



## **EVALUATING THE IMPACT OF REGULATIONS AND REGULATORY POLICIES ON THE PRIVATE SECTOR**

Dr. Cesar Cordova-Novion\*

Director, Jacobs and Associates

[www.regulatoryreform.com](http://www.regulatoryreform.com)

Lima, Peru, 24 May 2007

### **A. Introduction**

Governments know that all regulatory interventions affect how firms operate. Without this knowledge, government would not use this type of intervention, but rather use such policy instruments as direct coercion, taxation/subsidies, or information to create the desired behavior among firms. Unfortunately, governments often do not know to balance the positive and negative impacts of their interventions, and furthermore, have difficulty in determining whether their initiatives to reduce the regulatory burden on firms have been effective.

This paper will review two issues: 1) the methods of evaluating the impact of regulation on firms, and 2) the mechanisms for evaluating the governmental regulatory reform initiatives. Because the scope of both issues is so extensive, the intention of this paper will only be to give some elements of response.

### **B. Evaluating the Impacts of Regulation on Firms**

Government regulations have a profound effect upon firms and on the working of markets.<sup>1</sup> Regulations are the key tools to carrying out a wide variety of public policy goals, including improved safety, health, and environmental protection. Indeed, as society becomes more complex -- and some other type of policy tools such as taxes and subsidies face constraints and limitations from globalization and competing tax regimes -- regulations are becoming the preferred policy tool. Today there are many types of regulations in use (see Box 1).

#### **Box 1: What is a regulation?**

There is no generally accepted definition of "regulation" that is applicable in the very different regulatory systems operating around the world. In OECD work, "regulation" refers to the diverse set of instruments by which governments imposes requirements on enterprises and citizens. Regulations include constitutions, laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. It also includes 'soft regulation', which in recent years has grown to include joint opinions, declarations, resolutions, recommendations, proposals, guidelines, codes of conduct, agreement protocols and 'agreements proper'. In general, regulations fall into three categories:

**Economic regulations** intervene directly in market by directly affecting pricing, competition, market entry, or exit decisions. Reforms in this area aim at increasing economic efficiency by reducing barriers to

---

\* Additional editing and comments by Diana Rowen-Hyde, Project Manager, Jacobs and Associates

<sup>1</sup> For a general overview of the regulatory environment and reform in OECD countries, see OECD (1997) *The OECD Report on Regulatory Reform*, Paris. Other important sources of information on the role and impact of regulations are at the following email addresses : <http://www.aei-brookings.org/index.php>, <http://rru.worldbank.org/>, [http://www.smarttape.ca/working\\_on/index.html](http://www.smarttape.ca/working_on/index.html)

competition and innovation, often through 1) deregulation, 2) the use of efficiency-promoting regulation, and 3) by improving regulatory frameworks for market functioning and prudential oversight.

**Social regulations** protect public interests such as health, safety, the environment, and social cohesion. The economic effects of social regulations may be secondary concerns or even unexpected, but can be substantial. Reforms in this area are aimed at verifying that regulation is needed, and how regulations can be designed to be more flexible, simpler and more effective at lower costs -- including such possibilities as market incentives and goal-based approaches.

**Administrative regulations** are the paperwork and other administrative procedures and formalities -- the so-called "red tape" -- through which governments collect information and intervene in individual economic decisions. They can have substantial impacts on private sector performance. Reforms in this area are aimed at eliminating requirements no longer needed, streamlining and simplifying those that are needed, and improving the transparency of application.

Source: Adapted from OECD (1997)

Governments are increasingly using regulations to achieve most of their public policy goals. A growing regulatory 'environment' exists nowadays to protect consumers from unsafe products, to protect employees from unfair and unsafe practices in the workplace, and to protect the environment and 'the public good' in general.

Certainly regulations create direct benefits for companies. They can establish market frameworks in which commercial transactions take place at lower cost. Pro-competition regulations can help smaller companies and entrepreneurs gain access to markets previously reserved for government supported organizations or large enterprises. Consumer protection regulations have, for example, improved the public's confidence in sectors as diverse as food, financial services, and pharmaceuticals. Moreover, reporting information (for instance for tax requirements) may also improve the accounting and information systems of small companies.

However, regulations have also negative impacts on firms. There is a real risk that regulation -- its application and enforcement -- can impede innovation or create unnecessary barriers to trade, investment, and economic efficiency. Regulations that are outdated or poorly designed to achieve policy goals can impose unnecessary costs. The cumulative effect of many regulations from multiple institutions and layers of government is to slow down business. Business become less responsive, divert resources away from productive investments, reduce innovation and job creation, find entry into new markets hampered, and are generally less entrepreneurial. These effects are more costly when dealing with global markets, where business competitiveness can be affected by the efficiency of the domestic regulatory and administrative environment.

