From Red Tape to Smart Tape

ADMINISTRATIVE SIMPLIFICATION IN OECD COUNTRIES



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Publié en français sous le titre :

Éliminer la paperasserie
La simplification administrative dans les pays de l'OCDE

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Foreword

"Too much red tape" is one of the most common complaints from businesses and citizens in OECD countries. Filling out forms and asking for permits and licences is often extremely complex and cumbersome, generating unnecessary regulatory burdens. When excessive in number and complexity, administrative formalities can impede innovation, create unnecessary barriers to trade, investment and economic efficiency, and even threaten the legitimacy of regulation and the rule of law.

In recognition of these challenges, governments increasingly focus on efforts to simplify administrative regulations. This report looks at a set of commonly used tools and practices to do so. It provides policy makers with an overview of experiences and promising practices, which can serve as an inspiration in the development and implementation of administrative simplification policies in OECD member and non-member countries.

The report is based on seven case studies of administrative simplification in Australia, France, the Netherlands, Mexico, Korea, the United Kingdom, and the United States (see the Country Case Study section), and it also draws on the country studies of regulatory reform conducted as part of OECD's Programme on Regulatory Reform.

Work on this report was launched by the OECD's Working Party on Regulatory Management and Reform. It builds on previous work on regulatory burdens and administrative regulations undertaken under the auspices of the Working Party, including the 2001 report Businesses Views on Red Tape.*

The report was carried out under the auspices of the OECD's Working Party on Regulatory Management and Reform as part of the Public Governance and Territorial Development Directorate's work programme. The report was prepared by Peter Ladegaard under the supervision of Cesar Cordova-Novion and the direction of Rolf Alter. Peter Czaga, Jeffrey Lubbers and Rex Deighton-Smith contributed to the drafting of the synthesis report. It has benefited from input from many country experts, national officials and the Delegates of the Working Party. Jennifer Stein was responsible for the editing and final document preparation.

The country case studies are based on drafts prepared by the following consultants: Nick McShane and Rex Deighton-Smith (Australia), George Chatillon under the direction of the Secretary-General of the Commission for administrative simplification (COSA), (France), DoHoon Kim (Korea), Hugo Felix, Jorge Plaza and Luis Cerda (Mexico), Ignace Snellen (Netherlands), Colin Scott and Martin Lodge (United Kingdom), and Jeffrey Lubbers (United States).

The report is published under the responsibility of the Secretary-General of the OECD.

* OECD (2001a).

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ISBN 92-64-10067-9
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Executive Summary

Government formalities are important tools to support public policies in many areas such as taxation, safety and environmental protection. Administrative regulations can also create benefits for enterprises by setting level playing fields where commercial transactions can take place in a pro-competitive and low cost environment.

There is a risk, however, that administrative regulations can impede innovation or create unnecessary barriers to trade, investment and economic efficiency, and even threaten the legitimacy of regulation. As regulations have become more complex and information-dependent, regulatory burdens have increased and many regulatory costs have shifted to citizens and businesses in the form of asking for permits, filling out forms, and reporting and notifying the government. Often, practices have become irrelevant and cumbersome, generating unnecessary regulatory burdens – so-called "red tape".

This report reviews policies and tools used in OECD countries to reduce administrative burdens. It also looks at different institutional solutions used to pursue administrative simplification, and examines the interaction of administrative simplification with broader regulatory reform policies. The report provides policy makers with an overview of experiences and promising practices, which can serve as an inspiration in the development and implementation of administrative simplification policies in OECD member and non-member countries. The report shows how innovative thinking and skilful use of IT in many areas are leading to new and more effective approaches to administrative regulation. In this respect, "smart tape" may soon be a more appropriate label for many governments' approach to administrative regulations.

Towards more integrated and IT-driven administrative simplification policies

The report identifies four broad trends in governments' administrative simplification work. Among the most important is a gradual shift from an exclusively *ex post* focus on administrative burdens to an increasing recognition of the need to work in an *ex ante* sense to ensure that unnecessary or unreasonable burdens are not implemented in the first place.

A second trend is that, while simplification initiatives have generally been "bottom-up" in nature over the past years, they are being supplemented by "top-down" initiatives and increasingly integrated into broader government programmes. A prime example of this is the adoption of government Web portals and the merger of one-stop shops.

A third trend is that simplification seems to be inspired gradually more by market-based economic policies. Replacing more restrictive approaches to reform, administrative simplification policies are now influenced by policies based on the idea that economic agents should be free to conduct their business unless compelling arguments can be made for the need to protect sections of the public.

Finally, administrative simplification is increasingly driven by IT mechanisms. IT mechanisms are not only the most important "physical" enabler of burden reduction. They also provide strong dynamics and pressure to reduce burdens. The immediate Internet exposure of over-bureaucratic, unclear or duplicative forms has in many cases triggered strong direct reactions from users and media, urging the issuing authority to simplify the relevant forms and subsequently the back-office procedures. Aware of this effect, agencies pushing the administrative simplification agenda have sometimes used "shaming strategies" as a driver for further simplification among reluctant reformers. Such pressures often go beyond aspirations for further "simplification" of regulations. They also lead toward substantial changes in the applied regulatory means and measures.

High profile, but rarely evidence-based

Cutting red tape is firmly on the political agenda in most OECD Countries. Despite the high profile, however, governments seldom have a detailed understanding of the extent of the total administrative burdens imposed on businesses, citizens and government itself nor of the cost-efficiency of many of the administrative simplification tools applied.

In the absence of evidence-based appraisals, administrative simplification policies are often made in an information vacuum, and the size of the actual burdens as well as progress and setbacks in reducing them may remain unappreciated. Measuring the size of existing burdens can be an important approach to foster political support for the development of a policy on burden reduction. It can also form the basis for evaluating policy initiatives needed to improve and sustain long-lasting government efforts. The report describes how some governments have taken first steps to measure administrative burdens and to set reduction objectives over time.

One-stop shops deliver savings for users, but little is known about their overall cost-efficiency

One-stop shops deliver substantial savings in time and costs for users by providing seamless, integrated and easily accessible points of contact. In addition to simple burden reduction, they can also facilitate process re-engineering. Bringing together the full range of information requirements, licences and permits required in relation to a given business tend to highlight areas of overlap and/or duplication and point out redundancies. Notwithstanding the fast growth of Internet-based one-stop shops, physical one-stop shops remain a very important means to reduce administrative burdens for citizens and businesses. They possess qualities, such as providing opportunities for personal advice and face-to-face dialogue, which Web-based one-stop shops cannot offer.

One possible concern is that one-stop shops can, in some cases, shift burdens rather than eliminate them. For example, while governments' business licence information services have entailed reductions in information search costs for businesses, they have largely shifted administrative burdens from business to government. More broadly, the continued expansion of one-stop shop initiatives has raised a range of policy questions. Some of these are strategic, such as the range of services offered by a single one-stop shop, the number of one-stop shops needed, and how they interact and compete with each other. Others are practical questions on how to equip one-stop shops with everything required by

their customers and what approach governments should take to their funding. For example, how can the private sector be given opportunities to run one-stop shops, either by receiving funding for this activity from the government or by charging customers directly? There are also questions about how to overcome co-ordination problems between regulatory authorities. A proliferation of one-stop shops may invalidate the idea of a single query point. Furthermore, there is an increasing demand for empirical evidence to guide policy makers on the overall cost-efficiency of one-stop shops. Although most one-stop shops clearly reduce administrative burdens for the immediate target groups, little is known about the full economic impact for governments and taxpayers of establishing and maintaining them. Finally, the continued expansion of "e-tools" reaffirms the important question of how to address the digital divide between some businesses (*e.g.* SMEs) and citizens having difficulties in accessing government services provided online.

Simplification of business licences can be an important first step in a broader regulatory reform programme

Business licensing is widely believed to have the potential for causing serious economic harm. It raises real and perceived barriers to new start-ups, and thus detracts from innovation. Licensing may also support anti-competitive behaviour, since incumbent firms have strong incentives to lobby regulators to use the licensing arrangements as a means to protect them from new entrants.

The report shows that licensing strategies often vary in the way they are linked to general regulatory reform policies or to centrally defined criteria for how to use licences. They also vary in terms of their scope and focus. Some reviews focus on reducing the number of permits, others on simplifying and streamlining the application procedure. Reviews of licences may be exhaustive, *i.e.* encompass all permits and licences, or selective, *i.e.* focussing the review on specific types of permits. In the latter category, countries have focussed on reviews of, for example, the most frequently requested permits, business start-ups or permits relevant to a specific sector.

Simple numerical indicators for licence reduction initiatives such as the number or percentage of licences eliminated can easily mislead. Licence or permit reduction programmes function in many cases as "window dressing" exercises that achieve little meaningful reform, pruning only the "deadwood". Careful programme design increases the likelihood of significant results. The adoption of an explicit policy on the use of licences and permits seems to be an important driver of efforts to achieve substantial improvements. Other key elements are political oversight and accountability, benchmarking, and the adoption of open and transparent procedures that allow effective opportunities for public input and suggestions.

Business licence simplification can help mobilise constituencies for reform by promising and achieving highly visible results within short time frames. In this respect, business licence simplification can be an important first step in a broader regulatory reform programme.

Time limits for government decision-making can reduce administrative costs and improve accountability

Administrative burdens are determined only partially by business and citizens' direct costs related to collecting required information, filling out forms and dealing with administrators. Costs are also incurred by time delays and uncertainty in the provision of either information or answers to requests. Setting time limits on public servants' and regulators' case-handling time often leads to reduced administrative costs for businesses and citizens. Helpful approaches for encouraging compliance with time limits include monitoring and reporting performance, and applying sanctions for substantial under-performance. The use of the "silence is consent" or the "silence is denial" rule in many cases provides an effective assurance to applicants that they will obtain a timely resolution to their request.

However time limits also induces administrations to be more accountable and responsive. It shifts the burden of proof from applicants to regulators. These factors may have positive impacts on the administration's efficiency, internal processes for decision-making and authorisation.

Special SME assistance is a high priority for many governments, but promising practices are difficult to identify

OECD countries have generally adopted the view that small and medium-sized enterprises (SMEs) are of particular importance in the economy and that their ability to play this role is potentially undermined by regulatory compliance burdens, particularly administrative burdens. The report describes three approaches used by governments to address these issues.

- Provide special assistance and guidance to help SMEs meet their compliance requirements for administrative regulations.
- Amend the administrative requirements themselves to make them less stringent for small businesses.
- Ensure that new and amended regulatory requirements are, from the outset, sensitive to small business compliance issues. These include institutional approaches with government bodies dedicated to helping firms and representing them within government. They also include procedurally oriented approaches requiring agencies to prepare statements for regulations affecting small business.

There is often a limited factual basis for the design of special SME support programmes. In most OECD countries, relatively little research has been undertaken on the interface between small businesses and regulation. To answer some basic questions, more needs to be known about the actual burdens faced by small businesses and the effectiveness of the mechanisms in place to support them. The dilemma is to what extent high-quality design of administrative regulations should be more responsive to small business needs. Any responsiveness must be measured against what the outcome would have been in the absence of such advocacy. "Positive discrimination" of SMEs may have dynamic drawbacks by providing SMEs with incentives not to grow beyond thresholds qualifying for special support or to break up strategically as soon as the threshold is passed. However, as the report

shows, it is clear that the political will to continue and expand these programmes is strong, and experience with their implementation is beginning to accumulate.

Variations in organisational approaches

There is considerable variety in the organisational models countries use to pursue administrative simplification policies. The report classifies the various units and bodies in four categories – "Single Purpose Entities"; "Administrative Simplification Agencies"; "Regulatory Reform Agencies"; and "External Committees" – and discusses the particular advantages and possible drawbacks of each model.

Single-purpose entities are widely used, most commonly with the remit to improve administrative regulations for businesses and SMEs. Administrative Simplification Agencies (promoting administrative simplification across the board) are less widespread, and often used when administrative simplification is considered as a relatively independent and high-priority policy area, not necessarily strongly linked or subordinated to the broader regulatory reform agenda. The institutional basis of both approaches provides visibility and drive, and may help to attract resources and expertise.

Not surprisingly, the use and success of external advisory groups depend upon the degree to which the advice of the group or taskforce receives political backing and leadership within the government. "Taskforces" are often introduced in order to reduce the adversarial character that has shaped previous attempts, and to delegate key responsibility for regulatory simplification to departments.

The "attractiveness" of administrative simplification risks distorting the regulatory reform agenda

From the perspective of regulatory reform authorities, pursuing administrative simplification policies can often represent a feasible and pragmatic approach. Integrating administrative simplification into government's regulatory reform policies can bring important benefits. Administrative simplification is often seen as beneficial for all parties and suitable to foster a strong pro reform constituency of citizens and businesses, in particular SMEs. In the absence of strong opposition from vested interests, administrative simplification is therefore often used as an important lever for other regulatory reforms. Tangible results can be delivered within relatively short time lines, nicely suiting the political cycle.

However, there are risks that administrative simplification policies might divert the energies of reformers from wider and more rigorous regulatory quality programmes. The report suggests that the best basis for developing and prioritising administrative simplification may occur where these efforts are integrated into a broader regulatory quality agenda.

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Synthesis Report: Administrative Simplification in OECD Countries

Abstract. *Governments increasingly focus on efforts to make administrative regulations simpler and less burdensome for citizens and business in OECD countries. This report looks at a set of commonly used tools and practices, such as one-stop shops (physical as well as electronic), simplification of permits and licence procedures, time limits for decision-making, assistance to small and medium-sized enterprises in implementing regulation, methods to measure administrative burdens, organisational and structural approaches to administrative simplification, and, the use of IT-driven mechanisms. The use of these instruments are leading to new and more effective strategies to administrative simplification in many areas. In this respect, "smart tape" may soon be a more appropriate label for many governments' approach to administrative regulations.*

Introduction

The importance of administrative regulations

Administrative regulations are important tools to support public policies in many areas such as taxation, safety and environmental protection. They constitute one of three broad categories of regulations used by governments to promote economic and social well being of businesses and citizens, *c.f.* Box 1.1. Broadly speaking, they are information requirements enabling governments to exercise and implement regulatory objectives, including monitoring compliance with such regulations. Administrative regulations can create benefits for enterprises by setting market frameworks in which commercial transactions can take place in a pro-competitive and low cost environment. Experience from OECD countries demonstrates that reforms of administrative regulations – such as the repeal of administrative regulations following a deregulation – can be effective steps to boost sectoral efficiency and innovation, enhance economy-wide flexibility and potential growth, and increase consumer choice and welfare.

Box 1.1. **What is regulation?**

In OECD work, regulation refers to the diverse set of instruments by which governments set requirements on businesses and citizens. Regulations fall into three categories:

- Economic regulations intervene directly in market decisions such as pricing, competition, market entry, or exit.
- Social regulations protect public interests such as health, safety, the environment, and social cohesion.
- Administrative regulations are paperwork and administrative formalities through which governments collect information and intervene in individual economic decisions.

Source: OECD (1997), *OECD Report on Regulatory Reform*, Paris.

There is a risk, however, that administrative regulations can impede innovation or create unnecessary barriers to trade, investment and economic efficiency, and even threaten the legitimacy of regulation. As regulations have become more complex and information-dependent, many regulatory costs have shifted to citizens and businesses in the form of filling out forms, asking for permissions, reporting information, notifying the government, and record-keeping. In some instances, practices have grown to become irrelevant and cumbersome, generating unnecessary regulatory burdens – so-called "red tape". The cumulative effect of many administrative regulations and formalities from multiple institutions and layers of government is to slow down business responsiveness, divert resources away from productive investments, reduce transparency and accountability, hamper entry to markets, reduce innovation and job creation, and discourage entrepreneurship.

Administrative regulations impose direct as well as indirect costs. Direct administrative compliance costs include time and money spent on formalities and paperwork necessary to comply with regulations. Indirect or dynamic costs arise when (administrative) regulations reduce the productivity and innovativeness of enterprises. The number and complexity of government formalities and paperwork form one of the most common complaints from businesses and citizens in OECD countries. Ultimately, failure to address these complaints can have wider impacts on the regulatory authority of the state. If the burdens of administrative regulation come to be seen as unreasonable, compliance rates will fall and the general level of respect for the law will be undermined. Such dynamic can put at risk the effectiveness of regulation as a tool to reach policy objectives.

In recognition of these challenges, governments have over the past two decades increasingly focussed on efforts to review and simplify administrative regulations. Efforts to improve the efficiency of transactions with citizens and businesses have included removal of obsolete or contradictory provisions, improvement of guidelines for administrative regulation, and the introduction of new tools to reduce and measure the impact of administrative regulations.

This report reviews the policies, tools and practices employed by OECD countries to simplify administrative regulations imposed by government on businesses, citizens and the public sector. The purpose is to provide policy makers with an overview of experiences and promising practices that could serve as inspiration in the implementation and development of administrative simplification policies in OECD member and non-member countries. The report looks in some detail at a set of commonly used tools and practices, being:

- One-stop shops (physical as well as electronic);
- simplification of licensing procedures;
- time-limits for decision-making;
- assistance to small and medium-sized enterprises in implementing regulation;
- methods to measure administrative burdens;
- organisational and structural approaches to administrative simplification, and, more broadly;
- the use of IT-driven mechanisms, *i.e.* Web-based portals and databases.

As the report will show, innovative thinking and technology is in many areas leading to new and more effective approaches to administrative regulation.

In this report the term administrative simplification refers to government policies, tools and practices aiming at simplifying and easing the burdens of administrative regulations affecting business, citizens and the public sector. The analytical approach of the report implies looking at administrative simplification as activities aimed at improving governments' management of the information requirements they impose on business, citizens and the public sector. Improving the management of governments' information requirements can have significant economic effects in freeing time and resources of those affected by the regulation, and by enabling an improved allocation of resources. It may also have other effects, or, indeed, be driven by other objectives, such as improving the transparency and accountability of administrative regulations.

Administrative simplification in OECD countries has primarily been driven by ambitions to improve the cost-efficiency of administrative regulations. However, as the

report will show many of the tools and practices applied to improve the cost-efficiency of administrative regulations also lead to, or are supported by measures that enhance transparency and accountability.

Administrative simplification can be seen as policies and tools applied to facilitate governments' management of information requirements in three areas:

- *Information dissemination*, *i.e.* making regulatory information requirements easily and cost-efficiently available for relevant target groups.
- *Transactional aspects, i.e.* enabling and facilitating regulatory information transactions between authorities and businesses and citizens, for example when obtaining a licence to start an enterprise, filing tax returns, or renewing a driving licence.
- *Stocking information*, *i.e.* tools and strategies to store and share information required according to administrative or other regulations.

Administrative simplification and regulatory quality policies

Administrative simplification is becoming an integrated part of governments' regulatory reform policies. It is considered today by many governments as a key aspect to ensure regulatory quality.

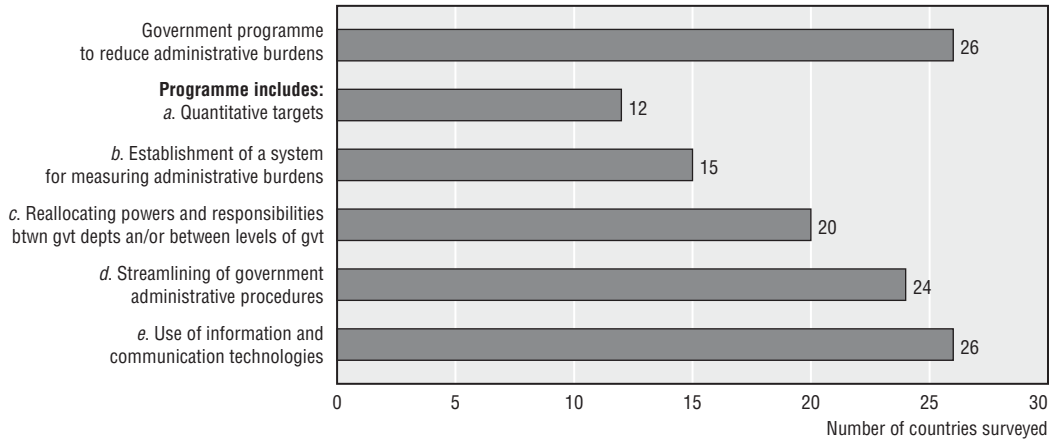
This is partly due to the greater complexity of regulations – and thereby often the costs they impose. But it is also due to the improvement and development of new tools, notably IT-based tools, which enable unprecedented possibilities for greater coherence and efficiency in the regulatory interactions between government, businesses and citizens.

The 1997 *OECD Report on Regulatory Reform* recommended that governments reduce red tape and government formalities as one element of an integrated set of nine strategies for improving regulatory quality.[1] This recommendation recognises the potential importance of new and improved tools – notably those based on information and communication technology – to make regulation less costly.

Almost all OECD countries have now initiated programmes focussed on reducing regulatory transaction costs. Those intended to simplify administrative regulations are probably the most widespread. In 2000, out of 28 surveyed OECD countries, 26 stated they had a government programme to reduce administrative burdens. Figure 1.1 lists some of the main characteristics of these programmes. Information and communication technologies are clearly the most widespread measures: every country with an administrative simplification programme is making use of such measures. In addition, the survey indicates that their administrative programmes include "streamlining of government administrative procedures", *i.e.* process re-engineering and "reallocation of power between government departments and/or levels of governments". However, measurement of existing burdens and the establishment of specific targets are less widely employed measures: in almost half of the surveyed countries, the administrative simplification programmes are implemented without a system in place that can actually measure administrative burdens. Only twelve out of twenty-eight surveyed countries set quantitative targets for their administrative burden reductions.

Numerous studies, including some conducted by the OECD, show that small businesses are disproportionately affected by red tape.[2] It is inevitable that the *proportionate* burden of red tape will be greater for SMEs since there are necessarily important fixed cost elements in these requirements. In competitive terms, smaller firms are likely to have less capacity to absorb unproductive expenditures. They have a smaller turnover to absorb

Figure 1.1. **Aspects of OECD countries' strategies to reduce administrative burdens (28 countries)**



Source: PUMA/OECD (2000/2001), *Responses to the Survey on Regulatory Capacities in OECD Countries*, Paris.

increases in fixed costs and fewer management resources to deal with red tape than large companies do. Many OECD countries have concluded that SMEs have a distinct role in economic growth, providing a large share of new jobs, making an important contribution to innovation. For this reason, SMEs have frequently formed a major focus of governments' administrative simplification activities.

Data and country studies supporting the report

This report draws on several sources. First, it is based on examples and experience reported in seven country studies – Australia, France, the Netherlands, Mexico, Korea, the United Kingdom, and the United States – conducted in 2001 and 2002. The country studies are presented in the country case section of this report.

Second, an Expert Seminar held in the OECD headquarters in Paris on October 18-19, 2001 discussed draft versions of the country studies and supplemented them with experiences from other member countries. The Seminar was attended by experts from 21 OECD countries.[3] Third, the report draws on the set of 18 country studies of regulatory reform in OECD member countries conducted to date as part of the OECD Programme on Regulatory Reform.[4]

The coverage of country practices in this report is less than complete, given the widespread use of many practices within OECD member countries. The choice of examples reflects, to a large extent, the country reporters' priorities and selection of good practices.

IT-driven mechanisms to reduce administrative burdens

Introduction

The use of innovation in information technology (IT) has been a major driving force in administrative simplification programmes in most OECD countries. The country studies confirm that the exploitation of IT in relation to transactions within and between government bodies and, between government bodies and business and citizens, is probably the most important enabler of administrative simplification. In this regard, IT is used in three basic areas:

- To facilitate the operation of complex systems within government agencies, such as those relating to welfare benefit, tax, and licensing programmes.
- To aid interconnection among government agencies.
- To improve the interface between government and the citizen or individual businesses.

Administrative simplification strategies based on IT tools are numerous. Much of the progress made via the introduction and refinement of these strategies is visible on government agency Web sites, which have shown striking developments in the past few years. Among the most important uses of IT that have been developed are electronic means of:

- Storing, compiling and providing information.
- Providing access to codified regulations.
- Communicating within and between government departments and between different jurisdictions (intranets).
- Online filing of applications, and other transactions.
- Compiling and reporting statistics.
- Assigning business identification numbers.
- Government collecting data from enterprises without active enterprise involvement.
- Streamlining government contracting.

This section discusses the major aspects of government IT programmes focussed on administrative simplification. Some of these techniques are described in further detail in other parts of this report (*e.g.*, one-stop shops, methodologies for estimating burdens, and simplification of permits and licensing).[5]

Practices and experiences

E-Government Plans. Government-wide plans to promote "e-government" have become common. E-government plans are overarching strategies for the application of key ITs throughout the government sector in a strategic and co-ordinated fashion. The key elements of these plans are typically: *a)* to enhance customer focus by facilitating access to government administrations by the public, via the Internet; *b)* to modernise the state sector's operation by using online operations to deliver efficiencies and better performance; and *c)* to increase the immediacy and the effectiveness of communication between administrations, for example through the development of a secure "Intranet".

These objectives incorporated within e-government plans are strongly aligned with, and support, administrative simplification. Indeed, much e-government activity is, in effect, pursuing an administrative simplification agenda. Increasingly, administrative simplification policies are becoming explicitly integrated and important parts of governments' e-government plans. E-government systems deliver administrative simplification primarily through improved accessibility of information and services and the creation of more integrated government services. Two examples of e-government strategies:

- **Australia's** strategic priorities for e-government include several elements closely related to administrative simplification. First, agencies must take full advantage of the opportunities the Internet provides. Second, it is a priority to facilitate enablers such as *authentication, meta-data standards, electronic publishing and record keeping guidelines, accessibility, privacy* and *security*. And third facilitation of cross-agency services.[6] The

focus is on making services more integrated and more accessible, on improving service quality by being more responsive to customer's needs, and on providing more cost effective government services.

- In **France**, the administrative simplification commission ("COSA") has since 1998 been responsible for providing assistance in the development of online public services and on the content of the services offered. A new agency for information and communication technologies ("ATICA") has been entrusted with providing technical support for the introduction of new IT applications in the administrations. Furthermore, a club for Web masters of public Web sites has been established and an external Web site has been set up to allow for the exchange of information, sharing of experience and pooling of good practices.

Centralised Government Portals. Related to the above, the establishment of centralised government information portals is a key element in many e-government plans. The portals are attempts to create an access point through which citizens or entrepreneurs can find all relevant government information and, ultimately, conduct a wide range of transactions with the government. In more sophisticated versions of these portals, regulatory transactions are simplified by innovations. For example, by the creation of forms that are filled out automatically with the information the government already has with respect to an enterprise. In addition, a central electronic access point enables entrepreneurs to be notified pro-actively about services and obligations. A further advantage of the system is that certain types of information will only have to be submitted once. Some examples:

- The **United States'** FirstGov.gov is the official US gateway to all government information. It consolidates 20 000 topical and customer focused government Web sites into one. The site helps clients find and do business with government online, by phone, by mail, or in person. On the opening page, users may choose among three major customer gateways – citizens, business and government employees.
- **Korea's** guiding map for civil applications has systematically classified over 4 000 civil applications in a government-wide portal site. According to a survey conducted by the city of Seoul covering 1 245 citizens, 84.3% replied that its online system for handling applications contributed to achieving transparency and 72.3% said that it accommodated their interests. The portal is still under expansion, and the government expects that a total WON 1.2 trillion (USD 91.7 million) of cost per year will be saved once the system is totally in place.
- In **France**, provision of online services was ensured by introducing a national gateway portal in October 2000 that allows online access to administrative forms (1 000 forms available out of 1 600). It is hoped that by 2005 most public services will be available online. In 2000, 2.5 million people were able to determine their income tax online. Five million health care files are now exchanged each week on the health and social services network, which links medical practitioners to social security agencies.

Specialised Portals. More specialised portals are also used in many countries. They differ from the general portals described above in that they aim at assisting a particular sub-set of governments' "client" groups. Such groups include small businesses generally and, in some cases, businesses operating in a particular sector or industry. These specialised portals are often closely linked to a centralised government portal, such as that described above, and frequently represent an outgrowth of those general portals. In this way, they

often constitute attempts to extend the logic of centralised portals by applying it to a range of particular groupings. Examples of such specialised portals are:

- In **Denmark** the Government portal indberetning.dk provides an overview of all reporting obligations for businesses. At the same time the portal serves as a platform for the actual reporting. The portal provides broad information management mechanisms by which businesses can identify, individualise and carry through reporting obligations. A "what if…" service based on the business' specific profile provides information about reporting requirements in case of particular changes to the business.
- Another example is the **Australian** Business Entry Point (BEP), which provides information in a linked and user-friendly format on a wide range of topics, including taxation, employment, business planning and financing, workplace relations, retirement benefits, and importing and exporting.
- While the Australian version is aimed at all business users, other versions are still more specialised in scope. An example is the **US** Food and Drug Administration's (FDA) Operational and Administrative System for Import Support (OASIS), which applies to importers of food, drugs, cosmetics and medical devices into the United States. OASIS was developed in response to problems caused by imports of perishable products, in particular because of the existing manual approvals system, which often involved approval delays of several days. Under OASIS, importers electronically submit documentation that is quickly reviewed on PCs by FDA employees. FDA returns its admissibility decisions to the importers within minutes. 85% of shipments are now handled without paper documentation. With OASIS, imports are handled consistently throughout the country. According to a study by Booz, Allen and Hamilton, the import industry will save at least USD 1.2 billion over a seven-year period thanks to OASIS.
- In **Belgium**, a "social security portal" makes available information about welfare legislation as well as applications for online registration (for beginning construction work, declaring hiring, etc.) together with calculation methods and examples of how to calculate enterprises' social security contributions. Use of electronic means to declare hiring has significantly reduced the administrative burdens of Belgian businesses.
- In the **US**, a recent report on "e-government" pointed to many other examples of the productive use of government Web sites designed for citizens. One of the examples cited was that in 2000, students filed more than two million applications for college financial aid through the US Department of Education's online service. Two recent independent studies of e-government have also described the increasing popularity of government Web sites. The studies showed (2001) that 51% of all Americans had visited a government Web site. Most of these visitors (80%) were happy with the content of these sites, and 49% responded that the Internet has improved the way they interact with the Federal Government.

Internet-based Registers of Formalities. IT has enabled governments to use the Internet as a platform for registers of formalities imposed on citizens and businesses. This tool enables users to obtain all necessary forms online. Examples are:

- **Mexico** has established a "Federal Register of Formalities and Services" on the Internet. It includes the principal procedural requirements imposed by all federal departments and agencies on private citizens and businesses. The register enables users to obtain all business forms online and to carry out electronically some regulatory transactions with the Ministry of the Economy. An advisory service is available to assist users. The system

contains over 3 400 entries, as well as links to a number of registers of state formalities and to national and international information on regulatory improvement processes.

- In **Spain**, a review of all administrative formalities was initiated in 1992 and resulted in the publication of an inventory of formalities in 1995. It was subsequently updated and made available on the Internet in 1997. The current inventory categorises the formalities, and provides information on the objectives of the formality, its legal basis, the responsible administrative unit, time limits for responses and the effect of non-responses. Future enhancements planned include better search capabilities and the publication of a user-friendly guide to finding formalities.
- In **Greece**, the ARIADNE programme was originally set up to facilitate information access for people living on islands in the Aegean Sea. Previously, obtaining and lodging government forms could take two or more days as citizens had to travel to the island where the prefecture was located. The idea was to use the Internet for access and filing of administrative forms required for the issue of every certificate or permit. The programme involved redesigning over 300 application forms and placing them on the Internet. At the end of 2000, the programme included all documents that citizens all over Greece may find necessary for government application. The programme is now operating in municipalities on the Islands in the Aegean Sea, providing access to computer terminals for all citizens who are not connected to the Internet. The obvious usefulness of this facility for the islands stirred interest in providing similar access to those living on the mainland. The programme has now been extended to other areas of Greece.

Internet-based Regulatory Transactions. In some cases, electronic registers also make it possible for users to fulfil some or all administrative formalities electronically. These initiatives are based on the idea of extending the logic of an electronic information provision into a "clearinghouse" or one-stop shop for licence issues or other administrative formalities. An advanced use of Internet-based regulatory transactions is a computer-based business approval that streamlines and provides a single contact point for all matters relating to business licence applications, approvals, and issues relating to a targeted business activity or sector.

- **Australia** is currently implementing a national legislative scheme to allow for legal recognition of regulatory transactions (licence applications, renewals, etc.) conducted via the Internet. An additional related initiative is the development of a secure electronic signature technology. Australia has already implemented two trial versions of "Business Approvals Packages"(BAP). The Web-based trial versions so far implemented have been based around a single industry sector – Aquaculture. An evaluation study made into the Tasmanian BAP in 1999, indicated that the time saving in the provision of information by agencies to applicants amounts to 1-2 hours per enquiry.
- Examples from the **United States** include two systems based on "one-stop permitting" approaches operated by the Department of Commerce. The National Marine Fisheries Service Permit Shop enables organisations to engage and transact with online customers and partners for both business-to-consumer and business-to-business applications. The Simplified Network Application Process (SNAP) is an automated system for the submission of licence applications to the Bureau of Export Administration via the Internet. It is a free service that allows exporters to submit export, re-export, high-

performance computer notices, and commodity classifications to the Bureau via the Internet in a secure environment.

- An example on the use of handling civil applications through the Internet is the system developed in the city of Seoul, **Korea**. Here applications from citizens are posted on an Internet site where applicants can obtain information on whether the application has been received properly, who is handling and reviewing the case, when the permit is expected to be granted, and, if it is refused or returned, for what reasons. The system also allows citizens to ask questions or make comments directly to the staff handling their case. One-stop shops have been set up for all civil application services provided by all Korean administrative bodies, central or regional. This concept has also been extended to create a "map" of civil applications required during one's lifetime. This "life cycle map" classifies civil applications from the applicant's perspective based on one's life cycle – birth, school enrolment, employment, military enrolment, marriage, housing, car registration, pension, and death.

Internet-based registers of laws and regulations: A closely related initiative to the online registers of formalities is the provision of online databases of laws and regulations. This move is being progressively embraced across the OECD area and has reached a high state of development in many countries.

- For example, in **Norway** and **Denmark**, the full text of all primary and secondary legislation is available on free and easy searchable Web sites. These databases generally also include a range of related material, such as bills currently being debated in the parliament and many of the decisions of the superior courts.
- In **Belgium,** the *Moniteur belge* (official gazette) has been posted on the Internet for some ten years. All legislation is accessible online free of charge with an archiving system going back to 1945.
- These initiatives have substantially enhanced the transparency of the law, and therefore of government. More specifically, they have placed businesses in a much better position to acquire information on their obligations under the law and, in particular, to ensure that their knowledge of these obligations is kept up to date. At the same time, the inclusion of bills and other materials on draft laws also provides for improved consultation opportunities. All of these efforts have potential impacts in terms of burden reduction, while also serving a number of other, important governance values, such as transparency and accountability.

Automatic Transfers of Standardised Information from Enterprises to the Government. Equally central to IT's contributions to burden reduction are the projects relating to the standardisation of data submitted to the government and to the interchange of data between enterprises and administrations. These "electronic data interchange" (EDI) projects are directed at facilitating the direct electronic transfer of enterprise data to governmental authorities. Another aim is to reduce enterprise data to its basic elements, so that every governmental authority can assemble the data it needs without duplicative requests.

- For example, in the **Netherlands**, the Tax Administration, the Social Security Office, and the National Statistical Office have developed common standards for the collection of data from businesses. In co-operation with participating small and medium-sized enterprises, common standards are built into the businesses' accounting systems, whereby the data required by the three agencies can be derived directly from the

administrations of the enterprises by "pushing a button". The authorities collect the data with the participation of the enterprises – government authorities are allowed to penetrate into the accounting systems of the enterprises to collect the data they need. In 1999, the Dutch Government launched a programme aimed at implementing an improved system of the Interchange of Data between Enterprises and Administrations (IDEA). Once fully in place, the cost savings of IDEA for the retail sector is estimated at EUR 90 million, about 50% of the current total administrative burden in the areas of wage tax, employees' social insurance, and wage and labour market statistics.

- **Denmark** also has developed "electronic data interchange" (EDI) schemes that automatically transfer information between enterprises and the government. The first stage of the programme allowed accounting information, including tax returns, annual accounts and some statistical reports to be processed via EDI. The second stage of the programme focused on employee information, including taxes, wages and pension entitlements.[7]

Unique Business Identification Numbers. The development of a unique business identification number allows for the creation of a business registration system, so that businesses only need to have a single identifier for all dealings with government. Putting such a system online makes electronic registration and searching for business ID numbers possible. This may be known as a "single enterprise register".

- For example, **Australia** has developed the Australian Business Register (ABR), which is based on the use of a unique business identification number, the Australian Business Number (ABN). The ABN is designed to provide a business registration system, so that businesses only need to have a single identifier for all dealings with government. Businesses use their ABN to undertake a range of taxation-related transactions with the Australian Tax Office (ATO) and other businesses. Now that the ABR is online, electronic registration and searching of ABNs is available. In addition, the Commonwealth has developed the Australian Business Number-Digital Signature Certificate. ABR Online appears to have gained widespread acceptance by business, recording over half a million requests each month. The benefits delivered by the system are threefold. First, the ABR has reduced the time and costs businesses spend fulfilling tax registration obligations and other dealings with government agencies. Second, built-in edit checks within the application process combined with electronic registrations resulted in much lower error rates. Third, the high level of online registration (60% of total ABN registrations) significantly reduced ATO resource requirements.
- The **Dutch** version of this technique is called the "Single Enterprise Register". It was developed by the four main business registrars in the Netherlands – the Ministry of Finance, the Chamber of Commerce, the National Institute for Social Security, and Statistics Netherlands. It functions as a unique source of the basic data related to enterprises, self-employed professionals and other organisations. Its operating principle is that data have to be delivered only once to the government, and will be used for a wide range of different functions.
- In **Belgium**, registers listing companies (VAT, business register, social security, etc.) have been merged into one central register. The register is intended so serve as a "crossroads" of all information requests to and about enterprises.
- As a corollary to single enterprise registers, digital signature certificates have been introduced to simplify and reduce the identity requirements for businesses when

dealing online. For example, in 2000 and 2001, Denmark, France, and the United States enacted systems for the legal recognition of electronic signatures and to secure transmission of information.

Electronic Government Procurement. Government procurement systems have benefited greatly from the advent of the Internet. Such systems allow government purchasing units to list their goods, services, leasing and public work requirements on the Internet. These listings enable suppliers and contractors to identify opportunities, to submit bids by the same means and subsequently to follow the entire process to its completion. Some examples are:

- **Mexico** created the Electronic System of Government Procurement (Compranet) in 1996. Compranet produces greater transparency in government acquisition of goods, services, leases, and public works. This is believed to be particularly valuable in increasing the opportunity for small and medium enterprises to bid for government procurement work.
- **Italy** has developed a new centralised purchasing service for goods and services purchased by state administrations. The Ministry of the Economy and Finance performs this duty through a government corporation (Consip S.p.A.) which stipulates the covenants that suppliers must follow. Suppliers agree to accept supply orders from a single administrative structure through an online system (*www.acquisti.tesoro.it*) which now averages 90 000 connections monthly.
- In **Belgium**, a fully computerised management system for government procurement contracts is available to all potential bidders (joint e-public procurement). This system was at the origin of the Belgian government's computerisation of administrative files in which the data required could be accessed by means of a Universal Messaging Engine between administrations. This system has significantly reduced the administrative burdens in Belgium in relation to procurement procedure.
- **Canada** began using an electronic tendering service in 1992/93. Its current Government Electronic Tendering Service (GETS) has been in place since 1997. The number of participating agencies has increased due to the inclusion of the MASH Sector (Municipalities, Academic Institutions, Social Services and Hospitals) under Canada's Agreement on Internal Trade. In 2001, participating agencies advertised over 40 000 opportunities on GETS. The government has realised extensive operational savings through the outsourcing of the advertising and distribution functions. For Public Works and Government Services Canada (PWGSC), the central purchasing agency for the federal government, these savings amounted to about CAD1.5 million (more than USD 960 000) a year in photocopying and courier charges, CAD 2 million a year in newspaper advertising and CAD 1 million in the service start-up costs. The cost of the initial development and ongoing operation of GETS has been minimal because the Government of Canada has contracted out the service. The operator of GETS recovers its costs by charging user-fees.[8]

Conclusion and challenges

It is increasingly apparent that IT mechanisms are essential tools in most burden reduction and administrative simplification reforms in the countries studied. IT advances are allowing for a more-and-more sophisticated electronic transfer of an expanding range of information between government entities, levels of government, government and citizens, and government and business. The programmes reviewed above involve a mix of information dissemination and transactional aspects. Online reporting and editing of core

business information has been successful in reducing business and government costs. In short, IT offers governments a way to reduce administrative burdens by facilitating the availability of relevant information to businesses and citizens and thereby improving the efficiency and effectiveness of the administrative process.

The use of IT made a relevant contribution to the advancement of the one-stop shop concept. The underlying rationale for the increasing availability of various services online through generalised or specialised portals is rooted in administrative simplification but also in concepts of transparency and accountability as fundamental principles of good governance. These portals can provide substantial savings in information search costs for both citizens and businesses in relation to a wide range of interactions with government. Similarly, the processing of electronic transactions – for example vehicle registration renewals, business licence renewals, etc. – can also reduce regulatory related transaction costs for all parties involved. To a substantial extent, these portals can be regarded as burden reduction initiatives, based around the presentation of existing information and requirements in a more cost-effective manner through the application of technology. At the same time the development of systems to allow online transactions can often be a means by which the underlying processes themselves are reviewed and simplified.

There is a range of issues that has to be considered with regard to the use of IT as an administrative simplification tool. One fundamental point is the need to retain a benefit-cost perspective. This would mean that identified gains, including gains made by users of services, are weighed against the costs of developing and, more importantly, maintaining the mechanisms used to implement IT-based initiatives. In this regard the need for continuous assessment and updating of both the technical capabilities employed and the substantive content conveyed is too often overlooked. Related to this, the programmes must be client focused. This could mean an incorporation of "feedback loops", in order to ensure that the IT programme is assessed and modified as needed to best meet the needs of the customers. There is a strong need for executive leadership, to secure a strategic focus and promote the adoption of consistent policy approaches across government, thus assuring the maximum inter-operability of the systems and facilities created. A highly contentious issue is that of determining the best way to promote this leadership. Finally, another important set of rapidly evolving issues revolves around questions of privacy, security, and archival concerns.

In addition to all this, the increasing use and importance of IT in government-business and government-citizen relations might create problems regarding the digital divide. Some businesses (*e.g.* SMEs) or groups of citizens might find it more difficult or impossible to get access to government services provided electronically. In this way, IT-based administration might increase already existing economic and social differences among businesses and citizens.

Furthermore, it is increasingly recognised that the use of IT often requires or promotes important changes in the administrative organisation and the nature of the workplace. Integrated online services, for example, will require a reassessment of processes and administrative arrangements within all agencies involved. This means, on the one hand, that embarking on IT-based initiatives is likely to have broader ramifications for the administration of government business. Such programmes often generate further reaching and more ambitious tasks than the initial statement of objectives may suggest. Secondly, the implementation of IT initiatives necessarily involves close scrutiny of existing

processes and procedures. The mapping of administrative requirements is obviously a fundamental pre-requisite to making them available via new channels. As part of this process, redundancies and overlaps will probably be identified and better policy options for achieving given objectives are likely to become apparent. This, in turn, may force administrative re-engineering to better meet citizens' and businesses' needs. IT practices to reduce administrative burdens can thus be considered not only as tools for achieving burden reduction within existing policy frameworks and administrative arrangements, but also as drivers of the simplification of the administrative regulations themselves.

Finally, making existing forms and procedures available on the Internet has in many countries created an interesting and often unanticipated side-effect. The immediate Internet access to and exposure of over-bureaucratic forms requesting information in an unclear or duplicative manner, has in many cases triggered strong direct reactions from users and media, urging the issuing authority to simplify the relevant forms. Aware of this effect, agencies pushing the administrative simplification agenda have sometimes used such "shaming" strategies *i.e.* exposing bad forms and procedures on the Internet, as a driver for further simplification among reluctant reformers.

Needless to say, increased use of IT does not guarantee in itself that the positive changes in administrative organisation and regulations mentioned above will appear. The effects will also depend on the strength of government's e-government policies. There is still need for evidence to substantiate how IT and e-government programmes can lead to legal and regulatory reform, and to demonstrate that e-driven reforms will not be confined to and constrained by the existing legal environment.

Physical one-stop shops for citizens and businesses

Introduction

One-stop shops can in general terms be defined as offices where applicants and others interested in government services can obtain all the information necessary to their query in one location. They are often referred to as a "service counter", "single window" or "information kiosk".

One-stop shops are primary designed to provide integrated and seamless services with as few and as easily accessible points of contacts with the clients as possible. The purpose of one-stop shops is to provide substantial savings in information search and transaction costs for users in relation to a wide range of interactions with government. In addition to the direct savings in cost and time for applicants, the gains spread to government and the government staff. Additional benefits can also be recognised by increasing accountability, objectivity, and placing decision making as close to the citizens and enterprises as possible. The one-stop shop concept also offers remedies to "monopolies-of-information situations" where governmental agencies can withhold information from citizens and businesses, or deprive equal access to it.

As experience with one-stop shops has grown, and technology has improved, the services provided have expanded. Users of one-stop shops can acquire lists of applicable laws and regulations, information on codes of practice and other guidance material, and information on licences and permits required by various levels of government. Delivery mechanisms have expanded from traditional methods, such as face-to-face interviews, telephone and mail, to the use of IT-based tools, including, most importantly, Web portals, but also CD-ROM systems, information kiosks or automated teller machines. Increasingly,

different mechanisms are being seen as elements of an overall service channel strategy, with all elements gaining from recent advances in IT use. This section of the report deals specifically with "physical" one-stop shops. Electronic one-stop shops, *e.g.* in the form of government-wide information search portals, were dealt with in the previous section of this report.

Practices and experiences

One-stop shops are aimed at assisting citizens and businesses. Services provided to citizens and businesses can appear in a segregated format, but, in many cases, a particular one-stop shop, like offices for wage and tax reporting, can serve both types of clients at the same time. According to the scope of the services offered, one-stop shops are either specialised or general. More specialised one-stop shops differ from the general ones by serving a particular sub-set of governments' "client" group. At the same time, specialised one-stop shops are often closely linked, and may be the outgrowth of general ones. Finally, one-stop shops can be operated by the national, regional or local authorities on one hand, and, on the other, by some form of co-operation between public bodies and private entities, such as business or civil society associations.

One-stop shops for citizens

One-stop shops for citizens date back to the early 1990s. In many countries local municipalities were the first providers of such services, and regional and central governments followed steps in implementing one-stop shops projects. One-stop shops available to citizens most commonly are dealing with registration and licences, such as birth or marriage certificates or car registrations. Tax and wage reporting, general social security, welfare and health services are often delivered through such institutions. One of the keys to organising one-stop shops is to focus on the demand side, on what citizens actually want from the government. The creation of services organised around so called "life cycle episodes" as opposed to organised around government departments are proliferating.

- In Finland and the Netherlands there has been an explicit government policy to encourage the establishment and development of one-stop shops. In the **Netherlands**, the federal government has been actively supporting integrated service counters since 1992, when it started to fund four pilot government service centres. In 1996, the "Overheidsloket 2000" (Public Counter 2000) programme was launched. This initiative's goal was to structure the delivery of public services according to demand patterns, and has funded projects in the areas of citizen registration, welfare, and construction. In **Finland**, local government service bureaux have been an integral part of public administration reform since 1993. These service bureaux are ultimately destined to become fully integrated points of service delivery for most public services in the country.
- One-stop shops serving a more specific group of citizens, namely foreigners staying in the country, started operation in **Hungary** in January 2002. These offices provide information on and handle the applications related to all types of documents that might be required from foreigners. These include short and long-term residence permits, work permits, and citizenship, or simply the compulsory registration of addresses. Most of these functions were transferred from local authorities and the police. The objective of the new institutional arrangement is to simplify the procedures and shorten the time necessary for issuing permits.

- In the **United Kingdom,** examples of "life episode services" available in citizen service bureaux are: "having a baby" "moving houses", "death and bereavement", "starting or changing jobs", etc. Similarly, a policy is established in **Korea** where civil applications are classified from the requesters' perspective based on one's life cycle.

One-stop shops for enterprises

One-stop shops are widely used to simplify the governments' interaction with enterprises. Some of these institutions deal with all kinds of businesses, others concentrate on companies of a certain size, like SMEs, or those operating in specific sectors and industries. Further specialisation includes two categories of one-stop shops: business licensing services and enterprise service counters. Business licensing services focus their activities on the provision of information and opportunities for transactions related to the acquisition of permits necessary for engaging in a specific business activity. Enterprise service counters usually offer a broader type of services to enterprises. They are offices where entrepreneurs can obtain a broad range of services from different public authorities. Their major advantage is that they provide integrated services. In an ideal situation, enterprises would only have one place to contact in order to access all services they might require.

- For example, Enterprise Ireland, set up in 1998 in **Ireland,** is a development agency that services specifically to indigenous industries. Assuming the resources of three previously separate entities (Forbairt, the Irish Trade Board and the in-company training division of FÁS), Enterprise Ireland represents a more tailored approach to assisting small businesses in manufacturing and internationally traded services. The organisation acts as a one-stop shop, providing information and advice on all aspects of business activities and organisation.
- Sviluppo Italia, set up in 1999, is an agency for regional and entrepreneurial development operating in **Italy**. It encompasses all previous entities set up to support existing or fledgling enterprises. Its areas of activity are to promote production, employment, new entrepreneurs, investments, innovation and local development.
- Generally SMEs are the main targets of enterprise service counters, but in some cases, the services are oriented towards a specific group of entrepreneurs. For example, **Greece** has a specialised type of one-stop shop targeting foreign investors. The Hellenic Center for investment, or ELKE, was established in 1997 to assist foreign investors with requirements for starting new investments in Greece, and to support those that plan to apply for subsidies for new investments. The consulting and support services of ELKE are accessible only to larger investors, but information services are available to all.

In many cases, enterprise counters are operated in close co-operation or jointly by government units, municipalities and organisations representing businesses, such as chambers of commerce and industry, employers', professional and sectoral associations.

- For example, the **Dutch** "Enterprise Service Counter" has created a common service counter merging the services of municipalities, Chambers of Commerce, tax administrations, and the Ministry of Economic Affairs. At the local or regional level, provinces and local partners may also be involved.
- An interesting initiative in **Mexico** has been the development of private-sector-run one-stop shops, typically established by business and industrial associations such as those organised by the Mexico City Chamber of Commerce. Most business chambers have their

own tailor-made one-stop shops providing services, and supporting the applications and other requirements most commonly encountered by their members. The formalities for which the greatest amount of information is available are those for setting up business, exporting and importing goods, and registering trademarks. As the mandatory requirement to belong to a chamber is phased out, the government has pushed the chamber to compete on services provided to business and thus in managing efficient one-stop shops.

One of the most common types of specialised one-stop shops for businesses – and especially small businesses – is the business licensing service. These services are among the earliest burden reduction initiatives implemented by governments, having been used in some cases since the mid-1980s. Business licencing services act as one-stop regulatory information shops, identifying relevant licences and providing application forms, information and contact details. Generally each service provides clients with tailored business licensing information packages that contain most or all of the following:

- A summary of the national and local government licences required for the particular business;
- The contact details of the agency which administers each licence (if not handled by the one-stop shop itself);
- Licence application forms, combined where possible; and
- Details of licence fees, periods of coverage and renewals.

Business licencing information services reduce administrative burdens for businesses by reducing the information search costs incurred while trying to establish their regulatory compliance obligations. Because they act as one-stop regulatory information shops, this removes the need for businesses to have an understanding of the fabric of government in order to determine their compliance obligations.

As noted above, some jurisdictions have extensive experience with business licence services. In these cases, the services offered have usually been progressively expanded over time, as expertise in system design and service delivery accumulates and technological advances increase the range of possibilities. Examples of expanded services include provision of information on the licensing requirements of sub-national (*i.e.* state and/or regional) levels of government and listing of government support programmes available to inquiring businesses. Another direction of development is giving business license services the ability to approve requests for licences, to authorise requests, and to register the business entity.

- For example, **France** has a network of Business Formalities Centres, which operate as "front offices" for the provision of government information and transactions in relation to formalities in such places as chambers of commerce and industry for businesses in the industrial and commercial sector, chambers of trade for tradesmen and, more recently, chambers of agriculture. They provide new businesses with a single access point where all information about statutory start-up formalities are available. The Business Formalities Centres are authorised to consolidate all relevant documentary requirements from other ministries and social services. The Business Formalities Centres also process any changes in the course of businesses' operating lives. "Virtual" versions of the Business Formalities Centres have also been set up on the Internet.

- The concept of the Business Licence Information Service (BLIS) arose in **Australia** in the late 1980s. Pioneered by the state of Victoria, every State and Territory in Australia by now has implemented such services. BLIS units provide a single point of access for State, Commonwealth and local government licences, including application forms. While the service is primarily aimed at providing information for prospective new businesses, it also provides information on licence renewals, transfers and general regulatory issues concerning business expansion. According to the findings of a study, which assessed the effectiveness and efficiency of the Victorian BLIS in 1994, the benefit to clients of the service was estimated at AUD 21 million (USD 10.4 million), with a client benefit-cost ratio of 15:1.

Information and advice services provided by such one-stop shops are especially valuable for business start-ups. One-stop permitting approaches, meaning the establishment of single access points for the registration of new businesses, can reduce the costs and the time involved. This can encourage entrepreneurial activities and facilitate the dynamic and the growth of local and national economies. There are an increasing number of countries following such practices.[9]

- In 1999, a network of Single Access Points was set up in **Spain** to handle the administration of business start-ups. They provide advice to prospective entrepreneurs, act as a single point of contact for submission of all documents needed to set up a new enterprise and transmit documents to all government bodies involved in business registration. New IT tools are used to facilitate the process of transmitting information between government bodies. The network has contributed to a major reduction in the typical time needed to comply with the mandatory requirements to set up a new business.
- Since 1999, registration of a new enterprise in **Luxembourg** has taken place through a single access point operated jointly by the Chamber of Commerce and the Chamber of Professions. This administrative and institutional reform allows prospective entrepreneurs to have a single contact point for all registration formalities. The new single access point is responsible for ensuring that registration is submitted to the relevant court for approval and that all relevant public and private bodies are informed of the existence of a new enterprise.

Conclusion and challenges

The one-stop shop concept has been implemented in a vast number of permutations and combinations. There is evidence that many of the variations of this basic idea have been successful in reducing administrative burdens on businesses and the general public. These gains have been experienced as reductions in the time and cost invested in seeking information, especially on licence and permit requirements.

The one-stop shop concept has been enhanced and driven by technological change. The first adoption of licence information systems followed quickly from the widespread adoption of faxes, personal computers and associated software that enabled the compilation of searchable databases. The availability of these services was expanded by new delivery mechanisms – such as sales of the entire database and software in CD form to business advisers, and subsequently, delivery via the Internet. Increasingly, however, these services have become specific modules, or applications, within the larger government information portals that are either in use or under development in most OECD countries. Notwithstanding the fast growth of Internet-based one-stop shops, physical

one-stop shops remain a very important means to reduce administrative burdens for citizens and businesses. This is because physical one-stop shops possess qualities, such as providing opportunities for personal advice and guidance, or a high level of accountability through the personal involvement of civil servants, that Web-based one-stop shops cannot offer.

There is arguably a combination of "top-down" and "bottom-up" dynamics in operation related to the development of one-stop shops. That is, generalised government one-stop shops can be considered "top-down" in approach, being designed with the objective of providing a broad range of government information to all potential clients. The business licence services, on the other hand, have begun life as "bottom-up" in their approach, identifying a specific need and a particular constituency. For them, the direction of development over time has been to move "upward", identifying additional information of value to the same constituency and seeking to include it in the basic database to add value to the service.

The combination of the "top-down" and "bottom-up" dynamics may be the best means of ensuring that the one-stop shop concept is developed to its full potential. The bottom-up approach ensures a focus on the needs of particular client groups, while the "top-down" approach allows a broad view of the communication issue to be grasped.

The evolution of one-stop shops according to the "top-down" and "bottom-up" approaches indicates that there is room for a range of different variations on the one-stop shop concept. A central issue in the further development of these tools will be to take a strategic approach focused on integrating the different tools into a coherent whole.

From the applicants' viewpoint, the major advantage of these services is that they organise government information on the basis of applicants' needs, without needing a global understanding of the government structure that lies behind the information, licence, permit or approval required. This allows clients to deal with government on an "enterprise" basis, rather than as a collection of individual agencies. Further utilisation of this characteristic is likely to occur in the future as additional content is identified for delivery through these services. This can include an increasing array of information that enables businesses to readily assess their overall regulatory compliance obligations. As many of these services now constitute well-recognised distribution channels, they are strategically well placed to engage in regulatory transactions (information, licences, permits, approvals, fee-paying, etc.) with businesses.

In addition, the one-stop shop approach arguably has benefits in relation to the simplification of permits, licences, and other authorisations that go beyond the savings in search costs that they appear to be generating. A key benefit for policy makers and others interested in reform is that, by bringing together the full range of licences and permits required in relation to a given business, they tend to highlight areas of overlap and/or duplication and point out redundancies. Thus, they provide a potential resource in terms of programmes to simplify and rationalise licence and permit arrangements. At the most basic level, one-stop shops may be the only readily available means of obtaining a full inventory of all licences and permits currently in existence, an indispensable starting point for any licence reduction programme.

However, the implementation of one-stop shops still entails substantial practical difficulties; the most significant difficulty arises from machinery-of-government issues, rather than technological ones. One possible concern is that one-stop shops can, in some

cases, shift burdens rather than eliminate them. An example of this issue is that of business licence information service systems. While these systems have been found to entail real reductions in information search costs for businesses, they have largely shifted administrative burdens from business to government.

More broadly, the continued expansion of one-stop shop type initiatives has raised a range of policy questions that remain to be addressed. Some of these are strategic, like the question of the scope of services offered by one single one-stop shop, the number of one-stop shops needed, how they interact and compete with each other or how the one-stop shop differs from the "service counter" idea. Others still are practical questions of how these one-stops can be equipped to respond to the customers' needs and what approach governments should take to their funding. Some argue that the private sector should be given opportunities to run one-stop shops as "regulated information brokers" and either receive funding for this activity from the government or charge customers directly. For some countries, corruption effects can also be involved as licensing implies a degree of discretionary powers which may be exploited for personal gain.

Furthermore, there are questions about how to overcome problems relating to co-ordination between one-stop shops and the back offices of the regulatory authorities. If one-stop shops are to make the leap from information provision centres to transactional agencies (or portals), this co-ordination will have to be close, reliable and streamlined. Further problems that can appear relate to the question where liability and legal responsibility lie in the new reformed structures. Finally, in certain cases ministries might be reluctant to hand over competence and activities as this can bring a potential loss of power over human, legal and financial resources.

Finally, and perhaps most fundamentally, there is an increasing demand for empirical evidence to guide policy makers on the overall cost-efficiency of one-stop shops. Although most one-stop shops by definition reduce administrative burdens for the immediate target groups, little is known about the full economic impact on businesses, governments, taxpayers, of establishing and maintaining one-stop shops. Taking into account long-term operational costs may change the priorities for how, where and when to introduce one-stop shops.

Simplification of licensing procedures

Introduction

Licensing is the practice of requiring prior approval by a government authority for the establishment and conduct of a business or other activities. Approval is based on the provision of specific validated or certified information (usually in written form).

All governments use licences – though in varying degrees and with different objectives – to protect the environment, to assure certain market allocations or to protect consumers. It is a widespread form of government intervention in business activities, although OECD data suggest that different countries use it to differing degrees: some have reported that they administer a few hundred licences, while others, several thousand.[10]

Business licensing is widely believed to have the potential for serious economic harm, both because it raises real and perceived barriers to new start-ups, and thus detracts from innovation and, in particular, because of its anti-competitive possibilities which arise because incumbent firms have strong incentives to lobby regulators to use the licensing arrangements as a means to protect themselves from new entrants.

The issue of access to licensing requirements has become prominent because licensing happens before engaging in a business or economic activity and because of the proliferation, duplication and contradiction of many business licences. The search costs to businesses of identifying the range of licences they are required to obtain in order to conduct their intended business, as well as the regulatory authorities responsible for administering those licences can be considerable. The problem of ensuring compliance with all relevant licensing requirements is clearly of concern to both business and government. For some countries corruption effects can also be involved, as licensing implies a degree of discretionary power from the side of the administrators and a situation that involves direct contact between low level civil servants and businesses eager to launch their activities.

Programmes to simplify permits and licences have several outcomes. In some cases, licences are abolished altogether, simplified or amalgamated with similar licences. In other cases, the focus is on process re-engineering, with the result being a simplification or streamlining of internal procedures to obtain the authorisation, leading to a shortening of the time requirement for permit handling.

Deregulation and debureaucratisation campaigns have traditionally been the driver behind many licence simplification initiatives. Over recent years, however, the application of IT to *existing* licence and permit requirements has also facilitated burden reductions and regulatory simplification of licensing procedures. Putting existing licences on the Internet reduces administrative burdens by facilitating access and information. Making regulatory requirements easily accessible on the Internet also exposes overly numerous, time consuming and burdensome regulatory requirements, thereby often leading to pressure to simplify the regulatory requirements themselves.

Figure 1.2 shows the use among 28 surveyed OECD countries of various strategies to simplify licences and permits procedures.

Practices and experiences

Strategies to scrutinise existing permits and licenses

Four important distinctions can be made between the strategies used by OECD countries to review existing licences. First, strategies vary in terms of their linkage to general regulatory reform policies or to centrally defined criteria for when and how to use licences. The adoption of an explicit policy on the use of licences and permits seems to be an important driver of efforts to achieve substantial improvements. Such policies can include setting general criteria as to when the use of licences is appropriate, guidance on establishing administrative requirements, licence renewals and/or the setting of appropriate fees and charges. Clear policy criteria for the use of licensing and permits can form the basis of self-assessment by regulatory agencies and help ensure that a consistent approach is taken. Explicit policies can provide a clear discipline on regulators, as well as a means of challenging licensing regimes that do not comply and are thus likely to be of low quality. Policy criteria established for licensing used in various OECD countries include, among others:

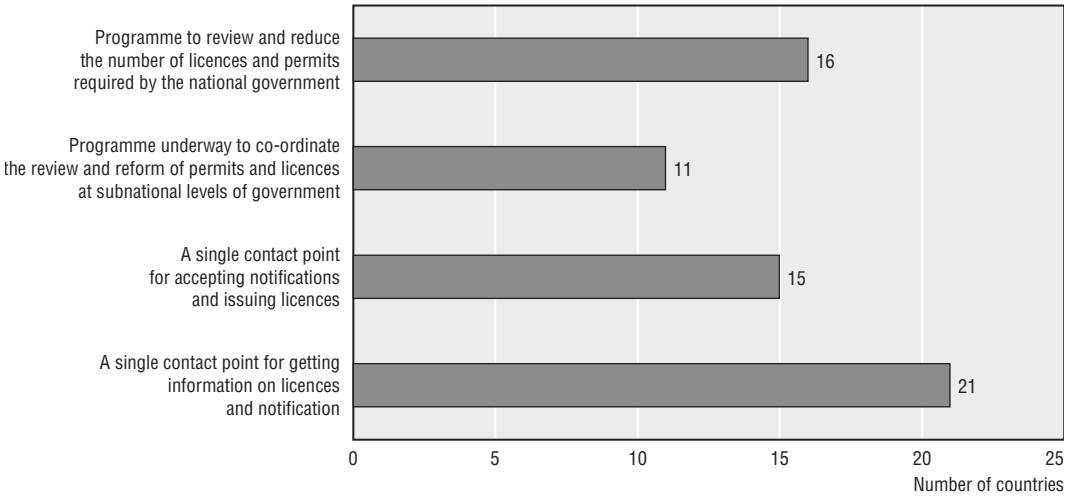
- The use of licences only where there are clear risks to the public associated with the conduct of the business and apparent information problems for consumers.
- Renewal requirements being adopted only where there is a substantial need to verify continued competence and suitability to undertake the business.

- Qualification requirements being directly and substantively related to the ability to carry out the business without risks to the public.
- Informational and procedural requirements being restricted to the minimum necessary to verify the above.

The policy and practices of the United States and the Netherlands provide an example on the design and application of a general policy for permits and licensing.

- The general policy of the **Dutch** government for the use of permits is that oversight based on general rules should be preferred over preventive restrictions, and that reporting on activities should be preferred over an obligation to ask for permission. A permit is considered to be an adequate policy instrument if: 1) it is necessary to regulate individual actions or acts by case-oriented rules and to monitor such actions; or 2), the interest, that has to be protected, is so important, that an exemption from an explicit

Figure 1.2. **Strategies to simplify licensing procedures (28 surveyed countries)**



Source: PUMA/OECD (2000/2001), *Responses to the Survey on Regulatory Capacities in OECD Countries*, Paris.

ban can only be permitted on a case-by-case basis. Guidelines prepared by the Dutch Ministry of Justice have been the basis of a general review of 555 permits carried out by the General Audit Office in 1998.

Second, strategies vary in terms of scope. Reviews of licences may be general or exhaustive, *i.e.* encompassing all permits and licences, or selective, *i.e.* concentrating the review on specific types of permits. In the latter category countries have focussed on reviews of, for example, the most frequently requested permits, business start-ups or permits relevant to a specific sector.

- In **Korea**, for example, a review programme initiated in 2000 covers the most frequently requested documents such as business registrations, resident registrations, real estate titles, car registrations, and tax payment certificates. In addition to frequently requested permits and licences, the programme also covers documents which are often required to be submitted even for cases where a simple check of identity cards or crosscheck between administrative bodies would be sufficient. Under the programme, ministries and agencies were asked to closely look at their civil applications to check whether

Box 1.2. **A permanent review: The US Paperwork Reduction Act**

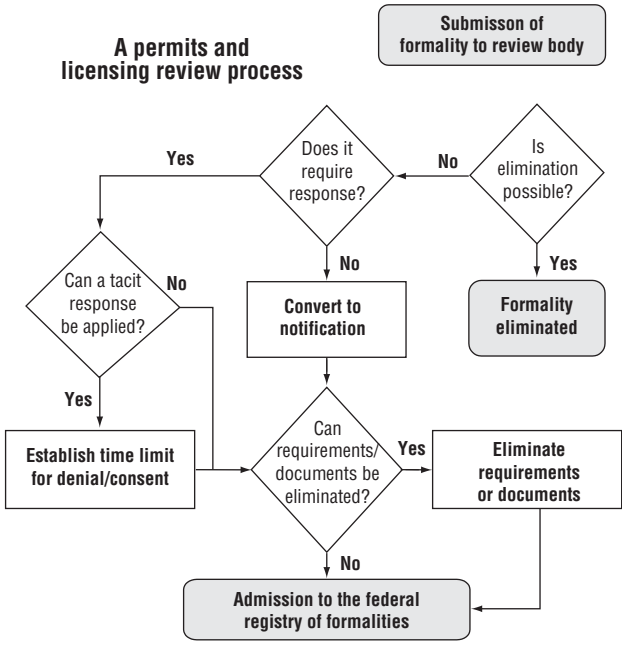
The general logic of the licence and permit simplification schemes conducted has also been applied more generally in at least one country – the United States. The US Paperwork Reduction Act provides a comprehensive, centrally enforced programme for analysing and clearing individual government information collection requirements and also for deriving a national paperwork budget. Importantly, it is also a permanent programme, which has been embedded in the legislation-making process since the passage of the Act in 1980. This distinguishes it in an important respect from the licence simplification programmes that have often been "one off" or "episodic" in nature.

The PRA requires federal agencies to request approval from the Office of Management and Budget (OMB) before collecting information from the public. The PRA was intended to minimise the amount of paperwork the public is required to complete for federal agencies. To that end, the PRA gives OMB the responsibility to evaluate the agency's information collection request by weighing the practical utility of the information to the agency against the burden it imposes on the public. Agencies must publish their proposed information collection request in the Federal Register for a 60-day public comment period, and then submit the request to OMB for review. In seeking OMB's approval, the agency needs to demonstrate that the collection of information is the most efficient way of obtaining information necessary for the proper performance of the agency's functions, that the collection is not duplicative of others that the agency already maintains, and that the agency will make practical use of the information collected. The agency also must certify that the proposed information collection "reduces to the extent practicable and appropriate the burden" on respondents, including, for example, small business, local government, and other small entities.

document requirements could be eliminated, and if not, why. As a second step, Korea's Regulatory Reform Committee (RRC) re-examined the reasons reported by ministries and agencies to finally determine whether the requirements were necessary. As a final step, a government-wide system is to be established to let all the administrative bodies share information on civil applications with each other.

- In January 2002, **Mexico** launched a Rapid Business Opening System (*Sistema de Apertura Rápida de Empresas*, or SARE). The SARE reduces the number of federal formalities to open a low-risk business to one for individuals (tax registration) and two for businesses (tax registration and enterprise registration). The total time it takes to comply with federal start-up formalities is now one business day for low-risk activities. The remaining formalities, which are all required by law, were simplified by allowing businesses to comply with them up to three months after beginning operations. A catalogue of low risk activities was published as an annex to the decree, in order to give entrepreneurs the certainty of whether they qualify for the SARE or not. As of November 2002, over 226 000 individuals and 1 400 legal entities have received their tax and enterprise registrations under this scheme. The programme also includes a co-operation initiative to help local authorities to implement SARE. Mexico's explicit government policy to co-ordinate programmes for the removal and/or simplification of federal formalities is illustrated below (see Figure 1.3). As can be seen from the illustration, the Mexican review includes, among others, considerations on reducing administrative burdens by transforming *ex ante* authorisations into notifications to be inspected *ex post*.

Figure 1.3. **A permits and licensing review**



Source: www.COFEMER.gob.mex

- Based on a comprehensive collection in 2000 of all the procedures with which start-up enterprises have to comply, the **Belgian** *Agence pour la Simplification Administrative* (ASA) has initiated a project aiming at integrating in one single procedure all formalities, broken down by professions, necessary to commence a business activity. Such consolidation of procedures into one procedure requires seamless co-ordination between the public services involved, an effective electronic medium, and usually a complete overhaul of the regulations and sometimes the services themselves. Currently the single procedure process (DEUS – *déclaration électronique unique des starters*) applies only to a few sectors.
- Based on the Business Activity Law **Poland** in 1999 launched a review of its business licensing and permit system. The law determined areas subject to licensing and permits, and set out general principles for granting permits and licences. The law reduced the areas and economic activities subject to licensing from 30 to eight.
- In 2000, a series of initiatives in **France** showed significant results in terms of saving costs and time as a consequence of "simple" simplification procedures introduced for citizens applying for documents, permits and allowances. For example, an extension of the period of validity of passports from 5 to 10 years and the simplification of the procedures required for renewal led to the elimination of 1.2 million applications, equivalent to saving of 3.6 million hours for French nationals or EUR 73.2 million.

Third, reviews and strategies vary in terms of their focus or objective. Some reviews focus on the achievement of specific quantitative reduction targets, established at the outset – for example a 25% reduction in an overall number of licences, or a certain reduction in the number of days necessary for starting a business. These numerical targets often coincide with the adoption of a highly decentralised approach, in which it is simply mandated that administrative bodies must reduce the number of licences by the required

amount. Some reviews have focussed on setting or reducing time limits for providing answers to requests for permits and licences, whereas other reviews have focussed primarily on avoiding duplication or by reducing the coverage of individual regulations. The latter may include releasing certain activities entirely from approval by the authorities, or by changing *ex ante* approvals into *ex post* notifications of the authorities, after the regulated activities have been commenced.

Finally, reviews of permits vary in terms their organisational set-up. Often examinations are carried out by the regulatory reform authority working in association with the licence-administering agency. In other cases, reviews are carried out by external committees or bodies, either on an *ad hoc* or permanent basis. Examples and experiences with various organisational set-ups are covered in the section on organisational approaches of this report.

"Tutors" for applicants

A further tool for achieving burden reduction in relation to licences and permits is the adoption of "tutors", or mechanisms to assist those affected to complete the required administrative procedures.

- **Korea**, for example, has established a programme by which experienced "tutors", who are highly familiar with administrative requirements in a particular area, are made available to help citizens complete applications.
- In the **United States**, a number of departmental level initiatives have been adopted, many of which focus on small businesses. For example, the Environment Protection Authority has a "Small Business Ombudsman" who produces a "resource guide" that details all of the agency's small-business-specific activities. In addition, a number of departments are developing expert systems and intelligent technology to provide business compliance assistance. For example, the Department of Labor has developed 18 "E-law Advisors," which are Web-based expert systems that the public can query through menus and routine questions to better understand and comply with its regulations.

