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COST OF COMPLIANCE STUDY: THE IMPACT OF GOVERNMENT REGULATIONS ON BUSINESS
Vol. I

by

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PRÉFACE

Le mandat sur la réglementation confié au Conseil économique du Canada par le Premier ministre a pris naissance au cours des discussions qui ont eu lieu lors de la réunion des premiers ministres en février 1978. Le Conseil a donné suite à cette demande en entreprenant une série d'études comprenant l'analyse de certains règlements, ainsi que d'industries et d'entreprises particulières. L'étude sur les coûts de conformité aux règlements avait pour but d'approfondir nos connaissances beaucoup trop superficielles quant aux dépenses engagées par les compagnies individuelles pour se conformer aux règlements imposés par tous les paliers de gouvernement au Canada.

Afin de maximiser ses chances d'obtenir la collaboration des compagnies pour ce qui est de fournir les données sur les coûts et autres renseignements possiblement confidentiels, et pour assurer que cette information soit convenablement examinée, le Conseil a fait appel à une société de conseillers en gestion. Les services de l'entreprise Woods Gordon ont été retenus suite à un appel d'offres précisant les principales caractéristiques du programme d'étude établi par la directrice du projet.

Sous la direction générale de la directrice de projet et en consultation étroite avec elle, Woods Gordon a examiné attentivement deux cents compagnies pour obtenir dix cas à analyser, a dirigé la préparation des cas par ces compagnies en imposant une méthodologie commune, et a contrôlé les renseignements présentés par la suite. La directrice de l'étude et Woods Gordon ont étudié chaque cas avec les dirigeants des compagnies et ont pris bonne note des dimensions du processus de réglementation qui dépassaient les cadres du cas.

Les principaux organismes de réglementation cités dans les cas ont eu l'occasion de présenter leur commentaires. Au cours d'entrevues avec certains hauts fonctionnaires, les contraintes imposées aux gouvernements en ce qui a trait à l'élaboration des politiques et à l'application du processus de réglementation, ainsi que les réformes qui pourraient aider à

réaliser plus efficacement certains objectifs sociaux et économiques, ont été examinées de près.

L'étude sur les coûts de conformité aux règlements est présentée en plusieurs volumes, dont le plus important contient le rapport de la directrice sur les buts de l'étude, les questions générales identifiées et les recommandations, suivi du rapport de Woods Gordon sur la conduite de l'étude, les résultats détaillés et les réactions des organismes de réglementation. Un volume sur la méthodologie décrit la façon dont l'étude a été organisée et effectuée. Dix volumes présentent chacun une des dix études de cas, un résumé des réactions des organismes, ainsi que les principales différences de perspective entre les compagnies et les organismes.

L'étude doit son succès à la somme considérable de temps investi par les sociétés dans la documentation qui les concerne, à la bonne volonté des organismes de réglementation pour la discussion de ces cas, et enfin à la contribution de nombreux individus et groupes, y compris le Comité consultatif du projet sur les coûts de conformité, pour l'identification des domaines plus difficiles et pour leurs avis et conseils sur l'orientation générale à donner à l'étude.

Gail C.A. Cook
Directrice de l'étude

PREFACE

The Economic Council of Canada's Regulation Reference from the Prime Minister originated from discussions at the February 1978 meeting of First Ministers. In response, the Council launched a series of studies that included the analysis of particular regulations, industries and companies. The objective of the Cost of Compliance study was to add to the very limited knowledge of the costs incurred by individual companies to comply with regulations imposed by all levels of government in Canada.

To maximize the likelihood of cooperation from the companies in providing cost data and other information which might be of a confidential nature and to ensure the appropriate vetting of such information, the assistance of a management consulting company was enlisted. The firm of Woods Gordon was engaged following solicitation of competitive bids that responded to key features of the study design outlined by the Study Director.

Under the general direction of the Study Director and with close consultation throughout, Woods Gordon surveyed two hundred companies to obtain ten cases for analysis, directed the companies in preparing the cases using a common methodology, and verified the material presented by the companies. The Study Director and Woods Gordon reviewed each case with the chief executive officers of the companies and explored dimensions of the regulatory process that went beyond the confines of the case.

The major regulatory bodies referred to in the cases were given the opportunity to comment on the cases. Interviews with senior government officials probed the constraints on governments in developing policy and administering the regulatory process, and possible reforms that would assist in achieving social and economic objectives more efficiently.

The Cost of Compliance study is presented in a number of volumes. The main volume contains the Study Director's report on the objectives of the study, the broad issues identified and the recommendations, followed by the Woods Gordon report on the conduct of the study, the detailed findings, and the reactions of the regulatory agencies. A volume on methodology describes the way in which the study was organized and carried out. Ten individual case study volumes present the full case studies, a synopsis of the agency responses, and an identification of the major underlying differences in perspective between the companies and the agencies.

The study depended on the considerable investment of time by companies in documenting their cases, the willingness of the regulatory bodies to discuss them and the contributions of many individuals and groups, including The Cost of Compliance Project Advisory Committee, in identifying problem areas and advising on the general approach.

Gail C.A. Cook,
Study Director

ECONOMIC COUNCIL OF CANADA

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THE IMPACT OF GOVERNMENT REGULATIONS ON BUSINESS

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COST OF COMPLIANCE STUDY
OBJECTIVES, ISSUES AND RECOMMENDATIONS

REGULATION REFERENCE

The Economic Council of Canada's mandate to investigate the regulatory environment in Canada was contained in a communiqué from the First Ministers following their meeting in February 1978. The following excerpt identifies the First Ministers' key concerns and outlines their general mandate to the Economic Council of Canada.

> The burden of government regulation on the private sector should be reduced and the burden of overlapping federal and provincial jurisdictions should be eliminated. Procedures will be instituted to review the effects of regulatory action on jobs and costs. First Ministers agreed that the whole matter of economic regulation at all levels of government should be referred to the Economic Council for recommendations for action, in consultation with the provinces and the private sector.[1]

COST OF COMPLIANCE STUDY

Objective

The Economic Council of Canada's original objective in including a cost of compliance study to be carried out at the company level was to provide evidence of the cumulative impact of 'government as regulator' on individual companies. While other studies undertaken through the Regulation Reference concentrated on industry studies or analysis of particular regulations, the cost of compliance study focused on the individual company where the initial impact of regulations and the regulatory process are felt.

The Cost of Compliance study was designed to respond to the following observation and request contained in the Prime Minister's letter outlining the concerns that motivated the Regulation Reference and clarifying its objectives:

> there has developed in Canada a strong concern that increasing government regulation might be having serious adverse effects on the efficiency of Canadian firms and industries and on the allocation of resources;[2]
>
> the final report in particular should develop guidelines governments could employ in determining what areas of regulations are likely having a significant adverse economic impact and what particular changes in public policy might be undertaken to improve government regulation.[3]

Accordingly, the cost of compliance study was designed to investigate and evaluate potential areas of inefficiency as identified by companies and to suggest reforms that might reduce the costs of achieving governments' social and economic objectives.

The Mandate

Our mandate was to provide some evidence of the costs incurred by companies in complying with regulations whether imposed at the federal, provincial or municipal level. Although governments absorb the costs of administering the regulatory system, significant costs are incurred and borne by the private sector in complying with the regulations.[4] Yet, little publically available analysis was available on the cost to companies of regulations imposed by governments in Canada prior to the launching of the Regulation Reference.

Since the mandate was to analyse costs at the level of the company, two areas of study were explicitly excluded: an analysis of the final incidence of the regulatory burden and an analysis of the benefits of regulations at a social level.

While companies initially absorb the costs of adapting to regulations, the distribution of the final burden of these costs among consumers, shareholders and suppliers will depend on the supply and demand conditions facing the industry. The cost of compliance study analyses the initial costs and not the final incidence.

Since government regulations confer benefits on society as well as imposing costs, conclusions on the appropriateness of specific regulations cannot be made on the basis of a cost study alone. Yet this study is a micro study at the level of the company and the results cannot be inflated to match benefits at the level of society. Accordingly, the cost of compliance study must be seen in the context of the entire Regulation Reference in which both industry studies and studies of important regulations are undertaken.

Definition of Regulation

For purposes of the Regulation Reference the Economic Council of Canada has defined economic regulation as:

> the imposition of rules intended to modify economic behaviour significantly which are backed up by the authority of the state. Such rules typically attempt to modify one or more of the following: price, entry, (e.g., franchises, permits, licences), rate of return, disclosure of information, attributes of a product or service (e.g., quality, purity, safety, availability), methods of introduction (e.g., pollution standards, worker health and safety standards). [5]

These rules may appear in statutes, amendments to statutes, regulations as contained in subordinate legislation or administrative orders and directives.

Under this definition government requirements whose principal objective was to raise revenue or provide information (completion of tax returns and statistical reporting), and not to modify economic behaviour, were excluded. An exception was later made by the Economic Council of Canada to permit a reporting case to be included in this study.[6]

Two further criteria were used in the selection of cases. First, the regulations should be continuing in nature so that the analysis could concentrate on permanent objectives of regulations and the regulatory process. For this reason the demands by the Anti-Inflation Board were excluded from the study.[7] Second, the study focuses on regulations that were widely applicable and affected companies in different industries. Accordingly, regulations affecting companies in the traditionally defined 'regulated industries' were excluded. Such regulations would, in any case, be more appropriately handled in the set of industry studies being undertaken by the Regulation Reference.

While the above definition of economic regulation and our further exclusions can be readily stated, the regulatory process to which the regulations give rise is far more difficult to define and assess. It is a complex process that may reflect policy or, in cases where policy is unclear, may create policy through discretionary decisions. That it is not a codified and inflexible system is often viewed in business and government quarters as its greatest strength, but, as will be noted later, this feature also generates some of its criticisms.

RESULTS AND CONCLUSIONS

Problems Identified

Business expressed concern over the cumulative impact of the growing numbers of regulations and increased government intervention in the economy, apparent inefficiencies in the regulatory process and their doubt that some decisions could be justified on cost-benefit grounds. While companies can respond to each regulation at a cost, it is felt that the combined impact on prices and measured productivity growth is reducing Canada's ability to compete internationally. When making international comparisons Canadian businessmen look at world-wide competition and not merely competition from the United States where some key regulations and some features of the regulatory process are regarded as excessively costly means of achieving social and economic objectives.

Business favoured the flexibility of the Canadian regulatory system, the accessibility of government officials and relatively less reliance, than in the United States, on the judicial system. It seeks clear accountability of the regulatory process to parliament and an improvement in the management of the process rather than an alteration in its basic structure.

Company recommendations for further cost-benefit studies reflect the view shared by business and a number of independent analysts that the costs to the private sector have not been appropriately weighed in making regulatory decisions. A distinction should be made, however, between situations for which a formal assessment of the costs and benefits is required (e.g., new regulations) and those situations where a more informal understanding between companies and departments or agencies is sufficient. (e.g., individual project approvals.)

Costs

Some of the cases revealed instances where government regulations and the regulatory process imposed high costs on the companies. The costs tended to be higher in cases involving large new projects where the case study captured some of the cumulative impact of government regulations at the company level. In cases where the particular activity of the company was a very small part of the company's total business, the costs were smaller in absolute dollars but often significant relative to the total cost of that activity. In such instances, it is important to view the cases as illustrative of different types of problems that can occur simultaneously in a single company. Two cases revealed only minor additional costs that could be attributed to regulation.

Both incurred costs and opportunity costs were identified as the central core of different cases. The company's behavioural reaction to the regulatory process featured a marked difference in the way strategic and routine matters were handled. Strategic matters involved the higher corporate levels and focused on possible future regulatory developments. Routine matters were dealt with at the middle management level where the objective appeared to be to adapt to regulatory requirements as efficiently as possible.

Policy versus Regulatory Process

The cases revealed that the primary business concern was with the regulatory process rather than with fundamental disagreements over policy objectives or stringency of regulations. In some cases, however, there was a tendency to emphasize the procedural aspect of a case when fundamental policy differences or political spillovers also existed. A number of such basic problems were identified:

- a company and a government department agree that there were more efficient means of achieving the main policy objective but these options were vetoed at the political level because they had less advantageous side features for a particular group.

- an objective, and in some cases a particular means of achieving it, becomes a non-tradeable good, for both policy and administrative reasons.

- policy has not been clearly formulated because it is difficult to define the trade-offs especially in 'frontier' regulatory areas that involve new regulatory areas, sensitive geographical areas or requirements for new procedures or institutions.

Regulatory Process

The cases identified two major, and related, procedural problems: involvement of a number of departments and agencies within and across levels of government in any one company activity and the lack of clear procedures by which to obtain regulatory decisions when introducing a new product or constructing a new facility. The cases indicate that a number of departments or agencies have jurisdiction over a single company activity (e.g. construction of a new facility) but their involvement is in related, not identical, regulatory areas. Although they may have different objectives under different legislation or may even administer different parts of the same piece of legislation, their impact on the company overlaps. Companies have difficulty in identifying the potential decision-makers and, in some instances, in dealing with conflicting directives arising from the discretion used in interpreting different mandates of different departments or agencies. Companies often refer to this situation, erroneously, as one of overlapping jurisidiction of departments and agencies.

The responsibility for managing the regulatory process which includes the co-ordination of the fragmented regulatory system belongs to governments. Although constitutional reform designed to disentangle federal and provincial government responsibilities with the objective of having fewer areas of concurrent jurisdiction would ease the problem, the more practical, short-term approach is for governments to increase their co-operative efforts at the administrative level.

Consultation revealed considerable variation among companies in their understanding of government processes and in the priority they gave to interaction with governments. Ignorance of the flexibility with which on-going regulations are administered and failure to understand basic government operations can contribute to companies incurring unnecessary costs.

A number of the cases identified delays in obtaining government decisions as an important potential factor in affecting costs. Some of these delays are due to ignorance of how to get through the process and some appear to be attributable to a difference of opinion between companies and government departments or agencies on the significance of the companies' initial review of proposed activities with governments. Government departments suggest that companies do not come to them early enough in the planning process so that they can assist in anticipating problems and advising other departments of the proposal. Yet companies that have had initial discussions and regard the process as underway have found that initial meetings were viewed as so preliminary by governments that this role was not played by the agency.

In evaluating the regulatory process a sharp distinction should be made between the process involved in routine decisions that are being made repeatedly by departments and agencies on behalf of different companies and the process required to deal with regulatory objectives in 'frontier' regulatory areas. Greater codification and dissemination of standard procedures is required for routine decisions and can even be improved to some degree in the 'frontier' regulatory areas.

The close and extensive consultation and co-operation of business and government is critical to the operation of an effective regulatory process. In 'frontier' regulatory areas, created largely by new technology or the extension of existing technology to more sensitive areas, governments are dependent upon companies for technical information. Close consultation is required to ensure that a particular means of framing regulations to achieve an objective minimize the unintended effects on companies. The broadly based legislation is more likely to cause such problems.

Important Regulations

Pollution control regulations were the single most common form of regulation identified in the studies. Government and company predictions that rapidly increased costs are required to achieve further gains in pollution control account for their importance.

Appeals

Where formal appeals are available, there are situations in which companies can incur greater costs (primarily in terms of delay) to appeal a decision and win than by accepting the original situation Accordingly, there is an incentive for companies to absorb the costs and pass them on to the extent possible.

The discretionary nature of regulatory decision-making at the departmental level, the lack of a formal appeal mechanism and the hesitancy of some companies to appeal procedural matters to more senior government officials can result in companies' acceptance of situations that are not intended by policy.

RECOMMENDATIONS FOR MANAGING THE REGULATORY PROCESS

Ten cases studies alone do not provide the basis for establishing the generality of problem areas and for making recommendations for change. The following recommendations address problems that were raised not only in the case studies but also during the consultative process and are offered for consideration when the synthesis is made of the evidence from all the studies undertaken by the Regulation Reference. Most of the recommendations have already been adopted by a company or by a department or agency at some level of government in Canada and have been regarded as effective.

The recommendations reflect the view that governments bear the primary responsibility for identification and management of the regulatory process and that broader management control of the process would reduce substantially, or even resolve, many of the procedural problems identified in the case studies. Companies, in turn, must organize in such a way as to anticipate government demands and assist in reducing some of the delays that are costly to them.

The recommendations distinguish the distinctive problems associated with major projects from those involved in the more routine regulatory process.

Regulations and the Regulatory Process

Recommendation 1

- Government departments or agencies that administer a routine process should codify and publicize the major steps in the process. Consideration might be given to incorporating this requirement in all new legislation or subsidiary legislation.

Recommendation 2

- Before instituting government regulations with the potential for a major impact on the private sector the potential costs and benefits of regulations should be analyzed. The Economic Council of Canada's Interim Report recommended the Regulatory Impact Analysis Statement (RIAS).

- The following guidelines should be clarified:

  a) a clear set of criteria defining those regulations that will be subject to a RIAS (based on feasibility given the departmental workload, manpower availability and recognition of possible adverse effects of long delays in making decisions);
  b) an effort to establish predictable characteristics that will differentiate regulations requiring cursory evaluation from those requiring more detailed examination;
  c) an effort to identify some boundaries on the types of cost and benefit to be included in the analysis.

Recommendation 3

. Recognizing that detailed information of a proprietary nature may be required by governments to estimate the private costs of proposed new regulations, appropriate safeguards should be taken to ensure the confidentiality of the data.

Recommendation 4

. Where federal and provincial jurisdictions both have responsibility for a single product (or regulatory area), the governments should explore the feasability of designating one department as co-ordinator for all legislation relating to that product or area. Administrative arrangements of this type have been worked out for specific products and should be explored for relevance in other areas.

Recommendation 5

. A review of key existing regulatory programs be undertaken by government departments and agencies as outlined in Chapter 6 of the Economic Council of Canada's Interim Report. This review should:

a) identify those regulations that are difficult to understand and either commence the process of rewriting the regulations or produce a layman's guide to the regulations and inform those affected of its existence;
b) compare the original intent of the regulations, where possible, with the regulations designed to achieve it;
c) explore inefficiencies in achieving objectives. For example, somewhat more selective standards or more categories of standards or standards more closely related to engineering requirements could lead to the same objective being met at less cost to companies. The public and private costs must be included in the review;
d) explore for conflicting regulatory programs;
e) identify cases where regulation for limited objectives have been interpeted more broadly;
f) identify cases where the regulations are having costly unintended effects and alternative means of achieving the objective may be available;
g) identify those appeal processes that are ineffective because it is more costly to appeal than to accept the cost of 'living with the system';
h) explore the cost effectiveness of alternative methods of monitoring private sector activities to ensure compliance with the regulations which might prove more effective both in terms of its own objectives and in terms of the constraints within which the companies must operate. Various dimensions include: allowing greater flexibility in regulations when it may be warranted by the nature of the productive process with concomitant greater penalties for noncompliance; initial performance rating of companies, mandatory monitoring by companies and only an audit of monitoring data for those companies that initially fell within the performance rating standard.

Recommendation 6

- The conclusions noted the potential for procedural delays to weigh heavily on companies. To the extent that more management control of the regulatory systems is achieved, the need for an appeal against procedural inequities should diminish. If other studies identify the same problem, consideration might be given to the possibility of creating the opportunity for a limited appeal of procedural problems incurred in obtaining decisions from governments.

Major Projects

Recommendation 7

- Companies should have the opportunity to apply for the assistance of a government official in identifying the government departments, sub-departments, agencies and boards having jurisdiction over major new projects and for the nomination of a lead manager to undertake a co-ordinating role in particularly complicated situations.

- The lead manager should have a clear mandate and authority from senior levels of government to enable him to serve an effective co-ordinating role among departments and jurisdictions. The lead manager would:

  a) co-ordinate and monitor the decisions made with the objective of identifying any excessive delay and recommending ways of overcoming it;
  b) identify inconsistencies or situations in which conflicting directives are provided by different departments or different branches of the same department and assist company officials in resolving the impasse. The companies would continue to bear the responsibility for obtaining the necessary government decisions from the appropriate officials but the process would be facilitated by the lead manager. As a result of this process, the lead department would have information on the totality of government's impact on a major project which could prove to be valuable for future policy-making.

- In the case of major new industrial projects, particularly those in frontier areas, there is a need for early consultation between the company project co-ordinators and goverment co-ordinators to resolve key regulatory issues, including identification of:

  (a) potential benefits to the economy and the manner in which these will be quantified;
  (b) key areas of governmental concern and the manner in which these should be addressed;
  (c) third parties affected by the proposal whose views must be solicited;
  (d) the appropriate sequence of steps in the planning process and the appropriate time frame in which they should be undertaken.

Recommendation 8

- Companies should ensure that managers of major projects use the services of an individual with a knowledge of government policies from the beginning of the planning process. That person could anticipate some government requirements and see that the company provides information to governments at the earliest possible stage in the process.

CHARACTERISTICS OF STUDY APPROACH

A full cost of compliance study at the level of the firm would examine the cumulative impact of 'government as regulator' on individual companies. To achieve this objective would require identification of all the regulations affecting a company and costing them. Even the most extensive cost of compliance study done to date by Arthur Andersen and Co. for the Business Roundtable in the U.S. was restricted to estimating the costs of the regulations of a few key U.S. regulatory agencies on forty-eight companies for one year (1977).[8] One company participating in that study estimated that its personnel put in 30 man-years of work.[9] Neither the time, budget or co-operation of the business community would permit such a detailed approach for this study.

While the Arthur Andersen study opted for a careful cost accounting approach with extensive audit trails, this study followed a broader and looser approach. This approach had the potential to include more of the problem areas between companies and governments and was better designed to identify high priority areas for reform and to articulate recommendations for improvement.

Since it was not feasible to undertake a full cost study of the cumulative impact of regulations on selected companies, the research design did not need to be restricted to a snap-shot picture of costs as of a particular year. The approach could reflect the fact that decisions made by both companies and governments are conditioned by past events and have implications for future events that cannot be adequately assessed by estimating costs incurred in a single year. Rather, the approach adopted was designed to reflect that business activities take place over time, that the regulatory process is of prime importance to the business community and that the regulatory process affects business decisions over time.

The following features characterize the study:

- use of the case study approach
- emphasis on the impact of the regulatory process over time rather than as of a specific date
- focus on the activities of companies that are affected by regulations and the regulatory process
- selection of cases from a survey of two hundred companies
- inclusion of specified secondary effects such as the effect of delays and selected opportunity costs
- inclusion of general behavioural effects of regulations and the regulatory process as they affect business decisions and business interaction with governments
- identification of viewpoints of regulatory departments or agencies

Case Study

The case study approach was adopted to analyse the impact of regulations and the regulatory process at the company level. The case study provided the best vehicle for presenting and evaluating key regulatory issues.

Politicians have requested members of the business community to support their general claims of regulatory burden by specific examples and to identify those areas of the regulatory system that rank high in their priorities for reform.[10] Such requests demand specific responses with detailed supporting material for which the case study framework is the appropriate vehicle.

As will be elaborated upon later, the isolation of problem areas and the required documentation often take on the proportions of a research study. Accordingly, the choice of the case study approach allowed the specification of a methodology by independent consultants that might provide a guide to other companies for application to their own problems.

The case study approach to a study at the level of the company is not capable of dealing with the more general, and sometimes differential, effects of the same regulations on different companies. To the extent that regulations impose large fixed costs on industries in which the scale of operations varies among companies, they will weigh heavier on some companies than others.[11] A study at the company level must be combined with one at the industry level to assess differential effects on companies and the potential impact of such differential effects on the overall concentration in the industry.

In summary, the case studies are illustrative of issues that were raised continuously during extensive consultation but they cannot be regarded as statistically representative of all problems or all companies.

Emphasis on the Regulatory Process

Discussions with members of the business community who were from different industries and interested in different types of regulations indicated that the perceived problems with regulation lay primarily in the domain of the regulatory process. Although there were some substantive problems expressed with regulatory objectives or with the severity of some regulations, there was such a preponderant weight given to procedural types of issues that the research design could focus on inefficiencies in meeting the current objectives of regulations. Exposure to this concern over the regulatory process also contributed to the Economic Council's decision to place emphasis on procedural reforms in its Interim Report.[12]

In interpreting procedures, we had to be careful that changes in procedural matters would not alter the basic objective. For example, the delay in certain regulatory hearings could, in principle, be viewed as a procedural problem. Yet, alterations in the process to reduce delay could prevent some intervenors from being heard and, as a result, alter significantly one of the objectives of the process. The one major exception to the observation that the focus was on the regulatory process rather than the substantive nature of the regulations came in discussions over environmental standards. Company officials doubted that some standards could be justified on cost-benefit grounds. Even in these instances, however, the problem isolated by the companies was the failure of government departments to do the requisite studies and to communicate the results to the private sector. In this sense, therefore, the procedure for decision-making was being questioned in these cases also.

Activity Approach

This study identifies company activities and decisions and explores the impact of the regulatory environment on them. Since the cases covered a distinct activity which was, in most cases, a very small part of the overall activities of the company, they are only illustrative of selected problem areas that, in combination, form the regulatory impact on companies.

The following types of business activity were analysed: the introduction of a new product or service, building of a new plant or facility, and a cluster of regulations affecting one particular activity. Cases dealing with the introduction of a new product or service and the building of a new plant or facility focus attention on entrepreneurial activity and potential new investments. The final category permitted the companies to identify a particular activity such as production, distribution, marketing, and examine the effect of a cluster of regulations on it. The focus here was on an assessment of the regulatory impact on on-going activities.

Selection of Cases

Since the companies are the only source of data on the costs incurred by them to comply with regulations, their co-operation was basic to the conduct of the study. As explained in more detail on page 2-11, Woods Gordon surveyed two hundred companies requesting them to offer cases for possible analysis by the companies under Woods Gordon's direction and using its methodology. This approach provided an indication of the types of issues of concern to the companies as well as providing a group of cases from which to make a final selection.

