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Redesigning Canadian Trade Policies for New Global Realities

Edited by Stephen Tapp, Ari Van Assche and Robert Wolfe

About this chapter

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Redesigning Canadian Trade Policies for New Global Realities, edited by Stephen Tapp, Ari Van Assche and Robert Wolfe, will be the sixth volume of The Art of the State. Thirty leading academics, government researchers, practitioners and stakeholders, from Canada and abroad, analyze how changes in global commerce, technology, and economic and geopolitical power are affecting Canada and its policy.

Chapter summary

The economic gains from better international regulatory cooperation are substantial, but realizing them will require new policy approaches. In today's trade environment of globalized production processes and low tariffs, regulatory policies are increasingly restricting the international flows of goods, services, knowledge and professionals. Examples include product regulations to achieve health, safety or security objectives; licencing requirements for services providers; and certification procedures for production processes.

These regulations are being developed in "policy silos" by those with little incentive or capacity to take into account the cross-border economic effects of their decisions. The result is a plethora of minor differences across jurisdictions in regulations that have similar policy objectives but that impose redundant or inconsistent requirements. This raises the cost of doing business and hinders global trade. Indeed, regulatory compliance has become a major concern for companies with production processes that cross borders as part of global value chains.

In this chapter, Bernard Hoekman, Director of Global Economics at the European University Institute, proposes ways to improve regulatory co-operation by breaking down the "policy silos" that separate regulatory and economic policy-making. What is missing from current approaches, he argues, is a cross-cutting, deliberative mechanism that focuses on the forest rather than the trees, encourages learning, and builds trust through regular interactions among stakeholders.

Hoekman advocates a new policy approach centred on supply chains, the conceptual framework that international businesses use to organize their production. He proposes "supply chain councils" that would function as advisory bodies, and would consist of senior representatives from business, labour, government departments and regulatory agencies. Their goal would be to identify areas with the most to gain from regulatory cooperation and establish performance indicators to monitor the implementation of much-needed policy reforms.

According to Hoekman, Canada's most urgent regulatory policy challenge is to achieve better convergence of North American and European standards through continued efforts in the Canada-US Regulatory Cooperation Council and the Canada-EU regulatory cooperation forum. Over the longer term, he says, Canada should take a leadership role on these issues at the World Trade Organization, because the global nature of production ultimately means that regulatory cooperation should be open to all countries. Such multilateral cooperation is particularly important for countries like Canada that lack the political or economic weight to drive regulatory convergence on their own. Finally, he recommends that Canada support regulatory cooperation in forums with broader membership that could build momentum to tackle these issues, such as the Organisation for Economic Co-operation and Development and Asia-Pacific Economic Cooperation.

Résumé de chapitre

Une meilleure coopération internationale en matière de réglementation produirait des avantages économiques substantiels, qu'on ne pourra toutefois concrétiser sans l'adoption de nouvelles approches. Dans l'environnement commercial actuel, caractérisé par des processus de production mondialisés et de faibles tarifs, les politiques de réglementation restreignent de plus en plus la circulation des biens, des services, des savoirs et des experts. Qu'on pense seulement aux règlements sur les produits de santé et de sécurité, aux exigences d'attribution de permis pour les fournisseurs de services ou aux méthodes de certification des processus.

Élaborées en vase clos, ces réglementations sont le fait d'administrations peu disposées ou habiles à tenir compte des effets économiques transfrontaliers de leurs décisions. D'un pays à l'autre, il en résulte une myriade de légères différences entre des règlements aux objectifs similaires, qui n'en imposent pas moins des exigences redondantes ou contradictoires et font augmenter le coût des échanges tout en nuisant au commerce. Ainsi, la conformité réglementaire est devenue une source de grande préoccupation pour les entreprises dont les processus traversent les frontières dans le cadre des chaînes de valeur mondiale.

Directeur du programme d'économie mondiale à l'Institut universitaire européen, Bernard Hoekman propose dans ce chapitre d'améliorer la coopération réglementaire en supprimant les « cloisons » qui séparent l'élaboration des règlements et la prise de décisions économiques. Selon lui, il manque aux approches actuelles un mécanisme transversal et délibératif qui permettrait d'envisager la forêt au-delà de quelques arbres, d'échanger des connaissances et d'établir des interactions régulières entre les parties pour créer un climat de confiance mutuelle.

Il préconise ainsi une nouvelle approche centrée sur le cadre conceptuel des chaînes de valeur, sur lequel s'appuient les entreprises internationales pour organiser leur production. Et il propose la création de « conseils de chaînes de valeur » qui serviraient d'organes consultatifs, et seraient composés de hauts représentants des entreprises, des syndicats, des ministères et des organismes de réglementation. Ces conseils auraient pour tâche de déterminer les domaines qui profiteraient le plus d'une coopération réglementaire et de définir les indicateurs de performance permettant de superviser l'application des réformes nécessaires.

Bernard Hoekman estime que le défi le plus urgent pour le Canada consiste à renforcer la convergence des normes européennes et nord-américaines en redoublant d'effort au sein du Conseil de coopération Canada-États-Unis en matière de réglementation et du Forum de coopération réglementaire Canada-Union européenne. À plus long terme, le Canada devrait assumer un rôle de leadership sur ces enjeux au sein de l'Organisation mondiale du commerce, puisque la nature globale de la production implique que la coopération réglementaire s'étende progressivement à tous les pays. La coopération multilatérale revêt une importance particulière pour des pays comme le Canada dont le poids économique et politique est insuffisant pour favoriser à eux seuls la convergence réglementaire. Enfin, l'auteur exhorte le Canada à soutenir la coopération réglementaire dans des forums majeurs qui pourront prendre en main ces questions, notamment l'Organisation pour la coopération et le développement économiques et la Coopération économique de la zone Asie-Pacifique.