Conclusion and challenges

Licence simplification and reduction programmes differ from many of the other policies considered in this report by being amenable to easy quantification. Indeed, it may be that this is one reason for the popularity of these initiatives with many OECD governments. As noted above, many of these programmes have begun with the announcement of a specific quantitative target for reduction in the number of licences. Some countries have reported impressive statistics. Mexico, for example, reported that a total of 45% of the formalities administered by its eleven ministries had been eliminated and over 95% simplified in some way within 2½ years of the adoption of its review programme in 1996.[11] Many permits and authorisations were converted into notification or other requirements that are not essential to the commencement of a business. In other cases, documentary requirements were reduced or simplified or departments substantially reduced the average length of time required to process applications. The Netherlands reported that its administrative burden reduction programme had reduced overall burdens by 10% between 1993 and 1996 and that a new target of 25% had subsequently been set.[12] In some areas, the replacement of licences by general rules was part of a more fundamental change of the legislation. They delivered a large-scale reduction of administrative burdens and significant savings.

However, simple numerical indicators that report on licence reduction initiatives, such as the number or percentage of licences eliminated can easily mislead. For example, in cases when reductions are calculated on a static basis, the impact of licences that were newly created during the life of the programme may be ignored. It is a common observation that licence reduction programmes function in many cases as "window dressing" exercises that achieve little meaningful reform. This can be because the licences removed under the programme were due to be repealed in any event because of other reforms already in progress, or because they had already become redundant and fallen largely into disuse. In addition, the tendency to decentralise the enforcement of regulations to local governments can also reduce the inventory on the national level. Such factors often mean that impressive numeric reductions claimed as the result of these programmes have difficulty in withstanding closer scrutiny.

Thus, while licence reduction exercises can perform a useful function in prompting a systematic revisiting of the necessity and appropriateness of licensing arrangements, they are likely to lead to substantial change only under certain circumstances. A possible reason for the unimpressive outcomes for this type of reform in practice can be that, while the programmes are generally co-ordinated by a specialist regulatory reform body, the decision on the retention or removal of individual licences invariably remains with the responsible Minister and the administering agency. Ministries will usually find it extremely difficult to be objective in evaluating their own licences, so that important change will only occur if it is consistent with the administering Ministry's own goals and agenda.

Careful programme design can, however, increase the likelihood of significant reform. The adoption of an explicit policy on the use of licences and permits seem to be an important driver of efforts to achieve substantial improvements. Another key element can be to establish oversight and accountability for overall achievements via senior administrative or political bodies. For example, Korea's Regulatory Reform Committee performed such a role on a very large scale in the context of the *Comprehensive Regulatory Improvement Plan* in 1998 and 1999.[13] Another approach to drive such reforms is to establish comparable information about the quality and performance of countries' permits and licensing procedures.[14] The effectiveness of licence simplification is also likely to be enhanced by the adoption of open and transparent procedures that allow effective opportunities for public inputs and suggestions. Given the nature of the licence burden, affected parties can be expected to be an important resource in identifying priority areas for reform and, potentially, for proposing less burdensome means of meeting the objectives underlying the licence or permit requirement.

While some design elements of a relatively successful licence simplification/reduction exercise can thus be identified, there remains a threshold decision as to whether such generalised licence reduction exercises should be undertaken at all. Theoretically, the establishment of rigorous regulatory quality processes, such as Regulatory Impact Analysis[15] and more effective consultation procedures, in combination with robust review and/or "sunsetting" processes, should largely eliminate the need for such *ad hoc* licence reduction exercises. It is also arguable that licence reduction/simplification programmes have a prominence that is out of proportion to the rather limited empirical support available for the underlying presumption of the especially burdensome nature of licences and permits. For example, a survey of barriers to business set-ups in the European Union showed that "discretionary activities" such as developing a business plan and obtaining finance (rather than obtaining relevant permits and licences) had the greatest effect on the

total elapsed time to set up a new enterprise. A danger of adopting such programmes may be that they divert scarce regulatory reform expertise away from larger reform tasks with potentially much greater benefits.

However, there are reasons for favouring licence reduction programmes. They can be an important first step in a regulatory reform programme, achieving highly visible results within short timeframes. Thus, they can help in the process of mobilising constituencies for reform. As well, they can assist in shifting perceptions more broadly away from assumptions that government permission is required to carry on a business and toward a presumption of freedom to operate. Finally, there are promising practices in the licensing and permitting areas that may not be most effectively disseminated through broader regulatory reform initiatives. Their implementation might be more efficient through a programme that is licence-specific.

As with many regulatory reform initiatives, the choice of a particular licence simplification programme or approach depends to a substantial extent on the individual circumstances facing the country. In some cases these programmes have proved more successful when designed as a response to an economic crises. In other cases, these programmes may be particularly useful in the early stages of a regulatory reform programme. They can also potentially act as the starting point for wider reforms. This can particularly happen in a context where there is a very large number of licences already in place and a clear case for revisiting the underlying approach to business licensing. However, it is likely that, in the context of a mature regulatory reform programme, the effectiveness of such programmes will be much less since other, more systematic and broadly based regulatory quality programmes will be better placed to achieve many of the same objectives in a more efficient manner.

In a few countries, the general logic of licence simplification and reduction programmes has also been applied more generally to all paperwork requirements. These programmes, which in the case of the United States are permanent and legislatively driven, arguably provide an ongoing discipline on the creation of new administrative burdens that is embedded into the legislative process. The question necessarily arises, however, as to whether such issues are best considered on a "stand alone" basis, or integrated into broader regulatory impact analysis efforts. The experience of the US programme appears to be that positive results have been achieved, but that the degree of success is essentially one of slowing the rate of growth in burdens, rather than reducing them overall.

Assistance to small and medium-sized enterprises

Introduction

The OECD has recently highlighted the substantial absolute size of administrative compliance cost burdens on businesses. The report *Businesses' Views on Red Tape* estimates that they average around 4% of the Business Sector GDP across the eleven countries surveyed. Numerous studies also show that the burdens of regulatory programmes fall disproportionately on small and medium-sized enterprises (SMEs). For example, *Businesses Views on Red Tape*, which examined the costs of administrative compliance in almost 8 000 SMEs in 11 countries, found that administrative compliance costs per employee were over five times as high for the smallest SMEs than for the largest.[16]

Governments in many OECD countries have attempted to respond to the observations, often in response to heavy lobbying from the SME's sector itself. Consequently,

governments have been launching a wide variety of programmes aimed specifically at the SME's sector, seeking to assist it in meeting regulatory obligations.

Practices and experiences

Three main approaches can be distinguished.

- The first seeks to provide active assistance to small businesses, in particular to meet the administrative compliance requirements of regulations.
- The second approach involves exempting or modifying the requirements themselves, to make them less onerous for small businesses.
- The third approach is more dynamically oriented and involves putting in place specific mechanisms to ensure that regulatory design takes better account of small businesses needs and concerns in establishing new compliance burdens.

Examples of these tools and practices include small business impact statements, compliance assistance, waivers of penalties, regulatory fairness hotlines, expert advisors, "tiering" of regulations, sunset clauses, and targeted compliance cost surveys. Special agencies, like the US Small Business Administration, and the UK Small Business Service, have also been created to oversee and advocate such programmes.

Dedicated one-stop shops, Web-portals and E-Law advisors

As described in the sections on IT-driven mechanisms and Physical one-stop shops, one important positive assistance to small businesses is the service provided by Web-portals and one-stop shops set up especially to cover the particular needs of small businesses. The Internet has also facilitated specific advice-giving to small businesses. Interactive, electronic tools can give tailored, understandable advice about how to be in compliance with regulatory requirements:

- In the **United States,** for example, the Department of Labour (DOL) has developed 18 "E-law Advisors", Web-based expert systems that the public can query through menus and routine questions to better understand and comply with the DOL regulations. The Occupational Safety and Health Administration (OSHA) is working on the next generation of these systems which would combine interactive questionnaires and electronic forms with legal analysis. OSHA has made similar efforts in developing its "Expert Advisors", interactive Web-based systems designed to replicate the thinking process of OSHA's policy and enforcement staff on a particular topic area of interest to the public. OSHA has made ten Expert Advisors available online on such topics as asbestos, confined spaces, and the cost-benefit of safety.

Compliance guidelines

Another tool used to facilitate SME's compliance with administrative (as well as other) regulations is to prepare comprehensive guidelines and a well defined process to respond to small business inquiries on actions they are required to comply with.

- One example of this is the **United States,** where legislation requiring specific attention given to the compliance needs of small businesses has been in place since the passage of the Regulatory Flexibility Act in 1980. The Act was strengthened in 1996 with the passage of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which introduced legislated requirements for agencies to take specific actions to assist small businesses in meeting their compliance obligations. These include the production of

regulatory compliance guides and other guidance materials, as well as additional consultation requirements.

Scaling and calibrating administrative regulations

An example of meeting compliance needs of small businesses through regulatory redesign is "tiering" of regulations. "Tiering" can be described as the design of regulations to account for relevant differences among those being regulated and to prevent disproportionate impacts on small businesses. By "tiering", an agency can ensure that the regulatory solution fits the problem, and makes more efficient use of its limited enforcement resources.

- The **British** government initiative, "Think Small First", followed these principles in introducing some flexible exemptions to certain legislative provisions for small businesses, for example providing that *a)* companies below five employees were exempted from the stakeholder pension, *b)* union recognition was deemed not necessary for companies below 20 employees, and *c)* certain accounting standards were made applicable only to firms with more than 50 employees.
- In the **United States** the US Environmental Protection Agency has tiered 50 different regulations based either on firm size or the amount of pollution released.

Specific government bodies assisting small businesses

Some approaches to dealing with the issue of small business compliance needs are dynamically focused. That is, they seek to ensure that new and amended regulatory requirements are, from the outset, sensitive to the small business compliance issue. At the institutional level, a fundamental step can be to create a specific government body with a mandate to assist small businesses.

- One example is the **United Kingdom's** Small Business Service (SBS), which was established in April 2000 to provide a single government organisation dedicated to helping small firms and representing them within government. The main objectives of the SBS are to provide a strong voice for small firms within government, and to simplify and improve the quality and coherence of support to small firms. It also helps small firms deal with regulation and ensure that small firms' interests are properly considered at the earliest possible moment. SBS has a strong institutionalised position in the regulatory process, for example the right to have its views recorded in the RIA in a wording of its own choice.
- Another example is the **United States'** Small Business Administration (SBA), created in 1953. While the SBA historically provided low-interest government loans, it now has responsibility for overseeing the implementation of statutes designed to be compliance-friendly for small business. An independent Chief Counsel for Advocacy has also been established within SBA to advocate the interests of small business within the rest of the government. The SBA has also engaged in numerous other activities intended to simplify small business compliance with regulatory requirements. These include fairness "innovation awards", a regulatory fairness hotline and Web site, and the US Business Advisor (a one-stop shop for access to Federal Government information, services, and transactions).
- **Australia** took a slightly different approach in 1996, with the establishment of a Small Business Deregulation Taskforce. The Taskforce differed from the SBA model in that it

was an *ad hoc* body, a vehicle for a one-off reform, rather than a permanent part of the administration, which seeks to influence regulation as it is developed. Moreover, its members were drawn from the business sector, albeit supported by a Secretariat drawn from within the administration. The Taskforce was given specific terms of reference on its establishment, with its task being to report to Government on a programme to substantially reduce the regulatory and administrative burdens on business. Thus, the Taskforce model was based on the logic of conducting a "stocktake" of existing burdens and developing a co-ordinated plan for addressing major problem areas. A survey commissioned in 1996 by the SBA found that on average small businesses spent 16 hours per week on administration and compliance activities. Approximately a quarter of this time was devoted to government paperwork and compliance. The survey showed that taxation matters absorbed approximately 75% of government paperwork and compliance activities.

Small business impact assessments

In addition to the above focus on institutionally based approaches, some countries have taken a more procedurally oriented path to ensuring new legislation considers administrative burden issues. This includes, for example to require agencies to prepare special impact statements for proposed regulations that affect small businesses. These "small business impact statements" are often required to contain, among other things, a description of any significant alternatives that accomplish the stated objectives while minimising any significant economic impacts of the proposed rule on small businesses.

Another approach which can be adopted in conjunction with the impact statements and the institutional approach mentioned above is to require specific consultative approaches to be undertaken to ensure adequate representation of the views of small business.

Phased-in implementation of regulations

Another approach to reduce effective compliance burdens is to ensure that there is an adequate notice period before new legal and regulatory measures come into effect. By providing businesses with a longer period to reach compliance, they are given the opportunity to consider the most cost-effective means of reaching it. This increased time period might allow for obtaining expert advice where necessary. The costs of any outside assistance required to reach compliance may also be contained by avoiding a situation in which there is a sudden "spike" in demand for certain specialised services as large numbers of businesses seek to reach compliance within a very short period.

- This approach has recently been implemented in the **United Kingdom**. In November 2000, the Small Business Service published the Guidelines on Implementation Periods – Timing of the Issue of Guidance to Business on Compliance with New Legislation. As of 1 January, 2001, these guidelines recommended that business should be provided with at least a 12-week preparation period before a regulation comes into force ("implementation periods"). In addition, they recommend that these preparation periods should be further extended in more complex cases, while the time frame should be reduced to below 12 weeks only in exceptional cases.

Conclusion and challenges

Governments have realised that SMEs play an important role in economic prosperity and that they also tend to be disproportionately affected by regulation. Consequently, an important element of their programmes to reduce administrative burdens and simplify processes is focused fully or partly in this sector. However, there is often a limited factual basis for the design of such programmes. Basic questions are difficult to answer because of the relatively limited research undertaken on the interface between small businesses and regulation in most OECD countries. This includes questions such as how special programmes geared to SMEs should be organised, when concessions such as enforcement waivers and penalty reduction programmes for SMEs are beneficial and even what should be the dividing line between SMEs and larger enterprises for this purpose.

To answer some of these questions, more needs to be known about the actual burdens faced by small businesses. Furthermore, very little appears to be known about the effectiveness of the mechanisms discussed in this section in reducing small business compliance burdens. This is perhaps largely a result of the inherently difficult nature of the issues. The question is to what extent high-quality design of administrative regulations should be more responsive to small business needs. Any responsiveness must be measured against what the outcome would have been in the absence of such advocacy. Similar observations can also be noted regarding the use of e-law advisers and guidance materials.

At a theoretical level, the concept of adopting more sophisticated approaches to regulatory design that take better account of both the compliance capacities of different groups and the relative risks posed by them seems to be clearly consistent with principles of regulatory quality, as identified by the OECD. Here too, careful implementation is required, as the benefits conferred on SMEs could be outweighed by the costs to society. In addition, concerns have been voiced that some mechanisms, such as "tiering", may offend against important principles such as the equitable application of the law to all parties.

"Positive discrimination" of SMEs may also have dynamic drawbacks by providing SMEs with incentives not to grow beyond thresholds qualifying for special support or to break up strategically as soon as the threshold is passed.

In sum, OECD governments have generally adopted the view that the SME sector is of particular importance in the economy and that its ability to play this role is potentially undermined by regulatory compliance burdens, particularly in relation to administrative burdens. In response to this, they have implemented a wide range of policies that seek to minimise the regulatory administrative costs on the sector from a variety of perspectives. There is, to date, limited evidence of the effectiveness of these approaches. However, it is clear that the political will to continue and expand these programmes is strong, while a substantial body of experience with their implementation is beginning to accumulate. This is an area in which identification of promising practices is difficult.

Measuring administrative burdens

Introduction

Despite the numerous administrative simplification initiatives launched by OECD governments over the past decades, governments paradoxically do not often have a detailed understanding of the extent of the burdens imposed on businesses and citizens. This means that policy is made in an information vacuum, and that the size of the actual

burdens (as well as progresses and setbacks in reducing them) may remain unappreciated. The measurement of the size of existing burdens can be an important information-based approach to developing a policy on burden reduction and the basis for the evaluation of policy initiatives taken. The size of existing burdens can raise awareness amongst politicians, sustain a political constituency for changes, and help to develop and maintain initiatives and policies on burden reduction.

Practices and experiences

Ideally, in order to measure regulatory burdens or to evaluate programmes for reducing regulatory burdens, a first step is to develop a method of measuring existing burdens (baseline) as well as measuring the administrative burdens of new laws and regulations.

Some governments have established "macro" or top-down methodologies aiming at establishing government-wide estimates for administrative burdens. Other approaches – sometimes combined with the former – are based on bottom-up reviews of sectors or on individual estimates of regulations' administrative burdens, sometimes as part of broader impact assessments.

A bottom-up approach: The Dutch MISTRAL methodology

Box 1.3. describes the Dutch *Meetinstrument Administratieve Lastendruk* methodology, MISTRAL. MISTRAL is among the earliest and most thoroughly applied systems to measure administrative burdens in OECD Countries. With the use of MISTRAL, it was estimated that from 1993 to 1998, the administrative burdens for enterprises in the Netherlands grew from approximately NLG 13 billion (EUR 5.9 billion) to NLG 16.5 billion (EUR 75 487 billion). The Dutch government has set up successive policy goals for the reduction of these costs; minus 10% by 1998, and minus 25% by 2002, compared to the 1994 baseline. According to EIM, a Dutch consultancy that participated in the development of MISTRAL, administrative burdens were reduced by 6.25% from 1994-1998, another 0.5% in 1999, and in 2000 – the most recent figure available – burdens fell by 0.2%, representing a total reduction of nearly almost 7% from 1994-2000.

To prevent excessive information requirements being developed, the Dutch "Schlechte Committee" has developed a set of general norms for individual regulators and the government to observe when requesting information from businesses and citizens:

- *Re-use of information*. Government agencies should restrict information obligations as much as possible by re-using already available information, which enterprises register for their own management use and which they can transmit without further processing.
- *Information processing*. Government agencies should be encouraged to create common data definitions. Different authorities requiring divergent presentations of the same data often leads to different interpretations and a tendency to non-compliance.
- *Information creation*. Government agencies should only request information creation if it can be proved that re-use and processing of existing information cannot provide the relevant information. Government agencies should avoid changing information obligations during reporting periods, and give enterprises enough time to adapt their administration to new requirements. Information provision obligations of enterprises should be minimised by giving the authorities the right to collect information in existing databases.

Box 1.3. **The MISTRAL methodology**

In the Netherlands, the MISTRAL methodology has been developed to measure the administrative burdens of enterprises. MISTRAL works in three stages: *a)* an in-depth analysis during which all "data transfers" between a business and the authority (*e.g.*, a document, a telephone call, an inspection, etc.) are isolated and defined; *b)* the time involved in each "data transfer" and the level of the person performing it (related to professional qualification and hourly wage-rate) are then determined; and *c)* the data are computed to produce cost estimates. The MISTRAL method is a bottom-up approach (although the methodology also allows for a less expensive and less time-consuming top-down approach). When applied for the first time, MISTRAL is rather labour-intensive due to the need to establish a cost baseline on the basis of a detailed scrutiny of all administrative actions required by law. Administrative compliance costs are calculated on the basis of "average practices" observed by a third party (*i.e.* consultants), in consultation with affected businesses and the issuing ministry.

MISTRAL has been used to quantify administrative compliance costs of different laws and regulations, including evaluation of the information requirements of labour law, annual accounts, corporation tax, wage tax and social premiums, legislation concerning working conditions, and environmental legislation. Burdens are quantified in time as well as in monetary terms.

- *Information storage*. Storage of information may be expensive and risky. Expensive because some governments demand storage for a long period. Risky because electronically stored data may become unretrievable ("digital durability") after a few years. Government agencies should make storage times as short as possible.
- *Information transfer*. Transferring information will be less burdensome if it can be done electronically. As long as the forms have to be filled out by hand, the administrative burden may be substantial. Government agencies should use IT to make information "place-independent".
- *Information procedures*. Laws and regulations sometimes prescribe with great specificity which instruments have to be used and how exactly the information has to be gathered. Such laws and regulations may not prescribe the most efficient way of information gathering. Authorities, therefore, should prescribe only the results to be achieved in terms of information collection and not the exact way in which the reporting should take place.

Information collection budgets

In the **United States**, the Paperwork Reduction Act (PRA), as indicated in Box 1.2., provides a framework for the measurement and management of the burdens, which federal information collections impose on individuals, businesses, and government. Under the PRA, all federal agencies must request the approval from the Office of Budget and Management (OMB) before collecting information from the public. Detailed guidelines and standardised application forms enable the formation of comparable and cumulative information about paperwork burdens over time and between agencies and various types of regulations. The agency applying for permission collects information which provides the estimate for the expected number of respondents and the time estimated to provide the

requested information. To ensure that regulators consider the need, and all relevant quality aspects of the information requirements they impose, the PRA requires that the head of each agency signs a certification that the information collection has been developed under the observation of a number of provisions. Burdens are quantified in hours. However, no guidance has been issued on how to measure the burdens. OMB can approve data collection for no more than three years, at which point the agency must re-submit the information request for re-approval.

The Information Collection Budget (ICB) is the vehicle through which OMB, in consultation with each agency, sets annual agency goals to reduce information collection burdens. The ICB is built around fiscal budgeting concepts. Each agency calculates its total information collection "budget" by totalling the time required to complete all its information requests. This budgeting exercise is then used to measure progress toward reduction goals. Since 1980, the reduction targets have varied. In 1996 the ICB set an annual government-wide goal for the reduction of the total information collection burden of 10% during each of the fiscal years 1996 and 1997 and 5% during each of the fiscal years 1998 through 2001. However, during these years the actual burdens in terms of total hours only fell in 1998 (by 0.37%) whereas it increased in other years with between 2.5 to 4%, a total increase of approximately 12% from 6.8 billion man-hours in 1996 to 7.4 billion man-hours in 2001.[17]

In the US, as for many other countries, the ability of agencies to reduce administrative burdens is sometimes constrained because their discretion is limited. For example, requirements in regulations may be changed only through existing administrative processes that may take years. Furthermore, reporting and record keeping requirements may be mandated by existing statute or may be necessary to implement recently enacted statutes. There are also factors that tend to increase paperwork burden that are outside the control of agencies. These include economic growth, natural disasters, and demographic trends. These factors can change the number of participants in a programme, which – while not creating new burdens – nonetheless increases the reporting burden of the entire programme.

Index based approach to assessing burdens

- In **Belgium**, a law passed in 1998 requests the Agency for Administrative Simplification (ASA) to develop a system to measure and reduce the burdens of administrative regulations. The system called "*tableau de bord*" (score board) records all the variables used in each procedure or formality of any kind. It makes use of indicators for each procedural step and gives index values to these indicators. The index values for a formality are added together, and the total is multiplied by the frequency of the procedure and by the number of persons concerned. The result obtained gives the procedure's overall index value. Burden indexes for individual regulations can also be summarised to indicate the total size of administrative burdens. Some of the advantages of the index based approach are that it is adaptable to changes in regulation, and that it must be used by the administrators themselves (under centralised monitoring). Most importantly, it constitutes an important element of regulatory impact analysis, since the burden assessments can be made before the implementation of a regulation. However the system requires training before it can be used by administrators, and it can be difficult to ensure uniform application.

User surveys

Many OECD countries have employed survey-based methods, either to measure compliance costs directly or to measure satisfaction with the forms and/or processes used in administrative procedures.

- An example of the former is the survey conducted in **Australia** by the Small Business Deregulation Taskforce to form one of the basic data sources to guide the Taskforce's recommendations for an integrated burden reduction programme. The survey results allowed the calculation of estimates of the total time spent on average by small businesses on administration and compliance activities (estimated at 16 hours per week). In addition, the distribution of the burden between broad regulatory areas has also been revealed. (For example, approximately a quarter of the estimated total is devoted to government paperwork and compliance; taxation matters account for 75% of government paperwork and compliance burdens).
- In **Belgium**, a survey of enterprises' views of administrative regulations and administrative burdens showed that for the year 2000, Belgian enterprises estimated that they were facing government imposed administrative burdens at a size equal to 2.6% of GDP. The survey, commissioned by the Agency for Administrative Simplification in collaboration with the Federal Planning Bureau also showed that nearly 70% of the burdens were borne by small enterprises. The survey invited enterprises to give their views on what the priorities should be for the government's administrative simplification policies. In order of priorities, the answers were: to improve the quality of regulations, to make public services more user-friendly, to develop IT mechanisms and to introduce one-stop shops.
- In **France**, the Administrative Simplification Commission (COSA) launched in 2001 a set of consumer satisfaction surveys. These were conducted among user groups and the services managing case files or dealing with the general public in order to isolate key problem areas. The surveys led to the redrafting of forms with the help of a communications agency and the Committee for the Improvement of Administrative Language (COSLA).
- Similarly, in **Korea** a survey is conducted annually on citizens' satisfaction with the administrative processes set up by Government agencies. This programme forms a prominent part of the performance evaluation of those agencies.

Regulatory Impact Analyses programmes

Use of regulatory impact analyses (RIAs) is now widespread among OECD countries.[18] RIAs, while more broadly based in their concerns on regulatory impacts, constitute one systematic means of ensuring that consideration is given to administrative burden issues during the regulatory development process. RIA constitutes an *ex ante* approach to burden measurement, in contrast to the *ex post* focus of most measures adopted in OECD countries and discussed in this report.

RIAs have the significant advantage of allowing a re-consideration of potentially substantial burdens *before* they are imposed, rather than after their damaging effects have become apparent. Another advantage of RIA as an approach to measuring administrative burdens is that it allows those burdens to be placed in a broader context. That is, RIA explicitly requires those burdens to be weighed against the benefits deriving from the administrative procedure and a consideration to be made of the net impact of the procedure and its attendant regulation.

Box 1.4. **Measuring administrative burdens in Norway**

In Norway, the Brønnøysund Registers (an administrative agency under the Ministry of Trade and Industry) provides the possibility for an outstanding overview of reporting obligations imposed on Norwegian business. It also facilitates the reduction of future reporting burdens by using and sharing identical reporting definitions across the whole of government.

Reporting Obligations for Enterprises

Created in 1997, the main task of the Register of Reporting Obligations for Enterprises is to maintain a constantly updated overview of businesses' reporting obligations to central government. Law obliges public authorities to co-ordinate their reporting requests to businesses. The Register also maintains an overview of permits required to operate within various businesses and industries, and provides information on how to obtain such permits. On a yearly basis, the register publishes estimates for the total reporting obligations imposed on business by central government. The Register is responsible for the methodology and for collecting burden estimates, whereas individual ministries and agencies are primarily responsible for measuring the actual burden of a reporting obligation. Burdens are measured in time spent on filling out forms and preparatory work for the reporting obligation.

Applying national reporting definitions

The use of national definitions for information items simplifies processes in which two or more agencies require the same kind of information from an enterprise, and eliminates ambiguity or confusion about requirements to businesses. In order to create such synergies and to increase co-ordination capabilities, the Register of Reporting Obligations for Enterprises has established a repository of reporting definitions based upon a database containing all the information collected from enterprises nation-wide. The national system of informational definitions also relies on a high degree of compatibility with international standards.

Experiences from Norway points to two basic but important preconditions for reaping the full benefits of a register measuring and monitoring administrative burdens, and applying national reporting definitions. Firstly, regulatory ministries and agencies must be aware of their obligations to report, and to systematically calculate business' reporting obligations when preparing new regulation. Secondly, credible sanction and enforcement mechanisms must be in place to ensure that the obligation is honoured.

Source: OECD (2003), *Regulatory Reform in Norway*, Paris (forthcoming).

RIA also typically employs stakeholder consultation processes. Consultations have the benefit of verifying government estimates of the size of the burdens involved, as well as providing a forum for alternative proposals to be discussed, thus helping to ensure that regulatory proposals are the minimum necessary to achieve regulatory objectives. RIAs are usually subject to centralised review and/or clearance, such as by the Privy Council Office in Canada, the Regulatory Impact Unit in the United Kingdom, the Office of Management and Budget (OMB) in the United States or the Federal Regulatory Improvement Commission (COFEMER) in Mexico. This constitutes a further means of ensuring quality control over the estimates made and the conclusions reached.

Conclusion and challenges

Measuring administrative burdens is essential if governments wish to "benchmark" their performance in relation to this aspect of regulatory quality, either in a static sense and/or to verify the results of burden reduction initiatives over time. The various approaches used in OECD countries have generated some quite detailed estimates of the size of administrative burdens.

Experiences indicate that top-down approaches facilitate priority setting for broad burden reduction programmes, while bottom-up techniques are better adapted to the design and evaluation of specific initiatives to reduce burdens.[19] Survey-based approaches appear to have the potential to function as a relatively low-cost, yet reliable means of identifying areas of the greatest perceived burden among affected groups.

The "index" based approach to measuring burdens, as used in Belgium, also appears to have the potential benefit of being a less resource intensive approach to conducting top-down analyses. For this reason it may be a valuable method to priority setting for burden reduction programmes conducted at the macro level.

For a government, the paradox of measurements is that they are useful (in particular to sustain policy support) but tend to be costly if accuracy is needed. Administrative simplification bodies often have to deal with the dilemma of spending resources on evaluating results (and with this perhaps generating political support) or investing resources in specific simplification measures.

Another drawback of targeting specific burden reductions is that they raise expectations, which may be difficult to control and hard to fulfil by reformers. Simplifying the administration is extremely complex and difficult to predict. On the other hand, a measurable goal raises accountability of reformers.

Measuring burdens is an area in which clearly defined best practices are yet to emerge. Substantial questions remain which must be answered successfully before such best practices can be identified. These include:

- How is a baseline best established?
- What is the best way to measure burdens – on a micro or macro level or combined?
- Should benefits be taken into account, and, if so, how? Is it feasible to use such techniques to derive a "budget" for burdens?
- What is the best way to ensure that the regulatory impact analyses commonly used in regulatory reform programmes, take into account simplification issues?
- Are impact statement requirements useful tools in this context? Are they preferable to explicit burden measurement tools, due to their ability to locate burden measurements within a broader policy context and express them in terms of a benefit-cost framework?

Time limits for decision-making

Introduction

An important factor determining the extent of compliance burdens is the timeliness with which decisions are made and appeals can be launched or considered after an application is submitted. That is, the extent of an administrative burden is determined only partially by the direct input involved in marshalling required information and engaging in filling out forms and dealings with administrators. In addition, costs are also imposed on the

business or the citizen by time delays and uncertainty, either in the provision of information, or in providing answers to requests. Setting time limits may not only lead to reduced administrative costs for businesses and citizens. In many cases, time limits also have important accountability implications by putting a stronger onus on the public authorities to provide citizens and businesses within a definite and binding time limit.

Practices and experiences

The legal basis for time limits on administrative decision-making

In some cases, time limits are established in administrative procedure laws; in others in specific pieces of legislation relating solely to decisions made under that legislation. Usually time limits established in administrative procedure laws are subsidiary to time limits established in specific legislation. That is, if a law or regulation does not explicitly set a time limit, the administrative procedure law's requirements apply. Some examples:

- **Italy's** Administrative Procedure Law, adopted in 1990 requires that public authorities set appropriate time limits and the law itself sets a general limit of three months.
- **Korea's** Administrative Procedure Law also requires administrative bodies to publish time limits for administrative decision-making. Sanctions for not meeting these time limits vary. In some cases the administrative body may be able to grant itself an extension as long as it immediately informs the applicant about its intention to seek an extension, the reasons why, and the expected date of final decision. In other situations, if an administrative body does not meet the time limit, the applicant can bring a petition for the purpose of urging rapid treatment either directly to the administrative body or to a government body that supervises the concerned administrative body.
- In 1999, **Greece** adopted a new Code of Administrative Procedure which regulates administrative procedures in terms of time limits and deadlines in dealings with citizens. It also obliges the administration to explain delays, specify procedures for accessing administrative documents, define rules governing contracts between the administration and the private sector, and establish requirements on access to administrative appeal mechanisms.
- The **Dutch** administrative law requires that administrative decisions have to be taken within a "reasonable" time. This general requirement has been supplemented by the General Statute on Administrative Law. This document specifies a general time limit of four weeks, with a possible extension of an extra four weeks, within which public authorities have to provide an administrative decision on request, unless the special regulation concerned sets a different time limit.
- The **United States'** Administrative Procedure Act does not require agencies to act on rule-making proposals or case adjudications within a prescribed time after the end of public proceedings. However, Congress sometimes seeks to control and expedite agency action by imposing statutory deadlines within the context of individual Acts. Typically these statutory deadlines can be enforced only by court suits. However, in some cases Congress has added so-called "hammers" or other penalties that can be brought into effect if an agency fails to take timely action.
- A **French** initiative has enhanced citizens and businesses' effective ability to exercise their rights *vis-à-vis* public authorities by providing clearer rules for how to validate that deadlines for submissions to public authorities have been honoured. An Act of 12 April 2000 provides that a postmark or other official (including online) procedure

enabling the date of dispatch to be ascertained will be accepted as proof. The law replaces a series of practices or regulations that were frequently dissimilar and unfamiliar to the general public with a single rule.

In the absence of a statutory time limit, agencies sometimes find it helpful to set their own schedules for completion of the various steps in a rule making or adjudication. These schedules provide the agency with a practical yardstick for determining whether its proceeding is making satisfactory progress towards completion.

Tacit response: silence is consent and silence is denial rules

The technique of allowing an agency's silence to be construed as tacit authorisation or denial of applications is used in some countries as a corollary of the establishment of time limits for administrative decision-making. The silence is consent or denial rule provides a more effective assurance to the applicant for a decision that they will obtain a timely resolution to their request. It puts the onus to act on the bureaucrat: The bureaucrat has to act before the time limit, including, if necessary and possible, to ask for additional time to consider the application. If the bureaucrat does not make an active decision before the time limit, the resulting decision will automatically be his responsibility. In the case of a tacit denial, the applicant can immediately appeal the decision (instead of waiting for a negative response that may never come, if time limits were not established and enforced).

- **Spain's** Administrative Procedure Law places an obligation on administrative bodies to respond to applications within at most six months, unless the relevant law specifies an earlier deadline. If no timely response is given to a procedure initiated by an interested person, this can be taken as a tacit authorisation. If an administrative body has initiated a procedure and there is no response by the addressee, it can be taken as a tacit rejection. To be exempted from the authorisation or denial rule, agencies need to forward a formal request.
- **Italy's** Administrative Procedure Law establishes a presumption that the "silence is consent" rule will apply unless otherwise stated.
- "Silence is consent" rules are widely used in **Mexico.** Recent modifications to the Mexican Federal Law of Administrative Procedures reinforce the legal basis of the "silence is consent" rules, expanding their coverage to areas of public administration in which there is no risk of "under-regulating". These changes in the law establish that, with certain exceptions, the absence of a resolution within the time limits laid down in the law implies the approval of a citizen's demand. The use of "silence is consent" rules has spread to many Mexican states and municipalities.

In cases where applications are poorly presented and lacking relevant information tension may arise between, on the one hand, the need to take the administrative decision on a sound and relevant basis of information, and, on the other, the obligation to honour the time limit. Countries have addressed this challenge by seeking to provide clear and unambiguous guidance on the information needs, and by assigning a maximum of days to the agency receiving the application.

A "silence is denial" rule may be used in certain situations where applicants need a rapid resolution – for example in programmes involving application for benefits or merger authorisations. If the administration does not act on an application within a certain timeframe, it is deemed to be denied and an "exhaustion of administrative remedies" and the applicant may go directly to court.

Conclusions and challenges

In many OECD countries time limits for administrative decision-making are very important for businesses and constitute part of an accountable public service. A key determinant of time limits' performance and relevance may be found in aspects of the broader administrative culture within which they have been adopted.

In countries where traditions and means of redress are less well developed, the setting of legislated time limits may be a particularly important means to reduce administrative costs and uncertainty. In a number of countries, time limits were largely adopted as a response to the need for an effective incentive for the public sector to provide reasonably quick responses to requests from businesses and citizens.

The silence is consent approach has the effect of creating a presumption that an administrative application will be resolved positively, with a negative outcome requiring a deliberate action by the administration. Moreover, it provides an instant form of redress for applicants, who are relieved from the necessity to appeal against an administrative failure to make a decision. Thus, the silence is consent approach underpins and reinforces the underlying purpose of creating time limits for administrative decision-making. In this sense, they constitute an obvious complement to a time limit policy.

Silence is denial is in many ways an inferior rule to silence is consent, as it does not directly address the underlying reason for implementing time limits – *i.e.* the need to limit administrative burdens by providing a final resolution of an application in a timely way. However, as explained above, the silence is denial rule can at least speed an applicant's progress through administrative or judicial appeal processes by bringing a "deemed" closure to the initial application process.

Legislated time limits are difficult to apply "across the board". This is due to the fact that because of different degrees of complexity and consequences of making incorrect judgements, there can legitimately be wide variations in the time needed to exercise various kinds of administrative judgements. Silence is consent rules are not widely, or universally, used in any country. This reflects the fact that the effect of an unwarranted approval of an application can be extremely serious and costly in some cases. The operation of silence is consent has the potential to give rise to dangers in certain areas, whether of a safety-related or financial nature. The limited field of operation of silence is consent thus seems to reflect judgements by governments that the potential harms associated with such unwarranted approvals can, in many cases, outweigh the benefits of reduced administrative burdens and increased certainty.

In general, accountability mechanisms seem to be potentially important, particularly in contexts in which cultures of administrative responsiveness to citizens are not well established and have the potential to signal government expectations of performance in this regard. However, the issue of determining appropriate incentives and sanctions to ensure that the time lines are met remains a substantial challenge for the future. It is clear that the silence is consent rule has played a role in supporting the use of time limits. At the same time, there are substantial impediments to its more widespread use that will continue to limit the extent to which it is employed in the future. Other options for encouraging compliance with time limits, such as monitoring and reporting performance and applying sanctions for substantial under-performance, may need to be considered if this tool is to be made fully effective. Nonetheless, these tools show a high level of

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consistency with the broader governance agenda and its focus on accountability, transparency and responsiveness to citizens.

Other tools and practices

Introduction

The preceding sections of this report have identified and discussed tools commonly used to reduce burdens and simplify administrative regulations. However, OECD countries use a variety of other burden reduction tools and practices. These include negotiated rule making, ombudsman, "plain language" programmes, "simulated user" programmes, public service charters, and tax simplification initiatives. Some of these initiatives constitute recent experiments, with little information yet being available as to their performance in practice or as to critical success factors. Other initiatives – such as the ombudsman – represent more widely used tools that have policy goals that go well beyond the ambit of administrative simplification, but have been used in part to pursue simplification goals, at least in some contexts. The tools discussed in this section give a broader view of administrative simplification approaches and indicate some additional areas for future research and consideration.

Practices and experiences

Negotiated rule-making

In countries with a history of adversarial rule making, it is not unusual for the regulator and regulated parties to negotiate a settlement under the supervision of a court after the rule has been published. Reporting obligations and processes to settle disputes are sometimes claimed to be over-formalistic and adversarial, imposing administrative burdens on businesses as well as the public sector.

Negotiated rule-making in this context is a procedural innovation in which representatives of the regulatory agency and the various affected interests are brought together in a co-operative effort to negotiate the text of a proposed regulation that must meet statutory obligations and at the same time be accepted by the regulator and the issuing agency. Negotiation of a rule prior to the agency's publication of a proposed rule can save the agency and other parties both time and resources. By avoiding litigation, programmes become effective sooner and regulated businesses can plan changes earlier than if they faced years of litigation and uncertainty about the outcome.

Negotiated rule making may lead to more innovative approaches that may reduce compliance costs and increase compliance. It can also ensure that less time, money, and effort are spent on developing, enforcing and implementing rules. Negotiated rule making is considered to work best where *a)* there is a manageable number of interested groups and issues to be negotiated, *b)* where the issues are negotiable, and *c)* where all interested participants have an incentive to move forward (perhaps due to a deadline or to the inevitability that *some* regulation will be issued anyway).

- One example is the **United States**, where, since 1982, 17 federal agencies have initiated 67 negotiated rule makings producing 35 final rules. Experiences point to substantial cost-savings due to early implementation, whereas the most significant deterrent to using negotiated rule making is the up-front cost in terms of time and information gathering.

"Plain language" drafting

Many OECD countries have undertaken programmes to improve the clarity of their formalities and forms. Governments have ordered agencies to use plain language in all new rule-making documents. Instruction and training sessions have been held on how to make information requirements readable. The advice covers such things as format, headings, paragraphing, use of tables and illustrations, and use of active verbs. Some examples are:

- In **France**, a committee was established in 2001 to improve the administrative language (COSLA – *Comité d'orientation pour l'amélioration du langage administratif*). COSLA has embarked on redrafting forms most commonly used in order to make them easier for users to understand. To improve the quality of public servant's letters to citizens and businesses, COSLA is also preparing a glossary giving everyday language equivalents of technical and legal terms.
- The **United States** Government created a Web site called the "Plain Language Action Network" which was devoted to helping the implementation of this initiative. As part of this effort, the Vice President presented awards to federal employees for plain language accomplishments. Many other OECD countries have similar initiatives. Mexico's programme also includes the requirement that any government official who has direct contact with the population should fully identify himself or herself.

The simulated user programme

An innovative programme used in **Mexico** is the "simulated user programme." The programme serves as a tool for assessing compliance with the deregulation and administrative simplification initiatives through random, surprise visits made by simulated users. Quality indicators and procedure ratings are then used to assess the performance of government offices and employees. Between 1995 and 2000, the simulated user programme lead to over 500 recommendations being made to simplify procedures and improve services for the public.

Public service charters

Public Service Charters may support administrative simplification by making clear the reporting obligations and information requirements necessary to obtain public services.

- In 1998, the **Korean** Ministry of Government Administration and Home Affairs (MOGAHA) launched a public service charter programme by requesting all administrative bodies to formulate and announce their own "public service charters". Charters are supposed to include a description of services provided and their criteria, directions as to how to obtain services, and possible remedies for mistreatment by government employees.

Business and citizen suggestion programmes

Ad hoc and systematic input from business and citizens on how to simplify administrative procedures are a key source of input to administrative simplification initiatives in many countries. Input channels vary from general (electronic) contact points where suggestions can be tabled, to more systematic and targeted gathering of information.

- The **Korean** government has developed systematic ways to collect citizen suggestions to improve the public administration. Special bi-annual meetings are organised where citizens, generally represented by major NGOs, present suggestions for administrative reform. All administrative bodies at the regional level are also instructed to collect

suggestions from businesses and citizens as to how to improve the public administration. The Ministry of Government Administration and Home Affairs collects the suggestions and presents them with relevant administrative bodies to discuss if and how to implement them.

- Pioneered in **Denmark** in 1996, test panels are an innovative way to incorporate businesses' views on regulations before being finalised and implemented. In Denmark a Test Panel consists of 500 randomly selected representative businesses. Based on a summary of the proposed regulation and government estimates of the expected burdens, businesses in the panel are asked to fill out a standard questionnaire (which takes 10-15 minutes, communicated electronically over the Internet). Answers by businesses are summarised in a report prepared by a government agency and made available to the proponent ministry. Testing a regulation in the Test Panels takes approximately 20 days.

Public sector simplification

In 1999, the **British** Government developed a Public Sector Team (within its Cabinet Office Regulatory Impact Unit) with the sole purpose to seek to reduce the regulatory burden on the public sector, *i.e.* in areas such as law enforcement offices, schools, hospitals, and local authorities. Its role is mainly to recommend best practices and to facilitate the co-operation with government departments. A "new" technique, equivalent in its objectives to Regulatory Impact Assessment, currently labelled the "regulatory effects framework", aims to measure the costs of administrative burdens to public sector organisations in terms of the hours of staff time required to meet them.

The Public Sector Team seems at present to be a unique concept in terms of its focus on administrative simplification specifically within the public sector context. However, this would appear to be a fruitful area for further work, given the size of the public sector, the number of different levels of government that can be involved and the complexity of many of the interactions among public sector agencies.

Conclusion and challenges

The series of initiatives discussed above are indicative of the wide-ranging nature of the attempts made by OECD Governments to address the issues of administrative simplification and burden reduction. At the same time, they also serve to highlight the links between simplification programmes and other policy objectives.

For example, plain language drafting programmes were originally developed with the primary objective of making the law more intelligible and accessible to those required to comply with it. While this is essentially a transparency based objective, it is equally apparent that the compliance effort involved in relation to a given law can be substantially reduced if there is a greater degree of clarity in the law itself as to the nature of its requirements.

Indeed, the drafting of regulations is often the crucial point in addressing potential administrative burdens, while the logic of plain language drafting suggests that close consultation with citizens is likely to constitute one of the most productive approaches. The power of citizen's suggestions seems to be a largely untapped resource. This appears to be an area for further experiment, focusing on what is the best way to bring the affected public into the process at the early stages of drafting proposed regulations. However in some cases it seems that a challenge remains to build a real win/win strategy that will

convince both users and administrations that procedures can in fact be simplified without detriment to either.

Organisational approaches

Introduction

There is considerable variety in the organisational models that countries use to pursue administrative simplification policies. This variety reflects the different political and administrative structures – and the underlying political cultures – as well as different conceptions of the nature of the administrative simplification task.

In the following, organisational approaches used to advance administrative simplification policies are classified in four different categories:

- "*Single Purpose Entities*" refers to organisational approaches where the promotion of specific sub-elements of administrative simplification policies – *i.e.* plain language or burden reduction for special groups – are designated to an agency or unit with this task as its sole objective.
- "*Administrative Simplification Agencies*" refers to organisational approaches where a special government agency has the promotion of administrative simplification policies as its sole or primary objective.
- "*Regulatory Reform Agencies*" refers to organisational approaches where the promotion of administrative simplification policies is designated to agencies responsible for broader regulatory quality management issues.
- *External Committees* refers to committees established by government and composed by a majority of non-governmental representatives such as academia and business organisation with the purpose to carry through and co-ordinate, promote, propose or implement administrative simplification.

In addition to these four categories an important distinction also needs to be drawn between *permanent* and *ad-hoc* bodies or committees. The latter refers to situations where bodies or committees are established to work only for a certain amount of time or until the production of certain outputs or outcomes, *i.e.* a report giving recommendations to the government on how to better pursue administrative simplification.

The classification is not exhaustive or exclusive. Countries may and often have administrative simplification activities promoted through a combination of several of these organisational approaches listed above. Countries may also have administrative simplification promoted through other organisational approaches. However, the classification is believed to capture the majority of the diverse organisational approaches used to promote administrative simplification policies.

Practices and experiences

Single-purpose entities

These agencies are created specifically to promote one particular administrative simplification measure. Many "single-purpose" agencies are focused on small and medium-sized businesses, in recognition of the particular problems posed by the proportionality effect of administrative burdens on small entities. They are often permanent bodies, a fact that recognises that administrative simplification initiatives must be applied to new as well as existing regulation. Permanent status also allows them

to undertake longer-term work aimed at embedding a consciousness of simplification issues and their importance within regulatory agencies. Many of the activities of the single-purpose entities are indicative of the substantial prominence of technological approaches in the conceptions held by most OECD governments as well as to the nature of the administrative simplification task.

- The **United States**' Small Business Administration (SBA) was established in 1953 to provide special assistance to small businesses in receiving government grants and loans. The 1980 Regulatory Flexibility Act, which required special analysis of rules affecting small businesses created a "Chief Counsel for Advocacy" as a separate, presidentially appointed officer within the Small Business Administration to oversee agency implementation.
- The **British** Small Business Service, established in April 2000, is also a small business administration model. Its duties are primarily advocacy-based, strengthening the input of small businesses' views into the government process, in particular with regard to simplifying and improving the quality and coherence of business support. SBS has a strong institutionalised position in the regulatory process, for example the right to have its views recorded in the RIA in a wording of its own choice. The Small Business Service is the first institutionalised one-stop shop in the British central government.
- **France** has created an agency to promote administrative simplification via the use of new information communications technology (IT). "ATICA – *agence pour les technologies de l'information et de la communication*" provides technical support for the introduction of new IT applications in the administration.
- In the **United Kingdom**, a special agency – the Office of the e-Envoy (OeE) – was up to promote electronic government and IT-based service delivery across the public sector. The OeE works on the development of a government-wide strategy towards e-government and supports departments and agencies in the establishment and implementation of their e-government and electronic service delivery practices.

Some countries also have special units or committees promoting the use of plain language in laws and regulations:

- As mentioned in the section on Tools and practices, **France** established in 2001 the COSLA Committee (*Comité d'orientation pour l'amélioration du langage administratif*) to improve administrative language.
- **Sweden's** Ministry of Justice has a separate division for Legal and Linguistic Revision, and a "Plain Swedish Group", a forum appointed by the government in 1994 to encourage plain language projects throughout the government.

Administrative simplification agencies

France, Belgium and Italy have opted for the establishment at the centre of government of an agency dedicated to the promotion of administrative simplification policies.

- The **French** Commission on Administrative Simplification (COSA) was created in 1998 to specifically study, promote and review administrative simplification in France. COSA reports annually to the Prime Minister which includes the status of ministries' implementation of simplification plans. It is also responsible for designing tools to provide quantitative measurement of the actual impact achieved by those measures, for

example in relation to savings in time, number of procedures eliminated, or financial savings for users.

- In **Belgium**, the Agency for Administrative Simplification (ASA) was set up in 1998 as part of the policy to promote independent enterprises. ASA is attached to the Prime Minister of the federal government. The Agency has been given authority to adopt a cross-disciplinary approach. It is directed by a tripartite steering committee (social partners and government), and proposes measures to simplify the legal obligations and the procedures with which enterprises have to comply. The Agency prepares an annual programme, and submits reports to the Parliament on government action on administrative simplification. Three major objectives of ASA were identified when it was originally established: to propose, in collaboration with enterprises, all types of simplification measures; to develop a system to measure administrative burdens, and to design an *ex ante* regulatory impact analyses based on an administrative burdens perspective.
- In **Italy**, a Regulatory Simplification Unit, or Nucleo, has been operating between 1999 and 2002. Attached to the Prime Minister's Office, the Nucleo's main role was to prepare delegislation decrees and consolidated texts. It also provided support to ministries in making regulatory improvements, and provided opinions to DAGL (Department for Legal and Legislative Affairs in the Prime Minister's Office) on the quality of regulatory impact analyses and legal drafting assessments. Nucleo was composed of 25 professionals with expertise in law, economics, political science, impact analyses, European affairs, and linguistics.

Regulatory reform units

Many administrative simplification policies are policy-wise as well as organisationally integrated in governments' broader efforts to ensure high-quality regulation. Examples of this set-up include:

- **Australia's** Office of Regulatory Review (ORR) is located within the Productivity Commission, which was established in 1998 as the Commonwealth Government's principal advisory body on all aspects of microeconomic reform. The ORR vets and reviews draft regulations to ensure that they are properly formulated and that they include assessments of, among others, administrative costs for government, business and other affected parties.
- The **United States'** Office of Information and Regulatory Affairs (OIRA) was created in 1980 within the Office of Management and Budget under the Paperwork Reduction Act. OIRA reviews information collection requests under that Act, and acts as the centralised reviewing body for all regulations proposed by executive branch departments and agencies.
- **Mexico's** Federal Regulatory Improvement Commission (COFEMER) was created by law in March 2000 as an autonomous agency responsible for promoting and assessing administrative simplification and regulatory quality throughout the federal government. It succeeded the Economic Deregulation Unit in the Ministry of Industry and Trade. COFEMER performs a screening of all formalities before they can be included in the Federal Register of Formalities and Services. Any new regulation that leads to more paperwork is assessed in terms of its broader impacts. Failure to conduct a regulatory

impact statement in connection with new regulations and formalities constitutes an infringement of the law.

External committees

- In **Korea,** the development and promotion of administrative simplification policies is under the portfolio of the Regulatory Reform Committee (established by law in 1997). This law provides the Committee with a general mandate to develop and co-ordinate regulatory policies and to review and approve regulations, including administrative simplification. The Committee is composed by a majority of non-government representatives (academics, business), the Prime Minister and six other ministers. The Committee has played an active and crucial role in the development and implementation of regulatory reform and administrative simplification policies in Korea.
- In 1997, the **British** Government established a standing "Better Regulation Taskforce" (BRTF). Members of the BRTF were drawn primarily from a business background. The purpose of the Taskforce is to monitor and advocate "better regulation" rather than just deregulation. Its task is to advise the government on the effectiveness and credibility of regulatory measures by ensuring that they are necessary, fair and affordable. Furthermore, the BRTF is supposed to ensure that regulations are simple to understand and administer, while also accounting for the needs of smaller business and "ordinary" people. The BRTF publishes work and analysis and represents an advocacy body to motivate departments to consider a lightening of regulatory and administrative burdens. The BRTF also acts as an "informal gatekeeper". Via its early access to legislative and regulatory proposals it is able to influence the content of forthcoming initiatives.
- The **Australian** Small Business Deregulation Taskforce was formed in 1996. The Taskforce comprised six members from the private sector, predominately from small business backgrounds, together with a senior government officer. It was required to "advise on revenue-neutral ways to halve the paperwork and compliance burden on small business". The Taskforce's report was presented in November 1996 and largely agreed by the Federal Government in 1997, with implementation being undertaken progressively, in many cases in co-operation with State governments. Although the Taskforce recommended follow-up monitoring, the Taskforce itself ceased to exist following the delivery of the report.
- In 1998, the **Dutch** Cabinet formed a temporary advisory committee called the Committee for Reduction of Administrative Burdens of Enterprises (also known as the Schlechte Committee after its chairman). The purpose of the Committee was to propose or initiate administrative reduction projects. The Committee acted as an important catalyst in promoting administrative simplification and burden reduction, and by establishing awareness of the economic significance of administrative burdens. Members were representatives of small and medium enterprises, large enterprises, lower levels of government, accounting companies, political parties, the European Parliament, and specialists in public administration, organisational consulting, and communication. A Steering Group, consisting of top-level officials of the ministries, acted as the official "sparring partner" of the Committee. Through this Steering Group the involvement of the ministries was established, and administrative reduction initiatives were discussed and agreed upon in this forum.

- As a successor to the Schlechte Committee, the **Dutch** government in May 2000 created the Advisory Committee on the Testing of Administrative Burdens (ACTAL) to oversee the ministerial departments in their administrative simplification and burden reduction programmes. ACTAL is an independent organisation that acts as a watchdog and facilitator for the Dutch government, giving strong backing to the government's objective to bring about a 25% reduction in the overall administrative burden on enterprises. ACTAL is set up as a temporary organisation. It is expected to achieve its aims within 3 years and cease to exist in May 2003. Proposed laws and regulations and reports about existing laws and regulations have to be submitted to ACTAL. It advises the Cabinet and the Council of State not to consider any proposed laws or regulations that is not accompanied by an administrative burden statement. ACTAL consults with a business panel which represents around 500 enterprises. It also has regular contacts with employers' organisations of large, small, and medium sized enterprises, agricultural associations, and individual firms.

Conclusion and challenges

Governments' organisational and structural approaches to administrative simplification are imbedded in existing political and administrative practices and traditions. Though the country-specific context may constrain and shape available options, countries in principle must address the following issues when establishing the organisational framework for its administrative simplification policies:

- What relationship should administrative simplification have to broader regulatory quality programmes and to other policies such as public administration reform, e-government, competition policy, deregulation and privatisation?
- Should the promotion of administrative simplification policies rely on one (central) reform body or a set of them competing and pursuing different aspects of administrative simplification?
- Should administrative simplification policies rely on inputs and proposals from internal bodies, external advisory groups, or be a combination of both?
- Should the agency or committee promoting administrative simplification be purely advisory or should it be assigned control, challenge, and executive functions?
- Should administrative simplification bodies be temporary or permanent?

As for the choice of organisational approaches, the benefits and experiences with these organisational approaches also vary with the political and administrative context they appear in. However, some general lessons and experiences are emerging.

Generally, the experience of a number of countries suggests that a main obstacle to the development and implementation of programmes of administrative simplification can be a general cultural animosity to the dissemination of systematic principles of governance. Broad administrative simplification measures may be considered "intrusive" to the integrity of individual departments. This can be exacerbated where government structures and/or traditions mean that government departments possess a high level of independence in exercising executive power.

Single-Purpose Units promoting one particular aspect or feature of administrative simplification are widely used. These units most commonly have as their remit the improvement of administrative regulations for businesses and SMEs in particular. Other focus areas include plain language, IT application and public sector impacts. Clearly the

advantage of the organisational approach is the attention and focus provided to the particular area of concern. Dedicated units also provide opportunities for in-dept analysis and building up expertise. Intense political and administrative focus on one particular area of the administrative simplification agenda may however distort administrative simplification policies and regulatory reform policies toward one particular sub-area of the agenda. Such distortion may appear in terms of the political focus, human resources (expertise) and budgetary allocations. To avoid such distortion, procedures and objectives of single-purpose entity units must be integrated with broader administrative simplification and regulatory reform policies.

Administrative Simplification Units promote administrative simplification "across the board", *i.e.* for businesses as well as for citizens, not focussing on the application of one particular tool. This approach seems to be less wide-spread than single-purpose units. Under this approach administrative simplification is often seen as a relatively independent and high-priority policy area, not necessarily strongly linked to or subordinated to the broader regulatory reform agenda. This organisational approach shares the same pros and cons as the single-purpose units. The institutional basis provides visibility and drive, and may easily attract resources and expertise. On the other hand, there is a risk of distorting broader regulatory quality policies towards "sub-sets" of the regulatory policy agenda.

The best basis for developing and prioritising administrative simplification may occur where the promotion of administrative simplification is organisationally integrated into units responsible for the broader promotion of regulatory quality. In countries with this set-up administrative simplification is often integrated in (and subordinated to) the broader regulatory reform agenda. Nonetheless administrative simplification is often used as an important lever for other regulatory reforms. Most often being a win-win policy, administrative simplification policies rarely attract resistance from vested interest – in business as well as in government.

The use and success of an external advisory group will depend upon the degree to which the advice of the group or taskforce receives political backing and leadership within the governments. Even the best and most practical reform concepts from such bodies will wither and die without the political will to carry them through.

"Taskforces" are also often introduced in order to reduce the adversarial character which has shaped previous attempts and to delegate key responsibility for regulatory simplification to departments. Often taskforces have encouraged self-improvement within departments in order to support the embedding of a "better regulation culture" within the civil service. Thus the key emphasis has sometimes rested on establishing templates for actions for departments rather than detailed prescriptions on administrative simplification. This reflected the realisation that administrative simplification does not only depend on the enforcement of centrally set targets, but on the initiative of departments to develop best practices.

The key advantage of the use of a short-term taskforce is that it can provide a high profile and focused response to a political priority. If this response is properly targeted and formulated and includes practical and effective implementation plans, it can be very useful in implementing worthwhile administrative simplification measures. *Ad hoc* bodies along these lines are generally created where the simplification and burden reduction concept has attained a particularly high level of political prominence. Such situations provide the

opportunity to develop far reaching programmes through their high visibility and, in many cases, independence from the government administration.

However the *ad hoc* nature of a body can pose difficulties in ensuring implementation and follow-up. A further problem can arise in cases when the efforts on administrative simplification programmes are too personalised around a figurehead. This can make the initiative too dependent on the actual person, or fragile and unattainable when the leader terminates the task. Still, a standing taskforce model highlights the government's commitment to administrative simplification and it provides a focus for attracting reform ideas (from both within and without the bureaucracy). It may also act to educate the bureaucracy on private sector concerns and alternative approaches to regulation and devising methods of implementing reform initiatives in complex or politically difficult areas. Finally, it assists in educating private sector bodies on the difficulties and issues involved in implementing administrative simplification measures. This can create a broader understanding of the nature and dynamics of government reform processes.

In addition to the level of organisational integration of administrative simplification bodies into the broader regulatory reform agenda, another important distinction can be drawn between the actual roles of these bodies.[20] Three different roles can be identified. Firstly, bodies may be advisory, *i.e.* increasing regulatory capacities by publicising and disseminating guidance and by providing support to regulators. In these cases, administrative simplification is often based on self-assessment by the individual agencies and ministries. Secondly, bodies promoting administrative simplification may have a challenge function *vis-à-vis* any regulatory proposals that impose new (administrative) burdens on businesses and citizens. Such challenge may be in the form of an assessment putting pressure on the proponent regulatory to improve performance in accordance with a set of given criteria. Or it may in the form of a "veto", where the reviewing body act as a gate-keeper in the regulatory process. Bodies within government normally execute the advisory and challenge roles. The third role, advocacy, is often played by external bodies and committees. Advocacy refers to the promotion of long-term regulatory policy considerations, including policy change, development of new and improved tools and institutional change.

The roles assigned to the different administrative simplification bodies vary according to administrative culture and tradition, as well as over time. However, experience suggests that most administrative simplification policies and thus the roles assigned to the institutional drivers have relied primarily on advocacy and advice. Advisory and advocacy functions are clearly helpful preconditions for creating a fruitful environment for administrative simplification, including non-confrontational approach to administrative simplification. However leadership in the form of regulatory oversight bodies challenging as well as setting and enforcing targets for simplification may be needed to go beyond the limits of reforms that are primarily driven by self-assessment.

Conclusions

Efforts to systematically address administrative burdens began in most OECD member countries in the mid-1980s in response to regulatory inflation and the increasing complexity of public administrations.

Governments' administrative simplification policies are often promoted in a somewhat paradoxical political environment. On the one hand businesses and citizens are

complaining about administrative burdens and formalities, and putting substantial political pressure on governments to "cut red tape". On the other, there is an increasing demand from the same constituencies for more accountable, effective, fair and transparent government, most of which demands more targeted information requirements and regulations. This paradox emphasises that administrative simplification poses on-going and dynamic challenges to governments' information management.

This final section of the report presents some of the common themes of administrative simplification identified in the surveyed countries; it looks at implications of the links between administrative simplification and regulatory policy; and it identifies some issues and challenges on the administrative simplification agenda.

Common themes – institutions, policies and challenges

The alleviation of administrative burdens for enterprises and citizens is firmly on the political agenda in most countries as part of the broader regulatory quality and reform agenda. Most administrative simplification policies embrace both "framework" measures to encourage burden reductions, and specific initiatives to simplify and reduce administrative burdens. There is no clear tendency as to which level of government has been the primary driver of administrative simplification. In some countries, the national government has taken the lead, with the state and local governments playing a catch-up role. In other countries the situation has been exactly the opposite.

The country studies undertaken as part of this report indicate several broad similarities in the approaches to administrative simplification. At the same time, inevitable differences also exists in terms of institutional mechanisms, policy goals and areas of priority. The areas of similarity relate to policy approaches, institutional frameworks, and the tools and practices applied.

Administrative simplification in OECD countries has primarily been driven by ambitions to improve the cost-efficiency of administrative regulations. However many of the tools and practices applied to improve the cost-efficiency of administrative regulations have also lead to, or are supported by measures that improve transparency and accountability. Central co-ordination of reviews is an increasingly common feature in the policy approaches to administrative simplification. Central co-ordination of reviews responds to the perception that administrative burdens are widespread. Such reviews also increase the likelihood that many of the tools and solutions (see below) are of fairly general application. This may lead to a strong emphasis on consistent approaches and broad application of reforms, with central co-ordination being the means of achieving this. The focus of these reviews is inevitably on existing burdens, rather than quality control over newly proposed regulation. However, as discussed below, it appears that a trend toward greater emphasis on *ex ante* quality control (*i.e.* control during the preparation and drafting of a measure) is appearing.

In relation to institutions, two points of similarity can be noted from the current experience in OECD countries:

- Widespread use of "single-purpose" units or agencies targeting particular client groups (typically businesses or SMEs), or particular "sub-disciplines" of administrative simplification such as plain language drafting, forms on line, etc.
- Use of outside taskforces to provide input to government reforms, typically in carrying through or delivering input to broad reviews of existing regulations or licensing procedures.

The use of single-purpose units as well as outside taskforces appear largely to reflect the fact that administrative simplification programmes are seen as "client focused" initiatives, that have often arisen in response to sustained pressure from business groups, in particular.

In this context, outside taskforces – largely composed of members of the client group for the project – are likely to be seen as capable to reliably identify the priority areas for reform. At the same time, this approach also shifts a measure of responsibility for identifying solutions back to the client group. In addition, the use of external taskforces is likely to reflect the perceived need to take advice that is not tainted by bureaucratic conservatism and interests in maintaining the status quo. External taskforces appear to be perceived as a means to achieve rapid action, as evidenced by the often short reporting time lines provided to them.

- Commonly used practises and policy tools employed are such as one-stop shops, licence and permit simplification campaigns, special attention to the needs of small businesses, encouragement of alternative, less prescriptive, regulatory techniques, and a wide-spread use of IT-driven mechanisms.

The relatively recent trend toward IT-driven approaches does not represent a shift in thinking about the issues of administrative simplification *per se*. It is rather a specific manifestation of a broader trend to use technology as an important facilitator of government activities and interactions with business and citizens. It is difficult, however, to overstate the impact of information technology on administrative simplification programmes. It is probably no accident that many of the programmes discussed in this report began in the mid-1990s just as the "information revolution" reached the corridors of government. Many programmes, such as one-stop shops, burden estimation, paperwork reduction, and mapping of permit requirements are strongly facilitated by computer technology.

Nevertheless IT is not a panacea. It requires intelligent application if it is to yield maximum benefits. Even in the case of administrative regulations, IT mechanisms cannot always substitute the accountability, flexibility and "user-friendliness" of face-to-face encounters between citizens or business representatives with a "flesh and blood" administrator. Issues of privacy, security and digital divide remain pertinent.

Licence reform and simplification is occurring both through consolidation of licences and, more fundamentally, through re-examination and adoption of a more critical approach to licensing proposals or the retention of existing licences. One-stop shops have initially acted as information clearing-houses, reducing search costs for business by providing easy access to all licence and permit based information. This is an area in which there is good evidence for the success of the initiative, as measured in terms of cost savings to business, as well as high levels of client satisfaction. A more recent trend is for the logic of the one-stop shop to be extended toward becoming licence and permit issuing authorities. That is, in addition to being solely a burden reduction mechanism, one-stop shops have increasingly been used as an opportunity for process re-engineering. Bringing together the full range of information requirements, licences and permits required in relation to a given business tend to highlight areas of overlap and/or duplication and point out redundancies. However, experiences also show that benefits may be limited if changes only involve re-engineering the process by interposing an additional layer of government involvement, acting as a clearing house to expedite transactions within a pre-existing framework.

Finally, the focus on the needs of small businesses, found in almost all countries, clearly reflects the recognition that this sector is less well placed to deal with administrative burdens and so, conversely, stands to gain disproportionately from their reduction. This is an area in which *ex ante* approaches, of "small business friendly regulatory design" are becoming increasingly common.

Two commonly shared problem areas can also be identified. These are:

- Limited experience with systematic assessment or evaluation of burden-reduction techniques.
- Difficulties of co-ordination among government departments and between levels of government.

This report has highlighted that there is limited information available on the effectiveness of most of the initiatives pursued, even though some initiatives have been in place for a long time. Despite the revolutionary advances in the use of IT, good evidence-based data on the impact of the reforms described in this report are hard to come by. Governments are taking only first steps to set measures of the extent of the administrative burden and to set reduction objectives over time. This impedes the targeting of burden reduction policies and programmes of greatest need. It also suggests the importance of more systematic efforts to develop objective measures of administrative burdens and to track them over time, in order to be able to measure reform success and properly target reform priorities.

The activities of the Dutch and Belgian governments in devising measuring techniques deserve particular attention in this respect. It is clearly a major challenge to future programme design to close the "feedback loop" and refine policies as a result of the evaluation process. This should be a priority area for the future in most countries.

The need for effective co-ordination between government departments and between levels of government has become pressing in relation to some specific policy approaches in particular. These include one-stop shops, particularly in the context of recent attempts to re-invent these as licence issuing authorities. It also arises in the context of the design and operation of government Web portals, including the co-ordination between "government wide" or general portals and more specifically targeted ones. Further attention needs to be given to concrete strategies to develop and maintain this co-ordination.

Administrative simplification and regulatory reform

The prominence accorded to administrative simplification policies varies substantially between OECD countries. For some, these policies have remained a relatively minor component of their broader regulatory reform policies while, for others, administrative simplification constitutes the key element in regulatory reform efforts, with little activity undertaken on other regulatory quality issues. Some implications for regulatory quality policies can be identified in relation to the pursuit of administrative simplification.

First, from the perspective of regulatory reform authorities, pursuing administrative simplification policies can often represent a feasible and pragmatic approach. In most cases, regulatory agencies can be expected to be more willing to co-operate with such initiatives, as they do not threaten their prestige and authority to the extent that many fundamental regulatory reforms may do. Similarly, the likelihood of organised and sustained resistance from other vested interests is less in relation to simplification/burden

reduction programmes than for many initiatives to reform economic and social regulations. Again, their interests are less likely to be threatened fundamentally by the implementation of such programmes. It can be argued that administrative simplification policies constitute reform on a modest scale, and therefore have lesser risks attached to them. There is a smaller likelyhood that reforms will be derailed by concerted opposition from sectional interests, or by unanticipated problems in redrawing the regulatory architecture. Moreover, tangible results can be delivered within relatively short time lines that suit the political cycle.

Second – as an effect of the above-mentioned "attractiveness" of administrative simplification policies – there is a risk that these policies will divert the energies of reformers from other, sometimes more fundamental reforms. Administrative simplification programmes, while potentially important and linked to the achievement of a number of core governance values, cannot be a substitute for a rigorous regulatory quality programme. The issues of regulatory quality are broader than those dealt with via administrative simplification programmes. Moreover, as regulatory quality programmes become more comprehensive in their design and implementation, it can be speculated that the need for administrative simplification programmes may, to some extent, diminish. For example, the more extensive and rigorous use of regulatory impact analysis (RIA), which is occurring throughout the OECD, is likely to act increasingly as an effective *ex ante* control on the development of unnecessary red tape burdens. This mechanism, if effective, is clearly preferable to a reliance on *ex post* review. RIA being a more systematic approach must be preferred to the essentially *ad hoc* character of most simplification initiatives. The increasingly widespread requirement that regulators consider alternative policy tools also represents the adoption of more systematic approaches that can reduce the need for explicit simplification initiatives, as discussed above.

These factors suggest that a fruitful direction for future development of such programmes would be to investigate the options for more systematic approaches to burden reduction that can act in a mutually supportive way with other regulatory quality assurance measures. This would involve, for example, incorporating appropriate principles and guidance into regulatory "best practice" manuals for regulators, covering issues such as:

- The need to focus on licensing, permitting, or other "burden rich" forms of regulatory intervention.
- Adopting systematic approaches to minimising burdens in particular cases – for example taking a critical approach to information requirements, licence renewal periods.
- Identification of the affected group and of potential means of integrating administrative elements of a new regulatory requirement with existing programmes.
- Consideration of less prescriptive (and administratively burdensome) alternatives to administrative regulation.

In addition, it is clear that technological solutions have been applied successfully as a means of re-engineering existing programmes and reducing existing burdens. A more systematic, and potentially productive approach would involve focusing on the best possible use of technology at the design stage of new regulatory requirements. To date, little seems to have been achieved in this regard.

Notwithstanding the above arguments for a more systematic approach, it is likely that the important "policy co-ordination" role performed by administrative simplification

programmes will continue to be essentially *ad hoc* in nature. Simplification programmes frequently function as a means of improving the integration of a range of new and pre-existing policy initiatives – in particular, in relation to codification initiatives within administrative law contexts. It is to be expected that such a role would continue to be an essentially *ad hoc* one.

Trends and challenges

Ex ante vs. ex post *approaches*

A number of trends can be discerned from the administrative simplification policies in OECD countries. Among the most important is a gradual shift from an exclusively *ex post* focus to an increasing recognition of the need to work in an *ex ante* sense to ensure that unnecessary or unreasonable burdens are not implemented in the first place. As noted above, one key tool for this is RIA. These measures reflect a shift in logic, in which broader approaches are being taken and administrative simplification is increasingly linked with other aspects of regulatory quality programmes.

Programmes to amalgamate, abolish or simplify existing licences are now being supplemented by the issue of guidance that aims to ensure that they are adopted as a regulatory strategy only where they can be justified. This kind of specific guidance can supplement and add to the effectiveness of RIA approaches based on comparative analysis of different policy options.

As part of programmes to simplify licensing requirements, there is also an important and positive trend towards *ex post* notification instead of *ex ante* approval of certain economic activities.

Top-down vs. *bottom-up approaches*

A second trend is that, while simplification initiatives have generally been "bottom-up" in nature in past years, they are being supplemented more by "top-down" initiatives and increasingly integrated into broader government programmes. A prime example of this is the adoption of government Web portals and the merger of one-stop shops. These tools seek to improve the flow of both information and transactions between government, citizens and businesses across the board. Simplification initiatives such as one-stop shops and specific purpose portals are being integrated within this broader framework. The underlying logic of simplification as an element of SME policies, or of regulatory reform is to some degree thereby modified to incorporate links with broader objectives of governance, such as transparency and accountability.

Market-based frameworks

A third trend is that simplification seems to be driven increasingly by the adoption of market-based economic policies. Such policies are predicated on the presumption that economic agents should be free to conduct their business unless compelling arguments can be made for the need to protect sections of the public. This view is increasingly supplanting previous, more restrictive approaches that have seen the government as the regulator of the economy, and to differing degrees, seen government approval as the pre-requisite for economic activities. Much of the reduction in licences, permits and formalities in some countries is attributable to this shift, at least in part.

The dynamic and driving role of IT-driven mechanisms

Administrative simplification is increasingly driven by IT mechanisms. Firstly, because IT mechanisms are the most important "physical" enabler of burden reduction via mechanisms such as electronic reporting and one-stop shops. Secondly, because IT mechanisms create the possibility to expose "bad" forms and regulations on the Internet. This possibility generates very strong dynamics and pressures. Such pressures often go beyond aspirations for further "simplification" of regulations; they also lead toward substantial changes in the applied regulatory means and measures.

