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REVIEW OF SELECTED PROJECTS

18th Session of the Committee, Château de la Muette, Paris
28-29 October 1998

This document provides a review of selected projects including suggested actions to be taken by the Committee.

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REVIEW OF SELECTED PROJECTS

Attached are the papers relating to the projects to be reviewed under Agenda Items 8a) to d) for the Committee's 28-29 October session. They include:

- Item 8a) **Annex A - PUBLIC MANAGEMENT COUNTRY STUDIES**

Committee Action:

PROVIDE feedback on the proposals in this paper for the continued development of the country study outputs.

- Item 8b) **Annex B - PERFORMANCE CONTRACTING**

Committee Action:

NOTE the progress of work on performance contracting.

- Item 8c) **Annex C - REGULATORY REFORM COUNTRY REVIEWS**

NOTE the conclusions of the PUMA chapters for the Netherlands and the United States;

NOTE the oral report on the reviews of Japan and Mexico;

COMMENT on progress of the Activity.

- Item 8d) **Annex D - SYMPOSIUM ON “STRATEGIES FOR GOVERNMENT REVIEW AND REFORM”**

NOTE the objectives and intended participation for the Symposium, and provide any feedback.

Annex A

PUBLIC MANAGEMENT COUNTRY STUDIES

I. Purpose

1. The purpose of this note is to inform and consult with the PUMA Committee on the proposed goals and processes for the Public Management Country Studies to be carried out by PUMA's Budgeting and Management Division beginning in 1999.

II. Action

2. The Committee is asked to
- **provide feedback** on the proposals in this paper for the continued development of the country study outputs.

III. Background

3. This paper follows-on from discussion at the March meeting of the PUMA Committee on the performance orientation of government, the strong interest shown in this area by countries in the recent prioritisation process and the consideration of the study *Budgeting in Sweden* at this year's meeting of Senior Budget Officials [for reference: PUMA/SBO(98)5/REV1].

4. PUMA's prior work analysing well performing financial, performance and human resource management systems provides a strong basis for bringing these issues together into a more comprehensive and systemic assessment of public sector management in individual countries. Moreover, experience with public sector management reforms has advanced such that in many OECD countries governments are starting to evaluate the effectiveness of past reforms in aligning current public sector management policies and practices with the broader values and aims of the public sector.

IV. Goals for the Country Studies

5. The country studies aim to:
- **strengthen self-assessment** in target and other Member countries of their public sector resource management frameworks through the ongoing development and application of the PUMA review methodology;

- provide **second opinion policy analysis** on the working of Member countries' public management systems (e.g., financial, performance, human resource management) to serve as a **catalyst for improvement** of public management systems, in particular for overcoming barriers to integrating management systems; and
- provide an opportunity for **peer review and learning** among countries to increase the speed and degree of diffusion of emerging successful innovations.

6. The country specific system reviews will be complemented by the wider assessment and monitoring of public management innovation across the Membership.

V. Approach to developing the country study methodology

7. The credibility of the studies will depend on the acceptability of the framework for review which is under development. In developing the framework and set of processes for the country studies, the Secretariat has collected background information from the following sources:

- a) the country review of the Swedish budget system presented at the Senior Budget Officials meeting in May 1998.
- b) Secretariat commissioned study analysing issues in integrating financial and performance management with particular attention to assessing the nature of barriers to such integration, completed in September 1998.
- c) review of frameworks and processes used in other country study activities, including:
 - OECD Economic and Development Review Committee (EDRC) Annual Country Reviews
 - OECD Development Assistance Committee (DAC) Peer Reviews
 - OECD Regulatory Review Country Studies
 - Country-sponsored reviews (e.g., Pollitt review of Finland; Schick review of New Zealand)
 - Financial and competitiveness rating organisations (e.g., Standard & Poor, Moodys, IMD)
- d) standards and best practices for management systems (e.g., financial, performance and human resource management) as published by organisations such as the World Bank, IMF, IFAC and, of course, OECD and PUMA.

Review Process

Selecting Countries for Review

8. Participation by countries in the review process is **voluntary**. Selection and prioritisation of countries will be based on balancing the range of government systems represented in OECD countries, including factors such as political/administrative system (administrative law, Westminster, etc.), federal versus unitary, history of public management reform, significant change in overall fiscal position. etc.

9. The first country to be reviewed under this methodology will be Canada.

Timing

10. It is anticipated that up to two country reports will be prepared each year (at current resource levels).

Responsibility

11. Country studies will be published by PUMA on the authority of the Secretary General (as are most OECD publications). Editorial responsibility will rest with the PUMA Secretariat. Within the PUMA Secretariat, responsibility for this activity rests with the Head of Division for Budgeting and Management.

12. It is planned (under current resources) that each review will involve about **four person months** of Secretariat time. The PUMA review team will work in a collaborative and consultative way with PUMA and other OECD staff as appropriate. PUMA will attempt to access staff with appropriate language skills, where this is an issue.

*Information Collection and Reporting*Country Contacts in Reviewed Country

13. Key country contacts will work closely with the review team in a co-ordination function, including participating in selected organisation and co-ordination meetings, providing information and contacts, and in checking/verifying factual information, but will not be included in activities around analysing and reporting the findings. The Secretariat is aware of the potential resource burden on reviewed countries from collecting information and organising/participating in meetings. The review team will carefully manage the process through key country contacts to co-ordinate information collection and minimise the administrative burden as much as possible.

Review Mission

14. A well planned mission -- and active co-operation from the examined country in organising the mission -- is a key to the review process. During the mission, interviews will be carried out with selected officials from central and sectoral ministries and agencies, the legislature and lower levels of government. Interviews with relevant representatives from outside government, i.e. private sector/academics, will be carried out as appropriate. It is envisaged that the main mission will be of three to four days duration.

Documentation

15. Two main documents will be prepared for each review:

- A **main issues** paper will be developed prior to the review mission. This paper will include, for example, an outline of the main topics to be covered in the report, supporting questions for discussion, and advance requests for relevant data and published materials. Prepared by the Secretariat in bilateral discussions with the examined country.
- The **Secretariat report** based on an analysis of data, interviews and written materials, including (but not limited to) data and reports submitted by the examined country, and information collected during the review mission. A draft report will be provided to the country for review prior to being submitted to the peer review processes.

Secretariat Report

16. A **timeline** will be prepared at the start of each project outlining the time schedule for the various research, drafting, comment and review phases, report submission dates, and anticipated report finalisation date.

17. The examined country will be provided with a draft Secretariat Report for purposes of review and comment focused on ensuring accuracy and to facilitate a dialogue with the Examined Country about analyses drawn by the Secretariat.

18. Following peer review (see below) and final editing by the Secretariat, the report will be produced as an OECD/PUMA publication, with a summary provided on the PUMA Internet website for general distribution.

19. Final authority for the content of the report rests with the Secretary-General. While the views of the examined country and other participants will receive strong consideration, this final authority is key to ensuring a consistent and coherent OECD view in these reports.

Peer Review

20. The objectives for the peer review process are:

- to provide comments/guidance to the Secretariat on the text of the Secretariat's Report;
- to gain agreement of the assessment provided in the Secretariat Report of the public budgeting and management systems of the country being examined; and
- to identify any findings relevant for other countries and/or other bodies of the Organisation.

21. The major responsibility for peer review will rest with the PUMA Committee. Prior to peer review by the Committee, the report will be submitted for discussion and peer review to selected PUMA Working Parties¹, particularly the Senior Budget Officials (SBO). Pre-Committee review by the Working Parties is intended to provide an opportunity for cross-country learning and discussion, in line with the aims for this project, and to serve as an added quality assurance measure.

22. **Preliminary Reviews by PUMA Working Parties:** The draft report will be presented for discussion and peer review at a session of the annual meeting of the Senior Budget Officials (SBO) Working Party. Depending on meeting scheduling, it can also be considered at a meeting of the Human Resources Management Working Party.

23. **Final Review by the PUMA Committee:** The draft report will be presented to the subsequent meeting of the PUMA Committee which will be asked to endorse the Summary and Conclusions.

