

“Red Tape elimination campaign” *What could business be doing?*



Laurraine Lotter is the Executive Director of the Chemical and Allied Industries Association, which is the custodian in South Africa of the global chemical industry initiative to promote continuous improvement in health, safety and environmental performance. Part of her responsibilities are to advocate reasonable legislation. Laurraine has a Ph.D in Biochemistry and an Honours degree in Philosophy.

Background

South Africa continues to feature unfavourably in global indicators of regulatory burden and ease of doing business, like ‘Doing Business’, ‘Worldwide Governance Indicators’ of the World Bank and ‘The Global Competitiveness Index’ of the World Economic Forum.

In the 2010 ‘Doing Business’ report, for example, South Africa ranks 148 in the world on ease of trading across borders and 90 on registering property. The Global Governance Indicators of the World Bank reflect that, although South Africa remains in the 50 to 75th percentile of countries in respect of regulatory quality, a steady downward trend in performance in this governance indicator is evident for the period from 2006 to 2009. ‘The Global Competitiveness Index’ of 2009-2010 reflects a ranking of 94 in respect of the regulatory burden indicator.

These results do not come as a surprise. The negative impact of the regulatory environment, and particularly the burden on small and medium size enterprises, has been recognised by Business and Government for some time. The *Accelerated and Shared Growth Initiative for South Africa* (Asgisa) acknowledged that the mediocre performance of the small, medium and micro business sector in terms of contribution to GDP and employment partly arises from the sub-optimal regulatory environment.

Asgisa highlighted that, amongst others, the planning system, including environmental impact assessment, municipal regulation, the administration of labour law and, in specific sectoral regulatory environments, unnecessarily hampers the development of businesses.

Asgisa also acknowledged the negative impact of the cost, efficiency and capacity of the national logistics system. Backlogs in infrastructure and investment, and in some cases market structures that do not encourage competition, make the price of moving goods and conveying services over distance higher than it should be; a finding still highlighted in the ‘Doing Business’ 2010 report

The New Growth Path recognises Business as “a core driver of jobs and economic growth” and identifies “the development of more constructive and collaborative relations between the state and business” as key to the implementation of the New Growth Path.

The proposed collaboration is based on a *quid pro quo* approach where Government again “commits to minimise unnecessary economic costs, such as unnecessary regulatory requirements and delays, inadequate infrastructure, weak education and training, and Business responds by supporting critical and innovative initiatives for a more inclusive and equitable economy, especially projects that can generate employment on a much larger scale, through investment, technical support and mentoring, and appropriate pricing policies.”

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In this regard, the intention “To initiate a red-tape elimination campaign to simplify regulated procedures and forms and remove any bias against smaller producers, for instance in zoning requirements, with results reported to Cabinet on a quarterly basis” is clearly stated in the New Growth Path.

It is not the intention of this paper to debate the merits of the *quid pro quo* approach but to respond to the invitation to Business to engage on the issue of ‘unnecessary regulatory requirements’ or, in other words, the elimination of red tape or perhaps more appropriately stated, as moving from red tape to smart tape, as reflected in the Organisation for Economic Co-operation and Development (OECD) work in this regard.

Regulatory Impact Assessment

In 2007 the Government Program of Action included the implementation of a pilot Regulatory Impact Assessment (RIA) system and the introduction of the regulation making procedures. Despite sporadic efforts to establish a routine RIA system in Government, this has not materialised, although some RIA’s have been undertaken at the request of Cabinet.

The decision to introduce a Regulatory Impact Assessment system was based on the recommendations of a report ‘Counting the cost of Red Tape in South Africa’ commissioned by the Presidency in 2004.

This study revealed the following:

- The regulatory compliance costs of business amounted to R79 billion in 2004. This was equal to 6.5% of GDP in 2004, which was significantly higher than in a sample of developed countries.
- In 2004, the compliance burden was particularly acute in the areas of tax compliance, sector specific requirements, labour/employment regulations and BEE regulations.
- Over 30% of respondents believed that the complexity of the compliance process was the most important constraint to growth facing their businesses.
- Nearly 20% of respondents said they would avoid regulatory compliance by reducing the levels of employment in their businesses.
- A regulatory impact mechanism would improve the efficiency and effectiveness of regulation by minimising both the fiscal and economy-wide costs of the proposed intervention, and by transforming the law and policy-making process into one that is more transparent and interest-group neutral.

The study also found that firms with annual sales of more than R1 billion spent

on average 0.2% of turnover on compliance costs, while firms with annual sales of less than R1 million spent 8.3% of turnover, on average, on compliance costs. The disproportionate burden on SMME's is confirmed by studies in other countries. The highest contribution to the overall cost of regulation was regulatory compliance and complexity.

In a study commissioned by Business Leadership South Africa in 2010, the additions to legislation from 2005 to mid-2010 were assessed. This research suggests that from 2005 to mid-2010, there was a significant increase in the law-making activity by the state, and the rate of law-making had also increased over this period. Although this later study did not include a quantitative assessment of the costs, it is unlikely that with such increased levels of compliance there was a decrease in cost of compliance.

There is no dispute that society needs to be regulated. The question is what are the characteristics of regulation that achieve the objectives required by society and yet do not constitute an unacceptable burden on business.