There is undoubtedly a learning curve for reformers in the simplification area, as in most policy contexts. One-stop shops that provide information are transformed into transactional portals. Agency Web sites are linked into government "gateways"; paper registers of procedures become searchable Internet-based versions; integrated Web-based data enables physical one-stop shops to expand their services; techniques for assessing costs, benefits and reporting burdens become more refined and sophisticated; and new techniques are developed for tutoring applicants or advising small businesses on compliance issues. But in each country studied, it is notable that these techniques have continued to flourish despite various changes in governments and that they retain the enthusiastic support of all political parties.

In closing, it is fair to say that there is a consensus around the need for *anyone* dealing with government to have better access to information, understand government requirements and plans, receive helpful and timely assistance, undertake required transactions with fewer costs, have decisions made more expeditiously, avoid duplicative efforts, and provide suggestions and other inputs to policy makers. From the government's standpoint, there is a need to maximise co-ordination, share and digest information promptly, transact its own business expeditiously, receive feedback from stakeholders, and measure and evaluate the impact of its actions. All of these needs are addressed in some fashion by the techniques discussed in this report. As illustrated in the report, the development of new tools and techniques show how innovative thinking and skilful use of IT in many areas are leading to new and more effective approaches to administrative regulation. "Smart tape" rather than "red tape" may soon be a more appropriate label for many governments' approach to administrative regulations.

Given the broad support for administrative simplification initiatives demonstrated in this report, the challenge for governments is to focus on the use of those that are most effective and efficient, particularly within their own institutional contexts. The techniques of administrative simplification described in this report provide a rich menu of possible approaches for consideration by all OECD countries as well as non-member countries. At the same time, a critical approach is needed to determine which tools are best suited to particular national circumstances. While the discussion contained in this part is necessarily abbreviated, substantial additional detail on experiences in implementing the various tools is contained within the country chapters, which form the next sections of the report.

Notes

1. See OECD (1997a), Similar recommendations can be found in the 1995 *Recommendation of the OECD Council on Improving the Quality of Government Regulation*, OECD, Paris.
2. OECD (2001); OECD (2000a).

3. The seminar was attended by representatives from Australia, Belgium, Canada, Denmark, Germany, Greece, Hungary, Italy, France Japan, Mexico, Netherlands, Norway, Poland, Portugal, Korea, Spain, Sweden, Turkey, United Kingdom, United States. For further documentation about the seminar see *www.oecd.org/gov*
4. See also OECD (2002).
5. For a broader presentation and discussion of IT's effects on public governance, see OECD (2003b) and the e-government Programme of OECD's Public Governance and Territorial Development Directorate, *www.oecd.org/gov*
6. The 8 Australian strategic priorities for e-government are: 1) Agencies to take full advantage of the opportunities the Internet provides; 2) Facilitation of enablers such as *authentication, metadata standards, electronic publishing and record keeping guidelines, accessibility, privacy* and *security*; 3) Enhancement of government online services in regional Australia; 4) Enhancement of the impact of the Government Online initiatives on development in the Australian IT industry; 5) Government business operations to go online; 6) Monitor best practice and progress; 7) Facilitate cross agency services; and 8) Communicate with Stakeholders. See at *www.govonline.gov.au/projects/strategy/index.htm*.
7. See OECD (2000c).
8. OECD paper, based on information provided by the Canadian authorities.
9. In 2001 a project "Benchmarking the Administration of Business Start-ups" was undertaken for the European Commission by the Centre for Strategy and Evaluation Services (CSES). The objectives of the study were to help Member States of the European Union to establish benchmarks, to make improvements in the registration process by identifying performance drivers and to identify examples of best practices related to administration of new business entities. The following two country examples originate from the project report available online at *europa.eu.int/comm/enterprise/entrepreneurship/support_measures/start-ups/benchm_summary_2002_en.pdf*
10. See OECD (2002).
11. See OECD (1999a), pp. 165-167.
12. See OECD (1999b), p. 140.
13. See OECD (2000b), p. 154.
14. For examples of international benchmarking of business licenses see for example BIE (1996) and the European Commission (2002).
15. See OECD (1997a).
16. OECD (2001), p. 53.
17. The US Office of Budget and Management, *Information Collection Budget*, annual yearbooks.
18. See OECD (2002).
19. See also van der Burg *et al.*, p. 276.
20. See also OECD (2002) for a discussion of these roles related to regulatory oversight bodies.

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ISBN 92-64-10067-9
From Red Tape to Smart Tape
Administrative Simplification in OECD Countries
© OECD 2003

Country Case Studies

ISBN 92-64-10067-9
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2

Administrative Simplification in Australia*

Abstract. *The focus of administrative simplification and burden reduction programmes has tended to shift over time in Australia, from an initial concern with information provision, towards a process re-engineering approach, followed by an emphasis on technologically driven projects. The reduction of red tape on small businesses has also received special attention over the last years. Specialised regulatory reform bodies and central agency policy groups have a strong record in driving initiative, while extra-governmental reform advisory bodies have also been in operation. Given the federal system of the country, sub-national initiatives have been as important as national ones.*

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* This report is based on a draft prepared by Nick McShane of Stenning & Associates with the assistance of Rex Deighton-Smith of Jaguar Consulting, Australia. The report has been fact checked and commented on by the Australian Government.

Introduction

The purpose of this report is to provide an overview of how key administrative simplification and burden reduction programmes and policies have been developed, implemented and performed in Australia over the last decade. The report will provide a broad outline of the background to, and historical development of, administrative simplification and burden reduction policies in Australia. It then examines in detail a number of key administrative simplification and burden reduction programmes and policies across a range of functional areas. This examination includes briefly discussing the specific background to the selected programme or policy, describing its key features, outlining how they have been applied, evaluating their results and performance and commenting on the perspectives for improvements and the evolution of such programmes. The report concludes with a summary of the key lessons learned overall from Australia's experience.

Australia's federal structure[1] and the split of legislative and expenditure responsibilities between the Commonwealth and State governments under the Australian Constitution has significant implications for the examination of administrative simplification and burden reduction programmes and policies. Specifically, this structure has meant that sub-national initiatives have been equally as important as national initiatives in the development of administrative simplification and burden reduction programmes and policies. In particular, Australia's federal structure has meant that for many programmes and policies to be effective, a co-operative approach is required from the national and sub-national governments to ensure the maximum burden reduction benefits. This often requires supporting inter-governmental legislative, financial or administrative infrastructure or frameworks.

Accordingly, this report examines a number of co-operative initiatives and programmes involving national and sub-national levels of government, together with some specific initiatives and programmes at a sub-national level. This helps to provide a broad understanding of the issues associated with administrative simplification programmes and practices in Australia.

Background and historical development

The history of regulatory reform programmes in Australia, at both Federal and State Government levels, can be traced back to the mid-1980s. Administrative simplification and burden reduction programmes have constituted an important part of these broader regulatory reform programmes from the early years of their implementation. This can be seen as a reflection of the fact that regulatory reform policies in Australia have always incorporated a strong focus on regulatory quality concerns.

A review of the development of administrative simplification and burden reduction programmes indicates that their focus has tended to shift over time, from an initial concern with information provision, toward a process re-engineering approach, and then

to an emphasis on technologically driven conclusions. Of course, these characterisations of the evolution of policy on administrative simplification and burden reduction are generalisations only and are subject to a number of exceptions. For example, it is arguable that licence information systems, which are generally regarded as information-based initiatives, also represent a "technologically driven" solution, since their inception in the 1980s coincided closely with the appearance of the technology required to make them a reality.

Nonetheless, it is argued that this view of policy development is broadly explanatory and the detailed discussion of individual policies contained in the section on Selected policies and programmes of this paper is, accordingly, organised along these lines.

While both levels of government have long involvements with administrative simplification and burden reduction policies, a key distinction can be made between Federal and State Government approaches. In general, the States have a longer history of implementing policies that are specifically concerned with administrative simplification and burden reduction, while programmes and policies at a national level have, until recent times, tended to be mainly sub-components of larger Commonwealth reform programmes.

This, in turn, reflects the fact that, at a national level, for several decades the focus has been predominately on major macroeconomic and microeconomic reform programmes and structural adjustment policies. This was prompted by concerns about Australia's declining relative prosperity, which saw Australia's per capita GNP fall from being one of the top OECD countries to the bottom third of OECD countries within a few decades, largely due to poor productivity in key infrastructure industries such as ports, railroads, electricity generation, and telecommunications. These problems were, in part, attributable to structural distortions in Australia's labour and product markets caused by regulatory and other constraints.

This Federal focus has seen, over a twenty year period, major tariff reductions and subsidy cuts and significant reforms over a wide range of areas, including the financial, telecommunications, land and marine transport, domestic aviation, electricity, gas, and communications sectors, together with labour market and public sector reforms. As has been the case in other OECD countries, the focus of such programmes and policies has been to improve the competitiveness of both national and sub-national economies. Within this context, identifiable administrative simplification and burden reduction initiatives have been those that relate also to wider economic efficiency and market reform goals, including mutual recognition and the certification and product approval reforms implemented within the building industry.

Thus, the initiative by the incoming Commonwealth Government in 1996 to establish a major red tape reduction programme, through the establishment of a Small Business Deregulation Taskforce, constituted something of a departure for the federal government. This initiative followed from a Government election commitment to halve red tape for small business. The Government's response to the recommendations of this Taskforce has provided the mainstay for administrative simplification and burden reduction measures at the Federal level over the past five years.

Importantly, the implementation of the Taskforce's recommendations required considerable co-operation between the Commonwealth, State, and Territory Governments. The same observation can be made in respect of the building industry reforms noted above. It is arguable that administrative simplification and burden reduction is an area of

Box 2.1. **Examples of advisory bodies used to assist with regulatory reform in Western Australia**

Review of the Project Development Approvals Process (Keating Review)

An independent review committee is examining the approvals process for major projects in Western Australia. The objective of the review is to develop a system of government decision-making that is co-ordinated and integrated, clear and unambiguous, balanced between community and developer needs and that will lead to Western Australia being the global location of choice for project investment.

The scope of review is the primary approval process. A discussion paper "Review of the Project Development Approvals System" was released in January 2002. The final report was released in May 2002 and public comment on the final report has now closed. The report will now be considered by the Cabinet Standing Committee on Economic Policy.

Some of the report's key recommendations include:

- Greater use of timelines to improve levels of certainty and predictability;
- Allowing the Western Australian Government to undertake environmental assessments on behalf of the Commonwealth; and
- An integrated approvals system for projects of "State significance".

Business tax reform

The Western Australian Treasurer has formed an independent reference group to assist in carrying out a comprehensive review of business taxes. The review will examine all state taxes with the objective of improving the efficiency, equity and simplicity of the State's tax system. A reference group assisted with the review and a draft White Paper was released in June 2002. The public comment period has now closed and the reference group is preparing advice to the Treasurer.

Review of civil and administrative boards and committees

The proposal to establish a single State Administrative Tribunal to replace 40 Western Australian tribunals and boards is the major recommendation of the Western Australian Civil and Administrative Review Tribunal Taskforce. The proposed Tribunal would handle a wide range of appeals including town planning, strata titles, land valuation as well as registration of builders and painters. A discussion paper was released in July 2002 and is available at *http://167.30.48.105/content/files/sat_report.pdf*.

Regulation review panel

In Western Australia, a Regulation Review Panel examines government regulation and regulatory practices which may adversely impact on, or unnecessarily impede, business operations with a view to developing positive recommendations on ways to overcome this. The Panel also plays a key role in progressing issues identified through the Red Tape Buster Service, which is provided by the Small Business Development Corporation (SBDC), and involves the SBDC working with small business operators and their representatives to take an industry-specific approach to the identification of red tape issues.

The range of regulatory issues considered by the Panel is not restricted, although its primary focus is on the identification of existing State regulations which have direct impact on Western Australian small businesses. Membership of the Regulation Review Panel is drawn from representatives of industry associations with a strong interest in small business.

policy in respect of which the federal nature of Australia's government is a crucial element, and that there has been an increasing recognition of this fact in recent years and a consequent focus on ensuring federalist co-operation in advancing reform initiatives.

In this respect, the establishment of Special Premier's Conferences (SPCs) in 1990, (replaced by the Council of Australian Governments (COAG) since 1994) as a standing forum, or mechanism, for federal/state co-operation on a wide range of policy issues, was a key turning point in the development of co-operative approaches by the Commonwealth, State, and Territory Governments. SPCs and subsequently COAG provided the forum for united political leadership from Australian governments to pursue a wide range of microeconomic reforms and structural adjustment policies. At the same time it enabled a co-ordinated and consistent approach to regulatory reform efforts, including administrative simplification and burden reduction programmes and policies. Key administrative simplification and burden reduction initiatives that have been advanced under the SPCs and COAG include the adoption and implementation of mutual recognition, the implementation of co-operative reforms arising from the Small Business Deregulation Taskforce, the legislation reviewand transport reform, and the water and energy reforms components of National Competition Policy (NCP).

Current environment

Impetus for administrative simplification and burden reduction

Administrative simplification and burden reduction policies and programmes have, unsurprisingly, been supported consistently by key industry and small business organisations such as State and regional Chambers of Commerce and various State manufacturing, retail and agricultural industry organisations. At a national level, key proponents include the Australian Chamber of Commerce and Industry (ACCI), the Business Council of Australia, the National Farmers Federation, and other similar national associations.

However, this is not to say that administrative simplification and burden reduction programmes have been primarily driven by business or other private sector interests. While such bodies have supported, and often lobbied for, these programmes, their lobbying has largely been of a generic nature and has rarely included the advocacy of specific and detailed programmes of reform. Similarly, Australia on the federal level, has made only very limited use of the model of external advisory committees as a means of determining and/or driving a regulatory reform agenda, unlike many other OECD countries. What use it has made of this model has, in general, been quite recent. As noted elsewhere in this report, the recent use of this model has included the establishment of the *ad hoc* Small Business Deregulation Task Force, which was responsible for identifying and recommending a range of burden reduction initiatives. It thereby represents something of a point of departure, being the first time that a detailed programme of this type has been developed by private sector interests – albeit in a forum commissioned explicitly by government.

Over the longer term, the impetus for administrative simplification and burden reduction programmes can be seen as deriving primarily from the specialist regulatory reform bodies. The first of these bodies were created in Australia since 1985 by the Federal Government and the Government of the State of Victoria.

From the perspective of regulatory reform authorities, pursuing administrative simplification and burden reduction policies can often represent a feasible and pragmatic approach to regulatory reform. In most cases, regulatory agencies can be expected to be more willing to co-operate with such initiatives, as they do not threaten their prestige and authority to the extent that many fundamental regulatory reforms may do. Similarly, the likelihood of organised and sustained resistance from other vested interests is less in relation to simplification/burden reduction programmes than for many reform initiatives: again, their interests are less likely to be threatened fundamentally by the implementation of such programmes.

Within this context, it can be noted that Australia's specialist reform bodies have not, historically, been located in the centres of government. For example the Federal and Victorian units were located in the industry department at the time of their establishment, as was the Queensland unit when it was established in 1989. The Queensland unit has stayed in the industry department. The Victorian unit was transferred to the newly created small business ministry in 1991.

For regulatory reform authorities that were struggling to meet high expectations of programme effectiveness while usually lacking the necessary political support and authority within the administration, a focus on such "pragmatic" reform policies is to be expected. This is not to argue against the effectiveness of the policies pursued, but rather to indicate that there were specific historical factors that favoured the pursuit of such policies.

Institutions

The government institutions in relation to administrative simplification and burden reduction in Australia are much the same as those involved in regulatory management and reform. The key institutions are briefly described below.

Specialised regulatory reform bodies

The Commonwealth and most States and Territories have established specialised regulatory reform bodies. The functions and the operations of these bodies can vary significantly, however, a common role is to oversee the regulatory reform processes instituted by the jurisdictions and to advise or assist agencies in relation to regulatory reform issues. At the Commonwealth level, the Office of Regulation Review is located within the Productivity Commission (formerly the Industry Commission), which is an independent advisory body on industry policy and microeconomic reform issues.

Through their scrutiny of regulatory proposals, the work they undertake with regulatory agencies and the independent advice they provide to Government, these regulatory reform bodies play an important role in administrative simplification and burden reduction. Increasingly over the past decade, most of these bodies have worked with agencies to improve the quality of regulatory proposals by ensuring that their purpose is properly focused and that regulatory objectives are achieved with the minimum adverse impact on business and consumers.

Technology adoption-facilitative agencies

All Australian Governments have in recent years adopted firm policies to embrace emerging Internet technologies through e-commerce or e-government initiatives. To oversee these policies, many governments have established facilitative bodies within the bureaucracy, either as new agencies or as part of existing ones. For example, the

Commonwealth has established the National Office of the Information Economy, Victoria has established Multimedia Victoria and Queensland set up an Innovation and Information Economy portfolio. The New South Wales government has created the Department of Information Technology and Management to facilitate technology uptake. These agencies or bodies are emerging as key influences and facilitators regarding the way in which governments are adopting e-commerce and e-government initiatives. While it is early days yet, they have the potential, either directly or indirectly, to assist in the development of administrative simplification measures through encouraging and working with other government agencies in the adoption of new technology.

General inter-jurisdictional government bodies

A key regulatory trend in Australia since the late 1980s has been that of "co-operative federalism," in which extensive efforts are made to ensure regulatory harmonisation or uniformity in areas that are the responsibility of State governments. This trend arguably slightly pre-dates the development of mutual recognition legislation in Australia, but is clearly related to it. The harmonisation/uniformity agenda is generally advanced through the establishment of a range of inter-jurisdictional forums – most commonly Ministerial Councils, which bring together the responsible Ministers in each jurisdiction and function as the final decision-making body, and are shadowed by an equivalent body of officials that also provides secretariat support. In priority reform areas, standing inter-jurisdictional bodies are often created at the administrative level and are staffed by officials from all participating jurisdictions. It should be noted that the Federal Government often plays a leading role in the establishment and operations of these bodies, notwithstanding that they operate, by definition, in areas of State government policy responsibility.

Given the focus on harmonisation and uniformity in this context, the operations of these bodies are clearly important drivers of much simplification and burden reduction activity. As indicated earlier, administrative simplification and burden reduction programmes and policies at a national level have often been sub-components of other reform programmes. Box 2.2 describes their operations in more detail.

External advisory groups

In general, it can be stated that Australian Governments have made relatively little use of external advisory groups as a means of identifying and advancing administrative simplification and burden reduction initiatives – or indeed of driving regulatory reform more generally. Two early examples were the Tasmanian Government's Deregulation Advisory Board, established in the early 1980s to advise on red tape reduction, and the Queensland Government's Savage Committee, established around the same time for a similar purpose. Such early bodies had mixed success, with their performance in large part dependent on whether their sponsor government was serious about reform, or was simply using such bodies as political "window dressing". In general, the use of specialist regulatory reform bodies within the administration was favoured by Federal and State governments, notwithstanding these early experiments.

More recently, however, there has been a move in some jurisdictions to supplement their regulatory reform bodies with other external advisory group mechanisms, in particular, specialist red tape reduction taskforces. The use of taskforces (or boards, committees, inquiries, etc.) has been utilised in many other areas of government over recent times, particularly at the Commonwealth and inter-jurisdictional level. However, it

Box 2.2. **Ministerial councils and other specialised inter-judicial bodies**

Ministerial councils exist in a wide range of portfolio areas and ultimately report to the Council of Australian Governments (COAG). They are a commonly used mechanism for initiating, overseeing and implementing inter-jurisdictional reform regarding their relevant policy areas. In recent times, ministerial councils have been given a wide range of reform tasks to implement that have been derived from "whole of government" reform programmes, such as the National Competition Policy (NCP) (see Section on National Competition Policy) and the Federal Government's implementation of the recommendations of the Small Business Deregulation Taskforce (see Section on Business approvals packages).

However, given competing jurisdictional interests, ministerial councils can often be limited in the extent of change that they can achieve. Further, the role of Ministerial Councils should not be understood as being simply that of regulatory reform bodies, in the narrow sense of being bodies that are fundamentally committed to improved regulatory quality and the associated search for the correct mix of deregulation, re-regulation and improved regulatory quality. The Councils are, fundamentally, a forum for regulators from nine different jurisdictions with specific portfolio responsibilities. Thus, they are not equivalent to specialist reform bodies in the sense that they cannot be expected to take consistently a broad, social welfare-based view of policy issues. Given this, a number of dynamics operate that will mean that their endeavours may lead to increased burdens as often as reduced burdens.

In practice, Ministerial Councils have very often operated to devise new regulatory schemes that impose greater burdens than existing ones. Indeed, it can be argued that they have contributed to regulatory inflation as the search for national agreement on regulatory standards has led in the direction of a "race to the top" – particularly in contexts in which not all jurisdictions have previously adopted regulation. It can also be argued that the desire to reach agreement has sometimes resulted in the adoption of less than optimal regulatory arrangements.

These trends were identified by COAG's Committee for Regulatory Reform (CRR), which developed the *Principles and Guidelines for Standard Setting and Regulatory Action* as a response. The Principles and Guidelines were formulated as a means of assuring regulatory quality in the context of the activities of Ministerial Councils and are the mechanism that requires proposals involving regulatory burdens to undergo a sound Regulatory Impact Assessment (RIA) process as part of the national development process, rather than as part of the process of adoption by each State jurisdiction, as was previously the case. These Principles were endorsed by COAG as part of its NCP implementation and COAG now requires all ministerial councils and standard setting bodies to comply with them.

Importantly, the principles have effectively extended the application of the RIA methodology to many important national primary legislative proposals regularly developed by ministerial councils that otherwise would not be been subject to such analysis, as well as subordinate and quasi-regulatory proposals regularly developed by various government and quasi-government inter-jurisdictional standard-setting bodies. The Principles also promote administrative simplification and burden reduction by incorporating:

- A presumption against regulation;
- A principle of "minimum necessary regulation";
- A principle of least trade restrictiveness, including a presumption in favour of adopting existing international standards; and
- A presumption in favour of performance-based regulation and of regulatory flexibility.

Box 2.2. **Ministerial councils and other specialised inter-judicial bodies** *(cont.)*

This development has provided clear criteria against which new regulatory proposals can be judged, thereby adding rigour to the operations of ministerial councils. To the extent that its RIA disciplines and regulatory principles requirements improve upon some of the State-based policy development processes, it is possible to argue that regulatory quality assurance has been improved as a result of the proliferation of Ministerial Councils. However, there are now concerns regarding the proliferation and operations of Ministerial Councils, and COAG agreed in June 2001 to a number of measures to streamline the operation of Ministerial Councils, including the rationalisation of a number of Ministerial Councils. As noted above, underlying this concern is the question of whether the Councils are, in effect, acting as agents of regulatory inflation.

It can be argued that the role of the Ministerial Councils is in some ways analogous to that of the European Commission – on the one hand, they have tended to promote the single market and the modernisation of regulatory standards while, on the other, they are often believed to be the agents of regulatory inflation.

Although Ministerial Councils are supported by shadow forums of senior officials, they do not always have dedicated secretariats. However, once a major reform area has been identified and jurisdictional agreement on direction attained, it is becoming increasingly common for such standing secretariat bodies to be established by the Commonwealth in conjunction with the States and Territories and to be given carriage of the reform implementation. Some examples in this vein include the:

Australian Building Codes Board – which has overseen the establishment of a nationally uniform approach to building regulation;

Australian National Training Authority – which is similarly establishing a nationally consistent approach to the provision and regulation of industry training;

National Occupational Health and Safety Commission – which develops policy and regulation in relation to occupational health and safety and has been responsible for a major harmonisation programme.

Australian and New Zealand Food Authority – which is responsible for the reform and ongoing management of Australian and New Zealand food standards; and

National Road Transport Commission – which is co-ordinating a raft of national reforms in the road transport area.

These bodies tend to be staffed by officials from a range of participating jurisdictions and ultimately report to Ministerial Councils. They have been and are involved in significant reform initiatives that have, or can, deliver important administrative simplification and burden reduction outcomes as part of a broader reform programme. However, it is also clear that their greater resourcing (vis-à-vis the ad hoc secretariats normally serving Ministerial Councils) also necessarily increases the tendency for them to be drivers of regulatory inflation.

is only since the mid-1990s that these approaches have been utilised in relation to red tape reduction policies in any substantive way.

The two key examples of the use of taskforces regarding administrative simplification are the Small Business Deregulation Taskforce established by the Federal Government and the Red Tape Reduction Taskforce established by the Queensland Government.

In both cases, the membership of the taskforces has been drawn from a narrow range of interests, essentially representing business and, in particular, small business. This reflects what is arguably a trend toward an increased focus on improving the business environment as the fundamental goal of regulatory reform policy in Australia, as well as an increasing level of explicit policy concern with small business.

The taskforces are seen to combine the private sector's perspective on reform priorities and problem areas with bureaucratic expertise and knowledge of the workings of government, provided through secretariat support. They can also serve as a useful tool for consulting widely with stakeholders, with their independence ensuring that such stakeholders see them as credible. A key problem for both types of taskforce is trying to distinguish real problem areas from less substantive issues raised by stakeholders that, nonetheless, have significant superficial attraction.

As can be seen from the discussion of these examples below, their usefulness in achieving administrative simplification is varied. In general, these bodies can provide governments with a useful insight into those areas where administrative simplification and burden reduction is required. However, their effectiveness varies depending on the appreciation of taskforce members of the complexities of the workings of governments, their ability to provide frank advice, the extent to which their stakeholder Minister is prepared to "champion" their work in Cabinet, and the willingness of Government to accept and implement their recommendations.

The advantage of the use of a short-term task force is that it can provide a high profile, focused response to a political priority, that is, they can "strike when the iron is hot". If this response is properly targeted and formulated and includes practical and effective implementation plans, then it can be very useful in implementing worthwhile administrative simplification measures. It is understood that this was largely the reason behind the Federal Government's use of this task-force model. On the other hand, *ad hoc* taskforces, such as the Federal Government's, do not participate in the implementation of reform measures and can therefore overlook major issues that can affect the ultimate success or otherwise of such measures.

The Queensland Government opted for a standing task-force model. Key reasons for this decision included:

- It highlights the Government's commitment to red tape reduction;
- It provides an ongoing focus for attracting reform ideas (from both within and without the bureaucracy);
- It acts to educate the bureaucracy on private sector concerns and alternative approaches to regulation and devising methods of implementing reform initiatives in complex or politically difficult areas; and
- It assists in educating private sector bodies on the difficulties and issues involved in implementing administrative simplification and burden reduction measures, thereby creating a broader understanding of the nature and dynamics of Government reform processes.

In both instances, the use and success (or otherwise) of this type of approach will depend upon the degree to which the advice of the external group or taskforce receives political backing and leadership within the governments. Even the best and most practical

reform concepts from such bodies will wither and die without the political will to carry them through.

The relatively limited use of taskforces as a regulatory reform tool – including as a tool of administrative simplification and burden reduction programmes – may be seen as an outcome of aspects of Australia's political culture. A "culture" of widespread consultation has rapidly become established over the past 15-20 years, although there was little longer-term experience with this model of policymaking. However, the approach to consultation that has developed maintains a clear division between the active role of government – which manages the consultation – and that of the governed, who are "consulted". It is arguable that the taskforce model has generally been seen as inimical to this notion of a clear "inside/outside" distinction between government and the governed. It is too early to speculate, on the basis of two recent high profile uses of the taskforce model, whether they may be harbingers of a wider change in approach.

Small business deregulation taskforce. In 1996, the incoming Commonwealth Government established the Small Business Deregulation Taskforce as a consequence of its election commitment to reduce the paper and compliance burden on small business by 50%.

Significantly, the establishment of the Taskforce and the Commonwealth's response to its recommendations was, perhaps, the first major programme undertaken at a national level that focused specifically on administrative simplification and burden reduction.

The Taskforce was required to "advise on revenue-neutral ways to halve the paperwork and compliance burden on small business".[2] The Taskforce comprised six independent members from the private sector, predominately from small business backgrounds, together with a senior government officer. The Taskforce was given six months to report back to the Commonwealth Government and was provided with a secretariat by the Department of Industry, Science and Tourism.

Its terms of reference specified that its investigations should include, but not be limited to:

- Statistical collections.
- Taxation compliance.
- Commonwealth regulatory requirements.
- Commonwealth interactions with State and local government business regulation and compliance requirements and the overall Commonwealth/State/local government regulatory environment.
- The potential contribution of existing Commonwealth and cross-government regulation reform mechanisms to the Government's regulation reform objectives.

The Taskforce presented its findings, incorporated in 62 recommendations in November 1996. The Commonwealth Government, following consultation with State and Territory Governments and the Australian Local Government Association (ALGA), provided a comprehensive response to the Taskforce in March 1997, titled *More Time for Business*.

In this response, the Commonwealth Government agreed in full, in part, or in-principle with almost 90% of the Taskforce's recommendations. The response outlined a detailed action plan and tentative timeline for the implementation of the majority of the agreed-to recommendations. Included in its response was the establishment of a formal reporting framework to monitor progress in implementation, which involved the

Commonwealth Minister for Small Business and Consumer Affairs, in consultation with the Assistant Treasurer, taking responsibility for monitoring and reporting to the Commonwealth Cabinet on progress. The Minister was also responsible for co-ordinating a number of processes in consultation with jurisdictions and the ALGA.

While the implementation of many of the Taskforce's recommendations concerned matters wholly within the Commonwealth's domain, some 27 of the Taskforce's recommendations involved the co-operation of the States. Most of the co-operative reforms were to be advanced under the auspices of COAG or various Ministerial Councils[3] reporting to COAG.

Upon the presentation of its report, the Taskforce was disbanded, with responsibility for implementation and the on-going monitoring of progress being devolved to relevant agencies.

The Taskforce was the Commonwealth's first major foray into administrative simplification and burden reduction policies and programmes. Importantly, the work of the Taskforce enabled the Commonwealth to develop an understanding of the extent of the administrative burden it imposes on small business and a focus on initiatives that can assist in reducing that burden.

A key feature of the Taskforce's work appears to be its intent to change the regulatory culture by encouraging agencies to systematically consider a variety of regulatory reform and burden reduction measures. These range from the review and integration of forms, the adoption of minimum impact and performance-based regulation, the consideration and adoption of alternatives to administrative regulation, the improvement of regulatory services through the employment of new technology, increased electronic publication of regulatory related information, licence reform and reduction, licence term extension, and so on.

However, as the responsibility for the implementation and monitoring of progress has been devolved to relevant agencies, there are few whole of government mechanisms for identifying further areas of reform. The Government has maintained a focus on administrative simplification and burden reduction by changing the regulatory culture, particularly through regulation impact statements which require Government Agencies to analyse the cost and impact of regulatory options they put forward.

Queensland Red Tape Reduction Taskforce. The Queensland Government initially established the Red Tape Reduction Taskforce in 1997, and then re-established it in 1999 following a change of Government. The purpose of the Taskforce is to provide a forum for the private sector to communicate with the Government on how to improve regulatory relationships with the State's business sector. The Taskforce comprises ten private sector members, together with an ex-officio Government member and reports to the Minister for State Development. The Department of State Development's Business Regulation Reform Unit provides the Taskforce with administrative support.

The Taskforce's role is to identify key strategic issues impacting on the progress of regulatory reform in Queensland and to undertake projects to develop strategies to address these issues from a whole-of-government perspective. Its key areas of strategic concern include:

- The initial assessment of the need for regulation.
- The need for increased regulatory efficiency within government and between government and clients, especially in those business sectors/clusters identified as actual or potential high growth areas.

- The reduction of the compliance burden for business associated with government regulation.
- The promotion of cultural change in government away from regulatory command cultures and reliance on prescriptive regulation towards an increased use of alternative regulatory and non-regulatory approaches within government-agreed frameworks.

The Taskforce's work programme is developed from a variety of sources, including:

- Existing regulatory reform projects and associated research.
- Projects referred to it by the stakeholder Minister.
- New projects developed by the Taskforce and approved by the stakeholder Minister.
- Projects arising from the Taskforce's work with industry forums, business sector, and cluster work of the Department of State Development.

In essence, the concept behind the establishment of the Taskforce is similar to that of the Commonwealth's Small Business Deregulation Taskforce, the exception being that it has an on-going role of advising government on a range of regulatory reform issues, of which administrative simplification and burden reduction comprise only a part.

From an administrative simplification and burden reduction perspective, the existence and work of the Taskforce is important as it provides a focal point for ensuring that Government addresses those areas that are seen to be particularly onerous or burdensome by business. In particular, the independent advice provided by the Taskforce assists the Government to appropriately identify and prioritise administrative simplification and burden reduction issues and initiatives by providing a user's perspective on what is likely to be most beneficial to business. Perhaps most importantly, the continued existence of, and work done by, the Taskforce provides a key public measure of the Government's political commitment to regulatory reform and red tape reduction.

While some of the projects undertaken by the Taskforce have direct burden reduction implications, many of them are concerned with improving regulatory frameworks or working with agencies or local government to identify and implement specific burden reduction initiatives. This type of work is typical of that undertaken by many State regulatory reform bodies around Australia, which have generally developed two distinct roles:

- Establishing, improving and maintaining regulatory assessment and reform frameworks aimed at ensuring that new primary or subordinate legislation meets minimum quality requirements.
- Working with or "coaching" agencies to determine minimum impact approaches to the development of new legislation and regulation and, through the review of current regulatory arrangements, identify regulatory and burden reduction reforms to existing regulatory arrangements.

Selected policies and programmes

Information-based programmes

Business licence information services

Description. Licensing is a widespread form of government intervention in business activities and one that is widely believed to have the potential for serious economic harm, particularly because of its anti-competitive potential. A licence can be defined as "A notification which also requires prior approval as a condition for conducting prescribed

business activities and compliance with specified minimum standards – breaches of which may result in the suspension or revocation of permission by a specified agency".[4]

Because of the proliferation of business licences, the issue of access to licensing requirements has become prominent. For business, the search costs involved can be considerable, while the problem of ensuring compliance with all relevant requirements is clearly of concern to both business and government. The concept of the Business Licence Information Service (BLIS) arose in Australia in the late 1980s in order to deal with these issues. Pioneered by the Victorian Regulation Review Unit (now the Office of Regulation Reform), every State and Territory in Australia has now implemented an equivalent service. Some jurisdictions have also taken steps to incorporate other business processes in their services (*e.g.*, codes of practice data have been incorporated into the Victorian service[5]).

The Victorian BLIS arose from an identified opportunity to add to the services provided by the Victorian Government's small business advisory service.[6] Initially, only State licences were incorporated. However, over time further content has been added in the form of Commonwealth and local government licences and information on codes of practice. The subsequent development of BLIS systems in the other States and territories has also generally mirrored these developments.

One reason for this was the identification, in 1996, by the Federal Government's Small Business Deregulation Taskforce of BLIS centres as a key mechanism for delivering pertinent government information to small business. The Taskforce recommended the enhancement of the BLIS and, in response, the Prime Minister committed the Government to "developing a comprehensive national business information service by 30 June 1998 that builds on the existing Business Licence Information Service and Bizlink services".[7] As a result, a major initiative by the Federal Government was a project to incorporate local government licence data in the various State Business Licence Information Services.

The various business licence information services reduce administrative burdens for business by reducing the information search costs incurred in trying to establish their regulatory compliance obligations. The services act as one-stop regulatory information shops, identifying relevant licences and providing application forms, information and contact details. This removes the need for businesses to have an understanding of the fabric of government in order to determine their compliance obligations.

Application. BLIS services were initially provided via telephone call-up and over-the-counter services, and have subsequently been made available via CD-ROM and the Internet. Underlying each service is a comprehensive database of licensing information that is collected from regulatory agencies and supported by regular updating and maintenance systems.

Generally each service provides clients with tailored business licensing information packages that contain:

- A summary of the State and Commonwealth Government licences required for the particular business.
- The contact details of the agency which administers each licence.
- Licence application forms, combined where possible.
- Details of licence fees, periods of cover and renewals.
- A listing of all government support programmes available to business.

The Victorian Business Licence Information Service (BLIS) provides a good example of the development and evolution of business licence information services across Australia. The Victorian BLIS, like other similar services, provides a single point of access for State, Commonwealth and local government licences, including application forms. While the service is primarily aimed at providing information for prospective new businesses, it also provides information on licence renewals, transfers and general regulatory issues concerning business expansion.

The Victorian BLIS, originally began service in 1988 in a telephone call centre format. Initially covering only Victorian licences, Federal licences were subsequently added. In 1999, the BLIS was expanded by adding local government licences and implementing an improved data classification *methodology that involved three categories of licences for each business activity*:

Principal licences: Licences or permits particular to a specific business activity (*e.g.*, travel agent's licence).

Related licences: Licence or permits that might be relevant to a particular business, depending on the exact nature of its operation (*e.g.*, selling of alcohol in a café).

General licences: Licences that relate to nearly all business (*e.g.*, business name, employing staff, playing music in a store, etc.).

The BLIS was then redeveloped to offer three "Levels of Service" to clients. The first level provides general information to businesses via a *Factsheet: Business Licensing and Registration Overview* about what compliance obligations they may have when establishing or expanding a business. This information is generic and suited to clients who need only a broad idea of regulatory requirements.

The second level is where the client has indicated it wants to start a particular business, but is still in the early stages of planning. This level provides a summary report of the possible licences that may be required by the business. Currently these two service levels are available via all three client interfaces (counter services, Internet, and call centre).

The third level BLIS service is currently only available via counter services or the call centre, although there are plans to make it available via the Internet in the near future. This level involves a client service operator taking the client through a detailed questionnaire that determines which licences are likely to be required by the client. The resulting comprehensive report is detailed and tailored to the client's business, covers the licensing requirements of all three spheres of government (Commonwealth, State and local government) and contains the application forms needed. This tailored report is provided to the client via e-mail or through the post.

Some pertinent statistics regarding BLIS include:

- When available in call centre mode only (pre-1999), approximately 15 000 clients on average were served annually through BLIS.[8]
- Since its conversion to a combined call centre and Internet service, the use of BLIS has grown, with the number of clients served by the call centre (BLIS level 3) alone reaching at least the level experienced before 1999.
- In the nine months between September 1999 and May 2000, BLIS generated more than 13 500 fact sheets and reports for new and existing businesses via the Internet service alone (BLIS levels 1 and 2).

The Victorian Government has recently enhanced the BLIS by incorporating codes of practice referenced in legislation. The term "code of practice" is used as a generic term to describe all those external instruments referenced in legislation that business needs to comply with and includes, but is not limited to guidelines, standards, rules, orders, and procedures. The incorporation of this legislative-based data represents another means of easing the administrative burden placed on business by reducing information search costs by providing business with ready access through a centralised source to information on all Commonwealth and State-based codes that may affect on any nominated business activity.

A major issue for business licence information services is the need to ensure that the licence information contained in their databases is kept current, as the provision of outdated information to clients diminishes the value of the service and can result in litigation concerns. In this respect, all services have in place systems that monitor changes to licensing arrangements and allow regular updating of the dataset.

While the Federal Government does not have a specific business licence information service, it has established a Business Entry Point, which is an Internet portal aimed at providing a one-stop-shop for the provision of all Federal Government information relevant to business. Some States have also established similar portals, for example, both Victoria and South Australia have established *Business Channels*.[9] Western Australia also set up a business and investment portal. Links are generally established between the business licence information services, the Commonwealth's Business Entry Point and State business information Internet portals, hence allowing businesses to readily access a wide range of government licence and general information.

Evaluation and results. The development of the BLIS services was precipitated by the recognition of an opportunity for government to significantly reduce quite onerous information search costs through undertaking a quite small investment. From the perspective of administrative simplification and burden reduction, the services offered by the States and Territories appear to have been extremely successful.

As with most areas of government policy, evaluation activity has been limited. However, the above conclusion is supported by the findings of a study in 1994, which assessed the effectiveness and efficiency of the Victorian BLIS.[10] The study concluded that:

- Clients were highly satisfied with all aspects of the services provided.
- The accuracy of the information provided was highly rated by clients.
- The benefit to clients of the service was estimated at AUD 21 million [USD 10.4 million], with a client benefit/cost ratio of 15:1.

While no more recent evaluations of the benefits of the business licence information services are available, it is considered that these results are still relevant, particularly as the content provided by the services has improved significantly since that time to cover the licensing requirements of all spheres of government. Additionally, the expansion of online Internet provision of these services has facilitated trade by providing enhanced access to the relevant information for businesses beyond the jurisdiction in question.

An ancillary benefit of business licence information services is that they provide an excellent resource for government agencies and regulatory reform bodies. Specifically, they make the extent of government control and administrative impositions transparent and, hence, can provide a valuable input into programmes to reform the nature and extent of business licensing. For example, the Victorian BLIS was used as a key resource in the

business licence rationalisation programme undertaken in that State in 1995 (see Section on Business licence rationalisation).

With the benefits that the Internet and associated technological advances can offer, there is considerable potential for the expansion and improvement of BLIS services through growth in the content (both in terms of information and transactions) they make available. In this respect, the major advantage of these services is that they organise information-based on client needs, without the client having to understand the fabric of government that lies behind the licence and approvals that the client requires. This allows clients to deal with government on an "enterprise" basis, rather than as a collection of individual agencies. Further utilisation of this characteristic in conjunction with Internet technologies is likely to occur in the future as more relevant content is identified for delivery through these services, including an increasing array of regulatory compliance information that enables businesses to readily assess their overall regulatory compliance obligations.

For example, most Australian governments are now moving rapidly towards ensuring that as many government related transactions (information, regulatory approvals, fees, charges, etc.) as possible are available via the Internet. A major development that is facilitating this is the current implementation of a national legislative scheme to allow the legal recognition of regulatory transactions (licence applications, renewals, etc.) conducted via the Internet. This involves each State and Territory implementing template legislation introduced by the Commonwealth through its "Electronic Transactions Act of 2000". An additional initiative that also assists is the development of secure electronic signature technology, particularly through the ABN-DSC (see Section on Australian Business Register).

As BLIS services are a well-recognised distribution channel, they are strategically well placed to deliver regulatory transactions (information, licences, permits, approval, fee-paying, etc.) to business via the Internet. Indeed, the Queensland and Victoria State BLIS services are currently moving towards this model.

The move towards the "enterprise" style of government service delivery is already evident in a programme being run by the National Office of the Information Economy. The programme seeks to develop and trial a number of "online government service packs", which are aimed at providing a one-stop-shop for information and transactions (regulatory and otherwise) relating to certain government services. The trials are targeted at government information and services relating to recreational fishing, housing, exporting, and starting school.[11]

Measuring administrative burdens: small business deregulation taskforce

An important issue in considering administrative burden reduction is that governments typically do not have a clear and detailed understanding of the extent of the burdens imposed on business. This means that policy is made in an information vacuum, and that the size of the issue may remain unappreciated. In this context, the measurement of the size of existing burdens can be seen as an important information-based approach to developing policy on burden reduction and the basis for the evaluation of policy initiatives taken.

Description. As noted in the section on Small business deregulation taskforce, the Taskforce was required in 1996 to advise the Federal Government on revenue-neutral ways to halve the paperwork and compliance burden on small business. A key issue identified by the

Box 2.3. **Queensland's interactive business licensing service, "SmartLicence On-Line"**

With the growth of home based businesses and those businesses operating from home, (there has been an annual growth rate of 28.8% in this sector), there has been a corresponding demand for on-line information. Recognising this demand, the Queensland Government commissioned market research into the information and transactional needs of small business in the on-line environment.

This research highlighted that:

- There is a strong need for a central, integrated one stop shop for all online government small business information support services.
- There is a need for practical on line tools for facilitating compliance, business planning, marketing and communications.
- Online information must be delivered in an easily accessible format specifically designed for small business, rather than organised by a complex, fragmented department based structure.
- There needs to be an easy and effective means of locating content appropriate to the local environment.
- The new SmartLicence On-Line service was developed in response to this research.

Like most OECD countries, Australia is highly regulated and starting a business can be complex. For example, a restaurant in Queensland can require up to 20 licences from different levels of governments and different agencies within those governments. The capabilities of this service are unique in Australia and world wide, in particular because it enables businesses to diagnose their own business licensing requirements across the three levels of government in Australia all from their own home or office.

However there is much more to the service. To the client, the interactive service is relatively simple, but behind the scenes a range of sophisticated technologies was employed to enhance the client's experience as well as save government time and money.

For example:

- After answering a series of simple questions, clients are provided with all the licence application forms for their particular business and on-line help to assist them complete them.
- A secure Web site is provided to each client to enable them to store their applications and complete them at their leisure.
- A client only needs to complete their core data (names addresses etc) once and it is pre-populated across all application forms.
- Clients can complete applications, download them, or where available, submit and pay for them on-line in a fully secure environment.
- Licensing agencies have a secure Web site to 'collect' completed applications.
- Application forms can be generated for agencies in a mark up language that allows direct import into agency databases.

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Box 2.3. **Queensland's interactive business licensing service, 'SmartLicence On-Line'** *(cont.)*

Evaluation

After three weeks of operation and when over 2 000 clients had searched the licensing database, around 500 clients were surveyed about the site. Feedback already received has identified that:

- 83% of clients found the information related to either starting or expanding their business to be very useful.
- 90% of clients found the navigation through the site easy.
- 87% of clients found the instructions on SmartLicence On-Line easy to follow.

Benefits of the service are:

- Improved customer satisfaction.
- Reduced Red Tape.
- Savings to government through reduced duplication of services.
- Increased compliance and revenue.

Taskforce was to measure the existing compliance and paperwork burden on small business. This was clearly a pre-requisite to any future attempts to measure its success in achieving its quantitative target reduction. The Taskforce commissioned a survey to estimate this burden.

Application. The Taskforce defined the compliance and paperwork burden faced by small business as:

> ... The additional paperwork and other activities that small business must complete to comply with government regulations. It is the time and expense outlaid that is over and above normal commercial practices. The burden includes lost opportunities and disincentives to expand the business.[12]

Small business was defined as:

- Independently owned and operated.
- Most, if not all, capital contributed by owners and managers.
- Closely controlled by owners/managers.
- Having turnover of less than AUD 10 million [USD 4.9 million].

The Taskforce commissioned a survey to explore tax and regulatory compliance costs. The survey comprised an extension to the Yellow Pages Small Business Index, which is an ongoing series of surveys designed to track confidence and behaviour in the small business sector.

The survey extension examined:

- The time spent by small business proprietors and their staff on tax issues and other areas of regulatory compliance.
- The extent to which this time is considered an excessive burden.
- Perceptions of which areas of regulation are most in need of change and the impact of any reduction in compliance time on the business.

The survey results found that:

- On average, small business spends 16 hours per week on administration and compliance activities.
- Approximately a quarter of this time is devoted to government paperwork and compliance.
- Taxation matters absorb approximately 75% of government paperwork and compliance activities.
- Total compliance costs are around AUD 7 000 [USD 3 500] per annum, of which AUD 3 000 [USD 1 500] is spent on external advice.

Compliance cost estimates did not include the costs of lost opportunities or disincentive effects.

Interestingly, research by the Taskforce "showed that personal attitudes to the concept of regulation will affect... [the] perception of the burden of complying with the regulations".[13] In this respect, "the perceived unfairness of the fringe benefits tax contributed to the feeling of burden",[14] despite the fact that only 6.5% of small businesses actually paid it.

Evaluation and results. The attempt by the Taskforce to quantify the extent of the administrative burden on small business represents the only currently available benchmark in Australia of administrative burden, with the exception of the OECD Business Survey (OECD, 2001). It has also provided an invaluable insight into those elements of administrative burden that are considered particularly onerous by small business.

Importantly, these results reveal the relatively modest size of the red tape burden on businesses – on average three hours per week on taxation and one hour per week on other areas of compliance. This indicates that the burden is perhaps not as acute as the private sector would have the government believe. This is reinforced by the finding that many firms spend less time on these tasks – while the average time spent on taxation compliance was 141 hours per annum, 50% of firms spent 60 hours per annum (a little over one hour per week) on this task. It is notable that this perspective was not prominent in either the Taskforce's reports or in subsequent policy debate on this issue.

A specific recommendation of the Taskforce was that "a further benchmarking survey be undertaken in 1998-99 to measure movements in the nature and size of the paperwork and compliance burden".[15] In order to meet this commitment, the Government participated in the OECD Multi Country Survey of Business Regulation. At present, no further research has been completed, hence it is difficult to judge the extent of the burden reduction that has occurred as a result of the Commonwealth Government's implementation of the task force's recommendations.

Process re-engineering

Business approvals packages

The Business Approval Package (BAPs)[16] concept in some ways represents an extension of the logic underlying the BLIS approach. Soon after the successful implementation of the first BLIS packages, attention turned to the possibility of extending the one-stop shop approach beyond information provision and to licence application, approvals, issue and renewals. Trials of such programmes began as long ago as the

early 1990s in New South Wales (NSW). The BAP represents the current state of development of this concept.

A BAP is a computer-based package that streamlines licence and application lodgement and approval processes relating to a targeted business activity or sector. A BAP goes further than providing current business licence information services by more accurately identifying licence and approval requirements and providing a single point of contact for the submission and approval of all licence requirements pertaining to a targeted business activity. In its widest form, the BAP concept could conceivably integrate all the regulatory requirements of the three levels of government as they apply to a specifically targeted business activity or sector, providing a one-stop-shop licence approval centre. However, to date, BAPs in Australia have been restricted to the integration of licence and approval processes within a single jurisdiction.

Two pilot projects have recently been developed, both relating to the aquaculture industry. One was developed by the Tasmanian Government specifically to assist in promoting the development of the State's growing aquaculture industry by providing a "whole of government" approach to the licensing process, thus expediting the approvals necessary for the establishment of an aquaculture operation.

The BAP comprises an Internet-based system that contains information and forms relating to key licences and approvals for Freshwater and Marine Fish Farms and the processing of fish from those farms. A client using the BAP is taken through a series of questions relating to the many different aspects of an aquaculture operation. The BAP then provides an individually tailored, pre-printed application form for signature and submission with an Aquaculture Liaison Officer. The client also receives a summary of their enquiry and contact details for the various government agencies involved in the approval process. The Aquaculture Liaison Officer co-ordinates the dissemination of information to the relevant State government agencies for processing. The application process remains paper-based at this time for two reasons:

- The client is required to lodge supporting documentation which is paper-based; and
- There is no legal basis for the electronic submission of documents for regulatory purposes under current State legislation.

Once an application is submitted, the lead agency for the BAP co-ordinates the granting of all approvals by the relevant State regulatory authorities, effectively acting as an agent for the applicant. The BAP combines the application processes for a number of State government licences, reducing the amount of agency contact for a business when applying for licences. However, applications for local government development approval must be submitted separately, as must applications for the only Federal licence associated with aquaculture activities. The package is linked to the State's BLIS, which provides information on boat licences, employment issues, and other matters associated with business start-up.

Benefits claimed for the Tasmanian BAP since its introduction in August 1999 are:[17]

- Time saving in the provision of information by agencies to applicants (1-2 hours per enquiry).
- Improvements in the quality of applications, serving to reduce approval times.
- Savings in application time by business through the provision of consistent information by agencies and single point of submission.

- Savings in project start-up time by business through the accurate early identification of all necessary regulatory requirements facilitated by the whole-of-government approach.
- Increased overseas/interstate exposure by the Internet component of the BAP.

However, no independent evaluation has been conducted on the programme. It can be noted that some of these claimed benefits essentially derive from the BLIS elements of the service, rather than the specific BAP elements. Moreover, any gains must be weighed against the costs of developing and, more importantly, maintaining the BAP. At a conceptual level, the BAP concept inevitably involves an agency of government taking on the role of agent for a business enterprise in its dealings with a range of licensing agencies. This can be described as process re-engineering in the minimal sense that the government takes over a number of functions previously performed by the business and performs them on its behalf. Two key conceptual problems inhere in the BAP approach, which have not been explicitly addressed by its supporters:

- The BAP is based on establishing a government body to undertake an "agency function" for business, without any sound argument having been made that such a body will have a significant comparative advantage in this regard, *vis-à-vis* the business applicant. (Moreover, as BAP services are provided free of charge, they represent a subsidy to business and arguably offend against the competitive neutrality requirements of the National Competition Policy. This situation is remedied in New South Wales, where the vast majority of business approvals have been subject to NCP review requirements, including consideration of benefits and costs, and competitive Neutrality obligations.)
- The BAP necessarily involves interposing additional steps in the licence application and approval process. This means that it contains the possibility of elongating the process. Equally, the question of responsibility arises in the event that problems arise with the application – for example in relation to statutory time limits for providing responses not being met.

As noted above, the first attempt at establishing a BAP was undertaken in New South Wales approximately a decade ago. The New South Wales Government is currently implementing the Government On-line Licensing Project, which includes the enhancement of BLIS (which currently applies to one licensing agency, the New South Wales Department of Fair Trading). Following this first phase, the New South Wales Government will extend on-line licensing systems to 28 licensing agencies. This will streamline the processing of licences and enhance access for customers.

Simplifying development approvals

Description. Prior to 1997, increasing difficulties were being experienced with the operation of the land use planning and development process in NSW. In the words of the then Minister for Urban Affairs and Planning:

> ... The system... is over-regulated; it is full of duplication; separate approval processes sometimes conflict with one another; there is a lack of certainty; there is a lack of transparency; no-one is accountable; there is little co-ordination; the process and scale of assessment is often out of proportion to the environmental impact; and it all takes too long. Everyone... shares frustrations about the lack of common sense in the system and the seemingly unnecessary layer upon layer of rules and regulations that seem to get more complex every day.[18]

For example, a mining company seeking approval for a new mine went through the full process of the existing Environmental Planning and Assessment Act, including a commission of inquiry, and received the necessary approvals. However, when subsequently seeking a water licence, the company was faced with effectively having to repeat the whole process again as part of its application. The Government had to overcome this situation by passing special legislation.

To rectify the situation, the NSW Government introduced new legislation that created a single process for development approvals that co-ordinated all relevant statutory approvals via the issue of a single development "consent." These changes reduce "red tape" and provide for more certain and consistent decisions on development proposals.

Application. In 1997, the NSW Parliament passed the "Environmental Planning and Assessment (Amendment) Act of 1997" which simplified the procedures for obtaining approvals for projects such as the construction of new buildings or the commencement of new businesses through the creation of a one-stop-shop process.

The reforms included:

- Establishing a single legislative framework for the control of all development, building, demolition and subdivision aspects of a project that are within the responsibility of local government. This allows applicants to make a single application covering all the components of a development project, with concurrent assessment followed by the issuance of a single development consent.
- Linking all State government development approval requirements with the single development consent (the approvals are still separate, however their consideration and granting are concurrent and integrated with the development consent).
- When an application under other legislation is made within three years of development consent, the initial approval required under the other legislation for that development to proceed must be consistent with the general terms of the integrated development consent.
- The level of assessment applying to the established classification of developments (exempt, without consent, with consent, and prohibited) has been aligned with the complexity and likely environmental impact of a development proposal.
- Allowing accredited certifiers to issue development compliance certificates showing that proposals comply entirely with pre-determined development standards or that components of State and local development are in accordance with standards and conditions, for example, building plans and subdivision engineering plans and specifications.

Evaluation and results. The practical effect of the new system is that, when a proposed development requires development consent plus one or more approvals under certain other legislation, the consent authority must refer a copy of the application and later any public submissions received after exhibition of the proposal, to the relevant Ministers and State agencies ("approval bodies"). These approval bodies must then provide the general terms of the approval they would grant in relation to the development under their separate legislation. This results in the main administrative simplification benefits – reductions in approval times through concurrent and integrated approval processes, together with reduced compliance costs through a single point of contact through which to obtain relevant approvals.

The impacts of this reform have not been evaluated. Anecdotal evidence on the impact of the new system supplied by the Planning NSW, the NSW Government's department of urban affairs and planning[19] for this project focused largely on the adoption of private certification arrangements for much development approval activity. This initiative has apparently been widely taken up, with 260 accredited certifiers currently operating in NSW. Certifiers seem to have captured the market for larger developments (commercial and larger residential), and to have substantially reduced the timeframes for demonstration of compliance with building standards, both directly and through encouraging improved performance by competing local government certifiers.[20]

Despite the lack of substantive data as to the success of the initiatives, most other States have introduced similar initiatives. Victoria, South Australia, Tasmania, and Queensland have all implemented integrated development approval processes of various forms, with similar claims for administrative simplification and burden reduction benefits. For example, the introduction in Queensland of the "Integrated Planning Act of 1997" (IPA) saw the establishment of a framework for condensing over 60 different development approval processes contained in over 30 Acts into a single approval process in one Act. Ultimately, it is anticipated the IPA will lead to the removal of over 5 000 pages of process law and result in a simplified and streamlined development approval system.

Conceptually, the reformed system has some parallels with BAPs as it provides a one-stop-shop approval process for a variety of licences and permits required by State and local governments.

Alternatives to administrative regulation – private building certification

Description. One important form of process re-engineering is the adoption of alternatives to traditional regulatory administration. Traditionally, local government in Australia has administered all building and planning approvals, including the inspection of building work. This meant that local government held a monopoly over the issuing of building permits, which are required to verify that the regulatory building requirements have been met. In addition, local government officers undertook all building inspections, which are necessary prior to the issue of a building permit.

Following a review by the Regulation Review Unit in the late 1980s, Victoria developed and promoted a model involving private, third party certification of building compliance by competent building professionals. This model was taken up at the national level and incorporated in the development of model national building legislation, developed as part of a long-term regulatory harmonisation process in this area. The resulting Model Building Act, was first adopted by Victoria in 1993 and included provision for private certification.

As a result, in 1993 Victoria pioneered the introduction of private development of third party building certification by private sector practitioners. Under the Act, builders are able to choose to engage a private building surveyor to carry out the building permit, inspection and occupancy permit functions and responsibilities or, where available, they may choose to use the system provided by local government.

The push towards private building certification was prompted by "competitive pressures in the economy and greater emphasis on improving the professionalism of the building sector... (which caused) a push in the early 1990s to reform regulatory processes that were hampering the efficiency of the industry".[21] Reform efforts were assisted by the resourcing constraints facing local government following a significant local government amalgamation and reform programme.

Evaluation and results. The use of private building surveyors quickly became widespread throughout the industry, and in particular in the commercial building sector. It has resulted in an improved service that better meets the requirements of the industry. Private building surveyors now provide a more flexible inspection service, and also advise the builders at the early stages on how to best proceed to ensure that regulatory requirements are fully met while building costs and delays are minimised.

The Victorian Office of Regulation Review reports:

> Building surveyors are now more time-conscious and flexible, inspecting the work at a time that is suitable to the builder. The savings to the community from more responsive regulatory arrangements are significant. In the building business, time is definitely money... a one-day delay on a major development project can cost tens of thousands of dollars, just in interest. Ultimately, this cost is borne by the community.[22]

The building permit reforms have seen the time taken to approve residential buildings fall from up to four weeks to within a day or two.[23] Substantial reductions have also occurred in the commercial sector. Importantly, the impact of this reform in developing a "contestable market" in building inspection services has placed pressure on, and improved the performance of, local government building surveyors.[24] This "benchmarking" effect is critical in delivering improved services for building "consumers" and is a principal driver behind lifting burdens by reducing approval timeframes and, hence, reducing cost burdens.

The majority of other States have now implemented similar reforms and there has been international interest in the Victorian building permit system. For example, the New South Wales Minister for Planning established a Joint Select Committee on the Quality of Buildings, including to inquire into the certification process in operation since 1998. The Committee's report made a number of recommendations, including the establishment of a home building compliance commission. The NSW Government is currently considering its response to the report's recommendations. In addition, in Australia, the application of the concept of third party regulatory inspections is now being considered in a number of other areas in the building sector – for example, in relation to planning and development approvals.[25] Abroad, Dubai has implemented the Victorian system, while Japan and Malaysia have expressed considerable interest.[26]

Business licence rationalisation

As in many OECD countries, "one-off" business licence rationalisation or reduction programmes have been popular in Australia as a "process re-engineering"-based instrument for achieving administrative simplification and reducing burdens. A number of jurisdictions have undertaken such initiatives since approximately the early 1990s. Generally, these exercises are driven by central agencies, usually the specialised regulatory reform bodies, which co-ordinate a review of licences by the relevant administering agencies. Several of these exercises are briefly described below.

Application. Queensland's Red Tape Reduction Taskforce has recently overseen a three-year programme for the rationalisation in the number of business licences required by the State government. This project involved examining licences in association with the administering agency and identifying licences that:

- could be abolished;
- could be combined with other licences; and/or
- could be subject to less frequent renewal requirements.

This project concluded that, through a combination of licence abolition and licence integration, the number of State licences could be reduced by 50%. This would represent a reduction from approximately 520 to around 270 licences, involving 91 abolitions and with the remaining reductions due to licence amalgamations. In addition, the term of some 116 licences was suitable for extension. Following approval of the identified reforms by the Government, agencies have been progressively implementing these reforms, with the programme currently about 80% complete.

A similar Licence Reduction Programme was undertaken by NSW between August 1995 and February 1997, which involved the review of 273 licences. Of the 85 licences identified for repeal, 72 have already been repealed, with the remainder being contingent on the outcomes of other review processes (mainly National Competition Policy legislative reviews).

A similar exercise was undertaken in Victoria in 1993-1995 with the establishment of a Licence Simplification Programme by the then-Minister for Small Business in September 1993. The stated goal of this programme was "… to ensure that every effort is made to eliminate unnecessary burdens on both business and the general community".[27] The Programme was administered by the Victorian Office of Regulation Reform, a business unit of the Department of State and Regional Development. The responsible Minister set a target for the programme of reducing the total number of licences of 485 by 25% by the end of 1995. The role of the ORR in implementing the programme was to advocate, co-ordinate, and facilitate a review of licences by the relevant administering agencies. The Programme achieved a reduction of 111 licences (23%) by December 31, 1995.

Evaluation and results. Of the above programmes, only the Victorian initiative was subjected to such scrutiny. The findings of the Victorian Auditor General's review of that State's Licence Simplification Programme[28] were that, "of the Programme's 34 licences listed as either revoked or to be revoked":

- 23 changes resulted from major micro-economic reforms in the health and safety sectors that were co-ordinated at a national level with State and Territory involvement. The culmination of these initiatives resulted in the repeal of highly prescriptive acts and regulations and their replacement with new performance-based regulations.
- Five changes were due to regulations which ceased to exist under the "Mines Act of 1958" as from 1992 relating to trenches, shafts and tunnels.
- Three changes were due to a review of the Weights and Measures Regulations 1984 as required by the "Subordinate Legislation Act of 1994".

Of the three remaining licences:

- One (Sunday entertainment permits) was repealed at the initiative of the former Minister for Industry Services.
- Only two could be attributed to the Programme, namely, the Street Trading Licence and the licence to keep explosives for sale and to sell explosives.

The Auditor General concluded that:

> … the reduction in the number of licences achieved under the… Programme substantially met the target of 25% by 31 December 1995, but the licences revoked… had only a minimal impact on reducing business regulation costs. In addition… only 7% of licence reductions could be directly attributed to the Programme.

It was further observed that:

> … priority should be given to programmes designed to achieve qualitative improvements in regulations, rather than focusing on quantitative reduction programmes such as the Licence Simplification Programme. This would necessitate employing a more strategic approach than is required in managing a *blanket* quantitative reduction programme and involve a new set of measures such as: confirming with stakeholders, and particularly the business sector, the extent to which any programme assumptions are valid (*e.g.*, the extent to which licences impose burdens on business) and seeking their views on the major areas requiring attention; in consultation with agencies, targeting industries and identifying deregulatory priorities where benefits to the community and the business sector would be maximised; establishing clear objectives, scope, outputs and outcomes at the outset of the programme including evaluative mechanisms; and assigning responsibility for achieving priorities on an agency basis with the Office adopting a co-ordination and monitoring role.

Of the three examples of business licence rationalisation schemes cited above, it is arguable that the Queensland exercise, with its focus on opportunities for licence amalgamation, rather than blanket removals, may have been the most successful. At the same time, it is also possible that the amalgamated licences involve greater compliance burdens due to larger information, evaluation and approval requirements. This may have negative effects to the extent that more businesses are caught in the net of more onerous procedures due to a diminished ability to distinguish between different kinds of business operations in the licensing process.

Technology-based mechanisms

Australian Business Register

Description. A unique business identification number – the Australian Business Number (ABN), has been developed in response to the Commonwealth's *Small Business Deregulation Taskforce* report, which recommended that a single identifier be introduced to simplify business dealings with government. The ABN is designed to provide a business registration system, where businesses only need to have a single business identifier for all dealings with government. While the ABN is currently principally utilised for business dealings with the Australian Taxation Office (ATO) and for business incorporation purposes, it is intended that it will extend to dealings with other government departments and agencies. The Australian Business Register Online (ABR Online) enables online registration and searching of ABNs. State, Territory and local government bodies are also able to utilise the ABN to streamline registration requirements.

The introduction of the ABN in conjunction with ABR Online was designed to reduce the cost of compliance for small business, to improve access to government information and to provide a platform for future business-to-government and business-to-business e-commerce transactions.

Application. Businesses need an ABN to register for the goods and services tax (*i.e.* Value Added Tax) and other elements of tax reform package introduced by the Commonwealth Government in mid-2000. Specifically, businesses require an ABN to undertake a range of taxation-related transactions with the ATO and other businesses. For example:

- Failure to provide an ABN may result in other businesses deducting tax (currently 48.5%) from payments to a business.

- Businesses require an ABN in order to register for Goods and Service Taxes (GST), which in turn is required in order to claim back the GST payments that the business makes to other businesses.
- Charities are required to obtain and quote an ABN before they can be endorsed as a deductible gift recipient and/or an income tax exempt charity.

ABR Online (*www.abr.gov.au*) is an online database that records ABN details, facilitates online registration for an ABN and enables online queries regarding ABN details.[29] ABR Online is available through the Commonwealth's Business Entry Point. ABR Online is a public register, however, only some of the information provided by businesses when they register for an ABN is publicly available. The Registrar of ABR is the Commonwealth Commissioner of Taxation.

The ABN is a unique 11-digit number issued by the Australian Business Registrar structured as XX XX XX XXX XX. The ABN is self-verifying, consisting of a nine-digit unique identifier and two prefix check digits. The two leading digits (the check digits) are determined from the subsequent nine digits using a modulus 89-check digit calculation. The check digits allow the identification of common data entry errors such as digit transposition.

Not all information held in the ABR is available online due to privacy considerations.

The public information held in ABR Online includes the business':

- Australian Business Number.
- ABN Status and date of effect.
- Trading name(s).
- Legal name.
- Entity type.
- Location (State or Territory).
- Date of effect of GST registration.
- Deductible gift recipient status.
- Superannuation compliance status.
- Associated Australian Company Number (ACN).
- Associated Australian Registered Business Number (ARBN).

Currently, development work is underway on Key Public Infrastructure (KPI), through the Government's *Gatekeeper* programme, to ensure that government agencies have secure access to the non-public information contained in the ABR. Once the infrastructure for this has been completed and implemented, agencies will be able to use the ABN and ABR as a basis for dealing with businesses, particularly in relation to online transactions.

In this respect, the Commonwealth has developed the Australian Business Number-Digital Signature Certificate (ABN-DSC), which is an initiative to simplify and reduce the identity requirements for Australian businesses when dealing online. The ABN-DSC is a digital certificate linked to an entity's ABN. It is designed to facilitate online service delivery and encourage the use of digital certificates and e-commerce among Australian businesses. The ABN-DSC is issued by accredited Certification Authorities, with Commonwealth agencies using the certificate to identify businesses for online transactions.

To support this initiative, the Commonwealth Government has developed a policy that:

- Commonwealth agencies will use only the ABN as the identifier of a business.
- Commonwealth agencies will use only the ABN-DSC as the online business identification certificate.[30]

Evaluation and results. The linking of the ABN to taxation arrangements has effectively made the holding of an ABN compulsory for all Australian businesses. Currently, over 3.4 million business entities have applied to register for an ABN. At the commencement of the Commonwealth's New Tax System in July 2000, approximately 60% of the total number having registered for an ABN at that time had done so electronically using the ATO's Electronic Lodgement Service and the Commonwealth's Business Entry Point.[31]

The ABR Online initiative is unique – no other government in the world has introduced online registration for such a major new initiative. ABR Online appears to have gained widespread acceptance by business, being extensively used to check ABN details, recording over half a million requests each month.[32]

By providing online registration for ABN, GST, and other aspects of the New Tax System and free online access to the publicly available details, the ABR has reduced the time and costs for businesses electing to fulfil their tax registration obligations. Further, businesses can record changes of business details at a single location, the details of which can then be obtained by the various agencies utilising the ABR as a business identifier. This "tell once, use many times" function is a key feature of the way the ABR is intended to help reduce the amount of time businesses spend dealing with Commonwealth government agencies. Nevertheless, the usage of the ABN and ABR as mechanisms to reduce transaction costs and compliance costs for both business and government is currently restricted at this stage mainly to dealings with the Australian Tax Office, pending the full implementation of the KPI security programme to support the use of the ABN and ABR by government agencies.

In addition to reducing business costs, ABR Online has resulted in savings for the ATO:

- Built-in edit checks within the application process combined with electronic registrations resulted in much lower error rates.
- The high level of online registration (60% of total ABN registrations) significantly reduced ATO resource requirements in relation to the processing of applications in time for the implementation of the Commonwealth's New Tax System on July 1, 2000.

In recognition of its ease of use and advantages to business, ABR Online received a Gold award at the Fourteenth Government Technology Productivity Awards in March 2001.

Looking to the future, the ABN in tandem with ABR Online provides the building blocks for the provision of better government services to business, creating a catalyst for government to business and business-to-business e-commerce. It has also served to illustrate the potential of Internet-based technologies to provide access to government information and online transactions and encourage the wider adoption by businesses and government agencies of electronic commerce technologies.

It is expected that the ABN/ABR Online will provide a basis for the expansion of online business interactions between governments at all levels, with the potential for making dealings with government easier, faster, and less costly. However, this expansion is still in

its infancy, as much of the Commonwealth's efforts to date with the ABN and ABR Online have been focused on:

- Ensuring the smooth introduction of ABNs alongside the introduction of the Commonwealth's New Tax System.
- Establishing KPI security programme to support the development of online transactions utilising the ABN.

Once the KPI has been fully implemented, it can be expected that a variety of online government applications will be developed that use the ABN, ABR Online and the ABN-DSC for dealing with business, including:[33]

- Regulatory returns (*e.g.*, tax, statistical, corporate regulation forms, etc.).
- Online applications (*e.g.*, for programme funding).
- Public registers (*e.g.*, update of the ABR).
- Tender applications.
- Order/purchase (*e.g.*, publications).
- Online payments.
- Secure data transactions.

A number of these applications are currently being developed by Commonwealth agencies, however, it is considered that it will take time for both governments and business to implement and realise the full potential for online transactions as a means of reducing transaction costs.

Business entry point

Description. The Federal Government's establishment of a Business Entry Point (BEP) represents an important step toward harnessing the potential of the Internet to simplify administrative requirements and reduce burdens for businesses in their regulatory and other dealings with government. The BEP is an online information and transaction facility aimed at assisting small business in particular in dealing with the Commonwealth Government. The BEP provides information on a wide range of topics, including taxation, employment, business planning and financing, workplace relations, superannuation, and importing and exporting in a linked and user friendly format. The establishment of the BEP followed a recommendation from the Commonwealth's Small Business Deregulation Task Force that a mechanism was needed to increase the ability of small business to obtain access to government information and services.

The aim of the BEP is to improve the ability of business to find government information, to complete compliance processes, and to identify suitable government support or assistance programmes. Notably, the services listed on the BEP are not confined to the Federal Government: information and online services provided by State, Territory, and local governments are included, as are details of a number of industry and business associations.

Application. With the introduction of the ABN and ABR Online, the Business Entry Point Web site has become the main electronic portal for businesses to register for the ABN, GST, and other elements of the New Tax System.

In parallel with development of the BEP, Commonwealth, State and Territory governments have been encouraging their agencies to make their programmes and services available online wherever possible. Many of these programmes and services are

Box 2.4. **Initiatives in Queensland to improve consultations and information dissemination on regulations**

Queensland Regulations: Have Your Say is a regulatory communications system that acts as early warning device for impending regulatory activity by the Government. It has been introduced to assist business and the community to become involved early in the consultation process by clear public disclosure of the Government's regulatory intentions. The system is an interactive Web-based system which enables Government agencies to place information about regulatory proposals on the Department of State Development's Web site (*www.sd.qld.gov.au/qldregulations*). It also enables interested parties to respond through the system direct to an agency's proposal.

In addition, a one-stop-shop referral service, the Business Referral Service, has been implemented to provide business with access to detailed information and advice on government regulations, particularly compliance matters. The Business Referral Service enables business owners and operators, with complex compliance queries, direct access to relevant experts within Government. The service is incorporated in the Department's SmartLicence suite of services.

accessible through the BEP. In addition, most State Governments have implemented, or are in the process of implementing, parallel initiatives. For example, the Victorian Government has its Business Channel.

In addition, the BEP has established a programme to help agencies identify and develop online programmes and services. This involved establishing a panel of experts to assist agencies in identifying, selecting, developing and implementing Internet payment solutions.[34]

It is arguable that the implementation of BEP and equivalent initiatives is a necessary response to the increasing complexity of government Web sites and represents an electronic equivalent of the one-stop-shop approach to business licensing discussed above. The effectiveness of these initiatives is, as yet, unknown, due to their very recent implementation. However, their potential for marshalling and presenting a very wide range of government – and non-government – material in a thematic fashion suggests that there may be significant benefits for business and other users.