24. At the peer reviews, the representative of the examined country will be asked to make a brief statement updating major policy developments and highlighting areas where the examined country may have views that differ from those presented in the draft Secretariat Report. Representatives from selected countries other than the country being reviewed will be asked to be lead examiners for the peer review.

1. The expression 'Working Party' is used, consistent with the recommendations of the Vinde Report on the OECD's committee structure.

25. If necessary, following the peer review, the Secretariat will make any changes deemed appropriate to the Report. The Report will then be published. In the interest of timeliness, the Secretariat will ensure quick document finalisation and publication following final peer review.

Post-Review Feedback and Evaluation

26. The PUMA Secretariat will create an evaluation form for each examination. The examined country will be asked to use the form to provide feedback and comments about the review team, review processes and methodology. This will be followed-up, if appropriate, with internal and external discussions and proposals for change/improvement. At the same time, these issues will also be subject to ongoing self-examination by the PUMA Secretariat.

VI. Methodology: Standard Framework of Review Criteria

27. As a means of managing risk and developing credibility, it is proposed to document a standard framework for review. However, the institutional variety of countries within the OECD means that an inflexible one-size-fits-all approach is unlikely to work well. This suggests that the main issues document will be very important in converting the general framework to the specific needs of the target country and review team.

28. It is proposed that the reviews look at six main issues for the country studies -- these being major pillars of public management systems. Broad governance issues such as constitutional character will not be reviewed.

1. **Strategies** -- e.g., once political priorities and directions have been established, how are they articulated by government
 - across government as a whole, sectorally and at the organisational level
 - within the inner and outer government sectors (e.g., central government and state-owned enterprises, ministries and agencies)
 - between levels of government
2. **Co-ordination** -- e.g., how are government interventions co-ordinated and implemented to ensure they act in a way supportive of strategy, including the ability to
 - maintain aggregate fiscal discipline
 - allocate resources in accordance with government priorities (planning/budgeting)
 - integrate input and output management

3. **Management and Control** -- e.g., how are decision-rights allocated for financial, human and other people and organisational resources to
 - promote efficient delivery of resources in inner and outer government sectors
 - determine specific intervention performance objectives and targets
 - define managerial discretion over achieving targets and objectives
 - human resource and information practices, incentives, etc. with priorities
4. **Accountability and Transparency** -- e.g., how clear and direct are the lines of responsibility about determination of strategy, co-ordination of strategy and carrying out decisions, and what is the quality of information available to monitor and assess accountability, such as
 - clarity of decision-rights held by different players
 - clarity of performance expectations
 - clarity in performance results
 - clarity and commitment to processes
 - relationship with review bodies
5. **Role of the Legislature** -- e.g., what is the role of the legislature in strategy, co-ordination, management and control and accountability, for example
 - how are rights defined between the Executive and the Legislature
 - how is the relationship between the Executive and the Legislature managed
6. **Change Management** -- e.g., what systems create dynamic processes for 'challenge and change', including the ability to anticipate and deal with shocks or other unexpected need for changes in strategy, structures or capacity for delivering government priorities. How is information gathered to feed into this strategic review activity?

VII. Review Methodology

29. The methodology used to underpin the analyses and findings for the country review activity is intended to be transparent, but not rigid, and will necessarily evolve as the Secretariat gains more experience with country reviews, and as information becomes available.

30. In the short-term, the PUMA Secretariat will continue to develop a review methodology through the end of 1998, linked to the standard framework for review provided above. To assist in this process, **the Secretariat seeks the assistance of the PUMA Committee by the nomination of five PUMA Committee Members to serve as peer reviewers for the methodology.** It is hoped that exchange of documents and discussion between the Secretariat and the peer reviewers can be achieved electronically.

31. The PUMA Secretariat will use the **March 1999 Committee Meeting as a major review point** for the emerging methodology based on a report from the Secretariat.

32. As noted, the methodology (as well as the processes) will be subject to deliberate and collaborative discussion and review, particularly following each of the first few country studies.

VIII. Risks Factors and Risk Management

33. In designing this initiative, there are a number of risk factors which PUMA has been careful to address and will continue to give attention to.

Chief Risk Factors	Risk Management Strategy
1. Timeliness and the potential for country studies to become outdated quickly	<ul style="list-style-type: none"> * Do not review countries who plan <i>major</i> overhauls of budgeting and management systems in the near term. * Ensure quick document finalisation and publication following peer review
2. Low credibility due to: <ul style="list-style-type: none"> a. PUMA being seen as captured by one model b. Information and argument capture by reviewed country c. Low incentives to be “tough” on reviewed country d. Insufficient resources to do credit to a complex topic e. Lack of normative criteria for evaluating management systems f. Being both reviewer of country practices and source of analyses/advise on what constitutes good practice. 	<ul style="list-style-type: none"> * Transparent methodology and review process (a,b,c,f) * Peer review of each country study (a,b,c,e,f) * Only 1-2 country reviews per year (d) * Methodology subject to ongoing critique and review (a,e,f) * Building in either audit/quality assurance processes or self review following each study (a,e,f)
3. Particular institutional factors of reviewed country of limited value to other countries.	<ul style="list-style-type: none"> * Broadly uniform methodology and report format to promote comparability between country studies * Need to draw general lessons
4. PUMA gives a positive review to a system that then has a high profile failure, thereby damaging our reputation/credibility.	* Review framework will be adapted in light of such events. PUMA does not have perfect knowledge or foresight.
5. Countries feel that the organisation and transaction costs of being reviewed are too high.	* The review mission is intended to be of only three to four days duration and efforts will be made to minimise research and language issues in the review.

QUESTIONS FOR DISCUSSION

Does the PUMA Committee

- 1. feel that the Secretariat has found the right balance of priorities in setting the **goals** for the Public Management Country Studies?*
- 2. support the proposed **review process** (subject to evaluation and review as the Secretariat gains experience and new information)?*
- 3. agree with the six main areas of the **Strategic Framework** as provided in paragraph 27.*
- 4. agree with the process proposed for development of the **review methodology**?*
- 5. wish to **nominate five PUMA Committee Members** to peer review the review methodology?*
- 6. wish to consider other ways of increasing the involvement of non-examined Member countries in the carrying-out of these studies?*
- 7. wish to raise **other aspects or issues** related to the Public Management Country studies that the Secretariat should consider in addition to those outlined above?*

Annex B

PERFORMANCE CONTRACTING

Purpose

1. This paper informs the Committee on the progress of PUMA's activity on public sector performance contracting.

Action

2. The Committee is asked to
- **note** the progress of work on performance contracting.

Executive Summary

3. A series of country specific case studies have been completed and an expert meeting was held to discuss practical experience and the feasibility of developing a broad set of 'promising principles' for performance contracting.

4. This work is being complemented by an analytical review, currently underway, on the nature of performance contracting arrangements and to consider strengths and weaknesses of such arrangements in addressing issues of performance accountability.

5. The analytical review and major findings from the case studies will be brought together in a PUMA result. The case studies will be disseminated separately and made available on the PUMA Web Pages.

Problematique

6. A key principle of emerging public management practice is holding public servants accountable for the results (performance) of programmes and services, rather than the traditional bureaucratic focus of ensuring accountability through controlling inputs. The standard tool emerging is the performance contract. Such "contracts" allow one party to specify clearly their expectations and seek from the other party information on whether these expectations are being met.

7. This project explores the growing use of performance contracting as a tool to enhance performance management and accountability and the potential of these arrangements to cope with accountability requirements and assist efficient delivery in public service organisations. The project

examines the specific use of performance contracting across countries. The case study is being supplemented by the analytical review to assist determination of what form and degree of specification of performance contracting is likely to work in different circumstances. It will look at the limitations of performance contracting and the preconditions for successful performance contracting.

Preliminary Findings

Summary of Project Progress

8. There was a high degree of consensus from experts and the literature that many of the gains from contracting can be achieved from well specified quasi-contractual agreements involving conditional delegations of resources and delegations of authority that include a mix of resource and management factors linked to performance specifications. Going the extra step either to attempt legally enforceable contracts for performance, or even quasi-contractual agreements with a very high level of specificity, can impose significant additional transaction costs and risks, and may be counterproductive to the long-term relationship between the parties to the agreement. The project examines the appropriate degree of specificity given these wider goals.

