

**USAID ECONOMIC GROWTH OFFICERS WORKSHOP
OCTOBER 15-19, 2007
WASHINGTON, DC**

Session Title: Improving Business Regulation: the Guillotine and Other Approaches

Date and Time: Wednesday, October, 17, 2006, 1:30-2:30

Type of Session: Breakout

Speaker(s): Marc Shiman, Scott Jacobs, Jacobs and Associates

Moderator: Wade Channell

Overview of Session:



Marc Shiman addresses workshop attendees. Photo by Paul Goodman.

1) The guillotine approach focuses on a systematic and catalytic approach to deregulation. Experience has shown that it is critical to tackle all regulations at once, asking whether regulations are needed, can be streamlined, or should be eliminated. This approach shifts the burden of proof to the regulators -- if a regulation cannot be justified, then it should be eliminated. Also, it is critical that a system be in place to review carefully new regulations, using regulatory impact analysis to require that new regulation be clearly justified. The approach involves a high level commitment by political leadership, and full transparency and public information campaign.

2) Strong guillotine programs to reduce regulations do not mean that government officials must be laid off -- rather, in most cases, the goal is to dramatically reduce bad regulations and to shift attention to improving useful regulations. Effective regulation is a fundamental responsibility of government -- the objective is to assure that such regulation effectively achieves the desired social objective at the least cost to business compliance as possible.

Speaker's Remarks:

Mark Shiman organized a simulation with three break-out sessions to encourage discussion on an investment and regulation scenario: a) a group representing the government; b) a group representing USAID; and c) a group representing business interests. He noted that there is a decision tree that can be used, first assessing the value of a license to society, and then whether it should be eliminated, ignored, improved or outsourced. Each group provided perspectives on the scenario that made valid points. A key finding is that there are rarely easy answers to questions about licensing.

Scott Jacobs focused on the regulatory guillotine, which focuses on systematic reform and catalytic reform. He warned that focusing on easier, "low-hanging" reforms can be ineffective or even counterproductive -- he stresses the need for major, systematic reforms of all regulations.

He starts by noting that many governments have lost control of their regulatory systems -- there is often not a unified government regulatory system with clear understanding of why and how each regulation should work. Regulators lose independence, and can be captured by vested interests. As a result, there is often much more regulation than is commonly recognized -- in some cases tens of thousands of

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regulations can be in place that “regulate” business. This often arises from a legacy problem – past regulations are kept on the books as new regulations are added.

A regulatory system consists of laws, procedures, institutions and interest groups. He stresses the need to focus on the systematic impact on firms. Effective regulation is important for the public interest. The goal is a low-cost, low-risk regulatory system, which allows for higher profits and lower prices for consumers while also achieving the public interest. That is, regulation should achieve the public interest and be as business friendly in terms of compliance as possible.

He noted three main positive characteristics of a good regulation system:

- 1) regulations should be clear and appropriate to the task, and should be future oriented. Bad regulations should be eliminated, good regulations should be developed.
- 2) institutions and skills need to be in place to effectively implement the regulations
- 3) regulatory quality control is needed over time to monitor the relevance of old regulations and to evaluate the need for new regulations.



Scott Jacobs addresses workshop attendees. Photo by Paul Goodman.

He distinguished targeted regulatory reform in line with, say, the specific indicators noted in the Doing Business Reports, versus broad, systematic reform that uses a guillotine to assess and drastically cut back many types of regulations. Broad reforms have worked better than targeted reforms.

What is a regulatory guillotine? It is a national commitment to large scale simplification, often with specific, high-profile targets to, say, cut the number of all regulations by 50% as in Korea, or 40% as in Croatia, usually with a deadline of 12-18 months. It requires an accounting and reviewing of all existing regulations.

Guillotines have been done in Korea, Mexico, Moldova, Ukraine, Bosnia, Croatia and Kenya. Research on Korea showed that cutting back 50% of all regulations created 1 million jobs and encouraged FDI in the 1990s.

It is also critical to control the flow of new regulations, using regulatory impact analysis to evaluate the social value of any new regulations added after a successful guillotine effort.

With a guillotine, the burden of proof is shifted over to the proponent of a regulation. Any regulation must be justified as benefiting society with minimal compliance burden. The evaluation should ask: Is it legal? Is it needed? Is it business friendly? Evaluation can include self-evaluation, evaluation by independent analysts, or evaluation by businesses. For each regulation, the question should be asked: should it be eliminated, simplified, or kept as is?

He noted 8 building block strategies, noting that we do not want to eliminate important regulations that are needed to protect the public interest.

He noted that a key part of a guillotine is a communication plan, or a public campaign. The process needs maximum transparency and all recommendations should be public, which builds public support and pressure for the reforms.

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An e-registry for regulations can be useful.

In summary, a guillotine can achieve broad, systematic, catalytic change that provides a more productive business environment while also protecting the public interest, and there needs to be follow on quality control so that excessive regulation does not creep back into the system.

Key Points Discussed During Question & Answer Segment:

Q. How do you de-institutionalize an old system with too many regulations and officials oriented to enforcing those regulations?

A. Scott Shiman answered that the guillotine does not advocate reducing jobs in the bureaucracy, but rather that officials do different things. The need to enforce good regulations, not bad regulations; this can be done with the given institutions and workforces.

Q. It was noted that in the Ukraine, 5,000 regulations were eliminated, but many of the regulations have been reinstated. How often do you need to do a guillotine?

A. Scott Shiman noted that the key is early on in a guillotine process, there needs to be a follow on quality control process to make it hard to reinstate poor regulations. He warned to not underestimate inertia in the system.

Q. Doesn't reforming "low-hang fruit" regulation create political momentum for reform?

A. Scott Shiman responded that in his experience, he has never seen a limited, targeted regulatory reform program work. He stressed that it is essentially to do a broad, systematic reform to achieve major change.