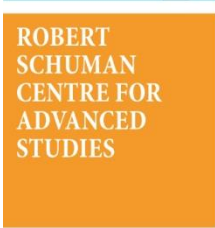




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Trade Agreements and International Regulatory
Cooperation in a Supply Chain World

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Global Governance Programme

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a Supply Chain World**

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Abstract

Many of the policies that affect international supply chains and associated trade flows are regulatory in nature. Governments generally do not pursue domestic regulation or design trade agreements with a view to support the “trade as production” model by reducing regulatory differences that have the effect of impeding trade. This paper proposes several mechanisms to help make policy more supportive of regulatory cooperation initiatives that are aimed at reducing excess costs that negatively affect supply chain trade and investments, and that can be incorporated into trade agreements. While the analysis and suggestions are general, specific context and examples are provided by recent trade agreements and regulatory cooperation initiatives involving Canada, the EU and the US.

Keywords

Supply chains, trade agreements, regulation, CETA, TTIP

JEL codes: F13, F50, K20

Introduction*

Differences in regulatory requirements across jurisdictions that raise the costs of international trade are of increasing concern to businesses. Governments are responding by pursuing a variety of international regulatory cooperation efforts. A relatively new approach that has begun to be used in such cooperation initiatives is to seek to establish regulatory equivalence and to put in place processes to support convergence in regulatory goals across countries. Such approaches involve very different mechanisms than those that are usually embodied in international trade agreements, the primary instrument used by states to reduce barriers to trade and investment. This paper puts forward a number of proposals to support greater use of regulatory equivalence as a mechanism to reduce trade costs. These include knowledge platforms to identify areas where the underlying preferences (objectives) of principals in different countries are very similar, and supply chain councils that bring together business representatives and other stakeholders that depend on the competitiveness of international value chains to identify where and how differences in regulatory regimes generate excess trade costs.

A distinctive feature of the post Second World War period has been the steady and sustained increase in international commerce, which, with the exception of a few episodes when the world went into recession, has grown more rapidly than output year in, year out. The value of global imports and exports of goods and services passed the US\$20 trillion mark in 2011 and currently is equivalent to 60 percent of global GDP, up from 40 percent of GDP in 1990.¹ The expansion in global trade was driven by lower trade costs, in turn the result of technological change and trade policy reform. Average import tariffs for manufactures are now in the 5 to 7 percent range or less in the major trading nations, including in large emerging economies such as China and India.

Much of the growth in world trade has comprised intermediate inputs and components. Declining trade and information and telecommunications costs have permitted firms to geographically splinter their production processes, using international supply networks to allocate different tasks and activities to plants or suppliers in different countries, with goods being produced – and value being added – in multiple countries that are part of the chain. The growth in supply chain trade (SCT) is associated with cross-border movement of capital and knowledge (as the technology and know-how needed to undertake the various activities is often firm-specific). The growth in global trade was paralleled by an even greater rise in the global value of the stock of foreign direct investment (FDI). The value of local sales by foreign-owned firms was some US\$26 trillion in 2012, as compared to \$18 trillion for world merchandise trade (UNCTAD, 2013).

A consequence of the large scale reductions in average import tariffs and removal of most quantitative restrictions and capital controls is that the policies that today restrict international flows of goods, services, knowledge and professionals are increasingly regulatory in nature. Examples of such so-called nontariff measures (NTMs) are product regulation (to achieve health, safety or security objectives), licensing requirements for providers of services, and certification and conformity assessment procedures for goods, services and production processes. The organization of an increasing share of production and trade into global value chains means that end products are impacted by an ever greater number of regulatory jurisdictions. For example, an automobile has thousands of parts that are produced by hundreds of suppliers located in different countries. A Volkswagen might have an engine made in Germany; a wiring harness from Mexico, and an exhaust filter system from South

* This paper was prepared for an Institute for Research on Public Policy project on Canadian trade policy. I am very grateful to Robert Carberry and Bob Wolfe for detailed comments on earlier drafts, as well as to two reviewers, Laszlo Bruszt, Thomas Courchene, Petros Mavroidis, Sebastien Miroudot, Sandy Moroz, Chuck Sabel and participants in the IRPP conference Adapting Canadian Trade and Commerce Policies to New Global Realities, Ottawa, June 16-17, 2014 and a December 16, 2013 EUI workshop Reducing Regulatory Barriers to Trade and Investment for helpful suggestions.

¹ Data in this paragraph are from the World Bank's World Development Indicators database.

Africa. Differences in standards and in testing procedures imply that components as well as the final product are not interchangeable—a catalytic converter that complies with EU norms may not be accepted in Canada and vice versa. Akhtar and Jones (2013) cite the example of a U.S. light truck manufacturer that wanted to sell a model in Europe – which “required 100 unique parts, an additional \$42 million in design and development costs, and incremental testing of 33 vehicle systems ...all without any performance differences in terms of safety or emissions.” There are many such examples in the trade press and industry literature, e.g. World Economic Forum (2013) notes a case involving a chemical company that imports acetyl, used in aspirin and paracetamol, into the US. The company must, on average, comply with similar regulations from five different agencies that do not coordinate effectively with one another, resulting in delays for one out of three shipments, with each day of delay costing the firm US\$60,000.²

This multiplicity of regulatory policies results in international trade costs often being much greater than for domestic transactions. The potential welfare gains from actions to reduce such costs – which are in significant part due to differences in regulation and redundant compliance requirements – are substantial. For example, OECD (2005) concludes that regulatory convergence in services sectors could raise per capita GDP by some 3 percent in the EU and US; WEF (2013) estimates that convergence in the cost of enforcing a set of trade-related NTMs to that observed in the most efficient countries would increase global welfare (real incomes) by some 5 percent. However, analyses of the potential impact of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU conclude that the impacts of this free trade agreement would increase real GDP of the EU very marginally (by less than 0.1 percent), and that of Canada by some 0.2 to 0.4 percent (reflecting the fact that Canada has a much smaller economy than the EU) (Joint Study, 2008). The projected economic impacts of a Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US are also relatively small: at best an increase in real aggregate income for the EU and the US of some 0.5 percent (Francois et al. 2013).

A major reason for the small predicted effects – relative to the much larger potential gains from reducing nontariff measures and trade costs estimated in the trade literature – is that the cited CETA and TTIP studies assume it will not be feasible to make significant progress in addressing many of the regulatory sources of transatlantic trade costs (see also ECORYS, 2009). The extent to which this can be done depends on the effectiveness of regulatory cooperation between countries to reduce the trade-impeding effects of differences in norms and requirements. Thus, the design of regulatory cooperation matters because this is a precondition for generating greater gains than those that are identified by economic research. This is an area of policy where unilateral, autonomous reforms can generate significant benefits, but given that the source of trade costs and inefficiencies in part reflects *differences* in regulation for the same product, international cooperation is needed.

Trade agreements are not designed with a view to minimize negative regulatory spillovers. They are designed to reduce explicit discrimination against foreign suppliers of goods and services through a process of reciprocal exchange of commitments to reduce instances of discrimination. In the case of regulatory policies in principle there is no discrimination: measures are applied to domestic and foreign goods and services equally. The source of the trade costs lies in the differences in regulation across jurisdictions, and the need to comply with the requirements of multiple regulatory bodies in two or more countries. International cooperation to reduce the market segmenting effects of differences in regulation confronts significant difficulties because of concerns that this will impede the realization of regulatory objectives and the execution of the legal mandates and obligations of regulatory agencies. The primary “technology” of trade negotiations – reciprocity – cannot be employed. It is ineffective.