International Regulatory Cooperation in a Supply Chain World

Bernard Hoekman

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 cooperative regulatory efforts. A relatively new approach is to seek to establish regulatory equivalence and to put in place processes to support international convergence of regulatory goals. Such an approach involves different mechanisms than are usually embodied in international trade agreements, the primary instrument states use to reduce barriers to trade and investment. This chapter proposes ways to support regulatory equivalence as a mechanism to reduce trade costs. These are using *knowledge platforms*, which cover topics where the underlying objectives of principals in different countries are similar, and *supply chain councils,* which would identify where and how differences in regulatory regimes generate excess trade costs (as well as complementary mechanisms to support these councils).

If we look at the period since the end of the Second World War, a distinctive feature is the increase in international commerce, which — except during a few recessions — has grown more rapidly than output. 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 gross domestic product (GDP), up from 40 percent in 1990.[1] This expansion in global trade has been driven by lower trade costs, which, in turn, are 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. This growth in global trade has been paralleled by an even greater rise in the global value of the stock of foreign direct investment: the value of local sales by foreign-owned

firms was some US$26 trillion in 2012, compared with $18 trillion for world merchandise trade (UNCTAD 2013).

Much of the growth in world trade comprises intermediate inputs and components. Declining trade and information and telecommunications costs have permitted firms to splinter their production processes geographically, using international supply networks to allocate different tasks and activities to plants or suppliers in different countries. Goods are now produced — and value is added — in multiple countries that are part of the supply chain. The growth of such supply chain trade is associated with the cross-border movement of capital and knowledge, as the technology and know-how needed to undertake the various activities in the chain is often firm-specific (for more on global value chains, see the chapters by Blanchard and Van Assche in this volume).

One consequence of the large reductions in average import tariffs and the removal of quantitative restrictions and capital controls is that the policies that now restrict international flows of goods, services, knowledge and professionals are increasingly regulatory. Examples of these 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 can be affected by numerous regulatory jurisdictions. For example, an automobile has thousands of parts, produced by hundreds of suppliers located in different countries; it might have an engine made in Germany, a wiring harness from Mexico and an exhaust filter system from South Africa. Differences in standards and testing procedures imply that components as well as the final product are not interchangeable — for example, a catalytic converter that complies with European Union (EU) norms might not be accepted in Canada and vice versa. Akhtar and Jones cite the example of a US light truck manufacturer that wanted to sell a model in Europe that "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" (2013, 8). There are many such examples in the trade press and industry literature. For instance, the World Economic Forum (2013) notes the case of a chemical company that imports acetyl, used in aspirin and paracetamol, into the United States. To do so, the company must comply with similar regulations from,

on average, five different agencies that often fail to coordinate and communicate with one another, resulting in delays for one out of three shipments, with each day of delay costing the firm US$60,000 (see also Kommerskollegium 2014).

This multiplicity of regulatory policies means that international trade costs are often much greater than for domestic transactions. The potential welfare gains from reducing such costs are substantial. The Organisation for Economic Co-operation and Development (OECD 2005), for example, concludes that regulatory convergence in the services sector could raise per capita GDP by 3 percent in both the EU and the United States, while the World Economic Forum (2013) estimates that the convergence of the world's trade-related NTMs with those of the most efficient countries would increase real global income by 5 percent. In contrast, it is thought that regulatory convergence under the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU will increase the EU's real GDP by less than 0.1 percent and Canada's by 0.2 to 0.4 percent (European Commission and Government of Canada 2008). Similarly, the projected Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States likely would increase real aggregate income in the two partners by, at best, 0.5 percent (Francois et al. 2013). A major reason for the small predicted gains from CETA and TTIP is that these trade agreements are unlikely to address many of the regulatory sources of trade costs (see Ecorys 2009). The extent to which they might do so 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 it is a precondition for realizing greater economic gains. This is a policy area where unilateral 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 crucial.

Trade agreements are designed, however, not to minimize regulations but to reduce explicit discrimination against foreign suppliers of goods and services through a process of reciprocal exchange of commitments to do so. Regulations, in contrast, are applied equally to domestic and foreign goods and services. The source of regulatory trade costs lies in differences in regulations across jurisdictions and the need to comply with the requirements of multiple regulatory bodies in different countries. Reducing the market-segmenting effects of differences in regulations is thus difficult because of concerns that it would compromise coun-

tries' regulatory objectives and hinder the execution of regulatory agencies' legal mandates and obligations. In such cases, reciprocity — the primary "technology" of trade negotiations — is ineffective.

Key obstacles to regulatory cooperation include (1) mandate gaps between trade negotiators and domestic regulators; (2) coordination gaps within government and between government and business; and (3) informational gaps within and among countries (government agencies; polities). Addressing these obstacles requires institutions and processes that foster learning and build trust through regular communications and repeated interaction, both among countries and among the agencies within countries that set and enforce regulations. In federal states with many regulatory jurisdictions, such as Canada and the United States, the difficulty of such cooperation is compounded.[2]

Regulators, moreover, often have a limited appreciation of the trade and business implications of what they do, even though they are the "owners" of many of the policies that affect trade opportunities. Rather, they generally focus attention on a specific regulatory mandate, with little recognition of measures that might have been applied in other parts of the value chain in other countries that aim to achieve similar outcomes. If regulators are to consider the cross-border economic implications of their work, they need incentives to do so. This raises issues related not just to regulators' legal mandates but also to the design of institutional mechanisms that facilitate a better understanding of the overall impact of regulatory norms throughout the value chain.

If there is to be greater cross-border regulatory cooperation, there must be a sufficient degree of "regulatory equivalence" in existing institutional capacities and objectives (see, for example, Bolkestein 2003; Stewart 2005).[3] Three ways to support such international regulatory cooperation are as follows. First, regulatory deliberations should be institutionalized in trade agreements such as CETA. This would complement the consultations that are a central feature of the regulatory process in Canada and other OECD member countries. These deliberations would focus on existing and proposed regulations to identify areas where different jurisdictions are pursuing equivalent objectives. The process would go beyond regulators to involve representatives of those who want regulations in the first place and those most concerned with their implementation. The key objective would be to identify areas where regulatory cooperation is feasible.

