

CANADIAN MANUFACTURERS & EXPORTERS SUBMISSION

Treasury Board Secretariat consultation on Regulatory Modernization

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To:

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On behalf of Canadian Manufacturers & Exporters (CME) and our 2,500 direct members across the country, we are writing to provide our comments as part of the Treasury Board of Canada Secretariat's (TBS) review of Canada's regulatory modernization initiatives.

To begin, we want to commend the TBS, and the government, for embarking on this ongoing review and modernization of the regulatory system. We believe good regulatory policy is critical to not only protect the vital interests of the country, but also to drive economic growth and innovation.

Manufacturing is the largest business sector in the country, directly accounting for 11 per cent of GDP, 66 per cent of exports, and 1.7 million employees in high wage, high skilled jobs in nearly every community across the country. Our industry falls under, or complies with, countless regulations from all levels of government. We support the concept that regulations are necessary to protect the public, workers, and indeed manufacturing companies themselves. However, while good regulatory practices can boost investment and innovation, and create a competitive advantage for companies, bad regulatory policy can do the opposite. There are three impacts of bad regulatory policy that are specific to the manufacturing sector:

- Adds unnecessary cost to doing business which increases consumer costs and makes domestic companies less competitive;
- Delays the introduction of new products, meaning consumers do not have access to the full range of goods available in other markets, and manufacturers are slower to market, missing out on additional sales; and
- Delays investment in the expansion of production capacity, meaning companies are limited in meeting customer demands.

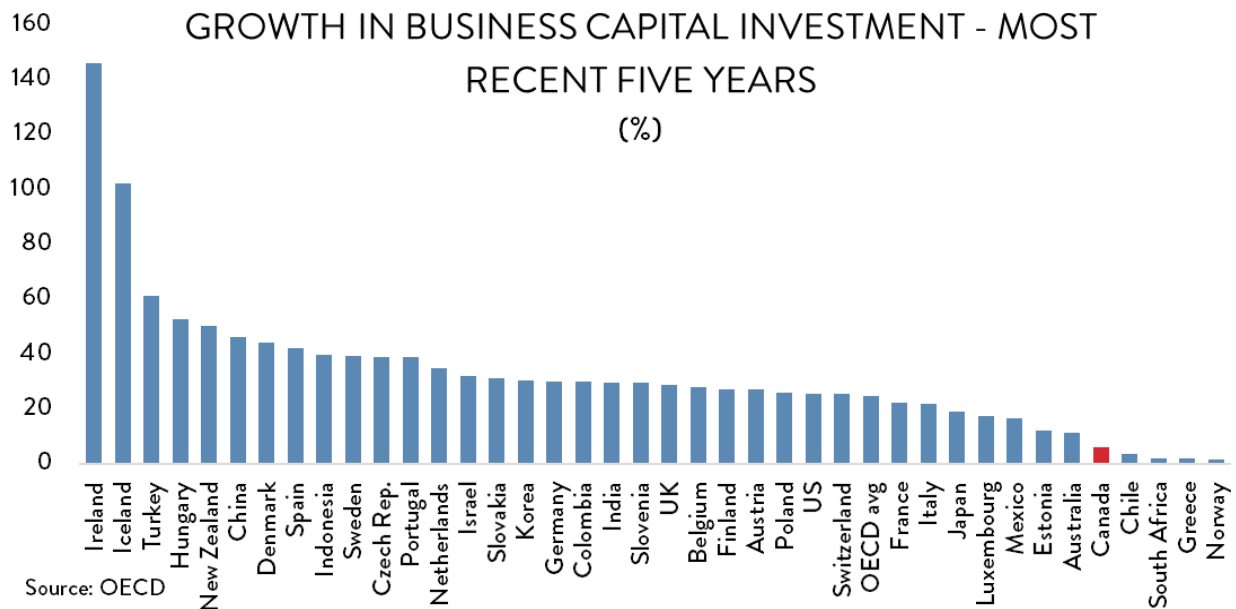
Far too often, Canada's regulatory system is a barrier to both business and consumer interests and the overall health of the economy. We believe this ongoing review is critical to setting the right regulatory policies moving forward. And CME's core recommendations under this review are as follows:

1. Adopt a Regulatory Bill of Rights to ensure that all developers and users of regulations are operating on a level playing field, that certain common benchmarks are set, and that predictability is enforced.
2. Ensure regulators consider the negative cumulative effects that additional regulations have on businesses.
3. Ensure regulations are harmonized with other jurisdictions, particularly the U.S.
4. Use technology to simplify and ease the administrative burden of regulatory compliance.