Key obstacles to achieving the desirable regulatory cooperation include (i) mandate gaps between trade negotiators and domestic regulators; (ii) coordination gaps within government and between

² See also Kommerskollegium (2014).

government and business; and (iii) informational gaps within and across countries (government agencies; politics). Addressing these gaps requires institutions and processes that foster learning and building trust through regular communication and repeated interaction. This is needed both across agencies within countries – frequently multiple regulators and government bodies are engaged in setting and enforcing product and process regulations – as well across countries. Matters are compounded in federal states, where regulation is applied at the state level (13 provinces and territories in Canada; the 50 States in the case of the US).³

The design of specific regulations generally does not consider how taken together they may impact on economic entities, whether there are overlaps and redundancy, or the potential impacts on trade and investment. Regulators generally do not think about the trade implications of what they do, but they are the “owners” of many of the policies that affect trade opportunities. They are limited in their appreciation of the economic effect and costs associated with implementation of their regime on businesses. As a result there is insufficient awareness of the possible negative competitiveness impacts of each jurisdiction duplicating tests and certification requirements. The focus of attention is generally on a specific regulatory mandate, with little recognition of measures that may have been applied in other parts of the value chain in other countries that aim to achieve similar outcomes. Governments and regulatory entities are generally insufficiently concerned with the impacts of policies on the trade costs and the efficiency of value chains. A necessary condition for regulators to consider the (cross-border) economic implications of their work is that they have incentives to do so, which raises issues related not just to their legal mandates but the design of institutional mechanisms that facilitate learning and a better understanding of the overall impact of regulatory norms throughout the value chain.

This paper discusses approaches that could be used to support greater cross-border regulatory cooperation to reduce redundant (duplicative) testing and certification requirements and to identify differences in regulatory norms across countries that are not substantive in that the desired risk mitigation outcomes are very similar. A precondition for the type of cooperation that is the subject of this paper is that there is a sufficient degree of “equivalence” in the extant institutional capacities and in the regulatory objectives that are being pursued by countries. If regulatory goals or implementation capacities differ widely, there will be much less scope for the type of regulatory cooperation that is the subject of this paper.⁴

Three proposals are made to support international regulatory cooperation to reduce regulatory redundancy and the excess costs for firms it brings with it, and equally if not more important, improve regulatory outcomes.

- First, to institutionalize regulatory deliberation processes under the auspices of existing and prospective regulatory cooperation fora in trade agreements like CETA, complementing the consultations that are a central feature of the regulatory process in many OECD member countries. These would focus on both extant and new (proposed) regulation with a view to identifying areas where different jurisdictions are in fact pursuing equivalent objectives. The process would go beyond the regulators (the “agents”) concerned and involve the active participation of representatives of the demanders of regulation and those most concerned with its implementation (the “principals”). The objective here is to identify areas where regulatory cooperation is feasible.
- Second, to engage the business community and other stakeholders that are concerned by the operation of international supply chains and production networks in a process that assesses how

³ In the case of the EU another complicating factor is that there are 28 member states that continue to have significant autonomy in the implementation of regulation in many areas.

⁴ Similarly to Lester and Barbee (2013), the presumption in what follows is that the focus of attention in international regulatory cooperation should be on differences in standards and duplicative compliance requirements as opposed to domestic regulatory reform.

a broad mix of relevant regulatory measures impact on trade opportunities and outcomes. The main goal of the proposed supply chain Councils is to generate information regarding where differences in regulation have the greatest economic impact. These Councils can be characterized as an example of experimentalist governance (Sabel and Zeitlin, 2012), helping to identify priorities for international cooperation by regulatory bodies as well as potential domestic policy reforms through a process of feedback and learning based on data provided by those tasked with complying with regulatory requirements.

- Third, putting in place mechanisms enabling “principals” (stakeholders – natural and legal persons) to raise awareness and advocate for reform of policy measures that negatively impact on trade opportunities that are not regulatory in nature but that directly impede access to markets, thus undercutting the realization of the market integration objective of a trade agreement.

The plan of paper is as follows. Section 1 discusses different types of regulatory cooperation and some conceptual issues and operational challenges that confront international regulatory cooperation efforts. Section 2 puts forward and discusses the three proposals summarized above to support international regulatory cooperation. Section 3 concludes.

1. Regulatory Cooperation: Conceptual Issues and Operational Challenges

Efforts to pursue regulatory cooperation as part of economic (trade) integration agreements have generally relied on two approaches: harmonization and mutual recognition. Harmonization involves the adoption of the same norms by two or more jurisdictions. Mutual recognition involves agreement that products legally introduced into the commerce of one jurisdiction may be sold and consumed without additional controls in another jurisdiction. In practice mutual recognition requires some minimum level of harmonization of norms. To take the example of food safety standards, mutual recognition between A and B implies that A has satisfied itself that the norms prevailing in B are such to ensure food satisfies its own safety norms and vice versa. If the underlying norms in the two jurisdictions differ enough the approach is not feasible. Even if countries A and B harmonize their norms, trade may still be impacted by redundant costs if both continue to inspect products before they are allowed to be sold. Only if A and B mutually recognize (accept) that their respective enforcement systems are effective will harmonization eliminate regulatory trade costs.

Mutual recognition agreements have had limited impact (Vogel, 2012).⁵ Harmonization of norms is extremely difficult to achieve for regulatory measures that are already in place even if the focus is limited to regulations that apply *within* Canada, the EU and the US, let alone seeking to harmonize rules across countries. An alternative to these two “traditional” approaches is for jurisdictions to work towards convergence of their regulatory regimes and to pursue what has been called “regulatory equivalence” (see, e.g., Bolkestein, 2003; Stewart, 2004) or “enhanced mutual recognition” (EC, 2004). This involves agreement that the regulatory objectives of the two parties are equivalent *and* acceptance that implementation/enforcement mechanisms in both jurisdictions are effective. Under a regulatory equivalence approach each government agrees to accept the regulatory system of another party – the goal being that each party accepts the regulatory regime that prevails in another as having both very similar objectives and an effective institutional system through which these objectives are attained. Under “standard” mutual recognition country A satisfies itself that its norms have been achieved by B through testing, inspections, sampling etc. that is done in country A. Under regulatory

⁵ The focus of this paper is regulatory cooperation between sovereign states and abstracts from the specific case of the EU. Mutual recognition has of course been a crucial mechanism in the process of integrating the product markets on EU member states. This has occurred not through specific agreements but through the decisions of the European Court of Justice, which ruled that in the absence of overriding concerns that permit an exception, members of the EU must accept products into their markets that were legally introduced in the commerce of another member state.

equivalence country A simply accepts the processes and system that is applied by country B.⁶ A necessary condition for such an approach is trust: there must be a prior process of “mutual assessment” (Messerlin, 2014) or evaluation of the regulatory goals and implementation regime in the relevant jurisdictions that results in a judgment that these are “equivalent”. This may require efforts to align programs intended to implement regulations and mitigate risk, e.g., inspections, tests, frequencies, etc. – i.e., regulatory equivalence may be conditional on some elements of harmonization.