Second, the business community and other stakeholders concerned with the operation of international supply chains and production networks should be engaged in assessing how a broad mix of relevant regulatory measures affect trade opportunities and outcomes. The main goal of these "supply chain councils" would be to generate information about where regulatory differences have the greatest economic effect. Such an example of experimentalist governance (Sabel and Zeitlin 2012) would help 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, mechanisms should be put in place that enable stakeholders to raise awareness and advocate for reform of policy measures that are not regulatory in nature but that directly impede access to markets, thus undercutting the realization of the market integration objective of trade agreements.

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 recognizes that the norms prevailing in B satisfy its own safety norms and vice versa. If the underlying norms in the two jurisdictions differ enough, such an approach is not feasible. Even if A and B harmonize their norms, trade still might be affected 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),[4] while harmonization is extremely difficult to achieve, even within a country with different regulatory jurisdictions, let alone among different countries.

An alternative to these two traditional approaches is the convergence of regulatory regimes and the pursuit of regulatory equivalence or "enhanced mutual recognition" (European Commission 2004). This involves agreement that the regulatory objectives of the parties involved are equivalent *and* acceptance that implementation and enforcement mechanisms in the parties' jurisdictions are effective. Under the regulatory equivalence approach, each government agrees to accept the regulatory system of the other parties (assuming that the regulatory regimes that prevail in the different parties have similar objectives and that each party has an effective institutional system through which these objectives are attained). Under the "standard" mutual recognition approach, A satisfies itself that B achieves its norms through testing, inspections, sampling and so on that are similar to what A undertakes. Under regulatory equivalence, A simply accepts B's processes and system,[5] but 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 might require the alignment of programs to implement regulations and mitigate risk — that is, regulatory equivalence might be conditional on some elements of harmonization.

How should these different types of regulatory cooperation be organized? Since the Second World War, governments have relied on international regimes anchored in international organizations to cooperate on matters of joint interest (Keohane 1984). The major examples in the trade arena are the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO). Starting in the 1990s, this type of state-based, rules-based approach to international trade cooperation has been complemented by two other forms of transnational governance: regime complexes and related networks, and experimentalist governance. Regime complexes are mechanisms through which a mix of state and nonstate actors from different countries form networks that create "policy space" — that is, a mandate — in which international organizations can engage in decision-making and pursue activities in a specific area. 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, 723).

Governance of international trade policies generally centres on trade agreements: state-to-state treaties that include binding, legally enforceable policy com-

mitments. These have been the workhorse of international cooperation on trade policy, an instrument through which countries have sought to improve access to foreign markets. More recently, trade agreements also have been used to address the market-segmenting effects of differences in regulatory regimes. The leader in this domain has been the EU, which is unique in the agreement of its 28 member states to create supranational institutions with significant authority. Various OECD members also have pursued trade agreements that include cooperation on regulatory policies. Examples include the Australia-New Zealand Closer Economic Relations Trade Agreement; agreements South Korea has negotiated with Canada, the EU and the United States (see, for example, Marx et al. 2013); CETA; the ongoing TTIP negotiations between the EU and the United States; and talks among a set of Pacific nations on a Trans-Pacific Partnership. All these initiatives have wider sectoral and deeper policy coverage than older agreements such as the North American Free Trade Agreement. All go beyond the WTO, though none comes close to emulating the supranational dimensions of the EU.

Effective regulatory cooperation, however, requires going beyond legally binding, and thus enforceable, treaties between states and toward experimentalist governance. Binding commitments to do or not to do something — the bread and butter of trade agreements — often simply are not feasible with respect to regulation. The nature of regulation is often very technical and dynamic, involving many actors with different degrees of autonomy and decentralization; moreover, regulators will respond to differences in local circumstances and changes in knowledge over time. This makes it difficult — even undesirable — to impose regulatory cooperation by fiat. Instead, such cooperation must be premised on mutual trust, which, in turn, requires mutual assessment of performance to enable regulators to assure principals (stakeholders, legislatures) that the other party can be trusted. In practice, achieving regulatory equivalence might require regulatory agencies to modernize and adjust their regimes together, so that convergence occurs over time and partner countries move closer to systems that are constructed and implemented the same way. Regulatory cooperation thus must have a "living nature" (European Commission 2013).

CETA — at the time of writing the most recent of the new type of trade integration agreements and likely to be a model for what the EU and the United States might agree to in TTIP — includes elements of experimentalist governance in a number of its provisions that aim to reduce the trade effects of differences

in regulatory policies between Canada and the EU. Yet, although CETA is a step in the right direction, more needs to be done to reflect the changes in the way international trade is now organized to bolster the ability of domestic firms to enhance their productivity and competitiveness. More rapid progress in attenuating the trade-cost effects of different 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 the active participation of private actors and take a broader value chain or supply chain perspective. Concrete initiatives to reduce the costs of redundant regulatory requirements and processes must be policy-specific — that is, they must involve the type of cooperation already being pursued in the context of, for example, CETA and the Canada-US Regulatory Cooperation Council. But missing from current approaches are cross-cutting, supply-chain-informed deliberative mechanisms that focus on a broad range of policies that affect trade costs and that provide a framework for regulatory cooperation to improve the competitiveness and efficiency of industry — two goals that Canada and the EU set for themselves in CETA (DFATD 2014, chap. 26, article X.3d).

International supply chains and regulatory cooperation

Numerous factors determine the ability of firms to exploit supply chain trade opportunities, among the most important of which is the extent of protectionism at the border in terms of both tariffs and nontariff barriers (NTBs). The latter include local content requirements and procurement policies that give preference to domestic firms, and restrictions on the ability of foreign companies to provide services, which affects their access to inputs and the cost of those inputs, ranging from finance to transport and logistics to professional and other business services. NTBs are complemented by generally applicable regulations, including product/supplier standards and related licensing and certification requirements, as well as sector- or activity-specific policies such as subsidies and tax incentives, transport costs and logistics performance, and "connectivity" — the quality and costs of information and communications technology services and infrastructure. More generally, uncertainty in the application of policy can be as important as average levels of barriers, if not more so.