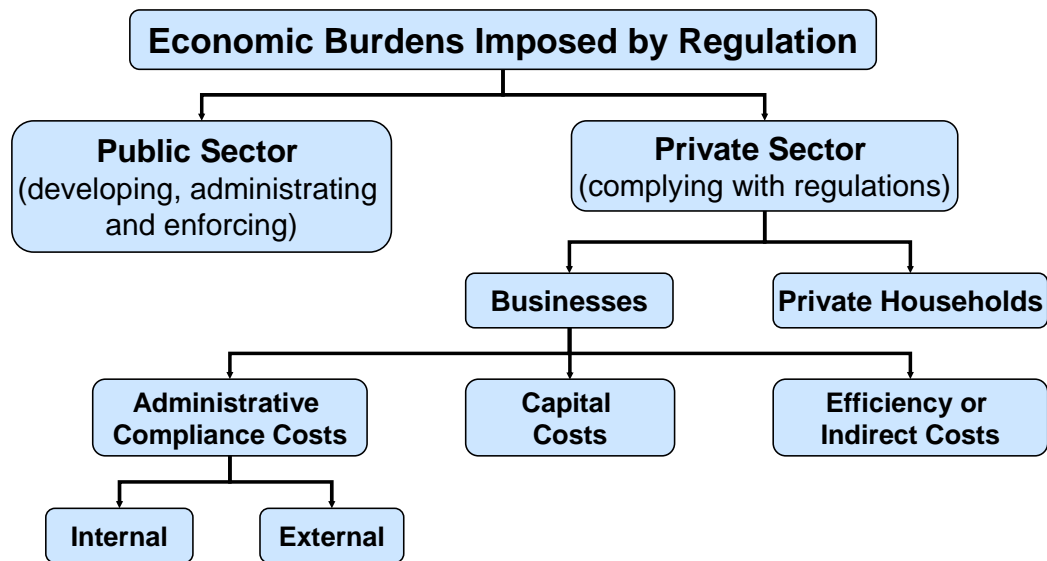
### ***The difficulties of measuring regulatory costs***

These concerns notwithstanding, it is difficult to identify, measure, and compare regulatory costs. In some cases, the problem is the absence of a clear definition of relevant costs.<sup>2</sup> Box 1 presents a simplified categorization of the regulatory costs used in this report, divided according to the type of cost and the sectors affected. However, each concept is fraught with definitional challenges.

---

<sup>2</sup> OECD (2001) *Businesses' Views on Red Tape. Administrative and Regulatory Burdens on Small and Medium-sized Enterprises*, Paris

**Figure 1: The Nature of Regulatory Costs**



Source: Jacobs and Associates.

The public sector absorbs the costs of developing, administering, and enforcing regulations while the private sector (businesses and private households) incurs the initial costs of complying with these regulations (although ultimately these costs filter through to the economy at large). Businesses see three different kinds of compliance costs:

- **Administrative costs** and other operating costs, such as filling in forms and other government information requirements.
- **Capital Costs** when businesses need to make capital investments to comply with regulations.
- **Indirect Costs** (or efficiency costs) which arise when regulations reduce the productivity and innovativeness of enterprises by, for example, hampering business management or distorting resource allocation.<sup>3</sup>

This description belies the complexity of analyzing *ex post* the costs associated with regulations. There are theoretical problems that make it difficult to measure and compare regulatory costs including:

- the difficulty of measuring the *net* costs to companies (after taking into account any direct benefits of regulations);
- the difficulty of estimating the costs that would have been incurred in any case, to obtain information needed for management purposes.

<sup>3</sup>. In addition, some researchers have identified the presence of “psychological” burdens (see Godwin, M (1995) in Sandford, C ed. (1995) *Tax Compliance Costs: Measurement and Policy*, Fiscal Publications, Bath. These may occur if managers experience higher levels of stress or pressure as a result of the need to comply with regulations.

And then there is the problem of identifying which expenditures were driven by regulatory requirements and which were driven by business needs. For example, when a company installs a filter to reduce pollution, is it regulatory or a business investment decision?<sup>4</sup> To measure direct costs, a researcher needs to track the whole impact of the financial expenditure (e.g. calculating depreciation and overhead) differentiating the impacts as much as possible. Moreover, measuring indirect or efficiency costs is even more complex as the costs are often incorporated into the production process or the design parameters of a product and, therefore, are extremely difficult to value. In most cases, these costs are passed to consumers and/or workers, and so are not clearly defined, or are taken for granted by existing businesses. Also, the researcher must also choose a baseline -- always a difficult analytical choice.

### ***Some evaluation techniques***

In recent years, an increasing number of studies and methodologies have been developed to get a better handle on these impacts. Some focus on the regulatory impact on the firm while others focus on the regulatory impact on specific economic sectors. The most frequently used methods are summarized below.

#### Cost-Benefit Analysis

This method tries to appraise all benefits and costs associated with a regulation.<sup>5</sup> Usually this technique is chosen when deciding whether an existing regulation or regulatory regime should be maintained or modified. Analysts using this methodology evaluate as precisely as possible the economic effects of regulation (i.e. benefits and costs) -- both static or dynamic. How the analyst conducts the valuation will have many ramifications and in particular the extent to which the analyst uses qualitative or quantitative estimates. In addition to the problems mentioned above, the calculation in money terms of social or welfare costs and benefits always present special challenges. For instance, how does one measure the loss of a species or the damage of a landscape or even the gain or loss of human? In addition, market prices may not be a good measure of the 'opportunity costs' and externalities. Such analysis is further complicated when analysts include dynamic effects, such as estimating the impacts across the economy, across many jurisdictions or into the future. In many cases, the lack of certainty will necessitate assessing risks rather than actual benefits and costs. No doubts these complexities have created a strong nucleus of skeptics.<sup>6</sup>

#### Economic Performance Indicators

Another method for evaluating regulatory impacts relies on developing a list of regulatory performance indicators. The OECD has been one of the key promoters of this technique. Since the late 1990s, the OECD has been constructing indices to compare product market regulations that affect competition in OECD countries.<sup>7</sup> All of these indicators are predicated on the belief that regulations create barriers to entrepreneurship and restrict competition in domestic markets. These indicators can be put together on 'per country' basis looking at the economic output of the different frameworks. OECD indices cover both general-purpose, economy-wide

---

<sup>4</sup> A number of studies have tried to identify the presence of such costs and a small number have made attempts at quantification. See, for example, OECD (1999). *Regulatory Reform for Smaller Firms* Paris and OECD (1997) *Regulation and Industrial Competitiveness: A Perspective for Regulatory Reform*. Paris

<sup>5</sup> For an excellent overview see Adler, Mathew and Eric Posner eds (2000) *Cost-Benefit Analysis*. Legal, Economic and Philosophical Perspectives. The University of Chicago Press.