Companies are not likely to select for study those regulations that conferred greater benefits than costs on them. However, protection of one industry from potential competition by regulations can impose extra costs on companies in other industries. (As a result we were able to provide a case that assessed the impact of regulatory barriers to entry to one industry on a company that was a user of that service.) The imposition of regulations on product or labour markets can reduce the range of market characteristics on which competition takes place which may have differential effects on companies that cannot be evaluated in company case studies.

Secondary Effects

The Cost of Compliance case study approach permitted inclusion of the costs of such secondary effects as lost opportunities and construction delays. The omission of these and other secondary costs from the Arthur Anderson study in the U.S. was one of the four points about the study that received major criticism.[13]

Many of the secondary effects reflect macro impacts that cannot be measured using a micro (company) study. The effect of delays in the regulatory process and the value of lost opportunities can, however, be estimated when the unit of analysis is the company and fitted easily into the general framework for the cost of compliance study.

Behavioural Effects

Not all effects of the regulatory process can be captured in cost estimates. Accordingly an important part of the interviews with chief executive officers, as well as with company officials involved in the cases, probed the broader impact of regulations and the regulatory process on company perceptions, behaviour and reactions.

Company and government decisions are made by individuals whose perceptions and behaviour are shaped by past events and conditioned by expectations of future events. Accordingly, some actions that might not be explainable by examining events and costs at a point in time can be better understood when placed in a dynamic context and looked at as the effect of previous experience.

Regulatory Departments or Agencies

The draft cases were presented to the government departments having a major involvement in the case in advance of a meeting with officials. The purpose of these meetings was twofold: to obtain the department or agency perspective on the definition of the problems raised by the case, and to explore with the officials any potential reforms that would fit in with government objectives and standards of performance while easing the cost impact on the companies. The intent was to reflect the mutual interest that business and governments have in co-operating to meet social objectives in the most efficient manner.

BEHAVIOURAL RESPONSE OF COMPANIES TO REGULATION

General business views and responses to regulations and the regulatory process that emerged from discussions with management provide a context within which to view the specific case studies. These include a view of the scope of regulation, an evident cycle in concern over regulations, difference in company response to strategic and routine decisions and company hesitancy in appealing certain procedural decisions to government officials at a higher level.

Government Intervention vs Regulation

In business a clear distinction between general government policy involvement in the Canadian economy and government regulation is often not made. Moreover, some of the issues that business defined as important regulatory matters, (such as tax matters and reporting requirements) were excluded by the Council's definition. To understand the concerns of the business community requires recalling the environment at the time when the First Ministers mandate to the Economic Council of Canada was given. At that time the extent of government involvement in the private sector through both budgets and regulations was gaining popular press in both Canada and the United States.

During this period Canadian governments were attempting to trim government expenditures and to investigate and introduce mechanisms to gain better management control of their expenditures. In this context, some of the First Ministers were becoming curious about the impact of government regulation on the size of their respective governments as well as on their economies. Business views on government intervention at this time were shaped, in large part, by the Anti-Inflation Board's demands upon them and their perception of the dangers inherent in proposals for Stage 2 of the Competition Bill. In fact, these new and broadly applicable pieces of legislation appeared to cause as much concern in the business community as the on-going regulations studied by the Economic Council of Canada.

Proposition 13 in California symbolized a reaction that was familiar in other states. It reflected a concern over the growth of governments and an unease in some quarters that governments may have over-stretched their capacity to deliver to their constituents and, in so doing, were contributing to other economic maladies such as inflation and a reduced rate of productivity increase. At the federal level the United States was attempting to rid itself of unnecessary regulation as a part of a more general effort to cope with price increases. Although the bulk of this activity took the form of more careful review of proposed new regulations, there was a dramatic example of reform reflected in the decision to de-regulate the U.S. airline industry in a phased manner.

Cumulative Impact of Regulations

While business can adapt to all of the individual regulations at a cost, there is a pervasive feeling in the business community that the Canadian economy is suffering, relative to its potential, as the result of the rapid

growth in the 1970's in the regulatory and government intervention areas.[14] Even if each regulation were justified on a cost benefit basis, some would argue that there is still the possibility that in the macro sense we have not adequately evaluated the cumulative impact on economic development and the Canadian competitive position. Furthermore, it is argued that knowledge of the cumulative impact of government regulation is not a priority concern of any particular department or central agency.

Cycle In Concern Over Regulations

It became clear during the conduct of the study that it was difficult for members of industry to identify and to document the most onerous regulations and the specific costs attributable to them. A number of factors contributed to the problem. The decision-making process within the company gives rise to a natural cycle in concern over regulations that emphasizes current and future regulatory problems. Over this cycle companies tend to invest resources in examining proposed bills and regulations at a time when their views and contributions can alter the outcome. Once the laws are on the books and the regulations implemented, companies tend to adapt, incurring the costs to deal with them and then go on to deal with the problems of the moment. Once the adaptation to the regulation takes place the costs are integrated and detailed documentation and evaluation is more difficult to put together.

When the costs of adapting to a particular regulation have been incurred, the costs of reform are often high which creates the tendency for companies to support the status quo. One company, for example, decided that having mastered the complicated and costly regulatory system in one province, continuance of the current system would be better than any reform that would inevitably involve greater uncertainty.

Consistent with the reaction cycle we observed business' major preoccupation with the nature of future regulations. Executives tend to devote attention to those situations that they have some probability of affecting. Their concern was enhanced by observing undesirable regulations in the United States and contemplating the probability of their being imported into Canada since regulatory environments in countries with similar industrial structures and social goals, and in particular the United States, are often leading indicators of future events in Canada.

Strategic and Routine Decisions

Business-government relations are conducted at the level of strategic decisions and also at the level of day-to-day compliance with government directives of various sorts. A sharp distinction should be made between the responses of companies to these two types of interaction. At the level of strategic decisions affected by proposed government policy, company management appears to make an effort to inform or lobby the appropriate government officials or Ministers. At the level of compliance with government directives that are already in place and where strategic decisions are not involved the response is quite different. The reaction is to adapt to what is required in the most efficient manner possible.

This difference in reaction stems from the nature of the function and the

level at which it is performed. Senior company officers interact with senior departmental officials and Ministers and are concerned with strategic decisions. Their involvement usually comes at a time when decisions have not yet been made and their initiative is designed to affect the government's decision-making process or when strategic decisions are influenced by existing government policy. Other company people tend to deal with the continuing regulations where efficient compliance is the goal. Since the operating group's objective is to get things done as quickly as possible given all the constraints (only one of which is government regulations) it responds by dealing with the problems and being generally adaptive. As long as the cost of meeting a government requirement could be predicted and budgeted for, it tends to be accepted and incorporated even though it might be viewed as unjustified.

Until the cases were reviewed with them, senior management of some companies was not really aware of the nature and extent of the difficulties that had been experienced with regulations at the operating level and the adaptive mode taken by the operating units in order to get their job done.

The stereotype of business as lobbyist may be relevant at the senior level where strategic decisions are made, but does not appear to reflect accurately the on-going situation. In fact, in our view, there were some cases where the extent of adaptation became a policy question that should have been dealt with on a higher level in both the company and the relevant government department or agency. It is quite possible, for example, that the outcome of some processes does not reflect intended policy of the senior officials in the department or the company.

The difference in perspective is illustrated by the reaction of potential participants in the study at the different levels in the company. There were cases where the chief executive officer and/or president to whom the request for participation was initially made were far more enthusiastic about participation than the management personnel who would be responsible for the project. The reasons are straightforward. The Cost of Compliance study had the potential to divert staff attention from their normal functions or to risk the disruption of their relations with government officials with whom they would be dealing on a continuing basis. It was this second danger which the operating people are more aware of that kept some of the companies from participating in the study at all and tended to lead others to be very careful in presenting their cases in written form.

Fear of Reprisal

There was very real concern on the part of company officials dealing with government departments that an analysis contained in a case study may be viewed as destructive criticism emanating from a desire to blame rather than as a basis for offering constructive proposals. Since company people view the government officials as exercising important control over their future activities, there was a real and pervasive fear of upsetting officials by presenting documented cases.

Since major companies tend to interact with governments consistently over time and even simultaneously on different issues, they hestitated to risk having problems in one arena affect developments in other areas.

This fear was related, in part, to the discretionary power of government officials in interpreting policy in highly technical and specialized situations and company knowledge that tighter interpretation of policy could be made in future which could affect them adversely.

The most dramatic example of this cautiousness involved a company that had agreed to prepare a case and invested the time necessary to complete a first draft. At that point, however, the company's decision to proceed with a major investment requiring government co-operation in the same jurisdiction in which the case took place led it to withdraw from participation in the study.

The same fear over simpler procedural issues was raised repeatedly by companies responding to Woods Gordon's request for participants in the study and again in the process of undertaking the case studies. For example, in situations where an outside observer might recommend that the issue be appealed to a more senior level in the government department, the response was that the company would have to deal with the same officials over time and could not risk upsetting them. Moreover, it felt that it had to reserve the appeal to higher levels of the department for strategic matters. In our view some procedural matters do, indeed, become strategic.

OVERVIEW OF CASES

Coverage

The ten cases were chosen from twenty cases submitted. The criteria for selection ranged from inclusion of various types of issues that had arisen from the consultative process to the practical consideration of how effectively the proposed case could be undertaken and documented.

Examination of the case studies indicates that the size of company and the type of situation addressed varies widely. Although the cost of compliance study was expected to focus on large companies, the opportunity was left open for the subsidiaries, or semi-independent units, of large companies to identify cases. Eight cases were from large companies and two came from small companies affiliated with large companies.

All the major issues that arose during the consultative process were covered by the cases. Two sectors of the economy, food retailing and land development, from which consistent concern about the burden of regulations has been expressed, did not offer cases. When it proved impossible to obtain a case from a developer, a manufacturing company offered an industrial park case that reflected its first experience in the land development business.

While there was a strong emphasis in the cases on the operation of the regulatory process itself, the second major observation from the cases was the importance of pollution regulations. This problem was featured in Case 2 (drilling in Lancaster Sound), Case 4 (the steel mill at Nanticoke), Case 5 (the new chemical terminal in British Columbia) and Case 6 (the oil refinery in the Montreal Urban Community). In only one case (Case 6), however, was the main burden of the case the basic decision on allowable levels of pollution. The alleged use of zero risk calculations (Case 5), the cumulative impact of all the pollution regulations (Case 4) and the lack of clarity of the process and the failure of governments to make a decision (Case 2) were highlighted in the cases.

In the cases involving pollution regulations, the companies consistently requested that cost-benefit studies be undertaken before government decisions are made. There was the sentiment on the business side in some cases that little analysis had been done to justify the decisions made. Two things became very clear in the discussion of these problems: first, the view that the costs of getting rid of additional pollution from now on is going to be achieved at only higher and higher costs and that this fact in itself will place more pressure for greater assessment of costs and benefits. Second, the request for greater use of the cost-benefit tool by companies really reflects their concern that in the past neither the costs imposed on the private sector by government regulations nor the benefits conferred on the public have been adequately assessed. In their view, the benefits have, in many cases, been assumed and the costs not evaluated.

While recommendations for further cost-benefit analyses were made, too much formalization in the process could affect the timing of major projects.

Costs

Impact on Companies

The ten cases varied considerably in the significance of the problems and the significance of their impact on the companies. Two cases involved small companies and the impact was more critical to them. In case 1 the loss to the company arose from a three-year approval process (government and private) which resulted in their inability to achieve targeted sales levels. In case 2 the entire capital of the company was invested in an attempt to meet regulatory requirements. Currently the entire sum invested is shown as an incurred cost of regulation. At such time as any company is permitted to drill, then only a portion of this incurred sum can be attributed to regulations.

At the other extreme there were two cases that did not involve high costs to the company. The corporate reporting case (Case 10) illustrated the point that government requirements need not involve high costs to the company in order to cause frustration and to be perceived as costly. After completing the case study the management expressed surprise that the costs of corporate reporting were not higher and concluded that the company had adapted efficiently to the requirements. Even though the case was not significant in cost terms to the one large company, management felt that small gains could be reaped for many companies through adoption of reporting by exception, co-ordination of demands for similar information by government departments and by governments' systematic review of their need for the information.

Management involved in the food product labelling case (case 9) indicated from the outset that the costs were not great but the case was considered as typical of many of the minor irritants that give rise to complaints from business. Discussions with the regulatory department involved in the case suggests that the particular regulations of concern to the company are difficult to interpret and perhaps, as a result, the company had interpreted regulations to be more rigid than they were and incurred unnecessary costs of compliance.

The inherent difficulty of the problems raised in the cases also varied. While we would expect the procedure for approving a new building product (Case 1) to be straightforward, cases that involved operation in 'frontier' regulatory areas involve a more complicated mix of procedural and policy issues. (Cases 2, 3, 4.)

Types of Costs

The cases ranged from identification of opportunity costs to a company arising from labour legislation to the costs of a user of a service resulting from restricted entry to an industry. In some cases the issue was the cumulative impact of the regulatory process while in other cases 'excessive' costs were identified. Inclusion of a case involving foregone production to a Canadian subsidiary as the core of the case reinforces the judgement that opportunity costs should be recognized in any study of the costs of regulations. In the cases where they are not the main source of costs to the company, they are

included to indicate the type of foregone opportunities that the companies regard as relevant. In those cases there is likely, however, to be a variation in judgement over what types of foregone opportunities are legitimate to include.

The cumulative impact of regulatory costs for pollution control on total capital expenditures is featured in another case. Costs of all requirements were included whether they would have been met in the absence of regulations or not.

A situation in which restriction of entry to one industry imposed costs on the use of that protected service is illustrated in still another case. Comparison of 'own' fleet and 'hired' fleet costs in jurisdictions with different regulatory environments provided the basis for the analysis.

'Excessive' costs of the regulatory process were estimated in another case by defining 'excessive' against standards based on a consultant's report on the time involved in the process in other parts of the province. Since this case fell into the category of a 'frontier' regulatory area, standards from elsewhere are not necessarily relevant. The very difficulty of attempting to identify excessive costs illustrates how important it is for governments to define target time periods for different phases of approvals.

Summary of Problems

The top panel of Table 1 summarizes the main sources of problems identified in the Cost of Compliance Case studies and indicates that various sources of regulatory problems and costs appear sumultaneously. The second panel on Table 1 lists the major factors generating direct costs for companies included in the Arthur Andersen Study for the United States. Since the study identified environmental regulations as being very costly, many of the factors reflect costs associated with providing capital equipment designed to achieve environmental protection. (The Canadian cases dealing with environmental protection exhibited the same major important characteristics.) The study also identified changing requirements, inadequate risk assessment and continuous monitoring as important contributors to costs.

The ten Canadian case studies suggest that although the characteristics identified by Arthur Andersen are important, companies are just as concerned about the regulatory process. The research design of the Cost of Compliance study which went beyond the identification of incurred costs to try to analyse the sources of the problems, allowed the companies to reflect additional characteristics of a procedural, jurisdictional and even policy nature which are also shown in Table 1.

General Economic Impact

To the extent that the regulatory process is inefficient and the objective of regulation could be achieved in a less costly manner, the immediate burden on companies is greater than necessary. This cost burden will be passed on to consumers, borne by the shareholders and shifted back on suppliers in proportions dictated by market conditions. The ultimate effect will be to raise prices of the final product and alter the rate of return to the affected industry and its suppliers. Irrespective of the particular or distribution of

TABLE 1

Sources of Problems for Companies

es of Problems st of Compliance Study	CASES 1 New Building Product	2 Explor-ation	3 Indus-trial Park	4 New Steel Plant	5 New Chem-ical Terminal	6 Environ-mental Standards: Oil Refinery	7 Hours of Work Legis-lation	8 Distri-bution and Trucking	9 Food Product Labelling	10 Cent-ralized Corporate Reporting
Policy										
Restricted entry (costs to some, benefits to others)								x		
No policy decisions or chang-ing policy decisions & uncer-tainty		x	x	x						
Legislation preventing effi-cient use of plant capacity							x			
Cumulative impact of requirements				x						
Procedure										
Procedure for meeting obligations unclear	x	x			x					
Jurisdictional disputes or inconsistencies	x	x		x	x					
Delays	x	x		x	x					
Complicated regulations									x	
tors Generating Costs to Companies in U.S. Study										
Continuous Monitoring										
Forcing New Technology						x				
Capital Intensity										
Recurring Costs										
Retrofitting						x				
Specified Compliance Action						x				
Inadequate Risk Assessment	x	x		x	x	x		x		
Engineering Solutions										
Changing Requirements		x								

the burden, however, the market signals of price and rate of return will be affected and lead to resource misallocation.

This resource misallocation occurs in cases where the costs to one industry provide monetary benefits to another industry (Case 8), where costs to one company may provide benefits to competitors (Case 1), or where costs to the company provide benefits to the consumer (Case 9).

In a number of discussions with government officials we observed the tendency to suggest that a particular source of cost was not signficant because it could be passed on to consumers. The cumulative macro impact of passing on all such unnecessary costs had not been seriously considered.

ISSUES

This section identifies key issues that emerged from our discussions with senior executives and department officials and provides case references in support.

Scope and Nature of Regulations

Company and government definitions of the scope and nature of regulations often differed significantly.

Interpretation of Scope

In a few of the case studies the regulatory impact upon the company depended upon an interaction between regulatory requirements and a series of private decisions. In two cases the departmental officials were perplexed that the combined impact should be attributable, even in part, to legislation that they administered or to their requirements. For example, the auto assembly case (Case 7) dealt with the over-time provisions of the Ontario Employment Standards Act. The impact of this legislation does not emanate from those provisions alone but from their interaction with the nature of an assembly operation which requires a team effort of a group accustomed to working together and with the habits or preferences of some of the workers. The combined effect of all three is to give the company less flexibility in using its assembly facilities efficiently which, in turn, has implications for the amount of production scheduled for Canadian plants and ultimately becomes one factor considered in deciding where to locate new facilities.

In the case of the new building product (Case 1), the department challenged the appropriateness of the inclusion of the case as one involving regulation arguing that the case dealt with specifications adopted by the government department that were similar to those that any private purchaser might demand from a supplier. When the department was the major purchaser of the product, when its acceptance was a pre-requisite for acceptance by some other purchasers (municipalities)and when it maintained an active presence in the 'private' portion of negotiations, a specification takes on most of the features and impact of a regulation.

These two examples highlight the quite different perspectives of government departments and companies. Companies identify and are concerned with the combined impact of legislative requirements and attitudes on their operation while the government departments in these instances were either unaware of the particular impact, weighted them less strongly, or regarded the solution as resting with the private sector.

Universal vs Selective Application of Government Requirements

One major source of disagreement between companies and governments is over whether governments can achieve their objectives without providing legislation that is uniformly applicable to all companies irrespective of circumstances. The automobile assembly case (Case 2) dealing with worker overtime provides an example.

Many union and business representatives endorse the principle that the collective bargaining process is the way in which to improve union-management relations and to work out points of contention. It is also recognized by both unions and business that this can be and is being done effectively in cases where there is a history of mature negotiations between the parties. At the same time, however, both parties agree that there are situations where these conditions do not exist and where government legislation may be required to protect workers from abuses. The debate is not over whether government action is required but over the extent of applicability of legislation, the possibility of unintended effects and the possibility of achieving the same goals in a different fashion.

Business dislikes superimposing legislation on top of the benefits worked out in the bargaining process. Its approach is to find a mechanism that would allow the collective bargaining approach to work, without interference of legislation, in cases where the process has shown evidence of working well. Legislation would be applicable only to situations where, according to some set of criteria, the process has not led to adequate protection.

Governments tend to focus on their interest in having a system that is uniformly applicable, thereby minimizing the burdens of individual judgements that might be regarded as too subjective. A uniformly applicable system is clearly easier for government decision-makers but what is often not recognized adequately is that uniform approaches affect parties differently and may impose unintended economic effects in certain instances.

Uncertainty vs Stringency of Regulations

A clear distinction was made in many of our discussions between the stringency of the regulations and the certainty of regulations.

In Case 1 involving approvals for a new sewer step, the senior management indicated that the problem was not the stringency of the regulations but the uncertainty of the government requirements, the tenuous process and the apparent lack of uniformity in application of the regulations.

In the new steel mill case (Case 4) management made its initial investment decision on the basis of its forecast of the costs of meeting regulatory standards. Since construction of all phases of the project will take place over an estimated eight years, government policy on regulations in the environment can change in the interim.

The company has tried to anticipate such change in some instances by imposing standards that go beyond what is required by current regulations. Similarily, the government department has tried to anticipate, and take measures to avoid situations that would lead to still further requirements. Yet, the company cannot predict what other potential pollutors may be admitted to the area which would require changes in its own equipment or what changes in government policy might yet come about. Such uncertainty makes it difficult to plan effectively for future investments and is viewed by the company as another major risk in an already risky project.

The dilemma in these situations is clear. Governments cannot make promises not to change environmental standards for stated periods of time while companies have difficulties in predicting what changes will become effective part way through construction.

Performance Standards vs Specific Compliance

Throughout the consultative process business representatives recommended that governments specify their objectives and performance standards and permit companies to work out the most efficient method of compliance rather than specifying detailed methods of compliance. Unfortunately, the case that focused on this problem and provided the most evidence on demands for specific mechanisms for compliance was kept confidential by the company for fear of jeopardizing current negotiations with government.

In the oil refinery case in Montreal the company argues that a particular process is required to meet the standards, that the capacities of the specific technology were a key factor in determining the standard and that meeting that standard will not alter the level of pollution appreciably, if at all. The government officials dispute the need to introduce a particular piece of equipment and process to achieve the standard.

In this case and the new steel mill case the companies argue that the best available technology is being imposed and that this approach is not necessarily consistent with what would be justified on cost-benefit grounds.

Regulatory Process

The cases illustrated company concerns about the regulatory process that had been raised over and over again during the consultative process. The cases and discussions with government officials revealed:

- company difficulty in identifying the steps in the regulatory processes for both routine types of decisions and more complicated situations in 'frontier' regulatory areas.
- a tendency to translate policy issues into procedural matters
- a difference in emphasis on the parts of both companies and governments when defining each others role and constraints.
- a difference in the incentive system facing business and government officials dealing with the regulatory process
- interest in appeal procedures

Identifying the Regulatory Process

The five cases dealing with the introduction of a new product or the construction of a new project all illustrated problems in identifying the departments, units of departments and agencies required to give approval on a project. The existence of a number of jurisdictions having authority over a single project or new product contributed to this difficulty. In some cases the government bodies suggested that the companies had begun consultation too late in the process (Case 5), or had failed to begin consultation with the particular government department that could have co-ordinated its further activities (Case 3).

While the business sector tends to view these problems of identifying the appropriate steps for clearance of new proposals as problems of duplication or overlap of government jurisdictions, our view is that they reflect the absence of a road map, or some other assistance, through the regulatory process. Or, as one executive suggested, it is necessary to ask very precise questions, which presume an understanding of the system, to gain a full knowledge of the process. In some instances this was readily recognized by officials who pointed to efforts to describe at least parts of the system better (Cases 2 and 5). In other instances it was suggested that large companies should be more aware of basic government requirements and which departments administer them.

Regulatory processes dealing with routine matters and those dealing with 'frontier' regulatory areas are quite different.

Routine

Routine regulatory processes are well known by the government officials administering them repetitively but more difficult for companies facing them for the first time. Such procedures are capable of codification and distribution to companies expressing interest. The reponsibility for identifying these processes should be placed upon the departments or agencies involved. The process of codifying the steps in attaining different types of approval can be instructive in providing governments themselves with an overview of a fragmented process that, when seen in its totality, might be regarded as in need of reform.

Where possible, the codification of the process should also include target time intervals within which various approvals should be made. In attempting to assess company claims that 'excessive' delays are experienced during the regulatory process, the analyst is severely restricted by the unavailability of an objective standard by which to evaluate a case study experience. In case 3, the standard time estimates were prepared by a consultant on the basis of experience elsewhere in the province. Far more satisfactory, however, would be an indication by the departments and agencies themselves, of the target time period in which certain types of applications will be processed assuming, of course, their routine nature and full co-operation by the companies. This information would permit more effective planning by the companies and would provide a good management tool for the departments or agencies.

Frontier

By contrast, the problems of companies and governments operating in 'frontier' regulatory areas are far more difficult and there is far greater shared responsibility required. 'Frontier' areas of regulations and the regulatory process refer to instances where the effects of new technology, or even the potential risks, are unknown, where existing technology is being applied in new areas or where the necessary institutions to handle the regulatory process have not been developed.

For example, the construction of new facilities (Cases 2, 3, 4) had the potential to make a significant impact on the surrounding area. In those

cases the authorities had no developmental precedents by way of experience. The most dramatic case was that involved with exploratory drilling in the Arctic (Lancaster Sound) where the necessary basic environmental information had to be established from the beginning. In the industrial park and new steel plant cases (Cases 3 and 4), not only were the precedents not available, but the necessary governmental structure in the form of regional governments deemed necessary to handle regional questions was not in place to deal with the proposal.

The cases dealing with these endeavours tended to involve capital intensive projects where delays were costly. The different time perspective of governments and companies appeared even more significant in these cases where the facility under study was part of a much larger project. For example, the new chemical terminal in Case 5 was constructed to ship the product of a major petro-chemical complex.

Responsibilities and Constraints

The company case studies and the interviews with government officials revealed quite different interpretations of the scope of government's role in the regulatory process. Government departments tended to define their role in terms of the legislation or particular parts of legislation that they were administering and, unless special arrangements were made, no government department had a view of the total government impact on a company project or any co-ordinating function to perform. Special efforts were made by naming a provincial government official as a facilitator or co-ordinator on behalf of one company (Case 4) while in another instance (Case 3) a department could have facilitated co-ordination, but even the consultants hired by the company did not enlist its support, which suggests that this function may not be well-known.

