



May 30, 2011

Mr. Bob Hamilton  
Senior Associate Secretary  
Treasury Board of Canada  
Regulatory Cooperation Council Secretariat  
140 O'Connor St  
Ottawa ON K1A 0R5

Mr. Simon Kennedy  
Senior Associate Deputy Minister  
Industry Canada  
Beyond the Border Working Group  
235 Queen Street  
Ottawa ON K1A 0H5

**Re: Recommendations to the Canada/U.S. Economic Integration and Competitiveness Initiative**

Dear Mr. Hamilton and Mr. Kennedy:

We are writing on behalf of the 46 member associations of the Canadian Manufacturing Coalition (CMC), our collective 10,000 member companies, and their approximately 2.5 million Canadian employees to provide our recommendations to the Canada/U.S. Economic Integration and Competitiveness Initiative and specifically the Beyond the Borders Working Group (BBWG) and the Regulatory Cooperation Council (RCC).

This is a critical time for Canadians as our economy emerges from recession. The strength of the Canadian dollar, surging oil and commodity prices and an uncertain outlook for the United States as well as our other trading partners, should clearly remind us of the risks that could jeopardize a sustained economic recovery. The future of North America's competitiveness and the next generation of jobs depend on manufacturers' ability to succeed in their drive towards greater efficiency, innovation and agility in taking advantage of business opportunities. While ultimately it is up to manufacturers themselves to do what it takes to ensure that their businesses succeed, governments play a critical role through the business and regulatory environment that industry operates within.

While our organizations have been involved in several similar initiatives in the past which have not resulted in the initially expected outcomes, we believe that the current initiative started by Prime Minister Harper and President Obama, holds the best opportunity for success given the high level of commitment from both governments and the coordination of efforts through central agencies. We believe that this will help eliminate the tendency for individual departments and agencies to "protect their turf" and resist the necessary changes.

Our organizations support a coordinated and principled approach to both the BBWG and the RCC that establishes an effective framework for eliminating the existing differences in requirements, as well as creates the framework for cooperative regulatory development moving forward. Specifically, we believe that the approach to be taken under the BBWG and the RCC should be based on the following priorities:

**Beyond the Border Working Group:**

The CMC supports the recommendations submitted by Business for Better Borders (B<sup>3</sup>) in their letter dated May 18, 2011. The priority should be to create a harmonized system of border operations between the countries and separate traffic and their reporting requirements at the border into three distinct streams based on the levels of investments by companies and the advanced knowledge of those companies and their commercial shipments that governments have. This streaming of traffic would provide benefits to companies that are aligned with the level of investment in trade compliance and supply chain security, as well as enhancing the ability of governments to more accurately target higher risk shipments for compliance verification and focus limited resources both at the border and beyond.

A detailed list of recommendations for improvements to border processes is included below, however the specific priorities include:

1. Harmonize and expand trusted trader programs and their benefits;
2. Harmonize to the most effective security and release procedures at the Canada/U.S. border;
3. Align regulations and regulatory reporting processes across government agencies and departments, including implementing government wide Single Window reporting;
4. Implement coordinated Canada/U.S. perimeter border security and processing requirements;
5. Expand and improve the existing trade infrastructure; and
6. Reduce barriers to the movement of business personnel.

**Regulatory Cooperation Council:**

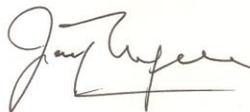
Within the NAFTA economic region, Canada and the U.S. should consider the Australia-New Zealand Trans-Tasman Mutual Recognition Agreement (MRA) as a template for regulatory cooperation between our countries. This MRA has established a collaborative approach to regulatory development that in essence ensures that products developed and approved for sale in one country can be sold in the other country without further testing and approvals. While there are a few exceptions allowed under this MRA, from the information that we have received from our counterparts in these countries, the process works well to reduce regulatory complexity and costs for businesses and consumers, while at the same time allowing each country to regulate separately based on unique needs.

