

Regulatory cooperation in CETA Exporting the NAFTA model or something more?

CETA Implementation: The Next Steps
Dalhousie University, Halifax, May 18, 2018

Stuart Trew (CCPA) & Max Bank (Lobby Control)

What are we talking about?

1. **Evolution** of regulatory cooperation (Good Regulatory Practices + institutions) in trade negotiations: NAFTA, WTO, CETA, etc.
2. **Current practices** in Canadian regulatory cooperation.
3. **Future directions**: What do industry stakeholders want out of this?

Regulatory Cooperation

Where did it come from?

It's been there all along.

- NAFTA as a “living agreement” (working groups).
- Side hustle of TBT and SPS committees at WTO (Good Regulatory Practices).
- Integrated through “Smart Regulation” (in Canada) or “Better Regulation” (in EU), etc.
- SPP (2005) to **Regulatory Cooperation Council** (2011).
- **OECD study group** on International Regulatory Cooperation beginning 2012-13.
- **Standalone Reg coop chapter in CETA (2014-16)**, and in subsequent EU deals (with Japan, etc.).
- **Regulatory Coherence/GRP in CPTPP (2018) and NAFTA 2.0 (20??)** with possible dispute resolution process.

Good Regulatory Practices?

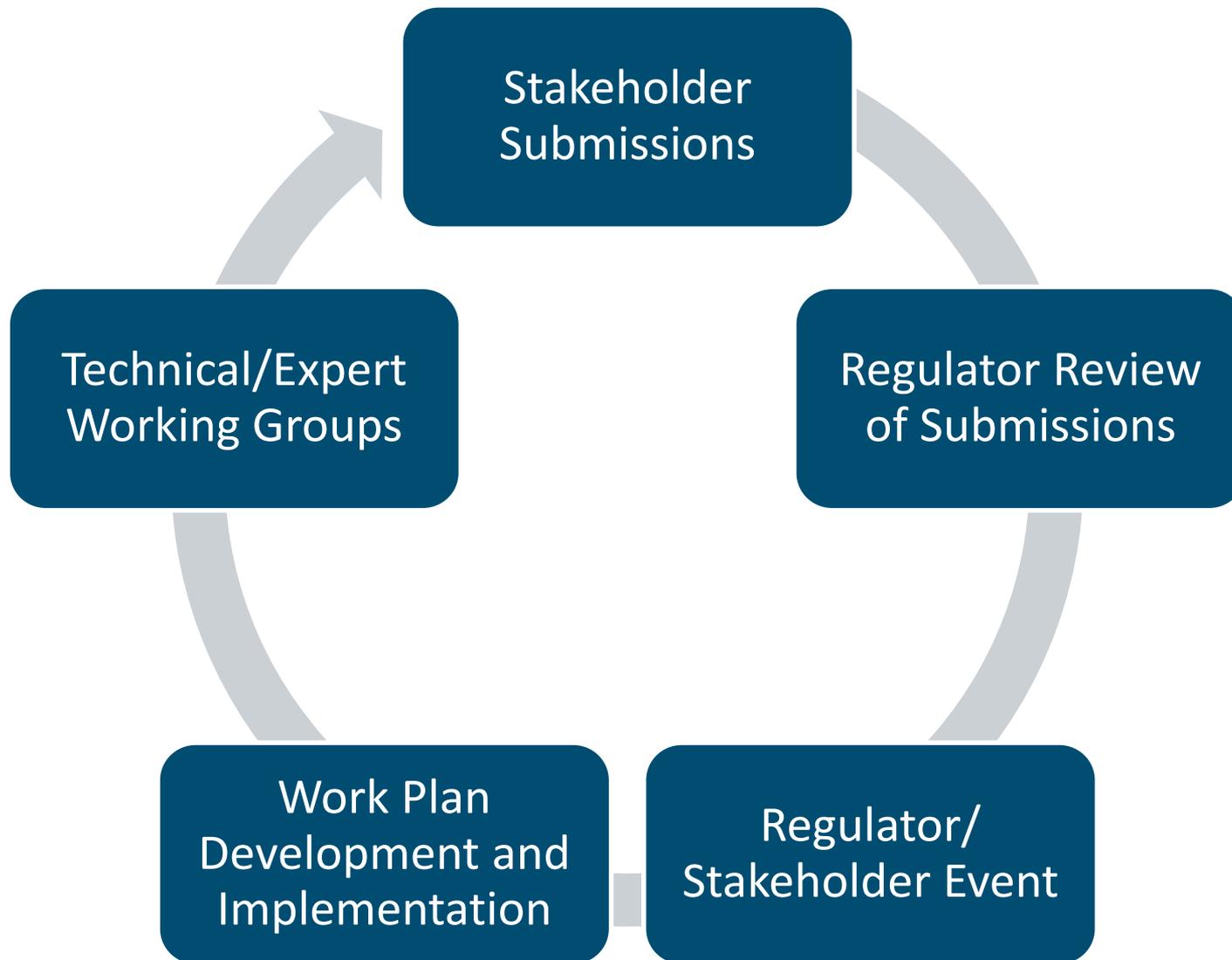
- Overwhelming emphasis on **commercial/trade impacts of new regulations**: “least trade-restrictive” option preferred.
- **Avoid duplication.**
- Use of **regulatory impact assessments** (cost/benefit), and adoption of “one-for-one” rules.
- “**Science-based**” regulations to **manage risks** (versus precautionary principle): evidence required of “serious or irreversible harm” before acting.
- “[A]dopt international approaches *wherever possible*,” and “limit the number of specific Canadian regulatory requirements.”
- Consider “**alternative instruments** for meeting policy objectives (e.g., **voluntary measures**, information strategies).”

How does regulatory cooperation
work in practice?

