The obsession with regulation

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The European Commission has predicted that the much heralded Transatlantic Trade and Investment Partnership (TTIP) will boost EU GDP by 0.5% which will annually add €120 billion to the economy.[1] The gains seem significant but in reality they represent little more than a rounding error in the calculation of economic output.

Yet, there will be benefits. However, unless agreement is reached on regulation and in particular the precautionary principle the TTIP will be cast aside; another casualty of the EU's obsession with regulation.

The European Commission does not just pass regulation affecting its own internal market but also aggressively seeks to export its rules beyond its own borders. Instead of liberalising the Single Market the EU is looking to raise rivals costs. This includes the most important potential trade deal in EU history. Instead of allowing European businesses to innovate more freely the Commission is attempting to make the USA apply what is known as the 'precautionary principle.'

According to Professor Ragnar Löfstedt, the Director of King's College London Centre for Risk Management, whenever a new endeavour or products is proposed the European Commission can decide to ban a product until its producer demonstrates that it poses no (or an acceptable) risk. This attitude is at the heart of EU regulation and largely responsible for the growing complexity and rigidity of European Union law. Its use has been upheld by the European Court of Justice in legal cases including Pfizer Animal Health SA v. Council 1999 ECR II-1961.[2]

The precautionary principle stymies innovation and harms economic growth. It is this well-intended in theory, but pernicious in practice, belief that is responsible for the march of health and safety legislation.[3]

The stubborn requirement for this and not allowing free access to goods which do not comply with the precautionary principle may have the effect of scuppering the Transatlantic Trade and Investment Partnership between the EU and the USA. The United States of America has a different approach to risk-management which is more open to innovation.[4]

From the European Commission perspective, free trade agreements are not just to encourage the export of goods but also exist to export its regulations. A condition of tariff free trade access and the faster transit through customs is for the non-EU state to apply common technical and health and safety standards. Compliance with EU environmental rules and a commitment to ensuring that competition is not being distorted by state intervention is also mandated. As is the protection of intellectual property rights and that public procurement will be open to all.[5]

Some even demand that in exchange for tariff free trade with the EU countries sign up to the EU's human rights agenda.

For the EU trade is politics by other means. There is a price to be paid for accessing the EU's internal market from outside the EU.

So what is the basis of this regulation and is it a burden on businesses?

A case can be made that common standards actually boost trade and make it easier for both service providers and manufacturers. Value is added to goods through an increasingly complex chain of production over many jurisdictions, with different parts and programmes originating in a number of countries. Global production, it is argued, requires global regulation. The Brussels bureaucracy is not the only organisation that promotes this position. It is even shared by some in the United States of America and is espoused by the influential US group the Council on Foreign Relations.[6]

What is more, the setting of different standards in one country can be used as a protectionist measure that makes it more difficult for one country to produce products for the recipients market. This is especially the case if the exporter has to pass costly and time consuming safety checks.

The standardisation of regulation will therefore remove these technical barriers to trade. Certainly it is the case that supply lines are always improved if there is interoperability. The difference between domestic and export markets will also be reduced making it easier for businesses to operate in one environment.

The arguable increase in trade does not take into account the probability that some businesses can reach agreement themselves making the regulation unwarranted. The desire for regulation also fails to consider that the costs of compliance. The level of interference has reached a point where it becomes excessive. Standardisation is also monotonous and impinges on creativity harming innovation.

There is substantial evidence which suggests that over-regulation is holding back economic growth. A report on the burdensome cost to business was commissioned by the pro-EU Prime Minster, Tony Blair, during his time in office. The 2005 report by the Better Regulation Task Force for the then premier estimated that regulation cost the British economy 10-12% of GDP. That amounts to approximately £150 billion per annum.

This cost is divided between, administration which entails 'familiarisation, record keeping and reporting, including inspection and enforcement.' This accounts for around a third of the burden with the remainder coming from the 'costs directly attributable to the policy goal.' At least half of this regulation, and therefore at least half the costs, originate from the EU; with this amount steadily growing. Half the cost equates to £75 billion pounds per year.

Other arms of the state have, however, come to different conclusions with civil service impact assessments reaching a different figure. These have been analysed by the British Chamber of Commerce in their *Burdens Barometer 2010* report. According to this he annual cost of EU regulation is £7.5 billion per year, still not an inconsiderable sum.[7]

Who is correct?