Administrative simplification as part of broader policy initiatives

The preceding sections have discussed specific administrative simplification and burden reduction initiatives, organising them in accordance with the general thematic development of these initiatives over time. The following section considers a number of broader policy initiatives in which administrative simplification and burden reduction have constituted significant, but subsidiary elements. It must be recognised that a very significant proportion of the administrative simplification achieved in Australia in practice has derived from these larger programmes.

Mutual recognition of goods and occupations

Australia adopted mutual recognition legislation in 1992. Both the form and purpose of the legislation are closely related to the mutual recognition arrangements implemented within the European Union. That is, mutual recognition was seen as an administratively efficient means of achieving many of the advantages of a single market without requiring the achievement of regulatory uniformity. As with the European model, the legislation

removes regulatory hurdles to the trade in goods and services between the Australian States and Territories by:

- Removing the need for goods produced in one jurisdiction having to comply with different regulatory regimes within various States and Territories before they can be sold.
- Removing the need for persons in regulated occupations to have to comply with different occupational entry requirements for each jurisdiction in which they wish to operate.

In both cases mutual recognition acts to reduce administrative burdens by reducing the regulatory hurdles for the trade in goods or mobility of labour between jurisdictions.

From a general perspective, mutual recognition has been a successful administrative simplification and burden reduction initiative because of its simplicity and the clear and constrained process for seeking exemptions. Specifically, the operation of mutual recognition is mainly driven by participants in the goods or regulated occupations markets, who can use the rules established by mutual recognition to reduce the administrative burdens that they face.

Reviews have indicated that mutual recognition has been leading to the development of national standards and greater consistency in requirements between jurisdictions. Certainly, mutual recognition has served to highlight inconsistent registration requirements between jurisdictions[35] and there have been moves towards consistency in registration requirements between jurisdictions.[36]

Regulatory Impact Assessment programmes

Regulatory impact assessment (RIA) programmes have been progressively adopted by Australian governments since 1984. Their initial focus, particularly at the State Government level, was on subordinate legislation, while a more recent trend is toward applying RIA to both primary legislation and quasi-regulation. Many of these programmes are legislative, particularly those applying to subordinate legislation, while others are administrative in character. RIA takes a broad, benefit/cost approach to regulatory quality and it is clear that it will thereby tend to encourage administrative simplification and burden reduction – at least to the extent dictated by wider efficiency concerns.

The development of RIAs has had important positive implications in terms of administrative simplification and burden reduction (at least in the negative sense of having constrained regulatory inflation), particularly as subordinate legislation – including quasi-regulation – has taken an increasingly prominent role *vis-à-vis* principal in recent decades. Specifically, RIAs ensure that regulatory proposals, or existing regulatory arrangements, are subject to a transparent, publicly accountable and rigorous analysis to determine if they are the minimum means of meeting regulatory objectives. As such, RIAs perform a "gatekeeper" role by promoting rational policy choice by Governments in a relatively transparent environment. While the focus of RIAs is not specifically on reducing the administrative burden, they do assist in stemming the tide of new regulation and "red tape," particularly regarding subordinate legislation.

The focus of RIA processes employed by Australian governments tends to be general and usually draws on generic regulatory reform principles. However, for example, Western Australia provides an interesting example, where the RIA processes for Cabinet Submissions are specific to issues impacting on regions or small businesses. IRA processes are particularly useful instruments for reducing or minimising administrative burdens, as

they require governments to apply a consistent, systematic and transparent process of assessing alternative policy approaches to problems when reviewing existing legislation or assessing new regulatory proposals. This is especially the case when implemented in tandem with a staged repeal or mandatory review programme. For example, in NSW it was observed that "the periodic review and cull of existing regulations... has reduced the number of regulations in force by 48%".[37]

The RIA process, properly undertaken, should identify minimum regulatory approaches and thereby minimise the administrative burdens associated with regulatory arrangements. This characteristic, however, can make the assessment of the usefulness of RIA processes problematic, as the benefit of the process is that unnecessarily burdensome legislation or regulation is not made in the first place.

National Competition Policy (NCP) – legislation review

National Competition Policy (NCP) has dominated microeconomic reform effort in Australia in recent years. The NCP agreements were prompted by a shared belief on the part of the Commonwealth, State and Territory Governments that a co-ordinated approach to competition policy and market reform was required in order to stimulate economic growth and job creation. The policy is based on the recommendations of an independent committee of inquiry commissioned by COAG and completed in 1993 (Hilmer Report).

A number of elements of the NCP have significance for administrative simplification and burden reduction. Each jurisdiction developed a programme for legislation review from 1996 to 2000 (subsequently amended to 2002). There is also a requirement for systematic review of this stock of legislation at least once every ten years. Reforms were required to remove restrictions in legislation unless net public benefit case could be made, and there was no alternative means of achieving identified objectives.

Thus, NCP has led to the plan to review and reform approximately 1 800 acts, together with the relevant subordinate legislation, from 1996 to 2002. A second element of the NCP legislative review requirement is that all new legislation is required to be assessed against the same competition tests prior to its introduction.

In sum, the implementation of these tests has had a considerable impact in promoting administrative simplification and burden reduction initiatives. The substantial progress made in achieving regulatory harmonisation and uniformity outcomes has meant substantial gains have been achieved in terms of administrative simplification and burden reduction, particularly for interstate operators in the industry.

Lessons learned

This report has established that administrative simplification and burden reduction programmes have existed essentially for as long as the regulatory reform agenda in Australia, and that they continue to be a prominent part of that agenda to the present day.

In some respects, the use of administrative simplification and burden reduction programmes in Australia can be seen to have shifted in the direction of a more systematic approach. It is clear that the most important and effective burden reduction programmes in Australia have increasingly been adopted as part of broader reform initiatives, including the ABN element of the recent redesign of the tax system and the regulatory quality assurance requirements adopted as part of the implementation of the national competition policy. Arguably, the adoption of mutual recognition represented the first step in this direction.

Some clear policy risks can be identified in relation to the pursuit of simplification and burden reduction policies. Firstly, there is the possibility that these policies will divert the energies of reformers from more fundamental reforms. It is arguable, for example, that the simplification and burden reduction programme pursued by the Federal Government's Small Business Deregulation Taskforce (and the associated implementing agencies) after 1996 consumed a disproportionate amount of the resources specifically devoted to regulatory reform during this period. Major activity in respect of simplification and burden reduction might be seen as constituting an "adequate" regulatory reform effort and detract from the perceived urgency of pursuing more difficult and fundamental reforms.

A second possible concern is that simplification and burden reduction initiatives can, in some cases, have the effect of shifting burdens, rather than eliminating them. An example of this issue is that of BLIS systems and Business Approvals Packages. While the former have been found to entail real reductions in information search costs, the latter seem largely to have shifted burdens from business to government. Moreover, to the extent that regulatory costs are justified, shifting them to government offends against sound pricing principles. This problem may be a reflection of a wider issue, with regulatory reform having increasingly been promoted primarily as an arm of industry policy in recent years – in line with the initial rationale of the "deregulation" programmes of the 1970s and 1980s – rather than as serving broader social welfare imperatives.

The example of BLIS and BAP can also serve to indicate another potential lesson. It appears that some of the most effective simplification and burden reduction initiatives have been the result of identification and implementation of an opportunity to adopt an *ad hoc* initiative with a significant potential benefit. Attempts to build overarching structures and programmes on this base (*e.g.*, to turn BLIS into BAP) can be counter-productive. Thus, a possible lesson is that simplification and burden reduction activity should be "opportunistic" in nature. A related lesson is that a sound *ex ante* analysis of the likely benefits and costs of burden reduction initiatives is essential: the performance of the burden reduction initiatives considered has clearly varied widely.

A number of initiatives discussed in this report also highlight the importance of co-ordination across levels of government in implementing administrative simplification-based reforms. The NSW development approvals reforms highlighted the importance of integrating State and local approvals processes. Similarly, the BLIS programmes have progressively included licensing and permitting information from all three levels of government in order to arrive at an integrated and comprehensive service. While co-ordination is important in many areas of regulatory reform activity, it seems that process-based reforms – such as administrative simplification – constitute an area where this is crucial.

As indicated above, there is insufficient experience with extra-governmental reform advisory bodies in Australia to allow any clear conclusions to be drawn as to their overall policy effectiveness, much less their role in relation to administrative simplification. (Western Australia is an exception to this, as advisory bodies are routinely used for regulatory reform activity in this State.) It is arguable, however, that the use of such bodies must be grounded in a supportive political culture if they are to succeed and that Anglo-Saxon political cultures may not be the most fertile ground for this form of initiative.

By contrast, specialist regulatory reform bodies and central agency policy groups have a strong record in identifying opportunities for administrative simplification initiatives, reflecting the largely technical nature of the issue.

Notes

1. Australia has one National, 6 State, and 2 Territory Governments.
2. Time for Business—Report of the Small Business Deregulation Taskforce, November 1996, p. 12.
3. Ministerial Councils exist covering a range of individual portfolio areas and involve the relevant Commonwealth, State and Territory ministers and the relevant New Zealand minister.
4. Business Licences and Regulation Reform, Bureau of Industry Economics, June 1996, AGPS, Canberra, p. 6.
5. Codes of practice, for the purpose of this study are described as external instruments referenced in legislation that business may be required to comply with, the term is used to describe a wide range of instruments including, standards (Australian and International), rules, guidelines, and procedures.
6. The fact that the business licence information service was conceived from within government is significant. While the business sector, particularly small business, is a consistent advocate for reducing red tape, it is rarely a source of concrete suggestions on how to achieve this, apart from the wholesale "deregulation" approach.
7. More Time for Business, Report of the Small Business Deregulation Taskforce, November 1996, p. 57.
8. Savings due to BLIS, unpublished document, Victorian Business Information Service.
9. Victorian Business Channel, *http://business.channel.vic.gov.au*, South Australian Business Channel *www.sa.gov.au/start/licences/smartlicence*, and Western Australia's business and investment portal, *www.bigwa.wa.gov.au*
10. Review of the Business Licence Information Service, Price Waterhouse, December 1994.
11. OIE Web site, TIGERS programme, *www.govonline.gov.au/projects/services&innovation/tigers.htm*
12. *Id.*, p. 1.
13. *Id.*, p. 15.
14. *Id.*
15. Time for Business, Small Business Deregulation Taskforce, 1996, Recommendation 62, p. 135.
16. Also sometimes referred to as Integrated Approvals Packages.
17. Personal communication from Lyn Rochford, Human Solutions Pty Ltd. Note that this company developed and maintains the BAP.
18. NSW Legislative Assembly Hansard, 15 October 1997, p. 822.
19. Personal communication. From Brett Whitworth, Assistant Director, Policy and Reform Branch, NSW Department of Urban Affairs and Planning.
20. The Building Code of Australia sets building construction standards.
21. Web site, Office of Regulation Review, Victoria, *www.dsrd.gov.au/orr*
22. *Id.*
23. *Id.*
24. Indeed, the residential building sector is understood to be the only one that continues to use local government building surveyors to a greater extent than private surveyors.
25. See also the references to the introduction of the latter approach in the context of NSW reform of its development approval process.
26. *Id.*
27. Timeliness of Service Delivery: A Customer's Right, Victorian Auditor-General, *http://home.vicnet.net.au/~vicaud1/sr44/ags4400.htm*

28. *Id.* for all following quotes.
29. Telephone and counter registration applications and queries are also supported by the ABR.
30. The Use of the ABN-DSC, ABN-DSC and Gatekeeper Draft Discussion Paper No. 6, Office of the Information Economy, Department of Communications, Information Technology and the Arts, 2000.
31. Technology in Government Committee Web site, *www.nte.gov.au*
32. Commonwealth Department of Workplace Relations and Small Business Web site, *www. www.dewrsb.gov.au*
33. *Id.*
34. Article by Lindsay Doig, *www.cpaonline.com.au*
35. Mutual Recognition Agreement Legislation Review, Department of Prime Minister and Cabinet, 1997, para. 5.2.2.
36. *Id.*, para. 5.3.
37. Re-engineering Regulations in New South Wales for the 21st Century, Regulation Review Committee, Parliament of NSW, June 2000.

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ISBN 92-64-10067-9
From Red Tape to Smart Tape
Administrative Simplification in OECD Countries
© OECD 2003

3

Administrative Simplification in France*

Abstract. *Administrative simplification and burden reduction have been ongoing features of French policy on administration of the state. The improvement of the observance of the rights of citizens and their right of access to administrations and the modernisation of state structures and modes of operation have been the key objectives of the measures taken. There are several important bodies in operation (COSA for administrative simplification, DIRE for state reform, ATICA for new information and communication technologies, and COSLA for the improvement of administrative language) that are in charge of different aspects of the overall modernisation and simplification efforts.*

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* This report was written with the support of the Secretary General of COSA – *Commission for administrative simplification*, France, based on interviews and surveys carried out by Professor George Chatillon, Paris-Sorbonne University, France.

Introduction

Although the government approach to administrative simplification in France has changed considerably over time, it has been a continuing factor in public policy. Between reports and studies, which go back as far as the period immediately following the Second World War, simplification of the relations between the administration and citizens has to varying extents been a constant concern of different Governments.

However, depending on public sensitivities and priorities, the aims and emphasis of simplification has varied. For instance, the debate on whether State involvement was too intrusive and needed to be lessened was the focus of attention in 1980-1990, while the cry for "better State involvement," which followed it, reflected a concern at a time of budget constraint that better use should be made of public monies on behalf of all citizens. Currently, action is focussed on reaching the most vulnerable population groups. Similarly, in the economic sphere, special attention is being paid to small and medium-sized enterprises.[1]

Administrative simplification and burden reduction have been ongoing features of French policy on administration of the State. Reform of the State, for its part, is a topic whose very wording is a sign in France that it is not confined to the administration but includes the Government and the general public. However, even where this ambitious reform project is concerned, France has seen the concept change under the sway of the prevailing sensitivities of the political majority in government and the flow of public opinion, which in France continues to demonstrate its continuing attachment to the public service. The question then is what exactly administrative simplification means in France. Two main concepts stand out, which, although not opposed to one another, are nevertheless quite distinct:

- Observance of the rights of citizens and their right of access to administrative documents; and
- Modernisation of State structures and modes of operation.

The Bill relating to the rights of citizens in their relations with administrations, passed in April 2000, stated that "Improvement of the rights of citizens in relation to administrations is a continuing concern of the public authorities. It is evidenced by the ongoing efforts of the State services, the local and regional authorities and other public services to provide the general public with the highest attainable quality of service".

However, apart from this ongoing and essential effort, which has to be vigorously pursued, there is a need at some points that new requirements are codified; this advances the law and improves conditions for citizens by strengthening their rights.

There has been an abundant harvest in this respect over the past twenty years with a number of new rights have been enshrined in the legislation and are no longer in dispute. These are the right to free access to administrative documents, introduced by the Act of 17 July 1978, the right to know the reasons for any administrative action, provided by the

Act of 11 July 1979, the right to access to records provided by the Act of 3 January 1979, and the new duties incumbent on the State administrative services introduced by the Decree of 28 November 1983.

As mentioned, one important thrust of public policy has thus been *to extend and safeguard citizens' rights*. These various provisions have in particular been an expression of the will to combat administrative secrecy and at the same time to make the work of the administrations more accessible to the public.

Similarly, the Act of 3 January 1973, which established the office of Mediator of the Republic (a function similar to that of an ombudsman) and the Act of 6 January 1978 provide a mechanism to safeguard information, relating to individuals, in computer files, including those in the public domain.

In short, from the late 1970s to the present, the legislature has been associated with simplification policy through its work in according greater recognition to citizens' rights. The many landmark legislative texts on access rights (1970s and 1980s), on the right of appeal (recent reform of the Code on Administrative Tribunals, which established new forms of summary appeal), and on the information to be provided to the public (see the recent Act on the rights of citizens in their relations with administrations – the DCRA Act, of 12 April 2000)[2] testify to an ongoing recognition of the status of individual citizens and a desire to strengthen the means available for exercising those rights of citizenship as users of public services.

Apart from the body of laws and regulations intended to protect the freedoms of citizens and ensure respect both in the courts and elsewhere for their rights in relation to the administrative services, the second major thrust of public policy on simplification is concerned with *physical access to one-stop shops*. Work on improving such access has led to a variety of approaches and represents a continuous development over the past twenty years.

Although, strictly speaking, administrative simplification and burden-reduction programmes in France are seen as primarily concerned with the interaction between users and one-stop shops, the second component of this study, which deals with cost reduction, is viewed in France as coming under the heading of modernising the State and making it more efficient. Both sides of this effort in the public sector are therefore considered in this report.

It should be recalled at the outset that France, as a unitary and centralised state, has for over a century operated under a government headed by a Prime Minister, which determines national policy. This organisational set-up, has, at the administrative level, a roughly vertical command structure leading from ministers at the top through the so-called "central" administrations (*i.e.* the offices of the ministry) to the decentralised services at the bottom. Although transfer of powers to local authorities has been gaining ground since 1982 in areas immediately affecting the general public (transfer of health and social services to the local departmental councils (*Conseils Généraux*), and transfer of vocational training and local economic development to the regions), these authorities are nevertheless subject to the laws and regulations of the Republic, which are prepared by the Government. The prefects, the State's representatives at local level, are responsible for ensuring compliance from all local authorities within their jurisdiction (the *départements*). However, mayors, the quintessential local elected representatives, may also be required to take action on behalf of the State, that is, in the place of a minister. This happens, for example, with

regard to the issue of identity papers or the keeping of registers of births, deaths, and marriages, which serve as evidence not only of an individual's existence but also of the principal landmarks in his or her life (marriage, divorce, parenthood, and death).

Another point that needs to be made is that although France takes an institutional approach to reform, in deference to its Constitution and the principle of separation of powers emanating from the 1798 Revolution, "administration" is understood by the general public to include all entities governed by public or private law that provide a public service at either the national or local level. From this standpoint, the term administration encompasses social security bodies and joint structures that bring employers' and workers' organisations together to manage insurance schemes covering illness, old age, family affairs, and even unemployment. Operators of public transport, water supply, and power supply networks are also considered administrations, although in institutional or legal terms they may not necessarily be so.

In particular, regional and local authorities (regions, *départements*, communes) are also considered by the general public to come under this heading, in view of their extensive powers, which have been increased by the recent legislation on decentralisation.

This report will therefore look at all provisions and measures that have been adopted with a view to simplifying the relations between users and all "administrations", in the sense in which the term is used in France and not in the strictly institutional sense (which applies solely to the State administrative services and those of local communities). On the other hand, the more restrictive institutional approach is what applies in the case of State reform, *i.e.*, modernisation of structures and modes of operation. In France, the legislation relating to decentralisation and management independence for social security entities and public establishments gives the Government no authority to force structural reform on them. Governments can therefore take direct action only in the case of their own services.

Public policy on administrative simplification and hence the involvement of politicians in the matter have changed radically as the general public's priorities and expectations have shifted. The methods employed, the content of reform and its outcome have all been very different over time but demonstrate the continuing concern for simplification.

The policies now being applied are therefore just another step along the road French administrations are being asked to follow. However new lines of action and new methods are involved and are producing meaningful results and projects, even though they are not always sufficiently visible to the general public.

Background and historical developments

In general, administrative simplification and burden-reduction programmes do not form part of any overall plan in France. Moreover, such an approach would hardly be appropriate and be relatively ineffective in view of the way the French administration is structured and how authority is shared between ministries and directorates, which would make too undifferentiated an approach unworkable.

The attitude in ministerial administrations is primarily centred on performance of the duties incumbent on the ministry concerned as shaped by its traditions and the laws and regulations defining its existence. The State administrations have principally directed their efforts to adapting their human and material resources to the services they are called upon to deliver to the public rather than to undertake radical reform of procedures and methods.

Although during the 1970s, organisation and methods entities (such as SCOM – the costs, organisation and methods service) were established as an accompaniment to planning and budget rationalisation efforts, this approach was abandoned in favour of a pyramidal system reaching up to the highest levels of the State apparatus such as ministerial directorates and basic services.

In France, therefore, it is the ministers that are responsible for determining and monitoring their ministries' operation. In addition, as members of a Government headed by a Prime Minister that determines government policy, ministers are expected to require their administrations to implement decisions made by the Council of Ministers or by meetings of ministers.

Although the actual procedures employed have varied over time, the major policy thrusts have always been decided by Government. Parliament is not the prime mover in this respect unless questions such as determination of the rights and obligations of citizens, safeguarding their freedoms and ensuring their right to defence against administrative decisions are at issue. It is conceivable, however, that this evaluation function is likely to be strengthened in the context of moves to modernise budget procedures in 2001. On the other hand, as a result of the tasks and reports entrusted to them, parliamentarians could well become a driving force for generating proposals for action.[3]

In conformity with the legal traditions of a law-based state, administrative simplification has in practice been channelled through the amendment of existing laws and regulations or the enactment of new ones. For instance, the decision to transfer the ability to issue some individual authorisations to the decentralised authorities was embodied in a Government Decree. (French law encompasses no less than 5000 authorisation regimes with prior submission of applications, which cover a very wide range of areas of national economic and social life.) In the same way, it took an initial Decree in November 1983 followed by a provision in the DCRA Act to compel public servants in contact with the general public to identify themselves.

It is only recently that thought has been given to other ways of steering reform; the contract-based relationship between the State and local authorities that was mentioned earlier is currently being extended within State administrations and in conjunction with the social security bodies, which is shown by the approval of plans setting out the goals each partner is expected to achieve in exchange for the resources, including financial resources, available to them under the plan. These undertakings are centred on the service to be delivered to users.

Institutional framework

The Prime Minister considers administrative simplification to be a challenge vital enough to need everyone to make a contribution. The general method recommended is to mobilise everyone: "The new system will only work if all administrations give it their best efforts on a continuing basis".[4] Thus "administrative simplification should not be made the exclusive property of a commission or a specialised body, it is of concern of the administration as a whole, including all State services".[5] The procedure has been for the services to pool information on good administrative practices, experience gained and difficulties encountered. This was the reason for ending COSIFORM (Commission for the simplification of formalities), designed as a simplification commission bringing together representatives of all institutional entities in its sub-committees. COSIFORM, despite many

meetings and reports did not really succeed in initiating any visible and practical simplifications. Incidentally, some of its working groups were unaware of or unable to take account of the advent of the Internet. Its work was brought to an end in August 1998.

As a consequence, the Prime Minister decided that each ministry should be responsible for the procedures under its purview and for preparing, under the conditions provided by article 1 of the Decree of 2 December 1998, an annual programme for simplification of administrative formalities and procedures. The ministerial programmes would then contribute to the wider multi-year modernisation programme.[6]

The separate responsibilities of each party were clearly defined: the ministries are responsible for administrative simplification policy in their sectors on the basis of plans to be submitted annually to the Administrative Simplification Commission (COSA). COSA reviews the plans and submits to the Prime Minister, who is its chairman, the measures proposed for implementation, including its own proposals. The method was defined in a Prime Ministerial circular dated 6 March 2000,[7] titled, *The Government Machinery For Achieving Administrative Simplification and Modernisation of the State: From Promoting Action to Concerted Action*.

Similarly, the administrative simplification procedures applied initially to businesses and later extended to other users were examined by a Commission for the Simplification of Formalities (COSIFORME, subsequently known as COSIFORM) which worked through a series of committees each dealing with a given topic and periodically meeting with partner institutions and administrations. At a time the concept of the single access point was making headway with the introduction of Business Formalities Centres, it was natural that most of COSIFORM's work would be centred on the introduction, under the "edifact" standard, of single access point procedures coupled with a "back office".

In the very early 1990s, the setting up of the Commission on State Reform, a subsidiary body to the Prime Minister's Office, was the sign of a rather one-sided policy where simplification consisted in the removal of existing procedures through an approach designed to promote such action. The wholesale transfer of a number of State services to the provinces in the wake of a Prime Ministerial Decision was also an aspect of this one-sided and somewhat authoritarian policy, whose abrupt demise was evidenced and penalised by the disappearance of the Commission on State Reform. The bodies currently in place are as follows:

- The *Administrative Simplification Commission* (COSA) is the leading body responsible for co-ordinating measures to simplify administrative procedures for users.
- The *Interministerial Delegation for State Reform* (DIRE) keeps abreast of the organisational changes taking place in the State services and in their relations with local authorities.
- The *Agency for Information and Communication Technologies* (ATICA) keeps an eye on changes in the new technologies market and provides administrations with guidance and advice.
- The *Committee to Improve Administrative Language* (COSLA) assists administrative bodies in redrafting forms in widest use, and helps public servants avoid legalese.

These four bodies are concerned with the general dissemination of good practices, which they review and disseminate, thus providing administrations with a permanent source of support. The starting point for the work was to be the user of the government procedure. As the Prime Minister said, "you must therefore identify the procedures that most often make difficulties for the user in practice and cause considerable misunderstanding and

waste of time. It is incumbent on you to determine, in the light of your department's field of work and in consultation with users and their representatives, the procedures relevant to such identification."[8]

With respect to government forms, in the late 1970s, the Centre for Registration of Administrative Forms (CERFA) was given the task of cataloguing all administrative forms designed for use by the general public. Since this proved a long and difficult undertaking, CERFA asked administrations to make it a practice in the future to submit to it all printed forms they intended to use.

Upon its demise in 1998, CERFA was replaced by COSA, which was able to use the work already done on cataloguing forms (some 2000 forms were in existence) and to continue this work in the search for greater overall accessibility and comprehensibility. COSA was thus asked to continue the cataloguing and in addition to look for ways to co-ordinate forms better and to simplify them.

Since March 2000, COSA, along with COSLA, has been engaged in the quality assessment of forms and has produced a guidebook to form design aimed at administrations as well as a checklist for self-assessment of forms (see the COSA report annexed). The best forms, whatever their format (paper forms, online forms, fully interactive online procedures) are awarded a seal of quality which the administration is then entitled to display on the document. Ministries have been very eager to receive this seal, but COSA has so far awarded it to only four procedures, namely the application form for entry to the competitive examination for entry to the teaching profession (300 000 applicants annually), the application form for family allowances, the form for notification of social security contributions paid by the self-employed and the application form for the criminal record certificate required for certain job applications.

This work continued in 2001 with an initial set of surveys conducted among user groups and the services managing case files or dealing with the general public to find out what problems had cropped up. This led to the rewriting of forms with the help of a communications agency and the Committee for the Improvement of Administrative Language (COSLA) – see the COSA report, which contains an annex giving a description of COSLA.

In addition to monitoring implementation of simplification measures in practice, notably with respect to time schedules, COSA is also responsible for designing tools to provide quantitative measurement of the actual impact achieved by those measures. Examples include tools to assess savings in time, number of procedures eliminated, or financial savings for users.

All simplification measures proposed by a ministry in its simplification plan shall be accompanied by an impact note. The Prime Minister assesses the timeliness and effectiveness of the measures submitted in the annual programmes. Once decided, simplification measures are to be put into practice as soon as possible. A senior official in each ministry is assigned the task of watching over the implementation of simplification measures. COSA submits a public report to the Prime Minister each year, which includes the status of implementation of the ministries' simplification plans.

Selected administrative simplification and burden reduction practices and programmes

Use of IT to improve access to public services

Over 7 000 public Internet access points sited in employment offices, public libraries, young peoples' information centres, etc. are to be introduced by 2003. Public access points have been made accessible to the visually impaired with the help of an association for the visually impaired.

A club for webmasters of public Web sites has been established and an external Web site has been set up to allow exchange of information, sharing of experience and pooling of good practices. The Public Service Directorate and COSA have also posted online the outcome of a dialogue with the State services responsible for recruitment for the public service, which takes the form of guidelines and a recommendation to allow applications for entry to the relevant competitive examinations to be made online.[9]

The relevant legal (recognition of electronic signatures) and technical (cryptology) systems were put in place in 2000 and 2001. The first online procedures making use of electronic forms have been initiated, notably by the Ministry of the Economy, Finance and Industry. The form for notification of intra-Community trade in goods and the monthly VAT return forms are examples of the forms being made available.

In addition, 20 online procedures relating to public tenders, urban planning matters and civil status are currently being introduced or are under study. By August 2000, 64 online services were already accessible through the French administration gateway[10] giving users the opportunity to make applications or file mandatory returns without having to make a journey to do so.

One-stops shops

The first move to improve access to public services was to reach out to isolated population groups with the help of mobile access points, or access points clustered in familiar premises (town halls and post offices offering other public and social security services in addition to their own). The recent establishment of public service centres by virtue of the above-mentioned DCRA Act of 12 April 2000, or the installation of law and justice centres open to consultation by all citizens, also make single access points available to information on and assistance in various procedures.

The concept of physical access at a clearly defined point has also been applied to businesses. Since the early 1980s, the public and semi-public bodies whose services are required for setting up businesses have joined together to provide a single network represented by a single access point for performance of all the requisite formalities. These are the Business Formalities Centres (CFEs – *centres de formalités des entreprises*). This mechanism operates as a "front office" in such places as chambers of commerce and industry for businesses in the industrial and commercial sector, chambers of trade for tradesmen, and, more recently, chambers of agriculture. It affords businesses a single access point where all statutory procedures for business establishment, changes in statutes and closures may be performed.

This concept is based not only on the idea of a single access point for performance of formalities but also on that of a single act for provision of information. A single document will suffice for businesses to communicate the information required by all the relevant administrations and social services. The idea of the "one-stop shop" that came into being

with the CFEs has been successfully introduced in other sectors and for other audiences. For example, the social services bodies and employers' organisations have recently set up a public interest grouping called GIP-MDS (*Groupement d'intérêt public – modernisation des déclarations sociales*) to provide joint management of social service returns. However, the formation of GIP-MDS in the age of the Internet has enabled a further step to be made towards simplification by introducing not a physical access point but a non-material access point for the submission of social service returns. A gateway known as Net-Enterprises[11] has now been made available and from now on will allow various types of returns to be submitted online (including the annual return of social service information and the staff recruitment return). This should help making the complexities of the administrative and financial relationships between the various bodies clear to the user.

The idea of a single access point has thus progressed to that of a gateway for submission of information. Following the general meeting on establishment of businesses held in March 2000, and at the request of the Prime Minister, the Ministry of the Economy, Finance and Industry have been preparing for introduction in late 2001 a gateway to the formalities for setting up businesses. As an extension of the CFE idea, but in this case a virtual embodiment of it, the gateway will serve as a bank of information, or, in other words, a yearbook of bodies able to assist those setting up a business, guide them through the necessary formalities, and help them in drawing up a business plan.

The measures recently adopted to facilitate access to administrations by the general public have been given practical expression by the introduction of public service centres and single access points where formalities may be carried out. Their sites have been chosen to provide geographical accessibility or because of their familiarity to sectors of the general public or to occupational sectors.

They also form part of the Governmental Action Programme for the Information Society (PAGSI – *programme d'action gouvernemental pour la société de l'information*);[12] which is intended to introduce information technology into the State sector and the public services and has two main thrusts:

- To facilitate access to administrations by the general public through the Internet.
- To modernise the State sector's mode of operation by putting administrations on line.

In 1997, recognising that administrations had been somewhat tardy in making use of the Internet, the Prime Minister decided to introduce a multi-year programme. Provision of online services was ensured by introducing the gateway service – public.fr – in October 2000, giving access to administrative forms on line (1000 forms available out of a list of 1600) and establishing 4 000 public access sites.

In August 2001, at the Hourtin communication summer school, a think-tank centred on the new information and communication technologies (NTIC), the second stage of PAGSI was launched with five objectives:

1. To make public services generally available on line by 2005.
2. To set up personal accounts for individual citizens allowing them to access their own administrative records and correspond with administrations.
3. To provide other means of online access, in order to avoid creating a digital divide (The Government has accelerated the introduction of telephone call centres and public service centres with a view to making access to all these new instruments as widely available to the public as possible).

4. To use the Internet to enliven democratic debate by setting up micro-forums.
5. To give all public servants access to the Internet and provide them with the skills to use the new information and communication technologies.

In 2000, 2.5 million people were able to determine their income tax on line. Five million health care dockets have been exchanged each week on the health and social services network that links medical practitioners to the social security bodies. Introduced during the second quarter of 2001, the online service providing criminal record certificates has allowed 35 000 Internet users to order this document from the appropriate office.

Two recent experiments, one on what Internet users expect public Web sites to offer and the other on reform of the Code governing the public contract system, have shown the general public's interest in this type of consultation.

A forthcoming debate will focus on the civic implications of electronic administration.

Half of public servants in the State sector already have access to online services: e-mail, intranets or access to the Internet. An external Web site for the public services has been in operation from the current year in all *départements*.

A new agency for information and communication technologies (ATICA – *agence pour les technologies de l'information et de la communication*[13]) has been entrusted with providing technical support for the introduction of the new information and communication technologies in administrations. COSA for its part has been given the task of providing assistance in the development of online public services and in the design of the content of the services offered.[14]

Codification of the laws

In the same way, the idea of improving access to the law has been expressed by two major trends. The first was the re-launching during the 1980s of the idea that all laws and regulations dealing with the same field but of scattered dates and levels should be grouped into single Codes. The High Commission on Codification was given the task of scrutinising these new Codes, which were intended to facilitate access to a unified and complete body of laws and regulations in a given field, before their submission to Parliament for approval.

The subsequent provision of a database accessible through the Légifrance Web site[15] and giving online access to these Codes and the principal laws and regulations published since 1994, makes it possible for all members of the public to consult the various Acts and Decrees without having to conduct a bibliographical search or undertake a journey.

In addition to the provision of Codes, laws and regulations and collective agreements online for consultation free of charge (at the Web site *www.legifrance.gouv.fr*), trials of making Bills and other draft legislation and regulations available online, together with their impact studies, are to be continued.

Standardisation of reporting requirements

Another thrust of simplification, is the pooling, under supervision by the National Commission on Computer Science and Freedoms (CNIL – *Commission nationale informatique et libertés*), of the information held in the different networks. The purpose is not merely to supervise but more specifically to prevent information being requested from sectors of the public that are frequently disadvantaged and culturally reluctant to have an administrative case file put together.

This pooling policy (*mutualisation*) was ushered in by authorising the Directorate General of Taxes and the social security bodies to share their data. It has made it possible to use a single annual return, called the annual social data statement (DADS – *déclaration annuelle de données sociales*), for one-step processing of the information provided by employers on the individuals on their payroll during the course of a year.

DADS, which from now on will be processed by GIP-MDS (see above), is a prime example of the pooling of information provided by returns that are mandatory by law for given social or social and occupational categories.

DADS is not only used by the General Directorate of Taxes for prior entry of data on tax returns for employed persons, statements of social contributions paid on behalf of an employee, or fees paid by a business, but is also sourced by the directorates of statistics of the Ministry of Employment and Solidarity (DARES – directorate for promotion of research, studies and statistics) and the Ministry of the Economy (INSEE – national institute of statistics and economics), thus sparing employers from having to make multiple returns.

Similarly, on the centennial of the Associations Act, in July 2000, the Prime Minister invited administrations to standardise their practices with respect to the associations they subsidised. The Ministry of the Interior, with which associations are registered, the Minister for Urban Affairs, the Minister of the Economy and Solidarity, the Budget

Box 3.1. **Administrative simplification and civil liberties**

In advance of the European Union, which recently adopted a directive to regulate protection of privacy with regard to personal information relating to individuals held on file, including in computer records, France introduced machinery to protect personal information in 1978.

Under the law, no administration may hold such information on file without prior authorisation from the independent commission CNIL, which keeps watch on all data held on file, the use made thereof, authorisations for access thereto by administrations and the archiving of such data. The law guarantees individuals' right of access to their personal data and their right to have such data corrected.

Single access points, together with all other systems for sharing data, are required to make prior application and may be denied access.

CNIL was for long opposed to a single identity code for use by all administrations. Although it recently authorised social security bodies to give data on the amounts paid out in allowance amounts to the Directorate General of Taxes to enable individual income tax returns to be completed in advance, this procedure is subject to stringent conditions. For example, no member of staff of the tax administration may have access to individual data. Data processing centres have been accorded sole entitlement to receive the information provided by social security bodies and enter them on tax returns (on which the identity code does not appear).

For the same reason, France does not have a general population database, unlike other States such as Denmark, since such databases are considered contrary to the principles of individual privacy. This limits the simplification process in that two separate administrations can share data on ordinary persons (users, families and managers and employees of businesses) only under very stringent conditions and after receiving prior agreement from CNIL and being subject to subsequent scrutiny by that body.

Directorate and the Commission for Administrative Simplification were asked to work on a joint project for the acceptance, evaluation, and granting of subsidies to proposed associations that were in line with public policy.

In a similar way, after the adoption by Parliament in December 1999 of the provisions ensuring universal sickness insurance (CMU – *Couverture maladie universelle*), a measure intended to provide social benefit to six million individuals not covered by insurance, it was the national sickness insurance fund system that provided the single access points for reception of applications. The administrative simplification involved consisted in giving the entitlement automatically to all recipients of RMI, a benefit provided by other structures, and only subsequently verifying for all applicants the income, family, and occupational details declared.

Another approach has been to try to reduce the number of requests made for information by an administration engaged in processing a user's case file. Legislation has thus removed the right of French administrations to require documents that must be supplied by other administrations, for example certificates of civil status (of which 60 million used to be requested annually, or at least one per year per inhabitant, each implying a trip to the town hall); documentary evidence of domicile, implying submission of a photocopy or display of bills or receipts at an access point (another journey and waiting time); or duly certificated photocopies of supporting documents.

In the future, users will show supporting documentation directly at the access point or send simple and legible photocopies by post. As a continuation of this effort, a Government Decree of 25 May 2001[16] requested all administrations to desist from requesting the same information from the same user on numerous occasions. COSA was required to assist

Box 3.2. **How business formalities centres operate**

Established in 1981 and initially dealing only with commercial or industrial enterprises, the Business Formalities Centres act as single access points for performing the various administrative formalities associated with setting up a business, changing its legal status or closing it down.

The idea behind the scheme is twofold:

- To provide a single access point for the various procedures involved, which means that in addition to a "front office" there is a pooling of data by partners in a "back office".
- To provide a one-step process whereby a single application will trigger all mandatory legal and regulatory procedures.

Thus when an application to register a new business is made at a given single access point the necessary notifications are sent simultaneously for attention to the various administrative services dealing with the relevant tax, social services, statistical, and legal aspects of the application.

This process relies on a single identity code for joint use by all members of the network and allows a case file to be unambiguously identified. The code is the Siren No. administered by INSEE, a statistics office. The code number is communicated to the business concerned and to all members of the network so as to enable the business to be identified in any subsequent procedures. The code number also serves as proof that the business has been duly notified to the judicial authorities and registered and has also complied with all the safeguards required by law in the conduct of its business.

administrations to follow this recommendation. One task for COSA was to certify the list of supporting documents required for each procedure and it was authorised to cut it down.

This approach has already had useful applications wherever there is a single file-holding point (CFE, GIP-MDS for mandatory social returns, etc.). It is taken into account by the major networks such as the family allowance funds which, with the help of COSA (and COSLA as regards administrative language), have designed a single simplified file for requesting various forms of social assistance. The file was designed on the premise that it was not up to applicants to determine the allowances to which they were entitled. They should be merely required to send in a statement of their family and financial situations in order to receive by return access to all the entitlements open to them. Of course, the observance of citizens' rights implies that information documents and a public site should be made available so that the assistance on hand might be ascertained.

French town halls, which used to issue 60 million certificates of civil status and 10 to 15 million duly certificated copies of documents a year, have been relieved to find that they will no longer have to support the extra workload occasioned by tasks originated by administrations processing case files.

Similarly, the introduction of electronic access points in prefectures, the development of online services, rationalisation of the periods of validity of identity and travel documents, and the provision of a list of supporting documents are allowing prefectures to cut down queues at access points. An evaluation of these measures by COSA has clearly demonstrated that their impact is not only due to the fact that users understand them, but also to the benefit the services receive from the considerable reduction in what are generally tedious tasks.

The downside is that all access points will have to offer the same facilities, otherwise some districts will have to suffer user complaints that they are not getting the same level of service as people in another district that is offering the new services. Similarly, users made aware of their rights and obligations by public sites are ready to protest against any extra or different requirements imposed on them locally. Complaints and e-mails bear witness to the fact that people are better informed.

The Minister of the Public Service and State Reform is preparing an information campaign for users in the autumn of 2001, entitled, "We're simplifying the administration for you", and taking care to prepare guides and circulars for officials dealing with the public and the services responsible for processing files. The increasing rate at which officials are being connected to the Internet, external Web sites, and public gateways should make it easier to minimise time lags between the moment a reform is adopted and the time it comes into operation throughout the country.

It is not only in the interests of improving the information provided to officials on the means at their disposal but also with a view to raising their awareness of the various aspects of administrative simplification and State reform that training is being stepped up and information days and seminars held. Trainees, officials, and students are also the target of interventions by ministers or senior officials with responsibilities for simplification and modernisation. Institutes for political studies, regional institutes of administration, and the national school of administration benefit from these interventions.

Methodologies to estimate burdens (e.g., Regulatory Impact Analysis)

A concern for high quality and effective policies has led Governments, as recommended by the Council of State, to seek to improve the quality of laws and regulations.

One of the main methods has been to require an impact study to be made of all proposed legislation before it is subjected to interministerial consideration or submitted to the Council of State for review. A Prime-Ministerial circular dated 21 November 1995[17] provides that Bills and draft Decrees should be accompanied at each stage of preparation by a specific review of the advantages expected of the legislation and its various implications, such as for employment and administrative procedures.

The Council of State and the Committee of Inquiry into the Cost and Performance of the Public Service have each made an evaluation of the operation. Despite mixed opinions, it was decided to make the mechanism a permanent one. Assessment of the five years of impact studies has led to the following observations:

- The studies exist and generally automatically accompany all draft legislation considered by the Council of State.
- Their content and quality remains very variable. They sometimes suffer from a lack of numerical data or international comparisons; services tend to advocate measures for internal reasons rather than engaging in a genuine critical review. However, it is true that the studies are prepared by services that lack the proper skills, are not subject to external review, and have to meet very short deadlines.

It is a fact that decisions relating to government programmes sometimes arise out of election manifestos. In such circumstances, texts are subject to many constraints (imposed by various groupings, consultations, and interministerial discussions) before consideration by the Council of State. The most far-reaching decisions are generally preceded by extensive media coverage and prior negotiation with the social partners. As a result it is difficult to soften or abandon such texts subsequently in the light of the conclusions of an expert survey of their principal or secondary repercussions.

Nevertheless, and despite the pitfalls reported by the two authorities that have assessed the measure over the five years of its application, the Prime Minister, in a circular on administrative simplification dated 25 May 2000,[18] recalled that an impact study is mandatory for any Bill or draft Decree submitted to the Council of State. The circular stated that the study should specify the number of authorities involved in the procedure, the new administrative formalities introduced, the grounds for introducing them, and the average time taken for a decision. In the case of any proposal to make procedures more cumbersome, authors are also asked to explain why this move is considered to be in the general interest.

Deconcentration of services

Another thrust of public policy has been to increase the effectiveness of public action. One way was to slim down the State apparatus in order to make it more efficient. A related programme was designed to bring government closer to the people. Hence, with the decentralisation policies that have been increasing the power and terms of reference of local authorities since the early 1980s, the State has been engaged in its own structural reform, which has been described as “deconcentration”.

A deconcentration charter is a contract-based policy for the relations between the central administrative services and the decentralised services. It, along with revised regulations now providing for case files submitted by local services to be processed in Paris

for subsequent decision-making at the local level, has brought administration nearer to the general public.

The contract-based approach between the State, represented at the local level by the prefect, and local authorities has entailed preparation of multi-year plans setting out the aims of negotiated public policies and the financial resources allocated to them. Pooling of resources to achieve a planned and consistent approach to meeting the needs of populated areas is continuing to take practical shape in the form of regional contracts, which are now becoming a standard procedure.

Transfer of the responsibility for processing case files for certain sectors of the public to local authorities or social security bodies has been a further factor in bringing the State closer to individuals. This has been the case with the introduction of the social minimum income (RMI – *revenu minimum d'insertion*), which requires municipal social services (social assistants and social workers) and the services of the *département* preparing the case file to be in place beforehand to establish entitlement, while the benefit is paid out of the family allowance funds.

The mediator of the republic

The Mediator of the Republic (whose function is equivalent to that of an ombudsman) is authorised by Parliament to deal with disputes between individual users of administrative services and the relevant administration through mediation and conciliation. Any action by the Mediator must precede any recourse to legal proceedings by a user. The Mediator is entitled to appoint deputies (some 300 in number) throughout the country and may submit direct proposals for reform of laws and regulations.

Obtaining public views on administration

In December 1999, DESS (Diploma of Higher Specialised Studies) students questioned 802 people about their feelings with regard to the word "administration". The mixed results obtained show that while the positive responses appreciated the accessibility and dedication of the public services, the poor opinions expressed reflected the usual stereotyped views of bureaucracy and supposed deficiencies in dealing with users. The Minister for the Public Service, who is also responsible for State reform, prepares and monitors work on modernisation. The main directions of this work have been set by the interministerial committees for State reform (CIRE), as follows.

To meet new expectations from the general public. In order to meet this objective, ministries have been asked to take various kinds of action, some of which are already under way. Each ministry was asked in October 2000 to draw up a quality policy on the basis of an online methods guide available at the Government's external Web site Vit@min.[19] The relevant arrangements depend on the commitment of each decentralised service and each public establishment to providing a quality service to users with priority being given to the most vulnerable population groups. Within the Interministerial Delegation for State Reform (DIRE) a resource and training centre has been set up to serve the teams attached to each ministry to monitor the performance of the programme to provide quality service. The second action is to ensure better drafting of regulations, with the watchwords being: "be simple, be clear, be brief". COSA (the Administrative Simplification Commission) has been specifically entrusted with the task of evaluating simplifications carried out in the interests of users (see the results described below).

COSA has also developed a procedure for qualitative evaluation of forms (whether in paper or electronic format) in order to enable services designing forms to review their work themselves. There are several lines of attack: compliance with the law, clarity for the user, less need for supporting documents and, where possible, no superfluous visits to administrative offices. In 2000, COSA also issued a guide to the design of administrative forms which was made available at its Web site[20] and has produced a seal of quality for the best designed documents; this marks the transition from the now outmoded practice of simply registering forms to the more ambitious procedure of approving them.

In addition, as part of the continued thinking on the subject in the European Union and in OECD, a working group chaired by a member of the Council of State, has been constituted to suggest ways to improve the drafting of regulations issued in France. This group, which followed a high level European group on the quality of regulations that made known its conclusions in March 2001, submitted its report to the Minister for the Public Service and State Reform in March 2002.[21]

At the same time, following a survey conducted for COSA by SOFRES (the French polling organisation – *Société française d'enquête par sondage*) on the quality of administrative forms, the Minister for the Public Service and State Reform and the Minister of Culture and Communication on 3 July 2001 set up a committee for the improvement of administrative language COSLA – *Comité d'orientation pour l'amélioration du langage administratif* (its composition and terms of reference in Annex 5). COSLA has undertaken two main tasks:

- To redraft the forms in widest use in order to make them understandable to users – work undertaken at COSA's request. During the autumn of 2001 this will focus on applications for identity documents, social assistance, old age pensions, individual tax returns, comprehensive sickness coverage, and for social minimum income (RMI);
- To provide, for the use of public servants drafting letters to users, an electronic glossary giving everyday language equivalents of technical and legal terms.

Accountability to the general public: better evaluation of public policy. All ministries are obliged to produce a progress report in 2001 on their work during 2000. These reports are to be submitted to Parliament when it is considering the Finance Bill.

Results of recent administrative simplification efforts

The plans submitted to COSA on 15 September 2000 have been reviewed and evaluated. Two plenary meetings of the Commission were enough to prepare the measures ministries were asked to implement in the short term.[22] Some of these measures applied to individuals using the administrative services and others to businesses and professional persons. Ten measures applicable to users and five groups of measures for businesses were approved.

Burden-reduction measures for users encompassed elimination or simplification of 25 million procedures. The time saved, which was calculated to be 10 million hours of procedures and waiting at access points, was estimated to be FF 600 million (EUR 91.5 million).

The procedures eliminated included: presentation of 60 million civil status certificates and 25 to 30 million photocopies of documentary evidence of domicile in the case of the most widely applied procedures, including application for vehicle registration certificates (12 million) and family allowances (10 million).

The extension of the period of validity of passports from 5 to 10 years and simplification of the procedures required for renewal have led to the elimination of 1.2 million applications and journeys, in other words a saving of 3.6 million hours for French nationals and a saving of FF 480 million (EUR 73.2 million) (the stamp duty of FF 400 (EUR 61 million) was maintained while the period of validity was extended from 5 to 10 years).

Search of the files of the criminal records office by administrations themselves in order to determine whether any candidates for work in the public service has a criminal record (900 competitive examinations are held each year, taken by 1.2 million candidates) saves 1.2 million procedures by individuals and FF 7.2 million (EUR 1.1 million) (cost of initial mailing and the stamped addressed return envelope).

Cuts in the process of applying for family allowances has lightened the burden of procedures for 10 million families, giving a total estimated time saving of 10 million hours. Online posting of notifications and returns has cut journeys considerably; 60 000 in the case for example of notifications by associations to prefectures, 12 million for applications for vehicle registration certificates, 230 000 for applications for secondary school teaching licences. A trial in eight *départements* of a system to assist students in finding accommodation gave 22 000 young people the opportunity to put in an application without having to make a journey.

The same is true of the 1 000 forms accessible free of charge online that has made it possible, in pursuance of a 2 February 1999 Decree,[23] to embark on a procedure by obtaining the form and its accompanying explanatory document on the Internet. COSA has taken on the task of official acceptance, following quality assessment in relation to clarity, comprehensibility, and ease of completion, of forms submitted in draft. Its duties are therefore quite different from those of the Centre for registration of administrative forms (CERFA), which was abolished at the same time as COSIFORM (see above) and merely listed and recorded proposed drafts of administrative forms. COSA has taken a number of steps to help services improve the design of forms:

- Provision of a guidebook on form design;
- Conduct of surveys among users and at access points to find out what users find difficult and what the pitfalls are;
- Work on the redesign and redrafting of forms with the help of design services, a communications agency and a university linguistics centre;
- Assistance in putting forms online where Internet access would help users and still meet legal requirements.

In the case of professional persons and businesses, five groups of measures were decided for introduction in 2001-2002:

- The general use of online notification and procedures began in the tax field (online VAT returns and notification of trade in goods, public tenders). In the public contract area and on the basis of the new Code governing public contracts which was published on 8 March 2001, a trial of placing bids for tender for the purchase of office equipment electronically was conducted at the Ministry of the Economy.[24]
- Continuation of the introduction of single access points for accomplishing administrative procedures or submitting administrative notifications, including installation of a processing centre for social and tax data shared by the social security bodies and the general tax directorate; having a single collection point for data will then

make it possible for taxpayers and payers of contributions to be sent returns completed in advance, which they will then have the opportunity to amend or endorse.

- Establishment of businesses by means of a virtual CFE.
- Simplification of social and tax procedures by use of the net-enterprises gateway managed by the public interest grouping on the modernisation of social notifications (GIP-MDS – see above) and in some sectors assistance in preparing payslips.
- Elimination or slimming down of administrative procedures for authorising the licensing of certain trades or occupations.

These measures are a continuation of the initial work on simplification of matters relating to businesses, which was begun in 1997 and 1998 by the Secretary of State for Small and Medium-Sized Enterprises, Trade, Crafts and Consumer Affairs, and extend and supplement it.

COSA is expected to report to the Prime Minister, the ministers who are its vice-chairmen and the prominent persons who serve on the Commission, on implementation of these measures, notably as part of the annual progress report mentioned earlier.[25]

A report on administrative simplification measures was presented in front of the plenary session of COSA on the 13th of February, 2002.[26] Through this body, the Prime Minister's directive to ministers has been to keep the number of proposals down but to ensure they are the measures that will be most meaningful for the public targeted and capable of being put into effect rapidly.

Conclusion

French simplification and burden-reduction policies are based on a long-term view. Methods and means vary in the light of Government priorities and also take account of the "exhaustion" of some channels or the limitations they have evidenced. Its current approach is a pragmatic one that brings together a minister's personal staff, ministerial departments, their local services, and users in order to find the most practical simplifications that can be brought into action rapidly.

The downside to this approach has been that it is not clearly apparent to an external observer since there is no overall simplification programme apart from statements of principle on government priorities that are embodied in certain watchwords such as "counting on trust", or "we're simplifying the administration for you", or even "simplifying to get ahead".[27] Apart from measures with a strong impact such as those relating to certificates of civil status, the provisions announced, although targeted, still frequently remain technical in nature and thus by definition lacking in general scope.

Furthermore, this pragmatic method is based on a many-sided effort of co-ordination among ministries. There is COSA for administrative simplification, DIRE for State reform, ATICA for new information and communication technologies – all in charge of different aspects of the overall reform process now under way under the Prime Minister and the Minister for the Public Service and State Reform. Within the ministries, a network of senior officials responsible for modernisation (RIM) is operating satisfactorily but is still much influenced by the administrative simplification and modernisation topics of special interest to the various representatives.

Other networks, apart from this official one, are beginning to be developed (a public Webmasters club, persons corresponding with DIRE or COSA, and persons responsible for the

new technologies at the prefecture level). However, these networks are very dependent on the degree of motivation of their participants so professional mobility could weaken them.

Priorities for modernisation of the State sector that focus on the introduction of new information technologies, place the French administration in a commanding position with a growing range and diversity of services to offer. Nevertheless, the press has commented that the State is probably in advance of its own users since many French homes are still not equipped for connection to the Internet. In order to overcome this deficiency, the public authorities have embarked on a programme to provide public access points to the Internet, 2 500 of which will have training staff attached to assist initial users.

However, introduction of the new information and communication technologies should not be allowed to overshadow simplification efforts themselves. The recent measures adopted by the Minister for the Public Service and State Reform to eliminate or slim down current procedures for users have helped in this regard. In terms of administrative organisation, however, it is still apparent that changes in traditional approaches imply the watchword "trust the user first". This implies that administrative access points may have to renounce the right to request supporting documents to open a file. This may create problems for administrative organisations.

Although COSA holds to the idea that simplification should not be undertaken without the assistance of administrations or against their interests, it still has yet to build a real win/win strategy that will convince both users and administrations that procedures can in fact be simplified without detriment to either.

Like all simplification methods, the empirical basis of the current process, and more systematic definition of watchwords in terms of priorities and programmes for modernisation of the State should probably be reviewed and adapted over time. France has already tried out a number or strategies and lines of action. This is not necessarily evidence of any difficulty in convincing users or officials that modernisation of the State is really possible, as some observers have claimed. This report, which underlines the importance of the progress made in this direction in the past few years, should serve to reiterate the longstanding nature of this challenge.

Notes

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2. See Act 2000-321 of 12 April 2000 on the rights of citizens in their relations with administrations, *www.legifrance.gouv.fr/citoyen/jorf_nor.ow?numjo=FPPX9800029L*
3. See for example the report by Thierry Carcenac, Deputy for Tarn, to the Prime Minister "Pour une administration électronique citoyenne. Méthodes et moyens" (April 2001), *www.internet.gouv.fr/francais/textesref/rapcarcenac/rapcarcenac.pdf*
4. See Circular, 6 March 2000 on simplification of formalities and administrative procedures *Journal officiel*, 7 March 2000 NOR: PRMX0003982C, *www.legifrance.gouv.fr/citoyen/jorf_nor.owNjumjo=PRMX0003982C*
5. *Idem*.
6. *Idem*.
7. *Idem*.
8. *Idem*.
9. See *www.vitamin.gouv.fr*

10. See *www.service-public.fr*
11. See *www.net-entreprises.fr*
12. Internet site for PAGSI, *www.internet.gouv.fr*
13. See *www.atica.pm.gouv.fr*
14. See *www.cerfa.gouv.fr*
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22. See *www.cerfa.gouv/fr*
23. See Decree 99-68 of 02 February 1999 on making administrative forms available online as amended by Decree 2001-452 of 25 May 2001, *www.legifrance.gouv.fr/texteconsolide/PQHZB.htm*
24. See *www.minefi.gouv.fr*
25. See *www.cerfa.gouv.fr*
26. The report titled "1997-2002: cinq anneés de simplification administrative" is available at *www.cosa.gouv.fr*
27. These are the topics of simplification campaigns organised since 2000.

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ISBN 92-64-10067-9
From Red Tape to Smart Tape
Administrative Simplification in OECD Countries
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4

Administrative Simplification in Korea*

Abstract. *Since the mid-1990s, Korea's government has been pursuing far-reaching reforms of the administrative system to deliver benefits for citizens and businesses alike. The policy stance taken so far prioritises direct action programmes at the expense of rule-setting. The government at first intends to eliminate unnecessary procedures and to reduce document requirements before setting up rules and provisions. These measures certainly improved the interaction between citizens and increased administrative transparency. The current government is also very active in efforts to establish e-Government initiatives. Forums where citizens can voice their proposals and a programme for collecting suggestions from civil servants are among the innovative approaches taken in Korea.*

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* This report is based on a draft prepared by DoHoon Kim, Senior Research Fellow and Director of the Research Division on Industrial Policy, Korea Institute for Industrial Economics and Trade (KIET). The report has been fact checked and commented on by the Korean Government.

Introduction

Korea has developed into a more mature democracy and average income levels have approached those of developed countries, so Korean citizens and businesses alike have become increasingly aware of the need and importance for the quality of administrative services. Korea's first civilian government in 30 years, inaugurated in 1993, recognised this problem and began to seriously reform the government's administrative system. As part of this reform, it also sought to change bureaucratic attitudes favouring administrative convenience over administrative quality.

The current Administration of President Kim Dae-Jung, inaugurated in 1998 with the promise to "build a business-friendly and people-friendly country", is especially promoting "a new way of administrating". That is one reason why the Administration's public sector reform, which highlights simplifying administrative processes and reducing administrative burdens, was prominently included in the Government's list of "four major reform programmes" along with financial market restructuring, corporate restructuring and labour market reform.

Currently, two ministries and three government committees are actively engaged in enacting administrative simplification and burden reduction programmes – the Ministry of Government Administration and Home Affairs (MOGAHA), the Ministry of Planning and Budget (MPB) including its Special Committee for E-Government, the Prime Minister's Committee for the Promotion of Informatisation, and the Regulatory Reform Committee (RRC). Other ministries such as the Ministry of Information and Communication are also engaged in this effort.

General policy stance of the Korean government

Quoting Kim Pan Suk,[1] the *OECD Report* on *Regulatory Reform in Korea* (2000) writes:

> Stating that "any reform undertaken in Korea must begin with the government", President Kim Dae-Jung launched a programme in 1998 aimed at changing the role of the state in the Korean economy and society. The government has adopted far-reaching plans for administrative reform that aim at eliminating unnecessary rules, producing a smaller and more efficient administration, incorporating competitive principles in government, and creating "customer orientation" within the administration.[2]

The current Government, since its inauguration, has consistently taken many measures that aim at simplifying administrative procedures and reducing administrative burdens. Moreover, the policy is considered one of the top priorities of the Government. The major features of this policy can be summarised as follows:

- *First*, emphasis for this policy has been placed on taking direct actions rather than setting rules and provisions. This may reflect the fact that the Korean administration is characterised by complex administrative procedures and cumbersome document requirements. The Government at first needed to eliminate unnecessary procedures and

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to reduce document requirements before setting up rules and provisions. Led by the Prime Minister's Office, the MOGAHA and the MPB have actively initiated many efforts.

- *Second*, the current Government is also quite active in efforts for establishing so-called "e-Government" to enhance efficiency of administration and the people's convenience. A bit tardy compared to other OECD countries, the Korean government is rapidly introducing technologically driven mechanisms in its administrative system. The Government is trying to establish an electronic communication network at the government-wide level connecting all ministries at the central government and all regional governments. Korea is finalising its system for opening all the information about administrative procedures, even the information on internal decision-making processes to citizens.
- *Third*, the Korean government is less active when it comes to establishing new procedural provisions in its administration. The policy stance "action first and rule next" is certainly one of the reasons for this attitude. Concerns about keeping the government efficient might affect the attitude as well, because Korean officials tend to think that overly strict rules and provisions may harm efficiency of the administration.
- *Fourth*, one can find that many innovative approaches have been taken in Korea for this objective. Meetings for citizens' initiatives and a programme for collecting suggestions from civil servants may be good examples.

Technologically driven mechanisms to reduce administrative burdens

Korea, in spite of being quite advanced in IT in general,[3] is a little behind compared with industrial countries in having its government introduce technologically driven mechanisms into its administration. This may be due to civil servants' long-lasting preference for personal contact in the process of decision-making within the government. Other reasons for this relative delay may be attributed to the traditional negligence of administrative service quality.

However, once it decided to tackle the problem, the Korean government has been very swift in establishing technologically driven mechanisms. This move towards more intensive use of these mechanisms seems to be based on the principles of reducing administrative burdens and enhancing citizens' benefit, because those principles are highlighted in the list of major objectives of new programmes related to this issue.

Its major efforts in this context may be divided into two interrelated aspects–efforts to make public all information about civil applications, and efforts to increase use of electronic means in the process of administrative decision-making, both by civil servants and by citizens making civil applications.

Programme for making available all information related to dealing with civil applications

A special programme has been initiated by Seoul City, followed by other regional governments. The responsible body is the Ministry of Planning and Budget (MPB). The programme opts for opening to the public all the information related to the process of dealing with civil applications, even including information held by administrative bodies.[4]

The information opened to the public includes the name of the responsible division and section, the name of the responsible civil servant, a description of the decision-making process (flow chart of hierarchy), the current state of the decision-making process,

Box 4.1. **Online Procedures Enhancement for civil applications (OPEN) at the City Government of Seoul***

What is the OPEN?

The Online Procedures Enhancement for civil applications (OPEN) was developed to achieve transparency in the city's administration by preventing unnecessary delays or unjust handling of civil affairs. Among many of the civil applications handled by the City Government of Seoul, the Web-based system allows citizens to monitor applications for permits or approvals.

How does the OPEN function?

As soon as a citizen files an application for a building permit, for example, government staff in charge will post the details of the received application on the OPEN site. Using any computer connected to the Internet, whether at home, work, or at the nearest district or ward office, the citizen can learn immediately whether the application has been received properly, who is currently handling and reviewing the case, when the permit is expected to be granted, and if it is returned, for what reasons.

In addition, because an electronic identity number is given to all civil applications, those who wish to monitor the handling process of their application are able to ask questions or make comments directly to the staff in charge by simply clicking the number on the document through the Internet.

What are opened?

On April 15, 1999, a total of 26 fields of civil applications were made public. Starting from March 2, 2000, 15 more areas with the potential for irregularities have seen their application processes made public: 4 industry and economy-related areas, 5 transportation-related areas, and 6 environment-related areas.

Reactions to the OPEN

The OPEN Internet site has had over 1 257 000 visitors as of January 1, 2001, since it was opened on April 15, 1999. The citizens also show a great interest, with an increase in the number of visits from about 1 100 visits a day at the beginning to 2 500 recently.

According to a survey conducted on 1 245 citizens by Seoul City, 84.3% (984 out of 1 167 persons) replied that the OPEN contributed to achieving transparency and 72.3% (762 out of 1 055 persons) said that it satisfied their interests. In making the entire flow of administrative processes public in real time, the OPEN is uniquely dynamic.

The OPEN was given a favourable reception at the international level too. It was recognised as a "Good Practice" at the 9th International Anti-Corruption Conference, held in Durban in October 1999. The OPEN is also attracting interest from international organisations such as IMF, World Bank, OECD, Interpol, and UNDP. At the OECD High-Level Policy Seminar held on 9-10 May 2000 in Paris, it was recognised as an excellent system. Moreover, the OPEN is introduced on the Web sites of the World Bank, OECD, and Transparency International as a system helpful to fight corruption.

At the national level, the OPEN was designated by the government as an advanced tool for innovative management in the public sector in November 1999, and all the administrative bodies, central or regional, plan to introduce a similar system from the second half of 2000.

* Seoul Metropolitan Government, Internet site *www.seoul.metro.kr*

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decisions made, and the next step or subsequent arrangements. Moreover, the number of civil applications to be made public is increasing, currently reaching 1 300 cases.

By providing this information, the government expects to speed up the dealing with civil applications and to avoid the corruption that may occur during the process.

"Government for Citizen" (G4C) Project

In an effort to meet the increasingly diversified popular demand for government services and to actively respond to the changing environment of national management, Government for Citizens (G4C) was established as one of the core projects of the Korean e-Government initiative.

Various agencies providing services for citizens are often the most frequently used government channels. Therefore, citizens should feel comfortable dealing with them. One problem is that given the vast number of agencies, it is difficult to know how to access the relevant and appropriate ones. Moreover, agencies have different systems of work that are not sufficiently shared. All these factors result in one thing: inconvenience for citizens.

With Korea's e-Government service, citizens can:

- Access guidance on the service they need online.
- Immediately apply for online services as they appear on the screen.
- Get information on the process and results of the service.
- Receive information in an electronic document.

The G4C Project has created a system that can serve citizens with greater ease and convenience. Citizens will no longer have to ask for information from various agencies. Instead, information will be shared and the number of documents reduced. Citizens will receive information enabling them to process the service separately or in a package. This one-stop e-Government window supports the processing of applications and reception, as well as the opening and issuance of services online.

Services are provided in the five most frequently used fields: residents, real estate, vehicle, business and taxation.

The G4C Project can be divided into the four following areas:

Establishment of an e-Government one-stop window to realize online service for citizens at home

- Establishment of a one-stop window providing services and administrative information to citizens at home.
- A service guide providing access to all government services.
- Real-time service for the status of service applications and processes.

Establishment of an information sharing system to present essential information offered by different agencies

- Link the system to provide essential information on residents, real estate, vehicles, businesses and taxation.
- Incoming-outgoing system usable for the agencies in demand.
- System environment for security.

Establishment of an infrastructure such as digital certification and payments

- PKI certification base for the security of electronically distributed information.

- Development of an electronic template and digital payment system to provide digital services.
- Systems security, intruder sensor, hacking and information leakage system.

Amendment of laws and regulations to cope with the digital era

- Abolition of unnecessary services, reduction of required documents, integrated/package settlement of services.
- Improvement of legislation for electronic government services and information sharing.

Government for Citizens (G4C) endeavours to establish a comprehensive electronic government through continued development and enhancement with the aim to improve the citizens's quality of life.

Creation of a guiding map

One of the objectives put forward in this programme, creating a guiding map for civil applications, has recently been fulfilled. The map has classified 4 209 civil applications in a systematic way at a government-wide portal site.[5]

Unlike traditional classifications based on the administrative service functions of providing administrative bodies, the new guide tries to classify civil applications from the demanders' perspective based on one's lifetime. The life cycle is composed of birth, school enrolment, employment, military enrolment, marriage, housing, car registration, pension and death. With this guiding map:

- *First*, applicants may easily search for which application they need.
- *Second*, applicants may get full and quick information about filing, decision-making processes, service fees, related laws and regulations, and necessary document forms.
- *Third*, they can get specific information about where to go, based on their address, as well as details of related administrative bodies.

As part of the G4C project, the Korean government has implemented a government-wide portal (single window) which provides a guide map for some 1 000 types of civil applications as of February, 2002. That number increased to 4 000 by November 2002.

Evaluation of public organisations' plans for setting up electronic service systems

Apart from this programme, the MPB conducted an overall review of the public organisations' plans for installing electronic service systems at the end of 2000.[6] According to this review, the MPB concluded that public organisations, when they planned to set up new electronic systems, were paying more attention to the need for improving service quality to the general public. In the past, these organisations gave higher priority to the improvement of organisational efficiency.

The MPB also put forward recommendations based on the outcome of the review. Public organisations are requested to take account of pilot projects, such as the procurement electronic data interchange system, when they plan to renew their electronic systems. They are also asked to consider the means by which their systems can be connected to other electronic systems. Finally, they are strongly recommended to think about restructuring their organisation and changing working methods while setting up new electronic service systems.

Issues related to administrative procedures

The Korean Government's general policy regarding issues related to administrative procedures was reflected in the 1996 Administrative Procedure Act (APA). This Act caters for such issues as time limits for administrative decision-making on civil applications, public hearings, etc. (APA does not cover "plain language" nor "drafting").

Now that administrative procedures provided by APA are necessary to protect the basic civil rights of the people, and to prevent the Government from abusing its power, the Government does not seem to be actively engaged in efforts to simplify the administrative procedural visions of APA. Instead it has prioritised efforts for directly reducing administrative burdens by installing electronic systems and eliminating inefficient administrative procedures such as cumbersome document requirements.

Time limits for administrative decision-making on civil applications

According to article 19 of the 1996 Administrative Procedure Act (APA), administrative bodies are required to set *ex ante* time limits for administrative decision-making on civil applications. In addition, these time limits, which may differ depending on the type of civil applications involved, should be made public.[7]

In case an administrative body cannot finalise necessary decision making during the initial time limit, it may extend the period up to the same period as the initial time limit. In that case, the administrative body is required to inform the applicant immediately about its intention and reasons for the time extension, and the expected date for a final decision.

If an administrative body does not meet the time limit, the applicant can address a petition urging for rapid treatment either directly to the administrative body or to a government body supervising the concerned administrative body. Korea does not have any provisions on the "silence is consent" rule.

Alternatives to administrative regulations

Article 7.3 of the 1997 Basic Act on Administrative Regulations states that administrative bodies should search for alternatives to administrative regulations when new ones need to be established. When they submit a proposed new regulation to the Regulatory Reform Committee, which is to conduct a review on Regulatory Impact Analysis, they are requested to mention whether there are alternatives to that regulation.

The OECD Report, *Regulatory Reform in Korea*, states that "the area of environmental regulation represents one of the most innovative policy areas in Korea in terms of the adoption of alternatives to traditional command and control regulation. Significant steps have been taken in implementing a range of market based alternatives as well as in implementing a system of voluntary agreements."[8] Many fee systems, such as emission fees, environmental improvement fees, deposit-refund systems, waste production fees, and water quality improvement fees, are used in this field. These alternatives, however, are not primarily used with the view to reduce administrative burdens, but rather to improve the flexibility and overall compliance with the regulatory objectives.

"Plain language" drafting

The Ministry of Legislation, which is in charge of finalising laws and regulations, is playing the role of checking draft laws. In doing so, it is also charged with checking whether laws and regulations are drafted in "plain language".

The OECD Report on *Regulatory Reform in Korea* indicates that the role of the Ministry of Legislation in checking drafting quality seems limited, because the law drafting responsibilities remain within each ministry. The OECD Report states, "The Ministry of Legislation believes that draft legislation is generally prepared by policy officers within the Ministries, in consultation with legal offices, rather than drafted by internal law-drafting specialists".[9] Nevertheless, the Ministry has stepped up its activities lately and has checked and corrected over 300 regulatory clauses during 1999.

Programmes for improving civil application systems and reducing document requirements

As mentioned above, the Korean Government puts tremendous efforts in improving its civil applications system and reducing document requirements. The Prime Minister's Office plays the leading role, and two ministries, the MOGAHA and the MPB, are very active in conducting and monitoring initiated programmes for these objectives. In addition, government-wide efforts are often organised in this context, involving almost all the administrative bodies, at both the national and regional levels of governments.

These efforts may be divided up into two categories: system improvements and direct burden reduction. The former is guided by an annual programme, the so-called Prime Minister's Guideline, and is sometimes reinforced by related special programmes and annual assessment programmes. According to a Government decree, for example, administrative bodies should not request dispensable documents from citizens. The latter is pursued through various methods such as a government-wide campaign, compilation of burdens, and special committee meetings. Korean officials seem to believe that these kinds of efforts will have a direct effect on reducing administrative burdens and enhancing citizens' convenience.

Prime Minister's Guideline for improving Korea's civil application system

- The Prime Minister's Office has developed a Guideline for improving Korea's civil application system. The other responsible body is the Ministry of Government Administration and Home Affairs. The Programme is reviewed every year and annual reports are to be submitted by each Ministry on their activities under the Guideline.

The Guideline proposes the following goals in conducting this programme:[10]

- To enhance customer-oriented or citizen-oriented service systems of civil applications.
- To intensify administrative accountability by eliminating the entrenched attitude of primarily emphasising administrative convenience.
- To continuously simplify systems of civil applications in order to reduce citizens' burden and inconvenience.
- To set up an electronic system of administrative decisions.
- To review the whole system of civil applications in order for citizens to obtain tangible benefits from the improved system of civil applications.

The Guideline is provided to every administrative body at both the national and regional levels in February each year. The MOGAHA monitors the extent to which the Guideline is respected by these government bodies. In addition, a citizens' survey on the quality of civil applications systems set up by these bodies is conducted at the end of each year. The outcome of this survey is significant in evaluating annual performances of various administrative bodies.