However, given the deep integration of several sectors industries between Canada and the U.S., the end objective must go beyond a MRA and result in the establishment of joint regulatory objectives, collaborative research on regulatory options and primary data collection, and shared peer reviews of regulatory development and ongoing performance. While this approach could eventually be taken in all sectors and regulations, we recognize this will be difficult to accomplish in the short term. As such, we suggest focusing on sectors with fully integrated companies and supply chains where Canada and the U.S. already share similar regulatory objectives, have strong regulatory regimes, and have mutual respect for the health and safety of consumers and the environment. As a starting point the focus could be on (but not be limited to) automotive, information technology and communications, food and consumer products, energy, and pharmaceuticals and medical devices.

We appreciate the opportunity to provide our input to this important initiative. In addition to these priority recommendations, please find attached several specific regulatory differences that have been identified to date. While we recognize that many of these recommendations are ambitious and far-reaching, we nevertheless believe that they are critical to meeting the objectives established by the Prime Minister and President to enhance the global competitiveness of our integrated industries, grow exports, and most importantly, support business investment and job creation.

We look forward to meeting with you on June 27<sup>th</sup> to discuss the Prime Minister's objectives and how we can support the efforts of the BBWG and the RCC.

Sincerely,



Jayson Myers  
President & CEO  
Canadian Manufacturers & Exporters  
Chair, Canadian Manufacturing Coalition



Jerry Engel  
President  
AMC - Agricultural Manufacturers of Canada



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Murray Abramovitch  
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Canadian Die Casters Association



Roger Larson  
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Canadian Fertilizer Institute



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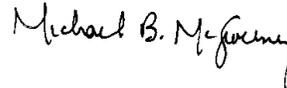
Ron Watkins  
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Michael B. McSweeney  
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## **Beyond the Border Working Group: Priority Areas for Border Simplification between Canada and the United States**

### **Harmonize and expand trusted trader programs:**

Trusted trader programs today cover the range of government/industry interaction including security, reporting compliance and post-release trade data verification. Companies to invest in their internal security and data reporting compliance as well as those of their integrated supply chains in exchange for customs agencies agree to facilitate trade by requiring less data on each shipment at the border. The benefit for governments is significantly enhanced information and assurance of compliance, which allows better streamlining of traffic at border crossings through better use of risk management principals. However, while governments and industry have invested heavily in the trusted trader programs, the programs are limited by several factors in each country and are not aligned between Canada and the U.S.

The focus to improve and expand trusted trader programs should be:

- Full harmonization of programs including U.S. implementation of a program aligned with the existing Canadian Customs Self-Assessment program and Partners in Protection (PIP) and Customs Trade Partnership Against Terrorism (C-TPAT) full mutual recognition
- Non-stop movement of fully qualified and secured (CSA and PIP/C-TPAT) shipments across the border
- Dedicated primary inspection lanes at all border crossings for PIP/C-TPAT registered companies
- Full recognition across all government agencies and departments to eliminate transactional reporting requirements

### **Harmonize security and release procedures at the Canada/U.S. border:**

Today, there are significant differences in the data requirements and release processes between Canada and the U.S. which often requires companies to operate multiple customs compliance and reporting systems. This is resource intensive (both human and technological) and requires different data to be collected and reported in different manners to each government and between government departments. The U.S. has implemented its Automated Customs Environment (ACE) with mixed results and Canada is currently part way through implementation of its Electronic Manifest (eMan) system, a modified version of ACE. These electronic systems operate entirely independent of each other with different data requirements, timeframes for reporting, and technology for data transmission, and do not allow full reporting of all data required across all government departments and agencies.