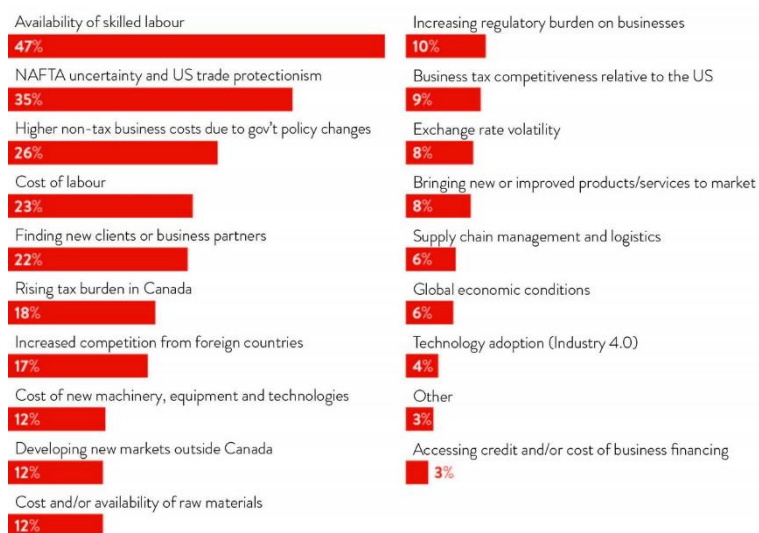
IMPACT ON INVESTMENT

Business investment is critical to the ongoing health of the economy and manufacturing. Investment drives productivity improvements through new machinery and equipment, and, technologies and innovation through new processes and products. In the globally integrated and competitive manufacturing sector, investment is essential to sustain and grow operations.

Currently, Canada is facing a major problem with business investment. As the graph below shows, Canada is near the bottom across the OECD in business investment over the past five years – above only 4 countries. Over the past decade (2007 – 2016), machinery and equipment investment in Canadian manufacturing has fallen by 17 per cent while in the US it has increased by 21 per cent. These trends are not sustainable in a small, trade exposed, economy such as Canada's.



To understand what issues most impact business operations and investment decisions of manufacturers in Canada, CME regularly surveys its members. In our 2018 Management Issues Survey (MIS), we identified a range of issues that are undermining investment decisions. As indicated in the graphic below, non-tax business costs due to government policy changes, and increasing regulatory burden on businesses are some of manufacturers' top challenges in this regard. In fact, the cost burden driven by regulatory policies (at all levels of government), ranked behind only labour issues, and access to manufacturers' largest market (the US).