The companies, on the other hand, who bear the combined initial impact of all regulations tend to view governments somewhat more monolithically and assume that it is government's task to identify its requirements in a clear and consistent fashion and to co-ordinate its demands.

Perhaps as a result of this fragmentation of responsibility and this research design which focused on small manageable cases, there were some departments who saw some of the concerns of the companies as fairly minor. The companies, however, see these cases as illustrative of the sources of additional costs that can cumulate to have a significant impact on company decisions.

Business also tends to take a narrow view of government policies. When discussing the impact of regulations, for example, company officials focus on the potential inefficiencies in conducting business that can be attributed to such policy decisions as maintenance of local autonomy or to problems raised by concurrent jurisdiction on the part of the federal and provincial governments in certain fields.

In our view the appropriate response to many of these problems is to accept that part of these costs may be due to a particular federal structure but that a vast majority of the problems can be considerably reduced by a clear identification of decision-makers and the nature of the process required for decisions.

Policy vs. Process

Although the emphasis in the case studies was on issues of process, fundamental policy issues were also reflected in them. In some cases what might potentially be a policy issue was transformed into a procedural issue by the companies' focus on the need for better analysis to justify regulatory decisions.

There are cases where no trade-offs are practical (where there are strong vested interests in retention of economic protection (Case 8) or certain values and rights are being protected (Case 7)) and cases where the trade-offs among objectives are difficult to make.

Opening the Ontario 'for-hire' trucking sector (Case 8) to significantly more competition does not appear feasible until the counter political lobby becomes stronger. The only other reform alternative appears to be for governments to work with the industry to identify the desired nature of the 'for-hire' trucking sector in Ontario and then to proceed to implement it as far as possible on an incremental basis.

In the case dealing with hours of work legislation, the government department's emphasis was on workers' rights, defined as the rights of workers who do not wish to work overtime. In political terms this is a non-tradeable good involving a right that dominates other government objectives once it has been legislated. The source of difficulty stems in part from the broad-based nature of this legislation where the effects on an assembly operation may not have been understood prior to its enactment or, if understood, were regarded as the price of achieving general applicability of legislation. The company, however, was faced with the costs of the legislation even though its own workers had the protection of a strong union.

A number of the cases demonstrate the difficulty in making the trade-off between further protection and further development. In the exploratory drilling case, the issue was further exploration for oil and gas against the protection of a special ecological area, in the steel case between current and future environment problems set against the necessity for the company to complete all phases of a multi-phased project in order to make its rate of return, and in the refinery case in Montreal it was the imposition of extra environmental costs and its impact on expansion and development in that location.

The development issue took on an additional dimension as between current and future producers in the case of the Montreal Urban Community. Its interest was in deliberately cutting back on the emissions of current contributors to pollution giving the community the flexibility to admit new producers to the area in the future.

Incentives

Governments have the well-acknowledged role of protecting both people and the environment while companies are attempting to initiate and complete activities as quickly as possible. These respective goals create incentives for companies and departments that result in quite a different response to time and delays.

It is far less risky for government departments to err on the side of taking extra precautions to reduce still further small risks of a potential problem. Although this approach is supportable in major new 'frontier' areas, the extension of the same concern to far more routine areas is questionable.

Review Mechanisms or Appeal Procedures

Some departments and some companies expressed concern about the dual role of some departments in articulating and interpreting regulations as well as identifying and adjudicating questions of non-compliance.

Officials in some government departments expressed interest in continuing to assist companies in understanding complicated regulations or in suggesting what might be required to meet certain governmental requirements. In two cases, however, reference was made to the necessity to define a limit to such assistance if the officials and department were not to get involved in a conflict of interest situation. Although in both cases the companies may have desired the officials to be more specific, in our view the crux of the cases did not involve questioning of the assistance of the officials. This point is raised to illustrate the conflicting pressures on the officials themselves.

The company viewpoint tended to emphasize different characteristics. Some business representatives regard departments, such as environment, as having more of an interest in protecting the environment than in a broader assessment of the costs and benefits of various proposals. Accordingly, companies made recommendations for review procedures that would ensure a broader assessment of the impact of the decisions of these departments (Case 6).

Assessment

The case studies and subsequent interviews with government officials indicated that three dimensions of economic assessment of decisions were important: the role of cost-benefit analysis, the question of what constitutes evidence and the dependence of governments in many instances on the technical expertise of companies.

Cost-Benefit Analysis

There was a consistent call throughout the case studies for greater assessment of the costs and benefits that would be imposed as a result of government decisions. This reflects a common business view that the costs of regulatory compliance are under-estimated because much of the initial burden is borne by the private sector rather than by governments themselves. Other groups, however, fear the greater use of formal cost-benefit analysis arguing that since benefits are more difficult to measure than costs they will be under-weighted in a formal analysis.

Any recommendation for the conduct of more cost-benefit studies must establish:

- the type of decisions to which the analysis is to be applied

- the strengths and weaknesses of the cost-benefit tool
- the implications that the institution of the formal device will have for the overall process with emphasis on the extent to which the regulator should be regulated .

Type of Decisions

Requirements for a formal cost-benefit analysis could, in principle, be applied to decisions to implement new regulations, to a review of existing regulations or to judgments on individual projects. The case studies questioned whether existing regulations and some discretionary judgments of officials could be justified on cost-benefit grounds.

To impose a formal requirement on governments to undertake a cost-benefit analysis to support discretionary judgments on a case-by-case basis would be excessive and even counter-productive by leading to delays in resolving problem areas. What is required, however, is that government departments explain to the companies as clearly as possible the basis upon which their decisions are made. The requirements for a formal economic assessment of new regulations and a review of existing regulations is set out in the Economic Council of Canada's Interim Report.

Strengths and Weaknesses of the Cost-Benefit Tool

Cost-benefit analysis is a limited tool that provides a framework within which to include costs and benefits and to quantify some of them.

Use of the framework imposes the discipline of clearly articulating the objective of the regulation or action and attempting to identify the impact on various groups. The tool is, however, most useful in cases where alternative means of achieving a specific goal are being examined and least useful at the level of broad articulation of policy trade-offs.

Although use of the cost-benefit framework for analysis of new regulations will not ensure that there will be agreement between government officials and companies, it is a mandatory first step for informed discussion. Use of the cost-benefit analysis would ensure that at least the evidence was presented at an early stage in the process and the debate and lobby activity could then focus on the nature of the trade-offs implied.

In the context of discussions of one of the cases dealing with environmental concerns, one set of officials dismissed the use of the cost-benefit technique to identify the appropriate stringency of a regulation. Although this view of the irrelevance of the cost-benefit technique was held by only one set of officials involved in only one of our cases dealing with environmental matters, it is important to recognize that some believe that the objective of government environmental policy is to achieve zero emissions apparently irrespective of cost. It was argued that standards should be set according to 'independent' health standards and it was only appropriate to introduce costs in order to evaluate alternative ways of minimizing the costs of achieving that objective. Moreover, the goal of environmental policy was articulated as pushing the companies to zero emissions of designated substances. The speed at which this was done was, in part, dependent on the technology available.

What Constitutes Evidence?

In a number of the cases the companies were required to supply information that would convince the regulators that the companies' proposed actions would comply with the regulations designed to protect people or the environment. In three cases the company either had difficulty in identifying the type of evidence that was required or the companies and the government departments had quite a different notion of what constituted appropriate and sufficient evidence to meet the conditions. The dispute was not over the fact that certain research had been done and evidence provided but rather over the adequacy of this evidence as in the exploratory drilling case in Lancaster Sound. In the refinery case related to the environment, the Montreal Urban Community officials took issue with the sampling techniques (and particulary the source of the samples) but not the analytical test performed on the sample by an independent agency.

In the Lancaster Sound case there was concern that the requirements kept escalating. The company saw these escalating requirements as a substitute for a basic policy decision about the future of the area while the government department saw such escalating requirements as demands that emanated from the findings of previous studies.

What characterized the Lancaster Sound case, in addition, was a basic failure of communication and understanding on the magnitude of the task required to convince the government department of the company's ability to handle contingencies.

Technical Expertise

Governments find it increasingly difficult to generate themselves the technical information required to make some policy decisions. They can either develop the technical capacity and the number of personnel required to work in parallel with the private sector or rely increasingly on the private sector to develop the type of information that they require. During a time when the scale of major projects is growing and more sensitive areas are being penetrated and at the same time government budgets are under scrutiny, the public sector has had to rely more heavily on information from the companies.

Recognition of the necessity to share expertise and the development of mechanisms for doing so would reduce some of the tension that is currently created over this issue.

Another dimension of the expertise issue arises in cases where regulations and the regulatory process demand inspection and endorsement by government officials who do not have the technical competence to make a judgment. Such situations cause extra effort for both companies and departments without achieving the major goal of ensuring the responsibility of companies for their actions. Again, alternative mechanisms can be devised to achieve the basic goal in more efficient ways.

Regulating the Regulators

There is a tendency to respond to problems arising from the regulatory

process by imposing demands upon governments that will involve another layer of review or appeal designed to regulate the regulators.[15] The main thesis of this paper is that the responsibility for the management of the regulatory process rests with the departments and agencies, and incentives must be provided to ensure that assessments of the process are generated internally so that senior officials will identify potential problem areas themselves.

The incentives include:

- possible inclusion in new legislation of the necessity for government bodies to specify the major steps in the regulatory process that they administer, in recognition of their ultimate accountability to parliament
- a formal requirement for departmental and agency review of the necessity for new regulations and their economic impact
- a suggested review of existing regulations by each department or agency. (Since new regulations are often reformulations of existing regulations, the above requirement will, over time, affect the existing regulations.)

These incentives and requirements for departments and agencies to undertake reviews of the process must be reinforced by incentives to senior officials to be effective managers. Although analysis of the determinants of civil servants' salaries and general status goes beyond our mandate, it is important to note that they are critical to the achievement of the better managed system.

While most companies have a cost incentive to deal more effectively with governments, some of them do not appear to recognize the importance of investing more time in understanding the basics of how governments work and of documenting the nature of their more significant problems and discussing them with the appropriate officials. Self-interest would appear to call for a change that would reflect the importance of government's impact on companies.

FOOTNOTES

1. First Ministers' Communique on The Business Environment, February 16, 1978.

2. Letter from Prime Minister P.E. Trudeau to Dr. Sylvia Ostry, Chairman of the Economic Council of Canada, dated July 12, 1978.

3. Ibid.

4. See, for example, the study undertaken by Arthur Andersen & Co. for the Business Roundtable in the United States. Arthur Andersen & Co., Cost of Government Regulations Study for the Business Roundtable Report (March 1979).

5. Sylvia Ostry, Regulation Reference: A Preliminary Report to First Ministers (Ottawa: Economic Council of Canada, November, 1978) p. 15, n. 15.

6. When the decision was made to undertake a separate study of small business in Canada where the perceived problems were reporting and general paper burden, a reporting case was included in the large company study.

7. Allan Maslove and Gene Swimmer, Wage Controls in Canada: The Anti-Inflation Board, 1975-1978 (Montreal: Institute for Research on Public Policy, 1980).

8. Arthur Andersen & Co., Cost of Government Regulations Study for the Business Roundtable Report (March 1979). Very few cost of compliance studies have been undertaken at the company level by analysts outside the company. For industry studies, see: Council on Wage and Price Stability, Catalog of Federal Regulations Affecting the Iron and Steel Industry (Washington, D.C.: December, 1976) or U.S. Department of Commerce, Industry and Trade Administration Staff Study, The Potential Economic Impact of U.S. Regulations on the U.S. Copper Industry, April 1979. For identification of company difficulties with the regulatory system, see, for example, James Greene, Regulatory Problems and Regulatory Reform: The Perceptions of Business, (The Conference Board, New York.)

9. General Electric expended 30-man years of effort in undertaking the pilot study following the methodology prescribed by Arthur Andersen & Co.

10. For example, the meeting between the President of the Treasury Board and executive members of the Canadian Manufacturers' Association, July 20, 1979.

11. H.C. Wainright & Co., The Impact of Government Regulations on Competition in the U.S. Automobile Industry (Boston: May, 1979)

12. Economic Council of Canada, Responsible Regulation: An Interim Report (Ottawa: November, 1979). See also the Parliamentary Task Force on Regulatory Reform Discussion Paper of August 1980 that emphasizes procedural issues.

13. Arthur Andersen & Co., Executive News Briefs, May 10, 1979.

14. Margot Priest and Aron Wohl, "The Growth of Federal and Provincial Regulation of Economic Activity, 1867-1978" in W.T. Stanbury (ed.) Government Regulation; Scope, Growth, Process (The Institute for Research on Public Policy: Montreal, 1980).

15. See Léon Courville, Responsible Regulation; Rules versus Incentives? (C.D. Howe Institute: Montreal, 1980).

Vol. I
(Part 2)

COST OF COMPLIANCE STUDY

REPORT ON THE IMPACT OF GOVERNMENT REGULATIONS ON BUSINESS, BY WOODS GORDON

COST OF COMPLIANCE STUDY

REPORT ON THE IMPACT OF GOVERNMENT REGULATIONS ON BUSINESS

1. THE STUDY

1.1 Introduction

Some work on cost of compliance and on the effect of government regulations on business has been done in recent years, particularly in the United States,* and this gave an initial perspective for this study. However, the scale of resources and time underlying these efforts was in excess of that available for the Cost of Compliance study in Canada. Additionally, the perspective was not as broad as was desired in the Canadian study. For instance, the Business Roundtable study dealt with costs in a single year only, whereas some perspective over time is preferable. Further, it dealt only incidentally with the secondary effects of regulations, although these were generally believed to be at least as significant as the directly related costs.

The Canadian work, then, was to have a wider scope and to be carried out with much less resources. In order to make this possible, and obtain practical and useful results, it was decided to carry out a limited number of case studies of the impact of regulations on business. In order to further enhance the possibility of getting worthwhile results, these case studies were to focus on the impact of regulations on certain key aspects of business operations:

- development of a new facility or property;
- development and introduction of a major new product line or service;
- a firm's on-going activities, in whole or in part.

With the purpose of ensuring some uniformity in treatment, the studies were to be carried out by a number of selected companies under the design and direction of Woods Gordon, which would be responsible for the conduct of the Cost of Compliance study overall and for preparation of an analytical, interpretative report on study results.

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*1 Cost of Government Regulation, Study for the Business Roundtable, Arthur Andersen & Co., March 1979.

2 Study on Federal Regulation, Committee on Governmental Affairs, United States Senate, Vol. VI, Dec. 1978.

3 The Impact of Government Regulation on the Dow Chemical Company, 1978.

1.2 Scope

In reviewing the study results, it is important to bear in mind that the terms of reference and the scope of the study were deliberately established by the Council to address certain aspects of government regulation and to ignore others.

Thus, since the mandate was to do a study at the level of the firm, it was decided to ask a number of firms to prepare case studies on their experience with regulations and regulatory agencies. In relation to this, Woods Gordon was to ensure that there was representativeness among types of firms and cases, to design a common methodology, to test that what was being said was reasonable and supportable, and to verify and be satisfied with the cost data developed and presented by the participating firms. The case studies, however, were to be prepared by the participating firms and to put forward their experience and view-point.

Another significant initial decision by the Council was that the focus would be deliberately placed on costs -- there was to be no consideration of benefits to society generally from regulation, and no attempt at cost-benefit assessment. Rather, the study was to attempt to identify whether there are problems for business with regulations; if so, what problems and their cost; and, finally, how these might be resolved.

This last aspect -- positive suggestions for improvements in regulations or in the regulatory process -- was a most significant part of the study process. It prevented firms from making very general, dismissive comments about regulations, and encouraged them to be specific and constructive in their case studies. Another influence in the same direction was the orientation of the study work by Woods Gordon toward the cost-effectiveness of regulations. Firms were advised that any disagreement by them with the basic objectives of regulations would require very strong supporting evidence. The purpose, again, was to elicit specific responses rather than generalities.

A further feature of the study process was the opportunity provided regulatory bodies to comment on the circumstances of cases concerning them and to advance their views on improvements in regulations or in the regulatory process. Proceeding in this way provided recognition to the different perspectives there are on regulatory matters, while stopping short of full cost-benefit analysis or broader regulatory-policy perspectives which were outside the scope of the study.

1.3 Approach and Methodology

The basic approach of the study was to discover what was happening and then to draw inferences from the observations. Accordingly, Woods Gordon worked directly with the firms in an intensive

and interactive way, as they developed the case studies (in a broadly uniform manner) on the basis of their experience and from their perspective. We then used the results to interpret in more general terms what the case studies showed and to draw generalizations across the range of cases. Following the review process with the regulatory bodies, we developed our overall assessment of the findings of this Cost of Compliance study and of significant matters for regulatory reform.

The case study methodology was directed toward providing answers (to greater or lesser extents) to the following general questions:

- Are regulations causing significant costs to firms?
- If so, which regulations, from which level of government, cause the greater amount of costs?
- What are the costs, quantifiable and non-quantifiable (including impact on corporate behaviour)?
- Have regulatory costs for firms grown significantly in the 1970's?
- Could the objectives of the regulations be achieved in a less costly way?

The answers to these questions are by no means self-evident, as the study results show. Even the limited number of cases studied display a surprising variety of circumstance and effect. However they provide, we believe, well-founded, illustrative examples of the impact of regulations in practice and of areas in which improvements in the regulatory process can be made.

It was decided that 10 case studies would be undertaken. While the numerical data from them cannot be representative in a statistical sense, careful selection of the 10 cases would provide a reasonable degree of coverage of issues and of categories such as the following:

- industry (since regulatory impact may be industry-specific);
- size of entity (since regulatory provisions may vary with size);
- geographic location (recognizing variations among provincial and municipal jurisdictions as well as the effect of federal regulations);
- type of activity affected by regulations;
- type of most significant regulations;
- types of regulatory issues encountered.

same as pp. 77-81

Within the overall Council focus on regulations which modify economic behavior, we concentrated on regulations relating to the health, safety, fairness, and other social aspects that impact on the otherwise unregulated affairs of individual firms. We did not consider the effect of regulations on firms in what are closely-regulated industries which are dependant on regulation for their whole existence and performance, since these are better addressed through a study of the industry concerned.

Throughout the process of study design, selection of case studies, conduct of case studies, and overall analysis, we worked in the closest liaison and consultation with the Economic Council Study Director for the study.

1.4 Significant Matters for Regulatory Reform

To provide readers with a framework while reviewing the details of the report, it is useful to identify the significant matters for regulatory reform which constitute our overall statement of study results. The following material is, in effect, an early presentation of what is contained in Section 5.2.2 of this overall report.

A central point that emerges from the study is that regulators operate within a regulatory system and framework that they have designed, know well, and expect others to know and abide by also. Business, by and large, has been aware of such systems only when it comes in contact with them and then only to the extent required for any particular situation -- business interests have been predominantly elsewhere and regulations only one of many external circumstances that impinge on business affairs.

Thus we encountered many times statements by regulators that mechanisms, procedures, and means for minimizing duplication and obtaining co-ordination did exist and worked reasonably well; in their view businesses (particularly large firms) ought to have known how to go about things, did not expend enough efforts, and were at least partly responsible for problems that arose.

And yet it was a common complaint in the cases that such mechanisms did not exist, did not operate in practice, or were impossible to establish; in many cases the firms detailed the extensive liaison efforts they had undertaken. Some of the cases were concerned with earlier years in the 1970's, and there may have been improvements subsequently in the regulatory process. It is more likely, however, that those inside the system take it for granted and expect others to be as aware of it as they; those outside it find it obscure and may not always have taken enough trouble to understand and deal with it.

There are implications here for improved behaviour on the parts both of government and business. On the part of regulators, it is desirable that there be major efforts to state and circulate broadly,

clear statements of objectives, policies, principles, processes, procedures and guidelines. These would benefit their own operations as well as those of regulatees. Another point to be noted is that while it may be easier for large companies to devote adequate resources to "managing the system", the system itself must be satisfactory for the operations of small companies (as was mentioned in several of the cases).

On the part of regulatees, it is desirable that they fully recognize and provide in their operations for the major changes that have occurred and will continue in the Canadian society and economy. Public involvement in formerly private matters is here to stay, and will be best accomplished for all parties if they actively participate in formulation and operation of what is required to make a good system work well.

Another very significant point is the different views of regulators and regulatees about the significance of initial contacts between the two parties.

Regulators state that early and full contacts, especially for projects that have high sensitivity, are most desirable from everyone's point of view. To be sure, these will be only exploratory and semi-official, since regulatory action cannot be taken until formal application is made by the firm. However, they will enable regulatory approval to be given more rapidly than had there not been prior contact.

The perspective of the firms is different, and a number of factors operate to diminish the significance of initial contacts: tradition and lack of appreciation of changing external circumstances; commercial considerations of confidentiality and competitive advantage; and focus on the decision point that is internal to the firm, i.e., approval by the Board to proceed with the project. Once that approval is given, the firm expects to be able to proceed rapidly, and is impatient with apparent complexities and time requirements of the regulatory process.

A concrete demonstration of these differences is provided by the different attitudes to the time durations of individual cases. The firms dated the case from their initiation of work and first contact with the regulatory authorities, and measured time and costs from this point. The agencies regarded everything prior to the formal application as not being part of the regulatory process, would measure time and costs from the point of formal application, and frequently were able to demonstrate that the workings of the process, once put in train, were efficient. This view also sheds light on the apparently inexplicable position of some regulators that they had a limited place, role and function in the regulatory process.

There are different regulatory circumstances attending new products or facilities and ongoing operations. This appreciation can be sharpened by appreciation that certain private activities and

public regulatory responses are in "frontier areas", which include geographical, institutional, informational, and time dimensions. The activities are new, often large (but not necessarily), and sometimes complex. Their common feature is that there is little, if any, precedent regarding them. The matter, then, is one of creating new regulatory mechanisms or appropriately adapting existing mechanisms. Associated with this is the need to define policy and objectives, in order to have a proper basis for the regulatory system adopted. Another link is with the desirability that there be a "lead department" and "lead manager" to ensure that action is taken in situations where several departments or units of a department are involved and prior practice does not provide any basis for action.

Apart from these "frontier areas" (and, indeed, for them after arrangements have been worked out), the bulk of regulatory activities have to do with on-going operations and procedures.

Major issues here are concerned with the means by which criteria, standards, requirements, etc., are established, and with the degree of flexibility-specificity-discretion that is in the hands of the operational-level people who have to make the system work.

Ideally, policy, objectives and guidelines would be sufficiently well stated to provide a basis for operational people to use judgement and flexibility, and yet satisfy the general regulatory requirements. In practice, however, this framework exists imperfectly, and regulators are seen by business as attempting to minimize risk and uncertainty by delaying decisions and calling for more information (whereas business favours earlier decisions, even if based on limited information, so that it can proceed accordingly).

Accompanying this mode of operation by regulators is a close knowledge of, and contacts with, interested parties and interest groups. Continuing exposure to conflicting pressures and to the complexities and impacts of the factors in any particular situation can impair the ability to take decisions on some objective basis and speedily. Moreover, it seems to predispose regulators to incremental, highly-defensible changes, pursued by advocates through the political process, in contrast to a more detached, objective approach that might be part of a different regulatory system.

Another major point is that regulators consider their behaviour to be governed, finally, by the overriding mandate of their agency. This point, unsolicited, came out in almost all our meetings with the regulatory agencies. Descriptions of the mandates included: fostering local autonomy; environmental protection; protection of natural resources; worker protection; consumer protection and right to know.

Unquestionably it is desirable -- and indeed essential -- that regulators in a particular field have an overriding principle to guide them. But the way in which this is translated into practice has

effects which are not necessarily satisfactory. Thus there is sometimes a preference by regulators for broad, blanket legislation or regulation, leaving interpretation in the hands of officials who will have close, continuing contact with individual situations and will possess substantial discretionary power. There may be an important gap here, between the general and the particular, and need in the regulatory process for intermediate principles or objectives. These would interpret the general policy and objectives and provide the basis for operating decisions to be taken in accord with them, and yet with the flexibility that is appropriate to the particular situation. Establishing such intermediate principles could be a most important improvement for regulators to make in the regulatory process.

see p. 66

A further effect is that the weight of emphasis and attention by regulators is primarily on the side of social benefits (although these are not necessarily quantified), with little consideration of costs. In several cases there was limited awareness by regulators that there were trade-off considerations between the benefits obtained from their efforts and the impact and costs arising from them. To be sure, at some point matters become "non-tradeable", but the disturbing feature in a number of cases was not that such trade-offs had not been examined, but that the possibility of there being potentially valid trade-offs had not even been recognized. In other cases, there was expressed disregard for costs, on the grounds that they would be passed along and were necessary to fulfill the regulatory mandate.

Finally, therefore, we come back to the basic position of a regulator, that the regulatory system exists and is to be complied with. In this view, the regulator is in the best position to judge what must be done, there is no need for review mechanisms, there is no need for improvements in the regulatory process beyond what is being undertaken internally, and potentially harmful questions should not be raised about established procedures and processes. It is up to regulatees to consult closely with regulators and to learn how to conform to the system.

While such a position is a caricature, in that it was not stated in total by any one agency interviewed, the individual points were mentioned by a number of regulatory agencies and did seem to represent an underlying position.

The perceptions of those being regulated are different. Their view is that the regulatory process that Canada has today is merely a result of the way the process developed, in the 1970's in particular, in response to the circumstances and views of the time. Much has been learnt since then, and there is a much better body of knowledge and experience on which to base an improved process for the 1980's.

Among many regulators, similar views prevail, and there is demonstrated action and support for improvements in the regulatory process. It is noteworthy that not all of the individuals with these

views were at a senior, policy level, and operational-level people were also interested in potential for improvements in the process. Additionally there is sharp recognition of limitations on the quantity of resources in the hands of regulatory authorities, and of the desirability of reassessing ways of accomplishing objectives so as to get best use of the resources available.

