Prospects for the Advancement of Regulatory Cooperation in the Current Trade Environment
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Canada-US Regulatory Systems in Context - Background

- Regulatory systems were conceived of and built in the post-WWII GATT world
- Intended to promote export, limit imports and to build a manufacturing base in each country
- Created a new “industry” within government
  - development of regulatory systems that served as trade barriers
  - Some health and safety, but mostly for production and marketing purposes
  - Focused on national economic interests
- WTO in 1980s - intended to rationalize regulatory systems and requirements
  - Science basis
  - Required the least restrictive means of regulating
  - TBT, SPS, international organizations and standards/approaches
  - Highly successful
- But a consequence - the result – regulatory policies, regulator mindsets, regulatory approaches were, and remain highly nation-centric
Canada-US Regulatory Systems in Context – Evolution of Manufacturing and Production

At the same time regulatory systems were being rationalized, the manufacturing environment was changing dramatically....the context for regulators was evolving....

Globalization
- Single-country end to end sourcing, production and manufacturing increasingly rare - supply chains involve multiple countries
- Many countries involved don’t have sophisticated regulatory systems, if any
- Industry increasingly interested in global products – manufacture of a uniform product with access into multiple markets

Canada-US integration of supply chains
- Canada and the US the most integrated economies in the world – we manufacture together
- Canada and US consumers have the same product preferences and risk tolerance
- 40% of Canada-US border traffic is intra-firm

Multi-Country supply chain participants
- Manufacturers and retailers seeking supply chain assurances in other jurisdictions - outside government
- Adoption of third party systems and standards that can be independently verified
- These systems more advanced than those of government (e.g. trend analytics, immediately reactive to technological advances, more detailed results and analysis)
- Supply chain and safety systems management are the new critical success factors for firms – their role in achieving regulatory outcomes is completely different than 25 years ago – very evolved
Regulatory systems and approaches are in dramatic need of reconsideration, modernization, synchronization, integration:

- In Canada and the US we are doing everything twice, duplicating requirements, applying it to a single supply chain.
- Cost to regulators, to industry, to consumers remains high and unnecessary.
- We are maintaining non-integrated regulatory systems in an integrated manufacturing environment and common consumer market.
- Regulatory cooperation has not been successfully installed between the countries.
- The plea from industry to reduce regulatory burden and cost is becoming more acute and desperate.
- Efforts at “red tape reduction”, “smart regulation”, simply haven’t worked. Existing exercises are devoid of game-changing innovation and ideas.
- Regulatory mindsets, regulatory policy and approaches support the status quo.
Canada-US Regulatory Cooperation....
2011-2016

- Driven by PM/President - Recognized the integration of the Canada-US economy (production, manufacturing, consumer markets) and the unnecessary costs and requirements impacting industry, consumers, government

- First 5 years: 2011-16
  ◦ From a concept, to a pilot, to 100’s of initiatives
  ◦ Not just the regulation per se, mostly implementation procedures (certificates, inspections, tests etc)
  ◦ Demonstrated the lack of awareness of impact of two systems and opportunities in the system
    ◦ Examples: Baby Seats, Lip Stick, Home Appliances
  ◦ Introduction of a new partnership model and planning cycle

At its core, initiated a new language and nature of discussion between Canada-US Regulatory Agencies and Industry

◦ Important new interface between regulators and industry on longer term regulatory system directions, key roles for industry – cost impacts and industry trends

Inclusions in TPP, CETA, under discussion at OECD and WTO related bodies– NAFTA discussions anemic, lacking vision

...but has stalled between Canada and the US even though the need is becoming more acute
Regulatory Cooperation – will tariffs and protectionism hinder it?

UPSTREAM
Manufacturing & Supply Chains
- Where market access already exists
  - Trade irritants (TBT, SPS) or disputes have been addressed
- Where supply chains are integrated
  - Cross border manufacturing or common sourcing
- Where markets are integrated
  - Similar products offered and regulated by similarly mandated agencies
  - From domestic or foreign sources
- Where consumers have similar preferences
- Where regulators have similar approaches and risk tolerance

DOWNSTREAM
Products into Markets

Given where and how it is applied - NO - it can provide cost relief
Regulatory Cooperation –
Taking stock - is the stage still set?