<sup>6</sup> Adler and Posner (2000) op cit.

<sup>7</sup> The latest update of the series was done in 2003. All the indicators, the underlying data and the related documentation can be accessed on line at [www.oecd.org/eco/pmr](http://www.oecd.org/eco/pmr)

regulation and sector-specific regulations in many of the non-manufacturing sectors.<sup>8</sup>

As always, choosing an indicator or a set of indicators to reflect a complex reality is difficult, and thus some of these economic indicators have shortcomings. In addition, the indices do not differentiate clearly the effects of the regulation itself from those of its implementation and enforcement and may underestimate compliance.

### Micro Measurement Studies

Micro measurement studies come in many forms. In the 1990s, they mostly included case studies based on the detailed analysis of regulatory impacts affecting individual companies. They were conducted through in-depth interviews with managers in a small number of companies, direct observations of activities, and the use of diaries by managers in different companies.

More recently, some research institutes and large consultancies have started using computer models based on detailed assessments of activities carried out in a small group of companies. These models are used as a basis for fiscal models developed to assess the impact of changes in taxes. An example of such an approach is the Mistral Project in the Netherlands. Mistral is a computer model designed to evaluate ex ante the business impact of regulations which has been quantifying the administrative compliance costs of different taxes and regulations in the Netherlands.<sup>9</sup>

These studies often provide a more detailed understanding on how businesses react in reality to regulations and their enforcement than large-scale surveys or macro studies (such as those of the OECD Product Market Indicator Project). However, they are based on small-scale and non-representative samples, and therefore, might not be representative of the whole population of companies. They cannot be used as a source for generating reliable aggregate estimates of the cost of administrative compliance for businesses as a whole.

A few years ago, European countries embarked in an ambitious program to group and generalize these studies under the generic term, 'Standard Cost Models'.<sup>10</sup> SCM is a method for determining the administrative burdens on businesses arising from a law or regulation. It is a quantitative methodology that can be applied in all countries and at different levels of the economy. The method can be used to measure the impact of a single law or selected areas of legislation, or to perform a baseline measurement of all legislation in a country. Furthermore, the SCM is also suitable for measuring simplification proposals as well as the administrative consequences of a new legislative proposal. The EU SCM initiative includes precise guidelines. A key advantage of SCM is that it produces quick results. SCM is a particularly useful tool for identifying ways in which costs can be reduced (see below). Unfortunately, the cost of undertaking a proper SCM is substantially higher than other methods. It often runs to several US millions for a given country. Implicit in the model is its focus on information collection (i.e., it is particularly good at estimating the impact of administrative regulations). Consequently, not only do the analyses of economic and social regulations tend to be diluted, but some of the model's conclusions may be biased against information-based regulatory solutions thus raising the risk of favoring substantive compliance and other capital and assets expenditures.

---

<sup>8</sup> Conway, Paul, Veronique Janod, Giuseppe Nicolette (2005) Product Market Regulation in OECD Countries: 1998 to 2003. Economics Department Working Papers, No 419. Paris.

<sup>9</sup> OECD (1999) *Regulatory Reform in the Netherlands*, Paris, p. 141.

<sup>10</sup> SCM was first developed in the Netherlands and later was supported by refinement in Denmark and the UK. For an overall description of the SCM and concrete examples see <http://www.administrative-burdens.com/>

## Business Surveys

This evaluation method involves the use of questionnaires sent to a random sample of firms that are statistically representative of a given (or whole) population of firms. Estimates provided by respondents are then extrapolated to provide aggregate estimates of the cost of administrative compliance for that business sector.

The goal of these evaluation techniques is to understand how firms behave to regulatory burdens or to regulatory reforms. For the latter, and in order to obtain statistically robust results, the affected firms are randomly organized into a 'treatment group' with firms affected by the reform, and a 'comparison group' containing firms not affected by the legislation change.<sup>11</sup>

International organizations have been heavy users of business surveys. The World Bank pioneered an international study in 69 countries in the mid 1990s in an effort to try to understand businesses' perceptions of regulations.<sup>12</sup> In 2001, the OECD undertook a more precise business survey on the impact of regulations. In this study, the OECD conducted a survey of the businesses' perception of administrative regulations in 11 OECD countries. For each country, the survey measured an enterprise's perceptions of the quality of the regulations and formalities for tax, employment, and environmental protection regulations. It also estimated the administrative costs of complying with the regulations and formalities in terms of direct costs (time and money spent by employees or entrepreneurs) and indirect costs (lawyers, accountants, etc.) for SMEs.<sup>13</sup>

As part of the World Bank Group, the Foreign Investment Advisory Services (FIAS) has relied on medium to large business surveys in the recent past and has developed a survey template to assess administrative burdens. In particular, FIAS has developed a 'turnkey' project available to all country under the programme, *Administrative Barriers to Investment: the Red Tape Analysis and Using Self-Assessment*. In this approach, FIAS assists a counterpart team in the host government who then utilize FIAS' templates to collect the basic information on the impacts of administrative procedures on business establishments and operations in the host country. The survey results are then used in a study of the administrative barriers to investment and ultimately lead to the preparation of an investment guide that focuses on the specific issues identified by the previous components (including international experts).

