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Increasing North American Competitiveness through Regulatory Cooperation

By Inu Manak

Imposing and threatening new tariffs have generated many headlines in recent years, whether it involved the United States' North American neighbors, its partners in Europe or its competitors in Asia, especially China. Much less attention has been given to divergent approaches to regulations and standards, which often pose significant barriers to trade and limit competitiveness.

As a major global marketplace, North America must address these issues forthrightly. North America trades over \$2.6 billion a minute and has built impressive and resilient co-production

value chains to support its economic prowess. But improvements in regulatory cooperation could provide a major boost to the benefits that the continent gains from the economic partnership among the US, Canada, and Mexico.

For example, divergent national regulations and standards govern whether a product can go onto the market. Adding to the costs of product compliance, testing, and verification, the "tyranny of small differences" created from regulatory divergence reduces opportunities for doing business across borders, particularly for micro-, small, and



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medium-sized enterprises (MSMEs) that do not have the resources to navigate the complex web of regulatory requirements.

These are the very companies that the US, Mexico, and Canada say they hope to encourage to play a greater role in North American trade under the USMCA trade agreement that went into effect in July 2020, replacing the North American Free Trade Agreement (NAFTA).

This is not a new problem, however. Since NAFTA eliminated nearly all tariffs on goods produced in and sold between Canada, Mexico, and the United States in the 1990s, regulatory barriers to trade became ever more visible. As early as 1996, NAFTA partners established a technical working group on pesticides to align their approaches to pesticide registration and harmonize labelling requirements, for example.

There have been various iterations of regulatory cooperation activities between the NAFTA countries over the years, but not all of them have proven successful. Building on those initiatives that have yielded success is imperative to facilitating trade between our countries and will help to build a more resilient North American economy.

It was not until the terrorist attacks on September 11, 2001, that initiatives to facilitate trade through regulatory cooperation gained steam. In 2005, at the North American Leaders Summit in Waco, Texas, NAFTA partners established the [Security and Prosperity Partnership](#) (SPP), which created working groups divided into a “prosperity agenda” and a “security agenda,” which functioned outside of the formal NAFTA structure. One of the goals of the prosperity agenda was to increase regulatory compatibility to reduce the costs of doing business and support supply chain integration.

Two years later, at the 2007 North American Leaders Summit in Montebello, the three trading partners [agreed](#) to collaborate on four additional priorities, one of which was the establishment of a [Regulatory Cooperation Framework](#) (RCF). While the SPP working groups on the prosperity component would be focused on existing regulatory divergence, the RCF would take up dialogue on preventing divergence in future rulemaking, building upon the Organization for Economic Co-operation and Development’s Guiding Principles for Regulatory Quality and Performance.

The RCF was an important component of the North American competitiveness agenda. Through

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an entirely voluntary process, it aimed to reduce regulatory barriers to trade and promote information sharing between regulators, and to facilitate cooperation in increasing compatibility in both regulatory outcomes and the regulatory process.

Importantly, cooperation under the SPP and RCF involved consultations with stakeholders, and specifically sought input from industry through the North American Competitiveness Council (NACC), an advisory body made up of the Council of the Americas, the US Chamber of Commerce, the Instituto Mexicano para la Competitividad, and the Canadian Council of Chief Executives. The idea was to have the NACC provide recommendations for areas where the three countries could work more closely together. The SPP made modest progress in four years, but like many North American initiatives, was terminated once a new occupant entered the White House.

With a new US administration, however, the North American leaders agreed that regulatory cooperation should continue and be retooled. Two separate bilateral frameworks were created in 2011: the Canada-US Regulatory Cooperation Council (RCC) and the US-Mexico High Level Regulatory Cooperation Council (HLRCC). Notably, both initiatives worked to expand stakeholder engagement beyond industry interests, opening up a broader dialogue. However, by shifting from a trilateral framework to a dual-bilateral one, it soon became clear that cooperation between the United States and Canada would outpace cooperation between the United States and Mexico. In fact, there is little evidence that the US-Mexico HLRCC's seven sectoral initiatives, covering issues from food safety to offshore oil and gas development standards, produced any results.

