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5th Regulatory Studies Forum: The Regulatory Impact Assessment in Mexico IPEA

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Rio de Janeiro, November 2009



I. Regulatory Reform in Mexico

Background: The Regulatory Reform in Mexico



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The Mexican economy was heavily regulated and protected from foreign and domestic competition. For instance, in 1985, 92% of national production of tradable goods was protected through import permits. Other forms of protection included high import tariffs and regulatory constraints to foreign investment. Obsolete regulations also limited competition in domestic markets.

The government realized that action was needed to 'open-up' in terms of: its external relations through better integration with the world economy; its politics and public governance.

The 1988 highly-criticized election and a new economic crisis accelerated reforms in order to regain economic and social trust.

Those reforms were based on three pillars:

- i. Consolidate trade liberalization,
- ii. Expand the privatization program, and
- iii. Adopt gradually a government-wide regulatory reform program.

Background: The Regulatory Reform in Mexico



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- The Economic Deregulation Unit (UDE) was created in 1989 within the Ministry of Trade and Industrial Development (currently, Ministry of Economy), with the mandate to deregulate key economic sectors (e.g. road freight and maritime transportation), propose regulation in areas such as economic competition and standardization, and eliminate barriers to the entry and exit of goods and services.
- UDE promoted the development of important new laws, such as the 1992 Federal Technical Standards Law, which established the first regulatory process with a detailed public consultation procedure.
- UDE also promoted a new legal framework for competition policy (Federal Law for Economic Competition).
- Another macroeconomic crisis, in December 1994, was required to further accelerate the improvement of the Mexican regulatory framework. These emergency actions were progressively consolidated between 1996 and 2000 into a fully-fledged RIA system.

Mexico's Regulatory Policy



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Finally, in May 2000, a new reform of the Federal Law on Administrative Procedure institutionalized new rule-making procedures based on RIA and public consultation. With these changes, the Federal Commission on Regulatory Improvement (COFEMER) replaced UDE.

COFEMER is a technical and operational autonomous entity of the Ministry of Economy (**oversight body**), responsible for the coordination and supervision of the regulatory reform program.

The mandate of **COFEMER** is to ensure transparency in the formulation of federal regulations, as well as to promote the development of cost – effective regulations that generate the highest net benefit to society.

In particular,
COFEMER:

- ✓ Reviews regulatory projects (**through RIA**).
- ✓ Makes proposals to improve the regulatory stock.
- ✓ Manages a catalog of federal formalities.
- ✓ Promotes regulatory improvement and reforms countrywide.

International Experience



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Australia

Prior to the deregulation program, the regulatory costs were calculated between 9% and 19% of GDP.

The deregulation program generated benefits estimated on 5.5% of the GDP.

Netherlands

In 2003, the administrative costs generated by regulation accounted for 3.6% of GDP.

The deregulation program decreased administrative costs by 25%, having a positive effect estimated on 0.9% of the GDP.

Italy

In 2007, they identified administrative costs for small and medium enterprises in the order of 1% of GDP.

In 2008 a deregulation program was adopted for small and medium businesses, generating a positive effect of 0.2% on the GDP.

Korea

As an urgent measure to overcome the 1997 crisis and foster the economy, in the summer of 1998 the government promoted a deregulation program for every procedure issued by ministries and government agencies.

The program had the goal of reducing 50% of all procedures.

Of a total of 11,125 procedures, 48.8% were eliminated and 2.7% of the remaining were simplified.

United States

In 1997, they promoted a deregulation program whose purpose was to reduce administrative costs, estimated between 7.2% and 9.5% of GDP.