Business surveys have important advantages. If the sampling is well designed, the study can provide a robust statistical estimate of the regulatory impacts on firms in general or on a specific sector (e.g. SMEs).<sup>14</sup> A business survey is also very useful for producing estimates of the cost of administrative compliance that are the right "order of magnitude". This enables researchers to extrapolate data to produce estimates of national costs. They are also a relatively cost-effective means of collecting information. While they cannot generate precise cost estimates, they can make a useful contribution to the debate on regulatory reform. Respondents can choose to complete questionnaires at a time of their own choosing. In the case of mailed surveys, they have time to think about their responses, and consult records or other people. Moreover, the cost of a mail survey is lower than most other methods of data

---

<sup>11</sup> Blundell, R. M.C. Dias (2002) 'Alternative approaches to evaluation in empirical microeconomics', the Institute for Fiscal Studies, Department of Economics, UCL, CEMMAP working paper cWP10/02.

<sup>12</sup> Brunetti A., Kisunko G. and Weder B. (1997) *How Businesses See Government – Responses from Private Sector Surveys in 69 Countries*, World Bank Paper, Washington.

<sup>13</sup> OECD (2001) op. cit.

<sup>14</sup> The survey needs to have a large enough population to allow a high absolute number of respondents, and thus avoid having a low response rates and the problem of non-respondents can be assumed to have similar characteristics as respondents.

collection.<sup>15</sup>

However, the business survey approach encounters problems too. The following are some of the most significant problems:

- The data collected reflects business perceptions, i.e., subjective opinions, not empirical, independent measurements. Businesses may inaccurately assess their costs. Some may exaggerate the costs for “political” purposes, such as the desire to embarrass the government, or the desire to achieve a reduction in compliance costs (so-called “strategic behavior”). On the other hand, others may understate their costs because they simply do not know or cannot remember all of the formalities and paperwork that are routinely undertaken to comply with regulations.
- Opinion surveys of businesses are quite susceptible to the business cycle. Poor company performance may induce businesses to respond to opinion surveys in a negative fashion.
- Firms will tend to underestimate the benefits of regulations. For instance, some administrative procedures undertaken routinely can provide valuable information to the company and the process of gathering and organizing the information may improve the corporate governance of the firm. As well, some regulations may spur innovations and thus bring a competitive edge to firm as the German SMEs have shown when dealing with stringent environmental regulations.

### Benchmarking Exercises

Benchmarking exercises solves some of the “subjective” and opinion-based problems encountered with business surveys. This approach avoids collecting data directly from businesses but rely on paid experts to investigate and corroborate the data before sending back their findings. Through a periodic application of such evaluations, it becomes possible to rank countries according to indexes and to study trends among the indicators.

The World Bank has invested much energy and effort into this type of study and has developed two influential set of indicators. The *Doing Business Survey* provides measures of business regulations and their enforcement; its annual report has become a driver of government reforms in many countries. Every year since 2004, the *Doing Business* report compares indicators across 175 economies indicating the regulatory costs of business. The 10 indicators presented and analyzed in *Doing Business* measure the regulatory impacts on businesses, especially small and medium-size domestic firms (see Box 2). Importantly, the World Bank ranks (i.e. benchmarks) all the economies according to the individual indicators as well as to a composite indicator. Nevertheless, this type of ‘objective’ indicators (compared to survey-based ones) has a hard time capturing the impact of regulatory enforcement or of informal regulations (such as litigation procedures). As with the other approaches, this type of study will mostly underline costs rather benefits of regulations.

#### **Box 2: Doing Business Indicators**

Each of the 10 topics in the *Doing Business* database highlights some aspect of private business activity. This page provides links to detailed information on each topic, to the underlying data, and to the topic’s methodology.

1. Starting a Business - Tracks the procedures, time, and costs for a limited liability company to start operation legally.

---

<sup>15</sup> For further discussion on small Vs. large scale surveys, see Evans, Chris et al., 2001, *Tax Compliance Costs: A Festschrift for Cedric Sandford*, Prospect Media Pty Ltd, Australia.

2. Dealing with Licenses - Tracks the procedures, time, and costs to build a warehouse, including obtaining necessary licenses and permits, completing required notifications and inspections and obtaining utility connections.
3. Employing Workers - Measures the flexibility of regulations for hiring and firing workers and the costs of hiring and firing.
4. Registering Property - Tracks the steps, time, and cost involved in registering property.
5. Getting Credit - Explores the role of creditor rights and credit information registries in expanding access to credit.
6. Protecting Investors - Measures the strength of minority shareholder protections against directors' misuse of corporate assets for personal gain.
7. Paying Taxes - Records the tax that a medium-size company must pay or withhold in a given year, as well as measures of the administrative burden in paying taxes.
8. Trading Across Borders - Details the costs and procedures involved in importing and exporting a standardized shipment of goods.
9. Enforcing Contracts -Evaluates the efficiency of contract enforcement by following the evolution of a payment dispute and tracking the time, cost, and number of procedures involved from the moment the plaintiff files the lawsuit until actual payment.
10. Closing a Business - Measures the time and cost of bankruptcy procedures, and develops indices of procedural bottlenecks in bankruptcy laws.

Source: World Bank. See <http://www.doingbusiness.org/>

The World Bank also publishes the influential *Governance Matters* indicators.<sup>16</sup> In this report, the indicators measure six dimensions of governance in over 213 countries and territories from 1996 to 2005. They are based on several hundred individual variables measuring perceptions of governance, drawn from 37 separate data sources constructed by 31 different organizations. The World Bank presents the estimates of governance, and the margins of error capturing the range of likely values for each country. One of the six dimensions is “Regulatory Burden” measures the incidence of market-unfriendly policies. This indicator evaluates “the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.” However, the construction of this type of indicators is quite complex (and expensive). Important challenges exist particularly in the quality control of the data sources as the World Bank combines statistics from different surveys (some of which are based on subjective opinions).