Indeed, so important are nontariff and regulatory issues that only two chapters of CETA deal with reductions in import tariffs and the removal of

discrimination in government procurement — two areas where there are direct restrictions on the ability of foreign companies to access the market. The majority of the substantive chapters of the agreement deal with such issues as technical barriers to trade, sanitary and phytosanitary (SPS) measures, customs and trade facilitation procedures, policies affecting specific services sectors, mutual recognition of professional qualifications, domestic regulation more generally and procedures for regulatory cooperation and dialogue, as well as protocols on the mutual acceptance of the results of the conformity assessment of good manufacturing practices for pharmaceutical products. Whether and to what extent CETA is effective with respect to such issues will depend on how well the agreement incentivizes government agencies and regulators to consider the trade effects of their activities. Progress has been achieved in some important areas, including the introduction of mechanisms through which regulatory authorities in specific areas from different countries interact. An example is consultation and information exchange/notification systems to make the parties aware of proposals for new regulations. This is also a key element of the operation of the WTO committees on technical barriers to trade and SPS measures, reflecting an understanding that regulatory cooperation should involve interaction "upstream" 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 to undo regulatory decisions after the fact.[6]

Consultative processes are a prominent feature of CETA, consistent with the approach of the Canadian federal government in the formulation and assessment of domestic regulation. However, although consultative mechanisms are critical to establishing the data and information flows needed to build trust and understanding of the operation of regulatory processes and norms, the effect of such cooperation in lowering trade costs is often limited. Regulatory cooperation tends to focus on specific policy areas such as health or safety standards, and to emphasize technical matters such as certification and conformity assessment procedures. These mechanisms are undoubtedly necessary to address regulatory barriers to trade, and they constitute an important element of CETA, but they are not sufficient (Vogel 2012).

One reason for the disappointing results of such mechanisms is that the approach they take is often based on some measure of harmonization or certification — that is, explicit "recognition" — of the specific processes different regula-

tory systems use. This requires each regulator to engage in a detailed assessment and evaluation of what goes on "in the kitchen" of the trading partner's regulatory bodies. Another reason is that regulators pay little attention to the net economic effects of how specific forms of regulation interact with one another and how they affect business and international trade opportunities. Businesses increasingly think in terms of supply chains (see Van Assche in this volume), whereas legislators and regulators tend to focus on specific policy objectives and the instruments used to pursue them — which might involve a particular authority or entity, or several. Accordingly, addressing regulatory barriers to trade would be facilitated if this default policy- and issue-specific "silo" approach were complemented with mechanisms centred on supply chains, the conceptual framework international businesses use to organize production.

Since regulatory regimes are limited to their domestic environments, companies are cooperating to develop more robust voluntary (private) global standards to ensure that all participants in the supply chain are manufacturing to the same standards. International supply chains have become prevalent, for example, in the food industry, allowing manufacturers seeking ingredients or partially processed foods from different countries to have confidence in the safety and quality of such inputs no matter what their source. In the absence of formal mechanisms of equivalence between the governments involved, the benefits associated with such regulatory equivalence within supply chains might be reduced. If governments recognized that such international systems of private standards are equivalent to their domestic regulatory environments, trade costs could be reduced by avoiding duplicative testing, data reporting requirements and so on.[7]

Three Proposals to Support Regulatory Cooperation and Reform

Although the processes Canada, the EU and the United States use to ensure implementation and enforcement of regulatory regimes can differ, they are likely to be equivalent in terms of their objectives. This suggests that one element of regulatory cooperation should be to pursue an equivalence approach. Such an approach would have a number of positive implications from an economic perspective (Messerlin 2014). One is that there would be 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 would imply greater competi-

tive opportunities for firms, and thus welfare gains for consumers, as businesses would not need to retool to contest a foreign market. Moreover, as Sabel (2014) stresses, the equivalence model has important benefits in terms of learning, the monitoring of upstream and downstream performance and the adoption of more effective or efficient regulatory approaches over time, thereby improving regulatory outcomes. Indeed, an important element of the approach would be convergence toward similar or common standards over time.

CETA embodies some elements in this direction. Article 2 of the chapter on regulatory cooperation commits both parties to develop 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 adopt transparent, efficient and effective regulatory processes that better support public policy objectives and fulfill the mandates of regulatory bodies. Article 3 mentions such objectives of regulatory cooperation as building trust; deepening mutual understanding of regulatory governance and obtaining from each other the benefit of expertise and perspective to improve regulatory proposals; promoting the transparency, predictability and efficacy of regulations; identifying alternative instruments; recognizing the associated effects of regulations; and improving 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, the agreement mentions the complementary goal of enhancing 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" (DFATD 2104, chap. 26, "Regulatory Cooperation," article X.3(d)(iii), emphasis added).

Language on — and examples of — regulatory equivalence embodied in CETA include the chapter on SPS measures, which requires each signatory to accept the measures of the exporting party as equivalent to its own if the exporting party "objectively demonstrates that its measure achieves the importing Party's appropriate level of protection" (DFATD 2014, chap. 7, "Sanitary and Phytosanitary Measures," article 7.1). Principles and guidelines for the determination of

equivalence are set out in Annex IV to the SPS chapter, while Annex V lists areas where the parties have agreed there is equivalence. One function 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 recognizing the equivalence of specific SPS measures. A Protocol on the Mutual Recognition of the Compliance and Enforcement Programme regarding Good Manufacturing Practices for Pharmaceutical Products provides for the determination of the equivalence of regulatory authorities that certify compliance with these practices. Annex II (on Medicinal Products or Drugs) of the protocol lists products for which the parties have agreed that their requirements and compliance programs are equivalent.[8]

The CETA chapter on regulatory cooperation creates an entry point with the respect to greater use of regulatory equivalence among like-minded countries but puts little emphasis on the use of equivalence as a way to reduce regulatory differences and costs. Indeed, the chapter, while laying out a rather long illustrative list of possible cooperation activities, does not mention "equivalence" in articles X.4, X.5 and X.7. Article X.4.18 does call for identifying approaches to reduce the adverse effects of existing regulatory differences on trade, including, "when appropriate, through greater convergence, mutual recognition, minimising the use of trade distorting regulatory instruments, and use of international standards," but the activities listed in these articles focus on transparency and data and information sharing.

