

# Queens University Annual Trade Policy Event

1

## **REGULATORY COOPERATION AND TRADE POLICY**

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# Outline

2

- Traditional trade agreement approaches
- Evolution of trade and manufacturing – new reality for regulators
- Canada-US Regulatory Cooperation – an overview
- Where regulatory cooperation best applies
- Areas of opportunity between regulators
- Next steps to secure success
- NAFTA – how can it set the stage for deeper cooperation?
- NAFTA – specific inclusions that would help
- A final word about third party standards

# Previous/Traditional Approaches

3

- WTO based – rights and obligations
- National government and country to country focus
- Many sub-disciplines and concepts – TBT, SPS, national treatment etc
- Dispute settlement and recourse
- Highly effective and successful in addressing tariffs, basic market access
- Changed the trade dynamic – now at a new starting point

# Evolution of Trade and Manufacturing – New reality for Regulatory Systems

4

- Integrated supply chains are now predominant
- Global products are a reality
- Regulatory systems are following but not keeping pace – regulators only now slowly breaking out of a domestic/regional focus
- Manufacturing standardization and facilitated market access hindered
- Domestic regulatory system effectiveness in achieving outcomes increasingly challenged

# Regulatory Cooperation – an overview

5

- Canada-US as the initial priority – Leaders commitment
- Recognized integration of the economy – manufacturing supply chains and consumer markets
- Existence of 2 independent regulatory systems on the same supply chain and firms
- Unnecessary costs and requirements impacting industry, consumers, government
- First 5 years – 2011-16
  - from a concept, to a pilot, to 100's of initiatives
  - introduction of a new partnership model and planning cycle
  - formal role for stakeholders
- Misalignment costs not due to regulation, but all the procedures and requirements associated with them
- Low level of awareness of impact on industry
- Next steps – complete the institutionalization between Canada and the US and further evolve regulatory partnership

# Where regulatory cooperation best and most broadly applies

6

- Where market access already exists
  - trade irritants (TBT, SPS etc) or disputes have been addressed
- Where supply chains are integrated
  - Cross border manufacturing or common sourcing
- Where markets are integrated
- Where similar products are offered to the market and are being regulated by similarly mandated agencies
  - From domestic or foreign sources
- Where consumers have similar preferences
- Where regulators have similar approaches and risk tolerance

# Areas of Opportunity Between Regulators

7

- **Common standards and tests**
  - Joint standards development – using combined data
  - Joint testing methodology development
  - Single certification for both markets
  - Jointly approved certification bodies
- **Product Approvals and Reviews**
  - Single point application process for both markets
  - Joint risk assessment/combined data sets
  - Single approval for both markets
- **Managing 3<sup>rd</sup> Party Import Risk**
  - Common procedures at perimeter and foreign sites
  - Jointly recognized inspection/certification
  - Common single enforcement program applied once for both markets
  - Enforcement for both markets at Point of Entry (not Canada-US border)
  - Common risk assessment and interdiction program
- **Leveraging the outcomes achieved in the other jurisdiction**
  - Common inspection program and procedures - modernize and adjust together – combined data
  - Joint management of inspection program – eliminate need for product re-testing
  - Plant and Animal Health – jointly manage evolving pest and disease risk due to climate and other factors based on a shared territory and zones therein – away from political boundaries

# Next Steps to Secure Success

8

- **Make Regulatory Policy changes**
  - Similar to first generation US Executive order – special consideration for Regulatory Cooperation initiatives that would include:
    - ✦ Use of combined data for cost benefit assessment
    - ✦ Allow for Canada-US (OIRA-RAS and Regulator to Regulator) confidential dialogue in final regulation adjustments
    - ✦ Enhance analysis of implementation procedures that would mis-align requirements even though regulation aligned
  - Require Departmental development of internal regulatory cooperation strategies and published work plans as well as forward regulatory plans
- **Enhance Governance**
  - Reinstitute a Secretariat led Council that would include Regulatory Department Heads
  - Establish senior/political binational oversight body
- **Institutionalize Annual planning**
  - Commit to and implement a regular, predictable annual cycle
  - Formalize the role of stakeholders in short, medium and long term planning
  - Provide formal procedures for stakeholders to identify regulatory cooperation opportunities or issues throughout the year to Departments, Secretariat/Council, Oversight body
- **Further Regulatory Department ambition and leadership**
  - Enhance analysis to better understand industry, consumer and departmental benefits of specific opportunities
  - Re-vector domestic regulatory mindset to one of regulatory partnership where common outcomes are desired



# NAFTA – how can it set the stage for deeper regulatory cooperation?

9

## Permission, Opportunity, Aspiration, Expectation

- Establish conditions and set expectations that are beyond GATT and WTO – beyond tariffs and current TBT and SPS disciplines
- Set regulatory cooperation/partnership as the next arena for focussed effort
  - But unlike traditional approaches – opportunities follow specific supply chains, products and their markets: includes non-signatories
  - Need a willingness by both country's regulators to take on an opportunity – not for irritants or basic market access issues
- Reinforce lead role of Regulatory Departments and of stakeholders
- Esconce governance structures, planning cycles
- Provide for new mechanisms and relationships between regulatory Departments between countries

# NAFTA – Specific Inclusions That Would Help

## Good Regulatory Practices

- Establish regulatory cooperation as a lens to assess regulatory proposals
- Establish proposals stemming from regulatory cooperation workplans for special consideration (e.g. nature of cost-benefit, importance of including implementation procedures and requirements in assessment etc)

## SPS/TBT

- Recognize the contiguous territory shared by the NAFTA countries – unique situation & opportunity
- Emphasize importance in addressing plant, animal and food risk jointly and ability to stand down from border measures when this occurs
- Legitimize the use of private standards and third party verification by industry in the region, as approved by government, as alternative to government run systems
- Open the door for regionalization and desire to form joint programs when these cross political borders

# NAFTA – Specific Inclusions That Would Help

- **Regulatory Cooperation Section**
  - Establish Regulatory Agency lead role for workplans and advancing regulatory cooperation
  - Establish governance 1) for an oversight body (senior/political) and (2) enhance the Canada-US secretariat-led Regulatory Cooperation Council to include implicated regulatory department heads
  - Formalize process for stakeholders in opportunity identification and workplan development – provide formal process for them to raise concerns with Oversight body, Council, Departments
  - Establish a process for stakeholder input citing regulatory cooperation concerns at anytime
  - Recognize that workplans do not necessarily include all signatories nor are they limited to signatories – can extend to others
  - Set expectation/scope for new mechanisms between regulators to achieve deeper cooperation/partnership

# Why private standards and 3<sup>rd</sup> party verification?

12

- Supply chains and products are increasingly global
- Domestic regulatory systems don't extend well into other jurisdictions
- Current regulatory systems are increasingly irrelevant to sophisticated manufacturers and non-sustainable financially and intellectually (specialized knowledge requirement increasing)
- Private standards with sophisticated verification systems are already in place
- Flexibility to orient to individual firms/supply chain participants – no foreign national regulatory system implications
- Enforcement effectiveness of large retailers and manufacturers surpasses that of government (longer reach and more absolute ie delisting)
- Regulatory systems are not leveraging outcomes achieved by responsible manufacturers

*Recognizing potential use in NAFTA creates game-changing possibilities*