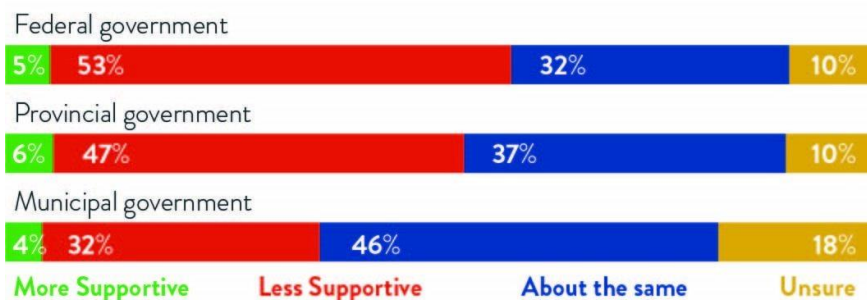


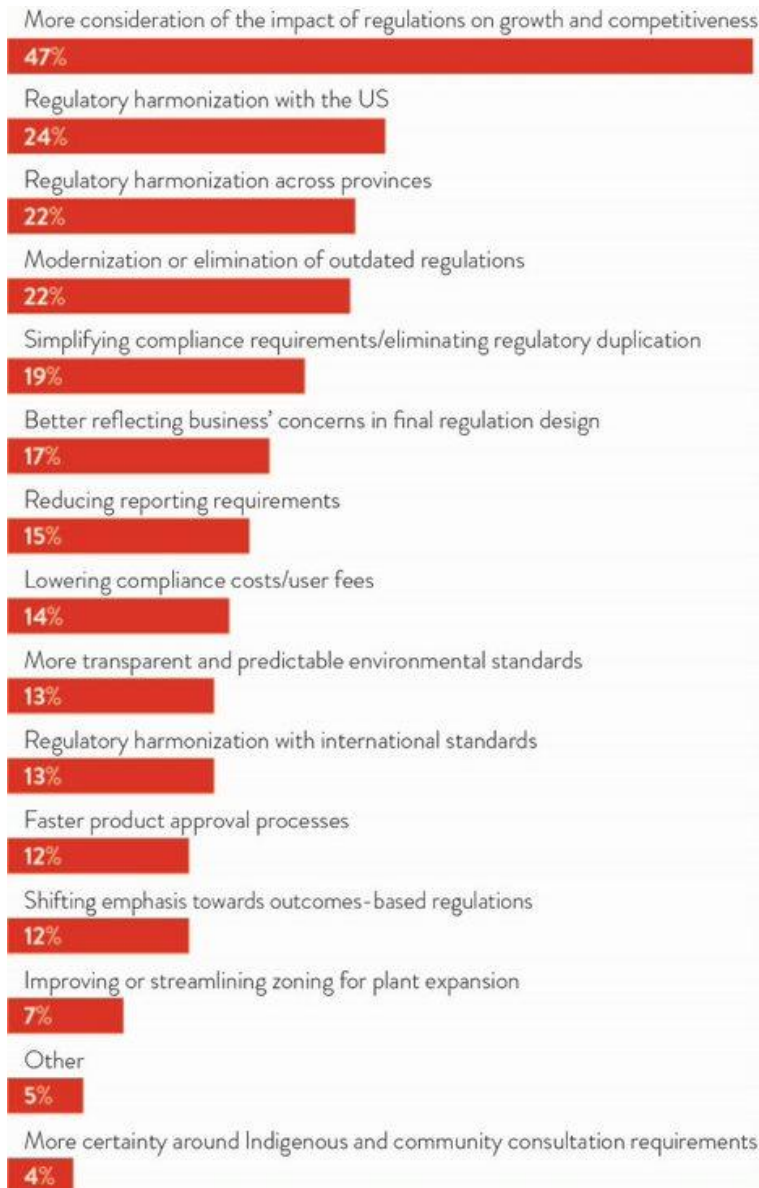
We believe that governments understand this challenge; which has resulted in a variety of efforts over the past number of years to lower the regulatory burden, including this current initiative. However, when asked specifically about changes in Canada's tax and regulatory system, manufacturers did not believe that it was improving at any level of government.

Despite all the regulatory reductions efforts of governments to date, only five per cent of respondents said that

federal government policies had improved over the last three years (2015 – 2018). Worse, 53 per cent thought that tax and regulatory policy had deteriorated at the federal level over that same time. While some of these responses may be more perception than reality, the reality is that perception is reality in business as in politics. This reality is directly impacting investment decisions.

CME believes that regulatory simplification and modernization is not only essential to drive business investment, but that the federal government can make real progress through efforts like the current one. These efforts though must not be symbolic, they must lead to





real outcomes. And if we are to reverse recent investment declines in business, they must be aggressive and deal with the issues of most importance to domestic industry.

As is shown in the following graphic from CME's MIS, the priority must be on improved focus on the cost of regulatory compliance and alignment across Canada and with major trading partners. Simply put, more attention needs to be paid to developing smart, effective, outcomes-based regulations that do not hamper our companies' ability to compete at home and abroad.

SCOPE OF THE CONSULTATION

As stated in the June 29, 2019 Canada Gazette, Part I, Volume 153, Number 26: GOVERNMENT NOTICES:

The Treasury Board of Canada Secretariat (TBS) is inviting input from all interested stakeholders on four of these regulatory modernization initiatives through this notice:

1. *Targeted Regulatory Reviews (Round 2);*
2. *Review of the Red Tape Reduction Act;*
3. *Exploring options to legislate changes to regulator mandates; and*
4. *Suggestions for the next annual Regulatory Modernization Bill.*

CME's comments below will touch on the sections described above. CME has a long history of working with the government on reforming and improving regulations. While our comments here are for this consultation, we nevertheless welcome continuing a dialogue with government on all regulatory modernization efforts.

CME MEMBER FEEDBACK ON REGULATORY MODERNIZATION EFFORTS

In addition to our general survey, CME canvassed its members on this specific Treasury Board of Canada consultation. We were able to get feedback from small and medium sized manufacturers and large, global manufacturing companies.