9. Issues such as these will be discussed from the perspective of both theory and practice in order to provide a broad policy framework where readers can weigh the variety of managerial, practical, financial and legal issues attached to different types of contractual arrangements in different institutional settings.

Country Case Studies

10. An expert network was created drawing from the membership and referrals offered from PUMA's Performance Management Working Party. Case studies have been provided by nine countries. These are:

Australia	<i>Centerlink and the Department of Social Services</i>
Belgium	<i>Emergence of public sector performance contracting in Belgium and Flanders</i>
Canada	<i>The Canada-Alberta Agreement on Labour Market Development</i>
Denmark	<i>Contract Management in Denmark: case study of the Danish National Board of Industrial Injuries</i>
Finland	<i>Finnish performance contracting system: case study of the Ministry of Social Affairs and Health</i>
France	<i>Contracting and Management of Local Services in the Directorate General for Taxes</i>
New Zealand	<i>Contracting for results: Case Studies of the Ministry of Justice and the Departments for Courts</i>
Norway	<i>Use of Performance Contracting in Norway</i>
Spain	<i>Performance Contracting and Inter-governmental Agreements in Spain: three examples</i>

Analytical Review

11. The aim of the review is to set out a framework for countries to better understand and assess why and how different approaches to performance contracting arrangements might be more or less appropriate for different purposes.

12. Different forms of contracting (enforceable, conditional, implied/informal) have different attributes and costs, and are suited to different institutional settings. Indeed, the role and limits to performance contracting are themselves a critically important determinant of whether public sector activities are handled through markets or within hierarchies.

13. The issues will be examined in terms of different types of public sector interactions and institutional arrangements in the context of the implications raised by, for example:

- classical contractual law;
- new institutional economics (transaction cost approach);
- economics and law perspective (legalistic contracting approach);
- agency cost approach;
- contracting in a public law setting.

14. Each approach suggests a number of general principles for designing efficient relationships between the parties, including implications for definition of the roles and accountability of the parties; degree of specification of the goods or services to be delivered, including the performance standards expected; mechanisms for ex post accountability; methods of specifically aligning the incentives between the parties; monitoring of performance, etc.

15. Clearly, it is not possible to generate detailed templates for the different types of performance contracting relationships (budgetary, individual, organisational, inter-governmental, with corporatised bodies, etc.) due to the variety of legislative and contextual situations individual to each Member country and level of government. However, there is scope for developing broad principles for framing and designing the performance contracting relationship. The situations provided in the case studies will allow for a practical reflection of how such principles might be applied and what their limitations will be.

Timeline

16. Outputs from this activity will be completed and subject to peer review via the Performance Management (Electronic) Working Party in late 1998, and submitted for final review and discussion to the PUMA Committee at the March 1999 meeting.

Next Steps

* Analytical review of performance contracting in a public sector context	completed December 1998
* Synthesis paper combining the analytical overview and findings from country practices (research and case studies)	
* “Promising principles” for performance contracting based on country practices	
* Peer review of papers/outputs	January 1999
* Submission to PUMA Committee for review	March 1999

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Annex C

REGULATORY REFORM COUNTRY REVIEWS

GOVERNMENT CAPACITY TO PRODUCE HIGH QUALITY REGULATION: NETHERLANDS

1. Conclusions and policy options for reform

1.1. *General assessment of current strengths and weaknesses*

1. In 15 years, the Netherlands has installed much of the administrative infrastructure to produce high quality regulations and to promote and carry out beneficial regulatory reforms. New disciplines have been built into the administration. Institutions with responsibility and incentives for good regulation -- and with accountability at the highest political levels -- have been created to make things happen. Quality standards based on good regulatory principles; decision tools such as regulatory impact analysis; and more transparent processes such as open public consultation have been adopted. Reductions in administrative burdens have decreased some costs. Innovative policy instruments are used more often than in most OECD countries.

2. In these formal aspects, the Netherlands ranks high among OECD countries. The combination of competition, deregulation, and good regulatory quality shows potential to be an effective policy mix for improving economic dynamism, while maintaining protection. Moreover, the reform programme is itself extraordinarily dynamic, the debate inside and outside the administration is well-informed and vigorous, and the search for better solutions continues through a pragmatic results-oriented approach. This flexible pragmatism is perhaps the greatest strength of the Dutch reformers.

3. These reforms have not been easy -- much regulatory reform and its move toward market principles, transparency, and empirical decision-making has struggled with the powerful entrenched habits and interests of the traditional corporatist state, as well as the universal conservatism of public administration that makes innovation difficult. Although major consumer groups have become more supportive of reform, there are still substantial fears about the impact of reform on traditionally high levels of protection for citizens, about impacts on the environment, on the Dutch life-style, and on distribution of wealth in a society that highly values equity.

4. Reform has been aided, however, by the integration of European markets under the policies of the Single Market programme, and the opportunities for fast-moving, dynamic enterprises in traded sectors who now tend to see domestic competition as a strength in Europe rather than as a threat.

5. Yet the considerable investment in processes, administrative reforms, and proposals has yet to produce the results expected. Several years were lost by relying too much on directives, guidance and

good intentions, and not enough on political commitment and institutionalised pressures. This lesson was learned, and a profound restructuring of the reform programme took place in 1994.

6. The 1994 programme is built on a more realistic understanding of the difficulties in introducing reform into public administrations, and important reform tools have been developed and put into use. However, many areas of economic and social policy are as yet untouched, particularly in sheltered sectors and in public sector activities. Many areas of regulation are still too detailed and unnecessarily burdensome for enterprises, particularly for SMEs. There remains tremendous scope for efficiency gains in streamlining and eliminating administrative formalities. For example, administrative barriers to self-employment linked to the tax and social security systems have a negative impact on entrepreneurship, while administrative costs for hiring employees are still among the highest in OECD countries.¹ Anti-competitive practices are pervasive through the sharing of regulatory powers with industrial organisations, with little control and transparency in how those powers are used. A serious problem is that little monitoring of the impacts of previous reforms was undertaken. As a result, assessments must be piecemeal, indirect, qualitative, and tentative.

7. Even in the areas where reforms have been identified, implementation of proposals has been very slow, reducing the concrete benefits of reform. Legislative changes as a result of MDW have, to date, been minimal. Only three are significant: the substantial (though still partial) liberalisation of shop trading hours; the first stage of an ongoing programme of reducing the number of businesses subject to environmental licensing; and removal of lawyers' monopoly rights to represent clients in legal proceedings. A much larger number of reforms are expected to emerge over the next few years, with 36 additional legislative proposals now in train as a result of MDW efforts. It is as if the Netherlands has constructed a new highway to speed traffic, but most of the cars are stuck at the tollbooths.

1.2. Potential benefits and costs of further regulatory reform

8. It is likely that the benefits of further steps to improve the capacity of the public sector to reform regulations and to ensure that new regulations are high quality will be substantial in terms of policy effectiveness and economic performance.

9. The Dutch are demanding consumers of public services often delivered through regulation, such as environmental protection, consumer protection, health, safety, and many others. Tools such as regulatory impact analysis and rigorous application of government-wide quality standards can be powerful in designing better regulations to deliver policies more effectively. Higher quality RIA can, for example, reduce the risks of policy failure. More to the point, delivering such services more cost-efficiently allows more services to be provided. This has been seen in other countries, where use of tradeable permits in air emissions has so reduced the costs of pollution reduction that tighter standards are possible. Disciplines on regulatory quality are part of a larger trend toward results-oriented and accountable government focussed on service quality and consumer choice.

10. Moreover, moving more quickly in response to identified problems should improve the capacities of the Dutch administration to respond to fast-moving social issues, and to correct policy failures as they arise, with positive implications for the legitimacy of the public administration.

11. Reform can also enhance the opportunities of Dutch citizens to be actively involved in the legislative processes of government. Indeed, development of new opportunities to date has already been considerable through changes to consultation systems. More can be achieved, especially through

integration of consultation and impact assessment, ensuring that the expertise of Dutch stakeholders is fully harnessed as a policy-making resource.

