

THE IMPORTANCE OF REGULATORY COOPERATION FOR IMPROVING GOVERNMENTS' ABILITY TO FULFIL LEGITIMATE POLICY OBJECTIVES WHILE FACILITATING TRADE: THE NORTH AMERICAN EXPERIENCE

Communication from Canada, Mexico, and the United States

The following communication, dated 8 June 2009, is being circulated at the request of the delegation of the United States.

I. INTRODUCTION

1. Effective integration of global markets not only requires the elimination of tariff duties but non-tariff barriers as well, including where possible, the elimination of undue differences in standards, technical regulations, and conformity assessment procedures.

2. In 1999, an OECD study referenced an estimate that 80 percent of trade is affected by standards or associated technical regulations.¹ An empirical study completed by trade economists in 2004 estimated that the global gains from the removal of non-tariff barriers could be in excess of \$90 billion.² Thus, we believe that the use of regulatory cooperation to reduce such barriers is critical.³

3. While recommending the implementation of regulatory cooperation mechanisms as a means for facilitating trade, it is important to bear in mind that there is no "one size fits all" approach. In other words, there are many ways and degrees to achieve regulatory cooperation among trading partners: from information-sharing to harmonization of standards and regulations, to equivalence and mutual recognition agreements. Some of these different approaches are reflected directly or indirectly in Articles 2.4, 2.6, 2.7, 2.8, 3.4, 5.4, 6, and 9 and Annex 3 of the Agreement on Technical Barriers to Trade (TBT Agreement).

II. BACKGROUND

4. In the Fourth Triennial Review, Members noted that:

"Regulatory cooperation between regulators from different Members, whether informal or formal in nature, and including training activities, can help achieve a better understanding of

¹ OECD, *Regulatory Reform and International Standardization*, TD/TC/WP (98) 36, January 1999.

² Andriamananjara, S., et al. (2004), "The Effects of Non-Tariff Measures on Prices, Trade, and Welfare: CGE Implementation of Policy-Based Price Comparisons," U.S. International Trade Commission (USITC), Office of Economics Working Paper EC2004-04-A, Washington, D.C.: USITC, p. 18.

³ *Enhancing Competitiveness in Canada, Mexico, and the United States: Private-sector Priorities for the Security and Prosperity Partnership of North America (SPP)*, Initial Recommendations of the North American Competitiveness Council, February 2007, p. 29.

different regulatory systems and approaches to addressing identified needs. Furthermore, it can promote regulatory convergence, harmonization, mutual recognition and equivalency, thereby contributing to the avoidance of unnecessary regulatory differences and to the reduction of unnecessary barriers to trade.”⁴

Further, Members agreed to share experiences on “how regulatory cooperation between Members has contributed to the avoidance of unnecessary regulatory differences.”⁵ It is in that context that Canada, Mexico, and the United States have prepared this paper for discussion by the Committee.

5. In 1993, the three countries signed the North American Free Trade Agreement (NAFTA), which took the region to the leading edge of trade and investment liberalization globally. The result has been hugely positive for all three countries. Since its implementation, annual trade between the three countries has gone from \$297 billion to \$810 billion.⁶ Our countries now conduct \$2.2 billion in trade every day.⁷ Economic growth in all three countries has also been robust, with the real gross domestic product (GDP) rising over this period by 40 percent in Mexico, 48 percent in the United States, and 49 percent in Canada.⁸

6. However, despite this impressive growth in trade, non-tariff barriers affect approximately \$715 billion of North American trade.⁹ In order to address such barriers, Canada, Mexico and the United States have long acknowledged the positive effects of improved trilateral regulatory cooperation, which acts to lower costs for North American businesses, producers, governments and consumers; maximize trade in goods and services across North American borders; and protect health, safety, and the environment.