2. SELECTION OF CASE STUDIES

2.1 Procedure

With the purpose of obtaining representativeness among cases to the greatest extent possible, and recognizing the lack of prior knowledge about the impact of regulations in Canada, we adopted a two-stage methodology in the selection of case studies:

- Stage 1: a survey of 200 companies in Canada, enquiring whether they were potential case study participants and, if so, the nature of the case they would present;

- Stage 2: from the responses, selection of the 10 cases for full study.

2.1.1 The Stage 1 Survey

It was decided that 200 companies should be approached in the Stage 1 survey, a sizeable population since it was visualized that a substantial number would not be able to commit the time and resources to develop a case properly and well.

The approach was preceded by an introductory letter from appropriate business associations: the Business Committee on National Issues, the Canadian Manufacturers Association, the Canadian Chamber of Commerce, or the Business Committee on Regulatory Reform. This was followed by a Woods Gordon survey letter and attachments, which was sent to the Presidents or Chief Executive Officers of the companies so as to obtain top level support and commitment.

The 200 companies were selected by Woods Gordon from lists provided by the business associations, supplemented by the Financial Post 1979 list of Canada's 500 largest companies and by other special sector lists.

Most companies invited to consider participation were large or medium-sized, since Woods Gordon's previous experience indicated that small companies would rarely have the resources or records to develop cases properly, and the Study Director indicated that a separate study on small businesses was to be commissioned by the Economic Council. In any event, it was not known for which entity a large company might submit a case; subsidiaries, divisions or functional areas could be of various sizes, and it could not be known in advance what the size distribution of possible cases might be.

Similarly, the geographic and locational distribution of possible cases could not be predetermined. Letters were sent to the head offices of corporations; while these were mostly in Ontario, the firms often had operations across the country, and care was taken to address firms with head offices in other regions and provinces also. Once again, the coverage of the response could not be predetermined.

A deliberate attempt was made to obtain a degree of representativeness by industrial sector, based on each industry's share in Canadian real domestic product. The following sectors were excluded for the reasons noted:

- agriculture and fishing: subject to unique circumstances, and operations generally too small for potentially good responses
- forestry: generally also small, unless part of an integrated operation, in which case it would be covered by the approach to the forest products manufacturer
- transport, energy and communications utilities: their whole existence is governed by regulation, and the regulatory impact cannot be distinguished separately for individual firms as the study was to do in other sectors
- business and personal services: generally fragmented and small
- government: the regulator, not the regulatee

Apart from these, the following were the industries selected and their share in real domestic product (based on 1971 weights adjusted to 1978 output levels):

	1971 Weight	1978 RDP Index	Adjusted 1978 RDP Weight	% Share
Mines, Quarries, Oils	3.810	104.4	3.987	5
Manufacturing	22.750	134.1	30.508	38
Trade	11.561	145.5	16.821	21
Finance, Business, Real Estate, Construction	18.840	178.2/112.1	28.953	36
Sub-total	56.961		80.269	100
Other, excluded sectors	43.039			
Total	100.000			

Bearing in mind the foregoing, and on the hypothesis that a yield of 1 final case might be expected from every 20 firms approached, the following was the industrial distribution of the firms surveyed in Stage 1:

Mines, Quarries & Oils	20
Manufacturing	80
Trade	40
Finance	20
Insurance	20
Real Estate and Construction	20
	200

2.1.2 The Response

One hundred and eighty-three of the two hundred companies surveyed replied by the cut-off date of October 26, 1979. This date was some six weeks later than planned as only 40% of the companies had replied by the original cut-off date. An extensive telephone follow-up campaign was required to elicit further response and even several written and verbal contacts did not achieve 100% response.

One hundred and twenty-two of the total respondents replied by letter as requested; the remaining sixty-one replied by telephone. This can affect any analysis of responses since verbal and written communications are not always identical. For instance, it was found that some companies gave one reason for their response by telephone and a different reason in a letter.

In assessing the response rates reported below, the deliberate exclusion by the Economic Council from the study of three major categories of regulation should be remembered: taxation and other revenue raising provisions; Anti-Inflation Board regulations; general statistical reporting requirements (although this last was relaxed later and one reporting case was finally selected). Many companies referred to these regulations as being of particular concern, and if they had been included responses would have been higher.

Overall, responses were as follows:

- companies submitting outlines of possible case	19
- companies unwilling or unable to participate	164
- companies not responding	17
	200

By sector, the responses were as follows:

	Total	No Reply	Unwilling or Unable to Participate	Submitted Case
Manufacturing	80	5	60	15
Mines, Quarries and Oils	20	3	15	2
Trade	40	5	35	0
Finance and Insurance	40	2	36	2
Real Estate and Construction	20	2	18	0
Totals	200	17	164	19

TABLE 1

ECONOMIC COUNCIL

COST OF COMPLIANCE STUDY

POSSIBLE CASE STUDIES

Company Information			Case Information				
Name	Industry	Ownership	Activity	Province	Regulation Type	Level of Government	Type of Case
* 1	Oil	Canadian & Foreign	Exploration	Arctic	Environmental Indian Affairs	Federal	1
2	Oil	Foreign	Manufacturing	All	Environmental	Federal Provincial	3
* 3	Oil	Foreign	Distribution	All	Transportation	Federal Provincial	3
** 4	Oil	Foreign	Manufacturing	Que.	Environmental	Municipal	1
** 5	Chem.	Foreign	Transportation	B.C.	Planning and Environmental	Federal Provincial	1
6	Chem.	Foreign	Manufacturing	Alta.	Environmental	Federal Provincial	1
o* 7	Chem.	Canadian	Manufacturing	Ont.	Environmental	Federal Provincial	3
8	Chem.	Foreign	Manufacturing	Alta.	Planning and Environmental	Federal Provincial Municipal	1
* 9	Mining	Canadian	Manufacturing	Alta.	Environmental	Provincial	3
10	Mining	Foreign	Mining	Ont.	Labour	Provincial	3
* 11	Steel	Canadian	Manufacturing	Ont.	Planning and Environmental	Provincial Municipal	1
* 12	Auto.	Foreign	Manufacturing	Ont.	Labour	Provincial	3
13	Cans	Foreign	Manufacturing	Most	Environmental	Provincial	3
* 14	Food	Foreign	Manufacturing	Que.	Health and Consumer	Federal	2
15	Food	Foreign	Manufacturing	Ont.	Packaging	Federal	3
* 16	Building Products	Foreign	Manufacturing	Ont.	Building Codes	All	2
**17	Conglomerate	Canadian	Manufacturing	All	Reporting	Federal	3
o*18	Insurance	Foreign	Financial	All	Information Specification	Provincial	3
o*19	Trust	Canadian	Financial	All	Information Specification	Federal Provincial	3

Notes:

* Case selected after initial scrutiny
o* Case selected initially but subsequently abandoned at company request
** Case subsequently selected

The major reasons for unwillingness or inability to participate were as follows:

	Total Refusals	No Case	Inadequate Resources	Participating in Other Studies	Misc.	No Reason
Manufacturing	60	30	21	1	4	4
Mines, Quarries and Oils	15	6	6	2	0	1
Trade	35	7	16	0	2	10
Finance and Insurance	36	17	18	0	0	1
Real Estate and Construction	18	4	7	1	0	6
Totals	164	64	68	4	6	22

Many companies gave multiple reasons for refusal; consequently the analyses given above are based on our judgment as to the most important reason. Further comments on responses are made below.

2.1.3 The Stage 2 Selection of Ten Cases

The 19 possible cases were submitted by companies in the following industries:

- manufacturing 15
- mines 2
- finance and insurance 2

These possible cases were arrayed as shown in Table 1 as an aid in deciding which 10 among them were most representative as a group. Supplementing this was the Woods Gordon requirement that firms provide an initial description of the case, an assessment of the likelihood of successful development of the case, and an indication of its potential positive contribution to improvements in the regulatory process. In each instance, we had telephone follow-up or meetings with potential participants prior to final selection of the cases.

As a result of this screening and review process, 10 case studies were selected as indicated by a single asterisk in Table 1. After notification and dispatch of methodology documents to the selected companies, we held a group briefing session with them at mid-November, to initiate the case study work. Following that meeting, 3 companies (indicated by the symbol 0 in Table 1, companies 7, 18 and 19) indicated that they did not wish to proceed further (for reasons which are elaborated on later). In consequence, we approached the next three potential participants in our case rating order. These companies, despite having been informed that they were not originally selected, were good enough to agree to participate. One of these cases offered

the opportunity to examine the effect of reporting requirements on a multidivisional conglomerate. We accepted this, and modified the earlier Economic Council ruling on reporting, because it appeared to be a unique opportunity to address reporting matters and to give cross-perspective with the separate study on small businesses.

These replacement companies (Nos. 4, 5 and 17) are indicated by a double asterisk in Table 1. The final set of 10 selected cases had the following array of attributes:

- industry	oil 3, chemical 1, mining 1, steel 1, auto 1, food 1, building products 1, conglomerate 1
- ownership	foreign 7, Canadian 3
- activity	manufacturing 7, exploration 1, transportation 1, distribution 1
- provinces	Arctic 1, Ont. 4, Alta. 1, Que. 2, B.C. 1, all 1
- regulation type	environmental 3, transportation 1, planning 2, labour 1, consumer 1, building codes 1, general reporting 1
- level of government	federal 2, federal and provincial 2, provincial 2, provincial and municipal 1, municipal 1, all 2
- type of case	Type 1 (new plant or facility) 3, Type 2 (new product or service) 1, Type 3 (on-going effect) 6

Work on development of the 10 case studies commenced in some companies in November, in others in December, and in some (including replacement companies) not before January 1980.

2.2 Woods Gordon Comments

The experience obtained in this phase of the study provided a number of initial insights regarding this Cost of Compliance study.

1. It was difficult to get response from all companies approached, on time, and in writing, even with extensive follow-up. While a certain degree of non-response to a survey usually occurs, this experience indicates no great willingness to participate in this study. This should not necessarily be interpreted as indicating unimportance or disinterest in regulatory matters. Other factors include the "hard" approach taken in the survey letter (discussed again below), priority concern among firms with three categories of regulation excluded from the study (taxation, AIB, and reporting), and expressed disinterest in participating in any more studies of any kind.

2. Among the respondents, the high proportion of those unwilling or unable to participate (90%) was surprising. We deliberately made our survey letter hard, in the sense of stressing the extensiveness of the effort and commitment required from the firm, so as to screen out immediately those not really interested in participating. Our original expectation (without any real basis for judgment) was that we might get about 50 positive responses, which would quickly winnow down to 20 or so potentially developable cases. In the event, we obtained only 19 positive responses, not all of which appeared to be good cases for development.

3. A variety of reasons were given for unwillingness or inability to participate, of which the most common (40% each) were: "no case", and "inadequate resources". The former includes statements that regulations were not onerous or those of concern were outside the scope of the study. Under the latter, firms pointed to shortage of staff, seasonal factors, a lack of time, and other priorities (such as strikes, expropriation, industry downturns and death or illness of key senior executives).

   Our discussions with companies revealed other reasons also: unwillingness to risk confrontation with regulators at the operating, day-to-day level where decisions are made; belief that this study was not the appropriate vehicle to use in addressing their particular problems; and desire to continue to use established channels.

4. Among the positive responses, the narrowness of response by sector was surprising. A disproportionate number of participants were in manufacturing, perhaps because of greater prevalence of regulatory problems or greater resources available to prepare a case. The non-response from the trade and the real estate and construction sectors was unexpected, since statements by industry representatives had suggested that these were areas where regulatory impacts were general and important. However, inability to obtain a case study through the survey was not changed by subsequent direct follow-up efforts with likely participants in these sectors by Woods Gordon and others.

5. In combination, the 19 possible case studies offered what seemed to be good representativeness across a range of attributes, including industry, ownership, type of activity, provinces, regulation type, level of government, and type of case. Some concentration in oil and chemical industry firms and on environmental matters raised initial concern but, as will be observed later, this was resolved to an extent by the type of cases addressed by the selected companies.

6. After Woods Gordon selected what appeared to be the 10 best cases in terms of array of attributes, likelihood of successful development of the case, and potential positive contribution to improvements in the regulatory process, three companies decided to discontinue participation, for the following reasons:

   - in one instance, belief that existing channels and mechanisms were a better means of resolving their regulatory problems. (It will be recalled that this reason was also given by a number of non-participants.)

   - in another, an unexpected change in attitude by the regulatory authorities which promised early resolution of difficulties and removed the basis for the case. (The Economic Council and Woods Gordon could perhaps have taken credit for such a change, had it been more frequent in the course of the study!)

   - for the third, inability to visualize a method of developing a case from the many regulatory impacts encountered, and despite extensive assistance and consultation with the Woods Gordon study personnel. (Again, this is a particular expression of a problem reported by non-participants and -- as we will see later -- by participants while developing their cases.)

3. CONDUCT OF CASE STUDIES

3.1 Procedure

We provided participating firms with detailed methodology documents (reproduced in the Volume on Methodology), and their representatives attended a general briefing session on study background and methodology.

The two initial steps for the companies were:

- to form a case study team, under a case study manager and with overall direction and support of a senior corporate officer;

- to define their case, and begin work on it.

Two Woods Gordon study managers undertook responsibility for particular cases within the ten, and maintained close advisory contact with the firms over a period of months through visits and telephone consultations. The Woods Gordon role was to ensure that a common approach was taken on technical questions, that the general prescribed methodology was followed, and that the case study reports were developed in a similar format. In practice, given the wide variety of firms, industries and case study situations, we allowed whatever flexibility was appropriate to reflect the case study circumstances in a meaningful and reasonably consistent way.

Our role with participating firms was a highly interactive one. We assisted them in developing their thinking through a process of challenge and suggestion. While maintaining a neutral position, we tried to ensure that what they were saying was reasonable and supportable, within the overall context that it was their case and experience that was being put forward. This was in accord with the basic orientation of the Cost of Compliance Study, to assess regulatory impact at the level of the firm as perceived by the firm, and as verified by Woods Gordon. It should be noted that in a number of instances, where highly technical data was concerned or when case aspects were not fully covered by written records, we relied on the interpretation of the firm as to what might be appropriate to include in a case.

The development of cases took substantial time, including case definition, clarification of issues, decisions on approach, assembly of information, and case study report drafting. The two Woods Gordon study managers participated actively throughout, in a series of meetings with senior corporate management and with the study team at the study operating level.

Toward the end of the process, when the case study report was in final draft form, there was a formal meeting of the directing corporate officer and study team of the firm, with the Economic Council Study Director and the Woods Gordon study team. This meeting allowed a final discussion of details and a more general discussion of the impact of regulation at the managerial and decision-making level of the firm.

3.2 Woods Gordon Comments

The experience we obtained during the conduct of the case studies broadened and deepened what we learned during the preceding case-selection stage and led to the following observations.

1. Many companies found it very difficult to define their case. Even where the general problem area was well known, it sometimes proved difficult to define what the major concerns were. There are a number of explanatory factors:

   - regulations are so pervasive that compliance with them is built-in as an accepted part of the corporate system. Potential case study participants, the selected participants which dropped out, and several of the participating companies cited this as a major difficulty in their being able to define and prepare a case study.

   - company records are usually not organized in a fashion that makes it easy or even practicable to document the history or cost of a case. Records of dealing with regulators and regulation are often scattered or non-existent, necessitating reliance on an individual's memory of events. Where there was no one who had been involved with the regulatory problem since its inception, it was hard to define the problem, let alone reconstruct it and measure it.

   - dealing with regulations and regulators constitutes only part of management's concerns. It receives attention as only one of numerous external factors impinging on the firm.

2. The perceptions and behaviour of different levels of management regarding regulatory matters are different. Middle management generally appear to be more adaptive to regulation than senior management. This may be because they have grown up with regulation and can conceive of little else. They are also the ones who have to deal with regulators on a continuing basis and are reluctant to disturb their relationship. In contrast, senior management, being older, can remember less regulation and tends to take a broader view of the impact of regulation on a company's well-being.

   Senior management is sometimes unaware of the extent of regulation and of the degree of accommodation of middle management to regulation. Several times senior managers were shocked at the situation disclosed by their cases, particularly as regards the time and effort involved in the regulatory process. The converse was also encountered where major problems believed by senior management to exist were not found.

It appears also that companies sometimes pay inadequate attention to regulation and regulators. In some, coping with regulations is a low priority, and problems might have been avoided had more management attention been given to regulatory requirements; higher front-end management costs could have reduced later compliance costs. The danger from management's point of view is in being overly-adaptive and diverting too much time and effort from the primary functions of the business.

3. In cases where regulatory problems were clearly identified as of importance and concern, there was sometimes a reluctance to be explicit about the circumstance and effect. This was more prevalent among middle than among senior management, and seems to be due to one or more of the following:

   - fear of retaliation by regulatory agencies;
   - fear of upsetting current negotiations with regulators;
   - unwillingness to point a finger at specific individuals;
   - reluctance to criticize without having documented evidence;
   - general sensitivity about public and governmental reaction.

   A further consequence was hesitancy by firms, toward the end of case study preparation, in deciding on the final formulation of their case and in releasing it to be a part of the overall study. Knowledge that their case study would be discussed with the appropriate regulatory agencies, and might eventually be published by the Economic Council, caused extensive internal review by firms of their cases and delays in making it available. This again illustrates considerable caution among firms in being specific in regulatory matters.

   The sensitivity of firms toward the reaction of regulators is highlighted by the refusal of one firm, after its case study had been completed, to allow it to go forward. The firm was embarking on a major capital project which required the approval of the very regulatory authority that was the subject of the case study of earlier circumstances; the firm did not wish to risk prejudicing current negotiations by releasing the case. Under the circumstances, and despite the time and effort involved and the relevance of the case to this study, Woods Gordon had no choice but to accede to the company's wishes. Fortunately, another of the participating firms had prepared two cases, on different regulatory issues and circumstances, the second having to do with land development. While normally we would have preferred that the ten cases came from ten firms, and that the case on land development came from a firm whose primary field of activity this was, we were thus able to maintain the desired total number of case studies and to broaden their coverage.

TABLE 2

ECONOMIC COUNCIL

COST OF COMPLIANCE STUDY

CASE STUDIES

Case	New Product	Period	Location	Level of Government
1.	New Building Product	1977-79	Ontario	Provincial/Municipal
	New Facility			
2.	Exploration Activity	1970-80	Arctic	Federal
3.	Industrial Park	1969-81	Ontario	Provincial/Municipal
4.	New Steel Plant	1974-81	Ontario	Federal/Provincial/ Municipal
5.	New Chemical Terminal	1976-79	British Columbia	Federal/Provincial/ Municipal
	On-going Operations			
6.	Environmental Standards: Oil Refinery	1978-80	Quebec	Municipal
7.	Hours of Work Legislation	1978-79	Ontario	Provincial
8.	Distribution and Trucking	1976-78	Ontario/Alberta	Provincial/Federal
9.	Food Product Labelling	1970-79	Quebec	Federal
10.	Centralized Corporate Reporting	1979-80	Ontario	Federal/Provincial

4. RESULTS FROM THE CASE STUDIES

The Executive Summary for each case, as prepared by the participating firm, is provided in Section 6 of this volume. The full case as prepared by the firm is presented in a separate working paper; by referring to these, a fuller appreciation will be obtained of the circumstances and content of the cases, on which the participating firms based their recommendations. Development of the cases was a major undertaking for firms, and very extensive back-up material and working papers, to which Woods Gordon had full access, exist in the offices of the participating firms.

The following comments, prepared by Woods Gordon, summarize the nature and content of the case studies, the costs of compliance, and the issues identified and recommendations made in the cases. The purpose is to provide a generalized statement of the information contained in the cases.

4.1 Synopses of the Case Studies

It will be recalled that we focussed attention on the effect of regulations on certain key aspects of business operations:

- development and introduction of a major new product line or service;
- development of a new facility or property;
- the on-going effects of particular regulations or a group of regulations on a firm's activities, in whole or in part.

The 10 cases developed covered that range of categories, as is shown in Table 2. One case relates to introduction of a new product and four cases to development of a new facility. Five cases are concerned with the effect of regulations on on-going activities. The following is a capsule description by Woods Gordon of the cases as prepared by the firms, in order to indicate their broad nature and coverage.

Case No. 1 is concerned with the introduction of a new building product which required approvals at the provincial and municipal level. The approval process was not defined, kept changing, did not have standards or other objective criteria, and was at the discretion of the officials involved. The full product approval process took 3 years instead of 3-6 months. There was no basic disagreement by the firm with regulatory objectives and the need for standards, but there was considerable dissatisfaction with the operation of the regulatory process.

Case No. 2 relates to exploration and drilling activity in the Arctic, and desire for subsequent federal approval to drill an

exploratory well. There was inability by government to resolve conflicting objectives of identifying Canada's hydrocarbon resources and of protecting the environment. Decisions were deferred, studies commissioned and environmental requirements escalated over the period 1970-80. The firm had no basic disagreement with the need for regulatory policies, objectives and standards, especially in complex matters where there can be multiple considerations and trade-offs, but the essence of the case is that these did not exist.

Case No. 3 is concerned with the development of a major new industrial park in Ontario. Municipal and Provincial regulations affecting the development caused delays and excess planning, engineering and construction costs over and above those expected by the specialist land-use engineering consultants retained. There is no disagreement with the underlying objectives of the regulations concerned but changes are called for in both the details of specific regulations and in the manner in which they are implemented.

Case No. 4 is concerned with the construction of a new, fully integrated steel plant in 4 stages. Stage 1, in 1974-81, was heavily impacted by many forms of regulation at all levels of government, of which environmental and land use were the most significant. The case considers that regulatory costs and the complications of the regulatory process are already severe and, if added to in future, would prejudice the success of the overall project. There is basic agreement with the objectives of much of the regulation and the company has overcomplied in certain respects to establish a sound initial position and to anticipate future changes and requirements.

Case No. 5 relates to the location of a new, deep-water, bulk-chemicals terminal. Changing decisions and views among the federal agencies involved caused delays and uncertainties. The position of the agencies was not based on objective, stated criteria. There was no disagreement by the firm with the underlying objectives of the regulations, but with the regulatory processes and concepts used.

Cases 6-10 are concerned with the effect of regulations on the on-going activities of businesses.

In Case No. 6, to do with environmental standards for certain atmospheric emissions by an oil refinery, there were substantial additions to existing regulations. While the firm does not basically disagree with the need for standards, the specific standard adopted by the agency is considered unrealistic in relation to the relative contribution to the environmental impact and to the cost of compliance. Beyond this, there are issues of retroactivity of new regulations to existing operations, retrofitting, and additions to existing cost structures.

Case No. 7 is concerned with hours of work legislation which prevents optimal use of plant capacity by an automotive manufacturer, causing losses in output and employment. The firm

considers that a mechanism for achieving the objective of the legislation already exists in the collective bargaining process, that legislation should only apply where such arrangements do not exist, and that the legislation causes adverse economic effects in the case presented.

Case No. 8 relates to distribution of bulk petroleum products by an oil company by tank truck. This is governed by a number of regulations, the effect of which is to cause higher costs than alternative feasible arrangements. On the basis of comparative experience in two provinces (Ontario and Alberta), recommendations are made for changes for entry into "for-hire" trucking, and for vehicle weights and dimensions. Additionally, changes are suggested in the method of providing rebates on fuels to agricultural users, among other suggested changes.

Finally, Case No. 9 (to do with food product labelling) and Case No. 10 (covering centralized corporate reporting) relate to more narrowly defined functional areas in business operations and the effect of regulations on them. Both cases were developed to assess the pervasiveness of regulations on business activities, and to measure the cost of them in a limited area of operating activity. They also illustrate vividly the adaptation of firms to regulations as an ongoing part of their businesses.

In summary, the 10 case studies present information that provides insight into the following regulatory matters and issues:

- Cases 1 - 5	the approval process for a new product or a new facility, where commencement of operations is affected by the approval and regulatory process
- Case 6	the imposition of standards without regard to potential environmental benefits in relation to the costs of achieving them
- Cases 7 and 8	the effect of regulations on existing operations, where superior alternatives are considered to exist
- Cases 9 and 10	the effect of regulations on a limited part of existing operations, illustrating pervasiveness of regulations and adaptation by firms.

4.2 Costs of Compliance

The study methodology asked, ideally, that the firms assemble their costs under the following groupings:

- total costs of the case (new product, new facility, on-going functional activity). This was to provide a point of reference to assess the significance of the regulatory costs that were being determined, i.e., their relative size and impact.

- incurred regulatory costs (IRCs), appearing in the firms' books of account, which arose from compliance with the regulations under study. (Since firms were asked to concentrate on the most significant regulations only, the IRCs reported are an understatement of the situation.)

- opportunity regulatory costs representing opportunities foregone as a result of the regulations under study (ORCs).

- the broader, behavioural effects of the regulations under study (BIRCs).

- (emerging from the foregoing) unnecessary regulatory costs, in the sense that there were alternative, less costly ways of achieving the objective.

In practice, as noted, the cases developed related to different sets of circumstances and regulatory effects. Moreover, there was considerable variation between the firms in the nature and comprehensiveness of internal records, and in the resources brought to the case by the study team members. Accordingly the costs for cases were developed in a manner that seemed most appropriate for the circumstances. In all cases common conceptual definitions and guidelines specified by Woods Gordon in advance were followed.

Total and Incurred Costs

Case 1 (the new building product), Case 2 (drilling), and Case 3 (development of an industrial park), have to do with the approval process for a new product or facility, in a line of activity which was new for the firm. Costs were incurred in each case during the approval process, in Case 1 over 3 years before operations could commence and in Case 2 over 10 years without any resolution of the situation. In Case 3 there were a number of delays at various points in the development process; this case also shows the effects of other actions by regulatory authorities on costs, e.g., through the imposition of servicing requirements which are considered by the firm to be excessive.