#### Ex ante Evaluation: Regulatory Impact analysis (RIA)

Unlike the above approaches, regulatory impact analysis (or assessment) looks at relative impacts rather than absolute impacts. RIA is thus a normative evaluation. That is, RIA’s main goal is to help decision makers design a better regulation with a lower negative impacts and/or higher positive impacts on firms (and citizens).<sup>17</sup>

RIA is used to examine selectively the potential impacts arising from government action or non-action, and to communicating the information to decision-makers and the public. In essence, RIA attempts to widen and clarify the relevant factors for decision-making. It implicitly broadens

---

<sup>16</sup> [www.worldbank.org/wbi/governance](http://www.worldbank.org/wbi/governance)

<sup>17</sup> Jacobs Scott (2006) *Current Trends in Regulatory Impact Analysis: The Challenges of Mainstreaming RIA into Policy-making*. Jacobs and Associates, [www.regulatoryreform.com](http://www.regulatoryreform.com)

the mission of regulators from highly-focused problem-solving to one of balanced decision-making that trade off problems against wider economic and distributional goals. (See Box 3). RIA has several internal and external objectives:

- Improve the understanding of real-world impacts of government action (including both benefits and costs)<sup>18</sup>
- Integrate multiple policy objectives
- Improve transparency and consultation
- Improve government accountability and reduce corruption

RIA is also a key tool for strengthening interministerial cohesion, reducing duplicative and contradictory policies. From an external standpoint, RIA enhances regulatory transparency and accountability of public administration ('no regulation without representation'). It contributes to reducing the danger of regulatory capture by powerful vested interests. As RIA involves a thorough consultation process, it helps to increase compliance with the rules when they are implemented. In dynamic terms, RIA is an essential instrument to improve decision-making and it has helped to change the administrative culture in many countries from a legalistic and passive stance to an evidence-based, proactive and citizens' friendly attitude. As RIA becomes more widely used, it helps to define governmental interventions and indeed contributes to defining a more positive role for the state.

Certainly RIA and in particular its use of cost-benefit analysis techniques have produced a wealth of information on the impact on regulation. For instance, The U.S. Office of Management and Budget (OMB) has assessed that in the period 1995 – 2005 the introduction of new major U.S. federal regulations (i.e. with higher than 100 million impact) had an annualized cost ranging between \$37 billion to \$44 billion per year and benefits in the range of \$94 billion to \$449 billion.<sup>19</sup> Adding the cumulative effect of existing regulation raises the impacts further. For instance, the US Environment Protection Agencies estimates that in 1990 the compliance cost for businesses of environmental regulations was \$170 million dollars.<sup>20</sup>

However, RIA is less quantitative-driven and detailed than the evaluation techniques described above. Moreover, RIA is designed mostly for evaluating regulations one by one (rather than for regimes) and is mostly used as a tool in looking at new regulatory proposals.

### **Box 3: The 1995 OECD Recommendations on Regulatory Quality**

As a core element, these recommendations includes a Reference Checklist for Regulatory Decision-Making organized around the following 10 fundamental regulatory quality principles:

1. Is the problem correctly defined?
2. Is government action justified?

---

<sup>18</sup> Hahn, Robert and Paul Tetlock (2007), This Has Economic Analysis Improved Regulatory Decisions? Joint Center AEI-Brookings Joint Center For Regulatory Studies. Working Paper 07. April 2007

<sup>19</sup> OMB (2006) "Draft 2006 Report to Congress on the Costs and Benefits of Federal Regulations" Washington, DC: Office of Information and Regulatory Affairs.

<sup>20</sup> EPA (1990) "Environmental Investments: The Cost of a Clean Environment." Report of the Administrator of the Environmental Protection Agency to the Congress of the United States. Quoted in Hahn and Tetlock (2007) op. cit.

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

**Source:** OECD (1995) OECD Ministerial Council approved the *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*. Paris

### C. Evaluation of Regulatory Policies and Instruments

Even in the absence of such evaluations, most governments are now aware that the number, quality and enforcement of regulations reduce business performance and thus generally have a negative impact on the competitiveness of firms, the investment climate and ultimately on the well-being of their citizens. So in the past two decades, governments have begun to invest in policies, programs and initiatives to reduce the compliance costs affecting businesses without waiting for the precise economic justification. Overall, these initiatives have tended to strengthen the accountability, efficiency, participation and reliability of governmental regulations. These initiatives are what the OECD has called efforts to strengthen the regulatory governance (see Box 4).

#### Box 4: Definition of Some Key Regulatory Terms

Since the mid-1990s, OECD has developed concepts that differentiate the government's exclusive action from those actions of partners beyond the government.<sup>21</sup> A **regulatory policy** is an explicit policy aimed at the continuous improvement of the regulatory environment via efficient use of the government's regulatory powers. A regulatory policy is based on: 1) screening regulations and formalities to identify those that are outdated or ineffective; 2) streamlining and simplifying those as needed; 3) using a wider range of market incentives and more flexible and international regulatory approaches; and 4) introducing greater discipline, co-ordination and transparency within regulatory processes. A regulatory policy can induce commitment to reform, sustain transparency, and promote consistency and co-ordination among the various components of reform. A government chooses its regulatory policy approach(es) for strategic and tactical reasons. There are several policy approaches that fall under the **regulatory policy** term -- these have strong complementarities because all address dysfunctions in the public service and pursue similar benefits. However, they involve different networks, instruments, and skills. Operationally, therefore, it is not easy to bring them together. The two main families of regulatory policies are administrative simplification (including eGovernment) and regulatory management and reform.