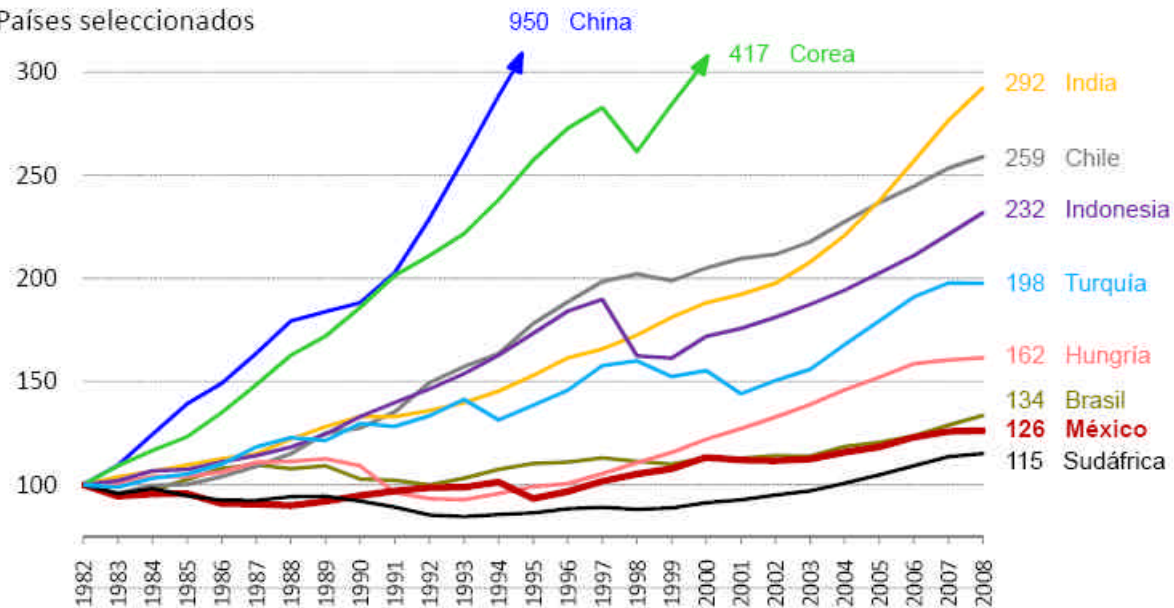
Deregulation led to benefits equivalent to 0.3% of GDP.

Economy of the World

PIB per cápita a precios constantes

Índice 1982 = 100

Países seleccionados



II. Regulatory Impact Assessment (RIA)

The Regulatory Impact Assessment



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The **Regulatory Impact Assessment** (RIA) is a public tool that allows government decisions and the respective regulatory instruments to be more transparent and rational.

RIA is an **ex-ante analysis** which allows to:

- 1 Know the effects, in terms of expected costs and benefits, a regulation will have when implemented.
- 2 Analyze regulatory alternatives to the original project of the regulator.
- 3 Define problems and to ensure that government action is justified and appropriate.

According to OECD, RIA is **a tool for policy coherence**, to ensure that regulation achieves its objectives effectively and efficiently in a changing world.

OECD RIA Best Practices



OECD has identified the ten best practices on the use of RIA:

1. Maximize political commitment to RIA;
2. Allocate responsibilities for RIA program elements carefully;
3. Train the regulators;
4. Use a consistent but flexible analytical method;
5. Develop and implement data collection strategies;
6. Target RIA efforts.;
7. Integrate RIA with the policy-making process, beginning as early as possible;
8. Communicate the results;
9. Involve the public extensively;
10. Apply RIA to existing as well as new regulation.

How does RIA work in Mexico?