In order to raise the effectiveness of the programme, the Prime Minister's Office (PMO) detailed its action plan as follows:

- *First*, the PMO along with the MOGAHA conducts a survey of ordinary citizens' satisfaction with the service quality of civil applications procedures set up by the administrative bodies at the central government level. Each provincial government conducts separate surveys to measure citizens' satisfaction with the service quality provided by local governments. Administrative bodies at the central government are supposed to prepare a follow-up programme for improving their service quality after analysing survey results.
- *Second*, as a means of establishing an electronically-based system of civil applications, the Guideline recommends that administrative bodies at the different levels set up a homepage providing the service of civil applications and also set up a system for making available the information about the process of civil applications.
- *Third*, the Guideline emphasises the necessity to improving civil servants' attitude in processing civil applications, and also enhancing the general environments of the "halls" where civil applications are filed.
- *Fourth*, the Guideline asks administrative bodies at the central government to actively disseminate information to the general public about improvement made through these efforts, and requests the MOGAHA to monitor on a quarterly basis how administrative bodies at the different levels are complying with the Guideline.

The Guideline puts forward more detailed actions that can be applied to administrative bodies at the central government. It asks administrative bodies, at the outset, to drastically reduce the number of document requirements. For this purpose, administrative bodies are asked to compile a list of civil applications that require citizens to submit documents. The list should cover both administrative procedures set up by themselves and those set up by subordinate government bodies, affiliated organisations, and the organisations to which they have delegated some of their own administrative actions. In addition, the MOGAHA is asked to set up a computerised system of common use of administrative information among administrative bodies. At the beginning, the system will cover the six most frequently requested documents: residence registrations, land and forest registrations, car registrations, business registrations, and tax payment certificates.

Examples of document requirements to be eliminated include:

- Those that become unnecessary as a result of deregulation.
- Those that can be replaced by simple checking of identity cards.
- Documents that can be checked against data compiled by other administrative bodies.
- Documents that can be checked electronically.
- Documents that can be checked by administrative bodies' random surveys.

Second, the Guideline requires administrative bodies to take various measures to simplify administrative procedures for civil applications, including shortening the time limit for finalising civil applications, eliminating ineffective administrative procedures (especially those not based on laws), avoiding requests for unnecessary documents, and rewriting ambiguous or impractical regulations.

Third, the Guideline asks administrative bodies to revise their own standard forms dealing with civil applications, taking account of the outcome of recent government-wide deregulation and the results of their own efforts to simplify administrative procedures.

The Guideline puts forward several measures to improve the administrative procedures for civil applications at the level of local governments. They are intended to help:

- Eliminate civil servants' tendency to give top priority to administrative convenience.
- Develop a system for dealing efficiently with civil applications that involves various different administrative divisions or sections.
- Establish an integrated division dealing with various civil applications and strengthen its function.
- Activate the tutorship system[11] for civil applications.
- Develop tailored procedures to enhance the convenience of those filing civil applications in the locality.
- Install automated teller machines that can issue various documents around the clock.
- Revise local rules and regulations that are not consistent with law.
- Revise handbooks for civil applications reflecting the outcome of recent deregulation.

In order to enhance the effectiveness of the programme, the Guideline asks administrative bodies to report to the MOGAHA about measures undertaken, including individual plans for improving the system of civil applications, accomplishments made during the year and opinions for further improvement, and compiled data on the handling of civil applications.

Annual assessment of the quality of systems for civil applications

This programme is reviewed on an annual basis, and can be considered as part of the action plans for accomplishing the previous programme. The responsible body is the Ministry of Government Administration and Home Affairs.

The major objective of this programme is to assess the quality of actual systems of civil applications and the degree of improvement at the level of regional governments.[12] A special emphasis is placed upon following three major directions: focusing the assessment on new measures taken to improve citizens' satisfaction, strengthening the objectivity and speciality of the assessment, and utilising the assessment results for further improvement.

Table 4.1. **Assessment criteria**

Major points	Specific criteria	Proportion
1. General requirements for civil applications	Environment of the "hall" for civil applications	20%
	Electronic system for civil applications	30%
2. Improvement of the procedures for civil applications	Procedures for civil applications	20%
	Tutorship for civil applications	15%
	Public hearings and special measures	15%
3. Administrative quality for citizens	Issuing documents through facsimile	15%
	Issuing documents through the Internet	10%
	Linking the two previous services	5%
	Establishing the base for electronic seal impression	15%
	Others	5%
Total		150%

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Regional governments at provincial and local levels conduct reciprocal assessments in October each year and report upon the outcomes of assessments to the MOGAHA, which compiles results and adds its own assessments. Early the next year, special prizes are offered to high-ranking local governments and officials.

Programme for compiling all civil applications and reducing them by half

This is a special programme which was launched in November 1999. The responsible bodies are the Ministry of Government Administration and Home Affairs and the Ministry of Planning and Budget.

The MPB compiled civil applications received by all administrative bodies in the central government during 1998 and classified them in three categories such as question-type, appeal-type and suggestion-type.[13]

Table 4.2. **Civil applications by type (1998)**

	Question-type	Appeal-type	Suggestion-type	Total
Total number (A)	79 117	60 488	24 085	163 690
(%)	48.3	37.0	14.7	100.0
Applications transferred to other administrative bodies (B)	6 069	23 388	3 462	32 919
Transfer ratio (B/A: %)	7.7	38.7	14.4	20.1

Based on the investigation results, the MPB and the MOGAHA were engaged in a subsequent programme to reduce the number of civil applications by half at the beginning of 2000. Considering that simple question-type civil applications represented almost half the total number and that the proportion of civil applications transferred to other administrative bodies reached 20%, special emphasis was placed on information dissemination. The programme proposed that administrative bodies should take the following specific measures:

- *First*, to establish a "special corner" on its Internet homepage to provide information about civil applications such as the list of frequently asked questions, in order to avoid redundant civil applications.
- *Second*, to set up a special team for managing and monitoring the "special corner".
- *Third*, to actively inform citizens about the "special corner" and draw their attention to it.
- *Fourth*, to link the outcome of these measures to routine efforts to improve administration.
- *Fifth*, to publish handbooks on civil applications and train civil servants in this field.
- *Sixth*, to make a government-wide map of civil applications in order to reduce the transfer ratio.

MPB established investigation plans for the implementation and management of "special corners" for all administrative bodies and in February 2001, inspected the FAQ services of all 39 central administrative organisations' homepages.

These homepages were evaluated on their content, ease of search, and accessibility based on user-oriented reviews. According to the results, all of the administrative bodies provided an intuitive composition that allowed easy access to FAQs. However, search functions still need to be improved as contents were found unsatisfactory, leaving room for

improvement. In addition, the best and worst performing administrative bodies on each criteria selected and announced.

Reducing document requirements from administrative bodies

Special attention was paid to reducing the number of document requirements. The most frequently requested documents are certificates of resident registration and certificates of seal impression. According to the MPB, the total number of certificates of resident registration issued was 105 million in 1999, representing more over KRW 1 trillion (USD 76.4 million) of additional administrative costs. The number of certificates of seal impression also reached 47 million cases. Those documents are often required to be submitted even for cases where a simple check of identity cards or a simple crosscheck among administrative bodies would be sufficient. As a result, the MPB along with the MOGAHA actively engaged in drastically reducing those document requirements in March 2000.[14]

As a first step, administrative bodies were asked to closely examine their own civil applications to check whether document requirements could be eliminated. If not, they were requested to report why.

As of 15 April 2000, the number of civil applications with requirements to be abolished reached 141 out of 267. Ninety-two of 143 cases eliminated requests for citizens to submit certificates of resident registration, and 49 out of 124 cases eliminated requests for certificates of seal impression.

As a second step, the Regulatory Reform Committee (RRC) re-examined the reasons reported by administrative bodies to finally determine whether they were necessary.

During the RRC's re-examination, nine other cases were added to the list of civil applications for which document requirements were abolished. The MPB estimated that more than ten million copies of those certificates were eliminated thanks to the programme. After a full re-examination, the RRC ended up with 33 extra cases for which relevant administrative bodies committed to amend related regulations by the end of 2000.

As a final step, a government-wide system would be established to let all the administrative bodies share information on civil applications with each other. It was expected to reduce the number of document requirements further once the system is finally set up.

Reducing document requirements from public organisations

In addition to administrative bodies at the central government, other public organisations such as public institutions, public enterprises, and public associations became the target of the programme. These organisations followed the same path as the administrative bodies to abolish many of their document requirements. In accordance with the plan finalised by MPB to cut the number of the types of document requirements from 183 to a total of 267 (69% reduction), document requirements have been reduced from July, 2000.

The regulatory reform committee's decision to reduce document requirements

The RRC ratified the results of the previous programme, and discussed issues requiring the amendments of rules and regulations.

The RRC convened two special meetings in July 1999 and June 2000 in order to reduce document requirements. At the first meeting, the RRC decided to undertake its own initiative to force administrative bodies to drastically reduce document requirements. As a result, out of 3 315, 1 072 document requirements were targeted for abolition during the

latter half of 1999. In fact, 485 requirements were ended by the end of the year while another 587 cases were to be abolished gradually after the government-wide electronic database was established.[15]

From the beginning of 2000, the RRC urged all the central and regional administrative bodies to review the list of document requirements related to their administrative procedures for civil applications and to report which requirements were still necessary. At the second meeting in June 2000, the RRC succeeded in abolishing a further 881 document requirements – 591 cases concerning administrative bodies at the central government, and 290 cases at the regional government.[16]

Table 4.3. **Cases of abolished document requirements decided by RRC (2000)**

		Total cases	Central government related cases	Regional government related cases
Number of related civil applications		625	451	174
Number of reduced document requirements		881	591	290
How to reduce	Simple abolition	477	343	134
	Replacement by checking original documents at administrative bodies	300	154	146
	Replacement by checking electronic database	27	25	2
	Replacement by checking identity cards	59	51	8
	Others	18	18	–

Other specific measures

In addition to the previous programmes, the Korean government conducts several specific measures to reducing administrative burdens. These programmes, rather non-conventional, seem to play a significant role in emphasising the importance of the matter and in changing civil servants' attitudes.

Citizen's initiative to administrative reform

This special programme was launched in December 1999 by the Ministry of Planning and Budget.

The MPB organises special meetings where citizens, generally represented by major NGOs, make suggestions for administrative reform. So far, five meetings have been convened. During these meetings, three to five issues raised by those NGOs are discussed.[17]

Some suggestions proposed in these meetings also include issues related to reducing administrative burdens. For example, discussions comprised the following:

- *At the first meeting,* the Citizens' Coalition for Better Government (CCBG) asked local governments to be more careful when deciding to start roadwork because hasty decisions can cause serious disruptions in citizens' lives.
- *At the second meeting*, a proposal raised by YMCA of Seoul to reduce to 5 days the number of school days for elementary schools, and a proposal raised by CCBG for introducing a systematic announcement service of the expiring date of passports.
- *At the third meeting*, a proposal raised by Centre for Promotion of Disabled People's Rights for deregulating the age limit for disabled people who want to become civil servants.
- *At the fourth meeting*, a proposal raised by the Coalition for Transportation Culture (CTC) for changing the current tax system which emphasises taxation on car ownership into a system of taxation on car utilisation.

- *At the fifth meeting*, a proposal raised by the Centre for Korean Women's Politics for admitting female students to the Reserve Officers' Training Corps (ROTC) at universities, and a proposal raised by CTC for installing more push button signals at crossroads.

The MPB is in charge of putting citizens' proposals into effect by discussing them with the related administrative bodies. So far, many of those proposals have been implemented. After these five series of meetings with NGOs, the MPB continues to work with NGOs to further expand and develop the citizen's initiative to administrative reform.

Furthermore, encouraged by this process, the MPB has set up the Council for Citizens' Initiative represented by major NGOs. The Council proposes and reviews proposals for this process before they are discussed openly. End 2000, the following NGO representatives took part in the Council:

- The Centre for Citizens' Movement.
- The Centre for Korean Women's Politics.
- The Centre for Promotion of Disabled People's Rights.
- The Christian Ethics Movement in Korea.
- The Citizens' Action Network.
- The Citizens' Alliance for Consumer Protection of Korea.
- The Citizens' Coalition for Better Government.
- The Citizens' Coalition for Economic Justice.
- The Citizens' Movement for Environmental Justice.
- The Coalition for Transportation Culture.
- Green Consumers Network in Korea.
- Green Korea United.
- Greencity.
- The Korea Council of Citizens' Movements.
- Saemaul Undong in Korea.
- Seoul YMCA.
- The Young Korean Academy.

Programme for collecting suggestions for improving administration

This programme is administered on an annual basis by the Ministry of Government Administration and Home Affairs.

All administrative bodies at the regional level, including regional committees for education, regional bureaux of the National Tax Service, and regional police offices, are asked to search for new ways to improve administration.[18] The MOGAHA generally conducts this survey during two months in the early part of each year. After collecting those suggestions, the MOGAHA usually re-examines them from the legal perspective and consults with related administrative bodies at the central level to discuss their feasibility. Finally the MOGAHA compiles suggestions to be implemented and makes them public in the early following year.

Special attention was paid to suggestions relating to improving people's convenience, reducing administrative regulations, and enhancing social welfare. Since the role of dealing with these issues is transferred to the Regulatory Reform Committee, the MOGAHA pays

Table 4.4. **Number of detected issues for improving the administrative system**

	91	92	93	94	95	96	97	98	99	00
Total collected issues	575	511	703	353	299	813	840	918	632	664
Total selected issues	188	158	166	163	161	263	147	180	271	86
Simplifying administration									48	12
Amending rules and laws									189	69
Abolishing ineffective systems									26	5
Improving citizens convenience	54	65	49	58	51	112	55	52		
Deregulating administrative regulations	38	62	5	58	39	90	37	60		
Consolidating social welfare	33	6	11	4	19	19	5	5		
Improving administrative efficiency	31	25	20	28	26	22	33	48		
Others	32	–	11	15	26	20	17	15		

more attention to simplifying administration and eliminating ineffective administrative procedures.

Public service charters

This programme was launched in 1998 by the Ministry of Government Administration and Home Affairs.

All administrative bodies were requested to announce their own "public service charters". They were strongly recommended to respect these charters, which are supposed to include a description of services provided and their criteria, how to obtain those services, and possible remedies for mistreatment.[19]

The MOGAHA puts forward the following seven basic principles to be respected by administrative bodies when those bodies prepare public service charters.

- User-oriented.
- Specification of service.
- Top quality service.
- Balance between costs and benefits.
- Information disclosure.
- Error correction.
- User participation.

The MOGAHA took an incremental approach (divided into three stages) to induce administrative bodies to participate in this programme.

- *First stage* (1998): The programme was applied to ten administrative bodies as pilot projects, which had functions intended for giving direct services to citizens. Those were: railways, post office, fire fighting, the police, customs, schools, hospitals, agencies for job search and training, agencies for small and medium enterprises, and patent agency.
- *Second stage* (1999-2000): All administrative bodies, national and regional, were requested to apply the programme to at least one of the services they provided. During July to October 1999, a total 289 administrative bodies (central 41 and regional 248) participated in this programme, adopting total of 584 service charters (central 44, regional 540).[20]

In 2000, every administrative body was asked to apply the programme to all the services they provided.

- At this stage, the MOGAHA determined that the programme was contributing to establishing a client-oriented administrative service system, increasing administrative transparency and citizens' satisfaction with administrative services, and enhancing public servants' attention to the quality of administrative service.[21]
- *Third stage* (2001 and after): Since 2001, the Government has been trying to internalise the programme and gather information on results rather than expand the number of service charters.

By the end of 2002, a total of 3 357 administrative bodies participated in this programme (1 486 central and 1 871 regional), and adopted a total of 6 463 service charters (2 304 central, 4 159 regional).

After conducting a survey with some selected administrative bodies to assess the benefits and lacuna of the programme at the end of 2002, the MOGAHA determined that the programme had brought the following benefits:[22]

1. Contributing to simplify unnecessary administrative procedures and reduce administrative burdens.
2. Urging administrative bodies to actively deal with users' complaints.
3. Forcing administrative bodies to build up a more user-friendly system and a feedback approach from users to their administration.

However, the MOGAHA has found some lacuna from its experience so far such as

1. First, a nation-wide approach made some administrative bodies take a passive attitude, that is, adopting similar charters to those made by other administrative bodies rather than creative or tailor-made ones.
2. Second, there were no serious methods for measuring users' satisfaction.
3. Third, the programme was pursued separately from the general efforts to enhance civil servants' kindness to citizens.
4. Fourth, despite institutions set up for enhancing users' participation, the degree of interaction between users and administrative bodies seemed to be low.

Assessment

MPB's survey on administrative service quality

End 2000, the MPB conducted a special survey on citizens to assess the quality of administrative services provided by National Tax Service, Emergency Call Services 119, Emergency Police Call Service 112, and a local government (Kangnam District in Seoul). These were selected as leading government bodies in innovating administrative services.

According to the survey, only 8.4% citizens showed dissatisfaction with those services, whereas the confidence index reached 76 and the cleanliness index stood at 79. Based on the survey results, the Korean Government seemed to be confident that efforts were made so far in this context and seemed to be determined to pursue those efforts further in the future.

The MPB is working on the development of an index for the evaluation of the quality of administrative services so that citizens (customers) can evaluate with ease services provided to them. The MPB is also encouraging all public organisations to use this evaluation system.

Assessment made by citizens

Citizens, represented by major NGOs, seem to be quite satisfied with the Government's efforts for administrative simplification and burden reduction. CCBG finds that administrative procedures have been very much simplified especially for civil application services, and it assesses that administrative transparency has quite improved through the use of IT in administrative systems.[23] Major newspapers such as *Chosunilbo* and *Dogailbo* also often mention the improvements in civil servants' attitude to citizens when they deal with civil applications.

However, NGOs are cautious when they try to assess the total effect of administrative reform, because they think that rapid administrative reform has sometimes resulted in adverse effects to Korean society.[24] Some academics and private research centres say that the Government should make further efforts in order for citizens to feel a tangible change.

The "Citizen's Action Network" monitored 168 central and local public organisations in September 2002 on the following 3 criteria: accessibility, transparency, and democracy. According to the results of this study, there was not enough consideration paid to the limited capacity of many computers included to be an active part of the network and the promotion of the publication list were found insufficient. The government needs to step up its efforts improve its e-government plans in order to reduce the digital divide and enhance transparency.

Lessons learned

In sum, Korea is active in launching policies and programmes to reduce administrative burdens and simplify administrative requirements imposed on businesses and citizens. At the moment, it seems to be premature to judge whether the government's efforts have delivered positive results for the Korean economy and society in general. However, it is clear that initiatives for administrative simplification have had a positive impact on civil servants' attitude towards citizens in the process of dealing with applications. It has certainly improved administrative transparency as well.

Active dialogue for this matter with both citizens and many civil servants working at the window level seems to contribute to finding new solutions to persistent problems. This approach seems to also contribute to improving citizens' perception with respect to this policy.

However, due to a lack of serious rule setting, efforts made so far may risk to only have a temporary effect on civil servants' attitude and therefore on enhancing citizens' convenience, because they may revert to traditional attitudes while the political emphasis on this matter fades.

Notes

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2. The OECD, *Regulatory Reform in Korea*, 2000, p. 49.
3. Korea is one of top-ranked countries with respect to the number of Internet users and to the rate of connecting the Internet. Koreans are purchasing increasingly more personal computers and telecommunication devices.
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7. The MOGAHA, *Handbook for Understanding Administrative Procedure*, February 2001.
8. The OECD, *Regulatory Reform in Korea*, 2000, pp. 147-149.
9. *Id.*, pp. 146-47.
10. The MOGAHA, *Prime Minister's Guidelines for Improving the System of Civil Applications in 2000*, February 2000, and *Prime Minister's Guidelines for Improving the System of Civil Applications in 2000*, February 2001.
11. Tutors are those who know the procedures of civil applications very well and are supposed to help applicants who are barely aware of these procedures to proceed civil applications with related administrative bodies.
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19. The MOGAHA, *Plan for Expanding Public Service Charters*, February 2000.
20. *Id.*
21. The MOGAHA, *Report on the Assessment of Public Service Charters*, February 2001.
22. The MOGAHA, *Report on the Assessment of Public Service Charters*, February 2001.
23. Based on a document sent by CCBG.
24. The CCBG mentions the proliferation of so-called "love hotels," which may cause deterioration in Korean society. It suggests that administrative simplification may be one of major reasons of the proliferation.

ISBN 92-64-10067-9
From Red Tape to Smart Tape
Administrative Simplification in OECD Countries
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5

Administrative Simplification in Mexico*

Abstract. *Initially, administrative simplification measures were implemented as part of sectoral deregulation and regulatory reform programmes in Mexico. Recently, a new approach emerged in the framework of the 2001-2006 Good Government Initiative that integrates administrative simplification into a management-for-quality programme. Among the most important tools implemented are the Federal Registry of Formalities and Services, the system of electronic tax declarations, various one-stop shop initiatives, the use of Regulatory Impact Analysis and the reinforcement criteria for the simplification of formalities such as "silence is consent and 'silence is denial'". An electronic system of government procurement, called Compranet, is also an important initiative that improves transparency and efficiency.*

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* This report is based on a draft prepared by Hugo Felix, Jorge Plaza and Luis Cerda of Thesis-Antares Consulting, Mexico. The report has been fact checked and commented on by the Mexican Government.

Introduction

Administrative simplification in Mexico has always been associated with regulatory improvement. Although it still faces enormous challenges, it has effectively reduced a significant proportion of the barriers and costs for the private sector. Since the mid-1980s, there has been an effective reduction in the size of the public sector and the excessive number of formalities, regulations and legislation that imposed unnecessary burdens on the private sector.

Only fifteen years ago, the legal provisions governing productive activities in Mexico entailed burdens that were both excessive and costly for citizens' and firms' activity. The lack of an approach that would effectively reduce these barriers led to the proliferation and accumulation of formalities and unnecessary regulations that unfairly restricted access to economic activities.[1]

Over the past fifteen years, Mexico has used trade liberalisation and other policy tools such as economic deregulation, administrative simplification and regulatory reform as significant elements in the transformation from a closed economy, with a powerful public sector, to a market economy with a more dynamic private sector. The economic crises of the 1980s forced the government to downsize its workforce and withdraw from industrial and trade activities, thereby giving the private sector more leverage.[2]

Institutional framework

The institutional framework of administrative simplification in Mexico has developed in three stages. During the first phase, from 1982 to 1989, responsibilities were defined and the Ministry of the Comptrollership was created. At the time of its inception, this Ministry was the only federal agency concerned with administrative simplification. During the second phase, from 1989 to 1995, administrative simplification was enhanced by economic deregulation promoted mainly by the agency responsible for this within the Ministry of Commerce. This meant that by the late 1980s, the control approach was replaced by attempts to reduce paperwork. During the third phase, from 1995 until the present, economic deregulation has become part of the policy of regulatory improvement with a more system-based approach. At the same time, the concept of administrative simplification began to be distinguished from regulatory improvement.

In recent years, in addition to adopting a more systemic, less reactive and discretionary approach, the institutions in charge of regulatory improvement and administrative simplification, such as the Federal Regulatory Improvement Commission, acquired greater autonomy. Several public and private agents participated in the development of the institutional framework at the federal level. The most important of these have been the Ministry of the Comptrollership and the Ministry of Commerce (now Ministry of Economy). The ministries delegated administrative simplification and regulatory reform activities to two agencies: the Ministry of the Comptrollership to the Administrative Development Unit

(UDA) and the Ministry of Commerce in the Economic Deregulation Unit (UDE), now known as the Federal Regulatory Improvement Commission (COFEMER).

Despite the overlapping between deregulation, simplification, and regulatory improvement, broadly defined, the Federal Regulatory Improvement Commission is in charge of its area, while the Administrative Development Unit is responsible for the administrative simplification not covered by COFEMER. The work of the UDA is guided by the recommendations and suggestions of the Economic Deregulation Council (now known as the Council for Regulatory Improvement). This Council aims to achieve political agreement over information and transparency in decision-making.

These federal agencies have established their actions based on the priorities defined by a set of programmes redesigned every six years. In hierarchical order, they include the National Development Plan, General Programmes such as the Programme for the Modernisation of Public Administration, sectoral programmes such as the Industrial Policy Programme or the Programme for Small and Medium-sized Businesses, specific programmes such as the Agreement for the Deregulation of Economic Activity, and sub-programmes such as the Simulated User Programme. All these constitute instruments that aim to outline the actions of administrative simplification.

Given the importance of the public sector in Mexico, administrative simplification has a strong tradition of planning, which is why most actions must be based on and refer to government programmes. For example, in order to eliminate certain formalities, it is first necessary to put forward a legal justification, then a social justification, and subsequently to evaluate its impact in terms of "rational" regulation.

To understand how this institutional framework operates, it is necessary to consider the application of the recently reformed Federal Administrative Procedures Law. The reforms approved in March 2000 created a new institutional framework for administrative simplification. The Law created the Federal Regulatory Improvement Commission (COFEMER), an autonomous agency that judges whether formalities comply with the simplification criteria. Formalities not included in the Federal Register of Formalities and Services are illegal and the authorities are not entitled to ask the public to comply with them. Any new regulation that leads to more paperwork must be assessed regarding its impact on society. Failure to conduct a regulatory impact statement (MIR) in connection with these new regulations constitutes an infringement of the law, and the Comptrollership Ministry must sanction officials. The COFEMER has hitherto had a preventive function while the Comptrollership Ministry is responsible for identifying and solving problems.

On the other hand, the Administrative Development Unit (UDA) of the Comptrollership Ministry is responsible for the internal regulatory improvement as well as for co-ordinating the general modernisation process of the federal public administration in conjunction with the presidential office for governmental innovation. For this reason it analyses processes and results regarding the quality of formalities and services as well as processing claims and inquiries from the public. This eventually translates into manuals, instructions, recommendations and legal provisions.

Background and historical development

Economic context

The first steps taken towards administrative simplification in Mexico were a response to a particularly difficult economic context, the numerous crises of the 1980s. The causes of the crises emerged in the 1970s when private investment was hindered because protected monopolies achieved a strong presence and had few incentives to raise productivity. Mexico was faced with two alternatives at that point: either to substantially increase public investment or to eliminate barriers to competition, private investments and exports. It chose the first alternative while the exploitation of its enormous petroleum reserves delayed any structural adjustment.

In 1982, however, the imbalance in public finances and the current account combined with the suspension of the flow of external savings, the deterioration of exchange rates and devaluation, marked the start of a period of stagflation.[3] At this point the Federal Government had two main reasons for implementing administrative simplification. On the one hand, the Federal Government had to reduce public expenses to reorganise its public finances while on the other, with less government participation in industrial and trade activities, the private sector had more opportunities for participation, which had to be effectively regulated by the government.

During the crises of the 1980s, government priorities included reorganising public finances, together with a programme of administrative re-structuring and moral renewal. Most efforts, however, were directed toward the reorganisation of public finances while administrative re-structuring and moral renewal were largely ignored.[4] This administration focused primarily on the reorganisation and redefinition of the responsibilities entailed by a smaller government. Conversely, over the following six years (1982-1988), the government experienced severe difficulties in achieving macroeconomic stabilisation. During this period, the Mexican economy underwent problems linked to the persistence of inflation, a high total deficit as a proportion of the GDP, the fall in oil prices, the 1987 financial crisis, and the fragility of the balance of payments. As a result, the elimination of barriers to private investment and any initiatives to achieve administrative simplification were postponed.

During the first period after the crisis (1989-1994) administrative simplification became synonymous with deregulation. The main achievements were isolated efforts by either the Economic Deregulation Unit (UDE) or by the General Programme for the Simplification of the Federal Administration. All the results in this period involved deregulation.

In the period from 1995 to 2000, the Programme of Economic Deregulation reflected the logic behind efforts to achieve administrative simplification. During this period, simplification policy was made more systematic, as all existing business formalities and proposed legislative and administrative regulations affecting business were reviewed, and regulatory impact statements required. Regulatory reform during this period was spurred by a grave economic crisis in 1995. Business people urged government support of local firms, and in a context of fiscal austerity, regulatory reform emerged as an effective and low-cost tool to promote a flexible economy, and business activity, and competitiveness.

The year 2000 marked the beginning of a new period, with amendments to the Federal Administrative Procedures Law. The approach favoured a more system-based programme with greater autonomy for the agency responsible for the regulatory improvement programme.

Nowadays, the Federal Government still faces several major challenges to allowing administrative simplification to proceed in a more tangible, homogeneous way. For example, ministries and agencies will have to continue reviewing and deregulating the set of obligations and formalities that they apply. The Federal Government must also improve its internal administrative formalities. Follow-up and evaluation of advances, and public availability of the data, are required to ensure that the policy framework effectively translates into reduced burdens for private citizens and that criteria for better practices are established.

Sectoral deregulation as administrative simplification (1989-1994)

From 1989 to 1994, the regulatory framework was characterised by a lack of transparency and openness in the elaboration of regulations. Administrative authorities acted in a discretionary, opaque fashion in the design of new regulations and the establishment of new formalities. Moreover, the instrumentation of regulatory and administrative policy was hierarchical and focused on compliance with a large number of formalities.

The 1989-1994 National Development Plan pointed out that the lack of effective measures to eliminate barriers to economic activity was an obstacle to economic growth. This approach called for a simpler, more effective relationship between the authorities and the private sector. As a result, the promotion of productivity through deregulation became a priority.

Deregulation in this period was discretionary. It was instrument-based, reactive, and oriented towards a smaller government. Given the particular economic and political context, however, deregulation was a must. Mexico was negotiating the North American Free Trade Agreement, and there was an evident need to regulate trade networks.

The first step taken toward deregulation was implemented in 1989 when the President issued an executive order, the Economic Deregulation Agreement. This Agreement created an Economic Deregulation Unit (UDE) within the Ministry of Trade and Industrial Development. The UDE pursued the objective of simplifying the government's relationship with the private sector, eliminating excess regulations that often proved expensive to comply with, and proposing new regulations or reforming existing ones to improve the government's performance in certain critical sectors. The difference between the UDE in 1989-94 and the UDE afterwards is that during the earlier period, the UDE operated in a discretionary fashion, focussing on particular cases.

The second concrete step toward deregulation was the General Programme for the Simplification of Federal Public Administration launched by the Ministry of the Comptrollership in 1989. The main objective of the Programme was to reduce, simplify and speed up federal government transactions and formalities and make them more transparent, in order to respond to the demand for improved public services.

From 1989 to 1994, the Programme conducted by the Comptrollership Ministry led to the implementation of one-stop shops in certain government offices and departments, and to the publication of manuals on formalities and services for the public. The principal achievements of this administrative simplification were led by a sectoral deregulation approach including the deregulation of the federal freight transport sector. In just one decade, from 1989 to 1999, the number of vehicles authorised to transport freight increased by over 100%, with a consequent reduction in tariffs by approximately 30% in real terms.[5] Likewise, the attempt at deregulation obliged formalities in certain sectors to be simplified, by opening them up to private investment and redesigning their regulatory framework. This process was successfully implemented in the following sectors: maritime transport (1991-1993), land tenure (1992), and joint generation and self-supply of electricity (1992-1993).

Towards more concrete, effective programmes (1995-2000)

Whereas during the period from 1989 to 1994 administrative simplification was understood as deregulation, in 1995 it was explicitly mentioned for the first time in a federal programme. Despite the achievements of deregulation, according to the 1995-2000 Industrial Policy Programme, the regulation in force in 1995 was fairly inefficient in terms of the length of the formalities required for setting up business in Mexico. The results of a survey on businessmen carried out in 1995 showed that the time spent on formalities for setting up business was considerably longer than the maximum time limits specified in the regulations. The following table shows the number of days required for carrying out this type of procedure according to the regulations and in the businessmen's view. Moreover, as can be seen in the third column, the Ministry of Commerce and Industrial Development, now the Ministry of Economy, proposed to reduce the number of formalities required, which would achieve a potential reduction in the times indicated by businessmen shown in the fourth column.

Table 5.1. **Mean length of formalities and productivity losses in 1995**

Type of formality for setting up a business[1]	Mean length of formalities (days)			
	According to current regulatory framework[2] (1995)	According to businessmen's survey[3]	According to SECOFI/DDF proposal[4]	Potential reduction of time as a result of proposal *vs.* Survey times[5]
Without building and without environmental risk	24	48	10	0.8
With building and without environmental risk	25	50	15	0.7
With building and with environmental risk	64	128	30	0.77

1. Including firms' incorporation agreement and land use (construction).
2. Assuming that the deadlines stipulated in the regulation are met.
3. According to the surveys, in practice, specified times are twice or even three times what they should be.
4. Assumes that silence gives consent.
5. Although the procedure for obtaining a building permit should take a day, in practice it takes approximately 30 days.

Source: Programa de Política Industrial y Comercio Exterior, Presidencia de la República, 1995.

Not only was the length of formalities a heavy burden but enterprises also complained, quite justifiably, about the lack of co-ordination between federal offices and between federal, state, and municipal governments. There were often several authorities in charge of the same matter, each with a different set of requirements.

The first policies explicitly designed to achieve administrative simplification were derived from the diagnosis provided by the National Development Plan for the period from 1995 to 2000. The diagnosis warned that institutions, offices, and formalities had become an intricate network of rules that discouraged social initiative, complicated processes, and resulted in inefficient public services and formalities.

The National Development Plan stressed the need to decentralise many public services and regulatory functions to the states and municipalities. Consequently, the process of administrative simplification should not only be directed to the Federal Government, but also to local governments in order to avoid the duplication of functions and reduce costs and formalities.

The Federal Government implemented a General Programme for the Modernisation of Public Administration (PROMAP) as an offshoot of the National Development Plan. The PROMAP pointed out severe shortcomings in the government's relation to private individuals.

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Its objective was to improve the coverage, quality and effectiveness of public services, since the lack of these elements translated into inefficiencies that entailed social costs for the whole country.

PROMAP was the first federal policy in which administrative simplification was explicitly highlighted and regarded as the key to productivity. The policies derived from PROMAP may be divided into three main areas. First, PROMAP realised that the complex integration of functions in federal and state offices translated into an inefficient response to society. Second, PROMAP highlighted the need to make use of technology. For example, public users often had to appear in person in government offices, thereby failing to take advantage of facilities such as the telephone, faxes, banking institutions and post offices. Third, it pointed out that several formalities were unnecessary.

The specific programme for regulatory reform in this period was the Agreement for the Deregulation of Business Activity (ADAE). On November 24, 1995, ADAE was published with the objective of co-ordinating programmes and departments with the ultimate aim of promoting productive activity. The Agreement was important since it distinguished the responsibilities of the two federal entities related to administrative simplification: the UDE and the Ministry of the Comptrollership. The UDE would be in charge of the deregulation and simplification of the establishment and operation of enterprises while the Comptrollership Ministry would be in charge of the simplification of formalities for citizens. ADAE's main contributions were the implementation of an approach closer to a system-based deregulation and simplification effort along with the definition of responsibilities within the institutional framework.

Significant progress was achieved during the period from 1995-2000. Some of the results show a significant reduction in the formalities for enterprises required by eleven ministries. Many permits and authorisations were converted into notices; non-essential requirements and additional documents were eliminated or enormously simplified while the authorities

Table 5.2. **Improvement of formalities according to COFEMER (Year 2000)**

Ministry[2]	Before	After			Reduction in the number of formalities (%)	Proportion of formalities with proposals of improvement	% implementation
	Total	Total	Service[1]	Compulsory			
SECOFI	227	142	81	61	37.4	85	100
SRE	24	22	9	13	8.3	76	100
SSA	115	81	18	63	29.6	98	100
STPS	72	38	22	16	47.2	93	100
SECTUR	67	49	44	5	26.9	92	100
SEMARNAP	222	205	16	189	7.7	99	92
SEP	146	42	4	38	71.2	100	94
SAGAR	49	43	31	12	12.2	100	99
SE	179	115	51	64	35.8	99	90
SCT	856	289	48	241	66.2	100	45
SG	81	77	5	72	4.9	100	90
TOTAL	2 038	1 103	329	774	45.8	97	96

1. Service formalities are those that firms demand voluntarily from Federal Government (examples are inquiries for monopoly practices, requests for electric service, participation in programmes to aid small firms, etc.).
2. SECOFI stands for Ministry of Trade and Industrial Development, SRE for Ministry of Exterior Relations, SSA for Ministry of Health, STPS for Ministry of Labour and Social Security, SECTUR for Ministry of Tourism, SEMARNAP for Ministry of Environment, Natural Resources and Fisheries, SEP for Ministry of Public Education, SAGAR for Ministry of Agriculture, SE for Ministry of Energy, SCT for Ministry of Communications and Transportation, and SG for Ministry of Interior.

Source: Final Report of the Commissioner, Federal Regulatory Improvement Commission, 2000.

reduced the length of time required to process applications. A total of 45% of formalities in the eleven ministries were eliminated and over 95% simplified in some way.

In addition to the elimination of formalities, the contents of the regulatory proposals drawn up by government offices were reviewed to ensure that their implementation did not entail unnecessary burdens. From 1997 to 2000, over five hundred regulatory proposals and the corresponding regulatory impact statements were reviewed.

Recent developments

Although administrative simplification has not always been specifically addressed, the new initiative 2001-2006 for a Good Government tries to integrate administrative simplification into a management-for-quality programme. This programme is part of the current National Development Plan and aims to renovate and achieve greater coherence for the institutional context of the modernisation of public administration. For such purposes a special Presidential Office for Governmental Innovation has been created and located at the President's office, with co-ordination by UDA.

Both the new Office for Governmental Innovation and the management-for-quality programme can further steer administrative simplification in a way that is separate from but complements the regulatory reform programme. In this way administrative simplification efforts could take a more systematic focus, with more specialised institutions, instruments, and capacities that could effectively improve practical results.

At present the UDA at the Ministry of Comptrollership, is building up a co-ordination with the Presidential Office for Governmental Innovation that will boost their autonomy. The UDA will then redefine its responsibilities in comparison with COFEMER's, towards a clearer definition of each agency's performance. This progress made by regulatory reform certainly has also influenced the implementation of administrative simplification.

In March 2000, the Executive sent to Congress a list of proposed amendments to the Federal Administrative Procedures Law that ensured the continuity of the regulatory reform programme and the analysis and permanent consultation of the business, union and government sectors. This reform, which was unanimously approved by Congress, introduced a series of elements that improved the 1994 law and ensured greater certainty and legal guarantees for private citizens.

As a result of these reforms, the UDE was transformed into the COFEMER and became a decentralised body of the Ministry of Trade and Industrial Development, with operative and functional autonomy. The Commission's mandate is to ensure transparency in the drafting of federal regulations and to promote the development of cost effective regulations that produce the greatest net benefit for society. It is legally obliged to consider all the opinions and proposals submitted by the public before issuing its final review. These reforms also extended COFEMER coverage to virtually all Federal Government areas, emphasised a preventive approach, and contributed to improving the definition of responsibilities.

The Federal Administrative Procedures Law promotes transparency, which ultimately has had an effect on the enhancement of simplification in administrative process. However, its main contributions were the Federal Register of Formalities and Services and the Register of Authorised Users.

Examples of the type of rules included in the Federal Administrative Procedures Law are given in Box 5.1.

Box 5.1 **Rules for the simplification of formalities according to the Federal Administrative Procedures Law**

- Only a single set of original documents must be submitted, together with a copy of any appendices.
- A certified copy of any original document may be submitted in its place.
- For subsequent formalities, instead of submitting copies of permits, registrations, licences and in general any document issued by the decentralised office or organisation, applicants may simply indicate the identification data of these documents.
- Notification of missing documentation or information must be provided within the first third of the authority's official response time or within 10 working days after the corresponding application has been submitted, if there is no official response time.
- The maximum time limit for processing applications will be three months, and the "silence means denial" or "silence gives consent" rule will apply, unless otherwise indicated. Proof of the "silence gives consent" rule must be issued within two working days after an application has been submitted.

Source: Articles 15-A, 17 and 17-A of the Federal Law of Administrative Procedure.

Box 5.2. **Description of the Register of Authorised Users**

The Federal Administrative Procedures Law establishes that all ministries must have a Register of Authorised Users for the submission of federal formalities before May 2003. Once registration is obtained, firms and private citizens will no longer have to present identification data (voter registration card, fiscal identification, business statutes, etc.) when submitting formalities to any federal ministry or decentralised agency, unless the identification documents have changed in some way. At present, five Ministries have begun to compile their registers of authorised users, although some technical details must be sorted out in order to ensure connectivity of all registrations.

Administrative simplification has not been approached directly as such. However, by focusing on Regulatory Improvement and Deregulation, significant progress has been achieved on the side effects of administrative simplification. Table 4.3 summarises the milestones achieved in the areas of deregulation and administrative simplification in Mexico from 1982 to the present.

Amendments to the Federal Administrative Procedures Law will in the medium and long run simplify paperwork by reducing the excessive number of formalities required of and services provided by the Government to citizens and enterprises.

Ongoing efforts

The current administration has decided to intensify efforts to ensure regulatory improvement and undertake a new phase of simplifying formalities. To this end, the Federal Government recently issued a new presidential agreement on regulatory improvement. On June 25 2001, the *Diario Oficial de la Federación* published an Agreement for the Deregulation and Simplification of Formalities in the Federal Register of Formalities and Services and for the Application of Regulatory Improvement Measures to Benefit Firms and Citizens. The Agreement was issued within the framework of a programme to

Table 5.3. **Milestones in deregulation and administrative simplification in Mexico 1982-2000**

		Initiative	Principal actions or effects (as regards the reduction of paperwork and formalities)
1982	DEFINITION OF INSTITUTIONS AND RESPONSIBILITIES	Creation of the Ministry of Comptrollership	The Ministry established as institutional responsibilities • Rationalisation of public sector activity. • Simplification of government management. • Evaluation of Public Sector through the implementation of the National System of Control and Evaluation of Public Management.
1982		Federal Law of Responsibilities of Government Officials and their Regulations	The Law established responsibilities of public officials • Obligations and restrictions in the exercise of government officials' functions. • Sanctions on government officials that fail to fulfil their obligations.
1983		Amendments to the Organic Law of Federal Public Administration	• Gave more precision to institutions. • Defined areas of responsibility. • Strengthen the system for the control of offices and departments.
1985		Programme for the Simplification of Federal Public Administration	• Implementation of one-stop shops in the Federal District and a number of states. • Publication of Formalities and Services Manuals for the Public.
1989	SECTORAL DEREGULATION	Creation of Economic Deregulation Unit	• Deregulation of specific sectors of economic activity to improve the flow of goods and services in the face of trade liberalisation. • Administrative simplification advanced as a result of deregulation initiatives.
1994		Federal Administrative Procedures Law	• Establishment of general rules for the simplification of formalities.
1995		Programme for the Modernisation of Federal Public Administration	• Establishment of broad policy lines for economic deregulation, administrative simplification, provision of services, and community participation in consultative boards on policies.
1995	TOWARDS A SYSTEM BASED APPROACH	Agreement for the Deregulation of Business Activity (ADAE)	• Deregulation of business obligations and formalities into twelve federal ministries. • Establishment of Economic Deregulation Council.
1995		Agreements for Co-ordination between the States in issues concerning Regulatory Improvement and Administrative Simplification	• Federal Government provides technical support for state governments on deregulation and administrative simplification.
2000		Amendments to the Federal Administrative Procedures Law	• Transformation of deregulation into regulatory improvement and reinforcement of criteria for revising current formalities. • Incorporation into the Law of Federal Registry of Formalities and Services. • Set of formal formalities for transparency and regulatory impact statements. • The Economic Deregulation Unit acquires autonomy following its transformation into the Federal Commission of Regulatory Improvement. • Scope of regulatory reform broadened to 16 ministries and 28 decentralised agencies, and to citizen formalities. • Obligation to prepare two-year regulatory improvement programmes for all ministries and decentralised agencies. • Regulatory reform programme includes administrative simplification as criteria for approving new federal formalities and formalities.
2001	GREATER COMPREHENSIVE APPROACH	Agreement for the Deregulation and simplification of business and civic formalities	• The commitment was to reduce the number of existing formalities by 20%. • Identification of five highest impact formalities in each ministry and decentralised agency for simplification or elimination.

reinforce the economy, designed as a response to the deceleration of the country's expectations of growth.[6]

COFEMER has continued to promote administrative simplification and economic deregulation, comprising both programmes within its regulatory improvement initiative. Most ministries and regulatory agencies have already submitted proposals for the

deregulation and simplification of formalities for the next two years, which could reduce approximately 20% of the formalities for these sectors.[7]

COFEMER is required by law to undertake its review of the two-year regulatory improvement programmes for each ministry and regulatory agency, and has done so for all the programmes that have been submitted. This public review is meant to provide additional incentives for regulatory improvement.

In June 2001, the Ministry of Finance and Public Credit, the only ministry that had not significantly pledged its commitment to regulatory improvement and administrative simplification by the year 2000, had already submitted its commitments regarding the simplification of fiscal matters. Foremost among the Ministry of Finance's commitments was the creation of its own register of fiscal and customs formalities, a 30% reduction in business formalities, and the optimisation of the information and requirements for forms and additional documents. Other commitments included the establishment of specific time limits for responding to each procedure and the possibility of undertaking formalities by certified post or messenger service.[8]

The Mexican business sector has also promoted the simplification of formalities in the various states. The Mexican Business Council (CCE) for example, published comparative studies on the quality of the regulatory framework and the administration of justice in Mexican states for three consecutive years, between 1998 and 2000. This study establishes comparative indicators of the barriers that still exist in state formalities and the quality of the regulatory framework, such as the average number of days required for setting up a business. The comparative nature of these studies has served as a significant incentive for the authorities responsible for administrative simplification in the country's major states and municipalities.

Based on the co-ordination agreements established between the Federal Government and the states since November 1995, all the states have issued legal instruments analogous to the federal Agreement for the Deregulation of Economic Activity. Through the technical support of the Federal Government, 17 states have implemented state registers of business formalities, while 22 states have drafted legislative and administrative reforms to speed up lawsuits, permit the assignment of mortgage loans, and repeal obsolete provisions.

Despite the significant progress made in the deregulation of a large number of federal formalities, a great deal remains to be done from the point of view of private citizens. Moreover, despite the speed with which changes have been achieved, administrative simplification has not progressed at the same rate in all Federal Government departments, or with the required degree of co-ordination between the authorities, nor has it spread to the state and municipal governments.

Finally, greater efficiency in the government's performance as a promoter of economic activity has not advanced uniformly in all areas that are critical to economic activity. There are still barriers and several formalities that must be simplified, eliminated or speeded up, in tax, social security, migratory, and financial matters.

Description and analysis of programmes and instruments

Federal Register of Formalities and Services on the Internet

The Federal Register of Formalities and Services contains the general rules of formalities currently available on the Internet: *www.cofemer.gob.mx*. This tool includes the

principal formalities carried out by private citizens at federal departments and offices. The Register is important for administrative simplification since any formality not included in the Register is not compulsory. Moreover, formalities not included in the Register are illegal. The Register was a new reform introduced by the Federal Administrative Procedures Law. It includes new areas that had not been previously simplified such as the paperwork carried out by federal enterprises.

The Federal Register of Formalities and Services was created as a result of the need for a certified inventory of all federal formalities. The aim was to avoid the haphazard proliferation of formalities and obligations. The Register contains a detailed description of the information, data and additional documents required to carry out any procedure.[9] After creating an inventory of federal formalities, these are systematically reviewed, with input from the COFEMER and the private sector.

The Register contains approximately 1 100 business formalities applied by eleven federal offices. The Register will be completed by May 2003 and will include the formalities submitted by citizens, as well as those concerning concessions, acquisitions and public works, social security, those stipulated under official technical standards, and those required by decentralised agencies. Formalities in the Register may only be applied in the way they are registered and only formalities that have been duly registered can be enforced.

These regulations also apply to decentralised organisations regarding their acts of authority and the services they alone provide, such as the rules for awarding franchises for the state oil company, Petróleos Mexicanos (Pemex), and the terms for high tension connections to the electricity grid operated by the Federal Electricity Commission (CFE). Financial authorities other than Banco de México (Mexico's Central Bank) are now bound by transparency requirements.

This tool enables users to obtain business forms on line and even to submit certain formalities for the Ministry of the Economy electronically. There is also a mailbox and advisory service that COFEMER runs to help users with federal formalities and to receive comments and suggestions on possible deregulation initiatives.

By December 2000, eleven out of nineteen ministries were posted on the Federal Register of Formalities and Services Web site. The system contains over 1 100 officially registered federal formalities, as well as links to a number of registers of state formalities and national and international information on regulatory improvement processes.

In order to improve the running and impact on users of formalities and public services, plans are currently underway to transform the Federal Register of Formalities and Services from an information site into a transactional tool, through the Tramitanet system. To this end, additional legal support will be developed in order to enable public offices to receive or process applications from private citizens by electronic means and to assign these documents the same value as those signed by hand.

State registers on the Internet

State Registers, roughly equivalent to the Federal Register of Formalities and Services, have been partially implemented in most states. In fact, COFEMER has given technical assistance to 17 states in this area. The level of development of the Registers varies greatly from state to state. In some cases, the Register serves as a general tool for all state formalities while in other states it merely includes formalities to establish new enterprises.

A significant achievement is that most state administrations regard the Register as an important instrument. By mid 2001, more than half of all states had established a Register and the rest are in the process of doing so.

The construction and implementation of state registers has progressed more slowly than the Federal Register for a number of reasons. In the first place, the definition of institutional context is not homogeneous and depends on the distribution of responsibilities and on the creation of specialised institutions focussing on administrative simplification. In the Federal Government, the initiatives and programmes for regulatory improvement, economic deregulation and administrative simplification are mainly concentrated in one agency, COFEMER. Moreover, this agency is mainly oriented towards the promotion and systematisation rather than control or evaluation. Still, the procedure in the states has not only been oriented to the systematisation but also to results.

Compranet

The Comptrollership Ministry has placed particular emphasis on the Electronic System of Government Procurement (Compranet at *www.compranet.gob.mx*) to ensure greater transparency in the formalities related to the acquisition and procurement of goods, services, leases and public works of the federal public administration, which has been operating since 1996. This instrument provides public access to some of the acquisitions and services required by the Federal Government and certain state governments.

Before Compranet existed, there was a complex system of procurement of rules. The process entailed high costs for both the public sector and the firms that participated. For firms, the consultation mechanisms available for determining the public sector's requirements were limited, while participation in bidding for public contracts was extremely costly, since it involved submitting the same documents for each bidding process, and going directly to the purchasing units for the various stages of the process. All this had a particularly negative effect on small and medium-sized businesses and suppliers living in the provinces.

Information technology was therefore regarded as a useful means of operating a faster, more timely procurement mechanism that would avoid unnecessary, recurrent formalities, prevent discretionary practices, facilitate the participation of the business sector, and promote transparency. The system is designed to automate the various stages of the procurement process, by connecting purchasing units to suppliers through the Internet. In other words, Compranet is a system whereby the government's purchasing units are able to list their goods, service, leasing and public works requirements, enabling suppliers and contractors to access this information and submit their bids by the same means and subsequently follow up the entire process until its completion. This speeds up the rigid procurement mechanisms and facilitates firms' participation, thereby minimising unnecessary costs.

The system's coverage has increased annually at a swift rate, both as regards the number of consultations made and the number of public administration purchasing units using the system. The effect on users has also increased rapidly; with over 25 000 firms throughout the country utilising the system on a regular basis. State Compranet initiatives have been established since September 1998 and currently operate in 756 bidding units in 26 states, 21 of which have made its use compulsory. State Compranet pages have also grown rapidly as regards the number of consultations made, the amount of information obtained, and the number of firms using the service.

The Federal Government annually assigns between 25 to 30% of the Federation's Expenditure Budget for procurement processes. These processes are carried out at approximately 20 000 annual public auctions, with an indeterminate number of allocations by restricted and direct invitation, in which nearly 4 000 public administration purchasing units took part in late 2000.

Although Compranet is a step in the right direction that takes advantage of information technology, there is still a widespread perception among users that the system has not reduced all unnecessary formalities, and needs to improve transparency, combat corruption, and provide more information.

A recent exercise, undertaken by a newspaper, which carried out an experiment with potential suppliers and opinion leaders, showed that the system has severe shortcoming as regards transparency and the low range of services available, in relation to the total volume of purchases. For example, of the total volume of purchases and procurements by the federal public sector, only a fraction of these are carried out through the auctions posted on Compranet. Likewise, users sometimes experienced problems in locating and accessing public administration's purchasing and procurement requirements. These problems are exacerbated in certain state governments, since their purchasing laws often provide considerable scope for discretionary practices.[10]

Electronic tax declarations

The objective of electronic declarations is to simplify the process of tax declaration and payment. This programme is the responsibility of the Ministry of Finance and Public Credit. Its programme is significant because all firms and employees and anyone who buys anything in Mexico must pay taxes. By law, some firms must submit electronic declarations instead of paperwork. Tax declarations are submitted at least every three months, but most people declare taxes every month depending on the regime in which they are registered before the Ministry of Finance. This practice includes three electronic instruments to facilitate declaration: electronic funds transfer, the submission of declarations through the Internet, and the possibility of submitting declarations through electronic banks and magnetic media in a bank window.

The main results of the instrument are firstly, a gradual but significant reduction in the use of paper and secondly, expanded customer service coverage. Thirdly, it is easier for the Ministry of Finance to identify the origin and the destination of payments. Finally, for the general public, the time spent on tax payment has been reduced. For the public, the main benefits are that declarations are easy to fill in, tax payments are safer and quicker and save time since the computer programme is downloaded into their computers.

Rapid business start-up system

In January 2000, Mexico launched a programme called System for Rapid Business Opening (*Sistema de Apertura Rápida de Empresas*, or SARE). SARE reduces the number of federal formalities to open a low-risk business for individuals (tax registration) and for businesses (tax registration and enterprise registration).

The system was designed to remedy the complaints of the Mexican private sector concerning the unnecessary high costs and large amounts of red tape required to open a business. A federal deregulation programme launched in 1995 already provided positive results in reducing formalities for business start-ups. However, at the beginning of 2000, low risk activities were still required to comply with eight federal and seven state and

municipal formalities. The average time to set-up a business took more than 100 days and imposed costs in excess of USD 2 000 at that time.[11] The burdensome business start-up procedure created unnecessary barriers to entry, discouraged entrepreneurial activity and job creation, encouraged the enlargement of the informal sector by increasing tax evasion and legal uncertainty, and undermined the regulatory framework in general.

Under SARE the situation improved significantly. Thanks to the new system, now it takes one working day to comply with federal start-up formalities for low-risk activities. Many formalities were simplified by allowing businesses to comply with them up to three months after beginning operations. A catalogue of low risk activities was published as an annex to the decree, in order help entrepreneurs to decide whether they qualify for the SARE or not.

Cofemer has launched an extensive co-operation initiative with the state and municipal authorities. Under this initiative, training to simplify and improve business start-up processes and to implement the SARE are provided for local authorities. As of November 2002, 19 states have signed co-operation agreements with Cofemer. Cofemer has also embarked on pilot programmes to implement fully integrated SAREs in major urban areas.

The programme has been a success. As of November 2002, more than 226 000 individuals and 1 400 legal entities have received their tax and enterprise registrations under this scheme. For example, in the City of Puebla, more than 1 724 enterprises – mainly small and medium size enterprises – have been opened under the SARE system between May and November 2002. This directly led to the creation of more than 7 000 new jobs and promoted investment in the region.

Streamlining of international airport inspections

This programme involves the reduction of the number of checks for travellers arriving at international airports from abroad. The Comptrollership Ministry is the agency responsible for revisions and oversees the streamlining initiative. For this purpose, the authorities participating in the process concentrate on two key areas of revision. Health and immigration checks are carried out in the same queue. In another queue, four checks are conducted: the tax check in the charge of the Ministry of Finance; the examination of products of animal or plant origin carried out by the Ministry of Agriculture, Cattle-raising and Fishing; the forestry and wild flora and fauna products check carried out by the Ministry of the Environment and Natural Resources; and the narcotics and drugs check carried out by the General Attorney's Office.

To date, similar measures have been implemented in Aguascalientes, Mérida, Cancún, Monterrey, Guadalajara, and Oaxaca airports. In Mexico City airport, manual checks have been replaced by electronic scanners, which has facilitated and speeded up the process by up to 83%. Travellers have benefited greatly from the time saved, since the process in Mexico City Airport has been reduced from two hours to 40 minutes.

Public registry modernisation programme

This programme is meant to enable Public Property Registers to provide services through simplified, automated processes. The Register of Public Property is the responsibility of the Ministry of Economy. This Register operates through two main devices. On the one hand it has an "Integral Register Management System" which designs and builds technology programmes to handle information related to real estate transactions.

Other achievements have included the reduction of the number of stages in the process from nine to five as a result of this automated system. There has been a shift from using paper files to register information to electronic storage, while implementation of the programme has been expanded to eleven states across the country.

Use and effects of one-stop shops to reduce information search costs and improve accuracy

In Mexico, one-stop shops are perhaps the administrative simplification instrument most widely used by federal, state and municipal offices. Nowadays most business chambers have their own tailor-made one-stop shops for the formalities most commonly used by their members. The advantages of one-stop shops are that they save time and money by avoiding the need to visit other offices or departments or to resort to third parties (who agree to carry out these transactions for a fee, while maintaining their clients in a constant state of uncertainty). They also offer advice and orientation, by providing information on compulsory formalities to be undertaken at the local and federal level. The formalities for which the greatest amount of information is available are those for setting up business, exporting and importing goods, and registering trademarks.

During the six-year period from 1995 to 2000, the establishment of one-stop shops continued in all federal ministries and institutions, and in the states, which were encouraged to make better use of banks, post and telegraph offices, and municipal and local offices. The Programme for the Modernisation of Public Administration favoured one-stop shops that would group together formalities from various ministries and government levels and the transaction approach, which, in addition to providing information, would be able to process transactions. At the federal level in Mexico, the one-stop shop with the greatest coverage in federal government formalities and services is the one promoted by the Federal Regulatory Improvement Commission, located at the COFEMER site *www.cofemer.gob.mx*.

At the state level, all states currently have one-stop shops in servers of varying quality and offering a varying degree of service coverage. All of them devote some of their contents to promoting productive activity through actions involving administrative simplification and economic deregulation.

The use of "silence is consent" or "silence is denial" rules in conjunction with legislated time limits on administrative decision-making

The use of "silence is consent" or "silence is denial" rules is a tool that has been promoted by the ADAE for reviewing the time limits of all federal requirements, formalities, forms, and expiry dates. On the basis of the review criteria of the 1995 ADAE, the UDE has assessed the difficulties experienced by government offices in dealing with the formalities and services required by private citizens. It has also evaluated their processing capacity and the viability of the "silence is consent," "silence is denial" rules, and other alternatives. The "silence is consent" or "silence is denial" rule is only applicable to procedures that require an authority's response or resolution – not situations where private individuals merely have to notify authorities or in which individuals must keep information on file for a specific amount of time.

Recent modifications of the Federal Administrative Procedures Law reinforce the legal basis of the "silence is consent" rules, by giving individuals the right to receive a written statement by the silent federal authority indicating that it did not respond to the request in time, within two business days of the individual's request. The "silence is consent" rule

is generally used in relation to low-risk activities or areas in which there is no risk of under regulating.

The use of the "silence is consent" or "silence is denial" rule has spread to the states and municipalities, which pledge to implement this rule through the signing of deregulation agreements between the federation and the state. For example, in the municipality of Monterrey, the third largest city in the country, the authorities have established the "silence gives consent" rule when a procedure exceeds the stipulated time limit, for connection to the city's water and drainage services. If a reply is not provided within the allotted time limit, an application is automatically approved.[12]

Regulatory Impact Analysis

Regulatory Impact Analysis (RIA) also serves as a preventive instrument in administrative simplification. It is a public instrument whereby federal ministries and agencies must justify the creation or modification of regulations and formalities derived from the latter. RIAs must be submitted to COFEMER for review, together with the all draft regulatory proposals (legislative or administrative) that impose compliance costs on society. COFEMER is authorised to issue a report on these proposals, and their RIAs on the basis of its mandate, which is to promote transparency in the elaboration and application of federal regulations and to ensure that their benefits outweigh the burdens they impose on society.[13]

The main objective of the RIA is to improve the drafting and quality of regulatory proposals, by promoting a discussion of their advantages and disadvantages and ensuring more effective consultation of the interested parties and the general public.

If, in COFEMER's view, a RIA does not provide sufficient discussion of the main aspects, (including the costs, benefits and formalities) of a particular regulation, it may request that the RIA be expanded or amended. COFEMER has a thirty working-day limit for issuing a verdict on the RIA and the regulatory proposal submitted. The verdict must consider the views of the interested parties submitted to COFEMER, and include, among other aspects, an assessment of whether the actions proposed in the preliminary plan are justified, in accordance with the Commission's mandate.

On the subject of the procedure defined by the Federal Administrative Procedures Law and the *Manual for Drafting RIAs*, COFEMER has been informed that certain discretionary practices continue to exist as regards both the drafting and evaluation of RIAs. According to *Manual* users, compiling a RIA requires a degree of academic training and experience that Federal Public Administration personnel usually lack. The section on the cost-benefit evaluations states that "the specific costs to be considered include capital costs (infrastructure and equipment) and running costs (salaries, materials, energy, and services). Other aspects include transaction costs (legal expenses, assessment and approval costs, advisory services, or the time required to comply with the administrative requirements of regulation), health, environmental and other kinds of social costs, and the administrative costs for the federal offices that would be responsible for implementing the proposed regulation".[14]

COFEMER has also received comments that the methodology defined by the *Manual for Drafting RIAs* is by no means simple and requires previous training. The quality of RIAs is therefore unlikely to be uniform, and will depend largely on the degree of training of the person responsible for their drafting.

In response to this, COFEMER is currently engaged in a process of drafting guidelines to provide a more accurate, simpler definition of the parameters for evaluating RIAs. It will also provide more support and training for drafting the RIAs, a fact that will be reflected in the Federal Administrative Procedures Law's implementing rules.

Use of plain language

Another initiative for ensuring the reduction of barriers and the administrative simplification of the services provided by the federal ministries and decentralised agencies has been promoted through the initiative to ensure simple, clear language included in PROMAP 1995-2000.

PROMAP's sub-programme, "Civic Participation and Attention", was designed to secure more active community participation in the government's work. To this end, four lines of action were defined that revolved around encouraging transparency and quality standards in the goods and services provided by the federal public sector.

To enhance transparency, from 1996 onwards, federal public administration offices were instructed to adopt specific measures to inform the user population, in simple, clear language, about the services they provide, how to have access to them, the requirements that must be fulfilled, and the appropriate channels to be used. This involved posting notices in public offices and using electronic and telephonic means of informing the population. The programme also stated that any government official who had direct contact with the population should fully identify him or herself, through clear, visible means informing users of his or her name and position. This initiative has had a significant effect on the orientation provided by federal public administration about the services it provides. However, it has not been established as a criterion for simplifying formalities.

Simulated user programme

Since 1995, the Comptrollership Ministry's Administrative Development Unit has implemented the Simulated User Programme. This programme is intended to improve the quality of services available to citizens at public offices. In this Programme, an official from the Comptrollership Ministry pretends to use services or follow any administrative procedure. In the process of doing so he or she might attempt to corrupt public officials. The Programme is able to detect extremely slow formalities, assess the quality of services, and identify corrupt practices. Quality indicators and procedure ratings are then used to evaluate the performance of federal offices and make suggestions to improve public service.

Within the context of administrative simplification, the simulated user programme serves as a tool for assessing compliance with the initiatives of regulatory improvement as well as an instrument against corruption.

During the period from 1995 to 2000, the simulated user programme helped to optimise certain formalities and services. This programme applied to 141 federal government institutions, which pledged to implement a further 500 recommendations, 80% of which were designed to simplify and improve services for the public.

One of the best-known results of the simulated user programme was the diagnosis of the initiative to improve the quality of services available to citizens in the Federal District in 1996.[15] A study of the data recorded in the Comptrollership Ministry's national systems of complaints during the first half of 1996 showed that the most complaints were related to deficiencies in formalities and services. The majority of the latter were related to

formalities that citizens were obliged to comply with in the inspection of businesses, complying with environmental pollution standards, and obtaining drivers' licences.

An analysis of the information yielded by the simulated user programme showed that the main reasons for the excessive number of formalities and unnecessary costs for citizens were:

- The fact that administration focussed on preserving an internal hierarchical and functional order, rather than on providing service and meeting the needs, expectations and demands of users and the community.
- Deficient internal information, filing, and data base services that failed to facilitate formalities or simplify the work of staff dealing with the public.
- Excess regulation of private citizens' activities.
- Excessive number of organisational levels and hierarchy that slowed down formalities and services and hampered communication. Operating levels were too far away from service areas and failed to incorporate suggestions for improving operative levels.
- Lack of information on formalities (lack of notices, no directories of the formalities and services offered or information on requirements, some of which were actually illegal).

Despite the accuracy of the diagnosis for the slowness of formalities in the Federal District in 1996, the authorities have not yet reduced the burdens on private citizens, nor have they been able to prevent a reversal of the process of administrative simplification. The most recent survey conducted by the Businessmen's Co-ordinating Council showed the Federal District in last place (out of 32 districts) in businessmen's opinion on the speed of formalities for setting up business.[16]

Colima E-government

Systematisation of government departments in Colima began three years ago, with virtual kiosks playing an important role in the task of updating and capturing data. The kiosks are windows established in certain areas instead of one-stop shops. They are transactional in nature and contribute to the simplification of legal formalities related to the state's productive, educational and business sectors.

Colima's electronic government project uses new information technology as a means of providing a rapid response to government formalities. Examples of the formalities that will be issued by Colima's e-government include certified copies of birth certificates, certificates of tax exemption, driving licences, payment of automobile taxes and verification stickers, and answers to questions on school information, among others.

The design of virtual kiosks in Colima includes a set of modules containing systematised information from various areas, such as health, education, transport, civil registry, housing, public safety, and the public register of property and trade. After depositing the cost of the required document, citizens will be able to carry out several formalities in a single place, the response to which will often only take a few minutes.

Among the challenges that the Colima Government faces in expanding coverage of formalities and services are the validation of digital signatures and legally guaranteeing the confidentiality of information. At present, offices in the executive branch are working with local Congress on the regulations concerning the use of information. The latter is due to the fact that this initiative goes beyond current state laws on the use of technologies, such as electronic signatures, data transmission by electronic means, and safety in the sending and reception of information through networks. Colima's e-government model

has been presented in various states and attracted the notice of administrations mainly in Puebla, Quintana Roo, and San Luis Potosí.

Conclusions

A review of a number of interesting, valuable practices in administrative simplification in Mexico shows that the most innovative experiences in this area have been implemented as a result of sectoral deregulation and regulatory reform over the past six years. The main conclusion that emerges from this review is that administrative simplification practices have been always associated and even confused with deregulation, but recently an interesting integrative approach is emerging through the 2001-2006 Good Government initiative. This is corroborated by the March 2000 amendments to the Federal Administrative Procedures Law. These tools, namely the Federal Registry of Formalities and Services, the Registry of Authorised Users, and the reinforcement of criteria for the simplification of formalities, such as "silence is consent" and "silence is denial", were promoted by the regulatory improvement programme and mainly implemented by the Federal Regulatory Improvement Commission. However, further and more systematic practices might be encouraged if the Good Government initiative succeeds to set in motion a management-for-quality approach.

The administrative simplification tool with the greatest potential impact that would permit a more systematic approach, enhance the continuity and dynamism of the progress achieved, and ensure a positive, lasting effect seems to be the Federal Register of Formalities and Services on the Internet. Creating this register has been a crucial step because the authorities must obtain an inventory of existing formalities in order to ascertain the best means of simplifying them.

Moreover, the Register requires co-ordination between various institutions and obliges every federal Ministry to evaluate the impact of each new procedure to be considered legal and therefore enforceable. In the foreseeable future, the system will enable public offices to process various types of applications from private citizens, meaning that this instrument will act both as an enhanced transactional one-stop shop for citizens and as an analytical tool for authorities. This initiative will obviously save time and money for citizens and agencies. In compiling the Register, the "silence is consent" and "silence is denial" rules can act as filters, providing the authorities do not feel that an automatic response would entail the risk of under-regulation.

Although many of the state registers on the Internet have a less advanced degree of implementation than the Federal Register, they constitute a vital tool for state and municipal authorities to systematise and orient their efforts. In addition to the advantages of using applied technology to speed up formalities, the implementation of state registers could serve as a powerful tool for creating an interconnected approach in conjunction with the Federal Government. However, realising these expectations will require overcoming certain difficulties, such as the simultaneous existence of registers of entrepreneurial and non-entrepreneurial formalities that are often controlled by different state offices.

Apart from one-stop shops, Compranet is the best-known initiative and the one that has been used for the longest time in the area of administrative simplification. Although its impact is limited to formalities for Federal Government suppliers, its importance lies in its transactional rather than purely informative nature, (which also requires co-ordination between Ministries and the agencies within the latter) as well as to the fact that it should be subject to continuous improvement. This electronic tool has provided access to the federal

procurement process for 25 000 firms across the country. Although there is obviously still room for improvement, particularly as regards the elimination of unnecessary procurement formalities, this device has been crucial to speeding up and allowing more competition in processes that were previously more discretionary.

The system of Electronic Tax Declarations has a broad potential impact since each and every corporation and individual must submit a tax declaration. It is also a technology-based transactional tool that requires co-ordination within the Ministry of Finance. It is also important since the fiscal area had previously been excluded from administrative simplification. Taxpayers can observe significant benefits in terms of time saved, since the electronic form is easy to fill in and has both a tutorial and telephone support. The Ministry of Finance also benefits since registration is automatic and accounting errors low.

One-stop shops are the longest established and most widely used instrument for the promotion of administrative simplification, in both the Federal Government and state and municipal governments. An evaluation of one-stop shops, however, shows that the majority merely provide information or constitute isolated initiatives, meaning that it is common to find windows for each office providing services for the public, where the lack of co-ordination creates a certain amount of confusion. Despite this, their main achievement has been a reduction in search costs as well as the promotion of productive activities. Through its electronic kiosks, Colima's e-government initiative has gone a step further, through an ambitious project to improve and integrate several state and municipal one-stop shops into a single electronic, transactional data warehouse, organised on the basis of an ID card. During the initial stages, services will include the provision of birth certificates, tax exemption certificates, driving licences, payment of automobile taxes, and verification stickers (decals proving that vehicles comply with pollution standards).

A recently implemented practice with an enormous potential impact is the programme for the modernisation of the Land Registry Office. This will help speed up the definition of property rights as well as the establishment of firms. The Land Registry Office used to be a collection of paper files supporting individual properties, the consultation and certification of which usually took weeks. The process has been automated, which has resulted in the elimination of a number of stages in the process, and the shift from paper files to electronic storage. Like other initiatives, it is still at an incipient stage, and work remains to be done to establish a legal framework to give electronic registries the same validity as paper registries. Nevertheless, it could have a broad impact and help reduce costs for society.

The simulated user programme has served as a useful tool for the Federal Government in detecting areas that could be simplified, as well as establishing priorities based on users' perceptions of formalities or services. The programme is able to identify slow formalities and corrupt practices and suggest further improvements through the use of performance indicators. Although its impact has not been as broad as it could have been, nor does it make use of technology, it has an enormous potential and could be established as a criterion for making the administrative simplification programme more systematic.

Likewise, Regulatory Impact Analysis (RIA) is a by-product of regulatory reform, with a powerful preventive effect on administrative simplification. As in other OECD countries, RIA requires federal agencies to justify the creation or modification of regulations and formalities to reduce costs. Although RIA could have a broad impact since it involves all new regulations, it was not specifically designed to simplify formalities, its implementation has not been easy in the Federal Government, and it may take even longer to adapt it to local governments. At

the same time, one of its advantages is that it forces institutional co-ordination between agencies, which will eventually lead to administrative simplification.

Finally, this report evaluates two practices which, despite their relatively narrow impact, are valuable because of their ease of application and because they deal with two key areas. Although its target population consists mainly of medium to high income consumers, meaning that it has a small but significant impact, the streamlining of international airport inspections has reduced the time spent on the latter, thereby speeding up the flow of passengers and goods. Administrative simplification here has benefited from the use of technology, in the form of electronic scanners that facilitate information checking and simplify the analysis of the latter by using specialised personnel to perform six different tasks in just two queues. Despite its limited impact, the experience is an example of focussing on concrete results for citizens, through the analysis and redesign of processes, which could be used in other key areas of public administration involving cumbersome formalities.

The use of plain language is perhaps the most inexpensive yet least used means of achieving administrative simplification in Mexico. Since 1996, the Programme for the Modernisation of Public Administration has stipulated that federal public administration offices must inform their clients in clear, simple language of the services they provide, how to obtain access to them, the necessary requirements, and the appropriate channels to use. Improved communication will certainly have a positive effect on the simplification of formalities. However, increasing the scope of this measure will require a change in public administration towards quality, which in turn will probably be easier to observe in the long term.