Abstracting from the different types of regulatory cooperation that can be pursued, a key practical question is how this should be organized. In the post-Second World War period governments have relied on international regimes anchored in international organizations to cooperate on matters that are of joint interest (Keohane, 1984). The major example in the trade arena is the GATT/WTO. Starting in the 1990s this type of state-based, rule-based approach to international trade cooperation has been complemented by two other forms of transnational governance: regime complexes and related networks, and what Sabel and Zeitlin (2012) have called experimentalist governance. Regime complexes comprise mechanisms through which a mix of state and non-state actors from multiple countries form networks that create “policy space” (a mandate) for international organizations to engage in decision-making and pursue activities in a specific area. Global experimentalist governance describes “the gradual institutionalization of practices involving continual updating and revision, open participation, an agreed understanding of goals and practices, and monitoring, including peer review” (De Búrca, Keohane and Sabel, 2013).

Governance of international trade policies is generally anchored on trade agreements. These are State-to-State treaties that include binding, legally enforceable policy commitments. They have been the work horse of international cooperation on trade policy, an instrument through which countries have sought to improve access to foreign markets. They have more recently also been used in efforts to address the market segmenting effects of differences in regulatory regimes. The leader in this domain has been the European Union, which currently spans 28 member states, and is *sui generis* given the agreement of the states involved to create supra-national institutions with significant authority. Other OECD member countries have also pursued trade agreements that include cooperation on regulatory policies. Examples include the Closer Economic Relations agreement between Australia-New Zealand (ANZCERTA); the agreements Korea negotiated with Canada, the EU and US (see, e.g., Marx et al. 2013); the Canada-EU CETA; the ongoing TTIP negotiations between the EU and the US; and talks among a set of Pacific nations on a Trans-Pacific Partnership (TPP). All of these initiatives have wider sectoral and deeper policy coverage than older agreements such as NAFTA. All go beyond the WTO; none come close to emulating the supranational dimensions of the EU.

Effective regulatory cooperation requires going beyond legally binding, and thus enforceable, treaties between States. What is needed instead are experimentalist governance approaches. Binding commitments not to do or not do something – the bread and butter of trade agreements – will simply not be feasible. The nature of regulation is often very technical and dynamic, involving many actors with different degrees of autonomy and decentralization, and will respond to differences in local circumstances and changes over time in knowledge. This makes it difficult – and undesirable – to impose regulatory cooperation by fiat. Instead, it must be premised on mutual trust, which in turn requires mutual assessments of performance so as to enable regulators to provide evidence to principals (stakeholders; parliaments) as to why the other party is trusted. In practice achieving

⁶ A key difference is therefore that regulatory equivalence requires a willingness to step back from a focus on technical product considerations and to assess systems as a whole. Thus, whereas mutual recognition is based on assessing country B’s meat inspection system on the basis of a sampling regime and the results of testing in country A of a sample of products originating in B, an approach based on regulatory equivalence would justify trust in a partner country’s products on the basis of systemic arguments: “because that country has had a meat inspection regime for 50 years, it is implemented by professional inspectors and veterinarians, it is based on modern principles and science, it is updated regularly, it is audited by objective third parties, and when problems occur, changes are made to address them expeditiously” (I owe this wording to Robert Carberry).

regulatory equivalence may require efforts over time that result in regulatory agencies modernizing and adjusting their regulatory regimes together, such that convergence occurs with time, and partner countries move closer to systems that are constructed and implemented the same way. A consequence is that regulatory cooperation must be of a “living nature”, involving gradual progress in convergence and acceptance of systems that results from the operation of specific institutional mechanisms that will need to be put in place (EC, 2013).

The CETA, at the time of writing the most recent of the new vintage trade integration agreements and that is likely to be a model for what may be agreed between the EU and the US in a TTIP, includes elements of experimentalist governance in a number of provisions that aim to reduce the trade impacts of differences in regulatory policies. While the CETA is a step forward compared to older vintage trade agreements, I will argue in what follows that more needs to be done to reflect the changes that have occurred in the way international trade is organized so as to bolster the ability of domestic firms to enhance their productivity and competitiveness. More rapid progress in attenuating the trade cost-increasing effects of (differences in) regulatory policies might be realized by complementing existing approaches in trade agreements that focus on specific policy disciplines with the creation of processes and institutional mechanisms that include active participation by private actors and that take a broader value or supply chain perspective. While concrete initiatives to reduce costs for firms and consumers created by redundant regulatory requirement and processes must be policy-specific – i.e., involve the type of cooperation that is already being pursued in the context of the CETA, the Canada-US Regulatory Cooperation Council (RCC) and similar forms of bilateral or plurilateral cooperation between regulatory bodies – what is missing from current approaches are cross-cutting, supply chain-informed deliberative mechanisms that focus on a broad range of policies that impact on trade costs and that provide a framework for regulatory cooperation to improve competitiveness and efficiency of industry – two goals that Canada and the EU set for themselves in the CETA (Art. X.3).

International supply chains and regulatory cooperation

The factors that determine the ability of firms to exploit SCT opportunities are manifold. A plethora of policies will play a role, ranging from the extent of protectionism at the border – the level of applied tariffs on inputs, complemented by a variety of non-tariff barriers (NTBs), including policies that explicitly limit the ability to embody foreign inputs into a product such as local content requirements or procurement policies that give a preference to domestic firms. Restrictions on the ability of foreign companies to provide services will impact on the access to and the cost of inputs ranging from finance to transport and logistics to professional and other business services. NTBs are complemented by generally applicable regulation including product/supplier standards and related licensing and certification requirements, as well as by sector- or activity-specific policies such as subsidies and tax incentives, transport costs and logistics performance, and “connectivity” — the quality and costs of ICT services and infrastructure. More generally, and very importantly, the variance (uncertainty) in the application of policy will be as if not more important than average “levels” for firms engaged in international trade.⁷

Thus, a variety of policy areas, many of them domestic, will affect the ability of companies to participate in global value chains. Reductions in import tariffs and removal of discrimination in government procurement – two areas where there are direct restrictions on the ability of foreign companies to access the market – account for just a two chapters of CETA. The majority of the substantive chapters of the CETA deal with non-tariff and regulatory policies including technical barriers to trade (TBT), sanitary and phytosanitary (SPS) measures; Customs and trade facilitation procedures; policies affecting specific services sectors; mutual recognition of professional

⁷ See Lapham (2014) for an in-depth discussion.

qualifications; domestic regulation more generally; procedures for regulatory cooperation and dialogues and bilateral cooperation, as well as protocols on the mutual acceptance of the results of conformity assessment of good manufacturing practices for pharmaceutical products, among others. Whether and to what extent they can be effective depends on how well they incentivize government agencies and regulators to consider trade effects of their activities. In some important areas progress has been achieved, including mechanisms through which regulatory authorities in specific areas from different countries interact. Consultation and information exchange-cum-notification systems through which other parties are made aware of proposals for new regulation are an example. This is a key element of the operation of the WTO TBT and SPS Committees, reflecting an understanding that regulatory cooperation should involve interaction “upstream” so as to try to avoid new standards becoming a ‘trade irritant’ and a source of dispute. It is much easier to adapt proposed regulations before they enter into force than it is to undo regulatory decisions *ex post*.⁸

Consultative processes are a prominent feature in the CETA, consistent with the approach that the Government of Canada takes in the formulation and assessment of domestic regulation. While consultative mechanisms with stakeholders and between regulators are critical in establishing the data and information flow needed to build trust and understanding of the operation of regulatory processes and norms, the impact of such types of cooperation in lowering trade costs may be limited. Regulatory cooperation tends to focus on a specific policy area such as health or safety standards, with an emphasis on technical matters such as certification and conformity assessment procedures. These are undoubtedly necessary dimensions of any effort to address regulatory barriers to trade and they constitute an important element of the CETA. But, they are not sufficient: the results of such mechanisms have been disappointing (Vogel, 2012).