In Case 1 the total costs incurred before the approval process was complete were regarded as incurred regulatory costs, i.e., the regulatory process resulted in the firm incurring costs that were 100% of its total costs. In Case 2, government-imposed costs for environmental studies were 16% of total costs; if authority to drill in this geographic area is not granted to anyone (despite efforts by this firm to comply fully with regulatory requirements as stated at the time), the full amount of the sunk costs will be attributable to the

effect of regulations. In Case 3, the firm measured total costs and the incurred costs arising from delays and from excessive regulatory requirements; these amounted to 21% of total costs, about half of which were because of delays and the balance due to excess requirements.

Case 4 (new steel plant) and Case 5 (new bulk-chemicals terminal), related to a new facility in the on-going field of activity of the firm. In these instances, the total costs of the case were measured and also the total incurred costs attributable to regulations. In Case 4 these IRCs were 11% of capital costs and are estimated at 8% of annual operating costs. In Case 5 the IRCs were 4% of capital costs, and additional annual operating costs equivalent to 7.5% of capital costs will be incurred as a regulatory effect.

In summary, for the 5 cases concerned with a new product or new facility, the incurred regulatory costs were sizeable in absolute and relative terms. Moreover, where the firms (Cases 1 and 2) could not proceed to the next step without approval, they experienced cost burdens which were severe in relation to their size. These firms commented on the prejudicial effect on development of new products and innovations by smaller businesses in Canada, and on the superior ability and resources of large companies to navigate and manage the regulatory process. This is not to say that the larger firms in Cases 3, 4 and 5 were happy either; each regarded the regulatory process as inefficient and costly, and the incurred costs of regulation as being at too high a level.

Cases 6 - 10 dealt with the effects of regulations on on-going activities; they focussed on particular regulations or particular aspects of operations to illustrate the effect of regulations. In these circumstances, total costs of the case could not generally be identified, and incurred regulatory costs only were developed.

Case 6 (dealing with environmental standards for an oil refinery) basically was a dispute with the appropriateness of the standards and mechanisms being put in place by the regulatory authorities in relation to the potential lessening in the environmental impact. The firm therefore regarded the IRCs as unrealistic and unnecessary in whole or in part.

Case 7 (hours of work) and Case 8 (transportation) measured the effect of certain regulations on existing operations, in the context of superior ways of proceeding which the firms considered were available. Case 7 found the IRCs to be negligible (the chief effect being in ORCs, as is mentioned later). Case 8 identified total costs, IRCs, and unnecessary costs for a number of functions in the distribution area and found that unnecessary IRCs were 3% of total costs in these matters.

Cases 9 (food product labelling) and 10 (centralized reporting) focussed attention on the impact of regulations on a limited part of their overall activities. For the areas examined, the IRCs are

relatively small but, the firms consider, illustrative of the built-in, pervasive cost of regulations throughout their business. Case 9 demonstrated substantial growth (almost doubling) of the relative cost of regulation in the areas examined in 1974-78. Case 10 found that the cost of the reporting functions measured was less than expected, in part because of the efficiency of centralized reporting.

Opportunity Regulatory Costs

An important finding from the cases was that ORCs were frequently larger than IRCs, even though the effect could not always be measured.

Thus Cases 1 and 2, where delays caused substantial IRCs, reported very severe ORCs, including loss of development potential, permanent loss of market share and position, delayed entry into export markets, effects on reputation for quality and performance, and commitment of capital and management resources that could have been used in alternative opportunities. In both cases the ORCs, insofar as they could be measured, were several times greater than the measured IRCs.

In Case 3, the main opportunity cost arose from the loss of potential tenants due to the delays which the firm attributed to regulations. Additionally, industrial users are forced to use expensive potable water when cheaper raw industrial water would have been adequate.

The ORCs in Case 4, arising from regulatory delays, were conservatively estimated at 1.5% of total capital costs; the effect was lessened by coincident delays elsewhere in the development project. In Case 5, delay caused ORCs at a level of some 8% of capital costs. In both cases, there was some effect from compensating variables within large organizations, but this cannot be assumed to operate as required and risks of adverse effects from regulatory delays are real and the costs substantial.

Other ORCs identified were the negative effect on future investment intentions in the particular location (Case 6), and diversion of production away from Canada equivalent to 4% of that in the Canadian facility with accompanying loss of value added and employment (Case 7). The distribution case (No. 8) measured ORCs at 4% of the total costs of the functional areas being examined, or a combined total for unnecessary IRCs and ORCs of 7%.

Behavioural Effects

BIRCs, the broader effect of regulations on corporate behaviour, were also found to be important in most cases. These are the most difficult costs to identify and quantify, and some study teams were reluctant to state them because of their qualitative nature. The effects are of two broad types.

The first type of behavioural effect arises from the continuing encounter with new regulations or major changes to existing regulations, particularly as they relate to the strategic planning and development of the firm. These were encountered in Cases 1-5 (new product or facility) and in Case 6 (the introduction of new environmental standards). These typically are matters for senior management attention, with high potential risks and also rewards. The disquieting evidence from the cases is the impact of the regulatory process, as it operates, on the willingness and ability of firms to undertake the efforts involved. Effects cited include:

- real loss of opportunities, and unwillingness to go the same route again;
- negative impact on international competitiveness;
- negative impacts on further investment by large, established companies;
- innovation discouraged;
- new, small companies discouraged, since they do not have the finance, management and time, to survive the regulatory process;
- disruption of internal morale and trust, when faults were those of the regulations.

The second type is the on-going implementation of and adaptation to regulations by the firm, at the middle-management and operating levels. This was observed in all cases, but particularly in Cases 7-10 which were concerned with the effect on on-going activities. The behaviour of the firm is one of adjustment to and dealing with regulations as one among the many external circumstances impinging on the firm. Middle-management accept and work within the established system. A counter-bureaucracy is established, new or expanded organizational units grow, and "government relations" becomes an integral part of training programs for junior and middle management.

It is also apparent that during the informal negotiating process that often occurs between companies and regulators, companies may accede to regulatory requests which they believe to be both unnecessary and expensive in the interest of completing the major task in as expeditious and efficient a manner as possible. There is scope for abuse of regulatory power in this way.

Beyond these generalized statements, the cases indicate that it is important to realize that, for the individuals in a firm, the impact of regulations is very specific and the reaction to them is very personal. Each firm sees itself as a particular situation, and its people react against being treated as a general case, or next-in-line, by regulatory policy-makers, agencies, and officials. Discouragement

and resentment for managers as individuals is real and lasting and if the effects are adverse for innovation, growth, and other supply-side variables, they will persist and intensify unless there are improvements.

One other important point is that there is a widely held perception that only the large firms have the resources to "manage" the regulatory process and the time to endure it. This is seen as negatively influencing the development of small and medium-sized businesses in Canada.

4.3 Issues and Recommendations

The following is a summary by Woods Gordon of the principal regulatory issues disclosed by the case studies and the resulting recommendations made by the firms. Besides the cases themselves, we drew on verbal comments made to us and the Study Director by the firm's study team and senior management at the final meeting regarding the case. These sometimes were more explicit and extensive than the comments made in writing by the firm, perhaps because of the broader responsibilities of senior officers. As an extension of this, often the points or comments made in a case were representative of what we were told by potential participants who did not finally prepare a case.

In this summary, we have tried to focus on matters of general interest and significance; aspects which are specific to the particular case can be found in the full case description by each firm which is presented in the separate working papers.

We have organized the material under three general headings, although it will be appreciated that there is considerable interrelationship among them:

- policies and objectives;
- the regulatory process;
- regulatory officials and relationships.

4.3.1 Policies and Objectives

It will be recalled from Section 1 that the prime focus of this Cost of Compliance study was on the cost-effectiveness of regulations. Firms were advised that any disagreement by them with the basic objectives of regulations would require very strong supporting evidence (the purpose being to elicit specific, constructive responses rather than dismissive generalities).

The case responses reflected this orientation; rarely was there expressed disagreement with the objectives of the regulations under study. However, the cases disclosed dissatisfaction with the way

in which policies and objectives were established and transmitted. Deficiencies here were considered to underlie some of the basic problems encountered in the regulatory process itself.

Such concerns occurred mainly with respect to new products and new facilities (Cases 1-5). The most detailed example is in Case No. 2 (drilling in the Arctic), where there were two conflicting major policy objectives (hydrocarbon exploration and development; preservation of the natural and human environments), and at least two major departments involved (Indian and Northern Affairs; Environment).

The main issues in the case are that there have been no clearly-stated policy and objectives, and no regulations since 1970; that environmental objectives and standards have evolved without a context of defined objectives; that contradictions which arise are not resolved, leading to greater uncertainty; and that outcomes and decisions are not a result of a reasoned policy process. The mechanisms for resolving multi-objective situations are inadequate, and there is lack of policy directions and guidelines for lower-level, operational regulations and procedures.

the key issue is the level of detail of the policy & objectives - see p. 44

The main recommendation from the case is that long-term policy and objectives should be established prior to the structuring of the regulatory process. This is a particular statement of a general point of view that was widely held among the participants in the study.

The firms recognize that many aspects of today's society and economy create situations with conflicting, legitimate objectives depending on the perspective taken, and that the outcome can be multi-objective and not fully satisfactory for any single point of view. This makes it all the more necessary, in the opinion of the firms, that assessment of such matters focus on the most significant aspects of the situation and use the best assessment techniques available (risk analysis, cost-benefit analysis, etc.). Beyond this, however, the very complexity of the matters being dealt with requires a focus on policies, objectives and means of assessment, at a higher level of attention than prevailed during the 1970's when, like Topsy, the system just grew.

4.3.2 The Regulatory Process

Most of the issues identified in the cases as being of concern had to do with the regulatory process. These led to recommendations for improvements which, in the circumstances, were often statements of desire for improvement rather than specific suggestions as to how it might be brought about.

We have grouped these matters as follows (although again there are interrelationships among the groupings):

- the approval process, duplication and overlap, and directions for reform;

- consistency/flexibility;
- standards and assessment methods;
- review mechanisms.

4.3.2.1 The Approval Process, Duplication and Overlap, Directions for Reform

Many cases referred to short-comings in the approval process:

- duplication of effort and approvals at provincial and municipal levels; approval process not clear, is complicated, and imposes unreasonable and costly demands (Case 1);
- approval process lengthy and complex, and undue intervention in the private decision-making process results in delays and uncertainty; overlapping jurisdictions of various levels of government create confusion and complexity (Case 3 & 4);
- was no way for the applicant to find out what the regulatory agencies and their procedures were; was duplication between federal and provincial agencies and within each level of government; clearance by one body meant nothing to others (Case 5);
- overlap and duplication in federal and provincial requirements (Case 10).

These led to a number of recommendations for clarification of approval processes, definition of jurisdictional boundaries, and avoidance of overlap. Beyond these general suggestions, several specific recommendations were made:

- where several departments/agencies are involved, there should be clear identification of the one with the primary responsibility;
- approval by one level or unit should be sufficient for others;
- the approval process (for example, for building permits at the municipal level) should distinguish between smaller, regular undertakings, and large, capital-intensive projects, attended by specialist professional expertise and particular technical circumstances, which require individual treatment;
- there should be a mechanism to identify for business for a project, the regulations and agencies of jurisdiction, the approval process to be followed, and the time dimensions for regulatory approval;
- reporting formats and dates for similar information to different levels of government should be standardized.

A number of other recommendations related to the need for regulatory reform to speed up and simplify the process, to resolve problems and issues in a practical way, and to improve the system so that regulatory officials could function better within it. Firms recognized that society and the economy are changing and that regulators also are often finding their way in new directions. This reinforced the view of the firms that there is need to design and clarify the regulatory system, following establishment of basic policies and objectives.

One firm cited a European country in which it also operates, where policies, objectives and standards are known and agreed, officials have the basis for taking speedy decisions on their own responsibility, and business knows the limits within which it must operate. The system there works, even though the number of regulations is likely greater than in Canada.

4.3.2.2 Consistency/Flexibility

On the one hand, then, firms express a general wish to know what is reasonably required under the rules of the game so that they can comply and get on with their business activities. (This is sometimes seen as a desire for the status quo and resistance to further change. More than this, however, it seems to represent a desire to have some degree of certainty in at least one of the external elements impinging on a business.)

On the other hand, firms look for some degree of flexibility which will recognize and accord with the circumstances of the individual situations they are in.

And the same firm or the same individual can take a different view of consistency versus flexibility depending on the particular circumstances.

Thus the firms have a general view that all suppliers should be treated equally or, more generally, that there be consistency of treatment by regulatory agencies. This would appear to require more specificity on the part of the regulator (i.e., there should be limits on his discretion), but this in turn conflicts with the wish of the firms that there be full recognition of the individuality of each particular situation.

It appears that a principal source of difficulty between regulators and regulatees is the different perception of the circumstances of each particular situation and of the validity and applicability of any general rules that exist. Clearly, these difficulties are more acute in situations for a new product or facility (Cases 1-5) although they are experienced in the on-going effect of regulations also.

There is also the matter of consistency over time. Several cases (Nos. 4 and 6) were concerned with the effect of changing regulations and new regulations on a large project with a long time dimension or for retroactive application to existing facilities. These would impact on planned cost structures or on existing cost structures, and materially change the conditions for the enterprise. Suggested matters for attention included:

- limitation on changes in regulations applicable to a particular major project extending over a considerable period of time, once that project has received initial approval and is under construction;

- limitation on new regulations applicable to such a project or facilities already built, and careful consideration of the need for and cost of retroactive compliance.

4.3.2.3 Standards and Assessment Methods

Many cases indicated disagreement with standards and with assessment methods used. Some of these were in the environmental area, where standards and assessment methods are technical in nature. We are also using these terms more generally, to cover statements of general performance specified and of the means of carrying it out.

The nature of the issues causing concern are as follows:

- some standards inappropriate and have adverse cost-benefit ratios (Case 4);

- ideas for performance (in lieu of standards) embrace an unrealistic zero-risk concept; no risk analysis or cost-benefit analysis carried out (Case 5);

- technology-based blanket standards inappropriate; zero-risk concept inappropriate; detailed specification by regulators inappropriate (Case 6);

- blanket legislation inappropriate for all circumstances (Case 7);

- blanket regulation, without provision for change on cost-benefit-engineering basis, inappropriate (Case 8);

- blanket specification impractical (Case 9).

There are several elements in these disagreements: with the level and appropriateness of the standard; with the assessment of its comparative worth (in terms of cost-benefit analysis); and with the relevance and practicality of detailed specification by the regulators (as distinct from general requirement statements that leave the firms to proceed in ways best suited to the circumstances).

The outcome was a number of recommendations directed toward improving the requirement-setting and assessment mechanisms. Almost all called for cost-benefit analysis, risk analysis, and impact analysis of existing regulations and of new regulations prior to introduction. One called for deregulation for certain transportation activities.

4.3.2.4 Review Mechanisms

Several cases expressed need for mechanisms for independent review of regulatory matters. Currently, regulators are considered to have powers of prosecuter, judge and jury in their own jurisdictional areas. More than this, they are perceived as being as self-interested from their own perspective as anyone else, and thus incapable of taking a balanced view of the public good in complex matters.

Three different types (or levels) of review mechanisms were recommended:

- review of proposed new regulations by an independent body, before they are finalized or instituted;

- means for firms to have recourse and access to alternative arrangements, if there are unreasonable, costly delays resulting from regulatory changes or inaction;

- a more formalized process of higher-level review than exists for regulatory decisions which have major implications. At present, depending on the circumstances, the final review point would be the Cabinet (federal or provincial). Alternative mechanisms would free Cabinet time for only the most important review activities.

4.3.3 Regulatory Officials and Relationships

While there was dissatisfaction with policies and objectives, and with the regulatory process, there was even greater disquiet among the firms about regulatory officials and relationships.

Firms state that they are not necessarily against regulations as such; they see the problem as being the system and some of the people in it. Going further, they are not automatically antagonistic or condemnatory of regulators as individuals, but rather of the poor system that gives the regulators neither guidelines nor a basis for operating more effectively. One firm commented that we now have specialists to help outsiders through the regulatory process (FIRA, EDP, LEAP, etc.), when what are needed are specialists inside the process to make it work. Criticisms of the behaviour of officials in practice include: avoid risk and take the safe path of refusal; have no sense of

time and cost; must be tolerated for fear of retaliation; may oblige businessmen to accept unnecessary costs to obtain regulatory approval for main work elements.

At the same time, the cases demonstrate recognition by businessmen that regulators have problems on their side. Society's views have changed, new technology has increased complexity, and policies, objectives, and standards are not easily arrived at. Opinion was that this reinforces the need for improvements to the overall system, so that those running it can do so more effectively. Unfortunately, an adverse effect of previous poor relationships has been an unwillingness of business to make suggestions to or discuss alternatives with regulators, for fear that statements by them quickly become minimum requirements as has happened in the past.

There is also a widely-perceived need for improved co-operation and communication within government, within industry, and between industry and government. This would help resolve many of the problem areas identified. The process of standard-setting would be greatly improved. There would hopefully be a more rational approach to a number of relatively small changes (e.g., in the transportation case) which would not impair objectives but would improve efficiency, lower costs and remove annoyances.

A great deal of communication and interchange occurs now in various ways. The underlying spirit of co-operation has not always been high because of mutual suspicions and self-interests among the different parties. These were fostered by the growth in regulation in the 1970's. A more rational and co-operative approach is hoped for in the 1980's.

5. RESPONSES BY REGULATORY AGENCIES AND OBSERVATIONS BY WOODS GORDON

5.1 Responses by the Regulatory Agencies

When the case study report prepared by the firm was in final form, it was sent by Woods Gordon to the principal regulatory agencies identified in the case, with a request for a meeting by Woods Gordon and the Study Director with agency officials, preceded by written comment if considered appropriate. (By regulatory agency, we mean the government department or regulatory body that appeared to have prime jurisdiction in the circumstances of the case.) The purpose here was to inform them of the circumstances and contents of the case, to obtain their response on the facts as presented, and to learn their reaction to the suggestions by the firms for improvements in the regulatory process and of directions in which the regulatory bodies themselves saw potential for improvement.

It had always been appreciated that the perspective of a regulatory agency could well be different from that of the firm which prepared a case, and we wished to obtain a reading regarding this. Additionally, in parallel to the attempt to have firms act constructively with positive suggestions for improvements, it was hoped that regulatory agencies would be similarly encouraged to advance their views on potential improvements in regulations or in the regulatory process.

These points were stated in our covering letter to the regulatory agencies, enclosing the case, which was generally addressed to the Deputy Minister or senior official of the agency concerned. A response was requested within about one month. The following were the agencies contacted with respect to the cases:

Case	Agency
1. New Building Product	Ministry of the Environment, Ontario
2. Exploration and Drilling Activity	Departments of Indian and Northern Affairs, and of the Environment, Ottawa
3. Industrial Park	Ministry of Housing, Ontario
4. Steel Plant	Ministry of the Environment, Ontario
5. Bulk-Chemicals Terminal	Ministry of Fisheries and Oceans, Ottawa
6. Environmental Standards, Oil Refinery	Montreal Urban Community, Quebec
7. Hours of Work Legislation	Ministry of Labour, Ontario

8. Distribution of Petroleum Products	Ministry of Transportation and Communications, Ontario Transportation and Treasury Departments, Alberta
9. Food Product Labelling	Department of Consumer and Corporate Affairs, Ottawa

Case No. 10 was not circulated because of the large number of regulations and departments with which it was concerned.

We provide our synopsis of the verbal and written comments by the agency on each case in Section 6 of this volume, immediately following the Executive Summary of the case as prepared by the firm. After thus presenting both the perspective of the firm and of the agency on the case, we make some Woods Gordon observations on the principal regulatory issues and matters that are raised by each case. Given the origin of the whole Regulation Reference and the context of this Cost of Compliance study these observations relate particularly to the positions of the regulatory agencies in the regulatory process. In order to obtain most benefit from this whole study, we place prime emphasis on the issues involved in the cases and responses, and not on the details.

In addition to this case-by-case treatment, it is desirable to provide generalized observations across the range of information contained in all the cases and responses. We do this in the second part of this Section 5.

Before coming to that, however, it is appropriate to mention certain aspects of the behaviour of regulatory agencies in response to our request for their comments on the cases. Earlier in this report, in Sections 2 and 3, we commented on the behaviour of firms in deciding whether or not to participate in this study, and on the behaviour of participating firms in carrying out their case studies. We have similarly obtained a perspective on the behaviour and attitudes of the agencies, although we recognize that their acquaintance with the particular case that concerned them and with this Cost of Compliance study was relatively brief.

In certain instances, our meetings were with senior officials at the policy level, and in others with intermediate/junior people at the operational level. The level at which we were dealing affected the scope of the discussions and the nature of the responses; in certain instances discussed were concerned more with policy, and in others more with administrative, aspects. To a certain extent the decision on level of response may reflect the attitude of agencies to the cases and to this Cost of Compliance study. Beyond this, the mix of policy and operational people that we saw may have been a valid representation of the situation for business in practice, in that detailed regulatory rulings and administration are made at the

operational level. Since we were dealing with specific people on specific matters in the way which individual firms do, we experienced at first hand some of the differences in purpose and focus which can cause friction and difficulty between regulator and regulatee.

Thus in some instances regulators had difficulty in accepting the validity of a study that focussed on costs and not on benefits. Allied with this was a view that the effect of regulations on only parts of a firm's operations were not grounds enough for considering basic changes in the regulatory process. It must be emphasized that in other instances regulators took a broad view and were themselves considering potential for useful changes.

Quite frequently however, regulators interpreted the cases as being criticisms of them; their tendency therefore was to be defensive. Another effect among relatively junior or intermediate officials was to concentrate on disputing detail, operating within their own context and framework. These were undoubtedly natural reactions and were not unexpected. However, it was unfortunate that the broader purpose of this study and its orientation toward regulatory reform was, in some instances, either not recognized or was lost in the response process.

The outcome of the written and verbal responses to us by the agencies on the cases, was often dispute on detail, interpretation, and sometimes the cost estimates of the case. In such instances we reported the comments to the firm that prepared the case, and this frequently resulted in some changes by the firm to the case in final form. In no instance, however, did a firm alter to any important extent the basic substance of its case. As a result, there frequently continues to be a difference in perception and interpretation regarding the case, between the firm and the regulatory body.

Regarding this, Woods Gordon is in no position to make a pronouncement on where truth lies (in some absolute sense) or to comment on the relative validity of the different views. What we can do is to verify that the circumstances of the cases prepared by the firms were factual and reasonable (which has been done), to present the comments of the agencies straightforwardly and without interpretation (which we do in Section 6), and to make our overall observations in as constructive a manner as possible.

5.2 Overall Observations by Woods Gordon

In this section, we present some conclusions that can be drawn from this Cost of Compliance study, and highlight principal issues and matters that are significant when considering regulatory reform.

We think that the coverage and range of the cases, together with the experience gained in all stages of the study over a full year, make it proper to advance general observations and

conclusions, even though the number of cases is limited. This limitation does mean, however, that it would be invalid to treat this sample of cases as representative in a statistical sense and to attempt to expand numerical data to an aggregate level for the Canadian business population as a whole.

5.2.1 Costs of Compliance

As mentioned earlier, our methodology and study conduct was oriented toward answering five main questions:

1. Are regulations causing significant costs to firms?

2. If so, which regulations, from which level of government, cause the greater amount of costs?

3. What are the costs, quantifiable and non-quantifiable?

4. Have regulatory costs for firms grown significantly in the 1970's?

5. Could the objectives of the regulations be achieved in a less costly way?

On the basis of the study work, the following are the general answers to these general questions:

1. The evidence from this study is that the cost of regulations in a number of types of business situations is significant in relation to the costs (capital and/or operating) of the particular activity. (We repeat what was stated earlier, that this study was deliberately focussed by the Economic Council on costs, and does not consider associated benefits from regulation.)

2. It is not possible to differentiate between the cost effect of regulations from the different levels of government. The case studies gave a good coverage of federal, provincial and municipal regulations, whether singly or in combination. It appears that all government levels can be of significance, depending on the project or situation. Indeed, several studies made clear that overlap, duplication and lack of clear lines of jurisdiction among governments were major problem matters.

3. Earlier we reported the costs of compliance as found in the case studies, in quantitative terms wherever possible. One important finding is that IRCs (incurred costs appearing in the firms' books of account) are often outweighed by ORCs (representing opportunities foregone because of the effect of regulations), although the different degree of precision attached to these two types of costs should be recognized. Not unexpectedly from the foregoing, BIRCs (the broader, behavioural effect of regulations) were also found to be very important.

4. Growth in regulatory costs for firms during the 1970's is also apparent from the case studies, even though the magnitude cannot be calculated because of the fragmentary evidence on this from the cases. This past growth, and knowledge among Canadian businessmen of the generally greater extent of regulatory influence in the United States than in Canada, has created concern and uncertainty regarding further potential growth in regulation in Canada.

5. The answer to whether the objectives of regulations could be achieved in a less costly way depends on the situation of the affected firm. The cases indicate that at least three categories of situation should be distinguished:

   - introduction of a major new product or facility requiring regulatory approval(s). In these situations the firm may not disagree with the regulatory objective in principle, but may have considerable reservations about:

     - the awareness of legislators and regulators of the cost impact of legislation and regulations, especially in terms of international competitiveness;

     - the fairness, appropriateness, and efficiency of the regulatory process.

   - impact on on-going business activities of substantial modifications or additions to existing regulations. In such situations there can be dispute regarding worth of the objective in a more fundamental sense (benefits in relation to costs) and about the way in which the regulators are seeking to achieve it;

   - impact on on-going business activities of modifications or additions to existing regulations, which are relatively small or spread out over a period of time. In these cases, the objectives and the mechanisms tend to be adapted to and incorporated into the operations of the firms, although there can be substantial dispute and discussion along the way.