Notes

1. The 1960s and 1970s witnessed a number of efforts to consolidate, modernise and simplify public administration. However, the objectives and goals established were extremely broad, and never focussed on reducing barriers. The government played an increasingly significant role in the economy, crowding out private investment. Consequently, in late 1982, the semi-state sector, comprising 1 155 firms – including all commercial banks – accounted for 18.5% of the Gross Domestic Product and employed 10% of the working-age population.
2. "For Mexico, the 1982 crisis was the worst since the Great Depression. Fundamental imbalances in public finances, and the current account, combined with the suspension of the flow of external savings ... marked the beginning of a period of stagflation." Aspe (1993), *Economic Transformation*, p. 22.
3. Aspe (1993), *Economic Transformation*, p. 32.
4. Except for a Programme for the Simplification of Federal Public Administration in 1985 that sought to reduce, simplify, and speed up government transactions and formalities and make them more transparent; however, results were virtually negligible.
5. Dutz (1999), *et. al.*
6. The projected growth of the Mexican economy for the year 2001 has been revised downward as a result of the increased deceleration of growth of the US economy. Although forecasts are still being reviewed, most forecasters believe that the Gross Domestic Product will stagnate or slightly decline during 2001.
7. The headline of an important newspaper read: "The overall commitment of the Federal Government is to reduce formalities by 20%." *El Economista* (15 May 2001).
8. This commitment was submitted by the Ministry of Finance in May 2001, within the context of a programme for the adjustment of public spending, linked to the reduced expectations for the growth of the Mexican economy in 2001.

9. The increase in rules and provisions created a regulatory inflation that not only hampered economic activity but was also one of the main sources of administrative corruption. López Presa (1998), *Corrupción y Cambio*.
10. The headline of a popular newspaper read "*Falla Compranet en Transparencia*" Reforma, p. 1 (27 July 2001). This opinion is slightly more favourable than that of a previous opinion poll conducted by Gallup in 1996 among businessmen to find out about the problems and limitations of government procurement processes, in which 62% of firms expressed a negative opinion of the existing process, citing lack of clarity and transparency in the process as the main barriers to their participation.
11. Simeon Djankov, Rafael La Porta y Florencio López de Silanes, *The Regulation of Entry*, Cambridge, Mass., National Bureau of Economic Research, September 2001 (NBER Working Paper, 7892).
12. The procedure for incorporating a real estate project into the Water and Sanitation System of Monterrey (SADM) is as follows:
    1. Request feasibility certificate (proof that it is feasible to provide water and drainage services) from Monterrey's water and drainage services. If the feasibility verdict is favourable, proceed to the following stage:
    2. Submit a blueprint of the housing project approved by the State Ministry of Environment and attached copy.
    3. SADM draws up drinking water and sanitary drainage projects.
    4. Property developer pays SADM for drafting the network project.
    5. A contract is signed between SADM and the property developer stipulating the contributions of either party for the infrastructure works. SADM then hands over the plans to the property developer so that he can develop the site.
    6. The property developer builds the potable water and sanitary drainage networks under the supervision of SADM.
    7. Once the work has been completed, a certificate of reception and delivery of the latter to SADM is drawn up for its operation and maintenance.

    In order to speed up the necessary formalities, the SADM established new time limits for processing applications; 12 days for defining the feasibility of the service, 7 days for contracting drinking water services if there are already existing pipelines and 12 if there are not. *www.aguaydrenajemty.gob.mx/fraccionamientos.htm*.
13. COFEMER (2000), *Manual para la Elaboración de la Manifestación de Impacto Regulatorio*, November.
14. COFEMER (2000), November.
15. López Presa, *et. al*. (1998), *Corrupción y Cambio*. México, Fondo de Cultura Económica, SECODAM.
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ISBN 92-64-10067-9
From Red Tape to Smart Tape
Administrative Simplification in OECD Countries
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6

Administrative Simplification in the Netherlands*

Abstract. *The alleviation of administrative burdens on enterprises in the Netherlands is firmly on the political agenda as part of the broader regulatory quality and reform plans. The government has placed a large emphasis on the institutionalisation of administrative simplification. An independent institution set up by the government to facilitate administrative burden reduction, called ACTAL, has been a crucial driver of initiatives. The empirical scientific underpinning offered by MISTRAL, a methodology to measure burdens, helps to maintain a cost-focused pragmatic approach to administrative simplification. Based on these tools, the Dutch government established targets and monitors progress for the reduction of administrative burdens.*

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* This report is based on a draft prepared by Ignace Snellen, Erasmus University, Rotterdam, the Netherlands. The report has been fact checked and commented on by the Dutch Government.

Background and historical development

This report provides an overview of attempts to reduce administrative burdens generated by existing and new laws and regulations for enterprises over the last twenty years. In the Netherlands, initiatives have mostly concentrated on burden reduction for enterprises. The administrative obligations of citizens have not been taken into systematic consideration until quite recently.

Before 1990, some scientific interest about the costs of laws and regulations existed, but no concrete policy initiatives were taken in this respect. The first advisory committee was established in 1984 with the purpose to provide an insight into the so-called "*Heerendiensten*" (feudal obligations) of enterprises *vis-à-vis* the government. *Heerendiensten* were defined to include the uncompensated information requirements the government puts on enterprises to make it possible for the government to implement its own policies, such as taxation, inspections, gathering of statistics, etc. The Cabinet had a reserved reaction towards the proposals of the advisory committee.

In 1990, another advisory committee was set up to harmonise the bases of levies in the fiscal and social security fields. The committee recommended creating one numerical foundation and one administrative body for the levy of taxes and social security premiums. In 1994, a second advisory committee on the same subject of harmonisation, chaired by a Director General of the Ministry of Finance, was established. This committee provided a platform for structural discussions between the Government and business associations. Taxes themselves were not discussed, only the information transfer regulations related to them. In 1995, this committee was converted into a permanent consultative body. One of the projects started by this body was the development of a model to measure the information costs of tax regulations. This model (MISTRAL) is discussed in the Section on Other Relevant Policies.

The creation of this second harmonisation advisory committee and an agreement of the new Cabinet in 1994 marked the launching of a policy aimed at reducing administrative burdens on enterprises by 10%. The policy itself was part of a more comprehensive approach taken to deregulation and improvement of the quality of laws and legislation. A project group on Market Functioning, Deregulation and Quality of Laws under the direction of a Deputy Minister of Economic Affairs was established to assess laws in terms of their legitimacy, feasibility, simplicity, and the compliance costs for enterprises. During the 1994-1998 Cabinet period, a total of 69 amendments to existing laws and regulations concerning business information provision to the government were enacted.

At the end of the 1994-1998 Cabinet period, the Deputy Minister reported to Parliament that the 10% target was met. As a follow-up, the Parliament came up with a widely-supported motion to realise an additional 15% reduction in administrative burdens on enterprises. This target was accepted by the Cabinet and taken up in the 1998 Cabinet coalition agreement.

In view of this new target, the Cabinet set up a temporary advisory committee in November 1998 called Committee for Reduction of Administrative Burdens on Enterprises. This committee (most often referred to as the Slechte Committee, named after its chairman), was requested to indicate or initiate administrative reduction projects. These projects were foreseen to deliver an approximate NLG 2 billion (EUR 907 million) reduction.

In November 1999, the Slechte Committee published its final report. This report was received well by the Dutch Cabinet and the Parliament, and almost all the measures suggested were accepted. The ministries appointed civil servants to supervise the implementation of the Committee's recommendations, and to promote further new initiatives in this field.

In May 2001, an Advisory Committee on the Testing of Administrative Burdens (ACTAL) was set up to operate for the coming three years. The Committee started its work on the basis of the foundations laid down by the Slechte Committee (see in more detail the next Section).

In sum, the alleviation of administrative burdens on enterprises in the Netherlands is firmly on the political agenda as part of the broader regulatory quality and reform plans. Twice a year, all relevant ministerial departments now have to present their plans, programmes, and results with respect to administrative burden reduction to the Parliament. An independent advisory board (ACTAL) oversees departmental implementation of this task. Proposed laws and regulations, as well as reports on existing laws and regulations have to be submitted to this advisory board. ACTAL can advise the Cabinet and the Council of State not to discuss a proposed law or regulation if there is no accompanying report on administrative burdens.

Institutions

The Slechte Committee

The creation and activities of the Slechte Committee forms arguably the most important milestone in the work on administrative burdens in the Netherlands. In particular, the Committee acted as an important catalyst for promoting administrative simplification and burden reduction, and established awareness on the economic significance of administrative burdens. The Committee not only facilitated a short-term reduction of administrative burdens on enterprises, but also participated in creating a permanent focus on administrative burdens in a structural and cultural sense.

The Committee was established in November 1998. Members were representatives of SMEs, large enterprises, lower levels of government, accounting firms, political parties, the European Parliament, and specialists in public administration, organisational consulting, and communication. A Steering Group, consisting of top-level ministry officials, acted as a counterpart of the Committee. The involvement of the ministries was organised through this Steering Group. Administrative reduction initiatives were discussed and agreed upon in this forum. The burden reduction projects were developed as co-operative undertakings between branch organisations of enterprises and individual companies on the one hand and ministries and regional or local authorities on the other. The project costs were shared between the branches concerned and the Ministry of Economic Affairs. The Committee published an interim report in May 1999 and its final report in November 1999. During its work, the Committee intensively consulted with relevant stakeholders. A total of 60 administrative burden reduction projects were initiated or stimulated by the Committee.

Box 6.1. **Some examples of projects stimulated by the Slechte Committee**

Social security:

- Simplification of the collection of social insurance contributions
- Information about labour relations and working conditions

Taxation:

- IT applications
- Reduction or simplification of mandatory audits

Justice:

- Reconsideration of the information costs of the privacy law
- Reduction of storing time of archives

Environment:

- Replacement of individual allowances by general rules
- Replacement of allowances by duties to report

Trade and industry:

- One-stop shops for enterprises
- Basic registration of enterprises

Statistics:

- Data assembly via existing registrations
- Integration of surveys

Traffic and transport:

- Reduction of instructions in regulations

The Committee's work was based on proposals brought forward by enterprises or their representative organisations on how to reduce burdens and simplify administrative regulations. The Steering Group checked the proposals' feasibility and contribution to meeting the set target of burden alleviation.

The Slechte Committee built its approach to burden reduction on two pillars: first, the re-use of information already provided by enterprises to public authorities is beneficial, and, second, the use of IT mechanisms can substantially reduce administrative burdens.

The Slechte Committee divided the processes that impose administrative burdens on enterprises into six categories. For each of these informational activities the Committee formulated viewpoints, which governmental administrations were advised to observe:

- Re-use of information. Government agencies should restrict information obligations as much as possible by re-using existing information, generated by enterprises for their own management use and which they can transmit without further processing.
- Information processing. Government agencies should be encouraged to create common data definitions. Different authorities requiring diverse presentations of the same data often leads to different interpretations and a tendency to non-compliance.
- Information creation (separate activities are required to generate the information as well as a separate bookkeeping system). Government agencies should only request new

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information if it can be proved that re-use and processing of existing information is not satisfactory. Government agencies guard against changing information obligations during reporting periods, and give enterprises enough time to adapt their administration to new requirements. Information provision obligations for enterprises should be minimised by giving the authorities the right to collect information from existing databases.

- Information storage may be expensive and risky. Expensive, because some governments demand storage for a long period, and risky, because electronically stored data may become irretrievable ("digital durability") after a few years. Government agencies should make storage times as short as possible.
- Information transfer will become less burdensome if it can be done electronically. As long as forms have to be filled out by hand, the administrative burden may be substantial. Government agencies should use IT to make information "place-independent".
- Information procedures can be burdensome, especially when laws and regulations prescribe with great specificity which instruments to use and how precisely the information has to be gathered. Such laws and regulations may not prescribe the most efficient way to gather information. Authorities, therefore, should only prescribe the results to be achieved and not the exact way in which the reporting should to take place.

The Slechte Committee also suggested to the Dutch government a systematic and independent monitoring and measurement of administrative burdens, and the establishment of an IT-facilitated single window approach to the reporting of administrative burdens. As will be discussed in the Section on the Description of the Programme, the Dutch government has to a great extent followed these recommendations.

The Advisory Board on the Testing of Administrative Burdens (ACTAL)

ACTAL[1] was established by a government decree of May 1, 2000, following the recommendations of the Slechte Committee to institutionalise the monitoring of and the initiatives to reduce administrative burdens[2] on enterprises. ACTAL is an independent organisation that acts as a watchdog and facilitator for the Dutch government. It is designed to give strong backing to the government's own objective to achieve a 25% reduction in the overall administrative burden on enterprises. ACTAL is set up as a temporary organisation. It is expected to achieve its aims within 3 years.

To ensure its effectiveness, the Dutch government decided that ACTAL should be an organisation placed outside the realm of political decision-making, focusing solely on advising government agencies and the Parliament on the reduction of administrative burdens in proposed and existing legislation. It was concluded that if ACTAL's functions would also include the independent review of broader regulatory quality assurance mechanisms such as regulatory impact assessments or general cost-benefit analyses, the organisation would be drawn into unnecessary political discussions about the purpose of the legislation in question.

ACTAL aims to achieve a cultural shift among legislators and regulators to encourage them to find ways to significantly cut back administrative burdens imposed on businesses. It also aims to increase the understanding about the impacts of laws and regulations on the overall administrative burdens on enterprises. ACTAL can choose its own ways and means to help achieve this goal. It can take initiatives and carry out its own research.

ACTAL reviews proposed laws and regulations. It requires ministries to quantify the administrative burdens produced by new legislation and to report on alternative policies that may result in a reduced burden on enterprises. A growing number of ministries have standard assessment tools (such as standard cost models) at their disposal to quantify the administrative burden in legislation. ACTAL checks the ministries' calculations and considerations. It may propose improvements and even call for the withdrawal of proposed laws and regulations.

ACTAL also advises on existing laws and regulations. It does this indirectly by evaluating the ministerial action programmes on administrative burden reduction that ministers are obliged to present annually to Parliament. In its advice, ACTAL may highlight areas of concern and propose improvements.

The Parliament or an individual minister may ask ACTAL for advice. ACTAL may also advise a minister (but not Parliament) on its own initiative. The Dutch Advisory Board Act (*Kaderwet adviescolleges*) stipulates that an advisory board is authorised to access all relevant information from government agencies. Additionally, the Dutch General Act on Administrative Law (*Algemenewet bestuursrecht*) stipulates that government agencies are obliged to transmit information that advisory boards require for the proper fulfilment of their tasks. On the basis of these provisions, ACTAL can request to review any draft law.

An interdepartmental committee on planned legislation keeps ACTAL informed about laws and regulations that will be proposed. Each ministry has to report all its planned legislation to this committee. The committee decides which proposals may have significant consequences on enterprises, the environment, or the legal system, and will require a regulatory impact assessment, environmental impact assessment or implementability and maintainability assessments. When the committee decides that a regulatory impact assessment has to be produced for a particular proposal, it will also indicate if attention has to be paid to the administrative burdens that may ensue. ACTAL can follow up on the committee's findings with regard to the administrative burdens in proposals. Regulatory impact assessments are carried out by each ministry and co-ordinated by the Ministry of Economic Affairs. Within the framework of a regulatory impact assessment, ministries must pay attention to administrative burdens as a standard procedure. ACTAL facilitates this process and reviews the possible results as an independent advisor. Regular meetings are held between the Ministry of Economic Affairs and ACTAL to co-ordinate the Ministry's activities on the overall regulatory impact assessments and ACTAL's activities on administrative burden reduction.

There is an agreement between ACTAL and the ministries that all proposals for which the interdepartmental committee on planned legislation requires a regulatory impact assessment, shall automatically be sent to ACTAL for review. Most ministries have agreed to go much further. They pledged even to consult ACTAL on proposals that may have an impact on the overall administrative burden on enterprises but have not been selected by the committee.

ACTAL's review procedure regarding proposed laws and regulations is as follows:

- Proposed laws and regulations which have an impact on the overall administrative burden on enterprises are conveyed to ACTAL for review.
- ACTAL decides on the basis of a set of selection criteria which laws and regulations will be selected for analysis.
- ACTAL analyses the proposed laws and regulations that are presented or selected based on a set of criteria.

- ACTAL communicates the result of its analysis to the minister, deputy minister or initiator of the proposal as a final judgement.

Selection criteria are:

- How many enterprises (or employees) are involved?
- How complex are the information obligations?
- What is the frequency of the information obligation?
- Which salary scale is involved with the information obligation?

On the basis of a preliminary calculation of these four aspects the total administrative burden is classified into one of three categories – *immediate analysis* (the administrative burdens total more than EUR 5 million); *sampling analysis* (the administrative burdens total between EUR 0.5 and 5 million); and *no analysis* (the administrative burdens total less than EUR 0.5 million).

The analysis criteria on which the judgements of ACTAL are based are the following:

- Are the administrative burdens, which will be imposed by a proposed law or regulation, sufficiently considered?
- Are the information obligations of the proposal indicated?
- Is the nature of the information obligations indicated (one-time only or repetitive; limited or substantial; more or less frequent; new obligations; new concepts introduced; new terms or deadlines)?
- Is the target group defined and quantitatively charted?
- Are the costs of information assembly, processing, registration, storage and provision estimated?
- Is there any indication whether the introduction of the proposal will eventually lead to cost reductions, and if so, to what amount?
- Is it indicated when the most recent change of the legislation took place?
- Are different options examined to reduce the administrative burdens? Is it indicated whether the ministerial department has investigated whether a lesser frequency, a better streamlining, harmonisation with existing concepts, or a systematic simplification are possible?
- Are alternatives for the different versions of laws and regulations considered?
- Is the least burdensome option chosen? Are arguments provided as to why a certain option was preferred and possible alternatives were rejected?

If necessary, ACTAL can make use of panels of enterprises or experts and commission research by outside researchers. ACTAL also holds consultations with a business panel which consists of approximately 500 enterprises. Apart from that, it has regular contacts with employers' organisations of large, small and medium-sized enterprises, agricultural associations, branch organisations, and depending on the case, with individual firms.

On the basis of the considerations implied in the selection and testing criteria, ACTAL gives its final judgement as formal advice to the minister or initiator of a law or amendment. This final judgement can take one of the four forms listed below:

- the Board advises to submit the proposal to the Cabinet;
- the Board advises to submit the proposal to the Cabinet, after its comments are taken into account;

- the Board advises not to submit the proposal to the Cabinet, unless its comments are taken into account; or
- the Board advises not to submit the proposal to the Cabinet.

ACTAL makes its advice available to the minister involved within four weeks after it has received a request for advice or has initiated its own review. If the complexity of the regulation requires more time for consideration, this period may be extended for another four weeks.

The ACTAL advice received by a minister will be attached to the proposed laws and regulations that are discussed by the Cabinet. In this way, the Cabinet can establish whether the minister has taken the advice sufficiently into consideration. The Council of State, the final advisory body in matters of legislation, will receive the proposed laws and regulations, the advice given by ACTAL (among other advices that may have been issued) and a memorandum with the position of the Cabinet.

Since September 2000, ACTAL has produced 80 advice memoranda related to draft laws and regulations. As long as these laws and regulations remain unpublished, the advice of ACTAL cannot be disclosed. As soon as the laws and regulations are made public, ACTAL will post its advice memoranda on its Web site.

ACTAL has reported a number of bottlenecks in its working relations with ministries. There is dissatisfaction with the occasional late provision of legislative dossiers by the ministries. This late delivery threatens to make ACTAL's assessment impossible. Another problem is that ministries – despite the availability of a standard cost model – do not always quantify the administrative burdens generated by a proposed law or regulation. Furthermore, in a number of cases, possible alternatives are neither considered, nor described or quantified in the memorandum of explanation.

Ministry of Economic Affairs

The Ministry of Economic Affairs is the co-ordinating ministry for the initiatives and activities related to the reduction of administrative burdens. As such, it has executive responsibility for the success of the campaign to simplify the information obligations of enterprises. It has launched 11 projects, seeking to provide baseline measurements of administrative burdens. ACTAL, which also reports to the Parliament as a whole, reports in the first instance to the Ministry of Economic Affairs.

Description of programmes

Technologically facilitated mechanisms to reduce administrative burdens

Forms online

As indicated above, the Slechte Committee developed the concept of using Internet-based techniques to achieve a gradual reduction of administrative burdens on enterprises. This plan was endorsed by the Ministry of Economic Affairs, which has committed itself to have the system operational by the end of 2003. When fully implemented 1) a central portal site will be available to access all necessary forms online; 2) it will be possible to find and fill out all necessary forms online; 3) the forms can be transmitted electronically; and 4) the data on one form can be re-used (with permission of data provider) on other forms. The forms will be designed according to demand patterns. It is expected that the design of the forms will evolve to a common standard.

The Minister of Economic Affairs has launched an initiative – "Government Forms On-Line" – to apply IT more intensively. The intention is to create a situation whereby:

- An entrepreneur can find all relevant government forms on one portal.
- The forms will include the information the government already possesses about the enterprise.
- The entrepreneur will be warned pro-actively about services, obligations, or information.
- A single piece of information will only have to be delivered once, either by mail or electronically.

The phases of the Government Forms On-Line project have been:

- *By mid-2001* – creation of a central Web site with references to online forms, and information on how to handle the forms.
- *By mid-2002* – establishment of an intelligent search agent to find the relevant forms, and other applications to simplify filling the forms.
- *By late 2002* – creating the option that forms filled out online can be sent electronically and thereby enabling the regulatory transaction.
- *By late 2003* – with the consent of the entrepreneur the provided information will be re-used, *i.e.*, the forms will be filled out automatically as much as possible. The layout of the forms will be harmonised. A project organisation, under the leadership of the Ministry of Economic Affairs, which consists of participants in the most involved ministries, will be created. It will be led by a steering group composed of high officials from the involved ministries.

The focus of this project is the creation of one single Web site, where one can find all questionnaires and forms of central, regional, and local authorities that any enterprise might have to fill out. A visit to this Web site will suffice to ascertain which information has to be supplied for which authority or for which kind of activity. The assembly of the information can take place via the Internet. The proposal of the Committee fits in with the initiative to create a single government window, called OL (see Section on One-stop shops approaches).

According to the Committee's proposal, the single window will take place in three phases:

- *Phase 1*. All forms that regulate the interaction between government and enterprises will be placed on one Web site. At first, the existing diversified formats will be maintained. The existing interactions with governmental departments and authorities will also remain as they are. Enterprises will remain free to provide information in the traditional form or via the Internet.
- *Phase 2*. Information that is provided via a form on the Web site can be used for other forms. If they wish, enterprises that provide data on one form do not need to provide it again.
- *Phase 3*. The sequence of questions on the forms, the layout, and the terms and concepts used will be standardised. A standard way of assembling information by governmental authorities will gradually be introduced. It will make this assembly transparent and will prevent redundant questioning.

Standardising data definitions

In 2000, the Dutch government launched a pilot project aiming at standardising and facilitating electronic transfer of data from enterprises to government authorities.

Currently, enterprises have to keep many records and registrations to enable governments to implement their policies. Examples of such obligations are financial statements of enterprises about salaries and other taxable remuneration of their personnel, and statements by banks about dividends cashed in by their clients, or about "exceptional" transactions, which might be related to money laundering.

The project is a co-operation between the Tax Administration, the co-ordinating organisation of Social Security Offices, and the National Statistical Office. In this latter organisation, the architecture and common standards for the assembly of data with enterprises are developed. These common standards will be built into software packages (modules) provided to small and medium-sized enterprises by software providers.

Once installed in the accounting modules of enterprises, data required by the Tax Administration, the organisations in the Social Security sector, or the Statistical Office can be imported directly from the enterprises' accounting systems without any active involvement of the enterprise.

First test-runs for this project took place in 2000. Cost reductions in five legislative fiscal areas are estimated to have totalled EUR 680 million – approximately 50% of the total administrative burden in these areas. No evaluation on the results of the project is so far available.

Facilitating Interchange of Data between Enterprises and Administrations (IDEA). In 1999 the Dutch government launched a programme aiming at an improved Interchange of Data between Enterprises and Administrations (IDEA). The IDEA concept is slightly different from the above-mentioned project on data standards, as its starting point are data definitions and standards of the enterprises, rather than those of government agencies. The project focuses on the establishment of those data-elements in the accounting systems of the businesses that in different constellations can cover the total need for data to be provided by businesses to the authorities. Application of the IDEA concept requires that enterprise data be dissected into such components that allow different authorities to compile the data in a form that they need for their own administration.

Two different kinds of data-elements are involved: 1) data-elements that enterprises assemble, store, process, and archive for their own business management, for example salaries; and 2) data-elements that enterprises do not need for their own management, but have to assemble, store, etc., for the benefit of the authorities.

To enable the authorities to compile their own data, data sets consisting of these different data-elements are made available by the enterprises to the authorities. If the accounting system of an enterprise is organised according to the IDEA concept, the transmission of only one single set of data will be required to inform all authorities concerned. In case a law or regulation is changed, it will simply be a matter of re-composing some data-elements in one or more modules. Another advantage ascribed to the IDEA approach is that the authorities themselves will collect the data-elements they need, and will compile them into the required formats. According to the IDEA concept, the authorities will continue to be responsible for the calculation of obligations and payments.

A pilot project of IDEA was carried out between May and September 1999, involving the branch organisation for retail trade, the social security benefit office, tax authorities, and the government statistical services. A set containing a group of data-elements is first sent to the benefit office. This office deducts the social contributions due, and sends

figures about the residue, the fiscal wage, to the internal revenue office. The fiscal office establishes the wage tax and notifies the enterprises about the withholdings, and informs the statistical office. So, by sending only one message, containing an assembly of data-elements, the retail firms fulfil their legal obligations. With the help of an IDEA module, the assembly of data-elements is collected automatically from the businesses' accounting systems.

Once fully in place, the estimated cost savings of IDEA for the retail sector are estimated to total EUR 90 million, about 50% of the current total administrative burden in the areas of wage tax, employees' social insurance, and wage and labour market statistics. No evaluations exist on the preliminary results of the project.

Prevention of information overlap. Further attempts have been made to reduce the overlap of information requests to enterprises. One such initiative is the Routing Institute for Inter-National Information Streams (RINIS). RINIS is an inter-sectoral reference system with the purpose to collect information in the form of databases and to make the data available for government agencies. RINIS aims to prevent the need to collect and store data in more than one place and by more than one authority. When RINIS is completely rolled out it will connect to the information systems of car registration, population registration, student allowances, rent subsidies, health care, social security, taxes, etc.

Secondly, through the creation of so-called authentic registrations, enterprises will only have to report the same data once. If an enterprise has provided data to an authentic source, it does not have to be approached another time for the provision of that data. Some authentic sources, such as a registry of enterprises, and a registration of policies of unemployment insurance, are already in existence, and others are being developed.

The single enterprise register

This project focuses on setting up a Single Enterprise Register in which identification of the data of all enterprises located in the Netherlands will be registered in a harmonised and standardised way. In 1998, a first proposal for the creation of such a register was developed and presented to the Deputy Minister of Economic Affairs. In 1999, the Strategy Team, consisting of representatives of the Ministry of the Interior, the Ministry of Justice and headed by the Ministry of Economic Affairs, developed an implementation schedule. The first version of this register will be operational at end 2003. The Act to give the Single Enterprise Register the legal status of an "authentic register" will be in force end 2006.

The Single Enterprise Register is seen as an authentic registration that is highly reliable and in principle always to be up-to-date, akin to the Dutch population registration. Authentic registrations are responsible for gathering and registering specific characteristics of an object and making these available to other administrations. The Single Enterprise Register is destined to function as a unique source of basic data related to enterprises, self-employed professionals, and other organisations. The starting point of the Single Enterprise Register is that the data will be delivered to the government only once, and will be used for different functions. By the use of electronic interchange, all registrations in other parts of the government are supposed to register the same value for a specific characteristic. It is expected that the introduction of such a registration will substantially reduce the administrative costs of enterprises, citizens, and social organisations. Another asserted advantage of the Register is that the quality of the data and policy-making with respect to enterprises will improve, thanks to the use of standard, undisputed, and linkable data and indexes. The idea of a

Box 6.2. **The basic characteristics of the Single Enterprise Register**

Limited set of basic data. The Single Enterprise Register is planned to register a limited set of basic data. The registration of basic data records the identification, the character, and the economic purpose of the organisation. This includes name, address, legal status, activity descriptions/codes etc.

Identification number. The identification number is a key element of the Single Enterprise Register. Through this number the Register shows "with which business we are dealing". The number can be recognised by all the different register institutions. Through this number the possibility is created to re-use the information which is already available within the government. In this sense the identification number is key to the administrative burden reduction.

Population register. The Register is planned to cover all business/organisation objects within the Netherlands. It unites the Trade Register of the Chambers of Commerce and the core register of the Tax Administration called "Beheer van Relaties" ("Relations Management").

Use of the Register. The Register is planned for use by all the institutions within the government.

Environment of the Register. The development of the Single Enterprise Register is part of the aim of the Dutch government to create a system of authentic registers. The Single Enterprise Register is one of the authentic registers, just like the population register, or a register of social security policies, etc.*

* See Ingrid Post, Rolf Bom and Harrie van de Ven (1999), "The Development of a Single Business Register as an Authentic Register".

Single Enterprise Register was developed by the four main business registrars in the Netherlands: the Ministry of Finance, the Chambers of Commerce, the National Institute for Social Security, and Statistics Netherlands. The Ministry of Economic Affairs is now also involved in the project.

One-stop shop approaches

Under the label of "Public Counter 2000" ("*Overheidsloket 2000*" or "OL 2000") many initiatives are brought together to improve the quality of service provided to citizens, enterprises, and non-profit organisations. Although simplification of administrative burdens or reduction of the costs of administrative burdens are not always the key focus of these initiatives, the reduction of burdens is in most cases one of the achieved effects.

The Enterprise Service Counter

In 1999, the Ministry of Economic Affairs started the Enterprise Service Counter project to improve public service delivery to entrepreneurs. This project aims at the creation of a common counter of municipalities, Chambers of Commerce, tax administrations, and the Ministry of Economic Affairs itself. At the local or regional level, provinces and local partners may be involved. Ideally an Enterprise Service Counter is a (virtual) place where the entrepreneurs can get services from different public authorities. These services are offered on the basis of so-called "demand patterns". These are comprehensive sets of questions and demands that are related to "life events" or "life episodes" or to the realisation of public rights or the fulfilment of public obligations.

Box 6.3. **Toolkit of an enterprise service counter**

- Inventory of demand patterns
- Assortment of services
- Model of a (virtual) service counter
- Education guide for personnel
- Model of co-operation agreement
- Management control model
- Checklist for communication
- Demand/product catalogue
- Co-operation models with other single window counters
- Prototypical registration forms

Three pilot projects of enterprise service counters were made operational at a provincial, regional and municipal level. The three pilot projects are developing instruments for enterprise service counters. Together these instruments form the toolkit of an enterprise service counter.

Business Entry Point project

This project focuses on developing a virtual front office, where on the basis of specific question patterns entrepreneurs can gather all necessary information on transactions with the government and government services. The project also focuses on publishing government forms online. It will be possible to handle a number of incidental transactions and services (*e.g.* requesting a VAT number or registering at a local Chamber of Commerce) through this virtual front office.

The trial period for the virtual front office will start mid 2003. The first version will be operational end 2003. The second version, which will have a much broader content, will be operational end 2004.

"Service oriented government"

The OL 2000 programme also consists of a large number of initiatives aiming at improving services and reducing administrative burdens on citizens. Initiatives are launched at the central as well as the local levels of government.

Most importantly, in November 2000, the Ministry of Economy launched the project "Service Oriented Government" ("*Service Gerichte Overheid*"). The project was the result of an increasing dissatisfaction among citizens regarding the quality of many laws and regulations in terms of perceived administrative burdens, clarity and accessibility, and the performances of the public administration.

In the context of this project, a limited number of problem areas were identified:

- Regulations related to building activities.
- Accessibility of governmental institutions.
- Transparency of the cost composition of governmental services.
- Administrative burdens on requests of municipal permits.

After identifying the most burdensome sources for citizens, some projects were launched, nationally as well as internationally, to chart "best practices". The citizens' position was the starting point of these projects.

Box 6.4. **Examples of various government one-stop shops**

Police Safety Net (Ministry of Interior): A Web site with general information about security, which at the local level is supplemented by information about neighbourhood-projects, contact persons and FAQs. The purpose of this Web site is to make people feel safer, and to engage actors other than the police. It permits people to express their opinion on the issue of security.

Country-wide Police Information Number (Ministry of Interior): A number for non-urgent announcements, questions and requests replaces the regional access numbers of the police. The national police number remains operational for urgent cases. The aim is to reduce the amount of calls to the national number (police, fire brigade, and ambulance) on non-urgent cases.

ELRO, Electronic Counter of the Judicial Organisation (Ministry of Justice): This site provides information about the organisation of the court system, makes it possible to consult case files, contains a list of legal terms, and provides news about recent court decisions and more specific information. This site is, however, more oriented to issues relevant to the legal profession than to issues that are concerns for the general public.

The Green Counter (Ministry of Agriculture): This site aims at concentrating or integrating the Web sites of different departments within the Ministry. The project also allows transactions concerning levies and subsidies.

Care and Welfare Counter (Ministry of Public Health, Welfare and Sport): In 2002, ten cities and regions have created counters for care and welfare. At these counters, all citizens, irrespective of their background, situation, characteristics, or capacities, receive information and advice that can enhance the quality of their lives as well as provide solutions to their problems. Counters for care and welfare can be used by citizens to receive information, for example, on disabilities, chronic illnesses, addictive behaviour, unemployment, volunteer activities, sports opportunities, etc. All kinds of social organisations, specialising in the problem areas concerned, are involved in the further operationalisation of the counters.

Counter for Building and Housing (Ministry of Housing, Spatial Planning and Environment): According to the implementation plan, this counter responds to four demand patterns: 1) the search of tenants by a candidate owner; 2) the search for housing by a candidate tenant; 3) problems and questions of house owners; 4) problems and questions of tenants. Other demand patterns may be developed in the future.

Time limits for administrative decision-making

The Dutch Administrative Law requires that administrative decisions have to be taken within a reasonable time limit. The General Statute on Administrative Law (Awb article 6.2) has specified a general time limit of four weeks, with a possible extension of an additional four weeks, within which public authorities have to give an administrative decision on request, unless the special regulation concerned sets a different time limit.

"Silence is consent" rule

A "silence is consent rule", as such, does not exist for administrative procedures in the Netherlands. Nevertheless, administrative law gives citizens a certain protection against the uncertainty that results from the (tacit) refusal of an authority to take a decision. The Dutch Administrative Law recognises the exceeding of a reasonable time limit to take a decision as an explicit refusal by the authority. At that point, the citizen may launch an appeal.

Alternatives to administrative regulation

Alternatives to traditional command-and-control regulation are used relatively widely in the Netherlands, and guidelines for systematic consideration of alternatives are integrated in the regulatory process.[3] Although such alternatives are not used with the explicit and sole purpose of reducing administrative burdens, in some cases this is a fortunate side-effect.

Covenants

In December 1995, the Minister-President promulgated a regulation with respect to the use and content of covenants. Covenants, in the Dutch context, are agreements between public authorities or between private parties and public authorities, concerning the exercise of a public authority or the implementation of a public policy. The legally binding nature of this kind of agreement is comparable to that of "gentlemen's agreements". Covenants are used especially in the environmental sector.

In early 1996, the Ministry of Justice published Guidelines for Covenants (*Aanwijzingen voor convenanten*). The checklist proposed by the Ministry contained the following elements:

- Is intervention of the central government necessary, or could the achievement of the desired outcomes be left to the self-regulation of the sector or to other public authorities?
- What instruments (information, self-regulation) could be used as alternatives, taking into consideration the realisation of government policy, its implementability, its enforceability, and the protection of related interests?
- Is a covenant demonstrably more effective and more efficient than a law or regulation?
- Can goals, rights, and obligations be specified clearly enough?

The guidelines also give many other suggestions, recommendations and examples on issues such as conflict resolution, sanctions, evaluation, and possible change and adaptation of the clauses of a covenant.

Rationalisation of permits

The Dutch government's general policy for the use of permits is that oversight based on the observance of general rules should be preferred over preventive restrictions, and that reporting on activities should be preferred over an obligation to ask for permission.

A permit is considered an adequate policy instrument if: 1) it is necessary to regulate individual actions or acts by case-oriented rules and to monitor such actions; or 2), the interest, that has to be protected, is so important, that an exemption from an explicit ban can only be permitted on a case-by-case basis.

In July 1998, the Minister of Justice reported to Parliament about the actions undertaken by the ministries on the basis of the guidelines and the intervention hierarchy established by the Cabinet. The guidelines were taken up by the ministries, and several permit systems were reconsidered. The international (especially European) permit systems, however, could not be reconsidered.

The General Audit Office (*Algemene Rekenkamer*) recently scrutinised 555 permit systems of the ministerial departments. On the basis of this scrutiny the General Audit Office made some recommendations with respect to:

1. Reconsideration of permits as a policy instrument;
2. Use of performance indicators and other management tools;

3. The imposition of cost-financing fees;

4. The maintenance of the conditions of the permits;

5. The guaranty of bureaucratic integrity.

Other relevant policies

Simplification, harmonisation, and unification of taxation with social security

The complex laws and regulations in the sectors of taxation and social security, and the lack of harmonisation between both sectors, has, over the years, led to a serious aggravation of the administrative burdens on enterprises. Billions of Dutch guilders could be saved in these domains, and many mistakes prevented, with administrative simplification.

Although it is not possible in the framework of this general overview to give a full account of the experiences made, the main problem seems to be the differences between elements of income accessible for levying taxes and premiums to the national insurance programme and income as a basis for calculating social security and other benefits. A law to reduce those differences was recently circulated amongst the social partners. (The acronym of this law is WALVIS, the Dutch word for whale, an indication of the size of the operation.)

WALVIS. In the Explanatory Memorandum of the law, the following five goals are mentioned: enhancement of the transparency of the system of employee insurance; improvement of the basis for the establishment of entitlements; decrease in the costs of implementation for the administrative bodies; reduction of the administrative burdens on employers; and improvement of law maintenance.

The law covers four issues. The first one is on the definition of a "wage". The definition of wage that forms the basis of the calculation of benefits is also chosen as the standard for the calculation of the income subject to the insurance scheme, thereby reducing reporting obligations for the employers. Second, the system of insurance contribution – which now may take place either before or after the pay period – will be unified so that contributions take place after the pay period. This makes unnecessary the generation of difficult estimates which are now required by the existing system. Third, a register of insurance policies will play a central role in the benefit offices. This measure reduces the information obligations of the employers. Fourth, the very complicated and rather subjective "pay-per-diem" calculation system, as basis of charges and benefits, will be drastically simplified. The income effects of these measures are more or less neutral.

Measuring administrative burdens

The MISTRAL methodology was developed to measure the administrative burdens on enterprises. It has been instrumental in creating the right atmosphere – less ideological and more technical – for a pragmatic discussion on administrative burdens.

Since 1993, the Dutch research organisation, EIM Small Business Research and Consultancy, has been developing and refining a computer model, with the Dutch acronym MISTRAL, to evaluate the business impact assessment of regulations. MISTRAL works in three stages: *a)* an in-depth analysis during which all "data transfers" between a business and the authority (*e.g.*, a document, a telephone call, an inspection, etc.) are isolated and defined; *b)* the time involved in each "data transfer" and the level of the person performing it (related to professional qualification and hourly wage-rate) are then determined;

and *c)* the data are computed to produce cost estimates. MISTRAL has been used to quantify administrative compliance costs of different laws and regulations, including evaluation of the information requirements of labour law, annual accounts, corporation tax, wage tax and social premiums, legislation concerning working conditions, and environmental legislation.

MISTRAL's main focus is on data transfers, traditionally through documents of any kind, and more recently also electronically. The one-time costs are estimated separately. Within MISTRAL a data transfer is defined as: Any information traffic between businesses and enforcing actors to inform the enforcing institutions in order to sustain *a)* the actions of these enforcing actors and *b)* the process of maintaining compliance.

A data transfer may encompass a document, a telephone call, an inspection, an e-mail, etc. The basic algorithm of MISTRAL is:

- Costs of information traffic = amount of messages x costs per message
- Costs per message = amount of actions x costs per action
- Costs per action = time x (wage) tariff

The calculations executed within MISTRAL are based on investigations of the time actions take – standardised after "average practise" – and of the frequency with which they are performed.

Calculations using MISTRAL may be executed in varying legal domains, such as social legislation, economic regulation, and fiscal requirements. The MISTRAL method is also quite suitable for determining which type of law maintenance through information obligations is the most efficient and the least burdensome for enterprises.

Creating a baseline and measuring changes over time

The MISTRAL method is a bottom-up approach and therefore is very exact. When applied for the first time, MISTRAL is rather labour-intensive due to the need to measure a baseline. The starting point for measurement is the law and its specific articles. All administrative actions required by a law are meticulously charted as to their frequency and time of execution. The wage rates used can also be determined exactly. Once a baseline survey has been carried out in a certain legal area, the monitoring of the changes of this area and their effects on administrative burden become rather simple.

If a less expensive and less time consuming method suffices to estimate the administrative burden implied by a law, a regulation or a legal domain, a top-down approach may be applied – *e.g.*, when an *ex ante* assessment in case of a proposed law is sufficient. MISTRAL can also be used for executing quick scans of vast areas of existing laws in order to find the most burdensome laws. A survey of enterprises' assessment about information costs they believe a legal obligation entails, gives a more subjective and less precise answer.

Most ministerial departments that are executing a baseline measurement of the administrative burdens are using MISTRAL. These baseline measurements are necessary as a starting point, to enable the ministries to report to Parliament what progress they are making in reducing administrative burdens. Up to now, baseline measurements according to MISTRAL have been carried out on behalf of the Ministry of Finance, the Ministry of Social Affairs and Employment, the Ministry of Judicial Affairs, and the Ministry of Economic Affairs. In addition, in order to prepare baseline measurements, quick scans based on MISTRAL were carried out on behalf of the Ministry of Agriculture, Nature and Fishery.

EIM Small Business Research and Consultancy, the inventor of MISTRAL, has calculated through a mixture of the bottom-up and top-down approachs that the administrative burden for enterprises has grown from approximately NGL 13 billion [EUR 5.9 billion] to about NGL 16.5 billion (EUR 7.487 billion) between 1993 and 1998. According to EIM, without the policy set by the Cabinet in 1994, the growth would have been NGL 0.93 billion [EUR 0.42 billion] higher. This means that a reduction of 5.35% has been achieved, falling short of the 10% target reduction, which the government set for itself. From 1998 to 1999 an additional reduction of 0.5% was realised according to EIM.

Burden reduction reporting by ministries

Every ministry is required to report to Parliament about the administrative burden situation in their own legislative domains and also to develop an Action Programme on reducing administrative burdens. The action programmes of the ministerial departments consists of the following steps:

1. Preparation of an inventory of relevant laws and regulations of ministries and of executive authorities at lower levels of government. This will give insight into which legal domains cause unnecessary administrative burdens.
2. Measurement of the volume of administrative burdens on enterprises (In 1998: it was NGL 16.5 billion [EUR 7.49 billion] according to EIM). The MISTRAL methodology is used for the measurement of a baseline level as a starting point.
3. Reduction of administrative burdens. As part of the inventory of legal domains mentioned under 1), the most burdensome laws and regulations are selected as first targets for the reduction attempts. While taking these steps, the ministerial departments have in their own sectors applied the following selection criteria in identifying the laws and regulations that require the most immediate action: frequency of administrative communications; volume of administrative burden per communication; number of enterprises involved; opportunities to apply IT; intensity of irritation on behalf of enterprises; intersectoral nature of administrative burden; and, possibilities for synergy with other administrative burden reduction efforts.
4. Monitoring of effectiveness of reduction programmes per legislative domain. The results of the (baseline) measurements will be updated yearly. It is expected that more intensive reconsideration of measurements will have to take place only once in every five years.

Some lessons learned

The Dutch approach

Many countries employ a broad approach to cost-benefit analysis and regulations. This means that parallel to the political debate on laws and regulations a quasi-economic discussion is taking place concerning the same laws and regulations. In this approach, the discussion about administrative burdens can become highly politicised. Attempts to "reduce paperwork" can also in fact have a much broader scope. They are often directed against the burden of regulatory compliance itself, instead of solely against paperwork that is implied by the laws and regulations.

The Slechte Committee has broken away from this tradition. First of all, it has focused only on costs imposed on enterprises. In this sense, the target group was limited. Secondly, it has made a distinction between 1) the costs of compliance for enterprises, 2) the costs of law enforcement by public authorities, and 3) the costs of the information enterprises have to

Box 6.5. **Examples of ministerial administrative reduction actions**

In the environmental domain – replacement of specific laws and regulations by general ones, so that different branches of industry no longer need specific permits for their activities. If this approach succeeds in all branches of industry the annual administrative reduction will amount to NGL 200 million [EUR 90.75 million] (compared to 1995).

In the domain of trade and industry – the law on consumer credit obliges each licence holder (approximately 125) to give annually audited information – costs NGL 2 000-3 000 (EUR 907.6-1 361.3) – and once in 5 years an extensive report – costs NGL 10 000-15 000 (EUR 4 537.8-6 806.7). Consideration is being given to changing the law and to abrogating those obligations.

In the fiscal domain – a project on electronic reporting obligations could result in cost savings of many millions. Abrogation of some audit certificates with respect to investment facilities and reduction of payments for income tax and company tax would result in a cost reduction of about NGL 25 million.

In the domain of the Ministry of Justice – reduction of the storage time of financial data for enterprises results in a yearly saving of NGL 120 million to 140 million (EUR 54.45-63.53 million).

In the domain of social affairs – the area of employees' insurance seems to be the most promising target for the reduction of administrative burdens.

supply to make law enforcement possible. Only costs belonging to this third category were the object of reduction attempts of the Slechte Committee. So the focus was relatively limited.

The attraction side of this approach is that the costs of administrative burdens are relatively easy to calculate. Knowing the costs explicitly makes the need for burden reduction obvious for everybody, and, therefore, creates support for such activities. Moreover, the "general interest" nature of the reduction of administrative burdens depoliticises the issue. It is difficult to argue against a provision for a reduction of administrative burdens once the size of the cost reduction is known (around 17 billion Dutch guilders per year).

Despite the presented initiatives and actions, the Dutch government still fell behind of achieving its original target of a 25% reduction of administrative burdens between 1994 and 2002. The latest figures available indicate that a 6.5% reduction has been achieved until the end of 2001. In November 2002, the Dutch government reconfirmed the target, but extended the deadline of meeting it till 2006. At the same time, the government presented an action plan to Parliament on how to achieve the "missing" 18.5% reduction. In this action plan, each ministry is held responsible for its own reduction rate, making the rule easier to enforce.

Institutionalisation

A second lesson concerns the need for a planned institutionalisation of administrative simplification. This should be started by the "internalisation" of the concern about administrative burdens in the bureaucratic culture of the ministries. The second step is to create structures of checks and balances to keep administrative burdens within limits. As far as the culture at the ministries is concerned, ACTAL tries to educate and develop awareness about burden reduction among officials at the ministries through having regular meetings with them. The empirical scientific underpinning offered by the MISTRAL

methodology, helps provide an awareness of the need to reduce the administrative burdens. Attention paid on administrative burdens on enterprises has to become a constant element of policy-making and the legislative processes.

As far as the structural institutionalisation is concerned, a system of checks and balances is created on one hand between administrative burden co-ordinators and the policy-making officials at the ministries, and on the other, between ACTAL and the ministries.

The effectiveness of these institutional measures still has to be proven by practise. One may hope that the awareness and concern of elected and non-elected officials about this subject will not result in routinised and ritualised procedures, as it has happened so often in the past with respect to other, originally well received and well adhered to policies.

Notes

1. For this overview, use is made of the information on the Web site of ACTAL: *www.actal.nl*
2. The Dutch government defines administrative burdens as: "The costs which have to be made to fulfil information obligations that ensue from laws and regulations of the government, such as the assembly, processing, registration, storage and provision of information."
3. See OECD (1999).

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ISBN 92-64-10067-9
From Red Tape to Smart Tape
Administrative Simplification in OECD Countries
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7

Administrative Simplification in the United Kingdom*

Abstract. *There have been sustained attempts since the 1980s to reduce administrative burdens placed on citizens and businesses in the UK. The agenda of the government has become over time more diverse and comprehensive ranging from better regulation, alternatives to administrative regulation, to small business support to e-government. An array of institutions and taskforces (among them the Regulatory Impact Unit or the Better Regulation Task Force) have been set up to drive regulatory policies and to enhance cross-departmental and public-private co-operation in particular issues.*

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* This report is based on a draft prepared by Colin Scott and Martin Lodge, Centre for the Analysis of Risk and Regulation, London School of Economics and Political Science. The report has been fact checked and commented on by the British Government.

Introduction

Efforts to reduce the regulatory and administrative burdens imposed by the state on business and individuals were undertaken by the Conservative Government in the mid-1980s and have been continued, with a slightly changed emphasis by the Labour Government since 1997. The United Kingdom (UK) offers therefore a primary example of the increasing international emphasis on regulatory quality. One part of the concerns with regard to regulatory quality is issues relating to administrative simplification or, to use the more widely used and rhetorical term, to cutting "red tape".

Efforts in administrative simplification address, in particular, concerns to reduce administrative rather than regulatory burdens. In the former case, the emphasis is placed on reducing the reporting and other formal requirements involved in interactions between individual actors and government, while in the latter case, the key concern is with the economic and social impact of regulatory measures. The UK is unusual in making this distinction explicit: for example Regulatory Impact Assessments (RIAs) are required to describe "policy" and "implementation" costs of regulation separately. But, while making this distinction, most UK "better regulation" policy initiatives have been aimed at reducing both types of burden simultaneously and, in doing so, the regulatory burdens, which are quantitatively more significant, have often loomed larger. Programmes relating specifically to administrative burdens have tended to be quite narrowly focused – on tax administration or forms reduction, for example – and, although these have been well documented, there has not been the sort of comprehensive evaluation or programme for reducing administrative burdens that there have been in some countries. However, it should be noted that the United Kingdom has, by comparative standards, a relatively low administrative burden. Administrative burdens arise in particular due to opportunity costs (costs incurred due to prohibitions on particular actions), disincentive costs (costs which may prohibit otherwise efficient action), compliance costs (costs imposed due to administrative and regulatory requirements), and information search costs (costs imposed due to searches for necessary compliance obligations, but potentially also in the wider context, all costs incurred in searching for particular government services).

In this report, emphasis will be placed on how the UK government has aimed to reduce the administrative burden on business and citizens. Additionally, the new emphasis on reducing administrative and regulatory burdens on public sector bodies will be discussed as there may be potential for reading across from this domain into policies on regulation of business. Similarly, policies directly targeted at the public sector may have indirect beneficial effects for businesses and citizens (for example by releasing additional time of front line public service workers such as police officers and teachers).

This report looks at initiatives encouraging administrative simplification, but does not deal with the wider context of public sector reform in the United Kingdom. It first offers an account of the historical background of simplification measures up to 1997 and then describes in more detail the initiatives taken by the British Government since 1997, in

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particular its "Modernising Government" programme, and more specific initiatives. These initiatives specifically targeted the regulatory burden imposed on small and medium sized enterprises, in relation to compliance and wider administrative costs.

Historical development of administrative simplification and burden reduction policies

The first initiative to account for the burdensome effect of regulation was the introduction of Compliance Cost Assessment (CCA) for regulatory measures in 1985. This reflected an increasing interest of the Government in enhancing competitiveness by reducing regulatory and related administrative barriers that inhibited a more entrepreneurial business environment. Government departments were required to provide CCAs in a systematic way in order to account for the predicted costs to business from the respective measures. This measure was part of the initiative announced in the White Paper, *Lifting the Burden*[1] which addressed the negative effect of over-regulation on business. Any regulatory measure was to be accompanied by a structural analysis by the sponsoring department. The adoption of CCA followed criticism of the costs imposed through regulation, in particular on the asymmetric burden of regulation placed on small and medium sized enterprises. However, rather than relying on cost-benefit analysis, the emphasis of costing was placed particularly on the administrative burdens of having to comply with regulation. Therefore, departments were not required to conduct a cost-benefit analysis, but rather to produce a less extensive and more limited cost-effectiveness exercise. It was seen as an aid to policy making within government, but it was also a tool that could be applied with administrative discretion.[2]

This theme was further explored in the White Paper, *Building Business – Not Barriers*, in 1986.[3] It led to the establishment of a central agency, the "Enterprise and Deregulation Unit" which was sited in the Department of Employment. This Unit was given the power to oversee and co-ordinate the "anti-red tape" efforts of the individual departments. These activities included the conduct of CCAs and a review of regulations which had produced unintended effects, duplicated regulatory efforts, and which had placed inappropriately high burdens on business – thus combining a focus on both regulatory as well as administrative burdens.

In 1987, the Unit, now re-named the "Deregulation Unit", was moved to the Department of Trade and Industry (DTI). It was assisted by an appointed task force of business people. It was perceived to conduct its activities in an adversarial and inquisitorial way, permanently challenging ministers and departments to deregulate by establishing an annual process of targets and tables that scored departments on the number of regulations committed to the "de-regulation" initiative. Furthermore, while targets and outputs were achieved, the desired outcome – fewer regulatory burdens on business – was not obtained. By 1992, the initial drive had dissipated given also the absence of continuing political pressure. Departments had reduced the status of their own internal deregulation units considerably. This was regarded as evidence that across central government, the culture of deregulation had not been embedded sufficiently, while departments were facing limited resources and therefore did not, or were unwilling to, conduct radical examinations of existing regulations.

The initiative to simplify administrative burdens was re-launched in 1992 with the appointment of a senior politician as the President of the Board of Trade at the DTI. This re-launch, which maintained the previous adversarial approach, included departmental

reviews of existing regulations as well as the creation of task forces to combat excessive regulation. These task forces consisted mainly of representatives from the business sector, and their objective was to identify areas of burdensome regulatory and administrative requirements. These task forces launched 605 deregulatory initiatives. An overall "Deregulatory Task Force" was established, as was an international group, the "Anglo-German Deregulation Group". Departmental reviews led to the implementation of 30 proposals. The major landmark of this administrative simplification initiative was the 1994 Deregulation and Contracting Out Act, which offered a legislative means to abrogate legislative regulatory burdens. This was accompanied by a small-firms initiative, after it had been shown that small firms, a large part of British economic activity, were over-proportionally affected by government regulation. Thus, departments were encouraged to "think small first". From 1992, the application of CCA was widened. Previously it had been applied only in relation to regulatory reforms contained in statutory instruments. Since 1992, its application became mandatory for parliamentary bills and EC draft directives. Thus, it aimed to influence decision-making and it became mandatory for Cabinet and Cabinet committee discussions to assess regulatory proposals, surveys and public inquiries.

The DTI unit moved to the Cabinet Office in 1995. Again a review of activities indicated that despite much activity, there had been slow progress. To enforce a more active departmental drive towards the elimination of "red tape", departments were to present monthly reports on any planned legislative activities. Departments were warned not to use to transposition of EC Directives for "gold-plating" activities (*i.e.*, the inclusion of extra measures not required by the European legislation). Furthermore, in 1996, the CCA measurement was widened into a "Regulatory Appraisal". Besides the traditional emphasis on CCA, it incorporated risk assessment measures. It represented a more ambitious programme than the original CCA approach, requiring departments to quantify the benefits derived from risk reduction as well as the additional costs – not only compliance costs, but also the administrative costs and equity issues.

Since 1997, there has been a shift from the rhetoric of "deregulation" towards "better regulation". Thus, more emphasis is placed on administrative discretion to consider alternative options to proposed regulatory measures, to encourage wider consultation outside and within government, and to promote self-regulation and self-enforcement. It was, however, emphasised that the need for better regulation had to reflect the public interest and any deregulation should primarily reflect the costs of "form-filling" and other bureaucratic burdens on business. The so-called "regulatory impact assessment" was not to provide a strict guideline but rather a template and framework to advance the quality of regulatory policy making. Furthermore, a "Better Regulation Task Force" (BRTF) was established, the majority of whose members were drawn from a business background, although there were also members with trade union, consumer and academic backgrounds, to monitor and advocate "better regulation" rather than mere deregulation. This reflected the acceptance that to some extent regulation was necessary and that the challenge for government was to find the most appropriate form of regulation. For example, in November 1998, the BRTF was asked to study regulatory barriers that inhibited the creation and sustainability of small businesses.

The reliance on "task forces" was intended to reduce the adversarial character which had shaped previous attempts and to delegate key responsibility for regulatory simplification to departments. An emphasis on encouraging self-improvement within

departments was to support the embedding of a "better regulation culture" within the civil service; thus the key emphasis rested on establishing templates for actions for departments rather than detailed prescriptions on administrative simplification. This reflected the realisation that administrative simplification did not depend on the enforcement of centrally set targets, but on the initiative of departments to develop best practices.

Background to recent administrative simplification and burden reduction policies

Initiatives, including measures targeting the reduction of administrative burdens, were presented in the Labour Government's 1998 White Paper, *Modernising Government*. It established five central commitments, which to some extent represented attempts to simplify administration and to establish a long-term programme of improvement:

- Policy making – with a changing emphasis from inputs to outcomes, improving the management of risk and cross-departmental policy making ("joined up government"), and better regulation and impact evaluation.
- Responsive public services – aiming to offer joined-up delivery across levels of government through a co-ordinated approach through, where practicable, a single location of delivery.
- Improving quality of public sector – emphasising in particular improved target-setting and public service agreements which shift the focus from input to outcome benchmarking in order to facilitate the spread of best practices as well as a focus on the whole system of delivery rather than a fragmented approach.
- Information age government – the aim to utilise the possibility to facilitate information of government and for the requirements of e-commerce.
- Public service – the aim to improve civil service performance through better training, incentivisation and an emphasis on innovation through the import of private sector skills.

Among the criticisms of government regulation has been the argument that the regulatory burden falls disproportionately on small business. Thus, demands were made to simplify administrative procedures and to allow for exemptions for smaller businesses. These accusations have been made particularly with regard to the Government's recent initiatives in employment law and increased payroll burdens. The Government has mainly responded by the creation of "red tape busters", namely the Better Regulation Task Force (launched in July 1997), the Small Business Service, and the Cabinet Office's Panel for Regulatory Accountability, as well as by giving detailed guidance to ministers. The Department of Trade and Industry, in 1999, also initiated a review of regulatory measures within its departmental brief, claiming that the guiding presumption should be against regulation. It has also become government policy, embodied in RIA guidance, that "sunset clauses" and small business exemptions or simplified procedures should be considered for all regulators.

The initial proposals to simplify service delivery included initiatives, discussed below, such as "24-7" services (most prominently NHS Direct in health care) the encouragement of so-called "joined up government" via electronic communications (setting a target that all dealings with government would be deliverable electronically by 2008), and the removal of unnecessary regulation via "high quality" regulatory impact assessments. Furthermore, it

Box 7.1. **Learning Labs**

The "Learning Lab" initiative was intended to improve public service delivery and reduce administrative burdens. Based on the US "Reinvention Labs", the "Learning Labs" aim to offer learning for public services through the active involvement of frontline staff, in particular challenging burdensome administrative rules and promotion of new and more flexible working methods as well as for dissemination of "best practices". This joined-up approach has been tried, for example, in the case of "personalised prisoners'" passports in Teeside in Northeast England, which were to facilitate the re-integration of former prisoners by reducing the information costs in registering and with local public services. A further example is the joint learning lab between London's Metropolitan Police, the Police Complaints Authority, and the Crown Prosecution Service to reduce the time for resolution of citizens' complaints against the police.*

* See the Learning Lab Home Page at: *www.servicefirst.gov.uk/2000/learninglabs/learninglabs.htm*

aimed to establish incentives to improve the delivery of the public service through "Learning Labs" for frontline delivery, financial rewards and a departmental shift of emphasis towards delivery and the inclusion of outsiders. The emphasis on more effectively co-ordinating government policy, and thereby aiming to decrease complexity in policy delivery, was through "unit building", *i.e.*, issue-specific units established to tackle crosscutting issues. This included areas such as social exclusion, women, crime reduction, and drugs. A so-called "Performance and Innovation Unit" was established to analyse major policy issues and to design strategic solutions cross-departmentally. So-called "Integrated Service Teams" were set up to identify practical "life problems" of ordinary citizens when having to deal with government, for example, leaving school, changing addresses, or becoming unemployed. These teams offered evidence that the same information was often required more than once, that there was no identifiable person in the public sector to offer support, and that there was a lack of integrated information and minimal use of new technology.

To spread "best practices" of better regulation and administration, the Government also initiated a major Public Sector Benchmarking Project. This initiative was not only linked to the greater emphasis placed on policy delivery, but was also to reduce the burdens on individuals due to administrative complexity within the public sector. The Public Sector Benchmarking Team seeks to apply the business practice of comparing performance across units and sectors to the public sector generally. At the local government level, the creation of the so-called "beacon council" scheme aims to identify model service providers and give them a lighter regulatory touch in return for an obligation to share best practices through the facilitation of study visits and the like. The principles of good regulation have been applied to enforcement (through an enforcement concordat) and applied to burdens placed on the public sector. Similar themes were also adopted in the field of local government, where the policy of "Best Value" aimed to deliver highly responsive services underpinned by performance measurement and independent inspection and audit in order to achieve continuous improvement.

Institutional framework

The Regulatory Impact Unit (RIU) (formerly the Deregulation Unit) is located at the Cabinet Office and is directed to work with government departments, agencies and regulatory bodies to find the "right" balance in regulation according to the "Principles of Good Regulation" (see Section on Alternatives to administrative regulation), to identify the risks and options of different options, support the Better Regulation Task Force (BRTF), remove regulatory burdens via the measures to be implemented, and improve the instruments of conducting regulatory impact assessment. Its activities are not only targeted at the national, but also EU, rulemaking. At the departmental level, regulatory impact units act in co-operation with the RIU in preparing Regulatory Impact Assessments (RIAs) in order to assess the impact of departmental proposals and to encourage early and effective consultation with affected parties while also managing the transposition of EU legislation.

The Regulatory Impact Unit's "Scrutiny Team" acts as an overall cross-departmental unit, which also deals with the wider public sector. The Scrutiny Team was established to reflect a diverse background with the aims of removing regulation, supporting the overall regulatory policy of the government, and spreading good practices across departments. It consists of secondees from industry, and representatives from a mixture of government departments and the wider public sector. Its tasks are to remove outdated regulations, improve burdensome existing regulation, and encourage the application of the Principles of Good Regulation. In co-operation with the departmental impact units, it is supposed to assess the impact of proposals and consider possible alternatives, undertake the regulatory impact statement on significant proposals, facilitate early consultation with the parties affected by regulatory proposals, and enhance the efficient and fair transposition of EU legislation.

The Better Regulation Task Force (BRTF), established in 1997 and the Public Sector Team (PST), established in 1999, are both located in the RIU. The BRTF, whose function is to act as an independent advisory group, replaced the Deregulation Task Force. It has a chairman with a considerable reputation in the business community. It also includes members from citizen and consumer groups, the voluntary sector, small and large businesses, and the "enforcement community". Its task is to advise the Government on the effectiveness and credibility of regulatory measures by ensuring that they are necessary, fair and affordable. Furthermore, the BRTF is supposed to ensure that regulations are simple to understand and administer, while also accounting for the needs of smaller business and "ordinary" people. Arguably, it has two roles. In its published work and analysis, it represents an advocacy body to motivate departments to consider a lightening of regulatory and administrative burdens. However, beyond the power of its analysis and recommendations, and its political support, it has few powers to force departments to comply with its recommendations. The second role could be described as an "informal gatekeeper." In this role, it is allowed early access to legislative and regulatory proposals and is therefore able to shape the content of forthcoming initiatives. This gate-keeping role is informal and there is no published information on the impact the BRTF has had in providing a relatively systematic check on any tendencies in government departments towards administrative complexity. Again, the effectiveness of this role depends to a large extent on the personal backing of the BRTF's activities by the Prime Minister. While the BRTF highlights successful initiatives, it has noted recommendations which have not been taken up and indicated that a number of departments fail to provide adequate justification for what appears to be unjustifiable complexity. A key example of this is provided in the BRTF's criticism of the so-called IACS form filled in by farmers in connection with intervention

Box 7.2. **Successful administrative simplification initiatives of the BRTF**

Report on Liquor Licensing: The report set the agenda for subsequent legislative initiatives to ease the path for the White Paper on reform of the provisions regulating the sale of alcohol to include consolidation of licensing regimes to include a single licence for sale of liquor, public entertainment, etc.

Report on Voluntary Sector Funding: the report made recommendations in order to reduce opportunity and information search costs as well as to promote a greater degree of interaction between government and voluntary sector organisations. The Government responded by publishing a code of good practice and launching a single application form.

Other initiatives included reports on the administrative burden placed on head teachers, on hotels and restaurants, as well as on the impact of environmental regulations on farmers.

applications. The relevant ministries have proved reluctant to find ways to share data to reduce the burden on farmers of supplying the same data for both census and IACS purposes.[4]

The aim of reducing the dependence on regulation has been pursued through a BRTF report, *Alternatives to State Regulation,*[5] which argues a detailed case for more self-regulation and linked reforms to make self-regulation more legitimate and effective (see also Section on Alternatives to administrative regulation).

The Panel for Regulatory Accountability was established by the Prime Minister in November 1999 to add political weight to the co-ordinating activities of the RIU and to provide political brokerage on contentious issues. The Panel generally meets monthly and is chaired by the Minister for the Cabinet Office. Its other members are: the Secretary of State for Trade and Industry, the Chief Secretary to the Treasury and the Cabinet Office Minister of State. The Chairman of the Small Business Council and the Chairman of the Better Regulation Task Force are also invited to attend. Ministers may appear before the panel to report on their department's programmes of regulatory reform and to justify specific costly or controversial proposals. Ministers also report to the Panel on the regulatory activities and performances of their department. The Cabinet Office Regulatory Impact Unit provides the secretariat support to the Panel.[6] While there was some criticism that an additional oversight committee was an unlikely instrument to enhance administrative simplification, it was suggested that the high-level membership of this "chamber," including both ministers and business representatives, offered a unique means to motivate administrative simplification across ministerial departments.

Description of programmes and practices

Technologically driven mechanisms to streamline transactions and reduce costs

The Conservative Government published a Green Paper in late 1996 on the application of information technology in government and for government service delivery. The theme of IT-based government services gained increased importance as part of the Labour Government's policy to modernise government, which established three policy priorities:

- Interconnection between departments to increase the immediacy of communication between ministers and officials, and the effectiveness of the central process of government – in particular through the development of the Government Secure Intranet (GSI). Once

connected, departments were able to exchange information with each other and with their customers. Questions of system compatibility were greatly reduced and, in many cases, eliminated altogether. The GSI was to provide the conduit for many of the electronic government services of the future.

- Intensive use of IT within departments' major processes. Many key systems [*e.g.*, Social Security benefits and contributions, income tax, value-added tax (VAT), driver and vehicle licensing, and many others] are already heavily based on electronic processing.
- More imaginative use of IT in the direct interface between government and citizens or individual businesses.

The White Paper, *Modernising Government*, stressed the importance of progressing towards an "information age government", aiming to establish a fertile e-commerce environment by 2002, and by advancing informatisation throughout government. By 2002, 25% of all dealings with government were to be capable of being done by the public electronically, with 100% coverage achieved by 2008. By 2002, individual citizens were to be able to electronically apply for driving tests, conduct job searches, submit self-assessment tax returns, receive information on benefits, receive online health information, connect to the so-called "National Grid for Learning", and apply for training loans and student support.

By March 2001, 90% of low cost purchases by government were to be conducted electronically. A corporate IT strategy, facilitated by central co-ordination and the monitoring of progress according to targets was to facilitate this strategy which was to evolve around clusters of government activity and be strengthened by close consultation and market research.

Business was supposed to be able to do such things as: submit VAT registers and returns with Customs and Excise, make on-line payments for the Inland Revenue's pay-as-you-earn scheme, supply returns at Companies House, register claims for EU farm subsidies and other support grants, and receive payments from government.

Within Government, the Office of the e-Envoy was set up in September 1999 as part of the Cabinet Office. The creation of the Office of the e-Envoy (OeE) followed a central recommendation of the Performance and Innovation Unit's report *e-commerce@its.best.uk*. The role of the Office is to "lead the drive to get the UK online, to ensure that the country, its citizens and its businesses derive maximum benefit from the knowledge economy". To support this aim, the Office has four core objectives:

- To make the UK the best place in the world for e-commerce.
- To ensure that everyone who wants to can access the internet by 2005.
- To deliver electronically, and in a customer-focused way, all government services by 2005.
- To co-ordinate the UK government's e-agenda across different departments.

The UK's e-Government strategy from April 2000 sets out a range of objectives and requirements supportive of simplifying and reducing the burdens of administrative regulations (see Box 7.3).

The OeE established an e-business network in order to support departments and agencies in the development of their e-business strategies. The Labour Government made great efforts to fulfil its self-imposed target to make the UK a major e-commerce location. However in December 1999, the National Audit Office published a report on the Government's

performance and delivery of Web-based services. It showed that the UK's response to the opportunities of the Internet had been patchy, that its targets were not sufficiently ambitious and that there had only been limited progress in establishing a government-wide Intranet. It also recommended the provision of more extensive services via the Internet (see also the DTI's White Paper, *Our Competitive Future: Building the Knowledge Driven Economy*), and the strengthening of the central machinery for co-ordinating and promoting development of the government Web-based service delivery.

Since the publication of the report, the Government has increased its efforts to widen its Web-based information and make government services more interactive, although they are arguably still not as extensive as government services in the US or Australia. Thus, the provision of NHS Direct (see below) was facilitated both by telephone and by the Internet.

Box 7.3. **E-government strategy**

In order to establish a government-wide strategy towards e-government, departments were required to establish special framework programmes. The direction was to transform their businesses in accordance with the e-government strategy, including:

- Plans to converge with corporate standards and frameworks.
- Plans to make services accessible via the Government Portals for citizens and businesses.
- A report on progress towards implementation of targets for electronic delivery of government services.
- Plans to deliver internal processes electronically, for example, via an intranet or the GSI for joined-up services.
- Plans for responding to the Office of the e-Envoy's review of major IT projects.
- Plans for meeting deficiencies identified in the information skills audit.

These strategies should reflect the outcome of the 2000 Spending review and the results from the Policy and Innovation Unit's study of electronic delivery of services to citizens, including:

- Analysis of business requirements and benefits of applying e-business methods.
- Examination of existing information flows and transactions between the department and the citizen, the department and business, the department and suppliers, and the department and other public sector bodies.
- Proposals for the application of customer service techniques to transactions with citizens and businesses.
- Identification of opportunities for working with partners in delivering services.
- Identification of opportunities to deliver early results.

The OeE established an e-business network in order to support departments and agencies in the development of their e-business strategies. The e-business strategy process in each department is governed by the e-Champion whose role is to identify how roles and responsibilities for implementation of the plan should be allocated. The network was to promote best practices in deploying e-business methods in the public sector. It offered a meeting place for those developing e-business strategies and provided advice on training and development. It encouraged private sector involvement and engagement with e-business strategists.

The Passport Agency was provided with a central telephone call centre as well as regional centres, equipped with interactive sites. Furthermore, in response to criticism by the National Audit Office as well as by industry, tougher targets for achieving e-government were established.

Progress on the issue of e-government is monitored by semi-annual reports, while the target for all services to be provided has been advanced from 2008 to 2005. The development of departmental strategies has gone in tandem with putting an increasing number of services online. Progress towards the 2005 target is measured in terms of the proportion of key services that were fully electronically enabled. Many of the services available by 2001 are primarily about making information available in a way that is more accessible and better targeted to the needs of service users. Already though, there are a number of significant transactional services online, and the proportion of services that are fully transactional were set to increase steadily towards 2005. Furthermore, a new central government gateway was established, (*www.UKonline.gov.uk*), designed to offer a more user-friendly interface. The so-called "Government Gateway" allows users to undertake secure electronic transactions with government. Registering with the Government Gateway allowed users to sign up for any of the UK Government's services that are available over the Internet.

As part of the e-government strategy, the Office of the e-Envoy published technical framework policies on call centres, Web sites, digital TV, security, authentication, electronic records management, and smart cards. Policies were developed on metadata, privacy, and interoperability.

The e-envoy attracted criticism from the House of Commons' Trade and Industry Committee.[7] It was suggested that the e-envoy was not sufficiently critical in auditing the progress across government departments, but had rather become too self-congratulatory in its strategy. Furthermore, the Committee criticised the planned increase in its staff from 61 in October 2000 to 212 by April 2002.

The UK Government's aim is still to make all services available electronically by 2005, but priority is given to enable and maximise the take-up of certain key services. These include services in the following areas: services to businesses; benefits and personal taxation; transport information and booking; education; health; citizen interactions with the justice system; land and property; agriculture and e-democracy.

Box 7.4. **Payroll regulation**

The Better Regulation Task Force's report on payroll regulation (2000) highlighted the potential benefits from a widespread use of modern technology. The report focused in particular on UK social regulation, which required employers to become responsible for paying out the so-called "working families" tax credit. In light of studies that showed that compliance costs fell asymmetrically on small businesses, the report stressed, apart from suggesting particularly targeted incentives for smaller businesses, the potential benefits of automated payroll systems and the need to enable smaller businesses to access newest technology. The Inland Revenue (IR) is working on the use of an Internet payroll system, which will be directly linked to the IR system with the objective of reducing other and more costly forms of contact between businesses and the IR.