One reason for this is that the approach taken often is based on some measure of harmonization or certification (explicit “recognition”) of the specific processes that are used by counterpart regulatory systems. This requires each regulatory entity to engage in a detailed assessment and evaluation of what goes on “in the kitchen” of the trading partner’s regulatory bodies. Another is that too little attention is given to explicit consideration of the net economic effects of how specific forms of regulation interact with each other and jointly impact on business and international trade opportunities. The approach that is taken by governments towards regulation differs quite significantly from how businesses operate internationally. Business “thinks supply chains,” whereas governments (and legislators/regulators) tend to focus on specific policy objectives and the specific instruments that are used to pursue them, which may involve a particular authority or entity or several. Making progress in addressing regulatory barriers to trade may be facilitated if this default policy-cum-issue-specific (“silo”) approach is complemented with mechanisms that are centred on the conceptual frameworks that are used by international business to organize production – the supply chain.

Industry is already cooperating to achieve elements of regulatory equivalence within supply chains. Given that regulatory regimes are limited to their domestic environments, companies (“lead firms”) have cooperated in the development of more robust voluntary (private) global standards such that they can have assurance that all participants in the supply chain are manufacturing to these standards. For example, in the food industry international supply chains have become very prevalent. As such, manufacturers seeking ingredients or partially processed foods from different countries can have confidence in the safety/quality of products, no matter where they are geographically located.

⁸ The fact that consultation mechanisms already exist in the WTO raises the important question of what is best done at the multilateral level and what requires bilateral or plurilateral cooperation. A major function of the WTO Committees dealing with product standards is transparency and to provide a forum for countries to be made aware of and be able to comment on – and question – new and proposed product-specific regulations. The type of regulatory cooperation that is involved in economic integration initiatives such as CETA and TTIP is a much more ambitious endeavor given the focus on regulatory systems and regimes as opposed to the technical aspects of a product-specific technical requirement. However, as discussed in the Conclusion, ultimately a multilateral approach will be needed to maximize the benefits of regulatory cooperation.

The benefits associated with such regulatory equivalence outcomes *within* supply chains may be reduced if there is no formal mechanism of equivalence between the governments involved. If governments recognize that such international systems of private standards are equivalent with their domestic regulatory environments this can further facilitate trade by avoiding duplicative testing, data reporting requirements, etc. The Global Food Safety Initiative is an example of such an effort—see <http://www.mygfsi.com/>.

2. Three Suggestions to Support Regulatory Cooperation and Reform

In the North Atlantic case – Canada, the EU and the US – regulatory objectives are frequently very similar in terms of desired outcomes. While the processes used to ensure implementation and enforcement can be very different, they are likely to be equivalent in terms of objectives and achieving desired outcomes. This suggests one element of regulatory cooperation should involve pursuit of a regulatory equivalence approach. This has a number of positive implications from an economic perspective (Messerlin 2014). One is that there is no need for governments to agree on the substance of minimum common standards or norms, as is the case with mutual recognition efforts. Another is that it implies greater competitive opportunities for firms and thus welfare gains for consumers, as there is no need for businesses to retool to contest a foreign market. Moreover, as stressed by Sabel (2014), a regulatory equivalence model has important benefits in terms of learning and monitoring of upstream and downstream performance and supporting the adoption of more effective or efficient approaches by regulatory bodies over time, thereby improving regulatory outcomes. Indeed, an important element of the approach is convergence towards very similar or common standards over time.

The CETA embodies some elements that go in this direction. Art.2 of the chapter on Regulatory Cooperation commits both Parties to further developing their regulatory cooperation to prevent and eliminate unnecessary barriers to trade and investment; enhance the climate for competitiveness and innovation, including through pursuing regulatory compatibility, recognition of equivalence, and convergence; and transparent, efficient and effective regulatory processes that better support public policy objectives and fulfil the mandates of regulatory bodies. Objectives of regulatory co-operation mentioned in Art. 3 of this chapter include building trust, deepening mutual understanding of regulatory governance and obtaining from each other the benefit of expertise and perspective to improve regulatory proposals; promote transparency, predictability and efficacy of regulations; identify alternative instruments; recognize the associated impacts of regulations; avoid unnecessary regulatory differences; and improve regulatory implementation and compliance. Another objective is to facilitate bilateral trade and investment by reducing unnecessary differences in regulation and identifying new ways of cooperating in specific sectors. In a similar vein, a complementary goal mentioned is to enhance the competitiveness of industry by looking for ways to reduce administrative costs and duplicative regulatory requirements and “pursuing compatible regulatory approaches including, if possible and appropriate, through: a) the application of regulatory approaches which are technology-neutral, and b) the *recognition of equivalence* or the promotion of convergence” (Art. 3(d)(iii) Regulatory Cooperation chapter, emphasis added).

Language on – and examples of – regulatory equivalence embodied in CETA include the chapter on SPS measures which requires each signatory to accept SPS measures of the exporting Party as equivalent to its own if the exporting Party “objectively demonstrates that its measures achieves the importing Party’s appropriate level of protection.” (SPS chapter, Art. 7.1 draft CETA text). Principles and guidelines for the determination of equivalence are set out in Annex IV to the SPS chapter, while Annex V lists areas in which Parties have agreed there is equivalence. One of the functions of the CETA Joint Management Committee for SPS Measures is to prepare and maintain a document detailing the state of discussions between the Parties on their work on recognition of the equivalence of specific SPS measures. A Protocol on the Mutual Recognition of the Compliance and Enforcement Programme regarding Good Manufacturing Practices (GMP) for Pharmaceutical Products makes

provisions for determination of the equivalence of regulatory authorities that certify compliance with these practices. For example, Parties must accept batch certificates issued by a manufacturer without re-control of that batch when imported provided that the products in the batch were manufactured in a facility that is certified as compliant by an equivalent authority. Annex II of this Protocol (on Medicinal Products or Drugs) lists a set of products where it has been agreed that the GMP requirements and compliance programs of both Parties are equivalent.⁹

The question is how to support greater use of regulatory equivalence in the North Atlantic and North American context, as well as with other countries that have similar regulatory objectives and effective enforcement institutions. The CETA chapter on regulatory cooperation creates an entry point but puts little emphasis on the use of equivalence as a method of reducing regulatory differences and costs. The term “equivalence” does not appear in Arts. 4, 5 and 7 of the regulatory cooperation chapter which lays out a rather long illustrative list of possible cooperation activities. One such activity that Art 4.18 calls for is to identify approaches to reduce the adverse effects of existing regulatory differences on trade, including “when appropriate, through greater convergence, mutual recognition, minimizing use of trade-distorting regulatory instruments and use of international standards...” The main thrust of the activities listed in these Articles is to enhance transparency and data and information sharing—there is no specific mention of greater pursuit of equivalence.