Immediate attention must be focussed on:

- Align data requirements for shipments between our countries with fewer data requirements than for foreign shipments. Canada must align its importer data requirements to the U.S. requirements under ACE and eliminate the current requirement for detailed manufacturer information on U.S. originating shipments
- Align data reporting timeframes for all shipment types
- Eliminate reporting and tracking requirements on returnable containers of international trade that are moved between Canada and the United States
- Enforcement of IPR and Trademark regulations to guard against third country counterfeit goods

### **Align regulations and regulatory reporting processes across government agencies and departments:**

Historically the focus on improving and simplifying border processes has been focussed on customs reporting requirements. However over the past several years, data reporting requirements from other government departments and agencies have increased substantially and have not been implemented in a coordinated or controlled manner. It has been estimated that today there are roughly 45 combined Canadian and U.S. authorities that can require data during the importation process, depending on the type of goods being shipped. These increased demands have placed significant resource strains on those required to enforce the regulations at the border and for companies attempting to remain in compliance with ever



changing regulations. Furthermore, there has been no consideration given to companies and shipments originating in each other's jurisdiction, when the identified target of the regulation has been from offshore importers.

The highest priority action must be the implementation of a single window reporting process across all other government departments in Canada and other government agencies in the U.S. Companies must be able to report all importation and exportation requirements electronically and through one source in each country. This would also support government needs for security as they would be able to view importation and exportation data holistically in order to make effective and efficient determinations on potential threats.

**Implement coordinated Canada/U.S. perimeter border security and processing requirements:**

If the internal border is to work more efficiently, Canada and the United States need a cooperative approach to external border security. This should be accomplished via the harmonization of data requirements and reporting timeframes for external shipments for customs and other government department requirements; integration of threat analysis processes and joint decisions on inspection; identical export processes for reporting of all goods, including those subject to controlled goods regulations; and the harmonization of enforcement authority to prevent proliferation of third-country counterfeit products.

**Expand and improve the existing trade infrastructure:**

Most of the trade infrastructure that carries the majority of Canada/U.S. trade, and supports our integrated industry was built in the 1920s and 1930s and was designed for a completely different economic reality. In fact, two weeks of automotive trade alone today is roughly equivalent to an entire year's worth of all trade between Canada and the United States when the Ambassador Bridge was built. With technology improvements and investments in traffic streaming through the ports, governments and bridge operators have maximized the potential of these crossings. However these crossings, especially the bridges and tunnels between southern Ontario and New York and Michigan, are not equipped to handle modern integrated supply chain necessities, trusted trader programs and security requirements. While understanding that these are longer term in nature, infrastructure investments should be focussed on a new international crossing in Detroit/Windsor, an additional span between Buffalo, New York. and Fort Erie, Ontario, and an expansion of the primary inspection lanes at the Blue Water Bridge in Port Huron, Michigan.

**Reduce barriers to the movement of business personnel:**

In today's global marketplace, and especially within integrated Canada/U.S. industries, companies do not operate independently in each market; rather they operate as part of a broader corporate enterprise with employees and suppliers having responsibilities in multiple countries. Integrated companies require staff to travel across the Canada/U.S. border frequently in support of company operations, including product development, equipment installation, maintenance and emergency repairs, and product launches. Recent documentation and visa requirements in both Canada and the U.S., have made cross-border travel difficult for all personnel, including those that have proper travel documentation, such as passports and NEXUS certification. Declaring someone is travelling for business immediately begs a line of questioning of why someone from one country needs to enter the other country for work and why the company couldn't hire locally. Requests for additional documentation, such as academic credentials, letters from employers, etc. at the border crossing are becoming more frequent while at the same time increasingly inconsistent, thus making timely business travel increasingly difficult and uncertain, especially on short notice. Governments must strive to immediately introduce a coordinated and simplified border crossing process for business travelers between the countries and expand and modernize definitions of the current NAFTA exemptions.



