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Canada's Fall Economic Statement Highlights Regulatory Reform

By: Mark Febrizio | December 21, 2018

Introduction

Canada released the Fall Economic Statement 2018 (FES) last month, a document that addresses a number of regulatory reform initiatives. The FES is a broad review of the progress Canada has made on government commitments, an evaluation of the country's recent economic record, and a discussion of forward-looking initiatives focused on economic growth and innovation. As we look ahead to 2019, Canada's report includes regulatory modernization efforts that may translate to the U.S. context.

Regulatory reform takes up a substantial portion of the report. Chapter 3—*Confidence in Canada's Economic Future*—reflects on the positive economic indicators detailed in the previous chapters and articulates how to position the country for long-term economic growth by investing in five pillars: strategic infrastructure, skills and training, innovation and science, trade and foreign investment, and competitiveness. The report, in particular, focuses on government "investments" in competitiveness, with regulatory modernization as an integral component of that objective.

Regulatory Highlights from the Report

Rather than separating regulatory modernization into a distinct section, the report embeds various recommended changes to the regulatory process across the document's subsections (primarily within Chapter 3). While the FES does not specifically delineate its reforms into these categories, three general themes are evident across the various regulatory-focused initiatives: 1) reforming regulatory institutions to promote economic growth; 2) expanding the tools used to improve regulatory policy; and 3) looking back and conducting retrospective review of existing regulations.

Prioritizing Growth-Oriented Regulation

Economic growth is at the core of the government's reforms, and two of the four growth strategies have implications for regulatory policy (*see* p. 53):

- "Remove the barriers to trade within Canada, to support stronger domestic trade and growth" (*see* pp. 69–71)

- "Make it easier for Canadian businesses to grow, by modernizing regulations while continuing to protect the health and safety of Canadians and the environment" (*see* pp. 72–76)

First, alongside reducing international trade barriers, Canada is removing internal trade barriers between provinces and territories, steps that began with the Canadian Free Trade Agreement (in force as of July 2017). The FES seeks to build off those actions and "remove regulatory and other barriers," specifically by harmonizing regulations that affect trucking and transportation, food and inspection rules, construction sector regulations and building codes, and interprovincial trade in alcohol.

The report suggests such differences in regulation often make transactions more expensive and reduce mutually beneficial exchanges, without protecting consumers and workers. The FES details instances of inconsistent regulations causing trucks to "change their tires at certain provincial borders" and increasing "the cost of water heaters … as much as 30 per cent." Additionally, the government expresses its intent to expand regulatory cooperation with other countries and "pursue mutual recognition of regulatory decisions and approvals." Such ideas are consistent with previous actions, such as a Memorandum of Understanding signed earlier in 2018 reaffirming the Canada-United States Regulatory Cooperation Council.

Second, Canada is taking steps to incorporate pro-growth policies into the regulatory sphere to encourage businesses to grow. A key aspect of this objective is changing how regulators approach new rules and expanding the information available to regulators. For instance, the government is considering a legislative requirement that would include "regulatory efficiency and economic growth" as "an integral part of regulators' mandates" alongside health and safety. Furthermore, Canada is establishing an *External Advisory Committee on Regulatory Competitiveness* to help businesses "engage with Government on an ongoing basis to identify ways to improve the regulatory system."

Improving Regulatory Tools

To improve the regulatory environment for businesses, Canada acknowledges "the need for the greater exploration and use of sandboxes and pilots to ensure the regulatory system can keep pace with advances in technology." The government will create a *Centre for Regulatory Innovation* where businesses can connect with regulators on different approaches to address advances in technology. Regulators often have difficulty keeping up with technological change—a phenomenon known as the pacing problem—but establishing an office that encourages experimentation and innovation could help meet that challenge. Relying on alternative regulatory tools, such as regulatory sandboxes, might be appropriate for rapidly evolving sectors and give relatively untested ideas an opportunity to improve.

Nevertheless, pursuing innovation in the regulatory sphere could incur additional expenses. The report discusses plans to dedicate more resources to regulatory development and implementation. Ensuring that regulators—and those who review their work—have the resources to adhere to best practices and implement those rules that are promulgated is essential to a well-functioning system. Fixing problems in the early stages of drafting and supporting the actual implementation of those rules should have positive practical effects.

Retrospective Review

Improving Canada's competitiveness and responding to recommendations from businesses are part of cultivating "a simpler, clearer, and more modern regulatory system." The report approaches this in part by strengthening retrospective evaluation of its existing regulatory policies, including making process-related changes and conducting industry-specific reviews.

Starting in 2019, the government plans to introduce an Annual Regulatory Modernization Bill, instituting a regular evaluation of its existing stock of regulation. The goal of the "annual exercise" would be "to remove outdated or duplicative regulatory requirements, and to allow for the updating of regulations." Unfortunately, the report does not detail how regulations will be selected for evaluation or how they will be evaluated.

The annual exercise is consistent with Canada's Red Tape Reduction Act, which requires that "each increase in the administrative burden on businesses must be offset with a corresponding decrease, one-for-one." The FES also commits to review the Act by 2020. Such process changes to regulation are important because they modify the institutional incentives that regulators face and encourage regulators to work with businesses to identify areas for improvement.

To be effective, process changes should result in actual modifications to existing regulations. The FES documents "early action items" from targeted regulatory reviews, which focus on "high-growth sectors" such as agri-food and aquaculture, health and bio-sciences, and transportation and infrastructure. More broadly, these reviews represent ongoing attempts by Canadian regulators to respond to the recommendations from the business community. While these items convey the breadth of actions taken by the government, few of the "outcomes-based descriptions" include metrics to gauge success.

Conclusion

Canada's report suggests that growth-oriented policies, experimentation with regulatory tools, and regular retrospective review of existing regulations can encourage a more competitive economic system. While the true impact of those policies is yet to be seen, utilizing multiple methods of reform can work together to improve regulatory institutions. The FES also demonstrates how broader process reforms often should lead to more specific, sector-level changes.

As the U.S. continues to pursue regulatory reform and moves into its third year of implementing its two-for-one executive order, regulators and policymakers should consider how to spur retrospective reviews that lead to reforms that are beneficial, durable, and measurable.

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Contact Bryce Chinault:
brycechinault@gwu.edu
(202) 994-9560

Regulatory Studies Center
THE GEORGE WASHINGTON UNIVERSITY

Regulatorystudies@gwu.edu
(202) 994-7543
805 21st Street, NW
MPA 612
Washington, DC 20052