The figure derived from the British civil service may well underestimate the costs of regulation. Their impact assessments have been criticised by the Better Regulation Task Force. This report argued that the evaluations by Whitehall are inadequate. They lack a full cost benefit analysis of how the regulation is to be implemented and enforced. What is more, the impact assessments do not include nor fully explore other, less costly, alternatives to regulation.

The EU also produces its own impact assessments on the advantages and disadvantages of its own regulations. Just as the EU regards that the appropriate level for law making is at the European level it also regards its rules as beneficial with affordable costs. The fundamental floor at the heart of EU impact assessments is the fact that the Commission, the body which produces the legislation, also conducts the cost/benefit analysis of the proposals.[8] The bureaucracy, which incidentally leaves implementation to the EU's arm's length agencies and the member states, are unlikely to consider their own ideas as defective.

What is more, the monitoring of the legislation once in force also rests with the European Commission, the same body that has the monopoly on introducing the directives and regulations.

The Roman poet, Juvenal, in his satires famously asked *"Quis custodiet ipsos custodes?"* This translates as *"Who will guard the guards themselves?"* Or *"Who watches the watchmen?"* When it comes to law making in the EU the answer is that the EU is its own guardian. The future of enterprise in Europe rests with the benevolence, or perhaps, malevolence of the European bureaucracy.

"Excessive EU regulation is a cost too far. The European Union is most definitely in relative, if not actual, economic decline largely because of excessive regulation"

Even supporters of the EU and some senior figures in the European Commission have admitted that the over-regulation of business is harming the economy.

Peter Mandelson, as Secretary of State for Trade, told the Confederation of British Industry conference on 8th November 2004 that the cost of EU regulation amounts to holding back GDP in the EU by as much as 4%.[9] He was soon to become the EU Commissioner for Trade, taking up that post just two weeks later. This regulatory burden did not decrease during his time at the centre of the EU.

Those in the UK that believe that EU regulation is seriously to the detriment of enterprise are not alone. The Netherlands has also come to the conclusion that the EU is bad for business. As long ago as 2002 the Dutch government estimated that the administrative burden of regulation alone, which they define as 'the costs imposed on businesses when complying with information obligations stemming from government regulation' cost them 3.6% of GDP.[10]

Other Dutch reports have come to similar conclusions. In 2004 a report commissioned at the request of Gerrit Zalm, the then Dutch Deputy Prime Minister who also served at that time as the Netherlands's Finance Minister, estimated that the administrative burden on business in his country cost 3.7% of economic output. These conclusions were supported by the Organisation for Economic Co-operation and Development (OECD). In 1997 they predicted that regulatory reform in the Netherlands could boost Dutch GDP by 3.5%.[11]

Like the UK, not all Dutch regulation, comes through the imposition of European Union directives and regulations. In the Netherlands, it is estimated that the EU element amounts to 40%. The proportion for the UK is higher, now as much as 60%.

On 10th October 2006 Günter Verhuegen, the European Commissioner for Enterprise and Industry and a Vice-President of Commission stated that, *"Many people still have this concept of Europe that the more rules you produce the more Europe you have. The idea is that the role of the commission is to keep the machinery running and the machinery is producing laws. And that's exactly what I want to change."*

Verhuegen's bid for reform was, however, blocked according to the Commissioner by the EU's administrative culture.[12] Even the Vice-President could not stop the legislative avalanche.

Günter Verhuegen also estimated that the annual cost of EU regulation across the EU amounted to €600 billion per annum (around 5.5% of GDP), while the benefits of the Single Market amount to only €160 billion: therefore the costs exceeded the benefits by a staggering €440 billion.[13] Later, in a letter from Commissioner Verhuegen to Bill Newton-Dunn MEP, on 18th June 2007, the Commissioner gives the overall figure of just the administrative burden of EU level legislation as costing 3.5% of GDP for all member states and this sum would be similar for the UK.[14] What is more, the figure of three and a half per cent actually excludes the costs that directly relate to the policy goal making the final figure much higher.

It appears that even these, now former, Commissioners have a better recognition of the harm that EU rules have on competitiveness than British civil servants whose analysis of the costs of regulation in their impact assessments clearly underestimate the burdens that are being placed on businesses. Yet they could stop the ever-growing amount of EU rules. If the EU has not changed this damaging practice after more than a decade of governments recognising there is a problem what hope is their of change now...?