12. Yet regulatory quality reforms can have costs, too. If carried out inefficiently or mechanically, they can slow down the entire regulatory process, further reducing the benefits of both regulatory and reform actions. While it may indeed be beneficial to slow down poor proposals, this should be done selectively through well-tuned filters. In addition, the administrative resources needed for the kinds of quality investments discussed here must probably be diverted from other uses that themselves have value, and hence opportunity costs must be considered carefully. In addition, changes to decision processes can destabilise the balance of interests that often permit progress, even if it is slow and step-by-step progress, and therefore have perverse effects on the capacity to reform. Speed and empirical rigor are not necessarily nettles that must be grasped at every step.

13. On the economic side, faster adjustment to changing conditions in European and international markets will reduce the costs and efficiency drags of outdated regulations. These reforms can boost productivity in many sectors of the Dutch economy. Yet the main benefits for economic performance due to reducing regulatory barriers and administrative formalities are likely to be dynamic in nature. These kinds of reforms can stimulate innovation, entrepreneurship, and investment. Policy responsiveness and regulatory efficiency are likely to be relatively more important for the Netherlands, as a small, relatively open export-driven economy, than for larger economies, and hence regulatory reform is relatively more valuable to the Netherlands.

1.3. Policy options for consideration

14. Good practices in OECD countries, as outlined in the various OECD reports and agreements among OECD countries, suggest that the Netherlands would benefit from several steps to improve the responsiveness, accountability, and transparency of regulatory reform.

- *Accelerate the scope and pace of reform by reducing the time required for reform proposals to be considered and implemented.*

15. A key issue for the Netherlands is the lack of policy responsiveness implied by the extremely long law-making process. The seriousness of this problem has been recognised by the Dutch government at least since the 1991 General Legislative Policy. The General Accounting Office (Algemene Rekenkamer) has found that the average time taken from policy proposal to final implementation is seven years; completely new laws and major substantive revisions can take ten years. The GAO found that more than half of this time was taken in preparation within Ministries.² The length of the legislative process is the key reason that the current programme has produced so few benefits. Only 7 of the 27 regulatory reform proposals made in 1994-1996 have been implemented; others are still in the pipeline. As European integration accelerates under the single monetary policy, the incapacity to react more quickly than this could impose substantial costs on Dutch businesses.

16. The length of time needed for legal change has other negative effects on the quality of the national regulatory system. Ministries are less willing to implement new regulatory quality procedures when their ability to satisfy demands from constituencies for new legislation is already constrained by lack of legislative capacity. Also, ministries have incentives to prefer non-legislative policy actions that enable them to act more quickly. Such alternatives can often be preferred on efficiency and effectiveness grounds, but incentives to use them as time-saving measures are likely to be perverse.

17. Reform in this area will be difficult, since lengthy decision processes are typical in corporatist systems, due to the number of interests who must be consulted and whose consent must be gained. Action

has already been taken in three areas: the legal requirements to hear advisory bodies, their role in relation to European legislation and the parliamentary handling of draft legislation. Significant changes have been made in the first two areas in particular. However, there is little evidence of improvement to date.

18. A review of the effects of these recent changes would be a useful step toward considering the direction of further reforms within the line ministries, where much of the problem lies. Although contexts differ greatly, consideration could also be given to the approach taken by the United Kingdom to increase the flexibility of the regulatory system by addressing a lack of legislative capacity in the legislature. The U.K. Deregulation and Contracting-Out Act of 1994 allows ministers to more easily amend or repeal problematic laws. The Act provides "a mechanism to change primary legislation for the purpose of removing or reducing burdens on businesses or others, provided that necessary protection is not removed".³ Under the Act, ministers may amend or repeal laws by ministerial order, but must consult those affected and provide to the Parliament a document giving the reasons for the change; the benefits in terms of cost savings, new market opportunities, and reductions in constraints; and details of protections provided by the order. Such orders require the positive approval of both houses of Parliament, as well as 60 days for parliamentary scrutiny. Other countries have used omnibus legislation, in which many reforms are packaged together on an accelerated time schedule.

19. Ironically, one current time-saving measure has the effect of undermining the impact of reform. The MDW criterion of reviewing only those areas where reviews can be conducted within an annual timeframe largely eliminates the possibility of reviewing more complex (but potentially highly relevant) areas of concern. It would be preferable to put more time into the review stage, and less time into the adoption/implementation stage.

- *Strengthen accountability for results within the ministries through development of measurable and public performance standards for regulatory reform.*

20. One of the strong points of the Dutch reform system is the development of new institutions to promote and drive cross-cutting reforms. The ministerial committee headed by the prime minister, and the impressive efforts of the Ministries of Justice and Economic Affairs, have been and will continue to be instrumental in getting reform actions underway.

21. Yet capacities for central direction are not balanced by effective incentives for the ministries to change themselves, particularly given offsetting pressures from their constituencies and from the political level. In particular, the objectives of the regulatory reform programme are formulated at a high level of generality, and transparent measures of performance for each ministry have not been adopted. That is, objectives are strategic rather than results-oriented. Hence, accountability for results is over-centralised, whereas the skills and resources for reform are decentralised. The fact that incentives for the ministries to produce good regulation are still not very strong may be one explanation for why the regulatory habits of the administration have not changed very much.

22. If the scope, depth, and pace of reform is to increase, the programme should mobilise the energies of the line ministries by reforming incentive structures through development of performance standards for quality regulation, and linkage of those standards to fiscal budgeting and other credible review mechanisms. These kinds of measures are not well developed in OECD countries with respect to regulatory reform, though they are under development in many other policy areas in many countries, including the Netherlands.⁴ One possible model is the U.S. Government Performance and Results Act of 1993, which established a government-wide system, including for regulators, to set goals for programme performance, measurement, and publication of results.⁵

- *Improve the contribution of RIA to good regulatory decisions by increasing methodological rigour, including adoption of a benefit-cost test; expanding it to incorporate detailed consideration of alternatives; and integrating RIA with consultation processes.*

23. The Dutch RIA programme is in some ways strong. It applies to both primary and subordinate regulation, is targeted toward major regulation, and includes a highly developed and well resourced system of assistance for ministries from co-ordinating agencies. Changes made since 1994 to the RIA system significantly improved its potential to contribute to regulatory quality. For example, targeting of RIA requirements to only the most significant regulations concentrated limited resources to their highest value in improving the cost-efficiency of regulations.

24. In particular, provision of significant resources through the help desk function is innovative and worthy of consideration by other OECD countries. Creation of a dedicated budget to fund analysis can help to overcome agency reluctance to divert resources to RIA, as can access to dedicated statistical resources from the help desk. The use of three co-ordinating departments to ensure that various aspects of regulatory quality are properly considered is another promising practice.

25. Yet the RIA programme has not been very effective in producing reliable data that can increase the cost-efficiency of regulatory decisions. OECD best practices suggest that three key steps are needed to improve its effectiveness: (1) increase methodological rigour by providing training, written guidance, and minimum analytical standards including a requirement for benefit-cost tests to line ministries; (2) expand RIA to incorporate detailed consideration of alternatives; (3) ensure greater public scrutiny through integrating RIA with consultation processes.

26. First, the degree of quantification of regulatory benefits and costs remains low. Training and guidance for policy staff in the ministries would be a useful step, and adoption of standard minimum requirements such as quantitative analysis of direct costs of compliance through tools such as the Canadian Business Impact Test. Adoption of an explicit benefit-cost principle would sharply improve the quality of regulatory decisions. The practical and conceptual difficulties of a formal benefit-cost analysis suggests that a step-by-step approach is needed in the Netherlands, in which the RIA programme is gradually improved, integrating both qualitative and quantitative elements of the analysis, so that over time it better supports application of the benefit-cost principle.

27. Second, the usefulness of RIA in promoting use of cost-effective policy tools would be significantly enhanced by a formal requirement that feasible alternatives be analysed and compared with the regulatory proposal. MDW does not appear to have had a significant impact in the rate of adoption of alternative policy instruments. While the performance of the Netherlands is relatively good with respect to use of innovative instruments, the use of environmental covenants, while still growing, does not appear to have accelerated as a result of actions taken under MDW. More rigorous assessment of alternatives should help identify a wider range of areas where they are the better choice.