More extensive work on these matters would provide additional data and information. However, notwithstanding the limited response to the request for cases, the 10 cases in this study did provide reasonable coverage across a broad range of regulatory problems, issues and attitudes. In terms of balance, it is noteworthy that 2 of the 10 cases (numbers 9 and 10) found regulatory problems that were at a lower level of content, impact and cost than the others. In conjunction with the survey response, this suggests that the impact of regulations, though widespread, is not always of significant effect.

This, and the small number of cases coming forward, appears to reflect the ability of business to adapt and adjust to almost any external influence, and to internalize it into its cost and price

structure. A concern of business is that the costs of the existing regulatory process are too high, and this study identifies the nature and magnitude of some of these costs. Beyond this, however, business is fearful of the possibility and effect of substantial additions to regulations in the future.

5.2.2 Significant Matters for Regulatory Reform

Discussion of significant matters is presented in a sequence relating to the workings of the regulatory process, the purpose and orientation of the process, and the nature of change in the process.

A central point that emerges from the study is that regulators operate within a regulatory system and framework that they have designed, know well, and expect others to know and abide by also. Business, by and large, has been aware of such systems only when it comes in contact with them and then only to the extent required for any particular situation -- business interests have been predominantly elsewhere and regulations only one of many external circumstances that impinge on business affairs.

Thus we encountered many times (e.g., the responses to Cases 1, 3, 5 and 9) statements by regulators that mechanisms, procedures, and means for minimizing duplication and obtaining co-ordination, did exist and worked reasonably well; in their view businesses (particularly large firms) ought to have known how to go about things, did not expend enough efforts, and were at least partly responsible for problems that arose.

And yet it was a common complaint in the cases that such mechanisms did not exist, did not operate in practice, or were impossible to establish; in many cases the firms detailed the extensive liaison efforts they had undertaken. Some of the cases were concerned with earlier years in the 1970's, and there may have been improvements subsequently in the regulatory process. It is more likely, however, that those inside the system take it for granted and expect others to be as aware of it as they; those outside it find it obscure and may not always have taken enough trouble to understand and deal with it.

There are implications here for improved behaviour on the parts both of government and business. On the part of regulators, it is desirable that there be major efforts to state and circulate broadly, clear statements of objectives, policies, principles, processes, procedures and guidelines. These would benefit their own operations as well as those of regulatees. Another point to be noted is that while it may be easier for large companies to devote adequate resources to "managing the system", the system itself must be satisfactory for the operations of small companies (as was mentioned in several of the cases).

On the part of regulatees, it is desirable that they fully recognize and provide in their operations for the major changes that have occurred and will continue in the Canadian society and economy. Public involvement in formerly private matters is here to stay, and will be best accomplished for all parties if they actively participate in formulation and operation of what is required to make a good system work well.

Another very significant point is the different views of regulators and regulatees about the significance of initial contacts between the two parties.

Regulators state that early and full contacts, especially for projects that have high sensitivity, are most desirable from everyone's point of view. To be sure, these will be only exploratory and semi-official, since regulatory action cannot be taken until formal application is made by the firm. However, they will enable regulatory approval to be given more rapidly than had there not been prior contact.

The perspective of the firms is different, and a number of factors operate to diminish the significance of initial contacts: tradition and lack of appreciation of changing external circumstances; commercial considerations of confidentiality and competitive advantage; and focus on the decision point that is internal to the firm, i.e., approval by the Board to proceed with the project. Once that approval is given, the firm expects to be able to proceed rapidly, and is impatient with apparent complexities and time requirements of the regulatory process.

A concrete demonstration of these differences is provided by the different attitudes to the time durations of individual cases (e.g., in Cases 1, 3, and 5). The firms dated the case from their initiation of work and first contact with the regulatory authorities, and measured time and costs from this point. The agencies regarded everything prior to the formal application as not being part of the regulatory process, would measure time and costs from the point of formal application, and frequently were able to demonstrate that the workings of the process, once put in train, were efficient. This view also sheds light on the apparently inexplicable position of some regulators (Cases 1 and 7) that they had a limited place, role and function in the regulatory process.

We have already mentioned the different regulatory circumstances attending new products or facilities (Cases 1-5) and on-going operations (Cases 6-10).

This can be sharpened by appreciation that certain private activities and public regulatory responses are in "frontier areas", which include geographical, institutional, informational, and time dimensions. The activities are new, often large (but not necessarily), and sometimes complex. Their common feature is that there is little, if any, precedent regarding them. The matter, then, is one

same as pp. 41-44

of creating new regulatory mechanisms or appropriately adapting existing mechanisms. Associated with this is the need to define policy and objectives, in order to have a proper basis for the regulatory system adopted. Another link is with the requirement that there be a "lead department" and "lead manager" to ensure that action is taken in situations where several departments or units of a department are involved and prior practice does not provide any basis for action.

Apart from these "frontier areas" (and, indeed, for them after arrangements have been worked out), the bulk of regulatory activities have to do with on-going operations and procedures.

Major issues here are concerned with the means by which criteria, standards, requirements, etc. are established, and with the degree of flexibility-specificity-discretion that is in the hands of the operational-level people who have to make the system work.

Ideally, policy, objectives and guidelines would be sufficiently well stated to provide a basis for operational people to use judgement and flexibility, and yet satisfy the general regulatory requirements. In practice, however, this framework exists imperfectly, and regulators are seen by business as attempting to minimize risk and uncertainty by delaying decisions and calling for more information (whereas business favours earlier decisions, even if based on limited information, so that it can proceed accordingly).

Accompanying this mode of operation by regulators is a close knowledge of, and contacts with, interested parties and interest groups. Continuing exposure to conflicting pressures and to the complexities and impacts of the factors in any particular situation can impair the ability to take decisions on some objective basis and speedily. Moreover, it seems to predispose regulators to incremental, highly-defensible changes, pursued by advocates through the political process, in contrast to a more detached, objective approach that might be part of a different regulatory system.

Another major point is that regulators consider their behaviour to be governed, finally, by the overriding mandate of their agency. This point, unsolicited, came out in almost all our meetings with the regulatory agencies. Descriptions of the mandates included: fostering local autonomy (Cases 1 and 3); environmental protection (Cases 4 and 6); protection of natural resource (Case 5); worker protection (Case 7); consumer protection and right to know (Case 9).

Unquestionably it is desirable -- and indeed essential -- that regulators in a particular field have an overriding principle to guide them. But the way in which this is translated into practice has effects which are not necessarily satisfactory. Thus there is sometimes a preference by regulators (Cases 6, 7 and 8) for broad, blanket legislation or regulation, leaving interpretation in the hands of officials who will have close, continuing contact with individual situations and will possess substantial discretionary power. There may

same as pp. 43-44.

be an important gap here, between the general and the particular, and need in the regulatory process for intermediate principles or objectives. These would interpret the general policy and objectives and provide the basis for operating decisions to be taken in accord with them, and yet with the flexibility that is appropriate to the particular situation. The attempt to establish such intermediate principles could be a most important improvement for regulators to make in the regulatory process.

Another effect is that the weight of emphasis and attention by regulators is primarily on the side of social benefits (although these are not necessarily quantified), with little consideration of costs. In several cases there was limited awareness by regulators that there were trade-off considerations between the benefits obtained from their efforts and the impact and costs arising from them. To be sure, at some point matters become "non-tradeable", but the disturbing feature in a number of cases was not that such trade-offs had not been examined, but that the possibility of there being potentially valid trade-offs had not even been recognized. In other cases, there was expressed disregard for costs, on the grounds that they would be passed along and were necessary to fulfill the regulatory mandate (See the responses to Cases 3, 4, 5, 6 and 8).

Finally, therefore, we come back to the basic position of a regulator, that the regulatory system exists and is to be complied with. In this view, the regulator is in the best position to judge what must be done, there is no need for review mechanisms, there is no need for improvements in the regulatory process beyond what is being undertaken internally, and potentially harmful questions should not be raised about established procedures and processes. It is up to regulatees to consult closely with regulators and to learn how to conform to the system.

While such a statement is a caricature, in that it was not stated in total by any one agency interviewed, the individual points were mentioned by a number of regulatory agencies and did seem to represent an underlying position, (e.g., in the responses to Cases 1, 4, 6, 7 and 8).

The perceptions of those being regulated are different. Their view is that the regulatory process that Canada has today is merely a result of the way the process developed, in the 1970's in particular, in response to the circumstances and views of the time. Much has been learnt since then, and there is a much better body of knowledge and experience on which to base an improved process for the 1980's.

Among many regulators, similar views prevail and there is demonstrated action and support for improvements in the regulatory process (e.g., in the responses to Cases 2, 3, 5 and 9). It is noteworthy that not all of the individuals with these views were at a senior, policy level, and operational-level people were also interested

in potential for improvements in the process. Additionally there is sharp recognition of limitations on the quantity of resources in the hands of regulatory authorities, and of the desirability of reassessing ways of accomplishing objectives so as to get best use of the resources available.

6. EXECUTIVE SUMMARIES OF CASES, RESPONSES BY THE REGULATORY AGENCIES, AND OBSERVATIONS BY WOODS GORDON

The Executive Summary for each case, as prepared by the participating firm, is presented in this Section 6. The full case prepared by the firm is presented in a separate working paper; by referring to these, a fuller appreciation will be obtained of the circumstances and content of the cases, on which the participating firms based their recommendations.

Each summary in this section is followed by our synopsis of the verbal and written comments by the regulatory agency on the case. After thus presenting both the perspective of the firm and of the agency on the case, we make some Woods Gordon observations on the principal regulatory issues and matters that are raised by each case, as the basis for our overall observations in Section 5.2.2.

6.1 NEW BUILDING PRODUCT: MSU/DAYMOND LIMITED

6.1.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

Introduction

This case study deals with the difficulties experienced by MSU/Daymond Limited ("MSU/Daymond") in obtaining the provincial and municipal approvals required to sell in Ontario a product which had been successfully used in Europe for some twenty years.

The product in question is a protected aluminum step used in manholes and sewers. While the design of the step involves some novel concepts, it does not represent a revolutionary or particularly complex piece of technology. Thus, MSU/Daymond and its engineering consultants confidently expected that obtaining the requisite approvals would be a relatively quick and straightforward matter, perhaps taking a maximum of 3 to 6 months. In fact it was some 3 years before final approval was obtained. The delay appeared to result from unjustifiable complexity in the regulatory process and duplication between provincial and municipal requirements. In addition it seemed that the requirements were unevenly applied between different companies.

Regulatory Requirements

When much of the market for a new product is funded provincially, approval of the product by provincial authorities is a prerequisite to successfully introducing and marketing it commercially. Although not regulation as such, these approvals are clearly part of the regulation process as defined by the Economic Council under its Regulation Reference.

The main approval required in this case is that issued by the Ontario Ministry of the Environment (MOE) which is by far the largest body financing the major capital works projects in which the MSU/Daymond step can be used. The Ministry of Transport and Communications (MTC) is also extensively involved in these matters at the provincial level. Additionally, approvals by individual municipalities, sometimes with additional requirements, are also needed. The case identifies the appropriate regulatory bodies whenever possible. General comments should be interpreted as applying to both provincial ministries and municipalities in general.

To comply with the requirements of MOE and MTC, MSU/Daymond was initially obliged to commission tests of its product by engineering consultants, and to provide extensive amounts of documentary evidence on materials used, experience elsewhere, and ability to meet a number of other requirements. After satisfying these, the Company believed it had obtained the required approval and commenced selling its product. However, a competitor, who carried out private tests of the MSU/Daymond step, was able to introduce doubt as to the step's adequacy and MSU/Daymond was forced to signficantly reduce sales and production while new tests and approvals were obtained. Ironically, additional tests then indicated that, while the MSU/Daymond step did not fully meet all requirements, it more nearly conformed to specifications than an existing product which had been used satisfactorily for years. It became apparent that the requirements for sewer steps were inappropriate. New specifications were then drawn up so that all existing steps could meet them.

Costs

The delays which occurred in receiving approval resulted in substantial costs for MSU/Daymond. The product is good and MSU/Daymond had every reason to believe that it would obtain a large share of the market and make MSU/Daymond highly profitable. With approvals in question MSU/Daymond had little to sell and as a result incurred operating losses totalling $149,000 and opportunity costs of $332,000. Other unquantifiable costs include a permanent loss of market share (since competition has used the delay to develop and introduce a competitive product) and delay in developing an export market.

MSU/Daymond believes that the direct costs shown above are very conservative since significant management time was spent in obtaining approvals. The cost of this time was not recorded in the MSU/Daymond accounts and therefore cannot be quantified.

Behavioural Effects

In addition to these costs, the following behavioural effects were observed.

1. Management would not have proceeded with the investment had it known in advance of the problems and delays it would experience.

2. Consideration was given to closing down of MSU/Daymond due to the continued lack of sales and profits caused by regulatory problems.

3. MSU/Daymond will be much more wary of introducing new products which would require similar approvals.

4. Management had expressed a concern that a feeling of distrust and disbelief existed between upper and middle management as the result of continued delays and lack of progress in approval of the product. In fact, senior management did not realize the magnitude nor the extent of the problems encountered by MSU/Daymond's middle management until they had reviewed this case study.

5. Specialists, such as R.V. Anderson, had to be retained in order to overcome the complexities and difficulties in dealing with government bureaucracy.

6. Because MSU/Daymond realized that it would have to continue to deal with the same ministries in the future, senior management were constrained in their reactions towards the regulatory problems.

Inefficiencies

The basic problems lie in the regulatory procedures rather than in the existence of regulations. MSU/Daymond does not quarrel with the underlying objectives of regulations in so far as they relate to safety and suitability of the product.

The main problems encountered with regulatory procedures are as follows:

The Provincial approval process was, and still is, not clear to the Company. The process is unnecessarily complicated and imposes unreasonable and costly demands upon those seeking approvals. There appears to be an unwillingness on the part of the regulators to use their own judgement and common sense in evaluating new products. They use and develop methods which are aimed at removing all risk from their decision-making, however time-consuming and costly these methods may be. Thus, new products are asked to meet standards which existing products cannot satisfy. The net effect is to stifle innovation, to protect existing producers and increase costs for society.

What is of particular concern is that, as stated earlier, the product in question is relatively straightforward. It has no moving parts, contains no new materials, uses no power and performs no new function. One can imagine, therefore, the potential problems in obtaining approval for more revolutionary products. This is not to say that adequate testing should not be given to any product involving

safety but simply that there should be a less complex and time-consuming way of obtaining approval. The need to obtain municipal approvals in addition to the Provincial approval involves significant duplication of effort. In other jurisdictions the regulatory requirements are in fact more stringent than in Canada; however, the time to obtain approvals is significantly less.

Recommendations by the Firm

1. The process of approval for new products should be made clear.

2. Only one Ministry should be involved.

3. Approval from one level of government should be sufficient for others.

4. All suppliers should be treated equally.

5. Specifications for new products should be the same as for existing products.

6. Regulatory agencies should work in conjunction with the industry concerned in reviewing standards for new products.

6.1.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCY, PREPARED BY WOODS GORDON

The agency's comments focussed almost exclusively on its different perception of the nature and circumstances of the case; there was little attention to the possibility of useful changes or improvements in the regulatory process.

Question was raised as to whether specifications for a building product constituted a regulation in the sense of the Economic Council. The agency challenged the position of Woods Gordon and Economic Council staff that approvals, standards, and specifications which must be met should validly be regarded as being part of the regulatory process, and were particularly relevant in this case where the agency's funding and standard-setting activities were a major determinant of product acceptance in the market.

Beyond this, the agency took the view that the approval process had worked in a straightforward, effective way. Its technical performance had been expeditious and it did not consider that its involvement had any effect on the circumstances of the case. Initial contacts and discussions were merely exploratory, as far as the agency was concerned, even though the firm regarded them as part of the process. Delays that occurred subsequent to application for approval were due to need for more information or, later, to competitive market forces that introduced new complexities. There was little dispute with

the sequence and actual events described in the case, but disagreement with the interpretation by, and the impact of events on, the case study firm. As a result, the agency considered the costs identified by the firm to be inapplicable and overstated.

On the broader aspects of improvements in the regulatory process, a number of points were discussed. In general, the agency did not visualize, nor did it appear interested in, any possibilities for potential improvement. Performance standards rather than specification standards were not considered a feasible way to proceed, given the large number of products in construction applications. The possibility of approval at the provincial level being sufficient for the municipal level (pertinent because much construction funding comes from the province) was not considered possible by the agency because of the overriding desirability of local autonomy.

6.1.3 OBSERVATIONS BY WOODS GORDON

Clearly, there was not only disagreement between the regulator and the regulatee about the circumstances of the case, but a particular view by the regulator of his role and function. In our view, the case and response illustrate a number of general regulatory issues:

- a narrow interpretation by the regulator of its place, role and impact in the regulatory process, and disinterest in potential for beneficial change;
- different degrees of knowledge by the regulatee and the regulator, about the regulatory process and requirements;
- different views regarding the significance of initial contacts and discussions -- regarded as purposive by the regulatee, as merely exploratory by the regulator;
- lack of well-defined criteria for approval/disapproval which would be accepted by all parties involved and would lessen the extent of official discretion;
- primacy of a general objective (local autonomy) over aspects of cost or efficiency.

6.2 EXPLORATION AND DRILLING ACTIVITY: MAGNORTH PETROLEUM LIMITED

6.2.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

Purpose

The purpose of this case study is to examine the cost effectiveness of government regulations which modify economic behaviour and how these regulations can be revised so as to reduce the cost impact on offshore exploration.

Introduction

This case recounts the difficulties and associated costs experienced by a small company, Magnorth Petroleum Ltd. Magnorth has spent ten years trying to obtain government permission to drill an offshore exploratory well in the search for hydrocarbons in Lancaster Sound, a region of the Arctic Islands at the eastern entrance to the Northwest Passage. The problems experienced have resulted from the inability of government to determine priorities and to resolve the apparent conflict between the need to identify Canada's hydrocarbon resources and the desire to protect the environment. To date, government has avoided dealing with these problems, at the expense of the company and Canada, by deferring decisions, commissioning studies and continually escalating environmental requirements. With hindsight, the company would not have embarked upon this project.

History of Events

The case opens in 1970 with the formation of Magnorth by a group of investors who had obtained exploration permits in 1968 and 1969 over a large area of the Northwest Passage. In 1970, Magnorth commenced exploration programs on behalf of these investors against a firm background of oil and gas regulations existing at that time. Although some of these permit holders were, or have become, large companies, Magnorth has always operated virtually independently of them.

In 1972, an agreement was made with Norlands Petroleums Limited under the terms of which Norlands committed $9.8 million for exploration work to earn a 25% working interest in the Magnorth acreage, with an option to increase this interest up to 50% for further expenditures of $26.5 million. Norlands became the operator of the exploration and proposed drilling program in 1973.

A large, potentially hydrocarbon-bearing structure was identified under Lancaster Sound by seismic survey. In order to evaluate it, Magnorth and Norlands requested drilling authority from the Department of Indian and Northern Affairs (DINA), the government department responsible for areas north of 60°. Magnorth had commenced operating under the Canada Oil and Gas Land Regulations which were subsequently effectively suspended in 1970. Since then, the companies have been operating under a confused system of ad hoc measures as outlined herein.

Magnorth and Norlands applied for permission to drill in 1974. They were granted an approval-in-principle, valid for three years subject to meeting certain environmental study requirements which were detailed after a delay of some six months. The companies, recognizing the sensitive nature of the Arctic environment, carried out extensive and costly studies which were equal to those carried out at that time by other companies which subsequently received drilling authority in the Beaufort Sea and Davis Strait. It was assumed that since the studies

were performed in accordance with DINA's requirements and advice, these studies would be acceptable and drilling could be carried out in 1976. During this time, however, concern for environmental hazards grew, particularly within the Department of the Environment (DOE). The result was that additional study requirements were imposed. In 1977, the companies were told by DINA that an Environmental Impact Statement (EIS) would be an additional requirement and the DOE would prepare it. Later in 1977, it became clear that the EIS was not going to be completed until the following year, and so an extension of the approval-in-principle was requested. The approval-in-principle to drill lapsed, however, and was not extended on the grounds that there was no precedent for such action.

With the background of constantly changing ministerial responsibilities (six Ministers of DINA in six years and six Ministers of DOE in eight years) and the referral of the project to the Federal Environmental Assessment Review Process (EARP), Magnorth and Norlands subsequently attended community and public hearings on their proposed drilling program and found themselves enmeshed in an ever expanding web of work requirements while resolution of the regulation problems came no nearer. Currently a Green Paper is being prepared which will identify the potential multiple uses of Lancaster Sound. This paper is expected to be completed by early 1981. Unfortunately the Government is unlikely to decide on drilling until the mid-1980's, almost ten years after Magnorth could reasonably have expected to drill.

The consequences of this indecision and delay are outlined below. One aspect which clearly demonstrates the contradictions and the ensnaring nature of the regulations deserves special attention here. To keep the exploration permits valid, Norlands must spend a certain amount each year for specific purposes, or else put up bank guaranteed promissory notes for similar amounts. Such cash guarantees are forfeited to the Crown if the work is not done. Magnorth and Norlands are now in the position that the only significant and useful way in which they can spend money on their permits is by drilling, which cannot be done in the absence of regulatory decision. However, expenditure obligations on the permits have continued and the companies are faced with the prospect of forfeiting bank guarantees made necessary by the very regulators who are denying the opportunity to make such expenditures. Simple justice demands that such action on the part of the regulators be prevented. It is to the credit of the most recent former Minister of DINA that partial recognition for the delay has been given in the form of a promise to temporarily extend permit life.

Regulations and Processes Affecting the Case

The regulations affecting this case are:

- Canada Oil and Gas Land Regulations;
- Canada Oil and Gas Production and Conservation Act;

- Approval-in-Principle;
- Federal Environmental Assessment and Review Process (EARP);
- Eastern Arctic Marine Environmental Studies (EAMES).

The last three named are not regulations in the strict sense of the word but form part of the regulatory process by which decisions are made. From the viewpoint of the Company, the distinction between regulation and regulatory processes is academic since both involve compliance and costs if the Company is to meet its objectives.

The Costs

The consequences of regulatory indecision and delay have been extensive. Encouraged by the issuance of exploratory permits and the approval-in-principle to drill, Magnorth and Norlands found that they had committed a sufficiently large proportion of their limited resources such that additional funds were necessary to protect the sunk investment even though the regulatory climate had changed. To date, the companies have committed all available capital resources ($11.5 million) which will be totally wasted if permission to drill is refused. Even if drilling is permitted, the companies contend that the baseline environmental studies which were carried out at a cost of $1.3 million should have been the responsibility of government since this work became part of the public domain.

The more significant costs, however, are not the incurred costs but the opportunity costs. Delay in drilling from 1976 to the present has led to an increase in drilling costs of $18 million, almost a 100% increase. Since Magnorth's financial capital has remained fixed, the company will be forced to find additional funds or dilute equity. More seriously, Magnorth has found that other private investors are unwilling to commit additional funds to a project in which political risks are greater than the already high technical risks of a dry well. This cost cannot be measured accurately but Magnorth has experienced the failure by Norlands to exercise an option to invest a further $26.5 million for an additional 25% working interest.

In addition, there are the behavioural effects. Several major behavioural costs have been experienced by both Magnorth and Norlands. If drilling permission had been authorized for Lancaster Sound, and a commercial oil field discovered, the ability of the companies to raise outside capital at a multiple of their original investment would have increased enormously. This capital could have been reinvested in other exploration programs, which, in turn, could have resulted in additional discoveries. Indeed, a discovery in Lancaster Sound could have propelled both Magnorth and Norlands into the forefront of the Canadian oil industry. Magnorth, itself, had originally planned to develop its interests internationally, which would have been a major accomplishment for twelve small independent, mostly Canadian, companies (Appendix 6).

This raises one of the most insidious behavioural effects and costs of the regulatory system. Initially, Magnorth, together with Norlands, were financially able to bear the costs of one exploratory well and also, together with the injection of a further $26.5 million by Norlands, the major cost component for the two delineation wells. If a commercial discovery had been proven, the companies would have had the choice of developing the discovery on their own, or reducing the financial risk and bringing in partners with greater resources. If the latter course of action had been chosen, the farm-out agreement which the companies could have struck with a third party would have been greatly in their favour because of the proven existence of an oil field.

Unfortunately, drilling was not permitted, costs have escalated, regulations and taxation have become more burdensome, so that in today's situation, Magnorth and Norlands are less likely to continue exploration activities on their own. More likely, they would farm-out part of their holdings to a larger corporation in return for its commitment to bear the cost of further exploration. This arrangement would have to be made prior to the drilling of an exploratory well. Since no commercial field has been proven, the companies would be obliged to give up a much greater interest in their acreage than would otherwise have been the case.

* The regulatory process appears to work to the benefit of large corporations, whether they be Canadian, government-owned or multinationals, and to the disadvantage of the smaller company. This presumably is the antithesis of government policy to promote small Canadian business. Smaller organizations do not have the resources, financial or otherwise, to navigate and manage the regulatory process, whilst the large corporations do. The more complex the regulatory system, the harder it becomes for the smaller corporation to adjust to and satisfy the requirements. Thus a large corporation has a relative advantage under such a complex system since it does have the resources to manage the system and await its resolution. Larger corporations have the ability to wait out the regulatory process and have the manpower to deal with it. Ultimately no one gains either in the public or private sector.

Finally, the adverse effects on the careers of the enterprising individuals who put Magnorth together should not be neglected.

Inefficiencies

In this case the most significant inefficiency resulting from the regulatory process is that environmental standards and regulations have evolved without government objectives being clearly stated from the outset. Contradictions have arisen which have not been resolved leading to great uncertainty.

The EAR Process to which the drilling project in Lancaster Sound was referred contains no legal procedures or rules of evidence. Furthermore, the EARP Panel Report recommendations were not considered broadly enough. In view of the significance of the findings the Company believes the whole Cabinet should have considered the Report's recommendations.