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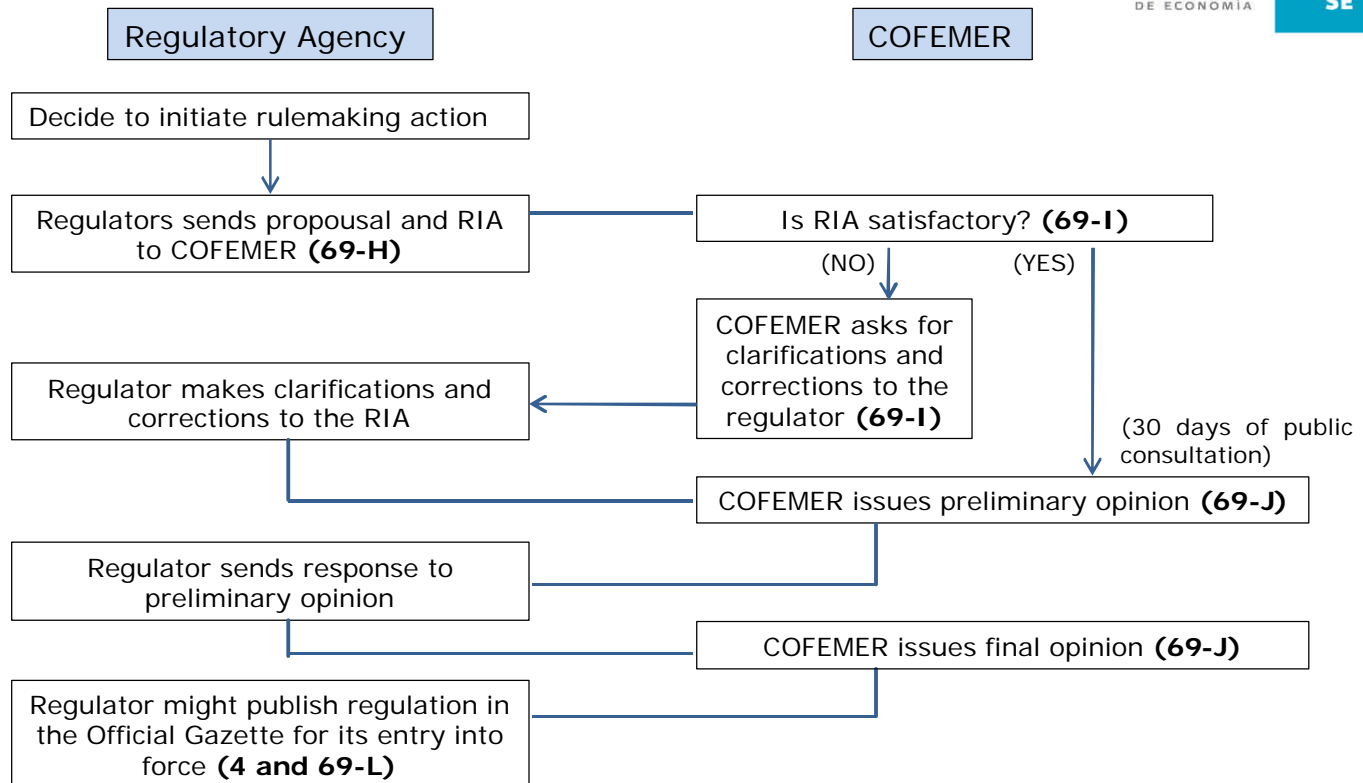
- RIA was introduced since 1997 for draft projects on Official Mexican Standards through the amendments to the Federal Law on Metrology and Standardization.
- It was on 2000 when RIA was implemented for wide use through a reform to the Federal Administrative Procedures Law.
- With the new legal framework, federal ministries and agencies are obliged to send their draft regulatory instruments to the body responsible for Regulatory Policy –COFEMER-.
- Two ways: 1) If the draft regulatory instrument establishes compliance costs, the regulator has to send to COFEMER its respective RIA in order to obtain the two opinion (preliminary and final). 2) Without compliance costs, the regulator just has to send the draft (without RIA) to COFEMER for its opinion.
- No regulatory instrument (promoted by the Executive Branch) might be published in the Official Gazette, and therefore enter into force, without obtaining firstly an opinion form the Oversight Body responsible of Regulatory Policy (COFEMER).

The RIA process



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Public consultation on the RIA process



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As a general rule and upon arrival at COFEMER, the draft regulatory text and the RIA report are made available to the public through [COFEMER's website](#), except when their publication might hinder or jeopardize the intended effects of the proposed regulation, provided that the relevant Ministry or agency so request and COFEMER grants its authorization **(69-K)**.

For 30 working days since the reception of the draft regulatory text and the RIA report, the public is allowed to send its comments to COFEMER.

As part of the regulatory review procedure, COFEMER sends out all the comments received to the regulatory body proposing the regulation, which is bound to take into account each comment individually or justify why it cannot incorporate it into the regulatory proposal.

The opinion issued by COFEMER is not mandatory for the ministries and agencies. Nevertheless, the process improves significantly the quality in regulation (preliminary and final opinions, transparency).

Public consultation on the RIA process



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Between January 1st, 2007 and October 31st, 2009, COFEMER received the following number of draft regulatory proposals:

	2007	2008	2009*
Draft regulatory proposals:	1,082	1,281	932
with compliance costs	431	370	241
without compliance costs	651	911	698

During the same period, COFEMER received **2,127** comments from citizens, business and stakeholders on the draft regulatory proposals (and RIA reports).

How does RIA work in Mexico?



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In the RIA, federal governmental bodies proposing new regulations indicate:

- the problem or situation to be solved;
- the legal foundations;
- the reasons of the proposed obligations;
- the benefit-cost analysis;
- the existing alternatives; and,
- the formalities that have been created, simplified or eliminated.