28. The effectiveness of both of these strategies would be enhanced by integration of RIA with consultation processes. Publication of RIA through a procedure that required regulators to respond to comments from affected parties would enable consultation to function more effectively as a means of cost-effective information gathering, and thereby improve the information needed for good RIA. Access to RIA would also improve the quality of consultation by permitting the public to react to more concrete information. Such integration should, however, be carefully designed so that additional delays to the policy process are not introduced.

- *Further encourage the use of cost-effective alternative policy instruments by developing operational guidance for ministries.*

29. As suggested above, a requirement that analysis of alternatives currently required by the Directives on Legislation be documented and subjected to public scrutiny through the RIA process could stimulate genuine comparisons of the benefits and costs of various approaches. However, policy makers are likely to require assistance in the identification of suitable alternative policy tools. Operational guidance on the characteristics and use of alternative approaches should be developed for use by the line ministries. Such guidance has been useful in several countries such as Australia and Canada. The current help desk structure would seem to be well-placed to support such an initiative by providing expert assistance in relation to particular policy issues, particularly to the extent that it succeeds in its current aim of becoming involved with ministries at an earlier stage in the policy process.

- *Improve transparency by extending requirements for transparency to non-governmental bodies with delegated regulatory authorities, and by publishing a plan of major upcoming regulatory actions.*

30. A form of regulation widely used in the Netherlands is that of “co-regulation”, or sharing of the regulatory function between government and industry. This has been implemented predominantly through the professional board structure. Such industry based regulatory and enforcement systems can have major benefits in terms of cost and effectiveness, but in many countries professional bodies have used this role to limit competition and increase incomes and, hence, consumer prices. The incentives that exist for rent-seeking require that governments carefully supervise the use of such delegated regulatory powers.

31. Two mechanisms currently in place are expected to have a significant impact. The new competition law should eliminate or restrict many anti-competitive practices, although the extent of this effect will clearly depend on the attitude taken by the competition authority in processing the numerous requests for exemptions. The regulation of several professions has been considered by working groups under the “Special Topics” element of the MDW programme and a number of deregulatory initiatives are in process.

32. A useful additional step would be development of clear governmental guidelines on the use of regulatory powers, including issues such as the representation of independent “public interest” advocates, the review role of competition authorities, and the need for specific legislative authorisation of regulatory powers, as well as transparency standards. The traditional approach to legitimacy in the Netherlands has been the corporatist system of balanced representation of the social partners, but the erosion of this system suggests that there is a need to re-examine the openness of these activities to public scrutiny. This is especially important to the extent that professional bodies retain regulatory functions, and as regional and international market openness develops. Guidelines would improve the transparency of the industry and professional boards, enhance their accountability to government and the public, including consumers, and maintain market openness.

33. Another transparency initiative that would improve co-ordination, RIA, and consultation is the publication of a plan of important upcoming regulation. Several countries have found such plans useful in improving the capacity of the public to comment, and the capacity of the administration to co-ordinate actions. This would be consistent with initiatives currently in train in the Netherlands to improve access to existing legislation (through electronic means) and could be integrated with the publication of a summary of proposed primary legislation which is currently undertaken.

- *Better co-ordinate regulatory reform and regulatory quality initiatives.*

34. There are opportunities to improve the degree of co-ordination between the various regulatory quality assurance and regulatory reform initiatives being undertaken in the Netherlands. Improved co-ordination would be particularly beneficial between RIA and consultation processes, between the Ministry of Justice' legislative quality assurance work (including the Directives on Legislation and the scrutiny of Bills process) and RIA and between RIA and programmes aimed at using regulatory alternatives.

35. There does not seem to be a clear relationship, or co-ordination, between the Directives on legislation, and the Ministry of Justice assessment of legislative quality, on the one hand, and the RIA process and role of the Ministry of Economic Affairs on the other. This appears to reflect the historically dominant role of the Ministry of Justice in regard to legislative policy and a consequent tendency to view legislative quality as primarily a technical legal concept, rather than as one which has a distinct, and possibly paramount, economics/public policy aspect.

36. Addressing this issue appears to require a role for the Ministry of Economic Affairs that is more integrated with the Ministry of Justice' work on legislative quality assessment. In addition, formulation of legislative quality guidelines covering economic and public policy aspects of quality that are distinct from (though co-ordinated with) a more streamlined set of "legal" guidelines should be considered. Here again there is a need for a strong co-operative relationship between the two ministries. Moreover, the latter guidelines should be presented in the context of a strengthened set of RIA requirements. Finally, the very limited time available to the Ministry of Justice to review draft legislation and initiate dialogue with the proposing ministry - often less than two weeks -- undermines this quality check. Process changes which extended this review period, and began it earlier in the process, are likely to be a positive move, notwithstanding concern over the length of the legislative process.

1.4. Managing regulatory reform

37. The most important determinant of the scope and pace of further reform is the attitude of the general public. The emphasis in the MDW programme on a "*new balance between protection and dynamism*"⁶ must be preserved if reform is to enjoy continued support in a citizenry that places high value on safety, health, environmental quality, and social equity, as well as a consensual approach to public policy. Evaluation of the impacts of reform and communication with the public and all major stakeholders with respect to the short and long-term effects of action and non-action, and on the distribution of costs and benefits, will be increasingly important to further progress.

38. The example of building support in the main consumer organisation is illustrative. The Consumentenbond was concerned that the MDW approach seemed to focus unduly on business interests, with no clear definition of consumer benefits and a lack of transparency in the process. Yet actions on competition law and shop trading hours were seen as having the clear potential for major consumer benefits. As the programme progressed, the government invited participation and was seen as responsive to the consumer association's principles for reform, focusing on the need for clear consumer benefit, an emphasis on re-regulation rather than deregulation and a view of deregulation as an instrument rather than a goal in itself. As a result, the consumer movement is now a supporter of MDW, seeing it as consistent with its overall emphasis on maximising consumer choice in all markets.

39. While there are continuing concerns about a move to competition in areas such as public transport, health care and social security, views on the most visible reform -- the extension of shop hours - - are largely favourable. At this juncture, it seems that fears about the effects of reform on levels of protection have not been borne out, but continued reform will proceed faster and more deeply if reformers take concrete steps to demonstrate that protection has been maintained. As the Consumentenbond has noted "Strong markets need strong governments."⁷

40. There is a positive view of the likely longer term benefits to business from increased competition in the provision of business services, as well as the additional opportunities which will arise from changes to government provision of commercial services (including both withdrawal from the field and the adoption of “competitive neutrality” principles). Like the consumer association, business initially saw MDW as lacking in transparency and opportunities for input by stakeholders, but these concerns have apparently been largely allayed. Significantly, there is support for the more targeted approach of MDW, which is seen as more effective than earlier attempts at a “global” approach to reform.

41. The kinds of reforms suggested above will be limited in impact if the regulatory activities of other levels of government are not brought into the process. Much of the national regulation of the Netherlands originates in fact at the level of the European Union. Much of the implementation of regulation is in the hands of municipal and other subnational levels of government. Regulatory reform is no longer, if it ever was, an activity that national governments can carry out in isolation. A programme of co-ordination of reforms spanning these levels of government can help protect and extend the benefits of reform in the future. In particular, using information generated through RIA as an input into EU decision-making processes, assisted by the fact that the European Commission is currently looking at means of improving its RIA performance, is potentially of great value.

GOVERNMENT CAPACITY TO PRODUCE HIGH QUALITY REGULATION: UNITED STATES

2. Conclusions and policy options for reform

2.1. General assessment of strengths and weaknesses

42. By most measures, the capacities of the U.S. federal government for assuring the quality of federal regulation is among the best in OECD countries. Considerable investments in the institutional, policy, and legal infrastructure for quality regulation has produced well-functioning systems in the critical areas of forward planning, regulatory impact analysis, centralised quality control, and consultation with affected entities.

43. An impressive example of reform is the collective and steady efforts over 20 years, through changes in political control of the Congress and the presidency, to improve analytical capacities and acceptance of the benefit-cost principle within regulatory agencies, under the leadership of OMB. While there are still substantial problems with adoption of regulations that do not pass the test, the degree of quantification of the impact of regulations in U.S. federal regulatory bodies is unique in OECD countries. The lesson to be learned here is the value of persistence and policy stability over the long term in embedding new ways of thinking into bureaucracies.