Lastly, a major inefficiency has been the uncertainty created by the lack of Canada Oil and Gas Land Regulations which were suspended in 1970.

Regulatory Objectives and Standards

There can be no quarrel with the basic objectives underlying the regulations and regulatory processes affecting this case. The need to know Canada's hydrocarbon potential within the context of an uncertain world oil supply situation and the need to protect the environment are desirable objectives. What is undesirable is that government has been unable to determine how conflicts in the regulatory process should be resolved.

Recommendations by the Firm

Several recommendations are proposed in this report. The first step should be the establishment of long-term objectives prior to the structuring of the regulatory process.

A clear recognition of the differences in risks to the environment that exist between the exploration and production stages should be made. The former should not be prohibited on the grounds of concern regarding the latter.

The EARP Panel recommendations should be endorsed by Cabinet alone, thereby resolving potential conflict between Ministers. The EAR Process should deal only with regional matters. Drilling approval for a site-specific well should be in the hands of the appropriate Minister after regional clearance has been given. Finally, the EARP Panel should have wider representation by including industry and technical personnel.

A process should be put in place to provide companies with some recourse to changing circumstances and regulations, and to allow special treatment for those companies.

The cost of studies initiated by government and imposed on industry after requirements have been set, and after the companies have committed themselves to the project, should be shared.

A process should be developed to allow for extension of approvals-in-principle and the life of permits by at least the same period as that caused by the delay.

Finally, emphasis should be placed on resolving differing views of government by stressing what needs to be done to settle the issues. Better lines of communication and more co-operation are needed between different branches of government, and between government and industry.

Conclusions

It is contended that the problems experienced in this case are the results of delays and uncertainties created by the regulatory process. Lack of resolution of the issues and the absence of priorities have heightened the uncertainty of an already high risk project. Too frequent changes of the Ministers in key departments have not helped in this regard.

It is believed that this case clearly demonstrates the disadvantages in dealing with government regulations, particularly to small companies. Offshore exploration is a high risk area to which Government through the regulatory process has added political uncertainties.

It is hoped that this presentation will not only lead to the remedy of the specific problems outlined, but will also bring about a broader understanding on the part of the regulators of the need for consistent objectives and consistency in their treatment, and of the critical importance of reducing the political uncertainties affecting business decisions.

6.2.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCIES, PREPARED BY WOODS GORDON

Two federal departments were seen in connection with this case, preceded by letters from them to Woods Gordon commenting on the case. These letters expressed general agreement with the statement of the circumstances and costs as presented in the case. In the meetings with the two departments with officials at a senior level, some questions were evident as to whether this particular firm met fully the extensive requirements that were appropriate to the very difficult and sensitive geographic area in which it sought to operate. However, recent action had been taken to relieve one of the firm's regulatory problems, recognizing the validity of the particular situation as described by the firm.

There was acknowledgement that during the period of the case (the 1970's), there was a very rapid turnover in departmental ministers, government policies in the matters concerned did change, and the regulatory requirements for firms did escalate. This was a time of rapid and large change in hydrocarbon horizons, in technical knowledge and capability, and in concern for environmental matters which required expression in public policy. As a result, both firms and government agencies were on a learning curve, and information requirements built up rapidly.

It is important to note that the process followed is different in Canada from that in the United States. There the government is involved in developments in a new geographic area right from the start, commissions and pays for studies, and gives a definite clearance when it is satisfied. This system is more definite and clear-cut as seen by the public and those concerned.

In Canada, by contrast, the policy is to allow companies to take the lead in expressing interest in a particular area, with the government following in support. There is an accelerated need for baseline studies. Government would like to do these but its resources are limited; companies must therefore do and pay for them, and they benefit from the knowledge obtained. The agency considers this approach has advantages in terms of speed and responsiveness.

Enhancement and sharing of the state of knowledge among government and industry is of major importance. A suggestion by the agency was that there be some mechanism, as part of revised Canada Oil and Gas Land Regulations, for ensuring that adequate environmental and other studies be carried out based on some cost-shared formula that applies to industry in general.

More generally, it is agreed that firms in a complex regulatory situation are entitled to have government objectives that are spelled out, a specified regulatory process, and guidelines on how to comply with requirements. It is hoped that the new regulatory framework now being put in place (for this area, through the industry-government EAMES approach and the forthcoming Green Paper) will provide this. In retrospect, and with the advantages of hindsight, some of the difficulties encountered earlier in this case could have been avoided if the regulatory process had been better defined. As regards to costs, these would appear to be attributable both to regulations as such and also to policy changes.

6.2.3 OBSERVATIONS BY WOODS GORDON

The case and the comments on it by the regulatory agency illustrate, in our view, the following principal points about the regulatory process:

- the difficulty of framing policy and regulations in areas which are "frontier areas" (in terms of geography, institutions, and information in this case);

- the effect of rapid turnover in departmental ministers;

- the effect of changing policy and regulatory requirements, and the different views, in such a situation, of what does or does not constitute satisfaction of requirements;

- the desirability of establishing policy, as a prerequisite to establishing regulations;

- desirability of a clear statement by regulators of objectives, the process and guidelines.

— in detail

6.3 INDUSTRIAL PARK: STELCO INC.

6.3.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

A. Reasons for Submitting the Case

Stelco's Lake Erie Industrial Park has been put forward as a case because:

1. Government regulations, organization and policies influenced the planning, design and construction activities.

2. The ultimate project is the largest of its type in Ontario.

3. It is a new and separate facility requiring significant Provincial expenditure for infrastructure beyond Stelco's property limits.

4. It is part of a new industrial development within a predominantly rural community.

5. No direct financial assistance was provided by governments and it is, therefore, an example of private enterprise initiative bearing a high degree of risk.

B. Description of Facility

Stelco acquired 2673 hectares on the north shore of Lake Erie to develop a new integrated steel plant on 1700 hectares and an Industrial Park on 973 hectares adjacent to the new steel plant. Since Stelco was inexperienced in the land development business, outside consultants were chosen. Discussions with the consultants, and municipal and provincial officials began in 1969 and continued in earnest in 1973 and 1974. The first Draft Plan of 193 hectares was submitted in late 1974. The application was efficiently processed to the draft plan approval stage by the Ministry of Housing within the target time frame and in May 1975 Stelco and its consultants began satisfying a number of conditions of the Draft Plan approval. The initial timetable for approval had not envisaged an extended delay of 14 months for appeal to the Ontario Municipal Board on one of the Draft Plan approval conditions. In addition, numerous other delays occurred during the review and approval stage and subsequent construction stages.

Following a successful challenge to the disputed condition in December 1976, both the municipal governments and the provincial ministries, co-ordinated by the Ministry of Housing, expeditiously processed the final approvals. After receipt of final approvals in August 1977, construction of services commenced and the first 65 marketable hectares were fully serviced by mid-1979. A second phase will be serviced in 1981 raising the total serviced marketable land to 134 hectares.

The stimulus behind the decision to develop this major Industrial Park was the announcement by 3 major primary industries to establish plants on Lake Erie in the Nanticoke area. The Ontario Hydro Nanticoke Generating Station, Texaco Oil Refinery and the Stelco steel mill all commenced operations in the period 1972 to 1980. Stelco expected a large number of its suppliers and customers would require industrial sites in close proximity to the mill site and considered that significant benefits could accrue to both individual industrialists and to the Province of Ontario by providing such sites. The Provincial decision to establish a major new community in Townsend would also generate a need for industrial land from manufacturing operations servicing the needs of the local population.

C. Total Development Cost of Case (Historical Dollars)

Development Costs	-	$12,554,800
Imputed Interest Costs	-	4,362,440
TOTAL DEVELOPMENT COST	-	$16,917,240

D. Regulations Affecting the Case

The principal regulations applicable to this project include the following:

1. The Planning Act of Ontario.

2. The Environmental Protection Act of Ontario.

3. The Act to Establish the Regional Municipality of Haldimand-Norfolk.

4. Zoning By-Law for the Regional Municipality of Haldimand-Norfolk.

5. A subdivision Agreement between Stelco and the City of Nanticoke and the Regional Municipality of Haldimand-Norfolk.

E. The Regulatory Problems

This case illustrates the problems and costs imposed on Stelco as a land developer as a result of municipal and provincial regulations, organizations and policies. These problems are analyzed under two general headings as follows:

1. Government Intervention in the Decision-Making Process of the Private Sector

The imposition of regulations and the process of ensuring a Company's compliance with same brings governments into contact with the private sector. Such intervention engenders the adverse effects of excessive delays and behavioural modification. As well, in many instances regulations are inefficient.

2. Cost of Compliance

The costs of complying with regulations in this case have been significant. Regulatory intervention resulted in an expenditure of funds considered by Stelco to be excessive as it was over and above those costs necessary to complete the case project. These costs include:

a. Excessive planning and engineering costs amounting to $1,074,500. This amount represents 51% of the total planning and engineering costs.

b. Excessive legal costs amounting to $92,000. This amount represents 94% of the total legal costs incurred during the project.

c. Excessive construction costs amounting to $1,440,900. This amount represents 21% of the total servicing costs for the first industrial park subdivision.

d. Opportunity costs for finite items have been calculated to have amounted to $1,103,735. It is not possible to calculate some of the opportunity costs associated with this case.

F. Recommendations

Stelco proposes the following recommendations:

1. New regulations should be subjected to a cost-benefit analysis.

2. The Planning Act should be amended to restrict the unlimited powers it now invests in Municipalities, its engineers and administrators in carrying out the intent of the Act.

3. Involvement of municipal elected officials in the planning approval process should be reduced.

4. Engineering and equipment performance criteria should be established to satisfy land servicing requirements.

5. The Planning Act should be amended to reduce the financial burden on the developer during the approval process.

6. The approval process should clearly define the agency review time frame.

7. Draft plan approval conditions should be precise and relate to a performance standard clearly documented.

8. Draft plan approval conditions must be capable of being satisfied by the developer and not contingent on a third party over whom the developer has no control.

9. A consistent storm water management performance standard is required to be developed jointly by the Ministry of the Environment, Ministry of National Resources and the Municipality.

10. Processing and Administrative fees should be related to actual processing costs rather than to a percentage of estimated construction costs.

6.3.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCY, PREPARED BY WOODS GORDON

The agency for this case was very much aware of the kinds of problems that existed, and was already taking major steps toward improvement in the regulatory process, through revisions to the underlying legislation which were at an advanced stage of public consideration. The changes proposed would meet many of the recommendations made in this case.

As a main point regarding the case, the agency stressed its uniqueness for several reasons: it related to a major, specialized development, carried out by a firm without prior experience in the land development business (although the firm used knowledgeable land-use, engineering consultants as advisors) and in a largely-rural area for which new forms of local government were being created. While the case was not a representative land development case, the agency agreed that it illustrated the problems encountered in other situations, arising particularly from the roles of municipal governments in the political process.

The agency's view was that the one-half of the excessive incurred regulatory costs, attributed by the firm to delays arising from the regulatory process, were overstated by being based on a timetable that was unrealistic in the circumstances. A substantial part of this delay occurred because of an appeal by the firm to the Ontario Municipal Board (which was successful). Experienced developers may choose not to appeal and to go along with a municipality's requirements, because they know that the costs of the appeal, even if won, would be greater than

the benefit, particularly because of the delays caused by the appeal. Similarly, the agency regarded the stated opportunity regulatory costs as being unrealistic to some extent. In any event, its view regarding costs was that their level was not significant, since a developer could always pass costs along.

More generally, the agency considered that the firm and its advisors had not understood and made itself familiar enough with the regulatory processes for such matters and with the mechanisms that existed for solving multi-jurisdictional problems and obtaining decisions and action. It considered that such arrangements were in position and working effectively now. The difficulties that were encountered at the time of the case, arising from creation of new local governments, required even greater liaison efforts on the part of the firm than it carried out (although the firm claims that these were very substantial).

A prime governing policy for the agency is local automony for elected local governments, which results in delegation of powers, e.g., to regional governments in sub-division matters. In practice, of course, there is a great variety in size and sophistication of municipalities, and accompanying variation in the degree of uniformity-flexibility-discretion that is appropriate.

6.3.3 OBSERVATIONS BY WOODS GORDON

The case and the comments on it by the regulatory agency illustrate, in our view, the following principal points about the regulatory process:

- the difficulty of adapting the regulatory process for areas which are "frontier areas" (in this case, in relation to establishment of new local government institutions in a new area);

- different degrees of knowledge by the regulatee and the regulator, about the regulatory process and its requirements;

- some disregard by the regulator of the significance of costs for private operations, because these are considered to be passed along;

- agreement on the need for a clear statement of objectives, the regulatory process, and guidelines;

- a view that it was up to the regulatee to adapt to and go along with the system, even though this can lead him to accede to unjustified demands by regulators or not to use appeal mechanisms;

- primacy of a general objective (local autonomy), accompanied by awareness of difficulties and need for improvements.

6.4 NEW STEEL PLANT: STELCO INC.

6.4.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

A. Reasons For Submitting the Case

Stelco's Lake Erie Development Steel Plant has been put forward as a case because:

1. Regulations significantly influenced planning, design and construction activities.

2. It is a project of considerable magnitude carrying with it significant implications for the Canadian economy and is an example of private enterprise initiative, bearing a high degree of risk.

3. It is a new and separate facility that has required the expenditure of heavy "front-end" capital in Stage 1.

4. It is part of a new industrial development within a predominantly rural community and has been developed in an era of advancing environmental concern which has occasioned the promulgation of much new legislation.

B. Description of Facility

On the north shore of Lake Erie, Stelco is building a fully integrated steel plant, eventually planned for four stages. This case concerns only Stage 1, comprising:

- a 1191 meter dock extending into Lake Erie;
- a cokemaking plant;
- a blast furnace;
- a Basic Oxygen Furnace Shop;
- a two-strand continuous Slab Caster;
- a Hot Strip Mill facility (80" strip mill will not be operational until 1983);
- supporting facilities.

Included in each of the above are a multitude of facilities installed for environmental reasons.

Construction began in 1974.

C. Total Construction Cost of the Case -- Historical Dollars

	Dollars 000's
Capital Dollars	$ 871,301
Imputed Interest Costs	534,108
Total Construction Dollars	$1,405,409

D. Stelco Observations

The impact of regulation on Stage 1 was heavy and regulations will also have profound impact on the three future stages which will be undertaken in later years and which are vital if Stelco is to achieve a balanced, efficient and viable facility. Regulatory agencies will need to resist the tendency to add to the regulatory burden if subsequent stages are to be completed in an economically viable manner.

Problems in constructing any new plant are formidable, even in the absence of regulation. Such a project carries its most severe risk in its earliest stage and cannot be exposed to major changes in regulatory requirements during construction of subsequent stages.

Stelco's concern has been less with individual compliance actions than with the overall impact of all those actions.

Canada, in recent years, has tended to move away from market-assisting regulation towards social regulation, a trend which could impact on economic stability and growth and less employment opportunities.

Because of their value as foundations for the Canadian economy, (Appendix 5 of the Case lists Stelco's utilization of manpower and skills), large capital intensive projects should be viewed by political and civil service officials in a positive light and the corporate/government relations which surround each such project should be handled in an expeditious and supportive manner. Political and civil service officials must also recognize that the regulations which impinge on such projects are numerous and impose capital and operating cost burdens. Such burdens could eliminate projects at the time when corporations make their initial "go" or "no go" decisions. Large projects normally have an element of international competition associated with them, in the area of Marketing and, therefore, Canadian costs of compliance should be in line, on an international basis. The present main expansion in world steel output is in developing countries where regulatory requirements may not be as severe as in Canada.

It is Stelco's contention that regulatory capital and operating costs, because of their magnitude, when added to the other

costs and subjected to inflation, could eliminate a number of large projects from the Canadian economic scene and it is important at the initial decision-making step, that corporate/government relationships be open and pragmatic enough to permit objective analysis of benefits in order to avoid economic loss. When a project is in a "go" mode, it is also an important requirement of the corporate/government relationship to ensure that approvals of the regulatory aspects of the project are processed expeditiously. Priority must be given to the decision approval process governing large projects, as any delay could incur major increases in capital costs (Canada cannot afford inefficient use of capital dollars) and bring about major opportunity costs.

E. The Main Problems

This case illustrates the costs and problems imposed on industry as a result of federal and provincial legislation. These problems are analyzed under two general headings as follows:

1. Costs of Compliance

The case illustrates that these are of a magnitude that may inhibit the construction of major industrial projects. These costs include:

a. Additional construction costs incurred as a result of regulation and which in this case amount to $155.2 million or 11% of total construction cost.

b. Costs of additional staff (calculated to be $3.6 million) to cope with government intervention in the planning, design and engineering process.

c. Additional operating costs, which in this case are calculated to amount to 8% of total annual manufacturing costs for Stage 1.

d. Opportunity costs, which are calculated conservatively to have amounted to $17.3 million.

All these costs of compliance are attributable in part to government regulatory standards. These costs are high from an industry's point of view and governments should be aware that they are significant and that Canada must keep such costs at levels that will permit industry to compete internationally.

2. Government Intervention in the Decision-Making Process of the Private Sector

Regulation in its present form permits the bureaucracy to become involved in the detailed planning and engineering of large industrial installations. Adverse effects resulting from such intervention, include:

a. Uncertainty attributable to the wide discretionary power conferred on the bureaucracy, the delay in granting necessary permits and approvals, the confusion caused by overlapping jurisdictions, periodic changes in the applicable regulations and the addition of new regulations. In a project of the magnitude described in this case, which must expand to a balanced operation and an economically viable size in stages, such complications make it difficult to exact project completion on the desired cost-effective basis.

b. Modification of the behaviour of the firm and its people. Delay and uncertainty result in increased costs and complexity of design, cause a diminution of enthusiasm and incentive and give rise to attitudes of risk aversion.

c. Inefficient regulations, in that certain regulatory requirements occasion significant expenditures in order to achieve relatively marginal benefits.

F. Some Conclusions

Regulatory costs together with government intervention in the decision-making process of the private sector play a very significant role in the construction and operation of major new industrial enterprises in Canada.

It is apparent that certain regulatory requirements are relatively inefficient and give more recognition to social and esthetic benefits than to resulting real costs. The problems outlined in this case indicate the need for new emphasis in the future on the cost-benefit analysis of regulation.

Stelco does not disagree fundamentally with the objectives of much of the regulation associated with this case. The Company has complied fully and indeed has gone beyond minimum requirements of legislation in order to establish a sound environmental base in Stage 1.

However, if the complications, costs and overall burden of the regulatory process are added to in the future, the cost effectiveness of Stelco's Lake Erie Development and its competitiveness internationally will be undermined.

Aspects which should receive particular attention include:

1. Limitation on changes in regulations applicable to a particular major project extending over a considerable period of time, once that project has received initial approval and is under construction.

2. Limitation on new regulations applicable to such a project or facilities already built, and careful consideration of the need for and cost of retroactive compliance.

3. The approvals process for building permits should be modified to remove uncertainty and to recognize the approach used and the engineering expertise of large industrial companies. The role of municipal building departments, with respect to the approval of building design, should be reviewed with the objective of minimizing complications and delay with regard to those large projects which have been designed by registered professionals with specialized process knowledge (e.g., by petroleum, steel, mining industries).

4. Any new regulation should be subjected to cost-benefit analysis carried out by the regulator and the proponent with the view to assuring the efficiency of regulation.

5. All levels of government -- federal, provincial and municipal -- should take concerted steps to lessen the regulatory burden, to limit existing and prevent future regulatory overlap and duplication, and to make the regulatory process more timely and efficient.

6. The appointment by government of a co-ordinator to assist industrial companies undertaking major construction projects to expedite approvals by various government departments is most desirable and should become a matter of common practice.

7. On-going consultation between governments and proponents creates a climate of mutual co-operation and understanding and should be fostered actively.

6.4.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCY, PREPARED BY WOODS GORDON

The basic position of the agency was that the regulatory requirements were appropriate for the current and future land-use and environmental conditions in the area. Indeed, a buffer zone concept and practice had been deliberately introduced in an attempt to avoid problems in the future. Much of the requirements had been arrived at through consultation between the firm and government; the case stated that the firm had fully, and in some cases, over-complied. In these circumstances, the agency did not see any need for changes in the regulatory process and, indeed, regarded any questioning of the current position as being counter-productive.

In the agency's view, the compliance costs measured by the firm were "not out of line" with experience elsewhere. In general the agency did not consider the burden of regulation in Ontario to be higher than elsewhere, and the firm's concern for future competitiveness was thought misplaced. Regulatory costs, in any event, were just passed along.

Problem areas identified by the firm with respect to uncertainty, overlapping jurisdictions, and need for cost-benefit analysis when establishing standards, were stated either to be resolved or being resolved by arrangements in place, although little concrete evidence on this was provided. In relation to cost-benefit analysis, it was established that the agency did not have a programme which applied to standard-setting; the main use of cost-benefit analysis was in applications from municipalities to the province for funding, where the province wished to have close control.

The basic position of the agency was that its environmental protection mandate was of overriding importance; that the regulatory requirements it had been able to negotiate and impose were justified; and that existing harmonious industry-government relationships should not be disturbed.

6.4.3 OBSERVATIONS BY WOODS GORDON

The case and the comments on it by the regulatory agency illustrate, in our view, the following principal points about the regulatory process:

- primacy of a general objective (environmental protection) over matters of cost or efficiency;
- awareness of the significance of costs for government operations, but not for private operations, particularly those in an internationally competitive situation;
- a view by the regulator that the arrangements and mechanisms that had been developed should continue without change or serious question;
- behavioural accommodation by the operations-level management of the regulatee to the requirements of the regulator, in the interest of advancing the project;
- disregard by the regulator of the concern of the regulatee that changes in future would add to already-high regulatory burdens.

6.5 NEW BULK-CHEMICAL TERMINAL: DOW CHEMICAL OF CANADA, LIMITED

6.5.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

Introduction

The case deals with the experience of Dow Chemical of Canada, Limited (Dow) in securing agency approvals for a $12 million deep water bulk chemical terminal in British Columbia, designed to handle annually some $250 million output from Dow's new world scale

petro-chemical complex in Fort Saskatchewan, Alberta. Dow's experience illustrates how the complexity of the regulatory process can affect construction timetables and the choice of site.

The terminal was constructed later than planned and in a less than ideal location from Dow's perspective. This state of affairs came about because of inefficiencies in the approval process and because a government agency used an inappropriate method to evaluate the environmental merits of a possible location. The agencies primarily involved were the former Federal Department of Fisheries and Environment and the National Harbours Board. The net results were increased capital and operating costs and a deep sense of frustration among Dow personnel responsible for the project. If the Company's experience is at all representative, other companies, particularly small ones, may have had to abandon projects or face severe cost increases.

The delays experienced seem to have arisen because the rights of approval and regulatory requirements were not well-defined nor understood by either industry or the regulating authorities. Overlapping jurisdiction complicated the approval process. There needs to be action to address both these issues.

The problems with the agency's action regarding the choice of location was due to the fact that it appears to have based its decision on a Zero Risk concept. There is no such thing. Agencies should be required to support their decisions with a cost-risk-benefit analysis. Such decisions should be timely, and subject to review and discussion on the basis of scientific and technical data.

History of Events

In 1976 Dow evaluated various sites in the Vancouver area for a new deep water bulk chemical terminal. Early investigations indicated that a site on Burrard Inlet (Lynnterm) owned by the National Harbours Board (N.H.B.) might be suitable. However, discussions with local N.H.B. management gave Dow a clear indication that the N.H.B. did not wish to have a chemical terminal at this site, which was set aside for farm-related products such as rapeseed oil. Further analysis by Dow showed the Lynnterm site had some physical and economic limitations as well as manpower constraints. In the light of these findings Dow decided not to pursue the Lynnterm option and turned its attention to a site at Ladner on the Fraser River, where Dow already had an operating plant.

Further investigations confirmed the suitability of Ladner and in March 1978 the Dow Board gave its approval to proceed there.

Prior to Dow Board approval being granted, Dow held discussions with the Provincial Pollution Control Branch (P.C.B.) and the Fisheries and Marine Service Branch of the former Federal Department of Fisheries and Environment to determine the suitability of the Ladner site from an environmental point of view. No significant problems were raised by either agency and no suggestion made that the approval of any other branch of the Federal Department should be sought.

However, shortly after Dow issued a press release, announcing its decision to build at Ladner, the Environmental Protection Service Branch (E.P.S.) contacted Dow to express concern over the choice of that site. E.P.S. indicated they questioned the acceptability of the project because of the potential hazard to salmon in the Fraser River.

E.P.S.'s initial comments suggested that their major fear was a spill at the terminal itself but, after an investigation indicated that this was highly unlikely, they took the position that the major risk was an accident involving loaded shipping moving from the terminal.

It appeared to Dow that E.P.S. were determined to prevent the Ladner site being used for the terminal and that, if one reason for not using it proved invalid, then another would be found. In short, it seemed that E.P.S. were using a zero risk concept to evaluate Ladner and consequently there would always be a way in which objections could be raised. So far as Dow is aware no cost-risk-benefit studies were done of the merits of Ladner and other sites and certainly none was ever presented to Dow.

In order to ensure the timely construction of the terminal, which was required to be ready by mid-1979 to meet a need for shipping some products from the existing Fort Saskatchewan facilities prior to the new major plants coming on stream, Dow continued planning and preliminary engineering work on the Ladner site but, as the prospects for using it dimmed, Dow turned its attention to other areas.

Ironically, E.P.S. suggested that they would support use of Lynnterm (the site initially investigated by Dow). Consequently Dow reopened negotiations on the Lynnterm site in mid-1978. By the end of the year, environmental approval for use of the Lynnterm site was received. However, negotiations with the N.H.B. took longer to complete. An interim lease agreement with the Vancouver N.H.B. was concluded late in 1978, but final authorization took several weeks longer. This was because the term of the lease as requested by Dow was in excess of 20 years and this therefore dictated that formal government approval could only be secured by means of an Order-in-Council. This necessitated approval from National Harbours Board, Ministry of Transport, Treasury Board and Privy Council. The whole leasing process appeared unduly complex and protracted.

