized Canada Businesses*, Working Paper 97-12 prepared for the Technical Committee on Business Taxation.

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Australia determined that firms that have not incorporated best practices would often find the burden larger because their internal procedures made compliance activities more difficult.⁹

Regulatory costs are only one part of the equation. Regulations have economic and social objectives, thus it is useful to also measure the benefits if one is to provide a rational analysis of the issue, especially when using the macro approach. The authors of the 2001 U.S. report, mentioned above, recognized more remains to be done and advised that the report be seen as “a building block toward a more adequate understanding of regulation, much but not all of which creates important and substantial benefits.” Benefits are distributed throughout society as a whole and very difficult to estimate.

Interestingly, in a 1995 report to Congress, the U.S. Small Business Administration dismissed measurement of benefits. It claimed that there is no comprehensive research estimating benefits available and that it is nearly impossible to allocate benefits among the affected persons and businesses. The report asserted that irrespective of the benefits of a given regulation, the existence of a disproportionate cost impact on smaller firms is important to policymakers. Specifically, the size, nature and trends of the disproportionate effect should compel a policy response.¹⁰

The benefits of regulations should be important for policymakers. For example, a cost-benefit analysis could distinguish between two types of regulations -- enabling and restrictive regulations -- resulting in a finely-tuned and more effective policy. Enabling regulations confer a clear benefit to businesses and outweigh their costs. The regulations governing the small business loans guarantee program under the *Canada Small Business Financing Act* are enabling. While they do require some paperwork, small businesses willingly comply to receive the benefit. Restrictive regulations, in contrast, serve an objective that benefits a greater good and the businesses do not perceive much benefit accruing to them, e.g. tax regulations. Complaints of regulatory burden often target restrictive regulations.

The assessment of regulatory burden is different for the two types of regulations. For enabling regulations, it is a matter of simply determining whether the procedures prescribed are more arduous than necessary. Greater analysis is needed for restrictive regulations; the impact on businesses needs to be weighed against the objectives of regulations and their effectiveness in meeting those objectives. Often, the benefits derived from restrictive regulations rule out simple solutions to meet businesses' concerns about regulatory burden.

⁹Bell, C. (1996), *Time for Business*, Report of the Small Business Deregulation Task Force, Department of Industry, Science and Technology, Canberra.

¹⁰*The Changing Burden of Regulation, Paperwork and Tax Compliance on Small Business. A Report to Congress.* Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, DC (October 1995).

Does firm size matter?

There are a number of international studies that indicate that while absolute compliance costs tend to rise with firm size, when expressed as a cost per employee or as a percentage of turnover, costs fall sharply with firm size. This may be explained by high fixed costs in learning about applicable regulations and undertaking procedures to ensure compliance.¹¹ It would be difficult to argue that the situation faced by Canadian small businesses is different. The limited data that exists indicate that smaller firms face higher costs of compliance, measured as a percentage of revenue. No data, however, is available to determine to what extent the burden of regulation falls disproportionately on small businesses. The U.S. data can only serve as a rough guide since the regulatory system it examines is different from that in Canada.

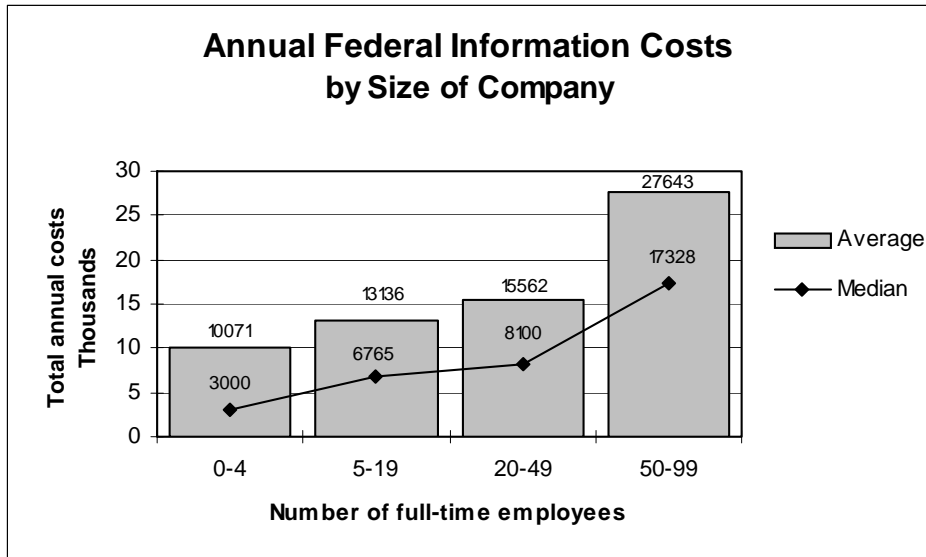
The 1995 study done for the Joint Forum on Paper Burden Reduction measured the cost to small and medium-sized enterprises in meeting federal information reporting requirements.¹² The Joint Forum was a private/public sector initiative to address almost 100 information burden irritants identified by the CFIB and in *Breaking through Barriers*. The study focussed on regular, recurring information requirements such as payroll remittances; reporting for the Goods and Services Tax (GST) and income tax; completing records of employment, Revenue Canada (as it was then called) audits and Statistic Canada surveys; preparing tenders and proposals to sell goods and services to the federal government; and other miscellaneous requirements.