44. The 1980s was a period of considerable investment in reform institutions and processes, but the programme was weakened by stressing “regulatory relief” rather than benefit-cost principles aimed at maximising social welfare, and by relying too much on an over-centralised and confrontational process that improved the quality of individual regulations, but did little to change incentives and administrative cultures within the regulatory agencies. For example, the role of the central oversight body (OMB) was too oriented toward reacting to transactions, and not enough to general systemic and institutional change. This lesson was learned, and an important retuning of the reform programme took place in the 1990s, with a targeting of OMB’s efforts and a focus on government reinvention and on results-oriented policy-making.

45. This review of regulatory reform in the United States should help dispel the myth that the United States is less regulated than other OECD countries. The United States is different from many countries certainly not in the amount of regulation, but in its style. The most important factor for U.S. regulation is that American regulatory culture incorporates competition principles to a greater extent than in most countries, which stems from deep-seated habits and values than from any organised vigilance. This is an asset of increasing value in a world economy characterised by globalisation, responsiveness, and rapid technological progress. The U.S. regulatory system illustrates well the conclusion in the OECD Report on Regulatory Reform:

“...economic regulations have often proven to be extremely costly and ineffective means of achieving public interest goals...In general, public policies such as protection of health, safety, and the environment are better served by using competition-neutral instruments, such as well-targeted social regulations and market incentives, to change behaviour in competitive markets.”⁸

46. The key questions today are these: Are federal regulations of higher-quality today than 25 years ago? Do they, in the aggregate, produce higher net social benefits for the American people? While no answer can be definitive, the answer is probably yes to both questions, for two reasons:

1. The enormous shift since the 1970s from anti-competitive economic regulation toward more neutral styles of social regulation has greatly improved the benefits of the regulatory system as a whole, since social regulations are much more likely to produce net benefits than do economic regulations. OMB has calculated that the total benefits of social regulation in 1997 exceeded costs by about \$80 billion, while the costs of economic regulations greatly exceeded its benefits.⁹;
2. controls on quality of social regulations and paperwork have steadily developed and government capacities to assure high-quality decisions are stronger than ever.

This improvement is a longer-term trend, since application of quality control capacities can obviously vary over time, and hence the overall quality of new federal regulations probably varies as well, depending on political commitment. Yet the trend is in the right direction.

47. This relative ranking should not induce complaisance. There continue to be severe problems with both cost and policy effectiveness in the U.S. regulatory system. The aggregate cost of regulations appears to stand at its highest ever point in relative terms, and the U.S. regulatory habits of excessive detail, legalism, and rigidity are still dominant.

48. The U.S. faces enormous difficulties in establishing consistent regulatory quality standards and controls on the sprawling regulatory apparatus of the federal government. There are enormous tensions in the system, between due process and flexibility, between legal clarity and innovation, and between empirical and legal/adversarial methods. Since the earliest days of regulatory reform, consistency and coherence have been at the heart of attempts to strengthen central management. An analysis of governance in the United States found this difficulty to be inherent in the constitutional set-up of the American government:

“The problem of governance in the United States is mainly one of creating institutions or governing arrangements that can pursue policies of sufficient coherence, consistency, foresight, and stability that the national welfare is not sacrificed for narrow or temporary gains. The United States has difficulty in arriving at such arrangements because it must fashion them out of three substantially autonomous political institutions: Congress, the presidency, and the bureaucracy.”¹⁰

49. This suggests that limits to rationality in the American regulatory system are inherent in the American way of governance. But there is considerable distance to travel before these limits are reached. At the heart of the most severe regulatory problems is the quality of primary legislation. The trend toward higher quality in delegated regulation cannot be seen in the quality of primary legislation, and this severely limits, and threatens to reverse, the benefits to be gained from regulatory reform.

50. More so than in other OECD countries, the United States has found it extremely difficult to develop controls on legislative quality. This is partly structural, arising from the constitutional balance of powers between the executive and the legislative. And, unlike parliamentary systems, bills originate from many sources. The result is that, perversely, there is less attention to quality of laws than to decisions authorised by the laws. In the past, the Congress has ignored even those slight controls that it adopted for itself, though recent reforms, such as the UMRA requirement that the Congressional Budget Office estimate the costs of proposed legislation, are positive. If this is to have any value, members of Congress

will have to become consumers of such information. It remains to be seen how such estimates will be considered in Congressional processes. Strikingly, some recent laws, such as the Clear Air Act of 1990, expressly prohibit good decision practices by regulatory agencies in order to limit administrative discretion (and presidential powers) in regulating.

51. Crucially, innovation and the development of more cost-effective policy approaches are often blocked by rigid legislation. "EPA is hobbled by overly prescriptive statutes that pull the agency in too many directions and permit managers too little discretion to make wise decisions. Congress should stop micro-managing EPA." concluded a recent report of the National Academy of Public Administration. A deeper problem, noted a former head of the U.S. environmental agency (and as noted earlier in nursing home regulation), is that frustration with regulatory performance, perhaps justified or perhaps stemming from unrealistic expectations, can lead to a vicious cycle of controls and increased barriers to good performance:

When traced to their source, many of the more vexing problems...have their roots in the underlying statutes. Besides being prescriptive, these statutes tend to over-promise setting up expectations of absolute safety within extremely tight time frames. While this is well-intentioned, it has an undermining effect on the Agency and those who rely on it. As EPA misses one deadline after another, the courts intervene, as requested by an aggrieved party, and Congress turns the screws even tighter, further limiting the Agency's ability to respond creatively and responsibly to problems far more complex than lawmakers could have possibly envisioned.¹¹

OMB has similarly warned that, "It is our view that highly prescriptive legislation...has contributed to a regulatory system that is sometimes unmanageable or is driven by plaintiffs rather than by a rational planning process that directs the nation's resources to the most important problems and the most cost-effective solutions."¹²

52. Without genuine progress at the legislative level in placing accountability on results and in encouraging risk-taking and policy innovation, it is doubtful that the executive branch can make substantial additional progress in the quality of subordinate regulations, or even preserve the progress that has been made. Reforms in the Congress are beyond the scope of this review, but it is clear that there is no quick fix. The two most positive steps in recent years is the Performance Management and Results Act, which builds a foundation for results-oriented policies, and the trend toward improving dialogue and consensus on innovation approaches, which experience in other countries shows is a necessary condition for building the trust that is needed if administrators are to have the flexibility to innovate and take risks.

53. The importance of a vigorous academic community in producing policy-relevant data to support regulatory reform should not be over-looked. The continuing efforts of researchers in American think tanks and universities have mapped the evidence of benefits from reform and posed strong challenges to the status quo. Such scholarship is, in fact, one of the most influential exports of the United States to the rest of the world (once in circulation, it can be considered a public good).

2.2. Policy options for consideration.

54. There is a large and growing volume of recommendations from many sources on ways to improve regulatory reform in the United States. Most of these consist of fine-tuning existing structures; some, such as those in the NPR, are more profound, aimed at changing the incentives and culture of regulators. Based in part on this body of work, this section identifies actions that, based on international

consensus on good regulatory practices and on concrete experiences in other OECD countries, are likely to be particularly beneficial to improving regulatory management and reform capacities in the United States.

- *Improve the responsiveness of the regulatory system by continuing to seek means to streamline regulatory processes through the NPR process.*

55. Sluggishness, delay, and inefficiencies in regulatory processes will increasingly penalise the United States as the pace of globalisation and innovation steps up. The lack of policy responsiveness and flexibility implied by the long and cumbersome regulatory process has been long-recognised. The 1993 NPR noted that a layering of procedural requirements have, cumulatively, “made the rulemaking process increasingly burdensome and rigid.”¹³

56. Further, the adversarial and legalistic process for producing new regulations produces an incentive for “all or nothing” solutions that drive regulators away from the rule of reason, and limit the sensible application of rules in the field. The NPR too found that “Lack of information is [a] serious problem. To some extent, this stems from the adversarial nature of the rulemaking process; in many rule-makings, regulated entities, public interest groups, and other parties are more interested in protecting their own positions than in providing useful information to the agency or finding a solution to the problem.”