A premise of the suggestions made below is that greater progress in reducing the effects of regulatory differences could be facilitated if those most concerned by the impacts and effects of specific sectoral regulatory regimes are made a more integral part of the process of deciding where an “equivalence approach” is feasible and desirable. Learning is critical when it comes to the substance of regulation—officials and stakeholders need to understand what the implications are of a given rule or proposed rule change and how it will impact on the economy. Establishing fora that are aimed at fostering a substantive, evidence and analysis-based discussion and assessment of the impacts of sector-specific regulatory policies could help support more effective regulatory cooperation.

2.1 Knowledge platforms to extend the use of regulatory equivalence

A necessary condition for the pursuit of regulatory equivalence is to identify areas and systems of regulation that pursue very similar goals and have very similar outcomes. This assessment is generally left to regulatory agencies, with limited engagement of the “principals” on behalf of whom regulations are implemented. These principals are rationally ignorant and have delegated the realization of their objectives (health, safety, risk mitigation, catastrophe avoidance, etc.) to technical regulatory entities. In practice efforts to agree there is regulatory equivalence may be stymied by interest groups that would be negatively affected and stakeholders with strong beliefs or fears that have no basis in fact. Famous examples include the use of hormones in meat production or chlorine-based solutions in the processing of meat products.

The CETA calls for establishment of a Regulatory Cooperation Forum (RCF) to facilitate and promote the realization of the objectives laid out in the Regulatory Cooperation chapter. It also provides that the Parties may consult with stakeholders, including the research community, NGOs, business and consumer organizations “on matters relating to the implementation of” the regulatory cooperation chapter (Art. 8 of the Regulatory Cooperation chapter). Engagement with stakeholders is arguably critical and should be given stronger institutional foundations. The same argument holds for

⁹ Some mention of regulatory equivalence also occurs in the chapter on financial services, a sector where the approach has been pursued internationally for some time – see e.g. Verdier (2011). The chapter permits Canadian institutions to provide portfolio management services to EU professional clients on a cross-border basis (i.e., without having to establish in the EU) once the European Commission has adopted the equivalence decision related to portfolio management (EU prudential requirements still apply).

similar cooperation mechanisms such as the RCC which have been active in undertaking consultations with stakeholders (Canada-EU RCC, 2014).

One way of promoting regular interaction between national regulators (agents) and national stakeholders (principals) involved in trade integration initiatives is to put in place knowledge platforms that operate under the auspices of the relevant regulatory cooperation fora or councils. Such platforms have been created by national governments as well as international organizations such as the World Bank. An example is a platform established by the Dutch government on electromagnetic fields which acts as a mechanism that brings together research and academics working on this subject, regulators, government agencies and NGOs with interest in (concerns about) the health impacts of electromagnetic fields, ranging from mobile phones to scanners using magnetic resonance imaging (MRI) (see <http://www.kennisplatform.nl/Homepage.aspx>). The World Bank has created a number of knowledge platforms to bring together research, policymakers and civil society groups to identify good practices and learn from cross-country experience in a given policy-relevant area (an example is a platform on green growth—see <http://www.greengrowthknowledge.org/>).

Knowledge platforms are consultative and deliberative mechanisms to collect, analyse, and diffuse knowledge/experience with good practices. Rather than government consulting with the private sector and civil society when considering to impose or change a specific regulation, knowledge platforms allow for sustained engagement between all the relevant stakeholders who are concerned with a given subject or area.¹⁰ Establishment of fora aimed at fostering a substantive, evidence/analysis-based discussion of the impacts of sector-specific regulatory policies in the different countries participating in integration initiatives as well as nations that are outside them but have similar regulatory objectives can help build a common understanding of where there are large potential gains from cooperating, including identification of areas where there is substantive equivalence in terms of regulation. Generating information on the impact and experience with regulatory programs could help governments both assess prevailing policies and institutions in their own nations, enhance knowledge regarding the prevalence and specific features of applicable regulatory measures in trading partners and help identify areas in which to pursue regulatory cooperation, including regulatory equivalence.

The specific activities of regulatory knowledge platforms would depend on the interests and views of participants. One activity that could usefully be considered in light of the objective of seeing greater use of regulatory equivalence is to clarify the preferences and concerns of stakeholders when it comes to trade-related regulation. This is not frequently done in the area of trade policy, in contrast with other areas of public policy.¹¹ For example, municipal governments sometimes make use of instruments such as deliberative polling to overcome the problems of rational ignorance and bias in responses by stakeholders to surveys, opinion polls or their views on alternative public policies or investment projects. Deliberative polling involves a random, representative sample of stakeholders participating in a survey or vote on a policy issue. This group is subsequently brought together to deliberate on the issue in small groups that are facilitated by trained moderators, informed by accessible expert briefing materials that provide balanced information on the matter at hand. Following this process of informed deliberation the group is asked to respond again to the original question. As long as the sample is representative of the relevant stakeholder community, the end result should much better reflect the conclusions that would be attained if the population as a whole were able to become more informed and more engaged on the feasibility of adopting a regulatory equivalence approach in a given area.¹²

¹⁰ In practice this is likely to be a multi-level process with business or industry associations representing the interests of concerned firms.

¹¹ See Halle and Wolfe (2007) for a discussion of trade policy-related practices in a number of countries.

¹² Fishkin (2009) provides an overview of the approach, the circumstances under which the technique can be used and examples of situations where it has been implemented. See also Hajer and Wagenaar (2003).

Criteria for this process to be effective include trust (by the public and by the parties), similarity in the objectives of the stakeholders concerned and robustness – in the sense that the information base is sufficient to assess likely outcomes/results of adopting regulatory equivalence approaches. The latter criterion may be the most difficult to satisfy as it will depend on the quality and comprehensiveness of available performance (outcome) data. The complementary proposals discussed next can help address this potential constraint by encouraging regular participation by business in processes of identifying and assessing the effects of differences in regulatory policies, and by putting in place mechanisms to raise awareness of specific policy measures that adversely affect supply chain efficiency and trade competitiveness, and advocate for domestic policy reform.

2.2. Supply-chain Councils to identify priorities for action and generate feedback

Sector- and issue-specific regulatory cooperation of the type that is already being pursued between Canada and the US (the RCC) and EU (CETA) is important. However, this type of cooperation may not have a significant impact on facilitating SCT because it is not focused on identifying how various policies taken together affect SCT and investment incentives. The fact remains that most of the focus and the way domestic and/or international trade policy assessment processes are organized is on a sector, agency-to-agency or policy instrument-specific basis. This can lead to gaps and lower returns on the investment that is made in regulatory cooperation efforts. Supporting processes that directly engage businesses that participate in international supply chains may provide valuable information on the state of play in different areas that have a bearing on trade costs and the extent to which progress is being made to lower trade costs for firms and citizens.