**Administrative simplification** focuses on improving procedures and processes inside the governmental apparatus, rather than the substance of policies themselves. No attempt is made to change the substantive aspects of a regulation. Administrative simplification reforms tend to concentrate on reducing response times by the public services, and/or the amount of information required to get official approvals (including less duplication of information requirements). Reforms also try to improve public access to

<sup>21</sup> OECD (1995), Recommendation of the OECD Council on Improving the Quality of Government Regulation, incorporating the OECD Reference Checklist for Regulatory Decision-Making, Paris. OECD (1997), "Regulatory Quality and Public Sector Reform" in The OECD Report on Regulatory Reform. Volume 2, Chapter 2, p. 234. OECD (1997) Report on Regulatory Reform. Paris; OECD (2002) Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance. Paris

regulatory and administrative procedures. Administrative simplification reforms are increasingly going beyond the bureaucratic 'front office' into the heart of inter-related government structures that foster regulatory complexity. These reforms involve 'total quality' and re-engineering processes of 'back offices' programs.

The advent of information and communication technologies as well as the spreading use of **Egovernment initiatives** has expanded the administrative simplification toolkit. These initiatives move beyond access to services toward enhancing the quality and variety of services, reaping for instance the benefits of two-ways interaction. Like administrative simplification initiatives, they are also moving from a 'service delivery' (front office) rationale into a process integration (back office) rationale -- albeit one based on technology rather than institutional and managerial reforms.

**Regulatory reform and management initiatives** also focus on improving the ways the government, citizens and businesses interact. However, regulatory reform addresses the instruments, institutions, processes, and policy content of laws and other rules. These reforms look beyond administrative procedures and tackle more than just information requirements (e.g. setting up an environmental filter, hiring and firing restrictions, etc.).<sup>22</sup> Regulatory management initiatives try to review and improve the existing regulations and laws that support administrative processes and structures. It also focuses on improving the rule-making processes with the help of techniques like regulatory impact analysis, public consultation, and alternatives to regulations.

**Regulatory governance** is a term that encompasses a number of regulatory policies. The concept involves developing and implementing statewide relationships and procedures that frame the ways in which authorities and governments use their regulatory powers. Regulatory governance goes beyond the government's executive branch and involves the participation of parliament, the judiciary and subnational authorities among other stakeholders to assure that the rule of law is enforced properly.

In the drive to make governments more responsive and results-oriented, policy makers are becoming increasingly interested in evaluating regulatory governance, policies and tools.

Today, most governments have implemented at least one regulatory policy and are using a few regulatory tools to improve the 'stock' of existing regulations and/or the 'flow' of new regulations. Though some initiatives date from the late 1970s, most efforts -- in particular in developing and in transition economies - have been so recent that good, rigorous evaluations of these initiatives' impacts on firms (and/or citizens) are lagging well behind. It is thus only in the past few years that additional research has been dedicated to understanding better why some of the regulatory improvement efforts have translated into fewer negative effects on the business sector from regulations.

Establishing a robust evaluation framework has not been easy. Most efforts have focused on developing the indicators discussed early in this paper. But even the choice of indicators has been problematic as the ambitious project of the European Commission project testifies<sup>23</sup>

When evaluating the quality of regulatory policies, a key issue is how to differentiate among the inputs, outputs and outcomes of the policy.

- From an **input** viewpoint, a government needs to enact new laws and set up policies, institutions and tools. However, this is not sufficient. This new framework of capacities needs to be implemented, enforced and ultimately deliver results to be deemed successful. The political will needs to be tested in the face of opposition

---

<sup>22</sup> Actually, administrative regulations are a small part of the scope of these policies when contemplating the universe of economic, social and environmental regulations. See discussion on the scope of regulatory reform and governance in OECD (2002) *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*. Paris.

<sup>23</sup> European Commission (2004) *Indicators Of Regulatory Quality*. DG Enterprise. Project prepared by Claudio Radelli, DG Enterprise

from public and private interests. The institutions need to have the human and budgetary resources that are necessary and adequate to apply the policies and tools. Inputs for example will include the budget allocated to the policy (e.g. to set up one-stop shops), or the laws and regulations to enforce the need to prepare a RIA or consult with stakeholders.

- A second array of tests thus focuses on the **outputs** of the policy and raises the question as to whether the inputs have produced better quality regulations. In this case, some indicators could be the number of RIAs made per year, or the reduction of businesses' complains.
- Finally, governments and institutions need to implement and enforce the tools to achieve concrete results for citizens and businesses, in other words, the new capacities needed to produce the **outcomes**. The latter includes higher investment, including foreign direct investment, economic growth, a better quality natural environment, increased social welfare, etc. Some examples would be reduction in time and cost to comply with an administrative procedures and better prices and services for consumers of a regulated industry such as the telecom one.

The following section will concentrate mainly on the discussion of the **inputs indicators** (i.e. the quality of the policy, institutions and tools) and the **outputs** (i.e. the compliance and enforcement of these policies) as the **impacts** (or outcome) indicators are those produced when assessing the impact of regulation addressed in Section B.

There are, however, some caveats about looking at regulatory evaluation from an *input-output-impact* perspective. Evaluating policies and instruments is often complicated by the numerous and overlapping nature of most governments' programs to improve firms' competitiveness. Hence detecting the effects of a single regulatory policy becomes rather hard. In addition, the tools of better regulation are still at the developmental stage in many countries. More importantly, the majority of regulatory policies and instruments are 'reactive' -- that is, they tend to eliminate current or future negative regulatory impacts on firms. Thus, it is very hard to assess what would have occurred if the regulatory reform policy or instrument had not been deployed.

Lastly, very few countries have started to do performance auditing. Exceptions include Canada and the UK who have undertaken studies to audit their RIA systems. Though these studies have shed light on RIA policies, other such better regulation tools have been neglected and basic questions (such as the full economic and budgetary costs of the interventions) have not been answered.