7. Trilateral regulatory cooperation has taken many forms over the years, either in a regulator-to-regulator format or within a more structured framework. The best known of these frameworks is the NAFTA which, since 1993, has offered a forum for cooperation in several specific areas, including pesticides, agriculture, automotive goods, and telecommunications. More recently, in March 2005, the Leaders of Canada, Mexico and United States launched a Regulatory Cooperation Framework (RCF) within the context of the Security and Prosperity Partnership of North America, with three general goals:

- (a) To strengthen regulatory cooperation, including at the outset of the regulatory process;
- (b) To streamline regulations and regulatory processes; and
- (c) To encourage compatibility of regulations, promote the use or adoption of relevant international standards in regulations, and eliminate redundant testing and certification requirements, consistent with our WTO obligations.

8. Sections C and D of this paper set out some examples of regulatory cooperation under NAFTA, the RCF, and other fora. In Section E, we attempt to draw some conclusions from these activities and provide recommendations to the Committee for further work in this area.

⁴ Fourth Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade Under Article 15.4, G/TBT/19, 14 November 2006, para. 18.

⁵ Id. at para. 19(h).

⁶ *Enhancing Competitiveness in Canada, Mexico, and the United States*, February 2007, p. 12.

⁷ Ibid.

⁸ Ibid.

⁹ Chen Maggie Xiaoyang, Tsune Otsuki, John S. Wilson, “Do Standards Matter for Export Success?” Policy Research Working Paper 3809, World Bank, Washington, D.C., 2004

III. REGULATORY COOPERATION ON SYSTEMIC ISSUES

A. COMMON REGULATORY PRINCIPLES AND BEST PRACTICES

9. Under the RCF, Canada, Mexico, and the United States agreed to a set of common regulatory principles to guide North American regulators during regulatory development.¹⁰ These common principles are rooted in WTO rules and mirror closely OECD principles. They include minimizing the adverse impact of regulations on fair and competitive market economies; minimizing unnecessary duplicative requirements within North America; identifying alternatives to addressing a regulatory need, including non-regulatory options; and ensuring transparent regulatory development and implementation. In light of these principles, Canada, Mexico and the United States established a list of illustrative best practices that provide concrete guidance, in each of the three countries, on how to achieve our common principles.¹¹ These best practices encompass government efforts to streamline the regulatory process, increase the use of regulatory impact assessment, and improve transparency through effective consultations throughout the process.

B. RISK IMPACT ANALYSIS

10. Under the RCF, Canada, Mexico, and the United States also established a trilateral forum on Regulatory Impact Analysis (RIA), which brings together regulatory policy experts from the three countries to strengthen collaboration on procedures, practices, and tools which underpin new regulatory proposals. In 2008, this forum undertook a trilateral review of an existing U.S. Department of Transportation RIA on electronic stability control for motor vehicles, allowing Canada and Mexico the opportunity to provide comments on the U.S. analysis. This joint pilot project also allowed representatives from regulatory agencies and departments, as well as representatives from central agencies responsible for regulatory policy in the three countries, to discuss the similarities and differences of the regulatory analytical requirements and the methodology used in each country. The joint analysis was very instructive and will be replicated in the future. We believe that such analytical work and dialogue are key for the development of compatible approaches to technical regulations.

IV. REGULATORY COOPERATION ON SECTOR-SPECIFIC ISSUES

A. FOOD AND AGRICULTURE

11. In the food and agricultural sector, Canada, Mexico, and the United States have been cooperating for many years to improve sector-related regulations and practices. NAFTA technical working groups (TWGs) have been established for issues such as food labelling and packaging, and TWGs and forums such as the North American Biotechnology Initiative play a significant role in regulatory cooperation in this sector. In these TWGs and other forums, Canada, Mexico, and the United States have collaborated on numerous regulatory projects. For example:

- (a) *Laboratories:* We have enhanced food laboratory cooperation between the three countries by: (1) establishing a procedure/mechanism to share information on laboratory methods, and (2) exchanging information on proficiency testing programs in each country, and identifying gaps where programs are not available.
- (b) *Nutritional labelling:* The three countries have agreed on a harmonized approach to the scientific basis used to update dietary reference values for the labelling of food products.

¹⁰ See http://www.spp.gov/docs/RCF_Common_Regulatory_Principles_Inventory_Best_Practices_FINAL.doc

¹¹ Ibid.