The study used a panel of 710 SMEs representing companies with fewer than 100 employees across 16 industry sectors. Each was asked to estimate their costs in meeting federal information requirements. The study found that there were significant differences in the costs for businesses of different sizes. Smaller businesses spent a higher proportion of revenue compared to medium-sized firms. Businesses with fewer than 5 employees spent, on average, just over 8 percent of revenue while businesses with 5-19 employees spent an average of 3.8 percent of revenue. For larger SMEs, the proportion declined further – 2.4 percent for firms with 20-49 employees and 1.8 percent for firms with 50-99 employees.

The study found a wide variation in costs reported. When it compared the median with the average costs reported, there was often a significant discrepancy. The explanation given was that the average was typically higher than the median because there was a small group of companies reporting significantly higher costs. This underscores the difficulties of asking businesses to estimate their costs as discussed in the previous section. This discrepancy occurred with all firm sizes as the graph below illustrates:

¹¹Lattimore, R., Martin, B., Madge, A. and Mills, J., (1998), *Design Principles for Small Business Programs and Regulations*, Productivity Commission Staff Research Paper, AusInfo, Canberra, August.

¹²Information Management & Economics, Inc., *supra*, note 5.



Two of the factors identified to explain the discrepancy were: (1) the frequency of reporting and (2) the manual methods of collecting and reporting the information. The study found that, in some cases, small businesses were reporting more frequently than necessary. For example, some firms were filing GST returns quarterly because they were not aware that they qualified for annual filings. The study also determined that those businesses whose method of tracking and remitting were automated (i.e. using some form of computer software) reported lower costs and less frustration in completing federal information requirements. These observations indicate that the issue may not have been only compliance costs. Lack of awareness of federal requirements and poor business practices also seem to be at play, suggesting that management skills is also an issue.

As limited as the study is, it appears to be the only one available that attempts to quantify information burden costs at the federal level, albeit for only a few – yet important – requirements. The cost of regulatory burden at the provincial and the municipal levels is not known. What is also not clear is which level imposes the most costs. A simplistic answer is unlikely since it probably depends on the sector in which the business operates, the province and even the municipality. What is clear, though, is that businesses deal with the cumulative effect of regulations imposed by all governments. The available data contributes only a little towards understanding the impact of the regulatory system on small businesses in Canada.

4. Policy Response

Creating an efficient and effective regulatory system is a constant challenge for governments. The scope of economic and social objectives underlying regulations necessarily results in complexity. However, minimizing the costs of regulations is also an important objective. Such a task is difficult given the numerous sources of regulations – various departments and different orders of government. For most people, red tape is synonymous with government. To address this issue, government needs to choose the appropriate policy too.

Policy responses to regulatory burden can lead to deregulation. However, this paper distinguishes regulatory burden reduction initiatives from deregulation. Regulatory burden reduction initiatives accept the social and economic objectives of the regulatory system. The purpose of these initiatives is to minimize the costs by determining whether the procedures and requirements in place are the most efficient. Deregulation, on the other hand, results from a fundamental shift in the government objectives. Simply put, it is a decision by government not to exert any control, or to exert less control, in a given area. The distinction is not always clear. For instance, repealing a regulation may be a deregulation exercise or a way to reduce regulatory burden. Eliminating a regulation because it offers no benefits is not deregulation. The regulation was extraneous or, in other words, not efficient in meeting government objectives. In contrast, eliminating regulations because the government decides that greater benefits would accrue if an industry sector were not regulated is deregulation.