The Canada-U.S. Regulatory Cooperation Council

1. **Industry-driven priorities**, focused in areas (e.g., rail, auto and aviation safety, chemicals, pesticides, pharmaceuticals, cosmetics, inspection) of greater cross-border integration.
2. ***Voluntary* cooperation between regulators**, with pressure from industry to deliver results.
3. **Direct industry participation** on technical working groups.
4. **NGOs brought in later** (not NGO-driven cooperation).
5. **Coordination by (sometimes) non-expert super-regulators** (e.g., Treasury Board, Office of Information and Regulatory Affairs).

Components of RCC Work Plan Process



RCC SNAC/SNUR TWG

Nancy	Beck	American Chemistry Council	US
Lynn	Bergeson	Bergeson & Campbell PC	US
Pat	<u>Casano</u>	General Electric	US
Marcia	Castellani	Ford	US
Shaun	Clancy	<u>Evonik</u>	US
Robin	Davidson	<u>Freescale Semiconductor</u>	US
Fe	de Leon	Canadian <u>Environmental Law Association (CELA)</u>	CAN
Christina	Franz	American Chemistry Council (ACC)	US
Mark	Greenwood	Greenwood Environmental	US
Jim	Hanna	Dow	CAN
Suzanne	<u>Hartigan</u>	International Fragrance Association	US/NA
Barbara	Lewis	<u>Givaudan</u>	US
Barbara	<u>Losey</u>	<u>Alkylphenols & Ethoxylates Research Council</u>	US
Sandra	<u>Madray</u>	Chemical Sensitivities Manitoba	CAN
Anne	McConnell	Canada Consumer Specialty Products Association	CAN
Beta	Montemayor	Canadian Cosmetic, Toiletry and Fragrance Association	CAN
Greg	Overwater	Global Automakers of Canada	CAN
Schuyler	<u>Pulleyn</u>	<u>Chemours</u>	US
Michele	Richardson	<u>OptumInsight</u>	CAN
Daniel	Rosenberg	NRDC	US
Linda	<u>Santry</u>	Nova Chemicals Corp.	CAN
Jennifer	Sass	NRDC	US
Dave	Saucier	Canadian Association of Chemical Distributors (CACD)	CAN
Carol	Sunman	BASF	US
Yasmin	Tarmohamed	Canadian Vehicle Manufacturers' Association	CAN
<u>Karluss</u>	Thomas	Silicones Environment, Health and Safety Council (SEHSC)	US
Ron	Thomas	<u>Arr Maz Custom Chemicals</u>	US

Regulatory coop in CETA: RCC-plus?

- **Early warning system** to intervene regulatory process (Article 21.4[b]) and 21.4(e)]. Some duplication here with intent of TBT and vice versa, i.e., reg coop affecting WTO discussions.
- **Voluntary? Not quite.** Cooperate or explain (Article 21.2.6).
- **Eroding precautionary principle**, e.g., “common scientific basis,” “best data,” etc. (Article 21.4[n]).
- **Horizontal** (Chapter 21) and **sectoral** (Chapter 25 – biotech; Chapter 5 – SPS Joint Management Committee) coop.
- **Regulatory Cooperation Forum** (RCF) staffed by high-level trade/business officials. Decisions vetted by CETA Joint Committee (legislatures?).
- **View to expansion:** “The Parties will, whenever practicable and mutually beneficial, approach regulatory cooperation in a way that is open to participation by other international trading partners” (Article 21.2.3).

NGO concerns about the Regulatory Cooperation Forum

“The European Commission is already lowering EU standards of protection against dangerous endocrine disrupting chemicals (EDCs), and has expressly acknowledged that its decision making was influenced by ‘mounting’ pressure from EU trade partners. The entry into force of CETA will only make matters worse. There is a high likelihood that CETA would put the decision making powers of the EU and its Member States in a straitjacket by prioritising trade interests over people’s health and the environment.”

17 January 2017 letter to EU Parliament from CIEL, Health and Environment Alliance and 33 other public interest groups.

Reg Coop Beyond CETA and the RCC.

CETA: “Supply Chain Councils”?

- EU to get observer status in North American RCC in exchange for Canadian observer status in TTIP cooperation discussions.
- Government should **reward regulators** who demonstrate how their proposals reduce trade barriers.
- Incorporate **“supply chain councils”** made up of business to identify regulatory cooperation priorities.

NAFTA 2.0: “Align or explain”?

“The three governments should devise an **“align or explain”** mechanism to encourage regulatory cooperation. Private-sector parties could use this mechanism to petition for alignment of specific regulations, on condition that they were able to show a critical mass of support in their specific industry or sector... **Governments would be required to respond to a petition within** a set period of, say, 120 days. They would have two options: **proceed with alignment, or provide a written, public explanation why the petition was being turned down.**”

Business Council of Canada, 2017

WTO: Beyond TBT/SPS

“The proposal is to draw upon the WTO Committees and other WTO sources like the Trade Facilitation Agreement or the work done in the NTB groups in the DDA and bring together this joint experience to build horizontal disciplines that would enhance transparency and good regulatory practices for all regulatory measures of general application under the remit of the Trade in Goods Council.”

Final remarks...

Regulatory cooperation is contested space.

- **Power matters.** For EU and U.S., regulatory cooperation is about projecting national rules outward; for Canada, it is about curbing those impulses (with a bit of deregulation); for biz, it's about profit.
- **What science?** “Risk management” versus precautionary principle. What about consumer preferences/demands? These are political, ethical and even moral questions (tied up with national economic priorities).
- **What type of cooperation?** Why not more global coordination on climate change, toxics/pesticides, plastics, financial stability, product labelling, etc. Reg coop seems disappointingly industry/commerce focused.