Agreements between regulatory agencies already in place, annual planning cycle confirmed in 2016 – but not implemented

Misunderstandings have already been avoided
  • Race to the bottom or lower standards, Loss of sovereignty, Removing unnecessary cost is not in conflict with Health and Safety, Environmental Protection outcomes

Not embedded as a right or obligation in a trade agreement – it’s about regulators partnering and working together – good will and reasonableness driven – doesn’t need NAFTA

Governments continue to strongly endorse the approach.

It is unrelated to tariff application, and can relieve cost burden.

Flexible - can target and modernize regulation where specifically needed for immediate gains

Can be focused on specific areas where unnecessary cost and regulatory misalignment are material – reducing burden, cost and red tape

Trump has signed 2 executive orders on regulatory reform
  - EO 13771 “Reducing Regulation and Controlling Regulatory Costs” – two for one and PAYGO
  - EO 13777 “Enforcing the Regulatory Reform Agenda”

Yes, frankly, the opportunity is BETTER than in 2016
Regulatory Cooperation – What needs to be done to reinvigorate & lock it down?

- Rebrand regulatory cooperation as a new form of “deregulation” – doesn’t mean eliminating regulation in an area
  - Consistent with all the reduction exercises –
    - Recognize reality of two systems applied on a single supply chain or the same products entering both markets
    - Doing regulatory work once, applying it once will reduce collective regulatory cost to industry and government by at least ½
    - In a joint context, this IS regulatory reduction and Departments should get credit for it.
- Policy changes at TBS and OIRA
  - Make regulatory cooperation the new normal.
  - Synchronize regulatory planning and secure all opportunities into regulatory cooperation workplans.
  - No regulation can advance if it could be done jointly and isn’t proposed as such
  - Change cost-benefit models to consider BOTH jurisdictions in cost/options analysis
  - Combine administrative procedures for consultation and comment for regulatory cooperation initiatives between Cda/USA
  - Major modernization initiatives should only be done together with a view to forming a common system
- Secure planning as a more formal process and raise submission status
  - Reinstall and adhere to the 2016 planning cycle
  - Establish new mechanisms to consider all opportunities as formal petitions
  - Require formal responses to ALL opportunities submitted
- Provide for the development of joint mechanisms and organizations between US and Canadian regulatory agencies to conduct foundational regulatory activities together and eliminate differences:
  - Risk assessments, standard setting, inspection program design and development, testing methodologies etc
- LEADERSHIP – at the center of between governments, and in regulatory agencies – new model?
Industry Challenges

Regulatory cooperation not yet embraced by regulators as a key modernization opportunity
- They don’t feel the imperative
- Regulators need to see something in it for them to be more effective and efficient in delivering their mandates

Regulatory Departments/Senior Regulatory Officials depth of knowledge about sectors they regulate
- Horizontal movement vs experience and expertise

Industry implications and costs of regulatory misalignment not adequately measured/fully appreciated
- Not traditionally part of the skillset of most departments
- Tools not designed for regulatory partnership – not contemplated
- Context of overall cost reduction through working with another jurisdiction

Transactional approaches vs longer term directions
- Lack of understanding of sector trends relegates regulatory strategies to a very short time horizon
- Longer term discussions will expose opportunities still on the horizon – new technologies, market trends

Domestic-centric mindsets
- Policies and approaches are still dated in 1980’s/90’s paradigms
Advice for Industry

Set your expectations higher and insist they are met:
- Insist on success - lower tolerance for lack of progress.
- Insist that key positions at all levels important to your livelihood are filled with subject matter experts – not ‘good bureaucrats’

Make it harder to say no to a good idea:
- Inform senior officials and regulatory staff about your industry – elaborating the specific cost and market impact of non-aligned regulatory decisions – in as much detail as possible – anecdotal and single company based is very useful.
- Provide MUCH more sophisticated input. Costing/Options analysis. There is external help in Canada, the US and Mexico.

Get in early – before Departments advance regulatory proposals:
- Exploit any opportunity to engage well before regulations are being drafted:
- BEFORE a direction is established or a “go it alone” decision made.

Insist on more joint mechanisms in common areas:
- Don’t buy the “we already cooperate’ line. That’s what got us to where we are now
- Insist on bigger, better ideas – joint bodies etc. Make it about how, not just what.

Present views/ideas, and as US/Canada partners:
- present regulators with joint or common positions and ideas
- Provide solutions that address both jurisdictions
Questions