Greater progress toward reducing the effects of regulatory differences could be facilitated if those most concerned with the effects of specific sectoral regulatory regimes became a more integral part of the process of deciding where an "equivalence approach" was feasible and desirable. Learning is critical when it comes to the substance of regulation — officials and stakeholders need to understand the implications of a given rule or proposed rule change and how it will affect the economy. Establishing forums aimed at fostering substantive, evidence- and analysis-based discussion and assessment of the effects of sector-specific regulatory policies could support more effective regulatory cooperation.

Knowledge platforms to extend the use of regulatory equivalence

A necessary condition for regulatory equivalence is to identify areas and systems that pursue similar goals and have similar outcomes. This assessment is generally

left to regulatory agencies, and often does not engage the principals on behalf of whom regulations are implemented. Instead, these principals delegate the realization of their objectives (health, safety, risk mitigation, catastrophe avoidance and so on) to technical regulatory entities. In practice, efforts to agree on regulatory equivalence can be stymied by interest groups that would be negatively affected and stakeholders with strong beliefs or even unfounded fears. Well-known examples include the use of hormones in meat production and chlorine-based solutions in the processing of meat products.

CETA calls for the establishment of a regulatory cooperation forum 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, nongovernmental organizations (NGOs) and business and consumer organizations, "on matters relating to the implementation of" the regulatory cooperation chapter (DFATD 2014, chap. 26, "Regulatory Cooperation," article X.8). Engagement with stakeholders is arguably critical, however, and should be given stronger institutional foundations. The same argument holds for similar cooperation mechanisms, such as the Canada-US Regulatory Cooperation Council (2014), which have been active in undertaking consultations with stakeholders.

One way to promote regular interaction between regulators and stakeholders involved in trade integration initiatives would be to put in place "knowledge platforms" — consultative and deliberative mechanisms to collect, analyze and diffuse knowledge and experience with good practices — that operate under the auspices of the relevant regulatory cooperation forums or councils. Rather than having governments consult with the private sector and civil society when considering a specific regulation, knowledge platforms allow for sustained engagement among all relevant stakeholders. (In practice, this is likely to be a multilevel process, with business or industry associations representing the interests of concerned firms.) Such platforms already have been created by national governments and international organizations such as the World Bank.[9] For example, the Dutch government has established a platform on electromagnetic fields that brings together academics, regulators, government agencies and NGOs with concerns about the health effects of electromagnetic fields.[10] The establishment of such forums could help identify the potential gains from cooperation on regulatory matters, including areas where there is already substantive equivalence.

Information on the effect of and experience with regulatory programs could help governments assess their own current policies and institutions and enhance their knowledge of applicable regulatory measures in their trading partners.

The specific activities of knowledge platforms would depend on the interests and views of participants. One useful activity would be to clarify the preferences and concerns of stakeholders with respect to trade-related regulation — something that is often ignored in the creation of trade policy, in contrast with other areas of public policy.[11] For example, municipal governments sometimes use instruments such as "deliberative polling" to overcome the problems of rational ignorance and bias in stakeholders' responses to surveys and opinion polls or their views on alternative public policies or investment projects. Deliberative polling brings together a random, representative sample of stakeholders who have already offered their survey responses to discuss the issue in small groups facilitated by trained moderators and informed by accessible expert briefing materials that provide balanced information on the issue. Afterward, the group is asked to respond again to the original question. As long as the sample is representative of the relevant stakeholders, the end result should reflect much better the conclusions that would have been attained had the population as a whole been more informed and more engaged.[12]

For the deliberative polling process to be effective, there must be trust on the part of both stakeholders and the public, similarity in the objectives of stakeholders and robustness, in the sense that the information base is sufficient to assess the likely results of adopting regulatory equivalence. The latter criterion might be the most difficult to satisfy, as it depends on the quality and comprehensiveness of available performance data. This potential constraint could be addressed, however, by encouraging the regular participation of business in 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.

The role of supply chain councils

Sector- and issue-specific regulatory cooperation of the type already being pursued between Canada and the United States and the EU is important, but it does not focus on the effects of various policies on supply chain trade and investment incentives. Instead, most of the focus of domestic and international trade

policy assessment processes is on specific sectors, agencies or policy instruments. CETA's proposed regulatory cooperation forum will focus on regulation, narrowly construed, while the only cross-cutting subject that the Canada-US Regulatory Cooperation Council has identified so far is the effect of different regulatory policies on small and medium-sized enterprises (SMEs).

Although such cooperation is useful, what is needed is a mechanism that focuses explicitly on the interdependencies that exist *across* sectors and policy areas, including those that are not regulatory in nature — that is, the traditional trade policy agenda. For example, competitiveness, whether of agricultural producers, manufacturers or services providers, is in part a function of the costs and availability of inputs from other sectors: a large share of the value of traded goods reflects services inputs, while the efficiency of services provision depends critically on access to and use of a variety of manufactured goods ranging from computers to trucks. To divide up the universe into "sectors" and separate policy departments and regulatory bodies is to focus on the trees rather than the forest — in other words, the policy silo problem. Identifying and addressing the trade and investment consequences of this problem is partly an information and coordination problem and partly a "mandate problem," in that trade and investment do not feature in regulatory design. A more cross-cutting approach could help to focus on actions that facilitate the competitiveness of domestic businesses.

Arguably, a cross-cutting approach to identify priorities is particularly important for firms that participate in value chains, and it is one way that regulatory cooperation differs from the traditional trade policy agenda. A key aim of regulatory cooperation in the context of trade agreements should be to cut unnecessary value chain costs, an objective that does not figure in traditional policy agendas or the design of trade agreements and that likely is a "target-rich" environment both for trade that is already occurring and for promoting the growth of new trade.