Despite these difficulties and the lack of hard data, a general typology of regulatory policies/tools and their possible evaluation indicators can be laid out (See Table 1) – with the following notes. First, each row of the table/tool would need a longer description and differentiation of its component, thus only the key components have been summarized.

Second, it should be kept in mind that the policies and tools can and have been applied to the

- General regulatory frameworks;
- Specific sectoral regimes in particular addressing policy areas such as agriculture, mining, construction, etc. and
- Individual regulations.

The choice of indicators and subsequent evaluation will consequently vary according to the scale to the regulatory matter studied. These will also vary when defining the scope of the implementation. Increasingly the policy/tools have been applied at federal, regional (i.e. state)

or municipal level, with quite different emphasis and results obtained.

Last and most important, the impact of these regulatory tools is closely tied to the institutional environment in which they are being applied and in particular to the organization promoting change. Without the proper incentives (resources) and deterrents (sanctions), the effect of the best design policy/tool will be not only ineffectual but probably counterproductive -- adding a new layer of bureaucracy and feeding the general skepticism of both businesses and citizens.

#### **D. Conclusion**

The science and art of evaluating regulatory impacts of business of government regulatory interventions are still in development in OECD countries. However, the rapid evolution in methods and the spread of approaches augur well to its future development. Today, many theoretical frameworks and clever methodologies are available from where government officials and academic researchers can chose. Some of them are purely positive (understanding the world as it is) some others are normative (trying to modify the world through better assessing policies and public interventions. Probably the next step on both cases will be for researchers to test and customize them to their context. In particular, work waits to deepen the understanding of impacts on the different type of businesses and to broaden the analyses beyond some of the more 'popular' fields such as administrative regulations. However, these efforts may seem little when researchers will start to face the challenges of adapting similar approaches and methods to the assessment of regulatory impacts (including the issues of non-compliance) of the transition and developing countries. We hope that in ten years time, the incipient efforts in this nearly uncharted continent will revolutionize the whole field and topics.



**Table 1: Typical Regulatory Policies and Tools and Examples of Evaluation Indicators**

Policy /Tool	Description	Example of evaluation indicators (type of indicator)
<b><i>Improve Regulatory Consultation</i></b>		
Forward planning of laws	Forward regulatory planning consists of raising awareness among stakeholders of proposed new regulation that has the potential to allow for more active public consultation. It provides greater notice to all parties and thus allows them more time to organize and formulate their views and submissions. Usually forward planning includes the publication of the overall legislative agenda proposed by a government.	* Number of regulation published
Notice and comments	<p>A 'publication for comment' procedure creates an opportunity and even a legal right for all citizens to participate in rulemaking activities. The procedure needs to include at least the following steps:</p> <ol style="list-style-type: none"> <li>1. The government publishes the proposed regulation in the official gazette or on an official website. The notice must set forth the text and the substance of the proposed rule, the legal authority for the rulemaking proceeding, and applicable times and places for public participation. Published proposals may also include information on contacts within regulatory agencies.</li> <li>2. During a statutory time (between 4 and 12 weeks)<sup>24</sup> all interested persons – nationals and non-nationals alike – have an opportunity to comment through written data, views, or arguments on a proposed rule. It is often the case that the business community challenges the factual assumptions on which the regulator is proceeding, and this is very useful in improving the regulation.</li> <li>3. After the statutory consultation period is over, the government publishes the final regulation. This final regulation includes a statement of the basis and purpose of the rule and responds to all substantive comments received.</li> </ol>	<ul style="list-style-type: none"> <li>* Number of regulation exempted from the 'notice and comment' rule (input)</li> <li>* Number of comments received (output)</li> <li>*</li> </ul>
Active Consultation	A crucial, albeit low-cost, way to consult with interested groups is to send regulatory proposals directly to selected affected parties and invite comments. This procedure is generally systematic, structured, and routine, and may have some basis in law, policy statements or instructions. Affected groups on an official circulation list receive drafts of	<ul style="list-style-type: none"> <li>* Number of active consultation completed (output)</li> <li>* Number of meeting (output)</li> </ul>

<sup>24</sup>

A shorter statutory period or a waiver to the notice and comment can be accepted by the government for urgent regulations. However, criteria and special features, such as a sunseting of the emergency rule, need to be implemented for this kind of measures.

Policy /Tool	Description	Example of evaluation indicators (type of indicator)
	<p>important regulations. This flexible procedure can be used at all stages of the regulatory process. Responses are usually in written form, but regulators may also accept oral statements, and may supplement those by inviting interested groups to hearings. Some countries like Denmark have established ad hoc test panels of businesspersons who statistically represent the private sector and volunteer to answer targeted questionnaires on draft or existing regulations.</p>	
<b><i>Improve Regulatory Access</i></b>		
One Stop shops	<p>Through this tool, public authorities provide access to many regulatory services in a single physical location. One-stop-shops are especially cost-effective for SMEs on whom transition costs related to regulation are disproportionably high. A one-stop shop can offer in a single place regulatory information and advice, the possibility to submit formalities and receive official answers. In some case, a one-stop-shop can adjudicate licenses. For many countries a one-stop shop has been also a way to accelerate devolution from central government to regional and lower level administrations in many fields on the subsidiarity principle. Egovernment tools have expanded the concept into a single site open to any firm with internet access.</p>	<ul style="list-style-type: none"> <li>* Number of one-stop shops (input)</li> <li>* Number of case handle by one-stop-shops (output)</li> <li>* Number of cases resolved by one-stop-shop (output).</li> </ul>
Regulatory registries and inventories	<p>Reforming regulations should be a high priority in any 'business environment' program to improve the interface between the public and private sectors. A first step is to remove uncertainty about the “universe” of government obligations. The objective is to establish a centralized, comprehensive, and secure registry of all forms and formalities required by the government, including all information requirements and background documents required. The inventory should provide legal security to businesses and thus must include the full set of enforceable formalities. Setting up an inventory is itself a deregulation mechanism, as ministries “in cleaning up their houses” will voluntarily eliminate outdated and illegal formalities, rather than report them. It should also be a bridgehead for using Egovernment tools in the future. Once all formalities have been identified, the government can start reviewing them all or the most problematic.</p>	<ul style="list-style-type: none"> <li>* Number of regulation in registry/inventory (output)</li> </ul>
Readability and clarity of regulation	<p>Countries supplement the official gazette with tools and mechanisms to help the parties affected by regulation know their legal obligations. An official gazette indeed is not enough as it only registers the changes (flow) and not the actual stock of regulations</p>	<ul style="list-style-type: none"> <li>* Number of forms with a readability check or label (output)</li> </ul>