The policy responses to reduce regulatory burden fall into three broad categories¹³:

- policies favouring small business in the application of regulations (“regulatory tiering”);
- initiatives that attempt to reduce compliance and other regulatory costs by changing the way regulations are delivered (“regulatory flexibility”); and
- broad-based approaches aimed at easing compliance, cutting red tape and generally reducing the regulatory burden for all businesses.

Regulatory tiering

Regulatory tiering is varying regulatory requirements according to firm size. For small businesses, it can reduce their compliance costs. There are two general ways tiering can be applied:

- *exemptions* - small businesses may be exempted from the substantive requirements of a regulation, or from associated regulatory requirements such as record-keeping or inspection programs; and
- *lighter regulatory requirements* - examples include less stringent standards, less onerous reporting and record keeping requirements for small businesses.

¹³Bickerdyke & Lattimore, *supra*, note 7. This section borrows much from their analysis.

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An example of regulatory tiering is the reporting of Goods and Services Tax (GST). Smaller firms can qualify to report their GST on an annual basis, while medium-sized firms have to report on a quarterly basis and large firms, on a monthly basis.

Generally, efforts to reduce regulatory burden should benefit all businesses. Policies that are targeted towards small business need to be carefully considered since tiering can ultimately weaken the standard or objective of a particular regulation. Therefore, justification for regulatory tiering needs to be supported by compelling data.

The case for regulatory tiering depends on there being a significant difference in regulatory costs across firms sizes and that this difference has an economic effect. Special treatment for small business may be justified if the evidence indicates that:

- it is justified on equity grounds, i.e. the regulations place an unfair burden on small businesses relative to larger ones; or
- it is justified on efficiency grounds, i.e. the compliance costs per unit of output confer a competitive advantage on larger firms that reduce the viability of small firms, thereby reducing competitive pressures and leading to less efficient outcomes.

For example, regulatory tiering based on equity considerations could be defended if the following factors existed:

- the disproportionate costs of new regulations or compliance requirements can lower the returns of owners and managers of small businesses;
- entrepreneurs must typically work longer hours in complying with the regulations; and
- the compliance costs may be considered “unfair” in the sense that smaller businesses face higher proportionate compliance costs (measured against turnover) than larger firms.

Regulatory tiering that enhances efficiency can be justified. For instance, the following circumstances would suggest that tiering is appropriate:

- the cost differences between small and large firms in complying with a uniform regulation substantially reduces the competitiveness of small businesses and this leads to the dominance of a few large firms that are able to exercise market power; or
- the regulatory cost per unit of output vary significantly with firm size, and large firms do not provide close substitutes for the goods and services of small firms in a particular industry (e.g. service activities - such as hair salons - are more efficiently provided by small business).

There are other factors that need to be taken into account. For instance, businesses can shift some of their compliance costs to customers by raising prices. Tiering can have its own re-distributional effect which may or may not be desired. Consequently, when developing a case of tiering, all the factors have to be considered on a case-by-case basis.

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Flexible delivery

Delivery of regulations relate to the administrative processes that exist to achieve the requirements of regulations. Flexible delivery is essentially client-focussed service delivery. Specifically, it responds to business concerns regarding the paperwork, the uncertainty of what is required and when, and the costs of dealing with three orders of government. Flexible delivery differs from regulatory tiering in that the initiatives do not offset the benefits of the regulations, i.e. they do not weaken the objective of the regulation to accommodate the needs of small business.

Flexible delivery initiatives includes:

- services to assist small businesses in understanding regulations and their obligations under them; and
- one-stop access points to help small businesses in meeting regulations associated with a particular business activity.

Data to support such initiatives do not have to be rigorous. Unlike regulatory tiering, the preference given to small businesses do not weaken the objective of a regulation. In fact, flexible delivery could improve the benefits of the regulation by encouraging increased compliance since some non-compliance among small businesses may be due to lack of awareness. Consequently, such initiatives can rely on qualitative information such as customer feedback.

Examples of a flexible delivery initiative are the Small Business Guide to Federal Incorporation, Canada Business Service Centres and the online www.businessgateway.ca. In making government services accessible, small businesses can readily find out more information on regulations that apply to them. A more targeted informative online tool is the U.S. Small Business Administration's online site (www.businesslaw.gov) which is dedicated to legal and regulatory information for small business and which offers plain-English guides to basic laws applying to each stage of a small business, and compliance assistance information by topic.