Mechanisms that generate information on prevailing regulatory policies — including NTMs and services sector policies — in different countries and how these affect trade competitiveness would facilitate broad-based discussion of the sectors and policies where cuts in trade costs are most likely to be found. One such mechanism is supply chain councils (see Hoekman 2014). These councils would bring together stakeholders from the countries involved with the aim of focusing attention on how various policy areas — tariffs, border management

procedures and requirements, product standards, regulatory agencies, access to transport and distribution (logistics) services and so forth — jointly affect international production, trade and investment. The objective would be to cut across prevailing policy silos in government and regulatory agencies by generating information on how the existing combinations of applicable regulations and policies affect key dimensions of supply and production chains and both reduce efficiency and 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 value chains or production networks that are representative of specific sectors and economically important activities. Each of these would be associated with a council consisting of representatives of the relevant businesses, employees, government departments and regulatory agencies, national and subnational as appropriate. Governments would have an important role to play in the choice of value chains by applying selection criteria to ensure that broader national welfare considerations were taken into account. As international trade flows and supply chains are often dominated by very large companies and industries, it would be important to control for biases that might result from simply focusing on existing trade and investment flows and neglecting the large potential gains from new trade. Moreover, large incumbent firms and industries in fact might benefit from the competition-reducing effects of regulatory market segmentation and thus might not support regulatory cooperation (see, for example, WTO 2013).

It would be important in this connection to consider how regulatory policies affect the ability of SMEs to exploit new technologies to sell more internationally.[13] SMEs generally are suppliers to lead firms, contract manufacturers and multinational service companies, but they can also use the Internet and business-to-business market platforms to sell their products internationally (see Ahmed and Melin in this volume for evidence on Canadian firms that use eBay Marketplaces). Facilitating greater international participation by SMEs, which are an important source of employment, would require an explicit focus on how policies affect their incentives to connect to value chains, since policy reform efforts often are concerned only with the interests of large firms.

One concern with supply chain councils is that they might risk reinforcing the policy silos problem by concentrating attention on just a subset of the thousands of supply chains that exist. Such a risk could be reduced, however,

by choosing a mix of supply chains that generate final products that enter the consumption bundle of all households and products that many industries use as inputs. Examples include processed foods, automobiles, consumer durables such as major appliances, electronic products, medicines, chemicals, financial services and e-commerce. Specific instances of regulatory measures or policies that raise trade costs significantly for any particular supply chain likely would be relevant for many others as well. In practice, industries that are most affected by excess costs due to regulatory duplication could be expected to suggest the creation of a supply chain council for themselves. The main goal would be to ensure that there are not important "gaps" — unaddressed policy measures, 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. As well, the aim of the exercise would be not to remove regulation or to question underlying regulatory objectives but to identify redundancies and excess costs created by duplicative regulatory measures. In most cases, regulatory policies presumably have a good rationale. In practice, however, there is often redundancy in the sense that similar but slightly differentiated data must be reported to different regulatory entities, or that similar standards are imposed by agencies that do not communicate with one another. A focus on value chains thus would help to identify such redundancies and possibilities for consolidation in ways that might not be evident if cooperation were to centre on a horizontal, agency-by-agency approach and on efforts to establish when requirements are approximately equivalent enough.

Given a set of supply chains to focus on, the goal of supply chain councils would be to identify the regulatory and trade-related policies that affect the operation of the chains, to determine which of these policies affect the chains most negatively (in the sense of generating costs in excess of what is required to attain regulatory objectives) and to determine where regulatory cooperation could reduce compliance costs significantly. This process would depend on the active engagement of business representatives, as such costs might not be evident. For example, costs can be reflected in delays or uncertainty that give rise to various forms of self-insurance, such as maintaining higher-than-desired inventory or adding production capacity (suppliers). As well, small regulatory differences can require entirely different product categorizations, approval processes between markets and product inventory maintenance requirements. The process of "map-

ping" observed supply chain trade costs and inefficiencies to regulatory policies would require input not only from the businesses concerned but also from policy analysts, since firms' supply chain managers generally will not be knowledgeable about the specific policies that underlie observed supply chain trade frictions and inefficiencies or about how to estimate the effects of different policy instruments.

An important aspect of supply chain councils would be their public-private partnership. The participation and representation of the relevant regulatory bodies, those in government who are responsible for economic policy and the business community would be necessary to decide how best to reduce regulatory compliance costs without detrimentally affecting regulatory objectives.

Usefully, the councils could also determine performance indicators — metrics that can be used as focal points for regulatory bodies and to measure changes in excess costs over time. This would require establishing baseline levels of performance against which progress — or the lack thereof — could be assessed over time. The councils could also contribute to monitoring the implementation of policy reforms and the results of reforms aimed at reducing trade costs. These findings should be made public in an annual report, both to ensure transparency and to increase the incentives of those tasked with taking actions to follow through. Although independent entities subsequently should undertake analysis of progress and reporting to avoid conflicts of interest, business would have a critical role to play, as it often would have the best access to the requisite data. If, for example, the performance indicator is the time it takes for consignments to satisfy all border management processes, or the share of transactions physically inspected, or the variance in the average time required for regulatory approval to be obtained, data on the outcomes of such metrics would have to come from the business community.

Going beyond analysis and information provision to identify actions and to ensure they are pursued would be a significant challenge. Actions likely would be predicated on a serious commitment by government to work to reduce excess costs. In practice, the likelihood of such a commitment would be enhanced if the councils included senior people from business and government and if the results of their work were fed into a high-level body committed to take the findings forward. Regulatory bodies and government agencies then would have to regard the findings and recommendations as their problem, particularly if the process were one to which the governments concerned have made a formal commitment. Here,

trade agreements such as CETA and TTIP could provide added value, as such treaties are commitment devices by construction.

The institutional framework for the proposed supply chain councils and associated processes could build on and complement those that have been or will be put in place in the North American and transatlantic context — namely, the Canada-US Regulatory Cooperation Council and the proposed regulatory cooperation forum. In practice, it would be difficult to make the councils formally part of these other processes, given the latter's focus on specific areas of regulation. As the councils' policy domain by design would be cross-cutting and might identify areas of policy not (yet) on the agenda of these other bodies, it would be more appropriate for the councils to operate under the auspices of a central government body. The councils' findings then would inform the activities of the other bodies through the central agency, insofar as they were appropriate bodies to address the identified priority areas for action. The councils themselves would not have any executive powers but would be more akin to advisory bodies. For their recommendations and findings to be translated into action, decisions would need to be made at the level of a central agency with the mandate and authority to cut across different line ministries and regulatory areas. In Canada, this would be either the Privy Council Office or the Treasury Board Secretariat — indeed, the former is already playing a key role in supporting the Regulatory Cooperation Council, while the latter has an important oversight role on regulations and, importantly, controls access to cabinet for proposed new regulations.