57. The cost and length of time needed for regulatory change has imposed large hidden costs on the quality of the national regulatory system. Regulators are less willing to implement new regulatory quality procedures when it already takes so long to get regulations through the pipeline. Beneficial modifications to old regulations are less likely to be carried out. Given the enormous investment needed, regulators are less likely to innovate and take risks, since a setback can cost several years of effort. Of great concern is the tendency by regulators to use policy statements, guidance, and memos to agency personal that side-step procedural requirements. While such methods can be efficient, incentives to use them as time-saving measures are likely to be perverse, and can undermine the transparency of the regulatory system.

58. Reform in this area will be difficult, since procedural and legal formalism is so heavily embedded in the U.S. policy system. Some steps are underway, such as use of “final” rules for minor issues to avoid the lengthy proposal process. Targeting of OMB review to only major reviews eliminates a step for many regulations. Regulatory negotiations and consensus-building processes offer the best chance for real change.

- *Increase regulatory benefits by improving interagency priority-setting capacities.*

59. The single regulatory reform measure likely to produce the most substantial gains in social welfare is improvement of priority-setting mechanisms across the government. Several attempts have been made to improve priority-setting. Forward planning through the Regulatory Plan has been useful for other reasons, but has been ineffective in forcing trade-offs between regulatory agencies, though this was one of its original purposes. The regulatory budget concept is very attractive from a theoretic view, but its methodological difficulties have prevented its implementation. Others have recommended that the regulatory budget be applied only to new regulatory costs,¹⁴ a partial solution that may, however, be more practical than a global budget constraint. The NPR recommended that similar risks be ranked and that priorities be set across agencies, but nothing has come of the recommendation. No OECD country has solved this problem, but it is possible that the Performance Management and Results Act is a step toward a priority-setting mechanism through which fiscal budgeting decisions can be linked to those regulatory programs that deliver more per dollar expended.

- *Expand the value, speed and scope of review of primary legislation and other regulations by launching a structured process of rolling reviews, reviewing policy areas rather than individual rules, and experimenting with use of advisory bodies for the reviews.*

60. One of the strongest points of the US system is the central review mechanisms for new regulations and formalities. Quality procedures that in many countries would be perceived as intolerable have been integrated into the regulatory culture of the public service. Yet the current system is very weak with respect to systematic review of the vast body of existing laws and other regulations. It looks forward, but not back. For example, while reviews by the regulators themselves in 1993-1994 eliminated many pages of regulations, the actual benefits in terms of cost-savings or policy effectiveness were not well documented, and are unlikely to be very significant since most changes were marginal.

61. A high priority should be placed on developing better review procedures for legislation in particular. As noted, American laws are likely to be lower quality than subordinate regulations, due to the imbalance in quality controls between the two instruments and the lack of any consistent evaluation of the performance of existing laws. This has substantial negative downstream effects on the quality of policy implementation and policy outcomes. This review has documented in particular the negative effects of current styles of law on innovation and experimentation by the administration.

62. More attention should be placed on systematic review and upgrading of legislation through, for example, a rolling review process based on a prioritisation of policy areas. Structuring of an effective review process will be key to its results, and may require strengthening the capacities of the OMB and congressional offices such as CBO. First, efforts in other OECD countries show that achieving consensus in advance on a transparent and measurable set of principles for review is essential. This was seen in the Australian competition principles review, which includes both federal and state governments and is unprecedented in its scope. The requirement in UMRA for a cost-effectiveness test for new legislation is a good step toward consensus on results-oriented principles, but a benefit-cost test and an emphasis on innovation will produce the best results in increasing social welfare.

63. Second, the reinvention principle should guide the reviews. Current review processes work better in analysing individual regulations than in understanding interactions between a group of regulations affecting an economic or social sector, having a cumulative and overlapping impact, originating from different agencies or even different levels of government. Such linkages are often not analysed. At the end, this seems a review process focused on pruning each tree rather than improving the health of the forest. The effectiveness of U.S. regulatory review could be improved with a thorough assessments of the regulatory framework affecting a given economic sector or a particularly relevant issue done by high-level advisory board, commission or task force. Its recommendations would include groups of reforms affecting different instruments or policies packaged together in order to permit a higher and quicker regulatory improvement. In every law reviewed, emphasis should be given to encouraging innovation in approaches, with accountability for results.

64. The setting up of an advisory group may gain from the recent experience of various OECD Members where ad hoc or standing task forces, often formed by senior business people, have presented closely and interrelated reform measures to central government institutions and decision makers. For example, Australia set up in 1996 the Small Business Task Force in order to propose changes to reduce "the paper and compliance burden on small business by 50 percent". The United Kingdom established more recently the Better Regulation Task Force with its members drawn from big and small businesses, consumer and citizen groups, the charity and voluntary sector, trade unions and enforcers to review nine selected regulatory areas (i.e. principles of good regulation, consumer law, employment law, social

services, charities and the voluntary sector, company law and corporate governance, environmental regulation, food, and licensing). The Danish regulatory programme has also gained coherence and speed from the establishment of specific topic high level commissions and task forces. Using this approach effectively may require review and revision of the restrictive procedures in the Federal Advisory Committee Act.

65. One area where such an approach has been shown to be useful is simplification of tax-related paperwork, the largest single source of paperwork burden on enterprises in any OECD country. In the United States, tax-related paperwork burdens represent 80 percent of the total burdens. The “Van Lunteren Commission” in the Netherlands is a model for an effective ad hoc commission in this area. The Commission produced short term and long term recommendations, organised into two categories: within existing legislation and with legal reforms.

- *Expand coverage of mandatory quality controls to economic regulation.*

66. As noted, economic regulation produces far fewer benefits than does social regulation, yet is costly. An ideal regulatory reform programme would therefore put stricter controls on the use of economic regulations than on social regulations. The U.S. programme does the opposite. The independent commissions responsible for most of the economic regulations are not covered by the presidential order on regulatory quality. This is rooted in the historical relations between the independent commissions and the president. Similar to the coverage of the Paperwork Reduction Act, however, the other regulatory quality controls should be extended to the independent regulatory commissions.

- *Further encourage the use of cost-effective alternative policy instruments by developing operational guidance for ministries and by developing a wider range of co-operative methods.*

67. One of the anomalies in the American regulatory system is that positive social views toward competition have not led to more market-based approaches to problem-solving. Market approaches have been recommended for years, most recently by the Vice-President’s National Performance Review. However, the U.S. regulatory system is relatively less innovative than those in some other OECD countries. For example, ten years later there is still only one nation-wide system of marketable permits for air emissions, though the benefits of such an approach have been well-documented in other areas. Other OECD countries use taxes to restructure incentives to a much greater extent than does the United States, suggesting missed opportunities for cost-effective action. Voluntary approaches have been hampered by inflexible statutes.

68. The current Clinton presidential order requires that analysis of alternatives be documented and subjected to public scrutiny through the RIA process to stimulate genuine comparisons of the benefits and costs of various approaches. UMRA requires agencies to certify that they are choosing the most cost-effective approach. These are good practices of value to other OECD countries. However, they do not seem sufficient in themselves to stimulate innovation, since there are powerful countervailing pressures to risk-taking and co-operation.

69. One of these pressures is the legalistic habits of the administration that, while intended to promote fairness and transparency, lead almost always to traditional command-and-control means. This is reinforced by traditionally weak accountability mechanisms for the performance of regulatory programmes, which have emphasised inputs such as inspections and rules, rather than outcomes in terms of results and costs. Incentives within the bureaucracy have been deeply conservative and risk-avoiding. Finally, the traditional adversarialism of decision-making emphasises an all or nothing approach

70. There are some hopeful signs. The Performance Management and Results Act should weaken incentives to avoid risk-taking at any cost to programme results. The focus on consensus-building is another positive step, though current approaches seem to be hampered by legal constraints and formalistic habits. A good practice that should be considered government-wide, and by other OECD countries, is to build responsibility for innovation into the bureaucracy through processes such as the 1998 ECOS-EPA Agreement, in which there is a legitimate and transparent channel for new ideas to be considered.

71. As recognised by the NPR in 1993, policy makers are likely to require assistance in the identification of suitable alternative policy tools. Operational guidance on the characteristics and use of alternative approaches should be developed for use by the line ministries. Such guidance has been useful in several countries such as Australia and Canada.

