

TERMS OF REFERENCE FOR THE UNITED STATES-CANADA REGULATORY COOPERATION COUNCIL

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CONTEXT

Canada and the United States share cultural, social, and environmental values that have led both countries to develop robust and efficient regulatory protections for their citizens. However, Canadian and U.S. regulators do not always maximize—or the laws under which they operate do not allow them to maximize—opportunities to align regulatory approaches that achieve common objectives, which is imperative given the integrated nature of our supply chains and robust trade relationship. In some cases, the resulting differences do not increase regulatory benefits, and instead impose needless additional burdens and costs for both businesses and consumers. These costs can be particularly acute for small- and medium-sized enterprises—the cornerstone of economic activity between our nations—which may not have the resources to customize products to meet unnecessarily divergent regulatory requirements. Identifying, preventing, and addressing unnecessary regulatory divergences requires regulatory cooperation between Canada and the United States.

Aligning regulatory approaches between Canada and the United States can spur economic growth and job creation in both nations and facilitate trade, while maintaining high standards of public health and safety and environmental protection. Through their February 4, 2011, commitment to establish a United States-Canada Regulatory Cooperation Council (RCC), both governments recognize the imperative of securing economic benefits through smarter, more effective approaches to regulation that increase cooperation. Increased regulatory cooperation in no way diminishes the sovereignty of either Canada or the United States or the ability of either country to carry out its regulatory functions according to its domestic and legal policy requirements. Accordingly, the RCC's activities, as described in these Terms of Reference, will be conducted in manner consistent with the domestic laws of both countries.

Canada and the United States have their own well developed and transparent regulatory regimes. For example, both governments follow good regulatory practices, such as regulatory impact assessment and open engagement of citizens and stakeholders in the rule-making process. Notwithstanding the strengths of current approaches, both countries do operate independently, and they recognize the opportunity to work together in order to bolster transparency and better align analysis in support of regulations, including for example, measures that would provide early notice of regulations with potential effects on trade. Their mutual desire to better align and cooperate in these areas reflects the commitment of both countries to evidence-based, predictable, cost-effective regulatory approaches that are carefully targeted to enable businesses to continue to innovate and grow without compromising the high standards of public health, safety, and environmental protection that their citizens expect.

MANDATE OF THE REGULATORY COOPERATION COUNCIL

The mandate of the RCC is to identify and recommend opportunities to enhance regulatory cooperation through:

1. **Increased regulatory alignment and transparency:** Regulatory cooperation can be strengthened through a commitment to:
 - increased transparency at the earliest possible stages of the rule-making process (e.g., through measures that allow for engagement between regulators in both countries to examine options to align regulatory approaches);
 - participation by relevant stakeholders and the public in general, including information regarding promising initiatives and “early warning” of upcoming rules that are significant and of mutual interest.

2. **Greater alignment in regulations and recognition of regulatory practices:** Over the years, regulators have taken significant steps to improve regulations by requiring careful attention to costs and benefits, by encouraging the use of the best available science, and by emphasizing low-cost tools, such as information disclosure and public-private partnerships. Equally, Canada and the U.S. have highly effective regulatory regimes and delivery mechanisms. Regulatory delivery and regulatory processes can be streamlined through cooperation that would seek to leverage the implementation activities conducted in either country. There are opportunities to align not just the regulations themselves, but also the activities associated with the application of regulations (testing procedures, inspection and certification activities, etc), and to accept and recognize the work done in each other’s jurisdiction. The work undertaken under the regulatory regime of one country, given our common outcomes and effective implementation, can be better leveraged to avoid duplicative or trade-related actions related to border trade. Based on greater coordination of regulatory practices, processes, and activities, Canada and the U.S. will seek to develop a permanent, lasting approach to avoiding future misalignments.

3. **Smarter, less burdensome regulations in specific sectors:** The RCC is charged with identifying opportunities to bring significant economic benefits to both countries through increased regulatory alignment within key existing and emerging sectors of the North American economy. In seeking to identify opportunities for increased alignment and cooperation, particular consideration will be given to:
 - sectors that are characterized by high levels of integration and a history of cooperative regulatory approaches and supporting activities;
 - sectors that have well developed pre-existing regulatory frameworks that are designed to achieve similar outcomes but are currently a barrier to increased integration and activity;
 - sectors that offer significant, emerging growth potential and that are characterized by rapidly evolving technologies where regulatory approaches are anticipated or are currently in early stages of development; and
 - sectors where regulatory cooperation will support export growth in North America.