SECTION 1: TARGETED REGULATORY REVIEWS

At a general level, many regulatory requirements negatively impact the Canadian manufacturing sector. And while most of these regulations are well intentioned, a big problem lies in the cumulative effect of multiple (and sometimes conflicting) regulations that business must comply with. Often, regulations are devised in isolation by one regulator and added to a master list that all businesses must follow. As a result, a company may find themselves subject to several regulations from different regulators, agencies, or departments. On their own, each regulation might be justified, however, without any attention paid to coordination between regulators, or, the overall compliance burden on industry, this results in the curtailment of business investment that has plagued the Canadian economy for several years now. This cumulative burden of regulation phenomenon is not well measured or appreciated and is probably one of the biggest headaches for companies in the manufacturing sector.

Secondly, on the regulatory development front, there is often not enough attention paid to the negative economic impacts new regulations might have. For example, the federal clean fuel standards. In developing these new rules, the government did not assess their economic impact, nor did they do a cost-benefit analysis with industry. While manufacturers support the goal of reducing greenhouse gas emissions, it cannot come at the cost of hollowing out one of the economy's largest sectors. Furthermore, applying new fuel standards in isolation to what our global counterparts are doing, and without consideration for the tremendous impact new rules will have on manufacturers, risks serious harm to Canada's manufacturing base and economy. The cost impact of the federal clean fuel standards has been estimated to reach nearly 50 per cent of the price of natural gas. For companies

who are using combined heat and power units to generate electricity, the impact is considerable. And, while manufacturers spend resources complying with these new regulations, it diverts money away from investing in clean tech solutions that could combat emissions.

Manufacturers, however, strongly support initiatives that help improve digitization of industry as well as the regulatory processes. At a fundamental level, regulatory structures should seek to enable e-commerce and the digital economy. From a manufacturing perspective, it is paramount that e-commerce and the free flow of data be allowed to occur without any hindrance. And while much of the focus is often on e-commerce and the selling of goods to consumers, it is important for us to point out that much of the digital activity in the economy is taking place at an industrial level.

That is because linkages between manufacturing and the digital economy are growing as manufacturing becomes more advanced. In addition to using technologies to reach new customers, manufacturers are leveraging enabling technologies to conduct real-time digital collaborative research and development; are ensuring efficient automated factory operations from data through the Internet of Things; and are using 3D printers to rapidly prototype new components to reduce product development times. These are just three areas of modern advanced manufacturing that were not even contemplated a few years ago.

The government must strive to create a legal and regulatory framework for the unrestricted free flow of data and information necessary for the digital economy to thrive and for manufacturers to remain globally competitive. This should include provisions to treat industrial data as distinct from consumer data, and to implement intellectual property protections for industrial data. At a structural level, members also suggested the creation of a new regulatory body that would have the power to review new tech and provide easy exemptions to industry seeking to expand their operations through the adoption of technology that would otherwise face regulatory hurdles. Such a body would simplify the process and enhance digitization as industry would not have to navigate complex bureaucracies.

On international standards, CME believes strongly that Canada's regulatory system should seek to harmonize with other jurisdictions, especially our major trading partners, as much as possible. This should happen in all respects, but especially on digitization and environmental regulation. Developing new regulatory rules in isolation complicates doing business in Canada and drives away investment and economic development. Not only should Canadian regulations seek to match global standards, but it should also take care not to develop new standards that put it at an economic disadvantage compared to global peers.

Canadian industry, especially manufacturing, competes at a global level and is highly integrated. Any deviation from international regulatory norms hurts our competitiveness, but also threatens our position in vital supply chains. Therefore, Canada should strive to harmonize with global regulatory standards and not develop any new regulation in isolation to the world that exists beyond our borders.

SECTION 2: THE RED TAPE REDUCTION ACT

While CME applauds the intent of the Red Tape Reduction Act, as our research shows, manufacturers are not seeing tangible improvements and still think their regulatory burden is rising.

The *Red Tape Reduction Act* fell short of effectively dealing with the real burden facing businesses. While the number of regulations decreased in several cases, the number of actual regulatory requirements remained unchanged – governments simply combined multiple regulations into single, larger regulations. Simply put, businesses are looking for an overall reduction in regulatory requirements, not just in the number of regulations. We explain how we think this can be achieved in the next section.

SECTION 3: LEGISLATING CHANGES TO REGULATOR MANDATES

CME fully supports the TBS effort to develop key principles related to efficiency and economic growth that would become part of the required analysis that regulators must perform as part of the regulatory development process. CME members believe that Canada's regulatory system can be a competitive advantage for Canadian manufacturers and can help fuel long-term growth. However, regulations can also be damaging and undermine investment, research, and commercialization of products in Canada. Throughout our consultation process, companies outlined a range of opinions on Canada's regulatory system. Most of what they said was unflattering and focused on a common thread: regulations, and regulators, appeared to be operating simply to look like they were doing something. Their prevailing motivation appeared to be: the more regulation the better.