One-stop shops

There has been no centralised development of a coherent policy of developing one-stop shops in UK central government. One-stop shops have been quite widely used in local authority service provision, but these local initiatives have not been used as the basis for learning about the innovations so as to develop a central policy. Where one-stop shops have been used by central government, the chief objectives have been to draw together information provided by more than one department that applies to small business and local authorities. A key example is the info4local initiative (see Box 7.5). The agenda to combine departmental activities has raised the profile of one-stop shop arrangements as mechanisms in theory. However, problems remained in actual policy delivery, given different regulatory agendas and initiatives across departments.

Box 7.5. **Info4local – A virtual one-stop shop**

The Department of Social Security (reformed and renamed in June 2001 as the Department of Work and Pensions) has been instrumental in establishing a "virtual one-stop shop", a portal called info4local (*www.info4local.gov.uk*). The site "provides the first, online, one-stop gateway for local authorities to get quick and easy access to local government-related information that is published on the Web sites of central government departments and agencies". It is run by a group of four departments: Department of the Environment, Transport and the Regions (reformed and renamed the Department of Environment, Food and Rural Affairs in June 2001), Department for Education and Employment (reformed and renamed the Department of Education and Skills in June 2001), Department of Health, Home Office and the Department of Social Security (reformed and renamed the Department of Work and Pensions in June 2001) with co-operation from the Cabinet Office and the Department of Trade and Industry and the ambition to draw in other departments. It aims to follow current leading standards for accessibility and currency of information for users.

No targets have been set for the use of one-stop shops by UK central government. Therefore no measurement and monitoring systems for one-stop shops have been established centrally. There are a number of examples of centrally driven one-stop shops affecting services that are provided locally. "Business Link" schemes were established during the 1990s to enhance the interaction between business and (mostly local) government and to simplify administrative processes affecting business. These programmes were particularly concerned with supporting small and medium sized enterprises. The Business Link approach included the Chambers of Commerce, Training and Enterprise Councils, Local Authorities, Enterprise Agencies, and the Government.

A further one-stop shop type of agency was the Small Business Service (see text Box 7.6). The Government has also announced plans to develop one-stop shops in respect of meeting land-use planning obligations,[8] and to integrate licensing for alcohol, public entertainment and other functions.[9] A related development is the piloting of a "single application form" for voluntary sector organisations applying to government departments for grants, intended to simplify the administrative processes associated with making such applications.[10]

In January 2001, the Government initiative "think small first" enhanced the role of the Small Business Service. It encouraged the secondment of business people to the DTI and

Box 7.6. **The Small Business Service**

The Small Business Service, the only institutionalised one-stop shop in central government, was established in April 2000. Its duties included primarily an advocacy role, strengthening the input of small business views into the government process, in particular with regard to simplifying and improving the quality and coherence of business support. It was broadly based on the US Small Business Administration. In November 2000, the Small Business Service published the *Guidelines on Implementation Periods – Timing of the Issue of Guidance to Business on Compliance with New Legislation*. These guidelines recommended that business should be provided with at least 12 weeks preparation period before a regulation came into force ("implementation periods") as of January 1, 2001. In more complex cases, these preparation periods should be further extended. Only in exceptional cases, should the time frame be reduced to below 12 weeks. SBS has a strong institutionalised position in the regulatory process, for example the right to have its views recorded in the RIA in a wording of its own choice. As per June 2001, the SBS had a total staff of 281 of out which 27 are concerned with regulatory issues.

Box 7.7. **NHS Direct**

NHS Direct represents an e-government initiative which functions as a one-stop shop. This initiative, which offers health advice both via the Internet (*www.nhsdirect.nhs.uk*) and the telephone was supposed to reduce the burden on casualty departments and general practitioners (GPs). It is intended that NHS Direct develop a single point of access for a large range of NHS services. Thus, by 2004, it is planned that calls will be transferred to after-hours services, that referrals to pharmacies will be possible and that ambulances could be summoned. Furthermore, it was intended that all consultations should be directly communicated to the responsible GP and that appointments could also be handled via this service. Early studies suggested a reduced growth in the usage of after-hours calls to GPs, but no reduction in the usage of casualty departments. The Government also intended to enhance Web-based information on all areas of health provision, including hospitals, primary care commissioning groups, General Practices, and health authorities (see *www.doh.gov.uk*).

also considered the potential introduction of "sunset clauses". This followed a report on how to support smaller firms and which called for ministries to give priority to the cutting of regulation. Furthermore, flexible exemptions from some legislative provisions were introduced for small businesses, companies below five employees were exempt from the stakeholder pension, union recognition was not necessary for companies below 20 employees and certain accounting standards had only to be met by forms with more than 50 staff. However, these initiatives were not expanded, due to a fear that a wider application might create perverse incentives that could distort the market and business behaviour.

Legislated time limits for administrative decision-making and sunset clauses

Although it has been government policy since 2000 that the appropriateness of time-limiting the whole or parts of legislation or including a commitment to review legislation should be considered for all new regulation, legislated time limits, defined either as time

limits applied to particular decisions or sunset clauses (providing for the extinction of regulatory regimes or parts of regimes after specified periods), have not so far been widely used in the UK for primary legislation (A large amount of secondary legislation with purely local effect is time limited, for example, statutory instruments imposing temporary road closures to allow repairs or improvements to be made). The only area of central administration where sunset clauses have been used to any degree is in the utilities sectors, where price control regimes were designed by economists to maximise incentives to efficiency of regulated firms while restricting the discretion of regulators. Thus, each of the main regulatory regimes for utilities established between 1984 and 1990 (telecommunications, gas, electricity, and water) deployed time-limited price control mechanisms. Time limits were typically of four or five years. The price controls could be renewed in existing or revised form by the regulator only with the consent of the licencee or after a favourable review by the Monopolies and Mergers Commission (renamed the Competition Commission under the Competition Act 1998). This type of licence provision was also used by the telecom regulator "Oftel" in 1996 to introduce time-limited requirements not to engage in anti-competitive conduct.

The option to include sunset clauses was discussed in the House of Lords debate on the Regulatory Reform Act 2001. However, the Lords' Committee on Delegated Powers and Deregulation had previously rejected sunset clauses as too crude and not appropriate. Instead it was proposed that legislation should be limited to five years unless it was renewed by an affirmative instrument and a Government report. This proposal was rejected by the Government – instead it gave an assurance that the Government would offer a report on the operation of the Act three years after its enactment. However, there is the perception that the issue of "sunset clauses" will receive further consideration under the newly re-elected Labour Government.

"Silence is consent" rules

The application of "silence is consent" rules is not widespread in British administrative practice. In general the nature of the British state, with a centralised bureaucracy and an absence of different levels of legislative action, has led to little pressure for such initiatives to be considered. There are some measures affecting the action of delegated agents, such as in the application of planning law by local authorities, and, broadly defined, with regard to estate agents (principle of negative licensing) (see Box 7.8), company directorships, and class licences in telecommunications.

Alternatives to administrative regulation

The UK has a long tradition of promoting alternatives to state regulation as a means of securing public policy objectives. An early example is the development and application of self-regulatory instruments. Leading examples of self-regulation (each with co-regulatory elements) are the Advertising Standards Authority (established in 1962 and periodically reformed with Government encouragement), the approved codes under the Fair Trading Act 1973 and the private British Standards Institution. The Conservative Governments of the 1980s and 1990s promoted the development of competition as an alternative to regulation where this was possible in the key public utility services. This has resulted in a gradual deregulation of the dominant telecommunications and energy suppliers as competition has been nurtured by the regulatory agencies.

As noted above, the deregulation programme of the 1990s introduced a set of principles that policy makers should consider to introducing any new regulatory requirements.

Box 7.8. **Negative licensing of estate agents**

The Estate Agents Acts of 1979 provides that any person can establish themselves as a (real) estate agent, but that they may be issued a warning order or barred from the industry by administrative decision if their conduct falls below certain standards. The Office of Fair Trading (OFT), the regulatory authority responsible, has indicated that criminal convictions for violence, fraud or other dishonesty are central reasons for triggering the revocation power. This is, thus, a form of negative licensing broadly equivalent to a "silence is consent" regime. In practice the OFT uses the power to revoke as incentive to estate agents to take notice of its advice and warnings – an example of the pyramidal approach of "responsive regulation". The OFT was challenged in court over its interpretation of the legislative provisions and now has a duty act to bar estate agents where there is evidence of a single act of misconduct. There is no need to show sustained misconduct. Notwithstanding this development, the OFT does not find the negative licensing regime to be satisfactory and would prefer to have positive licensing powers as exist for consumer credit lenders. From the perspective of estate agents the current limits on OFT regulatory power clearly reduces the time and cost associated with setting up in business.

Since 1997 a number of more systematic overviews have been undertaken of alternatives to state regulation. These include the Better Regulation Task Force report, *Alternatives to State Regulation*, The Office of Fair Trading work on Consumer Codes (subsequently developed by the DTI as the core principles for consumer codes in the 1999 Consumer Protection White Paper), and work by the Office of Telecommunications drawing together the various elements of self-regulation and other alternatives to classical regulation in the telecommunications sector (which includes the promotion of industry-produced comparative performance indicators to stimulate informed market competition).

No measurement or monitoring systems for use of alternatives to state regulation have been established beyond the review methods of the BRTF. In January 1998, the BRTF proposed a set of Principles of Good Regulation. The principles, which were marginally revised in 2000, have been accepted by the government and incorporated into the Government's Guide to Regulatory Impact Analysis. The principles should be met by good regulations and their enforcement to ensure that regulations are "necessary, fair, effective, affordable and enjoy a broad degree of public confidence". In total, the BRTF has an array of 13 criteria for testing regulations including five "basic" principles of better regulation:

- Transparency – that regulation should be open, simple and user-friendly.
- Accountability – towards Ministers, Parliament as well as the users and the wider public.
- Targeting – in that regulation focused on the problem and minimised side effects.
- Consistency – that regulation would be applied coherently.
- Proportionality – that regulatory responses fitted the extent of the risk.

The BRTF's Principles of Good Regulation also outlines eight "Tests of Good Regulation and Pitfalls to be Avoided" which also should be applied to state regulation as well as to alternatives to regulation. According to the eight tests regulations must:

- Have broad political support.
- Be enforceable.
- Be easy to understand.

- Be balanced and avoid impetuous knee-jerk reactions.
- Avoid unintended consequences.
- Balance risks, cost and practical benefit.
- Seek to reconcile contradictory policy objectives.
- Identify accountability.

Additionally, the Guide offered more detailed guidance on operationalising these principles in regulatory decisionmaking. Among the recommendations were that: 1) a "prior options approach" which emphasises the need to find "minimum level responses" should be used; 2) consultation should be taken seriously to enhance regulatory quality, cross-departmental consistency, and compliance both outside and within government; 3) self-regulation and self-enforcement should be considered as viable options; and 4) a regulatory impact assessment should accompany in new regulatory legislation. While directed at regulatory issues, the Task Force emphasised in particular the problem of regulatory opacity, which is directly responsible for substantial administrative burdens.

The Guide emphasised the use of a wide range of instruments as alternatives to regulation. The Cabinet Office indicated that it accepted that advice and that it would encourage policy makers to consider alternatives to regulation such as:

- Relying on consumer choice, competition and innovation.
- Improving advice or information.
- Using a code of practice.
- Economic instruments *e.g.*, user charges, taxes or tax concessions.
- Asking the industry to regulate itself.
- Simplifying or better targeting existing regulations through a "deregulation order".

These principles have been incorporated in the subsequent RIU guide, *Good Policy Making: A Guide to Regulatory Impact Assessment* (2000).[11] Linked to the advocacy of alternatives to state regulation are proposals to enhance complaint handling both against public and private sector service providers in order to empower users against businesses.

Furthermore, departments have increasingly become involved in drafting "codes of conduct" in contrast to requiring regulation. While self-regulation has a long history in Britain, it is now being increasingly used with regard to corporate governance issues, consumer relations, and health concerns such as passive smoking in restaurants.

There have been attempts to measure the effects on businesses, citizens and voluntary sector organisations of the implementation of the preference for self-regulation in particular cases, such as the Health and Safety Executive's study of the costs of the hospitality industry's code of conduct on smoking, but there have been no systemic academic or government studies covering the whole economy. It is generally believed that schemes of self-regulation and co-regulation impose fewer administrative costs and are simpler for businesses to work with than does public regulation. However, there are insufficient data to establish whether this is, in fact, always the case.

Deregulation orders

The purpose of the Regulatory Reform Act, which became law in April 2001, is to enhance and widen the use of Deregulation Orders, a mechanism created by the Deregulation and Contracting Out Act of 1994. The 1994 Act gave Ministers new powers to

repeal and amend by secondary legislation a provision in primary legislation that imposed a burden, so long as its reduction or removal did not reduce or remove any necessary regulatory protection. Thus, here again the emphasis was not solely on the regulatory impact, but also on the administrative burden caused by over-complex, overlapping or outdated regulation. There was also a requirement in the 1994 Act for thorough and mandatory consultation. The deregulation process offered a low profile, consensual approach, which has led to a significant number of mainly small but worthwhile regulatory amendments and it has been widely regarded as a success. But its main intention was to deal with measures limited in scope and for small items that would not otherwise warrant legislative attention.

Among the deregulation orders agreed to were the allowance of three yearly deductions of trade union dues from salaries, the permitting of bookings at registry offices up to one year rather than three months in advance and the relaxation of restrictions on opening hours of licenced premises (pubs) on December 31, 1999. Three initiatives were rejected by the committees (on Sunday dancing, civil aviation, and consumer credit).

The Labour Government argued that the 1994 Act was too limited to be of any further utility, pointing out the decreasing number of deregulation orders enacted.[12] Under its terms it could only be used to amend legislation enacted through the 1994 parliamentary session and had arguably been designed under the assumption that "red tape" and over-regulation had been caused by small and clearly defined regulatory requirements that could easily be removed. However, the pool of such small measures was limited and the process was ill-suited for addressing over-complex and overlapping regulatory regimes.

The 2001 Regulatory Reform Act (RRA) widened the deregulation order-making power to include:

- Making and re-enacting statutory provision.
- Allowing the imposition of additional burdens, but only if the burdens are proportionate and are needed to remove or reduce burdens on others.
- Removing legislative inconsistencies and anomalies.
- Dealing with burdensome situations caused by a lack of statutory provision.
- Application to legislation passed after the RRA, if it is at least two years old.
- Relieving burdens from anyone, but not simply from ministers and government departments where only they would benefit from reform.

Regulatory Reform Orders are subject to thorough public consultation followed by detailed two-stage scrutiny by the Deregulation and Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords. The special Parliamentary procedure which Regulatory Reform Orders undergo (sometimes called the "super-affirmative" procedure), affords a strong Parliamentary scrutiny. The process for scrutinising orders made under the Regulatory Reform Act is expected to take between nine months and a year. The Regulatory Reform Act specifies – in the law itself – the procedural requirements ministers have to follow when making regulations (Orders) under this Act.

The Act also empowers the government to produce a code of good enforcement practices. Its main intention is to provide safeguards against potential problems linked to the use of voluntary approach to the Enforcement Concordat (see below).

The Enforcement Concordat

Much concern of the business community has been directed at the enforcement of regulation. This in particular concerned the actions by enforcement officers in central and local government, where it was argued that procedural safeguards were required. Section 5 of the Deregulation and Contracting Out Act of 1994 offered protection against the unreasonable application of regulations, but it had been only applied directly once. As a result, in 1996, the Conservative Government consulted on a widening of the application to further activities, but the initiative was opposed by various stakeholders on the grounds that the inflexibility of the provision made it inappropriate for a more general application.

The Labour Government did not initially aim to replace or amend Section 5, but instead planned to rely on voluntary means such as the Enforcement Concordat. This is a non-statutory code prepared by the Better Regulation Task Force, designed to encourage local and central enforcement agencies to develop a more responsive and proportionate approach to regulatory enforcement.

It was intended that all targeted central and all local enforcement agencies should sign up to the principles of the Enforcement Concordat. The adoption of the code is voluntary, but by December 2001, it had been adopted by 96% of local authorities and the vast majority of central government agencies.

According to the Concordat, businesses should receive clear explanations from enforcers, have the opportunity to resolve differences before enforcement action is taken, and receive explanations of their rights of appeal. Its main purpose is to encourage fair, practical and consistent enforcement. Enforcement should be based on standards (service standards, and the publication of performance records), be open, be helpful (aiming to prevent rather than simply penalise non-compliance), offer a widely published and timely complaint procedure, be proportional to the harm, be consistent (ensuring that different enforcers would treat the subject in the same way), and offer an opportunity for consultation before formal enforcement measures take place.

The Government eventually repealed Section 5 of the Deregulation and Contracting Out Act of 1994 by the Regulatory Reform Act 2001 to provide ministers with the reserve power to set out a code of good practice in enforcement, should it become clear that enforcement practices need improvement. This was meant to safeguard against failure of the voluntary arrangements. The use of these measures, only to be applied after consultation, depends on the level and nature of complaints about the enforcement practice and the evidence of compliance with established standards of good practice. The code, if applied would not bind enforcers directly, but the courts would be able to take it into account in legal proceedings, for example in mitigation or when deciding on the award of costs. The aim is to assure business and the voluntary sector that the Government is truly interested in controlling enforcement of regulation, to supply incentives for the adoption of good practice, and to establish a new enforcement culture.

The Cabinet Office has commissioned research on the impact of the Enforcement Concordat on businesses. That research has not yet been concluded and no other documentation on effects of the Concordat has been published.

Public sector team

This unit within the Regulatory Impact Unit, established in 1999, is particularly concerned with the effects of regulation and consequent administrative burdens affecting

the public sector. It published reports recommending the reduction of paperwork from front line services, such as the police.

In its *Scoping Report*,[13] the Public Sector Team set out its agenda for reducing the regulatory burden for the public sector, in particular in the areas of criminal justice (police, Crown Prosecution Service, Court Service), health (GPs and hospitals), education (schools), and local authorities. Its role is to identify bureaucratic burdens affecting front line staff (*e.g.* nurses, teachers, and managers) and then to negotiate their reduction or removal with central government departments and agencies. Having sought strategic reductions in burdens through a process of review of key public services, including the police service and schools, the Public Sector Team moved, in 2001, to the articulation of more general principles for policy making with a regulatory impact on the public sector. A "new" technique, equivalent in its aims to regulatory impact assessment, known as the "policy effects framework (PEF)", has been developed to measure the costs to public sector organisations of administrative burdens in terms of the hours of staff time and physical resources necessary to meet them. The development of the PEF is now complete and is being adopted on a voluntary basis by central government departments. In summer 2002 it was first adopted by the Department for Education and Skills, as well as being used for police-related policy in the Home Office.

Evaluation and perspectives

This report has dealt with initiatives prior to the general election of 2001. During the election campaign, all parties committed themselves to furthering the programme of administrative simplification. The Labour Party committed itself to strengthening the Regulatory Impact Unit, partly by bringing in more people with a business background, partly by requiring every government department to review the impact of significant regulation within three years of implementation, and partly by improving the quality of regulatory impact assessments. A similar package of proposals was advocated by the Conservative Party, which, however, also suggested that the aggregate regulatory burden attributable to every government department should fall every year, that new regulations should include "sunset clauses", that small businesses should be exempt from certain categories of regulation, and that a "deregulation authority" should be established on a statutory basis. The overall consensus on administrative simplification across the main parties, which also included measures to simplify planning law, suggested a continued interest and emphasis on enhancing and taking forward the instruments described in this report.

The analysis of the Regulatory Impact Assessment suggested that its evolution had to become embedded at an early stage in the policy formulation process and should be applied and monitored more systematically across government departments.[14] There was evidence that the "discourse" of regulatory impact assessments had "fertilised" other regulatory domains (in terms of the RRA and the Local Government Act of 2000), thus suggesting that its intention and approach had become embedded in the procedural toolkit and culture in British administration. However, its use and applicability to some extent was constrained by opposition towards such measures as well as by difficulties in applying regulatory impact assessments in particular areas. Furthermore, there was also a risk that the resources that were devoted to the quality of the regulatory impact assessment could divert attention from the worthiness of the policy proposal itself.

The government has set up an array of institutions to drive regulatory policies. The Regulatory Impact Unit (RIU) plays the crucial dual role as scrutiniser and advisor of high quality regulations across government. The Labour Government developed a particular attachment towards establishing so-called "task forces" to enhance cross-departmental and public-private co-operation on particular issues. The Better Regulation Task Force, which has been a strong advocate for reform joins the RIU in continuously pushing for improvements in regulatory policies. It has been taken seriously by other departments and therefore was able to achieve substantial outcomes in terms of their reports and proposals. The Panel for Regulatory Accountability has raised the degree of responsibility in rulemaking and maintained regulatory policies at the centre of government. The importance of such centrally steered agents for change is, however, limited in being dependent on political support – thus the power of the BRTF was particularly reliant on the political support by the Prime Minister. In a related, although somewhat different role, the e-envoy provided both a controlling as well as a consulting and promoting function to the various departments, providing blueprints for action, advice as well as monitoring of progress. In the case of the e-envoy, this also involved annual international benchmarking reports (contrasting the UK with 13 other governments), while in the case of the Regulatory Impact Unit, this involved co-operation with the Dutch equivalent on developing a set of benchmarks.

Sectoral regulators have brought lower prices and in many cases promoted more competition and better services. The Small Business Service has also led to a focus on the concerns of small firms. The administrative culture in the UK is characterised by pragmatism, integrity and professionalism. Furthermore, there is a growing awareness in the British public on the importance of high quality regulation to achieve important welfare goals. Altogether these elements constitute a strong foundation for additional steps.

This report has provided a description of different stages of administrative simplification programmes. It offers evidence of sustained attempts since the 1980s to reduce the burden placed by administrative requirements on citizens and business. At the turn of the century, the modernising government agenda was arguably more embedded across government departments as it no longer simply involved a deregulation emphasis carried forward by a single unit, but rather a number of different agendas, ranging from better regulation, small business support to e-government which as a whole were likely over time to reduce the burden of "red tape" significantly. There are two main obstacles to the development and implementation of programmes of administrative simplification in the UK First, there is a general cultural hostility to the deployment of systematic principle of government within Government departments, reflected in the "Whitehall view" that centrally-driven administrative simplification measures specifically are unnecessary because individual departments can take responsibility for acting professionally. The second main obstacle is the unusual degree of "sovereignty" possessed by government departments in exercising executive power.[15] The advocacy role of the Better Regulation Task Force and the co-ordinating capacities of the Panel for Regulatory Accountability have to be seen as being designed to work within the context of these constraints. This makes progress highly dependent on the level of political support.

Notes

1. White Paper, Lifting the Burden, Cmnd 9571 (1985).
2. E. Froud, R. Boden, A. Ogus, and P. Stubbs, *Controlling the Regulators*, 3-4 (London, Macmillan 1998).
3. White Paper, *Building Business – Not Barriers,* Cmnd 9794 (1986).
4. Better Regulation Task Force, *Helping Small Firms Cope with Regulation* (London, Cabinet Office 2000).
5. Better Regulation Task Force, *Alternatives to State Regulation* (London, Cabinet Office July, 2000).
6. Better Regulation Task Force, *Annual Report 1999-2000* 4 (London, Cabinet Office) (undated).
7. *See Financial Times*, 24 March, 2001
8. Department of Environment Transport and the Regions (DETR 1998), *Modernising Planning,* para. 29 London.
9. Home Office, White Paper, *Time for Reform: Proposals for the Modernisation of Our Licensing Laws*, CM4696 (2000).
10. Better Regulation Task Force, *Annual Report 1999-2000*, p. 41, London, Cabinet Office (undated).
11. Better Regulation Task Force (1999), *Good Policy Making: A Guide to Regulatory Impact Assessment*, London, Cabinet Office.
12. Since April 1995, 48 deregulation orders were passed, with a decreasing number over time:

    1995 Two proposals

    1996 Twenty-three proposals

    1997 Twelve proposals

    1998 Five proposals

    1999 Four proposals

    2000 One proposal

    2001 One proposal (four under consideration)
13. Cabinet Office Public Sector Team, *Scoping Report* (London, Cabinet Office 2000).
14. This was also likely to depend on a review by the National Audit Office, to be published in the autumn 2001. Early press reports on the NAO investigation suggest that the NAO will be highly critical of the failure of key departments to properly and coherently follow the principles of regulatory impact assessment. Recommendations from the NAO are likely to lead to further reform of the system. *Financial Times* (7 June 2001).
15. *See* Alan Page and Terence Daintith (1999), *The Executive in the Constitution: Structure and Internal Control*, Oxford Univ. Press, August.

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Better Regulation Task Force (2000), *Red Tape Affecting Headteachers*, London, Cabinet Office.

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ISBN 92-64-10067-9
From Red Tape to Smart Tape
Administrative Simplification in OECD Countries
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8

Administrative Simplification in the United States*

Abstract. *There is a wide-spread and bi-partisan support for the concept of burden reduction and simplification of regulatory requirements in the United States. A great number of laws and orders that require impact statements, consultations, consideration of regulatory alternatives or plain language drafting ensure that these concepts are taken into account in the regulation-writing process. At the implementation end, programme ombudsmen and one-stop shops are proliferating. Assistance to small business in implementing regulations is also very common. The spectacular improvements in information technology and the rise of the Internet as a stream of commerce and information act as an important driver for many of these efforts. Despite the Presidents and Congress' focus on administrative simplification, it is still relatively decentralised.*

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* This report is based on a draft prepared by Jeffrey Lubbers, Washington College of Law, American University. The report has been fact checked and commented on by the United States Government.

Introduction

This report provides an examination of practices and programmes used in the United States to reduce administrative burdens. It primarily draws on examples of federal programmes/initiatives/experiences, with some additional information drawn from selected States.

In terms of structure, the report starts by giving a broad overview of the background to, and historical development of administrative simplification policies in the United States. It then briefly summarises the institutional framework for administrative simplification policies and the link of such policies/programmes to the broader regulatory reform agenda. It then examines US approaches to and experiences with a number of administrative simplification policies, and concludes with a summary of the key findings of this report.

Background and historical development

In the modern administrative state, once administrative agencies became active in development of regulatory polices and standards through the use of rulemaking in the 1970s, concerns began to surface about burdens (both concentrated and cumulative) imposed by regulations on regulated entities. These concerns were expressed by business associations, bar associations, and academics, and found a ready audience in the Congress and the White House. Numerous White House conferences on the needs of small businesses ensued. The "burden reduction movement" was especially effective, because it concentrated on reducing "unnecessary" red-tape, paperwork, and espoused "alternative" approaches to regulations, especially those affecting small business. While many of these initiatives were linked in some way to broader regulatory reform (or "regulatory relief" – as it became known in the Reagan and Bush I Administrations), they tended not to attract the same kind of determined opposition from the environmental, consumer, and labour movements, and many of these initiatives garnered bi-partisan support in Congress.

The themes of red-tape reduction, paperwork reduction, special attention to the needs of small business, and the new embracing of information technology run throughout this report.

Red tape

In his classic work, *Red Tape, Its Origins, Uses and Abuses*, Herbert Kaufman has a few kind words for red tape:

> Red tape is not all bad: Maybe we could suppress [red tape] if it were merely the nefarious work of a small group of villains or if it were a waste product easily separated from the things we want of government, but it is neither. Anyway, if we did do away with it, we would be appalled by the resurgence of the evils and follies it currently prevents.[1]

He also refers to some earlier works that cited the "relativity" of red tape.[2] He quotes Paul Appelby in 1945: "Red tape is that part of my business you don't know anything about".[3] Dwight Waldo in 1946: "One man's red tape is another man's system".[4] Alvin Gouldner

in 1952: "Red tape as a social problem cannot be explained unless the frame of reference employed by the person using this label is understood."[5]

Nevertheless, the term – in its pejorative sense – retains its currency today. For example, the primary report of the Clinton Administration's "Reinventing Government" initiative was called: *From Red Tape to Results: Creating a Government That Works Better and Costs Less*.[6]

Paperwork reduction

In the United States, government paperwork requirements are often equated with "red tape".[7] As recounted by Professor William Funk, President Roosevelt's concerns over "the large number of statistical reports which federal agencies are requiring from business and industry" led to a review of such reports and ultimately the enactment of the Federal Reports Act in 1942. The Act gave the Bureau of the Budget (precursor to the Office of Management and Budget) the responsibility to review agency information requests.

Enactment of the Administrative Procedure Act in 1946 provided more transparency of government rules and regulations by requiring them to be published or made available to the public.

Enforcement of the Federal Reports Act was haphazard, however, and in 1974, Congress responded to continuing constituent complaints about paperwork burdens by creating the Commission on Federal Paperwork. The Commission's charter required it to make a number of studies to determine the nature of the federal paperwork problem and to make recommendations for changes in statutes, rules, regulations, procedures, and practices.

The final report was submitted in October 1977, and in 1980 Congress responded by enacting the Paperwork Reduction Act.[8] This Act created the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) to oversee agency implementation of the Act. That same year, Congress also passed, and the President signed, the Regulatory Flexibility Act, which required special analysis of rules affecting small businesses and small governments. That Act created the Chief Counsel for Advocacy as a separate, presidentially appointed officer within the Small Business Administration to oversee agency implementation.

This legislation was strengthened in 1996 and may soon be supplemented again. In March 2001, the House of Representatives approved, by a vote of 418-0, the Small Business Paperwork Relief Act,[9] which would: *a)* require every federal agency to establish a single point of contact for small businesses who need help with paperwork requirements; *b)* require federal agencies to identify ways to reduce paperwork requirements for companies with fewer than 25 employees; *c)* require OMB to publish, in the *Federal Register* and on the Internet, an annual list of regulations that apply to small businesses; and *d)* create an interagency task force to study streamlining and consolidating federal paperwork requirements for small businesses.

History of the special concern for the needs of small business

The importance of small business needs in the United States' political system is shown not only by the existence of an agency specifically devoted to it, the Small Business Administration (SBA), but by the many pieces of recent legislation that have been enacted to reduce regulatory burdens on small businesses.[10]

Congress' "special solicitude" for the problems of small business dates back to the passage of the Small Business Act in 1953.[11] That Act established the SBA and provided small

business with assistance in receiving government grants and loans. After a while though, the small business constituency grew dissatisfied with the performance of the SBA and called for the appointment of a Chief Counsel for Advocacy, creating a new position within the SBA, to serve as ombudsman to protect the interests of small business. In 1976 Congress established the Office of Advocacy. One of the Chief Counsel's tasks included the measurement of the costs of government regulation on small businesses; and to make legislative and non-legislative proposals for eliminating excessive or unnecessary regulations of small businesses. This was followed by an influential White House Conference on Small Business that made sixty recommendations. One of the Conference's six specific policy goals for government was the elimination or reduction of onerous regulations and reporting requirements.

In that election year several important new laws were enacted with the support of the President. The Equal Access to Justice Act[12] provided small businesses and individuals with the right to recover attorneys' fees, witnesses' fees, and other costs resulting from successful litigation against the United States. The Paperwork Reduction Act, also enacted in 1980, stemmed from specific recommendations of the White House Conference on Small Business. And finally, the Regulatory Flexibility Act of 1980[13] was also a direct response to concerns about the differential impact of regulation on small business.

Additional White House Conferences on Small Business were held in 1986 and 1995. The SBA's Office of Advocacy continues to attempt to implement the 60 final recommendations issued to the President and Congress by the 1995 Conference.[14] One rapid response by Congress was to enact in 1996 the Small Business and Regulatory Enforcement Fairness Act[15] which gave the Office of Advocacy additional powers to enforce the Regulatory Flexibility Act (*e.g.*, to file briefs in court in support of litigated challenges to agency compliance with the Act).

Modernisation of information technology (IT)

The 1980 Paperwork Reduction Act also helped begin the US Government's march toward modernised IT. The 1996 Electronic Freedom of Information Act Amendments[16] hastened the development of agency Web sites. Other statutes also provided a stimulus to agency-specific activities, such as the following mentioned in a summary of the background of the US Department of Agriculture's (USDA's) use of Web-based technologies in its customer service sector:[17]

- The Department of Agriculture Reorganisation Act of 1994,[18] which required the USDA to consolidate field offices and manage IT in a manner which enhances productivity, customer service, and information sharing.
- The Clinger-Cohen Act of 1996,[19] which required the USDA to leverage IT to maximise the efficiency of programme delivery and better manage IT implementation risk and reporting.
- The Government Paperwork Elimination Act of 1998,[20] which required the USDA to move to a self-service, Web-enabled environment by 2003 in order to reduce time-consuming and often duplicative paperwork.
- The Freedom to E-File Act of 2000,[21] which required basic Web access to USDA forms and applications.

Institutional framework

At present, the key institutions in the Federal Government that oversee burden reduction efforts are OIRA, and several entities of the Small Business Administration: the

Chief Counsel for Advocacy, the Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman), and the regional Small Business Regulatory Fairness Boards. In the Clinton Administration the National Performance Review (later renamed the National Partnership for Reinventing Government) also supported these efforts, but the office was closed with the end of the Clinton Administration.[22] Another office, the Administrative Conference of the United States (ACUS), established in 1968, whose charter was to recommend improvements in administrative procedure, closed its doors after being defunded by the 104th Congress in 1995.[23] Most of the other initiatives described in this report were, however, undertaken by individual departments and agencies.

Thus, although OMB/OIRA, on behalf of the President, still plays the central role in administrative simplification, due to the separation-of-powers doctrine, its effectuation in the United States is still somewhat decentralised. Congress periodically conducts oversight hearings and mandates studies of regulatory programme effectiveness by the General Accounting Office. The SBA's independent Chief Counsel for Advocacy and various agency ombudsmen play a watchdog role as well.

Techniques of administrative simplification and burden reduction

Technology-driven mechanisms to reduce administrative burdens

Since 1980, US law has required OMB to develop co-ordinated, integrated, and uniform information resource management policies and practices,[24] and has also required that federal agencies seeking to collect information must certify to OMB that the proposed collection, "to the maximum extent practicable, uses IT to reduce burdens and improve data quality, agency efficiency and responsiveness to the public".[25]

These polices have borne fruit. There are many initiatives that illustrate the use of IT to improve data quality, increase public access to information, and reduce burdens on respondents. Agency use of IT in the regulatory process is advancing rapidly. A recent report on "e-government" pointed to many "examples of the productive use of government Web sites," citing as examples that students filed more than two million applications for college financial aid through the US Department of Education's online service last year and that two-thirds of the practising physicians in Georgia renew their licences online.[26] Two very recent independent studies of e-government have also described the increasing popularity of government Web sites. The studies show that 51% of all Americans had visited a government Web site. Most (80%) such visitors are happy with what they find on such sites, and 49% responded that the Internet has improved the way they interact with the Federal Government.[27] In addition, electronic signature legislation was enacted on the federal[28] and state[29] levels in recent years.

The Federal Government has recently reported numerous examples of initiatives covering electronic docketing, filing and reporting, researching, linking, and providing of information – described in Box 8.1 below.

One-stop shops

One of the specific beneficial by-products of the advances in IT has been the proliferation of Web-based one-stop shops – sites that allow applicants and others interested in government services to obtain all the information necessary to their query at one location. Examples include probably the world's largest government-wide information search portal, FirstGov.gov, as well as several programme-specific sites.

Box 8.1. **Technology-driven mechanisms to reduce administrative burdens – examples of US federal initiatives**

a) Electronic docketing. In the mid-1990's the Department of Transportation (DOT) developed an electronic, image-based database known as the Docket Management System (DMS).[1] The searchable database contains over 800 000 pages of regulatory and adjudicatory information.

b) Electronic filing and reporting. Agencies increasingly are using interactive "intelligent" software to help customers file reports, thereby reducing burdens and improving accuracy. For example:

- The Internal Revenue Service (IRS) has made Electronic Tax Administration a top priority. The IRS is also providing businesses a growing number of electronic filing and payment options.[2]
- The Bureau of Labor Statistics in the Department of Labor (DOL) has now established a system for electronic filing of employment and payroll data from employers throughout the United States.[3]
- The Bureau of the Census, in collaboration with the US Customs Service, has developed an electronic filing system called AESDirect (Automatic Export System) that reduces by over two-thirds (from 11 minutes to 3 minutes) the time needed to file an export declaration.[4]
- The Food and Drug Administration (FDA) promulgated an electronic signature regulation permitting it to accept documents or portions of regulatory applications electronically.[5]

c) Electronic filing and research. Some electronic filing sites also offer extensive search capability for related filings:

- The United States Patent and Trademark Office (PTO) have developed two significant electronic information systems. For patents, it has developed the PTO Electronic Business Center.[6] For trademarks, the PTO developed the Trademark Electronic Business Center, a "one-stop source for all online trademark searching, filing and follow-up".[7]
- Toxic Release Inventory of the Environmental Protection Agency (EPA). Several environmental statutes mandate that a publicly accessible toxic chemical database be developed and maintained by the EPA. This database, known as the Toxics Release Inventory (TRI), contains information concerning waste management activities and the release of toxic chemicals by facilities that manufacture, process, or otherwise use such materials.[8]

d) Electronic linkages. National Banknet[9] is an exclusive extranet Web site launched in 1999 by the Office of the Comptroller of the Currency (OCC)[10] available exclusively to national banks. It enhances the private exchange of information between the agency and the banks it charters and provides products to assist these banks. To date, 1 250 national banks have subscribed.

e) E-FOIA. The Department of Housing and Urban and Development's (HUD's) Freedom of Information Act (FOIA) Division has implemented cutting-edge technology by being the first agency to institute a practice of receiving FOIA requests online.[11]

1. See *http://dms.dot.gov/help/about_dms.asp#dms*
2. See, *e.g.*, *www.irs.gov/prod/elec_svs/941elf.html*
3. See *www.bls.gov/cew/cewedr01.htm*
4. See Bureau of the Census, Correct Way to Fill Out the Shipper's Export Declaration, available at *www.census.gov/foreign-trade/www/correct.way.html*. For an interactive "tour" of the AES Direct system, see *www.aesdirect.gov/tour/start.html*

Box 8.1. **Technology-driven mechanisms to reduce administrative burdens – examples of US federal initiatives** *(cont.)*

5. Food and Drug Administration, Electronic Records; Electronic Signatures, 62 Fed. Reg. 13 430 (Mar. 20, 1997) codified at 21 C.F.R. part 11.
6. See *www.uspto.gov/ebc/index.html*
7. See *www.uspto.gov/web/menu/tmebc/index.html*
8. See Environmental Protection Agency, Office of Information Analysis and Access, EPA 745-B-01-001, Toxic Chemical Release Inventory Reporting Forms and Instructions (Feb. 2001; corrected Mar. 19, 2001), available at *www.epa.gov/tri/rfi2000mar1901.pdf*
9. Comptroller of the Currency, Fact Sheet, "National Banknet: An Exclusive Web Service for National Banks," NR 2000-69 (Sept., 17, 2000), available at *www.occ.treas.gov/00rellst.htm*
10. The OCC charters, regulates and examines approximately 2 400 national banks and 58 federal branches of foreign banks in the US, accounting for more than 57% of the nation's banking assets
11. See *www.hud.gov/ogc/foiafree.html* (posted Oct. 3, 2000).

FirstGov.gov[30]

FirstGov is the first Web site that provides the public with easy, one-stop access to all online US Federal Government resources. FirstGov allows users to use a word-search engine to browse a Web site that consolidates 20 000 government Web sites into one. It supports a wide range of tasks from researching at the Library of Congress to tracking a NASA mission. FirstGov also enables users to conduct important business online – such as applying for student loans, tracking Social Security benefits, comparing Medicare options and even administering government grants and contracts. Early reviews have been positive.

The site's genesis[31] dates back to 1993 when the Clinton Administration established an Information Infrastructure Task Force to co-ordinate the Administration's efforts to improve service delivery to the public. Chaired by the OIRA Administrator, it published a set of principles for e-commerce in July 1997, which relied heavily on industry self-regulation. Then in December 1999, President Clinton issued a "Memorandum to the Heads of Executive Departments and Agencies Regarding Electronic Government." The Memorandum called for a number of actions, such as making federal forms and transactions available online, ensuring privacy, and providing access for the disabled. Significantly, the first item in this Directive called for the establishment of a one-stop gateway to government information available on the Internet, organised by the type of service or information that people are seeking rather than by agency.

The President's Management Council, comprised of the Chief Operating Officers from the major Departments and agencies, followed up by adopting "Promoting Electronic Government" as one of its three goals for the year 2000 and adopted priorities that build upon the President's Memorandum. These include a one-stop gateway for government information and services, the development of customer-centric Web sites for specific purposes like exports and procurement, and the adoption of at least one electronic government process in every agency.

Among the various challenges faced by the organisers of this site were the following:

- *Technical issues:* The FirstGov.gov portal was developed by the government in 90 days, using a fixed price contract. The search index was donated by a private non-profit charitable organisation known as the Fed-Search Foundation.[32] It used the Inktomi technology[33] to do its searching and indexing. In a few days, they searched all publicly available government Web pages and indexed 27 million pages. Fed-Search has agreed to

keep the index updated for the next 2-3 years when the Foundation will turn over its servers and knowledge base to the government, and the Foundation will cease to exist.

- *Linkage issues:* Because most Internet users already have a favourite portal, or small group of portals, the designers of FirstGov wanted it to be linked to these successful portals and thereby invite more customers. But there were some conditions: 1) the "first use" of government information must be free to all citizens, 2) no individual can be tracked while browsing government pages, 3) security must be excellent, and 4) advertising is prohibited on FirstGov pages. Private and public portals that agree to these conditions are allowed to become a "FirstGov Partner".[34] Of course any portal, whether or not a partner, can "point" to the FirstGov "Uniform Resource Locator (URL)" and when the user clicks, that user is transported to the FirstGov.gov portal. But there are three other more official partnership statuses: 1) "Bronze", where the portal puts a FirstGov logo button (or words) on the portal's site. Clicking it takes the user to the FirstGov.gov page as if he or she had come there directly; 2) "Silver", which has a "FirstGov search box" where the user can enter a word or words with the promise of a keyword search. The keyword is processed by Fed-Search for free and results are returned to a FirstGov page on the user's PC; and 3) "Gold", where the portal pays Fed-Search a nominal fee to cover the cost of the search, and Fed-Search provides a "fast pipe" to the portal guaranteeing optimal performance of the portal.
- *Privacy*: In the spring of 1999, the OMB Director issued Memorandum M-99-18 – *Privacy Policies on Federal Web Sites*. In that memorandum, OMB directed federal agencies to post privacy policies on key Web pages contained in agency Web sites. Last year the OMB Director issued Memorandum M-00-18 – *Privacy Policies and Data Collection on Federal Web Sites*, prohibiting the tracking of user behaviour across government Web sites and over time. FirstGov complies with both of these memoranda. As one step to ensure the latter principle, the portal does not deploy "cookies" without the express permission of those employing the service.[35]
- *Security:* Only publicly available documents are included in the index; no data that the government treats as private, classified, password-protected, or firewall-protected will be covered by the search engine. Government overseers have acknowledged that more needs to be done in this area. FirstGov lacks a comprehensive security plan, independent tests of the site's access controls have not been conducted, nor has the FirstGov Board established a programme for conducting periodic security assessments.
- *Access:* Agencies were required by law[36] to make all programmes offered on their Internet and Intranet sites accessible to people with disabilities by July 2001. For example, this might include ensuring access for people with vision impairments who rely on assistive technology to access computer-based information, such as screen readers and refreshable Braille displays. The FirstGov site has already met this deadline.

Prior to FirstGov, researchers had to rely on individual agency Web sites or to sift through the results produced by the undifferentiated private search engines to find government documents. Now they can feel assured that the search is of relevant documents and is complete. Perhaps the best indication of FirstGov's success and widespread acceptance is that President George W. Bush's welcoming message has now been affixed to this site, which was launched in late 2000 by the Clinton Administration.

Improving services and reducing costs

Often, one-stop shops have proven not only to improve services by making them easy accessible and comprehensive, but also to generate important cost savings. Box 8.2 summarises the idea and results of five such cases.

Time limits for administrative decision-making

The federal Administrative Procedure Act (APA) does not require agencies to act on rulemaking proposals within a prescribed time after the end of public proceedings.[37] Congress, however, sometimes seeks to control and expedite agency rulemaking by imposing statutory deadlines for completing rulemaking actions. This has often occurred when Congress was concerned about agency delay and inaction in the public health and environment areas. Thus, for example, the Asbestos Hazard Emergency Response Act of 1986[38] required EPA to publish an advance notice of proposed rulemaking within 60 days of enactment, a proposed rule within 180 days, and final rules within 360 days for seven specific areas relating to asbestos-containing materials in school buildings.[39]

Many other agency statutes have included deadlines for agency rulemaking action.[40] Typically these statutory deadlines can be enforced only by court suits; however, in some cases Congress has added so-called "hammers" or other penalties if an agency fails to take timely action. An example of a statutory "hammer" is the provision in the 1984 amendments to the Resource Conservation and Recovery Act (RCRA), providing EPA with a specified period of time in which to issue regulations; if at the end of that time it had not acted, the "hammer" would fall; *i.e.*, a congressionally specified regulatory result would go into effect.[41] The Nutrition Labelling and Education Act of 1990[42] contained a similar "hammer" specifying that the agency's *proposed* rule would go into effect if the final rule were not issued within the statutory time limit.[43]

Legislated time limits for agency action have been criticised as ineffective and counterproductive in the United States. In 1978 the Administrative Conference of the United States opined that, "Congressional expectations that statutory time limits would be effective have remained largely unfulfilled".[44] The Conference pointed to a substantial degree of non-compliance, coupled with a feeling by agency officials that they represented unrealistically rigid demands that disregard the agency's need to adjust to changing circumstances, that they may conflict with other requirements of law (*e.g.*, the right of interested persons or parties to a full and fair hearing), and that judges have tended to treat the enforcement of statutory time limits as a matter lying within their own equitable discretion despite the precisely measured language of the statutes.

The Administrative Conference's dubiety about statutory time limits has also been reinforced by other studies. One study of the results of eleven such deadlines pertaining to regulatory proceedings concluded that there was "no evidence that statutory deadlines proved beneficial in any of the eleven cases scrutinised".[45]

However, even in the absence of a statutory time limit, many agencies find it helpful to set their own schedules for completion of the various rulemaking steps, including the deliberative process. Not only do these schedules provide the agency a practical yardstick for determining whether its rulemaking is making satisfactory progress towards completion,[46] but in some cases courts have accepted such schedules as representing good faith efforts by the agency to complete its rulemaking within a "reasonable" time.[47] Some federal agencies have established formal case tracking systems and set time limits to speed

Box 8.2. **One-stop shops – improving services and reducing costs**

Importation of food, drugs and cosmetics – the OASIS system[1]

The FDA must review eight million shipments of food, drugs, cosmetics and medical devices to the United States per year – a 50% increase in four years. The FDA's manual review process used to take days – too long for the many perishable products awaiting entry at US ports. Under the "Operational and Administrative System for Import Support" (OASIS), which has been operational since 1996, importers electronically submit documentation that is quickly reviewed on PCs by FDA employees. FDA returns its admissibility decisions to the importers within minutes. 85% of shipments are now handled without paper documentation. It is unlikely that FDA would have been able to handle its growing workload concerning foreign imports if it had not started using the electronic system. With OASIS, imports are handled consistently throughout the country. According to a study by Booz, Allen and Hamilton, the import industry will save at least USD 1.2 billion in a seven-year period thanks to OASIS.

US Department of Agriculture (USDA) initiatives[2]

Genetic evaluations of the US milking herd

The Animal Improvement Programs Laboratory (AIPL) in the US Department of Agriculture helps breeders pick the prime parents of each succeeding generation of dairy cows through a computerised evaluation of the nation's cattle. The faster AIPL can provide breeders with genetic information, the faster cows can be mated, and the more milk that can be produced. This project commenced in 1995, and according to an agency research report, it was a daunting task: Computer processing of records from the nation's dairy herd requires the analysis of over 60 million milk records, solving over 40 million equations simultaneously, and preparing evaluations and associated information for release to 40 000 breeders, 100 artificial insemination organisations, 65 extension specialists, 6 dairy records processing centres, 7 breed registry societies, and hundreds of researchers as well as to counterpart groups worldwide.[3] USDA first converted its mainframe computer to a Unix workstation with better processing speed and memory. The agency then created an electronic transfer system with password protection so breeders could quickly access the USDA data. The agency reduced genetic evaluation time from eight weeks to three, and began releasing evaluations quarterly instead of semi-annually. The faster evaluations led to more frequent breeding of better animals. Genetic improvement is permanent, so the gains will compound over the years, making US cattle more valuable and milk more plentiful. The agency also estimates it saves USD 85 000 a year in computing expenses and shipping costs.

Unified export strategy

In FY 1999, the Foreign Agricultural Service (FAS) launched a Unified Export Strategy, automating its business processes and using the Internet to serve its geographically diverse customers. Thus far, FAS and its private sector partners have developed a secure Internet Web site[4] and designed special software that allows customers to consolidate into a single submission 172 different funding requests for 12 export development programmes. Customers no longer must prepare and submit multiple applications for funding or assistance. The effort reduced paperwork by an estimated 11 413 pages annually, saving over 32 staff years, and reduced the administrative cost of the programmes by over 50%.

Service Center Initiative

Another USDA effort is the Service Center Initiative (SCI).[5] Three of its agencies – the Farm Service Agency, Rural Development, and Natural Resources Conservation Service – have established one-stop shopping and a common interface that offers farmers round-the-

Box 8.2. **One-stop shops – improving services and reducing costs** *(cont.)*

clock access to the information and services of all three agencies. This IT initiative[6] was launched after a 1994 legislation required UDSA to consolidate field offices and manage IT in a manner that enhances productivity, customer service and information sharing. The programmes share data, eliminate duplicative information collections, and streamline those collections that remain. To further this goal, in FY 1999 SCI formed a team of staff to reduce paperwork. The team identified 547 forms and 402 non-form collection methods used by the three agencies to collect information from SCI customers; of those, 74 forms were almost completely duplicative.

A State example

Electronic filing in Washington State

The State of Washington has a "Digital Washington" Web site describing its many e-government activities.[7] For example, the Department of Revenue in partnership with the Department of Information Services and Washington taxpayers, created an electronic filing system (ELF) with a simple interface; automatic computations; automatic error checking; a secure, encrypted environment; and up-to-date online help so businesses can file and pay their taxes via the Internet.[8] Washington was the first state to deliver an online programme that automatically computes taxes and enables businesses to file and pay their returns electronically. A customised online form reflects the businesses' reporting profile and eliminates the need to re-enter recurring data. By automatically performing tax-return calculations, the system saves filing time for users and reduces the manual paper return error rate of 14%. Because ELF does not accept tax filings with calculation errors, it helps businesses get it right the first time. More than 7 200 Washington businesses have used ELF. Estimates indicate that up to a third of the 330 000 businesses that file tax returns did so electronically in 2001.

1. See *www.fda.gov/ora/import/oasis/home_page.html#Project*.
2. Examples taken from Office of Management and Budget, Office of Information and Regulatory Affairs, Information Collection Budget of the United States Government Fiscal Year 2000 p. 6-8, available at *www.whitehouse.gov/omb/inforeg/icbfy2000.pdf*
3. H.D. Norman and S.M. Hubbard, Enhancing genetic improvement for milk yield by reducing generation interval (AIPL RESEARCH REPORT AWD1 (11-98)), available at *http://aipl.arsusda.gov/memos/html/awd1.html*
4. See *www.fas.usda.gov/mos/ues/unified.html*
5. See *www.sci.usda.gov/sci/default.htm*
6. United States Department of Agriculture, Service Center Modernization Initiative Information Technology Blueprint (Dec. 2000), available at *www.sci.usda.gov/itwg/index.html*
7. See *www.wa.gov/dis/e-gov/index.htm*
8. See *http://dor.wa.gov*

up their proceedings.[48] Although these systems have not generally been set up for rulemaking, a similar system might be useful in such a context.

It should be noted, however, that recent statutory and internally-generated deadlines applied to rulemakings of the Federal Aviation Administration (FAA) have not proven to be successful. A 1996 statute required that the FAA Administrator issue final regulations, or take other final action, not later than 16 months after the last day of the public comment period for the regulations, and that the Office of the Secretary of Transportation (FAA's parent Department) complete its review of proposed and final rules within 45 days.[49]

But a recent draft study of the FAA's rulemaking indicates that the FAA has met the 16-month deadline in only 6 of 12 final rules subject to the deadline,[50] and that the Office of the Secretary reviews averaged over 200 days per rule.[51]

In addition, the FAA had set internal timeliness standards for the proposed and final rule stages of 450 days and 310 days respectively, but the study indicated that the FAA had met its own time goals in only 12 of 35 proposed rules and 10 of 26 final rules.[52]

The very limited success of statutory time limits and the mixed success of internally generated time limits shows that the causes of regulatory delay are not susceptible to easy fixes. Diagnosis of bottlenecks and of excessive sign-offs must be made along with targeted deployment of resources to areas of greatest need.

The "silence is consent" rule

The technique of allowing an agency's silence to be construed as tacit authorisation of applications is not widely used in the United States. Box 8.3, however, describes two examples of how the rule is applied in the US.

Alternatives to administrative regulation

Federal agencies are subject to numerous requirements to consider alternatives to direct, command-and-control regulation. President Clinton's Executive Order 12 866 (which the Bush Administration continues to enforce)[53] specifies, in its "Principles of Regulation" that:

> (3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behaviour, such as user fees or marketable permits, or providing information upon which choices can be made by the public, and…
>
> (8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behaviour or manner of compliance that regulated entities must adopt.[54]

These principles are also reflected in requirements in the Order pertaining to the annual regulatory plan[55] and in assessments required to accompany economically significant actions.[56]

In addition, several statutes also require agencies to consider alternatives. The Regulatory Flexibility Act requires all agencies that are issuing proposed rules that may have a "significant economic impact on a substantial number of small entities" to prepare an initial regulatory flexibility analysis that contains, among other things: a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimise any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities.
- The use of performance rather than design standards.
- An exemption from coverage of the rule, or any part thereof, for such small entities.[57]

Box 8.3. **Examples of the "Silence is Consent-rule" as used in the US**

Food Safety Determinations by the Food and Drug Administration[1]

The FDA recently changed one of its food safety procedures to incorporate the general idea. In 1997 the FDA streamlined the system by which manufacturers may receive affirmation from FDA that a food substance is "generally recognised as safe" (GRAS). Under the earlier procedures, if a manufacturer wanted FDA affirmation of its determination, the company was required to submit a petition and go through a rulemaking process. The streamlined notification procedure now allows manufacturers to simply notify FDA of their GRAS determination and provide evidence that supports their decision. After evaluating the notification, FDA will respond to the manufacturer with any objections within 90 days. The manufacturers' notification would serve as a basis for informing FDA without the need for rulemaking. The FDA explained that because the new notification procedure is considerably simpler than the former affirmation process, manufacturers should have greater incentive to inform FDA of their GRAS determinations. Therefore, FDA will gain increased awareness of ingredients in the nation's food supply and the cumulative dietary exposure to GRAS substances. The simplified notification procedure should also redirect FDA resources from the resource-intensive GRAS affirmation process to questions that may have a greater impact on public health protection. Although the proposed notification procedure has not yet been finalised, FDA has already received numerous notices.

Export Administration Applications[2]

Under a procedure used by the Bureau of Export Administration for applications concerning foreign software, unless the Bureau requests additional information, a reporting firm is entitled to rely upon its calculations thirty days after submission of its report and for so long as the Bureau does not ask for additional information or object to the reasonableness of the assumptions or calculations in the report. Under this report-and-wait procedure, silence is consent. As of the writing of the article describing this process in early November of 1998, the Bureau has "considered more than a dozen reports thus far [and] all actions on these reports ha[ve] resulted in a conclusion that the foreign software [are] not subject to the [regulations]".

1. See *http://vm.cfsan.fda.gov/~rdb/opa-gras.html*
2. See Larry E. Christensen (2000), Technology and Software Controls Under the Export Administration Regulations, Practising Law Institute, Commercial Law and Practice Course Handbook Series 433, 457, PLI Order No. A0-002Q (Dec. 1999). The Export Administration regulations were reformed as part an interim-final rule, 61 Fed. Reg. 12 714 (Mar. 25, 1996), codified at 15 C.F.R. pt. 734 supp. 2.

If such rules are finalised, the Act provides that the agency must prepare a final regulatory flexibility analysis that, among other things, describes:

The steps the agency has taken to minimise the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[58]

As the above requirements indicate, there seems to be a consensus that the traditional command-and-control style of regulation should be replaced when possible by market-oriented approaches.[59] Under the traditional approach, the agency dictates in detail what individual firms must do to meet an established standard or goal and then enforces

compliance with those details. For example, environmental regulations may require the use of specific pollution control devices, or inspection systems may require performance of specific procedures.[60] Certainly, a command-and-control approach is appropriate – and indeed necessary – in some cases. For example, where risks that would result from non-compliance are high, as in the regulation of nuclear power, command-and-control may be the only feasible regulatory approach.[61]

But, in other situations other regulatory approaches that make use of market forces and allow greater flexibility for the private sector are preferable. Several such approaches that also serve to reduce administrative burdens are performance standards, marketable permits and environmental contracting.[62]

These different approaches to regulation clearly can save regulated sectors of the economy millions of dollars without undermining regulatory objectives – if done with proper vigilance.

Methodologies used to estimate burdens (e.g., impact statements)

The United States has been in the forefront of developing mechanisms for measuring costs and benefits of regulations and for also using the impact-statement approach to measuring other effects.[63] To some extent, the development of the various regulatory impact assessment requirements has led to a greater attention being paid to administrative burdens as well. For example, the OIRA is the lead office in reviewing both the regulatory assessments discussed in this subsection and the paperwork/reporting reduction requirements discussed in the next subsection. However, there has been an accretion of different impact assessments required during the rulemaking process under various laws and Executive Orders, and critics have suggested that they be rationalised and combined into a refined and retailored overall assessment that should accompany significant proposed and final rules.[64]

OMB annual report to congress

On a macro level, the Office of Management and Budget has begun to report annually to Congress on the costs and benefits of federal regulations.[65] As mandated by Congress,[66] OMB's report covers:

1. An estimate of the total annual costs and benefits (including quantifiable and non-quantifiable effects) of federal rules and paperwork, to the extent feasible A) in the aggregate; B) by agency and agency programme; and C) by major rule.
2. An analysis of impacts of federal regulation on state, local, and tribal government, small business, wages, and economic growth.
3. Recommendations for reform.

OMB also prepares a draft version of the report for peer review and public comment in the *Federal Register* and on the OMB Web site. The opening report to the final report discusses the comments and OMB's reactions to the comments. While it is almost moot to provide OMB's bottom line without also doing justice to OMB's explanations and qualifications, for the record, for 1999 it estimated the annual aggregate costs of social regulation to range between USD 84 billion and USD 140 billion and the benefits between USD 56 billion and USD 1.5 trillion.[67]

Box 8.4. **Alternatives to command-and-control regulation**

"Performance" standards

Performance standards are generally preferable to "prescriptive" or "design" standards because they give the regulated industry the flexibility to determine the best technology to meet established standards. For example, a design standard for ladders might specify the materials and exact dimensions to be used, whereas a performance standard might simply require that the ladder support a minimum weight and provide a minimum degree of stability. The Occupational Safety and Health Administration (OSHA) has sometimes been criticised for prescriptive design standards for plants and equipment relating to worker safety. In 1990, OSHA initiated rulemaking on ladders and scaffolding to convert design standards to performance standards wherever possible. This proposal followed complaints by industry that current standards were burdensome because they provided insufficient flexibility and also inhibited technological developments. Another well-known example of performance standards is the EPA's "bubble" concept for limiting pollution emissions, which allows the regulation of overall emissions from a single facility or a group of facilities, rather than from each source in the facility. This allows companies greater flexibility in choosing which emissions source(s) to reduce in order to meet the overall limit for emissions from the bubble. This sort of approach would reduce administrative burdens of having to report on many different pollution sources within a given plant. In many such cases it will result in a reduction in measurement responsibilities and reporting points or intervals. In 1993, EPA estimated that facilities under the 80 or so bubbles established prior to 1986 saved USD 435 million in meeting emissions standards.

"Marketable permits"

Marketable permits allow the market, rather than the government, to distribute scarce resources. They also enable businesses to avoid having to engage in costly defences to enforcement proceedings, or intra-business litigation. The 1990 Clean Air Act Amendments established an allowance trading system for sulphur dioxide emissions from utilities in an effort to reduce acid rain. Utilities may trade initially allocated allowances, each representing one ton of emissions. This allows more of the reduction in emissions to be done by those plants that can reduce emissions at lower costs. In 1993, EPA estimated that this system would save from USD 700 million to USD 1 billion per year. In 1986, DOT issued a final rule allowing airlines to buy and sell airport takeoff and landing rights (slots) at four major airports. Previously, these slots had been allocated by a committee, which frequently deadlocked. Under the new system, however, the value of the slots is determined by the market, which should allocate them most efficiently. Similarly, the National Marine Fisheries Service in the Department of Commerce has implemented a transferable quota system for allocating fishery harvesting privileges. These types of alternative approaches to direct regulation have obvious benefits in terms of burden reduction. Regulated firms are able to organise their production methods to achieve maximum efficiencies while still meeting the ultimate regulatory goals. The bubble approach, for example, reduces the number of permits required, the amount of record keeping, and the time devoted to dealing with inspectors. Waivers or self-regulatory leeway granted to companies with exemplary records can also reduce the needs for permits and the resulting time and paperwork costs.

Environmental "contracting"

The Environmental Protection Agency has embarked on an effort to obtain compliance with environmental laws by offering agreements with companies who propose innovative

Box 8.4. **Alternatives to command-and-control regulation** *(cont.)*

approaches to reducing pollution. The programme involves the approach of "environmental contracting" under which regulated entities are offered the opportunity to propose ways of achieving superior environmental performance at their facilities.*

* See generally, Dennis D. Hirsch, Project XL and the Special Case: The EPA's Untold Success Story, 26 Colum. J. Envtl. L. 219 (2001). See also Sidney A. Shapiro and Randy Rabinowitz, Voluntary Regulatory Compliance in Theory and Practice: The Case of OSHA, 52 Admin. L. Rev. 147-49 (2000), and Jody Freeman, Collaborative Governance in the Administrative State, 45 UCLA L. Rev. 1, 55-66 (1997).

To come up with even these very imprecise ranges, OMB has gathered information provided by the agencies and gleaned from economic impact analyses prepared by agencies for major rules. OMB's *2000 Report to Congress* admits the difficulties in doing this:

> It is difficult, if not impossible, to estimate the actual total costs and benefits of all existing Federal regulations with accuracy. We lack good information about the complex interactions between the different regulations and the economy. A variety of estimation problems for individual and aggregate estimates distort the results in different ways.[68]

The report breaks down the many different types of federal regulations into three categories: social (including health, safety, and environmental rules), economic (pricing and entry/exit rules), and process (administrative or paperwork requirements). The Report goes on to address the following methodological questions, many of which were raised in the comments to the draft report:

- What baseline should we use?
- What costs should we measure?
- What is the effect of technological change?
- How do we determine causality?
- How do we assess older regulations?
- Is there an "apples and oranges" problem?
- Is it enough to know the costs and benefits?

In its discussion of these issues, the Report relies on a 1996 document OMB published that describes "*Best Practices*" for preparing the economic analysis called for by Executive Order 12 866 for significant regulatory actions.[69] This document represents the culmination of a two-year effort by an interagency group to review the state of the art for preparing economic analyses required by the Executive Order.

These same issues must also be addressed by individual agencies in their regulatory analyses for particular rules. A major regulation like the FDA's 1996 regulation (later overturned by the Supreme Court)[70] limiting cigarette advertising and sales of cigarettes to minors was accompanied by a regulatory impact analysis that ran for 42 pages in the *Federal Register*.[71]

Regulatory analysis of individual rules – review by OMB

President Clinton's Executive Order 12 866 (continued by President Bush) is the latest[72] in a long line of presidential orders requiring executive branch agencies to clear all significant regulatory actions with OMB's Office of Information and Regulatory Affairs (OIRA).

In addition to requiring cost-benefit analyses for certain rules (described below), of particular significance for this report is the Order's mandate in its "Statement of Principles" for agencies to tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.[73]

The Executive Order also 1) requires agencies to participate in the *Unified Agenda of Federal Regulatory and Deregulatory Actions* by publishing information on all regulations under development or review, 2) requires that agencies develop an annual "Regulatory Plan" to be forwarded to OIRA by June of each year for review by the Vice President and for publication in the *Agenda*, 3) requires that the Plan include the agency's plans to review *existing* regulations, and 4) created a Regulatory Working Group, chaired by the OIRA Administrator, to co-ordinate regulatory approaches and develop innovations.

Finally, Executive Order 12 866 also provides for regulatory analysis and review. If a proposed or final regulation is determined by the agency or OIRA Administrator to be "economically significant" (*i.e.*, having an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities) the agency must undertake a cost-benefit analysis.[74]

The assessment also requires a description of alternative approaches that could substantially achieve the same regulatory goal at lower cost and a brief explanation of the legal reasons why such alternatives could not be adopted.

Other analysis requirements

The National Environmental Policy Act. The National Environmental Policy Act of 1970 (NEPA)[75] originated the "impact statement" as a technique for directing agencies to give special attention to certain values during the decision-making process. Under NEPA, the potential impact on the environment of federal agency action, including regulations, must be considered. NEPA directs all agencies of the Federal Government to include in proposals for "major Federal actions significantly affecting the quality of the human environment" a detailed environmental impact statement (EIS) addressing certain listed subjects and applying substantive criteria set forth in the Act. The Act requires that rulemaking agencies consult with, and solicit comments from, agencies with jurisdiction or expertise on the particular environmental impacts at issue.

The Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA)[76] adopts the NEPA impact statement approach by directing agencies to consider the potential impact of regulations on small business and other small entities. Originally enacted in 1980, it mandates consideration of regulatory alternatives which accomplish the stated objectives of the proposed rule and which minimise any significant economic impact on such entities. In follow-up legislation, in 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA),[77] which strengthened the RFA, required agencies to produce new regulatory compliance guides and guidance materials, and added additional consultation requirements for "covered agencies" (currently only EPA and OSHA).

The RFA charges the Chief Counsel for Advocacy of the Small Business Administration with overseeing agency compliance with the flexibility analysis requirements.

It requires that unless the agency head certifies to the Chief Counsel for Advocacy and publishes such certification in the *Federal Register* that the rule will not have a significant economic impact on a substantial number of small entities, an agency must prepare an "initial regulatory flexibility analysis" (IRFA). The IRFA, or a summary thereof, must be published in the *Federal Register* along with the proposed rule. The certification and supporting statement of reasons must be sent to the Chief Counsel for Advocacy of the Small Business Administration. Under the 1996 (SBREFA) amendments to the RFA, this certification decision is now subject to judicial review. If a regulatory flexibility analysis is required, the final analysis or summary must accompany the final rule in the *Federal Register*.

The RFA also requires agencies to publish and implement a plan for reviewing within ten years existing (and subsequently issued) rules that have a significant economic impact on a substantial number of small entities.

Finally, the Act requires each agency to prepare a regulatory flexibility agenda of rules under development that may have a significant economic impact on a substantial number of small entities. The agenda must be published in the *Federal Register* semi-annually, in October and April, and is to be transmitted to the Office of Advocacy for comment and brought to the attention of small entities or their representatives. In practice, this agenda is incorporated into the *Unified Agenda of Federal Regulatory and Deregulatory Actions*.

The Unfunded Mandates Reform Act. This legislation, enacted in 1995,[78] requires Congress and executive agencies to give special consideration to proposed legislation and regulations imposing mandates on state, local, and tribal entities. It also contains a provision requiring agencies to prepare a written statement, in the nature of a regulatory analysis, for *any* proposed rulemaking that may result in an expenditure by state, local, or tribal governments in the aggregate, or by the private sector, in excess of USD 100 million in any one year. The Act's impact is lessened, however, because its provisions for judicial review of agency compliance with the Act are somewhat limited.

Other Executive Orders. Other Executive Orders require that agencies conduct various other "impact statements" before issuing regulations, such as assessments of the impact on Federal-state relations, the environment, and on specific vulnerable populations. There are no specific time frames associated with OMB review under these Executive Orders.[79]

State regulatory flexibility analyses (small business impact statements)

Many States are adopting "regulatory flexibility" laws for small businesses. These state laws are similar to the federal RFA and require agencies to determine the impact of state proposed rules on small business or periodically consider the impact of existing rules. The Office of Advocacy has compiled a partial list of state regulatory flexibility laws. While there are many regulatory review processes used by state governments, numerous state laws specifically require consideration of the impact of regulations on small businesses.[80]

These impact statement requirements are focused on economic and other impacts of regulations. They have the benefit of forcing a concentration on not only various types of burdens and benefits, but also the net effectiveness of regulation. On the other hand, they can be costly to prepare.

Paperwork/reporting reduction

The Paperwork Reduction Act (PRA)[81] requires federal agencies to request OMB approval before collecting information from the public. The PRA, through a combination of OMB

review, self-enforcing sanctions, and government-wide reduction targets, seeks to minimise the amount of paperwork the public is required to complete for federal agencies. At the same time, however, the PRA also recognises that good information is essential to agencies' ability to successfully serve the public. To that end, the PRA gives OMB the responsibility to evaluate the agency's information collection request by weighing the practical utility of the information to the agency with the burden it imposes on the public.

Agencies must publish their proposed information collection in the *Federal Register* for a 60-day public comment period. After reviewing the public comment and revising the proposed collection as appropriate, agencies submit the information collection request to OMB for review, discussion, and approval (or disapproval). In seeking OMB's approval, the agency needs to demonstrate that the collection of information is the most efficient way of obtaining information necessary for the proper performance of the agency's functions, that the collection is not duplicative of others the agency already maintains, and that the agency will make practical use of the information collected. The agency also must certify that the proposed information collection "reduces to the extent practicable and appropriate the burden" on respondents,[82] including, for example, small business, local government, and other small entities, the use of the techniques outlined in the Regulatory Flexibility Act.

The public has further opportunity to comment on a proposed collection once it has been submitted to OMB, at which point the agency publishes a notice in the *Federal Register* advising the public on how to comment to OMB about the information collection request. The public – during OMB's review and at any other time – is to have opportunity to make its views known concerning any federal data collection, both as to its perceived practical utility and the reporting burdens involved.

OMB can approve a data collection for no more than three years, at which point the agency must re-submit the collection for re-approval. Many collections are periodic and may be approved for only a single usage before revision and re-approval. When OMB grants approval for a collection, it issues a "control number", which must be displayed on the collection itself. If a current approval number is not displayed, a member of the public cannot be penalised for refusing to keep or submit the required information. Agencies are not supposed to expend resources carrying out unproved collections of information. OMB follows up any violations with the responsible agencies, and notifies the Congress annually of such violations. There appears, however, to be a substantial number of violations. The US General Accounting Office in 1999 found 800 cases where agencies had collected information in violation of the PRA.[83]

The Paperwork Reduction Act of 1995 requires the head of each agency, supported by his or her Chief Information Officer, to be responsible for the agency's information collection activities. This includes reducing the amount of paperwork required of the public.

OMB prepares an annual report that details the government-wide "Federal information collection burden", calculated in burden hours. The Information Collection Budget (ICB) is the vehicle through which OMB, in consultation with each agency, sets annual agency goals to reduce information collection burdens. The ICB is built around fiscal budgeting concepts. Each agency calculates its total information collection "budget" by totalling the time required to complete all its information requests. For fiscal year 2001, for example, OMB reported that the total burden hours for the government were 7.4 billion hours, 83.6% of which were attributed to the Department of the Treasury – which contains the Internal Revenue Service and the Customs Service.[84] The figures for 1987-2001 are presented in the appendix

Box 8.5. **Examples of individual burden reduction initiatives***

Streamlining regulation

Much of this streamlining took place in the arena of government contracting. An example was a rulemaking initiated in response to requests from industry to eliminate representations required by the Federal Acquisition Regulation (FAR) that place an assertedly unnecessary burden on offerors or contractors. The final rules deleted certain certifications required by the FAR that were deemed unnecessary or overly burdensome to offerors and contractors. As part of the final rulemaking, the FAR Council reported a significant savings in overall paperwork burden of 119 150 hours.

Eliminating redundancy

Raising reporting thresholds to reduce the number of reports that need to be submitted, cutting the frequency of periodic reporting requirements, consolidating information collections, or working across agencies to share information. For example, the Federal Communications Commission in 1999 consolidated three forms required of cable television operators into one, saving 18 000 burden hours.

Simplifying forms

Simplifying or streamlining forms to make them easier to read and fill out, and making programmes easier to apply for. An example was the Small Business Administration's form for "disaster relief." The earlier form required applicants to list each property item that was destroyed along with repair/replacement estimates. The new form provides a checklist for applicants to mark. The results in an estimated saving of 15 minutes per form or a total burden reduction of 26 525 hours.

* See Information Collection Budget of the United States Government Fiscal Year 2000, *supra* note 50 at 4-6, 15-27.

to this report. This budgeting exercise is used to measure progress toward reduction goals. Since 1980, the reduction targets have varied. In 1996 the PRA set an annual government-wide goal for the reduction of the total information collection burden of 10% during each of the fiscal years 1996 and 1997 and 5% during each of the fiscal years 1998 through 2001. However, during these years the actual burdens in terms of total hours only fell in 1998 (by 0.37%) whereas it increased in other years with between 2.5 to 4%, a total increase of approximately 12% from 6.8 billion man-hours in 1996 to 7.7 billion man-hours in 2001.