RCC PRINCIPLES

- Each country will maintain its own sovereign regulation—mutual reliance on the other country’s system to inform one’s own decision-making, and closer alignment of existing federal regulatory systems, consistent with domestic law, will be the focus.
- Regulatory outcomes for consumer protection, health, safety, security, and the environment will not be compromised.
- New regulatory systems will be designed with the goal of achieving regulatory alignment, to the extent feasible and appropriate. Regulatory alignment will be sought for all future Canada-U.S. regulatory system development—with differences existing only where necessary and with the impacts considered.
- The role of the RCC will be one of broad engagement, bilateral and horizontal coordination, idea generation and challenge. Efforts towards regulatory alignment will be conducted by lead departments and agencies, under broad guidance from the RCC and in consultation with impacted stakeholders. The goal is to align existing federal regulatory systems or, absent such alignment, encourage the adoption of other measures that make it easier to conduct business between the two countries, where such efforts are feasible and appropriate and consistent with other RCC principles.
- In addition to resolving existing unnecessary divergences, mechanisms to facilitate and secure future alignment will be developed. Transparency and early engagement between countries and with stakeholders will underlie these efforts.
- Opportunities will be pursued that provide benefits to both Canada and the United States.

ORGANIZATION OF THE UNITED STATES-CANADA REGULATORY COOPERATION COUNCIL

The RCC will be co-chaired by high-level representatives of the central regulatory oversight agencies in both governments, working closely with their respective trade and foreign affairs agencies, regulatory agencies, and those agencies with policy responsibility for broader competitiveness issues within their federal governments. The co-chairs will solicit the active involvement of regulatory agencies, depending on the specific cooperative activities being addressed.

Central Agency Role: The central agencies, working closely with their respective trade and foreign affairs agencies, regulatory agencies, as well as any other relevant agencies, will lead efforts to examine opportunities to improve collaboration in regards to the rule-making process in an effort to improve the transparency and analytic basis of regulations. A particular emphasis would be placed on measures that would provide early notice of regulations with potential effects on trade. Similarly, recognizing their respective leadership responsibilities for promoting smart, evidence-based regulations, the central agencies will also lead efforts to enhance the contribution of current regulatory analyses to cooperation and quality rule-making in both countries.

Trade/Foreign Affairs/Industry Role: The trade, foreign affairs, and industry agencies of both countries will work closely with the co-chairs to ensure that any regulatory cooperation efforts will be consistent with pertinent international obligations and to assist in identifying opportunities to enhance regulatory cooperation, particularly for those sectors that are characterized by high levels of integration and a history of cooperative regulatory approaches and supporting activities. In the interests of open government, the agencies may, as appropriate, consult and engage with their legislative bodies and key stakeholders regarding efforts on regulatory cooperation.

Regulatory Agency Role: The principal role of regulatory agencies within the RCC will be to: (1) work with the co-chairs to identify or develop sectoral initiatives or other opportunities to improve collaboration, as mutually agreed by regulators and the co-chairs; and (2) work with counterpart agencies to achieve progress on sectoral initiatives as mutually agreed by regulators and the co-chairs.

Working Groups: Under the direction of the co-chairs and, in the interest of assuring sustained progress, working groups may be organized to advance the work of the Council in areas of its mandate. Senior executives from the agencies described above are expected to play prominent leadership roles in advancing working group priorities, in accordance with co-chair commitments to open, transparent engagement of stakeholders and citizens.

REGULATORY COOPERATION COUNCIL ACTION PLAN

The co-chairs' first task will be to create an Action Plan to advance the goals identified in their mandate, which will be developed in close consultation with regulatory agencies. The Action Plan will outline activities for a period of up to two years. At the end of the two-year period, Canada and the United States will review the work of the RCC and consider the adoption of a new Action Plan.

Given the importance of securing and sustaining momentum for the Council's efforts, the co-chairs will monitor progress closely, providing oversight necessary to achieve their mandate with an appropriate level of public and stakeholder engagement. The RCC will meet regularly with interested stakeholders. The RCC will establish stakeholder sessions adjoining semiannual RCC meetings, one hosted by Canada and the other by the U.S.

The United States and Canada will seek, to the extent possible, to coordinate the RCC's activities with the work of the U.S.-Mexico High-Level Regulatory Cooperation Council when the three governments identify regulatory issues of common interest in North America.

Nothing in these Terms of Reference or the RCC Action Plan shall restrict the ability of counterpart agencies in the United States or Canada to engage agency-to-agency in bilateral cooperation and collaboration initiatives on their own outside the remit of the RCC.