CME believes the TBS should develop, implement, and enforce a set of guiding principles for regulatory policies that would strengthen the existing cabinet directive on regulations, which would constitute a "Bill of Rights." This approach would ensure that all developers and users of regulations are operating in a level playing field, that certain common benchmarks are set, and that predictability is enforced. This Bill of Rights should follow guiding principles that ensure regulations are:

- Scientifically-based using publicly-available and agreed-upon data;
- Developed in consultation with all affected parties;
- Aligned with those of our major trading partners, especially the US;
- Considerate of all impacts and include a full public economic impact analysis;
- Created using principles of LEAN processes to ensure efficiency in application;
- Contain service standards (where applicable) for the delivery of regulatory services; and
- Focused on the specific desired outcomes, rather than the process.

SECTION 4: SUGGESTIONS FOR THE NEXT ANNUAL REGULATORY MODERNIZATION BILL

During our consultation several specific regulatory changes and improvements were advanced by our members. We have reproduced them below.

1. Department: Health Canada
Legislation: Hazardous Products Act

Issue: In 2014, the Hazardous Products Act (HPA) was amended to allow for the modernization of the Hazardous Products Regulations. Included in the 2014 legislative amendments was the requirement, found in section 14.3 (1) (a) of the HPA, for suppliers to keep a “true copy” of labels for workplace chemicals on a server housed in Canada for 6 years. The cost to comply with the “true copy” requirement is prohibitive and is realized throughout the entirety of the Canadian supply chain.

Proposal: While it has been suggested that alternative solutions may be possible to address the data retention requirements prescribed in the legislation, only a legislative amendment to HPA that removes section 14.3.1. (a) will eliminate the requirements to keep a “true copy” of a label. For companies who wish to be competitive in the North American marketplace, this unusual paper burden, unique to Canada, is a disincentive to innovation and keeping business in Canada. As such, we request that it is included in the next Regulatory Modernization Bill.

2. Department: Health Canada
Legislation: Health Canada Microbiological Hazards Food Safety Standards

Issue: Canada has a “Canada only” regulation as to how it approves food safety methods. This industry is largely global and International validations (AOAC, AFNOR) are accepted in all countries with exceptions only in China, Brazil and Canada. Canada has a cost recovery target approval timeline of 12 months. Delays can go up to 48 months. Food imports are not regulated under microbial detection methodology putting Canada food producers in a weak position as importers can use the latest methods in other jurisdictions.

Proposal: Recognize international standards for microbial detection

3. Department: Health Canada
Legislation: Hazardous Products Act – Potential removal of the consumer product exemption and subject to Workplace Hazardous Materials Information System (WHMIS) being applicable for consumer goods

Issue: Government is evaluating the removal of consumer product exemption to improve workers safety and address consumer goods that end up in workplaces. This would require manufacturers to include SDS's for all

consumer goods, and retailers to provide these SDS's for each purchase. The cost would be significant. It is understood that intention of this regulation is to target very specific professions.

Proposal: It would be more targeted and efficient to regulate the targeted professions while not adding another layer of regulatory burden on the entire consumer and retail industry.

SUMMARY

Regulations are critical to any advanced economy. They bring balance and set the rules of the game to protect consumers, the public, and enterprise. However, regulations must be well calibrated or else it risks upsetting this critical balance. Effective regulation that achieves positive social outcomes and enhances the economy are not mutually exclusive goals.

Overall, manufacturers are concerned that the government is not paying enough attention to the impact that regulatory changes can have on business growth and competitiveness. More attention needs to be paid to developing smart, effective, outcomes-based regulations that do not hamper our companies' ability to compete at home and abroad. CME believes this can be achieved by adopting a regulatory bill of rights that would better coordinate regulators and the development of regulations. Businesses generally, and manufacturers specifically, should be consulted in all future regulatory development processes. Failure to do so may result in new regulations achieving their intended goals, but at tremendous economic costs. The regulatory process should not be a series of pyrrhic victories.

We commend the TBS, and the government, for embarking on this ongoing review and modernization of the regulatory system. CME has a long history of working with the government on reforming and improving regulations and we want to continue this cooperation. We look forward to the work ahead.

Yours very truly,



Matt Poirier
Director, Trade Policy
Canadian Manufacturers & Exporters