72. Perhaps the most important lesson for the United States from other countries is the value in terms of flexibility, cost-effectiveness, and responsiveness of more co-operative approaches to problem solving. Already, agencies in the United States are experimenting with such approaches. Negotiated rulemaking is one such effort, but the current approach still relies very heavily on traditional regulatory processes, and its value is not yet proven. It may be that covenants as used in many European countries are an example of a different approach. Continued leadership from the centre to encourage risk-taking and experimentation, and evaluation will be needed to promote efforts to inject a degree of co-operation into adversarial systems.

- *Develop a stronger role for the central reform authority in promoting, facilitating and providing practical guidance on reform to regulatory agencies.*

73. OMB has recently moved to develop more co-operative relationships with regulatory agencies and to become involved at earlier stages in rule-making processes. This is consistent with changes in a number of countries with extensive experience with reform, including the Netherlands, Canada and Australia, where central reform bodies have moved toward a more positive approach to regulators.

74. However, a key change not so far adopted in the United States is an emphasis on the provision of tools to assist agencies to regulate better, including practical guidance manuals on issues such as regulatory alternatives, principles of good regulation and regulatory impact assessment, backed by extensive training programmes to ensure skills acquisition by regulators. Initiatives of this sort could help build on the cultural changes among regulators that previous OMB reform efforts have produced, by giving regulators better tools for reinventing regulation. It is also useful in the context of a more results-oriented environment in which regulators become problem-solvers rather than production lines for legal texts.

- *Encourage entrepreneurialism by streamlining permits and licenses at the federal level, by co-ordinating with the states on review and streamlining of permits and licenses, and by building more complete information systems for enterprises*

75. Though *ex ante* permits and licenses can be among the most damaging of government formalities with respect to business start-ups and among the most costly regulations to administer, current efforts in the United States place too little focus on ensuring that such requirements are the minimum necessary to achieve policy objectives. This is probably due to the fact that most such requirements take place at state and local levels. Yet new ideas -- such as the move to a "supply model" in Germany that offers various choices to investors, depending on the degree of risk they wish to accept¹⁵ -- are being developed and implemented in many OECD countries, and could be useful in the United States.

76. At the federal level, OIRA may wish to lead an interagency programme to "re-engineer " important licences and permits. The thrust of this programme could be to reduce the most frequently used and costly licences and permits. An important criteria would be to minimise their cost collectively as well as individually a (i.e. reducing the overlap between them, increasing the information collection synergies between agencies).

77. The federal government should consider means of promoting the streamlining of permits, licenses, and other government formalities carried out at state and local levels. For example, it may wish to encourage adoption of paperwork reduction acts at state levels. A programme of regulatory benchmarking across states may help stimulate political interest in improving the business environment, as it has in Australia. Also, Australian state governments have agreed to adopt parallel regulation in many areas where divergent regulations would impose extra costs. The federal government has been a key facilitator of this process in Australia.

78. Finally, information technology has been under-used in this area in the United States. Development of a user-friendly public registry and inventory of formalities on the Internet could provide useful information on approved information collections., such as a plain language list of the items would be available: all the information elements required, the statutory time responses of the authorities, if the 'consent is silence' rule applies, the means or procedure to present (or maintain) it an electronic copy of the forms, etc. This central data base could evolve progressively into becoming an electronic one-stop shop where the formalities could be directly inputted and sent to the agencies.

2.3. *Managing regulatory reform*

79. The most important determinant of the scope and pace of further reform is the attitude of the Congress. Congressional incentives to relinquish control over *how* policies are carried out in return for more accountability for policy results are not strong, though they are improving. In the end, it will be the management of a more results-oriented relationship between the executive and the legislative that will determine the scope and pace of regulatory reform in the United States.

While the U.S. public debate over regulatory reform is among the most well-informed and transparent in OECD countries, there is still too little information on the results of reform strategies, including their effects on programme effectiveness, costs, economic performance, and distribution of gains and losses. Yet this information is critical if reform is to enjoy support from citizens who place high value on safety, health, environmental quality, and other values promoted by regulation. At this juncture, it seems that fears about the effects of reform on levels of protection have not been borne out, but continued reform will proceed faster and more deeply if reformers take concrete steps to demonstrate that protection has been maintained. Evaluation of the impacts of reform and communication with the public and all major stakeholders with respect to the short and long-term effects of action and non-action, and on the distribution of costs and benefits, will be increasingly important to further progress.

¹ OECD (1998) OECD Economic Surveys: Netherlands (Paris), p. 16.

² Algemene Rekenkamer (1994), **Wetgeving: Organisatie, proces en produkt**, Tweede Kamer, vergaderjaar 1993 - 1994, pp. 27-28.

³ Government of United Kingdom, Department of Trade and Industry (1995) "Deregulation and Contracting Out Act 1994: An Explanatory Guide," January.

⁴ OECD (1997), *In Search of Results: Performance Management Practices* (Paris); OECD (1996), *Performance Auditing and the Modernisation of Government* (Paris); OECD (1996), *Performance Management in Government: Contemporary Illustrations*, (Paris).

⁵ See U.S. Government, General Accounting Office (1997) “Managing for Results: Regulatory Agencies Identified Significant Barriers to Focusing on Results” (Washington, D.C.).

⁶ Letter to Parliament by the Minister of Economic Affairs and the Minister of Justice, 19 December 1994.

⁷ Direct communication with the OECD, April 1998.

⁸ US Office of Information and Regulatory Affairs, Office of Management and Budget (1997) Report to Congress on the Costs and Benefits of Federal Regulations, September 30, p. 44.

⁹ US Office of Information and Regulatory Affairs, Office of Management and Budget (1997) Report to Congress on the Costs and Benefits of Federal Regulations, September 30.

¹⁰ Chubb, John E. and Paul E. Peterson (1989) *Can the Government Govern?* (Brookings Institution: Washington, D.C.), p. 4.

¹¹ “Enterprise for the Environment,” statement by William D. Ruckelshaus, Chairman, Browning-Ferris Industries, Inc. before the Senate Appropriations Committee Subcommittee on VA-HUD Independent Agencies, February 29, 1996.

¹² OMB (1994) “Report to the President on Executive Order No. 12866 Regulatory Planning and Review,” May 1.

¹³ “Improving Regulatory Systems,” *op cit*.

¹⁴ Crandall, Robert, *et. al* (1997) *An Agenda for Federal Regulatory Reform* (AEI and The Brookings Institution).

¹⁵ See Jacobs, Scott H., Deighton-Smith, Rex, Huigen, Hans, and Buchwitz, Rebecca (1997) “Regulatory Quality and Public Sector Reform,” Chapter 2 in *The OECD Report on Regulatory Reform: Thematic Studies* (OECD: Paris).

Annex D

SYMPOSIUM ON “STRATEGIES FOR GOVERNMENT REVIEW AND REFORM”

1. The symposium, which was scheduled for February 1999, had to be postponed to avoid competition with other international events in the field of public management. It is now due to take place in September 1999.
2. The objectives of the symposium are to expose and confront OECD countries experience in the strategic review of government functions, and in the carrying-out of public management reform, drawing lessons from 15 years of international experience in the management of change in the public service. It is designed to cater to top reformers from Member countries.
3. The preparation is now well under way. A country expert group including Canada, Finland, Germany, Ireland, New-Zealand, the Netherlands, Norway, Portugal and the United Kingdom has already met once and is meeting again in November 1998. The members of the group have produced reports on their countries' experiences with the three areas covered by the symposium (strategic review, reform and change management). They provide feedback and advice on the overall design of the symposium programme and on discussion papers which will be developed by the Secretariat and consultants, as well as those produced by other members of the group.
4. A consultant paper (on the role of central government agencies in the reform process) has already been produced and discussed at the April 1998 meeting of the country expert group. Three other consultants have been commissioned (on the role of evaluation in reform, on the challenges facing the roles and functions of government in the next century, and on the designing of reform programmes), and speakers are being identified.
5. After the symposium, a publication will draw together the key findings of the venue as well as the papers provided by the consultants and the Secretariat. the case studies of countries experiences will be made available for consultation on the PUMA Web site.