Policy /Tool	Description	Example of evaluation indicators (type of indicator)
and forms	(including amendment, elimination and complementarities). Different tools exist besides the basic codification and restatement of laws and subordinated regulations. They include drafting easy-to-use manuals, updating registries of formalities and ....something missing here..... A benefit of such registries is that they can be setup to have “positive security”, which means that regulations must be included in the registry to have legal effect.	
<b><i>Administrative Simplification</i></b>		
Re-engineering administrative processes	<p>Process reengineering is the analysis and redesign of workflow within and among organizations, both private and public. The redesign and reorganization of the processes and procedures inside a public authority can lower costs and increase quality of service. Reengineering can also enable the use of Information and Communication Technologies to support and enable a radical change in how a bureaucracy operates.</p> <p>The most interesting initiatives have consisted in improving the start-up phase for getting business registration numbers and opening licenses.</p> <p>Other efforts have been linked to improve location regulation (e.g. access to premises, construction permits and utilities) and operating procedures and reporting requirements (e.g. taxes and inspections)</p>	<ul style="list-style-type: none"> <li>• Reduction of procedural steps</li> <li>• Reduction of information requirement and documents to be annexed</li> <li>•</li> </ul>
Speed official responses and the ‘silent is consent’ rule	<p>Establishing an explicit deadline for the public authorities’ responses is a first and crucial step. Governments can further enhance the accountability of civil servants by setting up a ‘silent is consent’ rule The “silence is consent” or tacit authorization rule switches the burden of action entirely: if administrators fail to act within time limits (usually two weeks to 30 days), the business is automatically granted approval. The “silence is consent” rule assures the applicant that they will obtain a timely decision to their request. It puts the onus to act on the bureaucrat. That is, the agency to which a request has been made, needs to act before the time limit, including, if necessary and possible, to ask for additional time to consider the application. In the case of denial, the applicant can immediately appeal instead of continuing to wait for a response, as would be the case if no time limit were established.</p> <p>By putting a stronger onus on the public authorities, tacit responses increase the accountability of the public administration. It helps focus the attention and target efforts of the back office on the crucial applications. They thus have the potential to revolutionize the relationship between authorities and businesses.</p>	<ul style="list-style-type: none"> <li>• Existence of an statutory deadline (input)</li> <li>• Number of procedures with ‘silent is consent rule’ (output)</li> <li>• Complains by firms over the non respect by authorities of the statutory deadline (outcome)</li> <li>•</li> </ul>

Policy /Tool	Description	Example of evaluation indicators (type of indicator)
<b><i>Deregulation – Re-regulation</i></b>		
Transforming authorizations (i.e. permits, licenses, concessions, etc) into notifications	A key element of this initiative is to shift from ex ante to ex post controls, letting the firms set up shop, learn their business and capitalize themselves before onerous controls are applied. The ideal practice would be to replace ex ante licenses with a simple notification and general rules and standards to be enforced by ex post checking such as market audits. Such programs reflect a change in the role of the state in controlling the market. For more risky activities, the system can be complemented with out-source certification functions to the (for profit or for non-profit) private sector. This outsourcing occurs in some countries via ex ante insurance companies or via compliance with ISO standards (which entitles the applicant firm to a fast track procedure to obtain certification.)	<ul style="list-style-type: none"> <li>* Number of reform initiatives (output)</li> <li>* Economic gains from the reforms (outcome)</li> </ul>
Liberalizing economic activities	An important mechanism to reduce the burden of business is to exempt the majority (or some) from the compliance with regulatory requirements. This liberalization equivalent to reducing the scope of the regulatory intervention may be subject to size of the firm (i.e. only large firms need to comply), location of the firm (i.e. only firms with present risks of externalities in neighborhoods) or processes (i.e. only firms that use specific risky process need to comply).	<ul style="list-style-type: none"> <li>* Number of firms exempted (outcome)</li> <li>*</li> </ul>
Regulatory Guillotine™ <sup>25</sup>	The Regulatory Guillotine™ is a technique of rapidly reviewing a large number of old regulations, and eliminating those that are no longer needed without the need for lengthy and costly legal action on each regulation. It is clear, decisive, and fast. It can be used to create a comprehensive and central regulatory registry with positive security (going beyond the formalities registry recommended above to include all regulations affecting businesses).	<ul style="list-style-type: none"> <li>* Target of Reform</li> <li>* Number of instruments reviewed</li> <li>* Time needed for process</li> <li>* % of Instruments Eliminated</li> <li>* % of Instruments Simplified</li> </ul>

<sup>25</sup> Regulatory Guillotine is a trademark of Jacobs and Associates Inc. See Jacobs, Scott and Irina Astrakhan (2006) *Effective and Sustainable Regulatory Reform: The Regulatory Guillotine in Three Transition and Developing Countries*, Jacobs and Associates, free downloadable at [www.regulatoryreform.com](http://www.regulatoryreform.com).