The Canada Customs and Revenue Agency's (CCRA) partnerships with the provinces is also a good example. With a single business number, businesses can apply for CCRA programs (GST/HST, payroll deductions, export/import and corporate tax accounts) and, in Ontario and Nova Scotia, for provincial accounts and licences and permits.

Broad-based approach

The broad-based approach encompasses a wide variety of activities. The most evident in Canada are the activities supporting red-tape reduction commitments made by several provinces. A few provinces have set targets. For instance, British Columbia has promised to reduce red-tape by a third in three years. This type of announcement serves as a strong impetus to review the benefits

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and costs of regulations. Saskatchewan, as part of its strategy, not only screens regulations but also offers mediation services for regulators and the regulated industry to solve problems. Ontario has set up a permanent body, the Red Tape Commission, to prevent unnecessary rules and regulations from being created in the future and to eliminate any unnecessary burden. At the federal level, the Joint Forum on Paper Burden Reduction, created in December 1994 with a mandate to reduce paper burden by 1998,¹⁴ is an example of a broad-based initiative. While these activities are often highlighted as an example of what government is doing for small businesses, they benefit all businesses.

More importantly, such initiatives can act as a useful check against unnecessary regulations. Broad-based activities such as red-tape reduction strategies are based on the rationale that a regulation which generates very small or no benefits should be eliminated or not introduced in the first place. Businesses should not have to pay the costs of inefficient regulations. Red-tape reduction is really a way for government to rationalize its regulatory system. Objective data generally does not have to support these types of initiatives because they serve as tools with which government can try to create an efficient regulatory framework with a given set of economic and social objectives.

By challenging existing and new regulations, broad-based initiatives can also effect a change in the regulatory mind set. Policy makers often unconsciously create problems by developing regulations without a real appreciation of the operating environment of regulated stakeholders. Red tape reduction initiatives often force a review of regulations against an agreed set of criteria which requires policy makers to be more rigorous in assessing the impact of a regulation. Such an assessment should lead to more efficient regulations.

In practice, though, changing the regulatory mind set is difficult since it involves effecting a culture shift, a very long and hard process to which the American experience can attest. In 1976, the United States government created the Office of Advocacy in the Small Business Administration to be an independent voice for small business in policy deliberations. It was specifically required to measure the costs and impacts of regulation on small business. However, the federal government found that this was not sufficient and that it had to provide strong direction. As a result, it enacted the *Regulatory Flexibility Act* in 1980 to mandate agencies to consider the impact of their regulatory proposals on small businesses, analyse equally effective alternatives and make their analyses public for comment. The law was not intended to create special treatment for small business. Instead, the intention was that agencies consider their impacts on small business to ensure that, in their efforts to fulfill their public responsibilities, their proposals did not have unintended anti-competitive impacts. Agencies were to explore less

¹⁴The Joint Forum issued its last report in 1997, *Reducing Regulatory Burden on Small Business, Making it Permanent*. It recognized that the public service needed to be more sensitive to the needs of small business and challenged government to continually question its information requirements.

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burdensome alternatives that were equally, or more, effective in achieving agency objectives.

The Office of Advocacy submits an annual report on the operations of the *Regulatory Flexibility Act* to the President and Congress. The latest report, *20 Years of the Regulatory Flexibility Act*, indicated that federal agencies were finally beginning to do what they should have been doing when the statute was enacted in 1980 – considering small business concerns as rules were being developed, not as an afterthought. It found, however, that the legislation was still viable and necessary to avoid unintended consequences from potentially burdensome regulation.

The *Regulatory Flexibility Act* is not without its critics. The claim is that regulatory agencies cannot estimate costs and benefits of regulations, much less the effect on small business compared to large business.¹⁵ The data, funds, and knowledge to do such an analysis are not available. Because of confidentiality concerns, the data needed to perform the analyses are unavailable to the regulatory agencies. Nor does the Office of Advocacy offer any expertise on how to measure the impact.¹⁶ Consequently, the costs and benefits of clean air and water, a safer work environment, and safer cars cannot be readily or reliably measured as the *Regulatory Flexibility Act* requires.¹⁷

Despite the challenges, broad-based initiatives can be effective. Concerted efforts to reduce regulatory burden may provide the necessary stimulus to come up with creative solutions. Equally important, some measures provide a venue through which small businesses can channel their concerns. Large businesses have the resources to hire lobbyists who have the network to influence public policy; small businesses do not. Policy makers need to encourage ongoing feedback to make better decisions. Even if they do the required analysis, the unintended consequences are not always apparent until the regulation is in force. Because small business often view government as one entity, it is difficult for them to know where to go to complain. Broad-based initiatives such as red tape commissions provide them with that point of contact.