Construction of the terminal commenced in March 1979 about 1 year later than planned in a location which Dow considered to be second best.

Costs

Incurred Costs: The capital cost of the Lynnterm terminal was approximately $12 million. Dow estimates that the cost of a comparable facility at Ladner would have been some $500,000 less. In addition, because of the slower turnaround time for rail cars at

Lynnterm, (estimated at 2 days), it became necessary to secure additional rail cars which would not have been required at Ladner. These additional rail cars were leased by Dow for a 20-year period, and they thereby incurred an additional contingent liability of $200,000 per year for that total period.

Lynnterm will also be more expensive to operate than Ladner. Dow estimates the additional incurred cost to be some $600,000 per year. These costs exclude the cost of management time expended in dealing with regulatory agencies.

Opportunity Costs: The one-year delay experienced in construction of the terminal due to regulatory action proved very costly. Prior to the new major plant facilities at Fort Saskatchewan coming on stream, Dow had intended to ship some products currently produced at that location through the terminal. During 1979 it became necessary to make alternative arrangements to ship the products through a terminal at Vancouver, Washington. This cost Dow an additional $1,000,000 for extra freight and terminal rental costs at this location.

Behavioural Effects: Use of Ladner rather than Lynnterm would have permitted Dow to use its own labour force which, being experienced and trained in the handling of chemicals, would have resulted in an operation which was potentially less hazardous to both personnel and the environment.

Dow's management was very frustrated by the regulatory problems experienced in this case. Those concerned believe that their energies could have been more profitably used elsewhere.

Inefficiencies in the Regulatory Process

Several types of inefficiency are illustrated by Dow's experience.

First, inefficiency appears because there appears to be no way, other than trial and error, by which Dow could determine which agencies of government were crucial to the approval of the capital facilities planned.

Second, it appeared that different arms of the same regulatory agency were unaware of each others' policies. For example, the Fisheries Branch initially raised no serious objection to a site which the E.P.S. strongly opposed. Similarly, unnecessary duplication exists when approval by the Pollution Control Branch of the Provincial Ministry of the Environment means nothing at the federal level. Dow also cannot understand why N.H.B. personnel who initially opposed the use of Lynnterm by the Company later changed their minds.

Third, the N.H.B. approval process for long-term leases seemed unduly protracted. The local office authority should be expanded to facilitate broader approvals.

Fourth, the decision-making criteria used by E.P.S. appeared to be arbitrary and without consideration of the risks/costs/benefits. The attitude of the former Department of Fisheries and Environment was that any hazard to salmon in the Fraser was unacceptable, whatever its degree, or operating benefit. Furthermore, if in fact a risk-cost-benefit analysis was done, E.P.S. provided Dow with no evidence of it, and gave the Company no opportunity to discuss such a study's findings.

Recommendations

Dow recommends:

That a risk-benefit analysis be carried out and made available to all concerned parties for debate and challenge on the basis of scientific and technical data in cases where there is dispute between a company and regulatory authorities.

That a zero-risk concept be recognized as unrealistic by regulatory agencies, and not be used by them.

That there be a mechanism which would provide guidelines to business regarding the regulations and agencies having jurisdiction over a particular project, the method of approach to be used by those concerned, and an approximate timetable for regulatory approval.

That the jurisdictional boundries of regulatory agencies and their branches be examined to co-ordinate policies and to eliminate duplication. There should be particular attention paid to co-ordination of policy within an agency and also between federal and provincial agencies.

6.5.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCY, PREPARED BY WOODS GORDON

The agency, while disagreeing with points in the case, presented a positive attitude to the problems encountered, outlined the mechanisms in place (while acknowledging that they did not always work perfectly), and described the improvements being made in the regulatory process in its field and geographical area of jurisdiction.

The basic position of the agency was that the case study firm had not consulted early enough or in adequate detail with the regulatory agencies that had jurisdiction. Particularly in highly-sensitive matters, early and close consultation is essential. Mechanisms existed for inter-jurisdictional liaison; although evidently this had occured to an extent, there was no guarantee that they would always work perfectly. Indeed, the case indicated that there had been shortfalls in communication and understanding between different levels of government and different units at the same level. This made it all

the more necessary that the regulatee maintain close contact with all concerned and, in the agency's view, the firm should have been more sensitive to this in the circumstances of the case.

The agency stated that it did not use a zero-risk concept, as was suggested in the case, and instead looked for the most acceptable option, taking risk into account. It was agreed that there was no formal assessment of risk in this case. The agency also stated that the principle of protection of the resource would be its overriding guide in making decisions.

The agency was cautious about use of cost-benefit analysis to assess individual projects. Cost/benefit is a complex tool and not fully satisfactory. It was considered preferable to use all available information to arrive at a decision. More formal analysis, including a full programme of assessment and hearings, could lead to delays that would be considered unsatisfactory.

The agency had, as an objective, the development of written material on regulatory procedures and guidelines, in the field of natural resources as had already been done for pipelines.

6.5.3 OBSERVATIONS BY WOODS GORDON

The case and the comments on it by the regulatory agency illustrate, in our view, the following principal points about the regulatory process:

- different degrees of knowledge by the regulator and regulatee, about the regulatory process and its requirements;
- different views regarding the nature of initial contacts and discussions -- regarded as purposive by the regulatee, as merely exploratory by the regulator;
- primacy of a general objective (protection of the resource) over matters of cost and efficiency;
- caution by the regulator on the value of cost-benefit analysis for considering individual projects, and preference for a wider and less-formalized evaluation framework;
- agreement on the need for clear statements of objectives, the regulatory process, and guidelines.

6.6 ENVIRONMENTAL STANDARDS: OIL REFINERY: GULF CANADA LIMITED

6.6.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

This study is concerned with the need for detailed analysis as a prerequisite to establishing environmental standards.

Without such analysis, a meaningful comparison of the cost of compliance of a proposed standard with its expected benefit is not possible. This often results in standards that are poorly suited to achieve the desired environmental improvements, misallocate resources, and cause excessive costs. Although the scope of this study has been limited to the detailed analysis of one particular standard, it illustrates defects that are common to many environmental standards throughout Canada.

One particular municipal by-law would cause significant capital and operating expenditures but would result in negligible environmental improvement.

A Montreal Urban Community (MUC) by-law establishes a standard which requires that emission of particulates from petroleum industry cracking catalyst regeneration be reduced to not more than 100 mg/m^3 (milligrams per cubic metre). This standard can only be met by installing electrostatic precipitators (ESP's), the most costly particulate control equipment commercially available. ESP's of appropriate size for new refineries would involve a minimum capital cost of $3.75 million. However, installations in existing refineries would require retrofit measures and substantially higher capital costs. In addition, there would be continuing operating costs of roughly $375,000 per year, much of which would be spent on electricity -- a valuable energy resource. Since the by-law will require six refineries in the Montreal East area to be equipped with electrostatic precipitators, the cost of compliance with this by-law for all Montreal East refineries would be at least $22.5 million installation capital costs plus $2.25 million in operating costs for each year thereafter.

In November of 1978, the Ontario Research Foundation (ORF) analyzed thirty samples of Montreal East air and, in all cases, refinery catalytic crackers were found to contribute less than half of one per cent (0.4%) by weight of the total suspended particulate matter. The elimination of such a small fraction of the total particulate matter would result in an insignificant environmental improvement. No environmental standard should require the expenditure of $22 million when little or no environmental improvement will result. The fact that such standards are created suggests that regulators are unaware of the analysis procedures available to prevent them and are insensitive to the adverse economic effects of their regulations.

There is evidence suggesting that suspended particulates in the air over Montreal East are not a significant environmental problem. However, assuming that they are at unacceptable levels and must be reduced, the rules of cost-effectiveness dictate that regulatory agencies should not attempt to resolve the problem by requiring, on a blanket basis, all known sources of particulate emissions to be equipped with the most advanced pollution abatement technology. Although this simplistic approach may be tempting to some regulators, this approach invariably results in large sums of money being spent for relatively insignficiant improvements in air quality.

We recommend that the regulatory agencies should conduct analyses to identify the most significant sources of pollutants and that reduction of discharges should be required only to the extent that its economic cost is justified by such analyses. We further recommend that all proposed regulations and their supporting analyses should be reviewed by an independent body to ensure that they are in the overall public interest and not merely expressions of the narrow interests and responsibilities of the sponsoring department.

In this study, unless otherwise expressly stated, all amounts, comments and descriptions are based on conditions as they existed in 1978.

6.6.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCY, PREPARED BY WOODS GORDON

The meeting with officials of the agency concerned indicated that it specifies blanket environmental standards, drawn from research and standard-setting in other jurisdictions, which are to be of general application; it does not attempt to deal specifically with individual sources of pollution nor their relative contribution toward the problem.

Technical standards are regarded as absolutes, and the cost-effectiveness of ways of reaching them are matters for the firms involved. In consequence, the agency does not recognize any need for benefit/cost assessments which examine the trade-offs involved in reaching objectives to varying extents and lead to decisions on economic as well as technical grounds.

The retroactive effect of new standards on existing facilities was also not a matter for consideration by it.

The agency had encountered resistance to change by firms involved and was suspicious of their use of data, and of their motivation. The firm regards the costs imposed by the regulation as unnecessary and unjustifiable; the agency considers they are required and will be passed along anyway. It regarded its function as being to impose what it considered to be required, and did not see any need for a negotiating or review mechanism in environmental matters. As the representative of the electors in these matters, it believed that it should have sole authority to establish what is required.

6.6.3 OBSERVATIONS BY WOODS GORDON

The case and the comments on it by the regulatory agency illustrate, in our view, the following principal points about the regulatory process:

- primacy of a general objective (environmental protection) over matters of cost or efficiency;

- application of blanket standards, drawn from other jurisdictions ;

- no consideration of benefits in relation to costs;

- no appreciation of private costs, on the grounds they will be passed along;

- no recognition of need for any form of review mechanism.

6.7 HOURS OF WORK LEGISLATION: GENERAL MOTORS OF CANADA

6.7.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

Purpose

Examine the impact of the Ontario restrictive hours of work legislation on the GM of Canada Oshawa assembly operations.

Results

The following effects are viewed as being attributable to the Ontario regulations:

1. The diversion of production away from Oshawa in favour of U.S. plants where overtime restrictions are less severe. Estimates of the resulting lost production to Oshawa have been placed at 22,000 units for 1979 and 18,000 units for 1978 with corresponding net sale values of approximately $140 million and $100 million respectively.

2. The legislation provides employees with a bargaining lever to obtain extraordinary premiums from the Company. Payments of such penalties in the form of extra overtime and night shift premiums amounted to approximately $500,000 during the 1979 model year.

3. Compliance with the regulation requires a substantial amount of supervisory effort in the plants. The value of such time has been estimated at approximately $138,000 for the 1979 model year.

4. Qualitative impacts include decreased quality and discipline and increased repair effort during overtime production.

5. The regulation through its limiting influence on labour resource utilization would have a negative impact on evaluating future investment in the province.

Recommendations by the Firm

In those cases where collective agreements have been established between employers and employees, the process of collective bargaining provides the most appropriate mechanism to address the problem of employee work hour responsibilities. In this regard, the Ontario law should neither take precedence over nor impair this process of mutual agreement. Legislated controls in this area should only find application in those instances where no other adequate method of control exists.

6.7.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCY, PREPARED BY WOODS GORDON

The basic position of the agency was that its function was to uphold general principles regarding worker protection which are embodied in legislation. Its job was to interpret the act and to administer it by way of regulations and rulings.

The case is concerned with the hours of work provisions of the legislation and the agency's accompanying rulings that provide flexibility as required by particular situations; the agency did not consider that its activities had an impact as the case claimed. In its view, the opportunity costs of diverted production identified in the case, arose from an inadequate collective agreement and labour relationship between the firm and the union at the plant concerned. The agency had difficulty in accepting the contention of the case that the act had a behavioural effect on the collective bargaining process, which resulted in the effects identified in the case and which could thus be attributed to the act. The central point of this case was the right to refuse overtime. The agency considered that the rights of the few to refuse must be safe-guarded over the desires of the many, even in an assembly-line operation which is vulnerable to shutdown if a few key workers are absent.

The agency indicated that it had made no economic assessment of the impact of this particular legislation (except insofar as economic effects were recognized when considering flexibility arrangements). The act was in place as an expression of the wishes of the legislators and electorate. It followed therefore that there was no place for consideration of trade-offs between the basic underlying principle of worker protection and economic impact. The matters at issue were social goals to be taken as given, and a shortcoming of the case, in the agency's opinion, was that it paid no attention to quality of work life and focussed on economic aspects only.

As regards the regulatory process, blanket legislation accompanied by exceptions and flexibility provisions (in the administration of which the agency is continuously and fully involved), is considered preferable to any alternative approach that would specify general standards and limits, and would lessen the involvement of the agency.

In general, the agency worked within the regulatory process established. The mix of policy/administrative officials interviewed had given little, if any, consideration to fundamental ways in which the process might be changed or improved.

6.7.3 OBSERVATIONS BY WOODS GORDON

The case and the comments on it by the regulatory agency illustrate, in our view, the following principal points about the regulatory process:

- primacy of a general objective (worker protection) over matters of cost or efficiency;
- a narrow interpretation by the regulator of its place, role and impact in the regulatory process, and disinterest in potential for beneficial change;
- absence of cost-benefit assessment; disagreement with need for consideration of trade-offs through this or other evaluation techniques;
- preference of the regulator for blanket regulation with provision for exceptions, which results in the regulator being closely and continuously involved with individual situations.

6.8 DISTRIBUTION AND TRUCKING: IMPERIAL OIL LIMITED

6.8.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

Purpose, Focus and Findings

In its distribution across Canada of bulk petroleum products from terminals to delivery locations such as farm agencies, service stations and industrial customers, Imperial Oil Limited is affected by regulations imposed by all levels of government. The present case samples the impact on Imperial of complying with several of the most significant regulations affecting its operations in two provinces, Alberta and Ontario.

These two provinces were chosen not only because they are representative of two important regions of the country, western and central Canada, but also because different approaches to regulation of trucking in the two provincial jurisdictions provide a useful contrast in the costs of compliance and the wider economic effects of regulation.

To provide a study of manageable size, the case was further restricted to transport by tank truck. Rail, marine and pipeline modes of transport were omitted, as were packaged petroleum products.

The activity studied is thus the transport of bulk petroleum products within Alberta and Ontario beginning with the loading of products onto a truck at a terminal and including movement to a delivery location, unloading into a storage container and returning to the terminal. Tank trucks included either are owned and operated by Imperial or are hired from independent operators under various types of contracts. Products included are motor gasoline, diesel fuel and heating oil, heavy fuel oil, asphalt, solvents and lubricants.

From the more than 35 different statutes, regulations and by-laws affecting this operating activity, Imperial selected the following signifciant regulatory aspects of five statutes:

1. Ontario Public Commercial Vehicles Act -- requirements for entry into "for hire" trucking within the province.

2. The federal Lord's Day Act -- prohibition of delivery of fuels on Sundays.

3. Alberta Motor Transport Act:

   (1) gross vehicle weight limitation;
   (2) vehicle dimensions and operating standards.

4. Alberta Fuel Oil Administration Act -- requirements for the dyeing and physical segregation of fuels exempt from certain taxes or eligible for an agricultural user's allowance.

5. Ontario Highway Traffic Act:

   (1) duplicate licensing of fleets operating in two provinces;
   (2) half-load limits.

The case study focusses over the period 1976 to 1978 on unnecessary cost to Imperial caused by these five instances of regulation within the limited operating activity described previously. These costs would not exist in the absence of regulation, and further Imperial believes in each instance that substantially all of the costs could be saved if its recommendations for alternative forms or methods of regulation were adopted. Where Imperial has no significant problem or disagreement with the regulation or form of its compliances action, no cost of compliance is included.

In the period 1976 to 1978, Imperial accordingly has calculated that annual savings of $1,530,000 could have been achieved out of a total annual cost of $22 million for distributing bulk petroleum products by truck in the two provinces. If dyeing of fuel in Alberta were eliminated, a further possible annual saving of $152,600 was estimated out of Imperial's total annual cost of $183,500 for this activity.

In summary, the principal recommendations whose implementation would allow these savings are:

1. Entry to the Ontario inter-provincial "for hire" trucking industry should be permitted after proof of financial capability only, as is the practice in Alberta, so that competition will be increased and "for hire" truck tariffs reduced. (annual saving - $792,000).

2. Regular operation of truck fleets on a 7-day weekly basis, rather than on the 6-day basis presently allowed under the Lord's Day Act, would permit a reduction in private and hired truck fleets (annual saving - $432,000).

3. The present limitation on gross vehicle weights in Alberta should be raised from 110,000 pounds to 118,000 pounds resulting in increased truck payloads (annual saving - $265,000).

4. A new method of distinguishing fuels according to use should be found in Alberta which eliminates (as in Ontario) the requirement for petroleum companies to inject purple dye marker, thus reducing the capital and operating costs of fuel dyeing facilities and added storage (annual saving - $152,600).

5. Ontario should eliminate, unilaterally or by negotiation with other provinces, duplicate licensing requirements for truck operators having operations in more than one province (annual saving - $41,000).

In view of significant and increasing regulation by governments of Imperial's operations in general, the company has observed changes in the behaviour of company personnel at all levels and has added to the structure of the organization itself. Employees have responded and adapted to the objectives of government regulation. Where regulations require unnecessary or inefficient acts of compliance, the result is a hidden and excessive cost to the company. The present case study illustrates some of these behavioural responses to regulation.

Imperial believes that the potential cost savings identified in this case study are a limited sample of savings in cost of its normal operations that are readily attainable through adoption of more efficient alternatives to existing regulation. Improvements in the

regulatory process of the federal and provincial governments, as well as between provinces, would noticeably reduce the cost burden of Imperial's response to government regulation.

6.8.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCIES, PREPARED BY WOODS GORDON

In general, the agencies in Ontario and Alberta with which this case was discussed were in agreement with the circumstances as presented. However, as regards the several specific recommendations made, the response was that the suggested changes were either impractical (largely because of the political and interest-group aspects involved), or were being considered in on-going industry-government discussions.

The suggestion that entry into for-hire trucking in Ontario be virtually deregulated (along the lines in Alberta) was considered to be unrealistic and the level of cost savings was held to be overstated, because it was not possible to exactly transpose experience from one jurisdiction into another. The trucking industry in each province had its own history and its own built-in interested parties. Forces for change would have to come from outside, e.g., in terms of the effect of energy supply and prices on operational- and cost-effectiveness.

Standardization of truck dimensions and weights was a complex matter, under discussion through industry-government bodies, but with little prospect of early, substantial changes. To a major extent, standards had to be of general application, since there were not the resources available for engineering studies to determine particular standards for particular situations. Discussions were underway on inter-provincial reciprocity in the other matters (besides truck dimensions and weights) that were touched on in the case.

Alternative, less-costly ways of dealing with the position of agricultural users of fuels in Alberta had been extensively considered and found satisfactory from administrative aspects. They had not been acceptable to some of the interest-groups involved however, and action had stalled.

More generally, improvements in administration and in management by exception were being continually sought. The extent to which these could be implemented was lessened, however, by the attitude of interest-groups affected. The agencies commented that changes in the regulatory process, to have any chance of being accepted and implemented, must be as specific, detailed and politically oriented toward interest-groups as possible. Regarding specificity, proposals at

a high level of generality regarding trade-offs in general were not useful. Specific steps that could be taken on an incremental basis had a chance of proceeding. Proposals must be thoroughly detailed and documented, and presented so as to recognize the political and interest-group factors involved. Industry associations could be useful in this respect, although there were fewer associations of industry users than of industry suppliers.

6.8.3 OBSERVATIONS BY WOODS GORDON

The case and the comments on it by the regulatory agency illustrate, in our view, the following principal points about the regulatory process:

- recognition of desirability of changes in the regulatory process, but difficulty in proceeding because of conflicting pressures from all interested parties;
- need to have blanket standards of general application, as resources to consider specific situations are not available;
- need for an incremental approach to improvements, rather than major changes;
- disregard for private costs, which are considered to be a part of the regulatory process and passed along anyway.

6.9 FOOD PRODUCT LABELLING: GRISSOL FOODS LIMITED

6.9.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

The purpose of this study was to examine and identify the cost impact of government regulations on the processing and packaging of food products.

The activity and legislation selected for study was the labelling of consumer products under a number of acts and regulations. The Consumer Packaging and Labelling Act (Consumer and Corporate Affairs) was introduced in 1974. The Food and Drugs Act (Health and Welfare Canada) and the Meat Inspection Act (Department of Agriculture), were revised in 1974. The study examines and identifies, where possible, the costs incurred, either directly or indirectly, as a consequence of these revisions in 1974. To provide a base point for comparison, data is developed back to 1970.

Findings

It was difficult to identify and isolate compliance actions and their costs and relate them directly to the individual regulations. In many instances, a compliance action would answer to all three regulations simultaneously.

Total costs attributable to the compliance actions amounted to $2,525,000 during the nine-year period 1970 to 1978. The percentage of such costs to gross sales rose from 0.44% in 1970-71 to 0.76% in 1977-78. The regulatory component of labelling costs is only a small part of the regulatory costs in Grissol's total operation. The study results should be viewed in this light.

The following are comments on the three regulations.

- Label changes. The metric conversion (Consumer Packaging and Labelling Act) and the ingredient listing regulations (Food and Drugs Act) were revised in substance in 1974. These revisions required a change of all labels during the subsequent years under review.

- Net weight. The 1974 revisions to the Consumer Packaging and Labelling Act established tighter net weight specifications and tolerances. As a lower cost alternative to reducing machine speed, or replacing scales with more sensitive equipment, the degree to which containers were overfilled was increased. The cost of such overpacking rose some fivefold between 1970 and 1978.

- Metric conversion. Capital expenditures were incurred in the period 1976-1978 for metric conversion.

Recommendations by the Firm

- Regulations on ingredient listing and net quantity should be less rigid to allow for the substitution of materials as supply conditions change. Furthermore foreign suppliers should be required to meet Canadian standards before being allowed access to Canadian markets.

- Adequate cost-benefit analysis should be carried out before modifications to existing regulations or introduction of new regulations.

- Regulations should be written in a form that is more readily comprehensible to users.

6.9.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCIES, PREPARED BY WOODS GORDON

Agency officials indicated that the case study reflected imperfect knowledge by the firm of the particular regulatory requirements, of the flexibility in the system, and of the extent to which the regulators did, and were prepared to, work with firms and the industry. Partly for these reasons, they considered that the costs of compliance presented in the case were overstated. They also stated that the concern of the firm regarding Canada following the lead of the

United States, in increasing the volume and expanding the range of regulations, was groundless; they had no such intention. They were interested in working closely with firms and in ensuring they had better knowledge than this firm evidently had in the past.

The operations-level officials interviewed considered themselves to be acting within a very broad mandate--consumer protection and the right to know--and their work focussed on the technical means by which this would be given expression. They worked within the established regulatory process and had given little consideration to the potential for basic changes and improvements, as was perhaps appropriate to their level. However, they were clearly aware of the impact of their activities and of their importance for those affected by them.

The recent introduction of Socio-Economic Impact Assessments for new regulations was seen by the officials as a step toward a more rational approach to consideration and introduction of new regulations.

6.9.3 OBSERVATION BY WOODS GORDON

The case and the comments on it by the regulatory agency illustrate, in our view, the following principal points about the regulatory process:

- primacy of a general objective (consumer protection and right to know) over matters of cost or efficiency;
- appreciation of Socio-Economic Impact Assessments as a contribution toward improvement in the regulatory process;
- inadequate knowledge on the part of the firm of regulatory requirements and of actions open to it, which led to it incurring costs unnecessarily;
- willingness of the agency to work with firms affected.

6.10 CENTRALIZED CORPORATE REPORTING: THE MOLSON COMPANIES

6.10.1 EXECUTIVE SUMMARY OF THE CASE, PREPARED BY THE FIRM

Introduction

The Molson Companies Limited initial assessment of the possibility of preparing a case study on the cost of compliance with government regulations suggested two possible cases for detailed study. The first case dealt with the development of a new retail facility, the second with the on-going burden of regulatory reporting requirements. (A third possible case, to do with Molson's brewing activities, was being developed as part of an industry study, and therefore was not considered for the cost of compliance study.)

The Company's preference was toward the second case and, after discussion with Woods Gordon, it was agreed to carry it out, since the company felt that the potential for success in measuring the direct impact of regulations and in making suggestions for improvement was high.

It was decided to focus on reporting carried out by the corporate office which exercises a central reporting function for certain matters on behalf of many constituent groups and divisions. It was decided that additional reporting activities carried out directly by the groups and divisions within the company would be indicated, but not measured, so as to illustrate the magnitude of reporting activities throughout the company.

Summary

The Corporate Office of the Company is responsible for the completion of a large number of reports to government on behalf of some 85 legal entities. The officers of the Company believed that a significant amount of time and cost was incurred in completing these reports and that there were likely to be considerable opportunities for cost reductions.

A survey revealed that the costs of filing corporate returns were not as burdensome as expected, being approximately $25,000. Additional to these are the costs of reporting directly by the groups and divisions.

While the measured reporting costs proved to be less significant than expected, some opportunities for cost reduction were observed, primarily by using common formats for federal and provincial returns and by adopting common filing dates for returns. Specific suggestions are made in this regard.

6.10.2 SYNOPSIS OF COMMENTS BY THE REGULATORY AGENCIES, PREPARED BY WOODS GORDON

This case was not circulated for comment because of the large number of regulations and departments with which it was concerned.