In the US, as for many other countries, the ability of agencies to reduce burden is sometimes constrained because their discretion is limited. For example, requirements in regulations may be changed only through existing administrative processes that may take years. Furthermore, reporting and record keeping requirements may be mandated by existing statute or may be necessary to implement recently enacted statutes. There are also factors that tend to increase paperwork burden that are outside the control of agencies. These include economic growth, natural disasters, and demographic trends. These factors can change the number of participants in a program, which – while not creating new burdens – nonetheless increases the reporting burden of the entire programme.

Permitting simplification

Obtaining government permits can be an extremely demanding and time-consuming activity – especially when multiple permits are required for a single activity. Fortunately,

advances in IT have facilitated one-stop permitting approaches to simplify the process. As the examples below show, licensing and permit programmes are attractive candidates for the sort of one-stop shopping that is made possible by advances in IT.

Reliance on industry standards and/or self-regulatory organisations

Agencies can conserve agency resources and ease the burdens on regulated entities by adopting voluntary national consensus standards rather than developing their own criteria in-house.[85] The National Technology Transfer and Advancement Act of 1995 (TTA)[86] obligates federal agencies to utilise consensus standards developed by voluntary private sector bodies (with agency participation) unless *i*) such standards are inconsistent with applicable law, or *ii*) the agency transmits to OMB a written justification for the agency's failure to adopt the voluntary standard.[87] In addition, OMB Circular A-119, through which the TTA is implemented, specifically directs agencies to refrain from developing their own government-unique standard in lieu of a voluntary consensus standard, even if the voluntary standard is not complete, provided that the standard is near completion and is otherwise suitable:

> If a voluntary consensus standards body is in the process of developing or adopting a voluntary consensus standard that would likely be lawful and practical for an agency to use, and would likely be developed or adopted on a timely basis, an agency should not be developing its own government-unique standard and should be participating in the activities of the voluntary consensus standards body.[88]

Agencies are also required to give consideration to international standards under international trade legislation.[89] Use of voluntary consensus standards or self-regulatory agencies has benefits for agencies and regulated parties alike. Agencies can deploy most of their regulatory resources elsewhere, and regulated entities can structure their reporting and other activities more efficiently and avoid the cost of duplicative but differing regulatory standards.

Of course reliance on SROs does not mean complete withdrawal from oversight by the agency. In fact, standards for use of SROs are necessary for their success.[90] One recent example of continuing agency vigilance is a recent CFTC regulation prescribing ethical obligation on persons associated with SROs.[91]

"Plain language" drafting

Plain language concerns in the law and in regulation are not new,[92] but the Clinton Administration made "plain language" a priority. In the President's Memorandum of June 1, 1998, he ordered executive departments and agencies to use plain language in all new documents including proposed and final rulemaking documents.[93]

The Office of the Federal Register has followed this memorandum with instructions on how to make regulations readable. The advice covers format, headings, paragraphing, use of tables and illustrations, and use of active verbs.[94]

The Administration's National Partnership for Reinventing Government created a Web site called "Plain Language Action Network" (PLAN) which is devoted to helping the implementation of this initiative.[95] As part of this effort, awards for plain language accomplishments by federal employees were presented by the Vice President.[96]

The State of Michigan has a formal policy of using plain English in its legislative drafting and rulemaking. The Legal Division of the Legislative Service Bureau is a non-partisan staff

Box 8.6 **Examples of one-stop permitting initiatives**

National Marine Fisheries Service Permit Shop[1]

The National Marine Fisheries Service Permit Shop was developed to replace a previous permitting system that was experiencing significant difficulties issuing Atlantic tuna fishing permits in a timely and accurate manner. The new system enables organisations to cost-effectively engage and transact with customers and partners online for both business-to-consumer and business-to-business applications.

Export licensing – Simplified Network Application Process (SNAP)[2]

The Simplified Network Application Process (SNAP) is an automated system for the submission of licence applications to the Bureau of Export Administration (within the Department of Commerce) via the Internet. SNAP is a free service that allows exporters to submit export, re-export, high performance computer notices, and commodity classifications to the Bureau via the Internet in a secure environment. In launching the programme, the Secretary of Commerce said, "I am setting the goal that by the year 2002, the Commerce Department will be truly an E-Commerce Department".[3]

New Jersey Online Air General Permits[4]

This New Jersey Web site integrates online permit registration and payment with the department's environmental management system, providing an easy-to-use permit process accessible to anyone with a Java-compatible browser and a valid credit card. That process is made possible by a change in the department's procedures: Standardised permits have been pre-approved by the department and the New Jersey public. With pre-approved permits, qualifying facilities can opt out of the lengthy custom permit process and simply register and pay online. The new process enables the department to shift resources from paperwork to compliance assistance and monitoring. Officials anticipate that the site will generate up to USD 600 000 in permit fees per year.

New York State Online Permit Database[5]

At this New York Web site, users have access to more than a thousand permit types and can develop their own customised permit packages. The site, unveiled in December 1999, provides specific information on 167 business types, including such diverse enterprises as accounting firms, bagel shops, bed-and-breakfasts, residential general contractors, lawn and garden services, and video stores.

Electronic Renewal of Driver's Licences[6]

Two states, Minnesota and Tennessee, recently initiated e-government services targeted to motorists. The Minnesota Department of Public Safety launched a Web site[7] where drivers can go to renew registrations for passenger vehicles. A typical transaction takes two minutes, according to a department press release. Customers may pay by credit card or debit their checking or savings account. Credit card payments are assessed a 1.75% processing fee. The transaction goes directly to the Division of Driver and Vehicle Services via an encrypted programme, which prevents disclosure of financial data to third parties. The division mails renewal stickers within 10 days of the Internet registration. The first day the service was in place, 490 people renewed their vehicle tags online, as noted by the site's Webmaster. In Tennessee, residents can renew their driver's licences by going to the state portal.[8] Unlike in Minnesota, fees for credit card transactions will not be passed on to applicants.

1. See *www.nmfspermits.com*
2. See *www.bxa.doc.gov/SNAP/default.htm*
3. Keynote Address by US Secretary of Commerce William M. Daley at the E-GOV 99 Conference, (July 1, 1999), available at *http://osecnt13.osec.doc.gov/public.nsf/docs/990701-daley-keynote-addr-egov-conf*

Box 8.6 **Examples of one-stop permitting initiatives** *(cont.)*

4. See *www.state.nj.us/dep/dwq/gps.htm*
5. See *www.gorr.state.ny.us/gorr/pas/pas2.nsf/LuFRM/Home?OpenDocument*
6. Eric Kulisch, Minnesota, Tennessee Join E-gov Ranks, FCW.COM, (Oct. 25, 2000), available at *www.civic.com/print.asp*
7. See *www.dps.state.mn.us/autolicence*
8. See *www.TennesseeAnytime.org*.

of 40 (including 22 attorneys) in drafting new laws and amending old ones. It also, pursuant to the state APA, reviews administrative rules and regulations proposed by executive branch agencies for format and style. Substantive review is by the Joint Committee on Administrative Rules in the legislature and the Office of Regulatory Reform in the executive branch.[97]

With respect to government forms and other information collection requests used by government, the Paperwork Reduction Act requires that agencies certify to OMB that such requests are "written suing plain, coherent, and unambiguous terminology and [are] understandable to those who are to respond".[98]

Plain English is no substitute for intelligent regulation, of course, but eliminating legalisms and "gobbledegook" reduces compliance costs and makes it easier for individuals and small businesses to deal with their government without the need to hire a lawyer.

Assistance to small business in development and implementing regulations

As mentioned in the introduction to this report, American politicians of all types pay special homage to the needs of small business. The Small Business Administration and individual agencies devote a lot of attention to the needs of small business in regulation-development and in enforcement and compliance. Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), federal agencies are required to develop comprehensive guidelines and a well defined process to respond to small business inquiries on actions that businesses are required to take to comply with rules established by the agencies.[99] These guidelines must be written in plain English. In addition, the Small Business Administration (SBA) has engaged in numerous other activities intended to simplify small business compliance with regulatory requirements, see Box 8.8.

Other agencies have also developed special assistance programmes directed at small businesses:

EPA assistance to small businesses

In addition to its other activities (discussed in the Section on Programme Ombudsmen below) the EPA Small Business Ombudsman has produced a "resource guide" that details all of the agency's small-business-specific activities.[100] The guide lists numerous EPA-supported assistance, training, mentoring, compliance support, and funding programmes tailored for small businesses as well as hotlines, clearinghouses, and information centres.

Expert advisors[101]

These interactive electronic tools give tailored, understandable advice about how to be in compliance with federal requirements. Several agencies are developing expert systems and intelligent technology to provide businesses compliance assistance and to reduce burden. DOL has developed 18 "E-law Advisors", Web-based expert systems that the public

Box 8.7 **Examples of industry standards and/or self-regulatory organisations**

Department of Energy Efficiency Standards

The Energy Policy and Conservation Act, as amended, establishes energy efficiency standards for certain commercial heating, air conditioning and water heating products. For some of these products, the Department of Energy (DOE) has recently adopted as national standards the new American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and Illuminating Engineering Society of North America (IESNA) Standard 90.1, as revised in October 1999. DOE's final rule also identifies other products covered by the recently revised ASHRAE/IESNA Standard 90.1-1999 that DOE will analyse further to determine whether more stringent standards are warranted.[1]

Federal Communications Commission reliance on private standards for telephone equipment

The FCC recently decided to transfer the responsibility for establishing technical criteria for customer premises equipment that may be sold for connection to the public switched telephone network, and for the approval of such equipment to demonstrate compliance with the relevant technical criteria.[2] In its rule, the FCC said:

Streamlining these procedures will reduce unnecessary costs and delays associated with bringing terminal equipment to the consumer without measurably increasing the possibility of harm to the public switched telephone network. Privatising the terminal equipment approval process will significantly reduce the Commission's regulatory burden and allow it to focus on enforcement of the industry-established technical criteria for terminal equipment. The Commission will maintain its role as the forum of last resort for disputes regarding terminal equipment standards and approval procedures.[3]

The FCC is transferring this responsibility to the Administrative Council for Terminal Attachments (Administrative Council) which is supposed to act as the clearinghouse, publishing technical criteria for terminal equipment developed by standards development organisations accredited by the American National Standards Institute (ANSI). This approach is intended to ensure that all manufacturers know which terminal equipment technologies can be connected to the public switched telephone network and that all providers of telecommunications can deploy services and design their networks to permit connection consistent with these technical criteria.

The Administrative Council is charged with adopting technical criteria for terminal equipment through the act of publishing criteria developed by ANSI-accredited standards development organisations. The Administrative Council is also responsible for establishing and maintaining a database of equipment approved as compliant with the technical criteria.

Self-regulatory organisations

In addition, agencies are regularly now relying on self-regulatory organisations (SROs) to serve as intermediaries between the agencies and the regulated industries.[4] In such an action, the agency delegates its authority to issue and enforce rules to a non-governmental organisation. This approach is pervasive in the regulation of professions and occupations.[5] Common examples are the Securities and Exchange Commission's (SEC) reliance on the stock exchanges and the National Association of Securities Dealers to regulate the activities of broker dealers and investment advisors.[6] Similarly, the Commodity Futures Trading Commission (CFTC) relies on the commodity exchanges and the National Futures Association.[7] Numerous other Federal Government uses of audited self-regulation occur in accreditation of participants in government benefit programmes such as Medicare and

Box 8.7 **Examples of industry standards and/or self-regulatory organisations** *(cont.)*

Medicaid, of clinical laboratories, and in financing of higher education; nuclear power production, and agricultural marketing.[8] Another more unusual example is the reliance on Indian tribe self-regulation of "Indian gaming".[9]

1. Department of Energy. Office of Energy Efficiency and Renewable Energy, Energy Efficiency Programme for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air Conditioning and Water Heating Equipment, 66 Fed. Reg. 3336 (Jan. 12, 2001). Note that this air-conditioning standard is under review by the Bush Administration.
2. Federal Communications Commission (2001), 2000 Biennial Regulatory Review of Adopting Technical Criteria and Approving Terminal Equipment, 66 Fed. Reg. 7579, Jan. 24.
3. *Id*.
4. See ACUS Recommendation 94-1, "The Use of Audited Self-Regulation as a Regulatory Technique", 59 Fed. Reg. 44 701 (Aug. 30, 1994), [also available at *www.law.fsu.edu/library/admin/acus/305941.html*.] and the background report by Douglas Michael, Federal Agency Use of Audited Self-Regulation as a Regulatory Technique, 47 Admin. L. Rev. 171 (1995).
5. For example the Federal Government, with a few exceptions, does not regulate the practice of attorneys before federal agencies; rather the Agency Practice Act provides that an attorney in good standing with any state bar association may so practice. 5 USC. § 500.
6. See Michael, supra note 125 at 203-07, 211-114. See also the NASD's home page at *www.nasd.com*. Accountants are also subject to self-regulation under SEC supervision, *id*. at 214-17.
7. *Id*. at 207-211. See also the NFA's home page: *www.nfa.futures.org*
8. These programmes are discussed in Michael, supra note 125, at pp. 217-240.
9. See National Indian Gaming Commission (1998), Issuance of Certificates of Self Regulation to Tribes for Class II Gaming, 63 Fed. Reg. 41 960, Aug. 6.

can query through menus and routine questions to better understand and comply with DOL regulations. OSHA is working on the next generation of these systems which would combine interactive questionnaires and electronic forms with legal analysis. OSHA has made similar efforts in developing its "Expert Advisors", interactive Web-based systems designed to replicate the thinking process of OSHA's policy and enforcement staff on a particular topic area of interest to the public. OSHA has made ten Expert Advisors available online on such topics as asbestos, confined spaces, and the cost-benefit of safety, and plans to add three more, for hazard communications, nursing homes, and workers rights, in FY 2000.

Partnerships with responsible companies[102]

An example of a public-private partnership designed to benefit responsible companies is the Consumer Product Safety Commission (CPSC) Fast-Track Product Recall Program. CPSC conducts an average of 350 product recalls each year. Under the Consumer Product Safety Act, firms are required to report potentially hazardous products to the Commission. Traditionally when a firm reports, the CPSC staff conducts any necessary investigation and makes a preliminarily determination of whether the reported product is defective and presents a substantial hazard. Some firms that were inclined to recall the product themselves found that the CPSC's formal evaluation process held up the recall. In response to those concerns, in March 1997, CPSC adopted the Fast-Track Product Recall Programme as a voluntary alternative to the traditional procedure. Under the Fast-Track Program, CPSC staff does not make a preliminary hazard determination if a firm provides the necessary full report information and initiates an acceptable consumer-level recall within 20 working days of its report. The Fast-Track Programme eliminates CPSC's need to determine whether there is a defect. Instead, if it approves the corrective action, the recall can begin. Fast-Track has made it easier for firms to recall potentially dangerous products. The programme

Box 8.8 **SBA activities to simplify small business compliance with regulatory requirements**

"RegFair"

The SBA's Regulatory Fairness Programme (RegFair) presented an Innovation Award to two Denver-based organisations: The Home Builders Association of Metropolitan Denver and the Region VIII office of the US Occupational Safety and Health Administration (OSHA). These groups received the RegFair Innovation Award for their joint pilot programme, called Homesafe, which helps small home building companies in Denver more easily comply with federal regulations, while minimising their chances of being fined or penalised. A major component of the Homesafe pilot is a pocket guide that simplifies thousands of pages of OSHA regulations in 70 pages of clear, understandable pictures. In return for the builders' good faith efforts to follow the principles described in the pocket guide, OSHA promised not to cite participating home builders for non-serious violations, provided the violation is corrected within a reasonable time. The co-operative pilot programme is expected to expand to the rest of the country.[1]

RegFair Hotline

Calls to the RegFair Hotline[2] have shown significant increases. From an average of only 54 a month in 1997, the average monthly number of calls to the RegFair Hotline over the three years of programme operation has grown to 102 per month. Over 3 680 calls have been received by the Hotline in total.

RegFair Internet Web site[3]

The RegFair Internet Web site has become very popular. With almost 300 000 "hits" or visitors to date, the RegFair Web site has received a steadily increasing amount of visitors since it was constructed in March 1997. Web site hits for the 10 months of 1997 that the site was in operation totalled just over 47 000. In 1998, that number almost doubled, increasing to just under 120 000. Totals for 1999 show another increase to over 163 000.[4]

US Business Advisor[5]

This site provides the public with one-stop access to Federal Government information, services, and transactions. At this site, businesses can learn what steps to take to be in compliance with government requirements, what tools government provides to help them, and what opportunities the government is making available to them.

Compliance Assistance

SBREFA requires that agencies establish a policy for the reduction or waiver of civil penalties for violation of a statutory or regulatory requirement. Agencies may consider ability to pay in determining penalty assessments. Policies or programmes should contain the following conditions: 1) requiring the correction of a violation within a reasonable time; 2) limiting the applicability of violations discovered through small business participation in a compliance assistance or audit programme; and 3) requiring a good faith effort to comply with the law.[6]

1. United States Small Business Administration, The National Ombudsman's 2000 Report to Congress: Building Small Business – Agency Partnerships, available at *www.sba.gov/regfair/report00.pdf*
2. (888)-REG-FAIR.
3. See *www.sba.gov/regfair*
4. *Id*.
5. See *www.business.gov*
6. SBREFA, *supra* note 15, §223 (codified at 5 US.C. § 601 note). In addition, see Regulatory Reform – Waiver of Penalties and Reduction of Reports, Memorandum of President of the United States (Apr. 21, 1995), 60 Fed. Reg. 20 621.

focuses on results, not process. By streamlining CPSC review, Fast-Track makes compliance with the law less burdensome and less costly, which is a particular benefit for small businesses.[103] It has been reported that under a traditional recall process, about 30% of recalled products might be returned. Under the Fast Track process, the percentage of products returned has climbed to nearly 60%.

Maryland's Office of Business Advocacy[104]

The Office of Business Advocacy was created in August 1995 as part of the Maryland Department of Business and Economic Development. Its mission is to assist Maryland businesses in navigating through the processes and regulations of local, state, and federal government. Small businesses in Maryland, as well as in other states, must obtain a variety of permits and licences from the federal, state, and local levels in order to operate. In fact, there are over 400 different permits issued by the State of Maryland, in addition to permits issued by the federal and local governments. The Office of Business Advocacy attempts to provide Maryland businesses with a liaison to all federal, state, and local government authorities to facilitate the process of opening and operating a business in Maryland.

An Office ombudsman trained in regulatory issues assists businesses in securing the necessary licences and permits needed from any regulatory agency. The ombudsman handling the matter will be the point person charged with ensuring that the business understands all of the regulatory requirements, and that the government agencies are granting the permits in a timely manner. This "customer service" approach attempts to make it easier to start, operate, and expand a business in Maryland, while ensuring that all regulatory requirements are met.

The Office of Business Advocacy measures success by the number of businesses it assists in dealing with the bureaucracy. By mid-2001, more than 500 businesses in Maryland have benefited from the services of the Office of Business Advocacy. One example of how the Office of Business Advocacy helps businesses is that of a financial services business that requested assistance. The company was constructing several new, two-story parking garages. The Americans with Disabilities Act (ADA) required a certain number of handicapped parking spaces on each floor of the garages and an elevator to provide handicapped access to each floor of the respective garages. The Office of Business Advocacy was able to assist the company in obtaining a variance from the ADA regulations. Rather than having handicapped spaces scattered throughout the floors, the company would simply put all such spaces on the ground level of the garages. This approach allowed the company to avoid the cost of installing and operating elevators in these garages, yet maintaining compliance with ADA regulations. This simple solution resulted in a savings to the company of nearly USD 500 000. In another matter, a small ice cream store chain, which made its own ice cream, was considered a manufacturer by every taxing authority except the one in which it was a benefit to be classified as such. At the request of the business, the Office of Business Advocacy became involved in an attempt to rectify the matter. After discussions with the appropriate taxing bodies, the law was changed to classify the business as a manufacturer across the board. The cost to the company of the incorrect classification was over USD 35 000.

"Tiering" of regulations[105]

"Tiering" is designing regulations to account for relevant differences among those being regulated. Tiering may be desirable when a uniform rule would otherwise impose

disproportionate impacts on regulated businesses. By tiering, an agency can alleviate disproportionate burdens, ensure that the regulatory solution fits the problem, and make more efficient use of its limited enforcement resources. This concept of designing flexible alternatives to uniform rules is the heart of the Regulatory Flexibility Act. In that Act, Congress instructed federal agencies to explore alternatives, such as tiering, to minimise the disproportionate impact of regulations on small businesses, associations and governmental units.

In many cases tiering is an effective way of increasing the cost-effectiveness of a regulation. EPA has tiered up to 50 different regulations based either on firm size or the amount of pollutant released. An example is EPA's approach to risk management for accidental release prevention requirements under the Clean Air Act.[106] EPA created three different levels of requirements for sources that pose different risks: a low hazard tier for sources whose worst case release would not affect any public or environmental receptors of concern; a medium hazard tier for sources that were not eligible or covered by the low or high hazard tiers; and a high hazard tier based on either industry sector accident history and number of employees or simply based on the number of employees.

Another example was reported by the Drug Enforcement Administration (DEA), which in 1995 revised its regulatory approach by not requiring registration by companies that manufacture certain chemicals for internal use. It also established a tiering mechanism for collecting registration fees that distinguishes between retail distributors of regulated drug products (which are often small businesses) and manufacturers, wholesalers, importers, and distributors.[107] At least one state, Kentucky, has specifically incorporated the concept of tiering of regulations into its administrative procedure act.[108]

A possible disadvantage is that tiered regulations may provide a disincentive for a firm to grow and, consequently, subject itself to a more stringent standard. Additionally, in certain cases, it may be difficult to set an appropriate tier.

Programme Ombudsmen

The ombudsman is decidedly not a new concept. It is a Swedish word meaning "agent" or "representative," and its Scandinavian origins have been traced to 1274. The first national ombudsman was established in Sweden in 1809, and the concept began spreading to the rest of Scandinavia and Down Under (New Zealand and Australia) in the Twentieth Century.[109] But its growth in American soil did not begin in earnest until about 25 years ago when ombudsman offices began to spread to state and local governments, prisons, universities, newspapers, and corporations. And now federal agencies are joining in by creating such offices – in some cases with Congressional encouragement.[110]

In 1990, the Administrative Conference of the US adopted a formal recommendation[111] that urged agencies with significant interaction with the public to consider establishing an agency-wide or programme-specific ombudsman, and set forth guidelines concerning powers, duties, qualifications, term, confidentiality, limitations on liability and judicial review, access to agency officials and records, and outreach.

Since the 1990 ACUS study and recommendation, the popularity of the idea has grown significantly. In 1993, the President's National Performance Review recognised the potential usefulness of the concept in increasing public participation in agency proceedings and in improving customer service.[112] The American Bar Association has also recently developed standards for ombudsmen.[113]

Use of the ombudsman technique is clearly on the rise in both the government and non-government sectors. It represents a particularly user-friendly approach to burden reduction. Current examples of programme ombudsmen include:

- Small Business Administration Ombudsmen. The Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) and the regional Small Business Regulatory Fairness Boards, created by the Small Business Regulatory Enforcement Fairness Act of 1996, work to bridge the communication gap between small business communities and federal agencies. The National Ombudsman evaluates and rates agency enforcement and compliance activities and annually makes specific recommendations to improve the regulatory environment.[114]
- The US Customs Service Trade Ombudsman. The Customs Service established an ombudsman in 1990 to improve the relationship between Customs and the trade community. He/she is primarily responsible for addressing the complaints of importers and exporters. The Trade Ombudsman has, for example, created a new automated tracking system for trade cases, increasing staff, and proposed a new programme to assist small business owners with Customs trade issues.[115]
- The Federal Deposit Insurance Corporation (FDIC) Office of the Ombudsman. The FDIC contributes to stability and public confidence in the nation's financial system by insuring deposits, and examining and supervising financial institutions. The FDIC's Office of the Ombudsman, established by statute in 1994,[116] provides a confidential, neutral and informal source of information and assistance to anyone affected by regulatory decisions made by the FDIC. The law provides that the Ombudsman acts as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and ensures that safeguards exist to encourage complainants to come forward and to preserve confidentiality.[117]
- *Environmental Protection Agency Ombudsmen*. EPA has several noteworthy ombudsman offices.
  - The Asbestos and Small Business Ombudsman (SBO), established in 1982, facilitates communications between the small business community and the EPA. The SBO also began serving as the Agency's Asbestos Ombudsman in 1986. In this role, the Office focuses issues concerning use of asbestos in schools and handles questions and complaints.[118] The SBO answers questions on its toll-free hotline ranging from explanations of regulatory requirements to waste minimisation and pollution prevention, and uses technical and legal advisors to assist in answering questions from the hotline. According to one review, EPA also has received positive recognition among some industry officials for its SBO. Initially, the SBO received approximately 4 000 calls per year. Now the SBO receives 1 100 to 1 500 calls per month.[119]
  - The National Hazardous Waste and Superfund Ombudsman (National Ombudsman) and the Regional Superfund Ombudsmen (Regional Ombudsmen) were established in EPA to provide assistance to the public in resolving issues and concerns about the implementation of hazardous and solid waste management laws. The National Ombudsman is located in the EPA Headquarters office in Washington, DC. In 1995, a Regional Ombudsman position was created in each EPA Regional office as part of the Superfund Administrative Reforms. On June 4, 1996, the Administrator formally announced the appointments of the Regional Ombudsmen. The Regional

Ombudsman programme, operates in support of the Superfund programme, but – depending on the Region – may also provide support to other programmes, including RCRA, regulation of underground storage tanks, and chemical emergency prevention and preparedness.[120]

- *Food and Drug Administration. The FDA Office of the Ombudsman*, located in the Office of the Senior Associate Commissioner, works to ensure that issues have been fairly heard by considering the basis for an FDA action or position; considering issues of consistency within and among the various FDA Centres; and, where appropriate, providing information or explanations to the complainant regarding the result. Most matters involve complaints about the FDA's processing of various submissions and review of import and export issues. The Office refers certain matters, including allegations of wrongdoing or potential criminal matters, to other FDA offices. The office does not get involved in matters currently in litigation. The Ombudsman also serves as the Food and Drug Administration's Product Jurisdiction Officer.[121] The Product Jurisdiction Officer assigns review responsibility when the jurisdiction is uncertain or in dispute. A company may make a formal "request for designation" to the Ombudsman, who will make a decision within 60 days. Companies and FDA Centres may also informally request assistance from the Office of the Ombudsman in working out difficult jurisdictional issues. The FDA also has a special ombudsman for the Center for Devices and Radiological Health.
- *Securities and Exchange Commission*. The SEC Chairman created an *Ombudsman in the Office of Municipal Securities* in 1997 to work with issuers of municipal securities to improve practices in the municipal market. The Ombudsman provides the nation's municipal bond issuers with a point of contact and ready access to the Commission and a means of obtaining general information about the Commission and its initiatives affecting municipal issuers.[122]

Tax simplification

The Internal Revenue Service (IRS) has become one of the most active US agencies in attempting simplification and burden reduction. This perhaps reflects the pervasive impact of tax preparation and the accompanying burden on individuals and businesses. For example, over 80% of the total federal paperwork burden is accounted for by the Department of the Treasury (primarily the IRS and the Customs Service).[123] Examples of IRS burden reduction initiatives include:

The taxpayer advocate

The Taxpayer Advocate Service is an IRS programme that provides an independent system to assure that tax problems, which have not been resolved through normal channels, are promptly and fairly handled. The National Taxpayer Advocate heads the programme. Each state and Service Center has at least one local Taxpayer Advocate, who is independent of the local IRS office and reports directly to the National Taxpayer Advocate. The goals of the Taxpayer Advocate Service are to protect individual taxpayer rights and to reduce taxpayer burden. The Taxpayer Advocate independently represents the taxpayer's interests and concerns within the IRS. This is accomplished in two ways:

- Ensuring that taxpayer problems, which have not been resolved through normal channels, are promptly and fairly handled.

- Identifying issues that increase burden or create problems for taxpayers: Bringing those issues to the attention of IRS management and making legislative proposals where necessary.[124]

In many ways this office operates as an ombudsman. But to reflect its advocacy focus, the name was changed from the Taxpayer Ombudsman to the Taxpayer Advocate in the Taxpayer Relief Act of 1997.[125]

The IRS Web site

The IRS Web site provides tax forms, instructions, publications, regulations, and other tax information. This site also helps taxpayers find the nearest tax professional to help prepare and file tax return electronically.[126]

Problem solving days

In 1997 after Senate hearings in which taxpayers complained about IRS abuses and the mishandling of tax cases, the IRS instituted "Problem Solving Days" (PSD), on a monthly basis (frequently on Saturdays, evenings as well as weekdays) at district offices. Customer satisfaction surveys and employee surveys are conducted at each PSD and an outside contractor also provides monthly analysis reports. Mandatory PSDs were scheduled at every district at least once every other month during calendar year 2000. On Problem Solving Days, taxpayers could, among other things, set up instalment agreements, settle issues related to audits or missing returns, or negotiate offers of compromise for back taxes and penalties owed. Since the events began, nearly 63 000 cases have been handled, according to the IRS. In an IRS survey of taxpayers who participated, 41% said they were able to resolve their disputes during their appointment.[127]

Business information centres

The IRS also partnered with the SBA to place IRS small business tax forms and publications, and an informational CD-ROMs at all Business Information Centres (BIC), which are sources of information for prospective and start-up business enterprises. The IRS enhanced this partnership with the SBA by placing IRS technical specialists at four BICs. The pilot programme's goal is to educate small businesses on tax related issues and improve tax understanding and compliance.

Tax-resolution representatives

Designed to complement and replace the Problem Solving Days, the IRS has installed 2 100 tax-resolution representatives in IRS offices across the country by the end of 2001. The intent is to give front-line IRS workers expanded authority and training to resolve taxpayer disputes on the spot. Taxpayers and practitioners will be able to call a toll-free number and schedule appointments to meet with IRS personnel at one of 413 IRS walk-in sites to resolve long-standing tax issues.[128]

Citizen advocacy panels (CAPs)

The IRS established CAPs in all four IRS regions. The CAPs are comprised of seven to twelve representative citizens and the local Taxpayer Advocate. The mission of the CAP is to: *a)* provide citizen input into enhancing IRS customer service by identifying problems and making recommendations for improvement of local systems and procedures; *b)* elevate identified problems to the appropriate IRS official and monitor the progress to affect change; and *c)* refer individual taxpayers to the appropriate IRS office for assistance in resolving their problems. Open public meetings have been held at least twice a year in various locations throughout the tax districts to solicit customer service issues, obtain

information, identify taxpayer concerns, and solicit feedback on proposed panel recommendations for improvement.[129]

Simplified tax deposit rules for small business[130]

In a move to simplify a major area of tax administration, the IRS is moving to eliminate monthly tax deposit requirements for about one million small businesses with less than USD 2 500 in employment taxes per quarter. After January 1, 2001, they are now allowed to make employment tax payments quarterly. This replaces the earlier standard that allowed quarterly payments only if businesses have less than USD 1 000 in quarterly employment taxes. The difference between the USD 1 000 and the USD 2 500 thresholds affects payment requirements for about one million businesses. In all, these businesses deposit USD 6.6 billion, about 13% of the USD 52.7 billion in total employment tax deposits. The change creates a number of advantages for small businesses. IRS notices to small businesses are expected to decrease about 70% because there will be fewer deposits. Because this change will reduce the frequency of deposits, small businesses will encounter fewer mistakes and fewer penalties. Payments on a quarterly basis – rather than on a monthly standard – will help small businesses on cash flow issues.

These activities of the IRS are really agency-specific examples of many of the techniques discussed in this report. But because taxation and its attendant reporting requirements are so pervasive, they deserve special attention.

Negotiated rule-making

Many experts have decried the increasing over-formalisation or "ossification" of the US rulemaking process.[131] These critics have pointed to the accretion of procedural requirements and resulting delays but also to the increased adversariness of the process – with more frequent challenges to rules in courts and to a "war of paper submissions" rather than a meaningful dialogue in the rulemaking process between the agency and the affected public. Several procedural innovations have been developed with some success to meet these concerns, negotiated rulemaking being among the most prominent.[132]

A number of federal agencies have successfully pioneered a consensus-based approach to drafting regulations called "negotiated rulemaking". Negotiated rulemaking bring together representatives of the agency and the various affected interests in a co-operative effort to develop regulations that not only meet statutory requirements, but also are accepted by the people who ultimately will have to live with the regulations.[133]

The long-term benefits of negotiated rulemaking include: *a)* more innovative approaches that may reduce compliance costs, *b)* less time, money, and effort spent on developing and enforcing rules,[134] *c)* earlier implementation, *d)* higher compliance rates, and *e)* more co-operative relationships between the agency and other affected parties.[135] These benefits flow from the broader participation of the parties, the opportunity for creative solutions to regulatory problems, and the potential for avoiding litigation.

If the parties reach consensus, the resulting rule is likely to be easier to implement and the probability of subsequent litigation is diminished. Even negotiations that do not result in consensus on a draft rule can still be very useful to the agency by: *a)* narrowing the issues in dispute, *b)* identifying information necessary to resolve issues, *c)* ranking priorities, *d)* finding potentially acceptable solutions, and *e)* improving the agency's understanding of the real-world impact of alternative regulatory options.

Since 1982, 17 federal agencies have initiated 67 negotiated rulemakings producing 35 final rules.[136] And, the Clinton Administration strongly advocated its use.[137]

Negotiation sessions provide all participants with an opportunity to have their assumptions and data questioned and tested by parties with other perspectives. The dynamic nature of negotiating forces each party to participate in crafting solutions to issues that are on the table for resolution. When successful, the process fosters creative activity by a broad spectrum of interested persons that is targeted at producing better, more acceptable rules.[138]

In regulatory programmes with a history of adversarial rulemaking, it is not unusual for parties to negotiate a settlement under the supervision of a court after the rule has been published. Particularly in these programmes, negotiation of a rule prior to the agency's publication of a proposed rule can save the agency and other parties both time and resources. By avoiding litigation, programmes become effective sooner and regulated businesses can plan capital expenditures or production changes earlier than if they faced years of litigation and uncertainty about the outcome. Moreover, at EPA (which has been the most frequent user of the technique) regulatory negotiations, on average, take less time than other rulemakings.[139]

Time savings can translate into both monetary savings for industry and greater satisfaction all around. For example, because of a negotiated rule, EPA's wood-stove emission standards went into effect as much as two years earlier than expected. The participant from an environmental group was quoted as expressing satisfaction that over 1.5 million wood-stoves sold during the two-year period would be covered by the new regulation. For their part, manufacturers were spared two years of uncertainty and could begin re-tooling for the new standards.[140]

The most significant deterrent to using negotiated rulemaking is the up-front cost. This process can be resource-intensive in the short term for both the agency and the other participants. While there are likely to be considerable long-term savings in total resources required, the concentrated investment of effort and expense in the short term may be a serious obstacle. This is particularly true if the savings and the costs appear in the budgets of different operating components of the agency. Additional costs may include services of mediators and convenors, research conducted on behalf of the negotiating committee, administrative support for the committee, expenses of participation for some of the negotiators, and some training costs.

It also should be noted that negotiated rulemaking is not appropriate for all rules. It works best where *a)* there are a manageable number of interested groups and issues to be negotiated, *b)* where the issues are negotiable, and *c)* where all interested participants have an incentive to move forward (perhaps due to a deadline or to the inevitability that *some* regulation will be issued anyway).[141]

Findings and conclusions

The many examples in this report show that there is widespread and bi-partisan support for the concept of burden reduction and simplification of regulatory requirements in the United States.

To some extent this is reflected in laws and presidential orders that seek to force agencies to take these concepts into account in the regulation-writing process. The various "impact statement" requirements, the "regulatory alternatives", the special consideration

to the needs of small business in drafting, the emphasis on paperwork reduction, on plain language drafting, and enhanced participation through negotiated rulemaking show how important this goal is.

Though difficult to measure, the benefits of these approaches in focusing the attention of regulators on regulatory alternatives, and on burden reduction and simplification seem undeniable. However, these approaches do have a downside in that many of them make the rulemaking process more lengthy and laborious for the agencies – thus potentially delaying cost-beneficial (or even deregulatory) rules.

At the implementation end, programme ombudsmen and one-stop shops are proliferating. The related concept of permitting simplification is being practised widely at the state and federal level. Assistance to small business in implementing regulations is also very popular. And tax simplification is showing renewed impetus. Driving many of these efforts, of course, are the dramatic improvements in IT and the rise of the Internet as a stream of commerce and information.

This latter development underlies the most dramatic "finding" in this report. It is the information revolution that is driving many of these reforms – from improved public participation in rulemaking, to one-stop shopping, to paperwork reduction, to tax simplification. The impressive array of technology-driven mechanisms for reducing administrative burdens – most of which have been developed in the last several years – are "win-win" propositions. They produce cost savings for the regulatees and for the regulatory agencies as well.

But just as excited investors in the IT revolution have learned to temper their unbridled enthusiasm, regulatory observers need to be realistic as well as optimistic about the future of IT-driven regulatory reform and burden reduction. There is much farther to go along the trail marked by many of the projects described in this report. On the other hand, "point-and-click" technology is not a panacea, nor is it a substitute for a well-trained civil service, enlightened and committed agency leadership, good science, transparency of decision-making, and sufficient budgetary resources to fulfil the promises made by reformers.

Another significant finding is that despite the great attention given to administrative simplification by Presidents and Congress, its effectuation in the United States is still relatively decentralised. Congress periodically conducts oversight hearings and mandates studies by the General Accounting Office. The President relies heavily on the Office of Management and Budget (OMB). The SBA's Chief Counsel for Advocacy and various agency ombudsmen are independent watchdogs. Whether this decentralisation hinders implementation of simplification and burden reduction is worth considering. Nevertheless, the examples in this report show how the sharp focus on easing regulatory burdens on small businesses has become ingrained and popular among most politicians and policy makers in the United States.

Finally, the need for increased administrative and bureaucratic attention to impacts on various constituencies, and the tendency to seek to insulate administrative decisions from intensive judicial review, creates the need for additional resources in the administrative agencies at a time when agency personnel budgetary levels have been trending downward.[142] On the other hand, the information revolution has made it possible for regulatory personnel to accomplish some of their tasks more efficiently than ever before. Long strides have been made by the US Government in attaining the important goal

of reducing burdens on, and simplifying compliance by, the regulated. But a final conclusory caveat is that it is important to bear the needs of the bureaucracy in mind as well.

Notes

1. Herbert Kaufman (1977), Red Tape: Its Origins, Uses, and Abuses 97, The Brookings Institution.
2. *Id.* at 4, n.1.
3. *Id.* citing Paul H. Appelby (1945), Big Democracy, Knopf, Chap. 6.
4. *Id.* citing Dwight Waldo (1946), "Government by Procedure", in Fritz Morstein Marx, ed., Elements of Public Administration, Prentice-Hall.
5. *Id.* citing Alvin W. Gardner (1952), "Red Tape as a Social Problem", in Robert K. Merton and others, eds. Reader in Bureaucracy, Free Press.
6. *See* National Performance Review (1993), *From Red Tape to Results: Creating a Government That Works Better & Costs Less*.
7. William F. Funk (1987), *The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law*, 24 Harv. J., Leg. 1, (explaining that the original bill that became the Paperwork Reduction Act was entitled the Paperwork and Redtape Reduction Act. S. 1411, 96th Cong., 1st Sess. (1979)). The following discussion in the text derives from pages 7-31 of Professor Funk's article.
8. Pub. L. No. 99-591, 94 Stat. 2812, codified, as amended, at 44 U.S.C. §§ 3501-3520.
9. H.R. 327. *See* Press Release, House Committee of Government Reform, Mar. 15, 2001, *www.house.gov/reform/press/01.03.15.htm*. Committee Chairman Burton stated that "The average small company spends USD 5 100 for each employee complying with federal regulations every year. This bill should help small business cut through the red tape and get answers to their questions from federal agencies". *Id.*
10. For a dissenting view on the benefit of special treatment for small business, see Richard J. Pierce, Jr. (1998), *Small Is Not Beautiful: The Case Against Special Regulatory Treatment of Small Firms,* 50 Admin. L. Rev. 537.
11. Paul R. Verkuil (1982), *A Critical Guide to the Regulatory Flexibility Act*, Duke L.J. 213, 216-219.
12. Enacted as Title II of the Small Business Export Expansion Act of 1980, Pub. L. No. 96-481, 94 Stat. 2325, codified, as amended, at 5 U.S.C § 504 and 28 U.S.C § 2412.
13. Pub. L. No. 96-354, 94 Stat. 1 164 – 1 170, codified, as amended, at 5 U.S.C. §§ 601-612. The Act, among other things, requires an impact statement for all regulations describing the potential impact on small businesses and small governments.
14. For a list of these recommendations. S*ee www.whcsb.org:81/fropen.htm*.
15. Pub. L. No. 104-21, tit. II, 110 Stat. 847, 857 (Mar. 29, 1996) (codified at 5 U.S.C. § 601 note (Supp. IV 1998)).
16. Pub. L. No. 104-231, §§3-11, 110 Stat. 3049 (Oct. 2, 1996).
17. United States Department of Agriculture (2000), *Service Center Modernization Initiative Information Technology Blueprint* at 5 Dec., available at *www.sci.usda.gov/itwg/index.html*
18. Pub. L. No. 103-354, Title II, Oct. 13, 1994, 108 Stat. 3209.
19. "Federal Acquisition Reform Act of 1996", "Information Technology Management Reform Act of 1996", Pub. L. No. 104-106, Div. E, Feb. 10, 1996, 110 Stat. 679.
20. Pub. L. No. 105-277, Div. C, Title XVII, Oct. 21, 1998, 112 Stat. 2681-749.
21. Pub. L No. 106-222, June 20, 2000, 114 Stat. 353.
22. Its useful Web site, however, has been preserved at *http://govinfo.library.unt.edu/npr/default.html*
23. For a symposium devoted to ACUS, *see* 30 Ariz. St. L.J. 1-204 (1998).
24. Paperwork Reduction Act of 1980, as amended, 44 U.S.C. § 3501(3).
25. *Id.* at § 3506(c)(3)(J).

26. Council for Excellence in Government, E-Government: The Next American Revolution, (Feb. 2001), at p. 6. *available at www.excelgov.org/techcon/egovex/ebluprint.htm*. This report of a bi-partisan, "blue-ribbon" commission, recommended a five-year, $3 billion appropriation from Congress for an "e-government strategic investment fund", comparable to the amount spent on the Y2K computer problem. It also recommended the establishment of a Cabinet-level assistant to the President for electronic government and an office of electronic government and information policy within the Office of Management and Budget, headed by a chief information officer appointed by the President. *See* Ben White (2001), *Council Offers Plan For E-Government*, Wash. Post, Feb. 22, at A-7.

27. *See* Pew Internet and American Life Project, *The Rise of the E-citizen, How People Use Government Agencies' Web Sites* (April 3 2002), available at *www.pewinternet.org/reports/pdfs/PIP_Govt_Web site_Rpt.pdf*, and The Council for Excellence in Government, *E-GOVERNMENT: To Connect, Protect, and Serve Us*, (Poll Conducted by Hart-Teeter 2002), *available at www.excelgov.org/techcon/0225poll/ report.PDF*. *See also* US Dep't of Commerce (2002), Economics and Statistics Administration and National Telecommunications and Information Administration, *A Nation Online: How Americans Are Expanding Their Use of the Internet*, Feb.

28. See the Electronic Signatures in Global and National Commerce Act (2000), Pub. L. No 106-229, June 30.

29. See the Uniform Electronic Transactions Act (1999), a model act issued by the National Conference on Commissioners of State Laws.

30. See *www.firstgov.gov*

31. The following description was developed from testimony of various witnesses at Hearings, House Subcomm. on Government Management, Information, and Technology, Comm. on Government Reform, "FirstGov.gov: Is it a Good Idea?" (Oct. 2, 2000), *available at www.house.gov/reform/gmit/ hearings/2000hearings/001002.FirstGov/001002h.htm*

32. This donation was approved after the Comptroller General's Office ruled that the US government is fully authorised to accept a gift of gratuitous services where there is no expectation of payment.

33. To avoid even the appearance that Inktomi would have a special advantage, the Foundation took two proactive steps. First, the Foundation and the government specifically agreed that Fed-Search would not be involved in drafting specifications to be used in the request for bids on any search engine contract nor would Fed-Search be in any way involved in selecting the company that would be awarded any search engine contract.

34. The current list of partners is available on the FirstGov Web site.

35. A "cookie" is a file placed on an Internet user's hard drive by a Web site, which allows the site to monitor visits to the site-usually without the user's knowledge.

36. The Rehabilitation Act Amendments of 1998, Pub. L. 105-220, Title IV, amending section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), require that when federal agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows individuals with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by individuals who do not have disabilities, unless an undue burden would be imposed on the agency. Regulations were issued by the agency assigned this responsibility under the law, the Architectural and Transportation Barriers Compliance Board on December 21, 2000, 65 Fed. Reg. 80 500. These standards cover the full range of electronic and information technologies in the federal sector, including those used for communication, duplication, computing, storage, presentation, control, transport and production. This includes computers, software, networks, peripherals and other types of electronic office equipment. Section 508 standards explain what makes these products accessible to people with disabilities, including those with vision, hearing, cognitive, and mobility impairments.

37. The APA does require agencies to conclude matters "within a reasonable time", 5 U.S.C. § 555(b); and authorises courts to compel agency action "unreasonably delayed". 5 U.S.C. § 706(1).

38. Pub. L. No. 99-519, 100 Stat. 2970 (codified at 15 U.S.C. §§ 2641-2656). This Act amended the Toxic Substances Control Act.

39. 15 U.S.C. § 2643(a).

40. It was estimated that Congress imposed about 600 deadlines in various environmental statutes between 1970 and 1983 and added 60 more in the Hazardous and Solid Waste Amendments of 1984. *See* Alden F. Abbott, *The Case Against Federal Statutory and Judicial Deadlines: A Cost-Benefit Appraisal*, 39 Admin. L. Rev. 171, 173 (1987).

41. 42 U.S.C. § 6924(d)(1-2). See also Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 100-202, Title I, 101 Stat. 1329-358, 1329-358-359 (1987) (reducing Department of Transportation budget if particular rulemaking deadline was not met), cited in Neil R. Eisner, *Agency Delay in Informal Rulemaking*, 3 Admin. L.J. Am. U. 7, 33 n.162 (1989).

42. Pub. L. No. 101-535, 104 Stat. 2353 (codified as amended in scattered sections of 21 U.S.C.).

43. *See* M. Elizabeth Magill, *Congressional Control Over Agency Rulemaking: The Nutrition Labeling and Education Act's Hammer Provisions*, 50 Food & Drug L.J. 149, 165-70 (1995) (describing FDA's failure to meet strict congressional deadlines for issuance of final nutrition Labeling regulations).

44. ACUS Recommendation 78-3, "Time Limits on Agency Actions" (c), 43 Fed. Reg. 27 509 (June 26, 1978), also available at *www.law.fsu.edu/library/admin/acus/305783.html*

45. Alden F. Abbott, *Case Studies on the Costs of Federal Statutory and Judicial Deadlines*, 39 Admin. L. Rev. 467, 487 (1987). The case studies include seven EPA rules, two OSHA rules, and one each from the (Consumer Product Safety Commission (CPSC) and the U.S. Coast Guard.

46. The Administrative Conference recommended that agencies adopt time limits in agency proceedings, either by announcing schedules for particular agency proceedings or by adopting general timetables for dealing with categories of the agency's proceedings, ACUS Recommendation No. 78-3(e), *supra* note 64. See also *Study on Federal Regulation, Vol. IV: Delay in the Regulatory Process,* Senate Comm. on Governmental Affairs, 95th Cong. 132-52 (1977) (concluding that agency-set time limits are useful tools for reducing delay).

47. See, *e.g.*, Oil Chem. and Atomic Workers Int'l Union v. Zegeer, 768 F.2d 1480 (D.C. Cir. 1985).

48. See Les Garner, *Management Control in Regulatory Agencies: A Modest Proposal For Reform*, 34 Admin. L. Rev. 465, 475-79 (1982) (discussing the National Labor Relations Board and the Interstate Commerce Commission); Richard B. Capalli, *Model For Case Management: The Grant Appeals Board*, 1986 ACUS Reports and Recommendations 663 (discussing the Department of Health and Human Services Grant Appeals Board); Charles Pou, Jr. and Charlotte Jones, *Agency Time Limits as a Tool For Reducing Regulatory Delay*, 1986 ACUS Reports and Recommendations 835 (discussing various agencies).

49. The Federal Aviation Reauthorization Act of 1996, Pub. L. No. 104-264 § 224, 110 Stat.3213, 3230-31, codified at 49 U.S.C. 106(f)(3)(A) and (B) (2000).

50. US General Accounting Office, *Aviation Rulemaking: Further Reform is Needed to Address Long-standing Problems* at 42-43 (GAO-01-00) (Draft, Feb. 2001) (on file with author). The report also states that for seven of its rules, FAA was subject to specific statutory deadlines, which were met only in two cases. *Id*. at 45.

51. *Id*. at 38 (the figure is for both proposed and final rule stages).

52. *Id*. at 47.

53. Although the Order was amended in ways not pertinent to this discussion by Exec. Order 13 258, 67 Fed. Reg. 9385 (Feb. 28, 2002).

54. Exec. Order No. 12 866 "Regulatory Planning and Review", § 1(b) (September 30, 1993), 58 Fed. Reg. 51 735 (Oct. 4, 1993). Most of this Order applies only to "Executive Branch" departments and agencies (but not to "independent agencies").

55. *Id*. at § 4(c)(1)(B). (This portion of the Order applies to all federal agencies, including independent regulatory agencies.)

56. *Id*. at § 6(a)(3)(C)(iii).

57. 5 U.S.C. § 603(c).

58. *Id*. at § 604(a)(5).

59. See *Improving Regulatory Systems*, Accompanying Report of the National Performance Review, (September 1993) (chapter REG02), available at *http://govinfo.library.unt.edu/npr/library/reports/reg.html*. Much of the following discussion is taken from of this report, for which the current author was the Team Leader. Original footnotes are kept and supplemented where possible.

60. As Professor Hirsch has stated, "the major federal environmental statutes establish a nationally uniform set of design and performance standards (most of which act as de facto design standards), often targeted at new sources and administered through a permit program, that prescribe the extent to which facilities must limit their pollution and, to a large degree, how they

should go about doing so". Dennis D. Hirsch, *Globalization, Information Technology, and Environmental Regulation: An Initial Inquiry*, 20 Va. Envtl. L.J. 57, 62(2001).

61. *Improving Regulatory Systems*, *supra* note 81 at 24.

62. For general discussions of economic incentives *see* Alan Carlin, *The United States Experience with Economic Incentives to Control Environmental Pollution*, Environmental Protection Agency (Washington, D.C., July 1992); and Office of Management and Budget (1993), Regulatory Programme of the United States Government, April 1, 1992-March 31, 1993, Washington, D.C., January, pp. 11-19.

63. See *e.g.,* OECD, 1998: "Government Capacity to Assure High Quality Regulation" in *Regulatory Reform Review of the United States*, Paris.

64. See *e.g.*, Administrative Conference of the United States, Recommendation 93-4, I(A) and II(C), and *Improving the Environment for Agency Rulemaking,* available at *www.law.fsu.edu/library/admin/acus/305934.html*

65. Office of Information and Regulatory Affairs, Office of Management and Budget, *Report to Congress on The Costs and Benefits of Federal Regulations – 2000*, available at *www.whitehouse.gov/omb/inforeg/2000fedreg-report.pdf*

66. 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, § 638(a), Pub L. No. 105-277, 112 Stat. 2681, 2681-525 (1998).

67. *Report to Congress On The Costs and Benefits of Federal Regulations – 2000, supra* note 88 at 19-20. (Note that the pagination of the Internet version and the hard copy differs – this information is on page 20 of hard copy.)

68. *Id*. at 12 (13 in hard copy).

69. OMB/OIRA (1996), *Economic Analysis of Federal Regulations Under Executive Order 12866*, Jan. 11, available at *www.whitehouse.gov/omb/inforeg/riaguide.html*

70. See FDA v. Brown & Williamson Tobacco Co., 529 US 120 (2000).

71. 61 Fed. Reg. 44 568 to 44 610 (Aug. 28, 1996). The entire final rule (including preamble) was 222 pages (61 Fed. Reg. 44 396 – 44 618).

72. Exec. Order No. 12 866 "Regulatory Planning and Review," (September 30, 1993), 58 Fed. Reg. 51 735 (Oct. 4, 1993) as amended by Exec. Order. 13 258, 67 Fed. Reg. 9385 (Feb. 28, 2002).

73. Exec. Order No. 12 866, § 1(11).

74. Provision is made for "emergency situations" and for those actions "governed by a statutory or court-imposed deadline", although agencies are required to comply with the Order's provisions "to the extent practicable". The Order also allows the Administrator to exempt any category of regulations from review.

75. 42 U.S.C. §§ 4321-4347d.

76. See note 12, *supra*.

77. See note 15, *supra*.

78. Pub. L. No. 104-14, 109 Stat. 48 (1995) (codified at 2 U.S.C. Chs. 17A, 25).

79. These include:
   a) Exec. Order No. 13 045, "*Protection of Children From Environmental Health Risks and Safety Risks*". Requires that agencies issuing "economically significant" rules that also concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health or safety effects of the planned regulation on children; and an explanation of why the planned regulation is preferable to alternatives.
   b) Exec. Order No. 13 132, "*Federalism*". Requires consideration of issues of federalism by executive departments and agencies.
   c) Exec. Order No. 13 175, "*Consultation and Coordination with Indian Tribal Governments*", also applies to rulemaking.

80. See list at *www.sba.gov/ADVO/laws/chart.html*. *See also* Robert W. Hahn (2000), *State and Federal Regulatory Reform: A Comparative Analysis*, 29 J. Legal Stud. 873 (concluding that more than half the

states have initiatives to improve regulations, including oversight mechanisms and use of cost-benefit analysis, but that their effectiveness is often doubtful).

81. Pub. L. No. 104-13, § 2, 109 Stat. 163 (May 22, 1995) amending and recodifying the Act, originally enacted in 1980.

82. 44 U.S.C. § 3506(c)(3)(C).

83. US General Accounting Office, *Paperwork Reduction Act: Burden Increases and Unauthorised Information Collections* (GAO/GGD-99-59) (April 20, 1999).

84. See Office of Management and Budget, Office of Information and Regulatory Affairs, *Managing Information Collection and Dissemination, Fiscal Year 2002*, Table B, p. 65, available at *www.whitehouse.gov/omb/inforeg/paperwork_policy_report_final.pdf*

85. See Administrative Conference of the United States, Recommendation 78-4, "Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulations", 44 Fed. Reg. 1357 (Jan. 5, 1979).

86. Pub. L. No. 104-113, 110 Stat. 775 (Mar. 7, 1996), § 12(a)(3), amending 15 U.S.C. § 272(b).

87. 15 U.S.C. § 272 note.

88. OMB Circ. A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (Feb. 10, 1998) § 7(j), available at *www.whitehouse.gov/omb/circulars/a119/a119.html*

89. 19 U.S.C. §§ 2531-33.

90. ACUS Recommendation 94-1, *supra* note 125, set forth suggested standards for the effective use of audited self-regulation – 1) that the substantive standards, whether imposed by statute, regulation, or otherwise, are clearly stated and are capable of objective application, 2) that an SRO with the ability and incentive to implement these substantive standards in Cupertino with the agency exists or can be created, 3) that the agency responsible for implementation and oversight must have the ability and incentive to implement the substantive standards through a self-regulatory programme, 4) that the self-regulatory programme is expressly authorised by legislation, 5) that the procedures of the self-regulatory organisation are fair, and 6) that Congress and the agency should provide public access to records of the SRO along the same lines as the Freedom of Information Act.

91. See Commodity Futures Trading Commission (2000), *Final Rules Concerning Amendments to Insider Trading Regulation*, 65 Fed. Reg. 47 483, Aug. 4.

92. See, *e.g.*, Richard C. Wydick, *Plain English for Lawyers,* 66 Calif. L. Rev. 727 (1978); Janice C. Redish, *How to Write Regulations (And Other Legal Documents) in Clear English*, 1 Leg. Notes and Viewpoints Q. 73 (1981).

93. "Plain Language in Government Writing", Memorandum from the President for the Heads of Executive Departments and Agencies, 63 Fed. Reg. 31 885, June 10, 1998.

94. "Making Regulations Readable", National Archives and Records Administration, Office of the Federal Register, *www.nara.gov/fedreg/mrr.html*

95. See *www.plainlanguage.gov.*

96. Winners of the plain language prize over the last seven months of the Clinton Administration include:

    July: The National Institutes of Health's Dr. Alexa McCray who developed clincaltrials.gov, a Web site that provides information on the status of clinical research studies.

    August: Anne Cyr of the Occupational Health and Safety Administration, who rewrote a lengthy poster to clearly inform employees of their right to know if their employer had committed OSHA violations.

    September: Steven Griswold, David Neil, Lauren Mason, and Andrea Macri of the Board of Immigration Appeals within the Department of Justice. Griswold and his partners rewrote a confusing manual describing conditions under which immigrants can be deported in a succinct question-and-answer format.

    October: The Food and Drug Administration's Naomi Kulakow and Christine Lewis who wrote a pamphlet describing how to read and use the nutrition facts printed on food labels.

November: Laura Fulmer, Helen Kirkman, Vikki Vrooman, James Cesarano, John Moro, and Melodee Mercer of the Internal Revenue Service. These foes of gobbledegook rewrote a form telling taxpayers how to obtain a refund check.

December: The Federal Aviation Administration's Don Byrne and Linda Walker, who reformatted an airworthiness directive to clearly explain potential safety hazards on a type of airplane.

January 2001: Susan Hollman and Valerie Perkins of the Health Care Financing Administration, who wrote a handbook entitled "Medicare and You" that clearly explained Medicare benefits.

Jason Peckenpaugh (2001), *Clinton administration awards last plain language prize*, *Govexec.com* January 8, available at *www.govexec.com/dailyfed/0101/010801p1.htm*

97. See Carol Cousineau and Roger Peters (2000), *Plain English in Michigan Statutes and Rules*, 79 Mich. B. J. 40.

98. Paperwork Reduction Act of 1980, as amended, 44 U.S.C. § 3506(c)(3)(D).

99. See note 15, *supra*.

100. US E.P.A. (2000), *Environmental Assistance Services for Small Businesses – A Resource Guide* (EPA-231B-00-001), December, available at *www.epa.gov/sbo*

101. See *www.osha-slc.gov/dts/osta/oshasoft/* See also *Information Collection Budget of the United States Government Fiscal Year 2000, supra* note 29 at 10.

102. See *www.npr.gov/initiati/common/*

103. United States Small Business Administration, *The National Ombudsman's 2000 Report to Congress: Building Small Business – Agency Partnerships*, available at *www.sba.gov/regfair/report00.pdf*

104. This account is from Office of Advocacy, US Small Business Administration, *Models for Success State Small Business Programs and Policies, 1999* at 29, available at *www.sba.gov/advo/success.txt*

105. From *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business, A Report To Congress*, Office of the Chief Counsel for Advocacy US Small Business Administration Washington, DC (October 1995) available at *www.sba.gov/ADVO/laws/law_brd.html#II*

106. Environmental Protection Agency (1996), Final Rule, Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7), 61 Fed. Reg. 31 667, 31 674, June 20.

107. Office of Management and Budget, Office of Information and Regulatory Affairs, *A Report to the President on the Third Anniversary of Executive Order 12866: More Benefits Fewer Burdens Creating a Regulatory System that Works for the American People,* chapter I, § 4, (Dec. 1996) available at *www.whitehouse.gov/omb/inforeg/text/3_year_report.html*

108. See Kentucky Revised Statutes, Ch. 13A.210 "Tiering of administrative regulations". This provision permits tiering regulatory requirements for various classes of regulatory entities, based on size and non-size variables. Size variables include number of citizens, number of employees, level of revenues, level of assets, and market shares. Non-size variables include degree of risk posed to humans, technological and economic ability to comply, geographic locations, and level of federal funding.

109. See David R. Anderson and Diane M. Stockton, *Federal Ombudsmen: An Underused Resource,* 5 Admin L.J. Am. U. 275, 279-80 (1991); D. Leah Meltzer, *Federal Workplace Ombuds* (Report for the Administrative Conference of the US and the Hewlett Foundation) 4-6 (1996).

110. See, *e.g.*, the recently created "Small Business and Agriculture Regulatory Enforcement Ombudsman", Pub L. 104-121 ("The Small Business Regulatory Enforcement Fairness Act of 1996"), § 221, codified at 15 US C. § 657. Other interesting statutorily mandated ombudsmen include the "Construction Metrication Ombudsman" (15 U.S.C. § 2051); and the "Aircraft Noise Ombudsman" (49 U.S.C. § 106).

111. ACUS Recommendation 90-2, "The Ombudsman in Federal Agencies," 55 Fed. Reg. 34 211 (Aug. 22, 1990).

112. See *Improving Regulatory Systems*, Accompanying Report of the National Performance Review, *supra* note 81 at 39 (Sept. 1993) ("Agencies also should consider establishing an ombudsman office to assist compliance efforts").

113. See *www.abanet.org/adminlaw/ombuds*. The ABA House of Delegates approved a recommendation in support of these standards on August 7, 2001. The recommendation, report, and standards can be found at *www.abanet.org/adminlaw/ombuds/*

114. United States Small Business Administration, *The National Ombudsman's 2000 Report to Congress, supra* note 160.

115. See *www.customs.gov/custoday/dec1999/spot.htm#top*

116. Section 309(d) of the Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806).

117. See *www.fdic.gov/about/contact/office/index.html*

118. See *www.epa.gov/sbo/whois.htm#ABOUT*

119. *Id.*

120. See *www.epa.gov/oswer/Ombud-draft.htm*

121. See *www.fda.gov/oc/ombudsman/pj.htm*

122. SEC Release 97-24, Mary Jo White to Leave SEC to Join Law Firm; Deputy Director Golden to Serve as Acting Municipal Ombudsman (Mar. 25, 1997), available at *www.sec.gov/news/press/97-24.txt*

123. See *Information Collection Budget of the United States Government Fiscal Year 2000, supra* note 50 at 11. *See also* the Appendix of this report.

124. Taken from *www.irs.ustreas.gov/ind_info/advocate.html*

125. Pub. L. 104-168, "Taxpayer Bill of Rights 2" (July 30, 1996) §101 (creating the Office of the Taxpayer Advocate), codified as amended at 26 U.S.C. § 7803(c).

126. See *www.irs.gov*

127. See Michelle Singletary, *The IRS Displays Good Form*, Wash. Post (Feb. 18, 2001) at H-1, H-12.

128. *Id.* at H-1.

129. United States Small Business Administration, *The National Ombudsman's 2000 Report to Congress, supra* note 150.

130. See *www.sba.gov/advo/advo_irstax00.html*

131. See Thomas McGarity, *Some Thoughts on "Deossifying" the Rulemaking Process,* 41 Duke L. J. 1385 (1992) (quoting Donald Elliott).

132. Much of this discussion is adapted from *Improving Regulatory Systems*, *supra* note 81 at 29-33.

133. Administrative Conference of the United States, Recommendations 82-4 and 85-5, "Procedures for Negotiating Proposed Regulations", 47 Fed. Reg. 30 708 (July 15, 1982) and 50 Fed. Reg. 52 895 (Dec. 27, 1985); and David M. Pritzker, and Deborah S. Dalton, eds., Negotiated Rulemaking Sourcebook (2d. ed.) (Administrative Conference of the U.S.) (Washington, D.C., 1995).

134. See Jody Freeman and Laura I. Langbein (2000), *Regulatory Negotiation and the Legitimacy Benefit*, 9 NYU Envt'l L.J. 60.

135. It is difficult to obtain reliable data about the costs of regulatory proceedings. However, some information is available that may give an indication of potential savings from using regulatory negotiations. Speaking in 1984, former EPA Administrator William Ruckelshaus estimated that more than 80% of EPA's major rules were challenged in court and that approximately 30% of the rules were changed significantly as a consequence. William Ruckelshaus, "Environmental Negotiation: A New Way of Winning", address to the Conservation Foundation's Second National Conference on Environmental Dispute Resolution 3, October 1, 1984, cited in Lawrence Susskind and Gerard McMahon, *The Theory and Practice of Negotiated Rulemaking*, 3 Yale J. on Reg. 133 (1985). Ruckelshaus also estimated that the annual effort to handle this litigation took 50 person-years from EPA's Office of General Counsel, 75 person-years from EPA programme offices, 25 person-years from the Department of Justice, and 175 person-years on the part of plaintiffs' counsel. Administrator Lee Thomas, in a 1987 address to a colloquium of the Administrative Conference of the United States, pegged the level of litigation at more than 75%. Lee Thomas, *The Successful Use of Regulatory Negotiations by EPA*, 13 Admin. L. News 1 (Fall, 1987).

136. See Freeman, *supra* note 85 at 36. Professor Freeman's discussion of the topic and two case studies from pp. 33-55 are illuminating.

137. See Improving Regulatory Systems, *supra* note 81 at 32; Exec. Order 12 866, *supra* note 76 at § 6(a) ("Each agency also is directed to explore, and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking").

138. *See* Freeman, *supra* note 85 at 41-55.

139. Cornelius M. Kerwin, and Scott R. Furlong, *Time and Rulemaking: An Empirical Test of Theory*, 2 J. Pub. Admin. Res. & Theory 124 (1992) (in study of 150 rules the rulemaking process took an average of 26 months for the four negotiated rulemakings in the sample and 37 months for all rules in the sample). Based on a sample of seven reg negs, EPA estimated a saving of 6 to 18 months as compared to the normal rulemaking process. Telephone interview with Chris Kirtz, Director, Consensus and Dispute Resolution Program, EPA, August 13, 1993. *But see* Cary Coglianese, *Assessing Consensus: The Promise and Performance of Negotiated Rulemaking*, 46 Duke L.J. 1255 (1997) (finding regulatory negotiations to have been slower and more likely be challenged in court than conventional rulemaking) and *contra* Philip J. Harter, *Assessing the Assessors: The Actual Performance of Negotiated Rulemaking*, 9 N. Y. U. Envtl. L. J. 32 (2000) (criticising Coglianese's methodology and finding reg-negs to have been faster and perceived as more successful by participants). For the latter proposition, Harter relies heavily on the empirical research in Laura I. Langbein and Cornelius M. Kerwin, *Regulatory Negotiation versus Conventional Rule Making: Claims, Counterclaims, and Empirical Evidence*, 10 J. Pub. Admin. Res. & Theory 599 (2000).

140. See Mike McClintock, *Regulating Wood-Stove Emissions*, Wash. Post (Sept. 25, 1986), Home Section at 5. *But see* William Funk, *When Smoke Gets in Your Eyes: Regulatory Negotiation and the Public Interest*, 18 Envtl. L. 55 (1987).

141. See *Improving Regulatory Systems, supra* note 81 at 31-32.

142. For example, the Occupational Safety and Health Administration (OSHA) has almost 800 fewer employees than it had in 1980, and its budget is $100 million less than it was in 1982 in constant dollars. Sidney A. Shapiro and Randy Rabinowitz, *supra* note 895 at 97, 98-99. At the overall Federal Government level, the size of the civilian workforce in the executive branch peaked in 1990 at 3 067 200. By 1999 it had shrunk to 2 686 700 (–12.4%) – levels not seen since the 1950s. See Office of Personnel Management, *The Fact Book-Federal Civilian Workforce Statistics* (2000), p. 8, available at *www.opm.gov/feddata/00factbk.pdf*. This shrinkage was most pronounced in the Department of Defense, but the number of employees in non-defence departments and agencies shrunk 7.2% during this period.

Appendix

Federal information collection burden in 1987-2001

In burden hours

Agency	1987	1992	1995	1996	1997	1998	1999	2000	2001
Agriculture	67 700 000	71 600 000	131 091 022	107 248 206	89 290 439	71 950 000	67 680 000	75 190 000	86 720 000
Commerce	5 400 000	4 100 000	8 239 828	7 960 779	8 210 119	13 490 000	7 210 000	38 570 000	10 290 000
Defense	279 700 000	215 200 000	205 847 538	152 490 315	138 511 139	119 000 000	111 730 000	93 620 000	92 050 000
Education	34 500 000	23 100 000	57 554 905	49 111 300	43 725 057	40 900 000	42 070 000	41 980 000	40 490 000
Energy	14 200 000	8 700 000	9 187 531	4 656 053	4 478 981	4 460 000	4 480 000	2 920 000	3 850 000
Health and human services	163 200 000	156 700 000	152 615 502	137 540 947	137 008 078	139 310 000	164 350 000	173 710 000	186 610 000
Housing and urban development	13 300 000	30 300 000	33 769 554	37 245 148	32 210 600	18 480 000	19 750 000	12 460 000	12 050 000
Interior	3 700 000	4 900 000	4 165 429	4 357 370	5 194 780	4 570 000	4 360 000	5 640 000	7 560 000
Justice	40 400 000	32 600 000	36 670 323	36 162 128	39 130 642	26 820 000	36 590 000	36 820 000	40 530 000
Labor	72 600 000	51 800 000	266 447 906	241 077 975	216 810 705	198 990 000	195 960 000	181 590 000	186 110 000
State	1 000 000	2 000 000	8 678 480	596 789	30 557 876	28 900 000	28 850 000	29 190 000	16 560 000
Transportation	75 600 000	65 100 000	91 022 665	66 167 487	111 375 978	138 750 000	140 000 000	117 650 000	80 340 000
Treasury	**852 200 000**	**5 743 700 000**	**5 331 298 033**	**5 352 845 430**	**5 582 121 203**	**5 702 240 000**	**5 909 070 000**	**6 156 800 000**	**6 415 850 000**
Veterans	5 400 000	6 400 000	11 133 887	94 345 522	6 230 103	2 640 000	5 270 000	5 980 000	5 310 000
EPA	68 900 000	60 700 000	103 066 374	107 655 255	115 671 113	119 180 000	118 910 000	128 750 000	130 770 000
Fed. Acquisition Reg. System			22 146 676	23 445 460	24 523 313	24 420 000	23 420 000	n.a.	n.a.
Fed. Communications Comm.			22 644 046	23 879 914	27 805 236	30 340 000	32 490 000	n.a.	n.a.
Fed. Deposit Insurance Corp.			8 502 121	8 633 670	8 536 375	7 560 000	7 970 000	n.a.	n.a.
Fed. Emergency Mgmt. Admin.			5 175 501	4 802 093	5 061 582	4 680 000	4 970 000	n.a.	n.a.
Fed. Energy Regulatory Comm.				5 157 268	5 233 893	5 540 000	3 980 000	n.a.	n.a.
Fed. Trade Comm.	7 100 000	200 000	146 149 460	146 148 091	146 161 341	126 980 000	126 560 000	n.a.	n.a.
NASA			9 561 494	9 228 714	9 087 758	7 710 000	7 340 000	n.a.	n.a.
Nat. Science Foundation			5 691 560	5 760 203	5 794 805	4 730 000	4 740 000	n.a.	n.a.
Nuclear Regulatory Comm.			8 726 244	9 942 882	10 271 588	9 670 000	9 510 000	n.a.	n.a.
Agency	1987	1992	1995	1996	1997	1998	1999	2 000	2001
Securities and Exchange Comm.			191 527 284	142 105 083	148 933 539	75 680 000	76 560 000	n.a.	n.a.
Small business admin.			2 355 150	2 288 365	1 492 925	3 070 000	1 670 000	n.a.	n.a.

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Federal information collection burden in 1987-2001 *(cont.)*

In burden hours

Agency	1987	1992	1995	1996	1997	1998	1999	2000	2001
Social security admin.			25 307 594	25 679 475	24 783 842	22 080 000	21 220 000	n.a.	n.a.
All others	123 600 000	119 900 000							
GRAND TOTAL	1 828 500 000	6 597 000 000	6 898 576 107	6 806 531 922	6 978 213 010	6 952 140 000	7 176 710 000	7 361 720 000	7 651.42
TOTAL excluding treasury	976 300 000	853 300 000	1 567 278 074	1 453 686 492	1 396 091 807	1 249 900 000	1 267 640 000	1 204 920 000	

1. These figures are derived from Office of Management and Budget, Office of Information and Regulatory Affairs, *Information Collection Budget of the United States Government Fiscal Year 2002* (and preceding volumes for FY 1998-2000), and General Accounting Office, *Paperwork Reduction – Reported Burden Hour Increases Reflect New Estimates, Not Actual Charges*, GAO/PMED-94-2 (Dec. 1993).

FROM RED TAPE TO SMART TAPE – ISBN 92-64-10067-9 – © OECD 2003

OECD PUBLICATIONS, 2, rue André-Pascal, 75775 PARIS CEDEX 16
PRINTED IN FRANCE
(42 2003 06 1 P) ISBN 92-64-10067-9 – No. 52995 2003