The RCF that will be created under the CETA (as is the Canada-US RCC) is limited in focus on regulation narrowly construed. The only cross-cutting subject that to date has been identified by the RCC is to look at how different regulatory policies impact on SMEs. While this is useful, there does not appear to be any vehicle that has an explicit focus on the interdependencies that exists *across* sectors and policy areas, including those that are not regulatory in nature – i.e., the traditional trade policy agenda. For any sector it will be important to consider how policies impact on other sectors, as these will be suppliers of inputs and/or customers. Thus, the competitiveness of agricultural producers will be in part a function of the costs and availability of a variety of goods and services. The same is true for manufacturing and services companies. A large share of the value of traded goods reflects services inputs, while the efficiency of services provision depends critically on access and use of a variety of manufactured goods, ranging from computers to trucks. Dividing up the universe into “sectors” and separate policy departments/regulatory bodies may easily result in too much of a focus on the trees as opposed to the forest—the policy silo problem. Identifying and addressing the trade and investment consequences of this problem is in part an information and coordination problem, and in part a ‘mandate problem’—trade/investment is not something that features in regulatory design. A more cross-cutting approach may help to focus action on areas that will do the most to enhance the competitiveness of domestic businesses.

A cross-cutting approach to identify priorities is arguably particularly important for firms that are part of value chains and is one way in which regulatory cooperation differs from the traditional trade policy agenda. A key focus of regulatory cooperation in the context of trade agreements should be on unnecessary value chain costs. This is not an objective that figures in traditional policy agendas and the design of traditional trade agreements. An implication is that regulatory cooperation has a much more “target-rich” environment in reducing unnecessary costly requirements for already occurring trade (the intensive margin) as well as promoting growth along the extensive margin.

Mechanisms to generate information on prevailing regulatory policies in different countries, including NTMs and service sector policies, and how these impact on trade competitiveness (performance; efficiency) would help facilitate broad-based discussion on the priority sectors/policy issues. Hoekman (2014b) proposes the creation of “supply chain councils” that are given the mandate

to identify how policies impact on supply chain trade. These Councils would bring together stakeholders from the different countries involved with the aim of complementing product, sector or regulation-specific cooperation by focusing attention on how various policy areas – tariffs, border management procedures and requirements, product standards, different domestic agencies responsible for regulatory policies, access to transport and distribution (logistics) services, and so forth – *jointly* impact on international production, trade and investment. The objective would be to cut across the prevailing policy silos in government and regulatory agencies by generating information on how the existing combination of applicable regulation/policies affect key dimensions of supply/production chains and reduce efficiency/raise costs. The process would entail close cooperation between the business community and government in identifying priority areas for action.

A first step would be to select a number of value chains/production networks that are representative of specific sectors and activities that are important economically. Each of these would be associated with a Council comprised of representatives of the relevant businesses, workers, government departments and regulatory agencies, Federal and sub-Federal, as appropriate. Government has an important role to play in the choice of value chains by applying selection criteria that will ensure broader national welfare considerations are taken into account. As international trade flows and supply chains tend to be dominated by very large companies and industries it will be important control for possible biases that can result from simply focusing on existing trade and investment flows. The latter focus may result in neglect of the extensive margin of trade, where there may be large potential gains. Moreover, large incumbent firms and industries may in fact benefit from the competition-reducing effects of regulatory market segmentation and thus may not support regulatory cooperation (see e.g., WTO, 2013).

It is important in this connection to consider how regulatory policies impact on the ability of small and medium-sized enterprises (SMEs) to exploit new technologies to sell more internationally.¹³ SMEs are an important source of employment. Generally they will be suppliers to lead firms, contract manufacturers and multinational service companies but they also can use the internet and business-to-business market platforms to sell their products internationally. Facilitating greater international participation by SMEs requires an explicit focus on how policies affect incentives for SMEs to connect to value chains, but policy and policy reform efforts tend to favour the interests of large firms.

One might worry that creation of a set of supply chain Councils aimed at identifying how regulatory differences create supply chain frictions and excess costs runs the risk of reinforcing the policy silos problem by concentrating attention on just a subset of the thousands of supply chains that exist. That risk can be reduced by choosing a mix of supply chains that generate final products that enter into the consumption bundle of all households, and products that are used by many industries as inputs. Examples include processed foods; automobiles; consumer durables such as white goods; electronic products; medicines; chemicals; financial services; and e-commerce (internet-enabled trade). Specific instances of regulatory measures or policies that raise trade costs significantly for any given supply chain are likely to be relevant for many others as well. In practice, if the proposed approach is adopted, industries that are most affected by excess costs due to regulatory duplication can be expected to suggest themselves for consideration.

The main goal is ensure that there are not important “gaps” – unaddressed policy measures, perhaps (indeed, likely) reflecting political sensitivities and rent-seeking interest group activity – that matter from an economic perspective by highlighting that neglect of these policy areas does indeed matter. It should also be recalled that the aim of the exercise is not to remove regulation or to question underlying regulatory objectives but to identify redundancies and excess costs created by duplicative

¹³ SMEs tend to face proportionally greater barriers to engaging in international trade, as the fixed costs of understanding and satisfying regulatory requirements in different markets weigh much more heavily on a unit cost basis than for large firms with much larger turnover and capacity to cover the costs of dedicating personnel to dealing with the different agencies concerned in multiple foreign markets.

regulatory measures. In most cases regulatory policies presumably have a good rationale – whether to deal with a market failure, ensure health and safety, etc. But in practice it is often the case that there is redundancy in the sense that very similar but slightly differentiated data must be reported to different regulatory entities, or that very similar standards are imposed by agencies that do not communicate with each other. A value chain focus will help identify such redundancies and possibilities for consolidation in ways that might not be evident if cooperation is limited to a horizontal regulatory agency-by-agency approach and efforts to establish when requirements are (approximately) equivalent (enough).

Given the choice of a set of supply chain/international production to focus on, the goal would be to seek to identify the regulatory and trade-related policies that affect the operation of the value chain, to determine which of these impact most negatively on the operation of the chain in the sense of generating costs that are in excess of what is required to attain the underlying regulatory objectives, and where regulatory cooperation could have a significant impact in reducing compliance costs. This process will depend on the active engagement of business representatives as such costs may not be evident. For example, they can be expected to be reflected in delays or uncertainty that gives rise to various forms of self-insurance such as maintaining higher than desired inventory holdings, additional production capacity (suppliers), etc. Small regulatory differences can require entirely different product categorizations, approval processes between markets and product inventory maintenance requirements. The process of “mapping” observed supply chain trade costs and inefficiencies to regulatory policies will require not only inputs from the businesses concerned, but also from policy analysts. Supply chain managers within firms generally will not be knowledgeable about the specific policies that underlie observed SCT frictions and inefficiencies, or how to go about estimating the impacts of different policy instruments. This implies a need for collaboration with researchers and policy analysts.

The public-private partnership nature of the councils is important. The participation-cum-representation of both the relevant regulatory bodies and those in government who are responsible for economic policy more generally is necessary to be able to decide how best to reduce regulatory compliance costs without detrimentally affecting the realization of the underlying regulatory objectives. At the same time active engagement by the business community is needed to facilitate identification of actions to lower compliance costs without putting into question the realization of regulatory objectives.

A useful additional contribution the Councils could make is to determine performance indicators—metrics that can be used as focal points for regulatory bodies and that can be used to measure changes over time in excess costs. This requires establishing baseline levels of performance against which progress – or the lack thereof – can be assessed over time. The Councils could contribute actively to monitoring of progress in implementation of policy reforms and the results of reforms in reducing trade costs. This should be made public (published in an annual report) both to ensure transparency and to increase the incentives of those who are tasked with taking actions to follow through. This is a function that will depend importantly on having established a quantitative baseline and collecting the data that are required to determine if performance on the chosen metrics is being made. While analysis of progress made (or not made) and reporting should be done by independent entities to ensure that conflicts of interest do not arise, business has a critical role to play as it will have the best access to the requisite data. If, for example, the performance indicators include the time it takes for consignments to satisfy all border management processes, or the share of transactions that are physically inspected, or the variance in the average time that is required for regulatory approval to be obtained, data on the outcomes that are realized on these metrics will need to come from the business community.