12. Bilateral work in this sector also continues. For example:

- (a) *Organic products:* Negotiations between Canada and the United States to reach an equivalency agreement on organic requirements began in February 2008, and the goal for both countries is to complete the negotiation as soon as possible.
- (b) *Tequila:* The United States and Mexico concluded an Agreement on Trade in Tequila in January 2006. The Agreement established a set of rights and obligations for the parties to protect tequila as a distinctive product of Mexico and to minimize barriers to the export of tequila to the United States. The Agreement also created a Working Group on Tequila in which representatives of the relevant agencies in the United States and Mexico monitor the implementation of the agreement and exchange information and statistics on tequila trade.

B. AUTOMOBILES

13. Canada, Mexico, and the United States are undertaking several joint activities with the goal of reducing air pollution and greenhouse gas emissions from vehicles and engines and ensuring that significantly cleaner vehicles and fuels are marketed throughout North America while enhancing regulatory cooperation among the three countries.

- (a) We have shared information on policies and programs on vehicle fuel efficiency, standby power consumption, and the potential for natural gas to support optimal energy use for the future.
- (b) We undertook a comprehensive analysis of various emissions inventories among the three countries to prepare a trilateral strategy to achieve comparability.
- (c) Additional candidate areas for cooperation could include such things as the exchange of information on vehicle and engine testing, as well as sharing information on the development and use of voluntary partnerships for in-use fleet emission reductions. This initiative will be an iterative process of engagement and will build upon existing formal and informal mechanisms. For example, the U.S. EPA hosted a workshop in Washington in June 2008 to share information with Canadian federal and provincial government representatives on strategies and approaches to reduce emissions from heavy duty vehicles that are already on the roads; and EPA hosted the Border 2012 Air Policy Forum (APF) meeting with Mexico in San Diego, California in July 2008, to adopt an emissions reduction strategy, which includes approaches specific to vehicle emissions in the Border States. EPA is currently undertaking a feasibility study on incorporating anti-idling mechanisms in the plans for a new border crossing near San Diego, which will be presented at the August Border 2012 APF meeting in Monterrey, Nuevo León, México. Simultaneously, EPA has begun discussions with the U.S. Departments of State, Transportation, Homeland Security, and Commerce with regard to anti-idling options for the new crossing. EPA is conducting and supporting numerous other transportation emissions reduction projects, including diesel retrofits, along the border as part of the Border 2012 APF Strategy.
- (d) Finally, the National Research Council Institute for National Measurement Standards (NRC-INMS) and the Mexican Ministry of Environment and Natural Resources (SEMARNAT) will exchange information on advanced techniques for measuring automotive air emissions such as carbon dioxide, carbon monoxide, nitrogen oxides and unburned hydrocarbons with the U.S. National Institute of Standards and Technology (NIST). NIST and NRC-INMS have also agreed to an exchange of visits, and NIST gas analysis experts visited the Environment Canada Environmental

Science and Technology Centre (EC-ESTC) labs in November 2008 to exchange information on measurement techniques.

C. CHEMICALS

14. Canada, Mexico, and the United States have developed a trilateral approach to fully apply the results of ongoing efforts to assess, prioritize, and take action on existing chemicals in the United States, Canada's Chemicals Management Plan, updated information on inventories, and Mexican efforts to develop a chemical inventory and implement international objectives, to achieve the following by 2020:

- (a) establishing or updating inventories of chemicals in commerce in all three countries;
- (b) enhanced capacity in Mexico to assess and manage chemicals; and
- (c) sound management of chemicals in North America as articulated by the World Summit on Sustainable Development Johannesburg Plan of Implementation and reinforced by the Strategic Approach to International Chemicals Management.

These efforts will contribute to improving our health and environmental protection programs through a practical and focused approach to strengthen chemical management in North America over the long term.

D. ENERGY

15. In July 2007, the three countries reached a trilateral agreement on energy science and technology – a framework designed to stimulate innovation and to share and help build capacity in all three countries. Ministers emphasized that developing cleaner and more efficient ways to produce and use conventional energy and advancing our knowledge of renewable energy, science and technology were fundamental to increasing energy security, sustaining economic prosperity, and protecting the environment, and that greater regulatory cooperation increased the potential return on investment in energy science and technology.