A key distinction among the RIA systems used by OECD member countries is that of the degree to which bodies external to the regulator, which have specific expertise in RIA, are given co-ordination and oversight responsibilities (**oversight body**).

Formal authority of the RIA requirements



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According to the OECD, the legal or policy basis upon which RIA requirement is established varies substantially across the countries. The 2004 inventory identified four basic forms of authority for RIA requirements:

- Established by law (as in the Czech Republic, the Republic of Korea and Mexico, as well as a majority of Australian States);
- Based on Presidential order or decree (as in the United States);
- Based on a prime ministerial decree, or guidelines of the Prime Minister (as in Australia, Austria, France, Italy and the Netherlands);
- Based on a directive or resolution of the Cabinet or the government (as in Canada, Denmark, Finland, Germany, Ireland, Japan, New Zealand, Norway, Poland, Portugal, Sweden, and the United Kingdom).

III. Regulatory Impact Assessment on Energy Industry

A case study



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Resolution that Amends the Methodology for Determining the Maximum Price of Natural Gas Subject to First-hand Sales Referred on the Directive for the Establishment of Rates and Charges for Regulated Activities of Natural Gas DIR-GAS-001-1996.

It was received by COFEMER on November 2007. It aimed at using the Henry Hub as reference market instead of the Houston Ship Channel as a way to determine the maximum price of natural gas subject to first hand sales on a Yardstick Competition Regulation.

The draft regulation was proposed because of the possible interrelation that the Mexican market could have on the Houston Ship Channel due to the interconnectivity of pipelines.

A case study



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COFEMER recommended some modifications to the study made by the regulator of the behavior of both methodologies, asking to extend the period of time used for the research. That way it would be possible to measure the consequences on volatility during periods such as the California Crisis (2000-2001) and the Katrina Hurricane (2005).

Also, the mechanism for the substitution of indexes during volatile periods wasn't justified on the RIA. COFEMER proposed an alternative mechanism of endogenous volatility.

Finally, on January 2009 the regulator issued a draft regulation along with the MIR, **taking into account eleven opinions from stakeholders**, reflecting the regulatory improvement process.

COFEMER's conclusions to the regulatory process was that prices with the new methodology did not differ from the ones using the current methodology, but there is a great difference on volatile periods, recommending, in the final opinion, a model of endogenous volatility.

IV. Additional points

Regulatory Reform in multilevel government



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13 states use a RIA for local regulatory draft projects, 3 other states implement some kind of study previous to the regulation.

RIA and the Presidential Order for Regulatory Quality



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In addition to the RIA process mentioned before, another instrument to reinforce Regulatory Quality was issued by President Felipe Calderón on February 2, 2007: the **Presidential Order for Regulatory Quality**.

The Presidential Order establishes a procedure that federal ministries and agencies must fulfill before COFEMER, previous to submitting the RIA.

The Presidential Order's goal is to oversee: i) that the draft regulation has a positive effect on citizens and productive activities; and ii) that no regulation is enacted if it hinders investment, job creation and, in general, the competitiveness of the Economy.

RIA and the Presidential Order for Regulatory Quality



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Federal agencies may issue new regulation, only when the latter complies, subject to COFEMER's decision, at least with one of the following criteria:

1. The draft regulation derives from an emergency situation.
2. The federal ministry or agency is complying with either an obligation established in law or in regulations issued by the President.
3. The draft regulation is complying with an international obligation.
4. The regulation has to be up-dated periodically due to its nature.
5. The benefits of the proposed regulation are superior to its compliance costs.
6. Program operating rules that are issued pursuant to the Federal Expense Budget.

V. Conclusion

Elements for a successful RIA



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According to OECD, there are many systemic factors that influence the quality of RIA and can potentially undermine its effectiveness. Among these factors are:

- ✓ The design of RIA processes and methodologies;
- ✓ The level of formal authority and political support for the process;
- ✓ The incorporation of specific quality assurance mechanisms.

In the Mexican experience, RIA has been an important tool in the Regulatory Reform. In the implementation of RIA, we have to consider:

- ✓ RIA has to be seen as a means to prepare draft regulation, not as a paperwork to be prepared after such a draft is completed.
- ✓ RIA creates a new culture (many times it will be observed opposition).
- ✓ RIA preparation has to be assigned to qualified personnel.
- ✓ Communicate effectively the benefits and usefulness of RIA.
- ✓ Involve all stakeholders in the public consultation phase of RIA, in order to gather as much information and points of view as possible.

Thank You

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