Going beyond analysis and information provision to identify actions and ensure these are pursued will be a significant challenge. Action is likely to be predicated on there being a serious commitment on the part of government to work to reduce excess costs. In practice the likelihood of this being the case will be enhanced if the Councils include senior people from business and government and that the

results of their work are fed into a high-level body that has committed to take the findings forward. The regulatory bodies and government agencies have to regard the findings/recommendations as their problem. This will be the case the more the process is one to which a formal commitment has been made by the governments concerned. It is here that trade agreements such as CETA and TTIP can provide added value as such treaties are commitment devices by construction.

The institutional framework for the proposed supply chain Councils and associated processes can build on those that have been or will be put in place in the North American and transatlantic context, such as the RCC and RCF. The Councils should complement these existing institutions. In practice it will be difficult to make the Councils formally part of the RCC or RCF given that the latter focus on specific areas of regulation. As the policy domain of the Councils is by design cross-cutting and may identify areas of policy that are not (yet) on the table of the RCC or RCF, it is more apposite that the Councils operate under auspices of a central government body. The outputs/findings of the Councils would then inform the activities of bodies such as the RCC and RCF through the central agency insofar as they are appropriate to address the priority areas for action that are identified. The Councils themselves would not have any executive powers—they are more akin to advisory bodies. For their recommendations and findings to be translated into action decisions need to be made at the level a central agency that has the mandate and authority to cut across the different line ministries and regulatory areas. This could be the Prime Minister's or President's office, or the Ministry of Finance. In Canada this would entail either the Privy Council Office or the Treasury Board Secretariat. The former is already playing a key role in supporting the RCC, while the latter has an important oversight role on regulations, and, importantly, controls access to Cabinet for proposed new regulations.

The Councils could also be construed to become part of the mechanisms that have been created to oversee the implementation of the new vintage trade integration initiatives. What is critical for the credibility of the process is that at the highest political level there is a real commitment to operationalize the outcome of Council deliberations, not least because this will determine whether business sees participation in (and allocation of resources to) the operation of the Councils as a worthwhile investment. One option is for the bodies that have been (will be) created to manage and monitor implementation of international trade agreements like the CETA to create a "Supply Chain Forum" that is tasked with undertaking the activities and to report on progress and results. In the Canada-EU case this would be the CETA Joint Committee (which is co-chaired by the Canadian Minister for International Trade and the EU Trade Commissioner). In the transatlantic case such a role could be taken up by the Transatlantic Economic Council – the highest level political body tasked with making progress in removing barriers to transatlantic trade and investment. (This may be replaced or augmented by another body if the TTIP talks are concluded successfully). This body is advised by the Transatlantic Business Council,¹⁴ which together with the Transatlantic Legislators Dialogue and the Transatlantic Consumers Dialogue represent the key groups (principals) with a stake in regulatory cooperation. Any such Forum should include representatives from these groups of principals and the Chairpersons of the various supply chain councils that are established.

A number of specific challenges will need to be dealt with in implementing these ideas. The suggested activities of the supply chain Councils will require them to be supported by a secretariat of some sort. This entails a need to decide how and where to administratively allocate this function. In the case of Canada, the Treasury Board Secretariat is one possibility. Whatever the administrative unit that is allocated with this task, it will need to have an operational mandate and adequate (additional) funding to provide the secretariat services and analysis that is called for. Another challenge is to ensure that deliberations are not captured by vested interests. Companies may have incentives to supply biased data that over-estimate the costs of regulatory differences and associated compliance requirements (particularly when the information is private and proprietary and thus more difficult to verify). They may not want to provide relevant data on the impacts of regulations on their supply chain

¹⁴ In the case of CETA, business interests are grouped in the Canada-Europe Roundtable for Business.

operations because of competitive concerns. More generally, they can be expected to be disinclined to incur additional costs associated with a need to collect data. The more that performance indicators can be based on information that is already being compiled by firms for their own purposes, the easier it will be to implement the approach. A potential problem in this regard is that governments may not trust the data that are provided and business in turn may not trust the Councils with their data because of confidentiality concerns. There are good practice models to address such concerns, including having data compiled and processed by an organization that is technically competent and independent of industry, and in ways that prevent competitively sensitive data from being made public.¹⁵ These are all reasons why a secretariat function is important and why sufficient resources must be allocated to the process.

2.3. Complementary mechanisms to improve competitiveness

The main output of the above mechanisms is information, both with respect to identification of areas where regulatory equivalence or mutual recognition might be consistent with the preferences of principals (the citizens of the countries concerned) and priorities for regulatory cooperation and complementary domestic reforms from a trade (supply chain competitiveness) perspective. For the mechanisms to have impact, and indeed, for them to be pursued in the first place, government/regulatory agencies and business and other stakeholders must have incentives to engage in them and to actively pursue regulatory cooperation in good faith.

As already discussed, the incentives confronting the key players in this regard are not necessarily aligned. The main driver behind regulatory cooperation efforts in the context of trade agreements is international business. But regulatory cooperation is also pursued independently by regulators, with a view to reducing enforcement costs and more efficiently attaining specific regulatory objectives such as risk mitigation and public health and safety. On the other hand, not all businesses will be in favor of regulatory cooperation. Those that benefit from the market segmentation created by differences in regulation can be expected to be happy with the status quo. And some (many?) regulators may have little interest in having their activities scrutinized and not consider the trade implications of their measures to be a matter of concern. The net result of these conflicting incentives may be that regulatory cooperation initiatives do not lead to action or are blocked from the get go.

The inclusion of processes aimed to support regulatory cooperation into the institutional infrastructure of CETA and similar deep trade agreements would create a focal point for the different players to engage in the process. Can one go further and also include mechanisms through which regulators and government agencies can be held accountable for not engaging seriously in dealing with (and avoiding) excess costs generated by duplicative regulation? If so, would this enhance the credibility and effectiveness of commitments to pursue regulatory cooperation?

In trade agreements enforcement involves States taking action to ensure that their counterparts abide by the terms of the negotiated contract. In practice it is difficult to envisage how formal State-to-State dispute settlement along standard trade agreement (WTO-type) lines could work given the focus of regulatory cooperation on processes that are endogenous, with significant ex ante uncertainty as to whether equivalence exists or convergence is possible. Much of what is involved in the proposals made above is not judicable by either the governments involved (“horizontal accountability”) or by firms or citizens (“vertical accountability”) (Wolfe, 2015) in the sense of formal dispute settlement procedures between States or citizens taking governments to court. Given that the goal is to have regulatory systems advancing together, and that regulatory equivalence is highly dependent on trust and learning, formal litigation is not desirable as it is likely to have adverse impacts on the willingness of agencies to engage in cooperation. Instead, effective implementation will have to rely on high level

¹⁵ Thus, this is not “regulation by disclosure” – see e.g. Fung et al. (2007) – as much of the internal data underlying the (public) performance indicators can remain confidential if companies do not want to make it public.

political buy-in and engagement to empower and incentivize entities like the RCC and the RCF to pursue cooperation, complemented with regular reporting to and monitoring by bodies such as the CETA Joint Committee.