16. In the area of energy efficiency standards, three energy performance standards have been harmonized across the three countries: freezers and refrigerators, three-phase motors, and room air conditioners. The new suite of products was assessed under the new framework to systematize energy efficiency harmonization between the three countries. Workshops have also been held on Standby Power and Transportation Efficiency. There is also a commitment to further align energy efficiency standards on key consumer products, and agreements to identify specific ways to increase cooperation on research and development and reduce barriers to deployment of new technologies in a wide variety of areas, including biofuels, gas hydrates, hydrogen, carbon capture and storage, clean coal, and electricity transmission.

17. We have also road tested emissions estimation methodologies for nine energy generating facilities to improve and harmonize emissions calculations in the energy power sector and provide the basis to populate and update power sector emissions inventories.

18. In short, the NAFTA approach to regulatory cooperation emphasizes the importance of regulatory convergence (including reduction of regulatory inconsistencies and redundancies), administrative simplification, and the use of practical, science- and risk-based tools, to attain critical health, safety, environmental, and security goals in the least trade-restrictive manner possible. Such an approach enables the NAFTA partners to effectively attain their legitimate regulatory objectives in a manner that reduces rather than increases the burden on businesses and international trade.

V. CONCLUSIONS AND RECOMMENDATIONS

19. The cooperative activities illustrated in this paper demonstrate the wide variety of approaches that can be employed by regulators to collaborate with each other -- from simple information sharing to negotiating equivalency agreements, always bearing in mind their obligations under the WTO TBT Agreement. The appropriate approaches in any given situation will necessarily differ based on a number of factors. The availability of resources, the degree of regulation already in place, and the level of technical and institutional capacity in each country are factors to consider. Canada, Mexico, and the United States are cooperating and coordinating successfully, taking into account these types of constraints, in the context of North American regulatory cooperation activities. We believe that our efforts have provided substantial benefits to regulators, suppliers, and the public.

20. For regulators, cooperation has improved access to shared information and to alternative approaches to addressing common problems and objectives. In some cases, cooperation has economized on critical staff time and resources, and enabled more rapid responses when regulatory action is needed. Regulatory cooperation also has enabled trade facilitation to be a key factor in evaluating alternative approaches to achieving legitimate policy objectives. For example, sharing international best practices through regulatory forums has provided global benefits in terms of opportunities to improve product safety, as well as consumers' confidence in products, their national regulators, and the global trading system.

21. In addition to leading to better regulations in North America, cooperation has reduced the costs of suppliers of dealing with unnecessary divergences in regulations. Harmonizing divergent regulatory approaches designed to achieve the same objective, while not lowering the level of protection of, e.g., the environment, health and safety, and consumers, simplifies the compliance process for suppliers. This will enable suppliers with operations located both inside and outside North America to reduce their costs of regulatory compliance, generate greater economies of scale, increase sales, and pass on cost savings to consumers.

22. Regulatory convergence is especially beneficial for small and medium sized enterprises (SMEs). SMEs, which account for tens of millions of jobs in North America and are a major source of innovation, necessarily devote a larger percentage of their operating budgets to regulatory compliance than do large enterprises, so they are particularly impacted by having to comply with a multitude of regulations across different jurisdictions.

23. The North American economic integration achieved through NAFTA over the past decade and a half has brought significant benefits to our citizens. Canada, Mexico, and the United States believe that our regulatory cooperation efforts have been an effective catalyst for achieving a more fully integrated North America market, and we intend to apply the lessons learned from our NAFTA efforts in other sectors. We invite other Members who have an interest in regulatory cooperation in any of the areas set out in this paper (or in other areas, for that matter) to discuss that interest with our delegations.

24. We also recommend that the Committee invite other Members to share their views and experiences on regulatory cooperation, with the goal of identifying areas where WTO Members can work together to achieve convergence on well-crafted, risk- and science- based, non-discriminatory, and transparent, regulatory approaches, with a goal of harmonization where possible. We recommend that the Committee hold a Workshop on Regulatory Cooperation to facilitate this information-sharing process.