The supply chain councils could also become part of the mechanisms that oversee the implementation of the new trade integration initiatives. Critical for the credibility of the process would be a real commitment at the highest political level to put the outcome of council deliberations into operation, not least because this would determine whether business saw participation in, and allocation of resources to, the councils as a worthwhile investment. One option would be for the bodies that have been or will be created to manage and monitor implementation of international trade agreements such as CETA to create a "supply chain forum" tasked with undertaking these activities and reporting on progress and results. In the Canada-EU case, this would be the CETA Joint Committee, 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

removing barriers to transatlantic trade and investment — although the council might be replaced or augmented by another body if the TTIP talks are concluded successfully.[14] Any such forum should include representatives of the principals with a stake in regulatory cooperation and the chairpersons of the various supply chain councils that are established.

A number of specific challenges would need to be dealt with in implementing these ideas. The suggested activities of the supply chain councils would require them to be supported by a secretariat of some sort. This would entail decisions on how and where to allocate this function administratively. In the case of Canada, the Treasury Board Secretariat would be one possibility. Whatever administrative unit this task is allocated to would need to have an operational mandate and adequate funding to provide the necessary secretariat services and analysis. Another challenge would be to ensure that deliberations were not captured by vested interests. Companies might have incentives to supply biased data that overestimate the costs of regulatory differences and associated compliance requirements, particularly when such information is private and proprietary and thus more difficult to verify. They also might not want to provide relevant data on the effects of regulations on their supply chain operations because of competitive concerns. More generally, they could be expected to be disinclined to incur additional costs to collect data. Thus, the more that performance indicators were based on information that firms already compile for their own purposes, the easier it would be to implement the approach. A further potential problem is that governments might not trust the data provided by business. Good practice models exist to address such concerns, however, including having data compiled and processed by an organization that is technically competent and independent of industry, and in ways that would prevent competitively sensitive data from being made public.[15]

Walking the talk: complementary mechanisms to improve competitiveness

The main output of the proposed supply chain councils would be information, with respect to identifying areas where regulatory equivalence or mutual recognition would be consistent with the preferences of principals and with priorities for regulatory cooperation and complementary domestic reforms from the perspective of supply chain competitiveness. For the mechanisms to be effective — 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 pursue regulatory cooperation actively and in good faith.

In this regard, the incentives of the key players are not necessarily aligned. The main driver behind regulatory cooperation efforts in the context of trade agreements is international business. But regulators themselves are also pursuing cooperation, with a view to reducing enforcement costs and more efficiently attaining specific regulatory objectives such as risk mitigation and public health and safety. At the same time, not all businesses would be in favour of regulatory cooperation. Those that benefit from the market segmentation created by differences in regulation could be expected to be happy with the status quo. And some, perhaps many, regulators might have little interest in having their activities scrutinized or in considering the trade implications of their measures. The net result of these conflicting incentives might be to stymie cooperation initiatives.

The inclusion of support for regulatory cooperation in the institutional infrastructure of CETA and similar deep trade agreements would create a focal point for the different players who engage in the process. Would it be possible to go further and also include mechanisms through which regulators and government agencies could be held accountable for not dealing seriously 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 the parties taking action to ensure that their counterparts abide by the terms of the negotiated contract. In practice, however, it is difficult to envisage how formal state-to-state dispute settlement along the lines of standard WTO-type trade agreements could work, given the focus of regulatory cooperation on processes that are domestic, with significant *ex ante* uncertainty as to whether equivalence exists or convergence is possible. Much of what would be involved in supply chain councils is not judiciable either by government ("horizontal accountability") or by firms or citizens ("vertical accountability") (Wolfe, 2015), in the sense of formal dispute settlement procedures between states or the ability of citizens to take governments to court. Since the goal would be to have regulatory systems advance together, and since regulatory equivalence is highly dependent on trust and learning, formal litigation of disputes likely would have an adverse effect on the willingness of agencies to engage in cooperation. Instead, effective implementation would have to rely

on high-level political commitment and engagement to empower and incentivize entities such as the Regulatory Cooperation Council and the proposed regulatory cooperation forum to pursue cooperation, complemented with regular reporting to and monitoring by bodies such as the CETA Joint Committee.

Arguably, however, a mechanism would be needed through which business and other stakeholders could raise awareness of policies that negatively affect supply chain trade, including policies 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. An example might be market access restrictions that are not yet the subject of explicit commitments in a trade agreement but that nonetheless have a negative impact on supply chain trade.[16] For supply chain councils to have the greatest possible impact on informing governments and raising awareness of priority areas for policy reform, attention would need to focus not just on areas where regulatory cooperation would make a difference. Other types of issues also could be key from the perspective of supply chain trade, including entry barriers that are the result of government action, such as restrictions on the ability of companies or consumers to obtain certain types of services from foreign suppliers, digital trade barriers and data localization requirements. If the councils were to identify such issues, there should be a process through which stakeholders could advocate for action and reform.