In contrast, the RCC seems to have been [generally successful](#). A few [notable examples](#) include: a single electronic gateway for approving

health products, slated to save the Canadian pharmaceutical industry \$22 million or more over 10 years; harmonizing energy efficiency standards that will lead to \$1.8 billion in energy cost savings for Canadians, and \$1.5 million a year for manufacturers; and the alignment of motor vehicle safety rules, “which will save nearly \$18 million for vehicles manufactured in 2018 over their average useful life.” The Pipeline and Hazardous Materials Safety Administration (PHMSA) within the Department of Transportation (DOT) also [amended](#) the Hazardous Materials Regulations as a result of RCC consultations. In addition, the RCC has facilitated several pilot projects, such as a February 2017 initiative that would allow sunscreen from the United States to enter Canada without additional testing; this pilot project was estimated to reduce the cost to industry by \$100,000 a year for each sunscreen product.

The work of the RCC halted initially under the administration of President Donald Trump, but it was somewhat revived in June 2018 when Canada and the United States signed a memorandum of understanding to [continue](#) regulatory cooperation. NAFTA was being renegotiated during 2018, and it was not yet clear whether there would be a deal at all between the three countries.

In the end, however, the USMCA included a new chapter on [Good Regulatory Practices](#), which “sets forth specific obligations with respect to good regulatory practices, including practices relating to the planning, design, issuance, implementation, and review of Parties’ respective regulations.” It is an ambitious chapter that encourages the parties to pursue regulatory compatibility and cooperation efforts, while also acknowledging that there may be other forums for addressing these issues. Importantly, the language of the USMCA allows the RCC to remain in place. The RCC's work has, in fact, continued, with eight new work plans



developed for 2019-2020. However, no new work plans have been issued since then, and open stakeholder consultations appear to have largely disappeared.

Meanwhile, at the November 2021 [North American Leaders Summit](#), leaders committed to promote good regulatory practices and cooperation in specific areas that would necessitate regulators talking to regulators, such as work related to vaccines, drugs and medical supply chains. Some regulatory coordination is also envisioned between the United States and Mexico under the [High-Level Economic Dialogue](#), which was relaunched in September 2021.

The three trading partners should explore how to best utilize the committee on Good Regulatory Practices established by the USMCA to coordinate efforts on strengthening supply chains, improving crisis management, and collaborating on regulatory policy on new and emerging technologies, including investments in environmental technology. This work should be complemented by the RCC and the High-Level Economic Dialogue where necessary.

To the extent the three governments can work together on shared objectives, the North American market can remain globally competitive in both new and existing product markets. Integrating our supply chains on electric vehicles, for example, can build on the success of the North American auto industry since NAFTA was established. Reducing barriers to trade and innovation in this critical space will be imperative to creating a flourishing 21st century North American automotive market.

Finally, regulatory cooperation efforts in North America should also be supported by the North American Competitiveness Committee, established in USMCA Chapter 26 to “discuss and develop cooperative activities in support of

a strong economic environment that incentivizes production in North America, facilitates regional trade and investment, enhances a predictable and transparent regulatory environment, encourages the swift movement of goods and the provision of services throughout the region, and responds to market developments and emerging technologies.”

While this committee does not of itself have the staff to undertake much of the work required to improve the regulatory environment, it could initiate broad consultations with stakeholders in all three countries, with the aim of developing a set of priorities for trilateral, and where suitable, bilateral regulatory cooperation activities. Such efforts can provide broader guidance to regulatory cooperation initiatives and help provide clarity to agencies on priority areas where they can build collaborative efforts with their counterparts across the border.

At the second meeting of the USMCA Free Trade Commission, on July 8, 2022, the three trade ministers [called on](#) the Competitiveness Committee to establish a sub-committee that can “cooperate during emergency situations in order to maintain, re-establish, or otherwise address issues related to the flow of trade between the Parties.” This is a welcome development.

However, there is more that should be done. The work of the Competitiveness Committee and the Good Regulatory Practices committee remains opaque. There is little information online about the potential workplans or discussions that are underway. As developed, these plans should be posted on the USMCA secretariat websites, and opportunities for stakeholder engagement should be made available at every possible stage of the process. It would be remiss to not incorporate elements of success from past regulatory cooperation efforts in North America, which allowed for both broad engagement and transparency.



To make future regulatory cooperation efforts through the USMCA fruitful, Canada, Mexico, and the United States should strive to include ideas from all segments of the North American economy, and they should provide regular reports on all regulatory cooperation activities so that the economic impact of these initiatives can be objectively evaluated. Transparency and data that

highlights both successes and failures of regulatory cooperation will assist stakeholders and the three governments in developing future priorities for cooperation and help to ensure that the USMCA remains a central institution for the coordination of regional efforts.





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