All measures of the cost of EU regulation show that there is indeed a significant price that business and therefore consumers have to pay as a result of EU rules. Across the EU enterprise, production and entrepreneurship have been replaced with regulation, inspection and compliance. Even the Confederation of British Industry mentioned in a report on the European Union that, 'The EU has moved too far from 'adding value' to 'adding functions', resulting in 'mission creep' in several areas.'[15]

Yet why at this difficult economic time is it still in place and continually being added to? Or, more specifically, cui bono; who benefits from the EU?

The reasons for regulation

Apart from the precautionary principle there are also other factors that have led to the growth of regulation.

Sir John Robert Seeley, the historian and writer on religious affairs, in his 1883 book the *Expansion of England* wrote of the British Empire that 'we seem, as it were, to have conquered half the world in a fit of absence of mind.' The Empire of the European Union, a realm of regulation, has conversely been deliberately established. It is not a free trade area that has been on an accidental legislative binge. The higher authority of the EU uses law to achieve its goal; that is the building of a monolithic system of political control that is aimed, rightly or wrongly, at reigning in the excesses of the nation states.

By implication the nationalist passions of the citizens of its member states are also kept in check. Or so the thinking goes. Building Europe requires the establishment of a body of law known as the *acquis communautaire*. A new political power cannot be said to exist unless it is an active law maker. The European Commission recognises that its political governance cannot be established in an absence of law.

Whilst the EU is largely immune to influence from national democratic institutions it is very much open to lobbying for new legislation from both environmental groups and multi-national businesses alike. Small and medium sized enterprises, who suffer most from red-tape, do not have the finances the time nor to defend their interests. This is not surprising; since 2010 there have been 3580 new EU rules on business that would take 92 days to read.[16]

Naturally the bigger the business the greater the resources it can spend on both being consulted by Brussels on future legislation and on lobbying for laws that are in their interests. This can include regulations that add costs on to competitors. Despite the apparent quest for harmony between the people of Europe, EU law making can also be manipulated to raise the costs of a rival country.[17]

The City of London and the UK's financial services industry has borne the brunt of this legislative assault. Recent regulations concerning; Credit Rating Agencies, and the establishment of the European Systemic Risk Board, the European Banking Authority, the European Securities and Markets Authority the European Insurance and Occupational Pensions Authority are prime examples. As is the Alternative Investment Fund Managers directive.

The expansion of the EU is also another factor. The accession of the once Soviet-dominated states did not lead to a new European paradigm where excessive regulation would be resisted. Far from leading to a liberalisation of the EU the eastward expansion became another excuse for yet more law making. In the opinion of the Commission the former communist states of Eastern Europe had insufficiently developed law for a capitalist free market. Apparently their economies were in need of stewardship by the EU. The standardisation that followed led to even greater EU interference.

The former President of the Czech Republic, Václav Klaus, said, during his time in office that, *"every time I try to repeal some Soviet-era directive, I'm told that whatever I am trying to scrap is a requirement of the European Commission."*

The European Commission is not the only EU institution that is adding to the legislative morass. A member of the Commission Legal Service blames another branch of the EU, the European Parliament. 'The European Parliament, under the co-decision [ordinary] procedure, is allowed to propose uninformed, irrational, impractical amendments, safe in the knowledge that they have no responsibility for implementation.'[18]

Other EU institutions are also part of the problem as any ambiguity is clarified by the European Court of Justice who inevitability add evermore complexity to EU law; which once in place is extremely difficult to repeal.[19] EU rules resemble the complicated financial devices bankers use like their debt swaps and derivatives. Few in the banking sector understood how they operated in practice let alone the risks involved. Complex EU law is equally economically damaging.

Excessive EU regulation is a cost too far. The European Union is most definitely in relative, if not actual, economic decline largely because of excessive regulation.

It is only fair to leave the last word to the EU. According to a report by the European Commission titled *Global Europe 2050* in the year 2000 the EU accounted for 25% of world economic output. However, by 2050 its share of global GDP will be 'as low as 15%.' The EU's own report goes onto say that, 'By 2050, Europe's share of global economic product may be lower than it was before the onset of industrialization, hardly a trend leading toward global economic dominance.'[20] ■

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