There is however arguably a need for a mechanism through which business and other stakeholders can raise awareness of policies that have negative effects on SCT, including those that cannot be addressed through regulatory cooperation either because the measures concerned are not regulatory in nature, or because the source of the excess costs cannot be addressed through international cooperation but requires domestic reform. Examples might be market access restrictions that are not (yet) the subject of explicit commitments in a trade agreements but that nonetheless have a negative impact on SCT.¹⁶ For the supply chain Councils to have the greatest possible impact in informing governments and raising awareness of priority areas for policy reform it is important that attention focus not just on areas where regulatory cooperation would make a difference. Other types of issues may be as if not more important from a SCT perspective, including entry barriers that are the result of government action – e.g., restrictions on the scope for companies or consumers to obtain certain types of services from foreign suppliers; digital trade barriers; data localization requirements. If these are identified by the Councils, there should be a process through which to advocate for taking action and promote reforms.

How might this be done? CETA (Art 14.16 Dispute Settlement chapter) states: “Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties. No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.” This clause basically emulates the status quo with respect to the situation that prevails in the EU. It implies that there is no possibility for a firm or a citizen of Canada or the EU to invoke the CETA before a tribunal or court unless this is expressly foreseen in a CETA provision. Firms must go through their governments in order to contest actions (or inaction) by trading partners, with their governments being free to refuse to raise the issue with the other government(s). There are very good arguments in favour of limiting international dispute settlement to States – see e.g., Levy and Srinivasan (1996) and Wolfe (2005). The focus of what follows is therefore limited to mechanisms national stakeholders could use to raise matters with their own governments.

CETA contrasts with the Agreement on Internal Trade (AIT), which aims to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investment within Canada (Canada, 2012). The AIT was required because Canada’s provinces have significant autonomy in setting and enforcing rules and regulations that affect to ability of operators in some service sectors to operate across provinces and for businesses to bid on government procurement contracts. The AIT has a dispute settlement system that is open to resident natural persons and enterprises with a “substantial connection” to a Canadian province (labour unions also have standing). Private parties first need to go through their relevant Provincial government with a request that it launch dispute proceedings against another Province. If this petition is refused, they may initiate proceedings on their own, conditional on approval by a “Screener” that is aimed at eliminating frivolous complaints and ensuring that the issue is economically meaningful in the sense that there is a reasonable case of injury or denial of benefit and that the party has standing.¹⁷

¹⁶ In WTO parlance this would be akin to a co-called non-violation case.

¹⁷ Except if the matter concerns procurement, for which there is a separate dispute settlement mechanism. The dispute settlement process for private parties is similar to that between governments with the exception that if the case is brought by a private party monetary penalties cannot be assessed by a compliance panel in case of non-implementation of the dispute resolution panel’s findings; instead the matter will remain on the agenda of the Committee on Internal Trade (the governing body of the agreement) until it is resolved. To date there have been 55 disputes brought under the AIT since its establishment in 1995. Thirteen of these went to a panel, four of which were brought by a private petitioner. See http://www.ait-aci.ca/index_en/dispute.htm

A similar mechanism could be envisaged to help focus the government's attention on policy areas that have significant negative impacts on supply chain competitiveness. One possibility would be to mandate a specific agent, e.g., an Ombudsman, to consider matters that are brought forward as priority areas for reform by the Councils. Ideally, this would be done by an entity such as the Productivity Commission in Australia, or the International Trade Commission in the US, which have the capacity to undertake analysis and assess the economic impacts of policies. Of course, many countries do not have similar institutions; Canada does not. But analysis is also a role that can be taken up by think tanks and public policy research institutes. The value added of the Councils is that they will identify specific policy areas that should be the locus of investigation and analysis and a set of constituencies that presumably will be willing to engage in the advocacy and political processes that drive policy formation.

3. Conclusion

The trade policy agenda today is ever more one that centres on domestic regulatory policies, with differences in regulation across countries creating additional costs for businesses that negatively affect their competitiveness. Regulators and government agencies in Canada, the EU and the US are increasingly aware and focused on efforts to reduce the trade- and investment-impeding effects of such differences, while at the same time seeking to enhance the efficiency of regulatory processes in achieving regulatory objectives. This has implications for the design of trade agreements, which to date do little to minimize negative regulatory spillovers. International cooperation to reduce the market segmenting effects of differences in regulation confronts significant difficulties because of concerns that this will impede the realization of regulatory objectives and the execution of the legal mandates and obligations of regulatory agencies. As noted in the Introduction, obstacles to achieving regulatory cooperation include (i) mandate gaps between trade negotiators and domestic regulators; (ii) coordination gaps within government and between government and business; and (iii) informational gaps within and across countries. This paper has argued that addressing these gaps requires institutions and processes that foster learning and building trust through regular communication and repeated interaction, and that mechanisms are needed that help identify areas where there is both scope and a high payoff to the pursuit of regulatory cooperation.

The type of regulatory cooperation that has become a feature of Canada-US, Canada-EU and EU-US interaction is important to capture the potential gains that economic research finds can be achieved by further integrating markets. Such cooperation should not be limited to dyads or a small number of countries. This is an agenda that needs to be pursued multilaterally, implying a willingness to not only extend current bilateral Atlantic cooperation initiatives to become quadrilateral and thus span all of North America and Europe, but to open up regulatory cooperation to participation by any country that is interested. Efforts to reduce the costs of differences in regulatory regimes and systems should be global in principle if only because value chains and international production are global.

Regulatory cooperation at a multilateral level is particularly important for relatively small countries such as Canada that have less ability ("market power") to influence the substance of product and process regulation and processes that aim at international regulatory convergence. This suggests thinking about pursuing the types of suggestions made in this paper in fora that have broader membership, such as APEC, the OECD and the WTO. Of these institutions, the WTO has the largest membership and offers a framework that can be used to "multilateralize" some or all of what is being/will be pursued in the CETA context: through mechanisms such as plurilateral agreements. As discussed at greater length in Hoekman and Mavroidis (2015) and the literature cited there, greater use of plurilateral forms of cooperation under the WTO umbrella is a means to gradually expand the reach of regulatory cooperation and to attenuate the potentially trade-diverting effects of a multitude of overlapping preferential trade agreements that deal with similar issues in different and possibly inconsistent ways.

More immediately, Canada's medium-term strategy on regulatory cooperation, especially given the end goal of benefitting international supply chain trade, which will invariably extend beyond the North Atlantic marketplace, should be to take a leadership role on regulatory cooperation in the WTO. As far as the North Atlantic marketplace itself is concerned, the more immediate challenge is to realize greater convergence of North American and European regulatory standards. That implies at a minimum taking measures to support cooperation between the RCC (with the US) and the RCF (with the EU). The fact that Canada is a member of both bodies provides both a challenge and opportunity to (indirectly) influence what is done in the TTIP as regards regulatory cooperation.¹⁸

¹⁸ Based on available information it would appear that there is less scope to pursue a similar strategy in the TPP context, as the focus there is not on regulatory cooperation and equivalence given the heterogeneity of the countries participating. The focus of regulatory disciplines is instead more on general principles that signatories would apply in the implementation of regulation.

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