¹⁵Hirschberg, David, *The Job-Generation Controversy: The Economic Myth of Small Business*, M.E. Sharpe Inc., 1999.

¹⁶The Office of Advocacy is an independent agency within the SBA, created in 1976 to represent the views and interest of small business in federal policy making activities.

¹⁷Despite these concerns, President Bush signed Executive Order 13272 on August 13, 2002, which requires agencies to place emphasis on the consideration of potential impacts on small firms when promulgating regulations in compliance with the Regulatory Flexibility Act. The signing of EO13272 is an important component of the U.S. Administration's Small Business Agenda.

Concluding Remarks

At the federal level, regulatory burden has been addressed primarily with delivery flexibility initiatives. With the Government On-line and service improvement initiatives, significant progress has been made, even though the focus of these initiatives has not been on regulatory burden. The Canada Customs and Revenue Agency (CCRA), in particular, is in a position to make a big impact because the agency is often small businesses' primary contact with government. Its partnerships with other departments and the provinces are very promising and it has a feedback system in place to solicit small businesses' views.

The limitation with the federal government's approach is that it only forces a change in departments that have ongoing service relationships with small businesses. For instance, CCRA administers the tax legislation but it is the Department of Finance that is responsible for provisions of the *Income Tax Act* and the regulations. Often, in consultations, CCRA is faced with complaints from small businesses that relate to the Act and its regulations. Because dealing with these issues is outside its jurisdiction, CCRA can only forward the comments to the Department of Finance where the service orientation is likely not as developed.

This dichotomy between operations and policy within the federal government ultimately limits the extent to which flexible delivery initiatives can reduce regulatory burden. The structure within government creates an environment where officials in policy departments are often detached from the realities of small businesses. They consult on an as-needed basis, for instance, when developing a new regulation and legislation. Moreover, the difficulties of engaging small businesses during consultations increases the chances of less than efficient regulations being implemented. Once in place, it is difficult to amend since there is often no continuous feedback process in place and no authority such as a red tape commission to question the regulations.

Depending on how far it is taken, a customer-service orientation in a policy shop increases the risk of becoming a captured regulator. Flexible delivery is, therefore, not often the appropriate response in areas where policy is removed from operations. However, in assessing the costs and benefits of a particular regulation, better information only leads to better policy. Broad-based initiatives such as those being pursued in the other provinces and the United States can be more effective.

Admittedly, without the commitment and/or the necessary resources to support an ongoing authority such as a Red Tape Commission or the U.S. Office of Advocacy which supports the *Regulatory Flexibility Act*, a focus on regulatory burden is hard to sustain. The importance of resource requirements should not be overstated, however. Provinces such as Saskatchewan and Alberta did not dedicate significant resources to their initiatives. Lack of commitment, more so than resources, is the biggest obstacle.

5. What next?

This document raises a number of issues which the federal government may want to address. No recommendation is provided. Instead, a number of questions are set out below to commence a dialogue on the possible response.

Measurement

- ▶ Should the general impact of existing regulations on small business be measured?
- ▶ What specifically should be measured? Should the data focus on certain sectors or regulations?
- ▶ For what purpose? To provide sound rationale for regulatory tiering?
- ▶ Who has the responsibility - public or private sector? Which public or private sector body should have the lead?
- ▶ Who will provide the funds?
- ▶ What is the appropriate methodology?

Policy Response

- ▶ Is regulatory tiering justified in any area for small business? What is the supporting data? Should such data be obtained? (Refer to measurement questions above.)
- ▶ Other than existing initiatives, are there flexibility delivery responses that should be implemented? What and by whom? What are the costs involved?
- ▶ Should the federal government resuscitate the Joint Forum on Reducing Paper Burden or undertake an initiative like the Red Tape Commission or other paper burden reduction exercises? What has been the experience of the provincial governments? Which department should have the lead? What are the resources required?
- ▶ Do regulatory bodies need assistance in doing cost-benefit analyses? If so, what should be done and who should provide it?

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