From Red Tape to Smart Tape

Definitions of 'red tape' range from terms like 'excessive or oppressively complex bureaucracy' to 'hair splitting' or 'foot dragging', so that getting business done is delayed. In other words the efficiency of the regulatory regime is key to eliminating red tape. In addition, the effectiveness of the regulation has to be considered. Is the regulation achieving what was intended by the regulator?

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The OECD, which is one of the leaders in moving from red tape to smart tape, identifies the following strategies to reduce regulatory or administrative burdens, by member countries:

26 countries have government programmes to reduce administrative burdens. These programmes include different elements as follows:

- Quantitative reduction targets: 12 countries
- Establishment of a system measuring administrative burdens: 15 countries
- Reallocation of powers and responsibilities between government departments and between levels of government: 20 countries
- Streamlining administrative procedures: 24 countries
- Use of information and communication technologies: 26 countries

Programmes along the lines set out above are essentially measures to alleviate an existing burden, clearly it would be more efficient and effective to promote the introduction of 'smart tape' in the first place.

Progress in Eliminating Red Tape in South Africa

Attempts to alleviate the regulatory burden can be discussed broadly in three areas:

- Identification of regulatory areas with the highest cost
- Promotion of smart tape
- Establishment of a monitoring system

Addressing areas with highest cost

In South Africa, significant improvements have been made in the areas identified as being the top five problems in the SBP study referred to above, namely various aspects of tax administration. However, the second highest number of responses identified labour law, the CCMA and bargaining councils as contributing to the cost of doing business. However, increasingly more technical and environmental legislation, consumer protection and amendments to company legislation are presenting significant challenges.

Promotion of smart tape

The introduction of a formal Regulatory Impact Assessment system is considered to be one of the most important interventions in a move from 'red' to 'smart' tape.

Despite the government decision to establish a formal Regulatory Impact Assessment system, assessments have only been undertaken sporadically and there is no formal requirement to subject new or amended legislation to assessment. This is particularly important in the case of regulation, as in many cases, it is only when the new regulations are published that the full cost of implementation can be assessed.

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can be effectively implemented across all authorities. The cost of the process is considered a hurdle to small players trying to enter the market. The time frames for decision making in the regulations are seldom attained, particularly on more complex projects.

The absence of a formal system of review promotes a culture of complaint from affected parties.

Monitoring system

Even if an RIA system is introduced it may only reduce unintended consequences of the legislation, not eliminate them altogether. There is therefore a need to monitor implementation and report on challenges being experienced.

The concept of a 'red tape elimination campaign' could be attractive to Business as it reflects a new sense of urgency and suggests a collaborative approach.

How could a Red Tape elimination campaign be approached?

Based on the studies already undertaken the following list of steps could be considered to support the development of an action campaign:

- Prepare a preliminary list of priorities for more detailed investigation
- Agree between Government and Business on the priorities

- Review agreed priorities on the basis of the following considerations:
 - Coherence with other legislation
 - Harmonised interpretation across authorities
 - Availability of technical capacity in government to implement the legislation effectively and efficiently
 - Level of understanding of requirements by SMMEs
 - Achievement of regulatory objectives
 - Extent to which employment is affected
- Identification of remedies for the problems identified above, which could includee
 - Exemptions below specific thresholds which may be partial or full
 - Administrative co-ordination
 - Implementation guidance and simplification where possible
 - Electronic services (as already implemented for tax)
 - Elimination of duplicate requirements
 - Harmonisation across authorities where required
 - Explore alternatives to increase technical capacity
 - Where regulatory requirements are not being met consider alternative approaches
- Establish Regulatory Impact Assessment system and enforce it.
- Consider setting targets for reduction of the regulatory burden and introduce a 13th outcome for ministerial performance monitoring

In developing a set of criteria against which to evaluate legislation, it is important to note that while indicators do exist that allow assessments to be made, they are not perfect, and it is therefore important to apply a diverse set of criteria.

Consideration could be given to agreeing a set of principles, which could form part of a regulatory impact process. Examples of such principles are:

- Problems should not be addressed through regulation unless a sound case for action has been clearly established, including explaining why existing measures are not sufficient to deal with the issue.
- A range of possible policy options should be subjected to a cost-benefit analysis
- Effective guidance should be provided to regulators and regulated parties to ensure that the policy intent of the regulation is clear, as well as what is needed to be compliant.
- Mechanisms such as sunset clauses and periodic reviews need to be built into legislation to ensure that regulation remains relevant and effective over time.
- Effective consultation with regulated parties at the key stages of regulation-making and administration.

In suggesting this approach, it is recognised that the regulatory regime is subject to constitutional realities and, in some cases, the constitutional allocation of powers and responsibilities presents significant challenges, particularly in respect of lack of harmonisation across authorities.

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and in finding solutions to the challenges identified. Establishment of some type of collaborative body between government and business could give the necessary impetus to the development and implementation of the campaign.

Conclusion

Business should respond positively to the proposal by the Minister of Economic Development to initiate a 'Red tape elimination campaign' by developing a set of business regulatory concerns which should be prioritised in the campaign.

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