How might this be done? CETA 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" (DFATD 2014, chap. 33, "Dispute Settlement," article 14.16). 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 CETA before a tribunal or court unless this is expressly foreseen in a CETA provision. Firms must go through their governments to contest actions (or inaction) by trading partners, and their governments are free to refuse to raise the issue with the other government(s). There are good

arguments in favour of limiting international dispute settlement to states (see, for example, Levy and Srinivasan 1996; Wolfe 2005), so what mechanisms could national stakeholders 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 the provinces have significant autonomy in setting and enforcing rules and regulations that affect the ability of providers in some services sectors to operate across provinces and of businesses to bid on government procurement contracts. The AIT's dispute settlement system is open to resident natural persons and enterprises with a "substantial connection" to a province (labour unions also have standing). Private parties first need to request that their relevant provincial government launch dispute proceedings against another province. If this petition is refused, they may initiate proceedings on their own, conditional on approval by a "screener" 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]

A similar mechanism could help focus government attention on policy areas that have significant negative effects on supply chain competitiveness. For example, a specific agent could be mandated to consider matters brought forward by the supply chain councils. Ideally, this would be done by an entity, such as the Productivity Commission in Australia or the International Trade Commission in the United States, with the capacity to undertake analysis and assess the economic effects of policies. Canada has no such formal institution, but think tanks and public policy research institutes could undertake such a role. The value that the councils would add is their identification of specific policy areas that should be the locus of investigation and analysis and a set of constituencies that presumably would be willing to engage in the advocacy and political processes that drive policy formation.

Conclusion

TODAY'S TRADE POLICY AGENDA INCREASINGLY INVOLVES DOMESTIC REGULATORY POLICIES, with differences in regulation across countries creating additional costs for businesses that affect their competitiveness. Regulators and government agencies in

Canada, the EU and the United States are aware of and focused on efforts to reduce the trade- and investment-impeding effects of such differences, while seeking to enhance the efficiency of the processes to achieve regulatory objectives. These efforts have implications for the design of trade agreements, which so far have done little to minimize negative regulatory spillovers. International cooperation to reduce the market-segmenting effects of differences in regulation confronts concerns that this would impede the realization of regulatory objectives and the execution of the legal mandates and obligations of regulatory agencies. Obstacles to achieving regulatory cooperation include mandate gaps between trade negotiators and domestic regulators; coordination gaps within government and between government and business; and informational gaps within and across countries. Addressing these gaps requires institutions and processes that foster learning and trust building through regular communication and repeated interaction, and mechanisms that help identify areas where there is scope for and a high payoff to pursuing regulatory cooperation.

The type of regulatory cooperation that has become a feature of interaction among Canada, the EU and the United States is important to capture the potential gains that economic research suggests can be achieved by further integrating markets. Ultimately, such cooperation should be pursued multilaterally, open to any country that would be interested. In principle, efforts to reduce the costs of differences in regulatory regimes and systems should be global, if only because value chains and international production are global.

Multilateral regulatory cooperation is particularly important for relatively small countries such as Canada that have less market power to influence the substance of regulatory convergence. Thus, Canada needs to think about pursuing such cooperation in forums that have broader membership, such as Asia-Pacific Economic Cooperation, 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 pursued in the context of CETA. Greater use of plurilateral forms of cooperation under the WTO umbrella would be a means to expand the reach of regulatory cooperation gradually 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 (see Hoekman and Mavroidis 2015).

This suggests that Canada's medium-term strategy on regulatory cooperation — especially given the end goal of benefiting international supply chain

trade — should be to take a leadership role in the WTO. The more immediate challenge, however, is to realize greater convergence of North American and European regulatory standards. At a minimum, this implies taking measures to support cooperation between the Canada-US Regulatory Cooperation Council and the Canada-EU regulatory cooperation forum. Canada's membership in both bodies would offer both a challenge and an opportunity to influence the process of regulatory cooperation in the proposed US-EU Transatlantic Trade and Investment Partnership.[18]

Notes

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1. Data in this paragraph are from the World Bank's World Development Indicators database.
2. In the EU, another complicating factor is that its 28 member states continue to have significant autonomy in the implementation of regulation in many areas.
3. As in 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.
4. Mutual recognition, of course, has been a crucial mechanism in the process of integrating the product markets of 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, EU members must accept products into their markets that were legally introduced in the commerce of another member state.
5. A key difference, therefore, is 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 means 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. As Robert Carberry put it to me, "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."
6. 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. Major functions of the WTO committees dealing with product standards are transparency and providing a forum in which countries can be made aware of and are able to comment on — and question — new and proposed product-specific regulations. The type of regulatory cooperation involved in economic integration initiatives such as CETA and TTIP is a much more ambitious endeavour given the focus on regulatory systems and regimes, as opposed to the technical aspects of a product-specific technical requirement. Ultimately, however, a multilateral approach will be needed to maximize the benefits of regulatory cooperation.
7. The Global Food Safety Initiative is an example of such an effort; see http://www.mygfsi.com/.
8. See http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/28.aspx?lang=eng. 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, for example, Verdier (2011). The chapter permits Canadian institutions to provide portfolio management services to EU professional clients on a cross-border basis (that is, without having to establish in the EU) once the European Commission has adopted the equivalence decision related to portfolio management (EU prudential requirements will still apply).

9. An example is a platform on green growth; see http://www.greengrowthknowledge.org/.
10. See the Knowledge Platform on Electromagnetic Fields and Health, at http://www.kennisplatform.nl/English/knowlegdeplatform.aspx.
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).
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 for them 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.
14. The Transatlantic Economic Council is advised by the Transatlantic Business Council, which, together with the Transatlantic Legislators Dialogue and the Transatlantic Consumers Dialogue, represents the key principals with a stake in regulatory cooperation. In the case of CETA, business interests are grouped in the Canada Europe Roundtable for Business.
15. Thus, this is not "regulation by disclosure" (see, for example, Fung, Graham and Weil 2007), as much of the internal data underlying the (public) performance indicators could remain confidential if companies did not want to make them public.
16. In WTO parlance, this would be akin to a so-called nonviolation 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 except that, if the case is brought by a private party, monetary penalties cannot be assessed by a compliance panel if the dispute resolution panel's findings are not implemented; instead, the matter will remain on the agenda of the Committee on Internal Trade (the governing body of the agreement) until it is resolved. Since its establishment in 1995, 55 disputes have been brought under the AIT; 13 of these went to a panel, 4 of which were brought by a private petitioner. See the website of the Agreement on Internal Trade, at http://www.ait-aci.ca/index_en/dispute.htm.
18. Based on available information, there appears to be less scope to pursue a similar strategy in the context of the Trans-Pacific Partnership, as its focus is not on regulatory cooperation and equivalence, given the heterogeneity of the participants, but more on general principles that signatories would apply in implementing regulation.

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