## **Regulatory Cooperation Council: Priority Areas for Regulatory Harmonization between Canada and the United States**

### **Export controls on consumer encryption technology:**

Encryption technology has evolved over the past two decades from specific military applications to today where it is used in a variety of everyday items such as smart phones, garage door openers, ATM cards, and internet technologies. The regulations controlling these technologies were developed through a 1996 international agreement called the Wassenaar Arrangement which focused on strictly controlling the trade in military application technologies and require government approvals prior to export. Canada adopted its regulations in 1998 and requires a minimum of 45 days (which often takes up to 60 days) before permission to export these technologies is granted. Since the implementation of these regulations and with the development of consumer applications for this technology, most countries, including the U.S., have relaxed their export controls on certain products so that there is either no review period or a very minimal period for regulatory approval. However, Canada has not made similar changes. The delays caused by the Canadian regulations force manufacturers to manufacture and export products in other jurisdictions or miss a critical market window on new products. Canada should align its cryptography export control regulations with those of the U.S.

### **International Traffic in Arms Regulations (ITARs):**

ITARs are fully supported by industry as they apply to most exports and imports of controlled goods, particularly to offshore destinations. However, with the integration of the defense industry across North America, the regulations often require governments and industry to spend unnecessary resources on internal Canada-U.S. shipments of goods that are often intra-company or part of the development of joint national security and defense programs. Currently the U.S. Department of State (DOS) requires export licensing authorizations for defense articles enumerated in the U.S. Munitions List destined to Canada for end-use, with minor exemptions for Canada in ITAR §126.5. To alleviate unnecessary burdens and inefficiencies for the Canadian-US industrial base and programs, U.S. regulations, namely ITAR § 126.5 should be harmonized with Canada's Export and Import Permits Act and Export Permit Regulations which allows most controlled goods with final consignee in the U.S. to be exported without an export permit.

Additionally, we welcome the recent changes by the U.S. DOS on May 16, 2011 which ends the requirement for separate licensing for dual and third country nationals. Accommodating these changes to the ITARs will require Public Works and Government Services Canada's Controlled Goods Program (CGP) to roll out its Enhanced Security Strategy (ESS). In order to accomplish this, Canada's Controlled Goods Directorate must continue to work with the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) and Canadian industry to ensure that Canada's CGP not only meets the requirements of the revised ITARs by the August 15, 2011 implementation date, but to also ensure that the CGP's ESS is supportive, parsimonious and does not erode the competitiveness of Canadian industry. As part of the CGP's ESS implementation, it is critical that Canadian industry be allowed similar exemptions provided in ITAR §124.16 that are available to the rest of the world, namely that employees who are exclusively nationals of countries not deemed as national security risks (e.g. NATO member countries) or employees who have already received a security clearance from the Canadian government are not required to be screened for substantive contacts with nationals from proscribed countries.

### **Made in Canada Labeling:**

Industry Canada's Competition Bureau published new Made in Canada and Product of Canada Guidance for non-food products effective July 1, 2010. The rules state that "Product of Canada" claims are subject to a 98% threshold of Canadian content; "Made in Canada" claims are subject to a 51% threshold of Canadian content; and the last substantial transformation of the product must have occurred in Canada. The Canadian Food Inspection Agency (CFIA) also has new "Made in Canada" and "Product of Canada" Guidance that does not include thresholds, only the last substantial transformation requirement. The U.S. only accepts the terms "Made in Canada" or "Product of Canada". These differences have created substantial unintended



consequences; primarily that Canada now has different standards for food products and non-food products. Furthermore, on non-food products there is no acceptable language to meet both domestic and export requirements on a single label. There must be consistency in Government of Canada's policies for "Made in Canada" labeling. Specifically, we recommend that Industry Canada's Competition Bureau should revise its guidelines to be consistent with CFIA's guidelines by removing the 51% threshold for all products and to allow the "Made in Canada" term based on the last substantial transformation.

#### **Energy regulations:**

Canada is the largest supplier of energy for the United States. Both countries have made important commitments on both the multilateral and bilateral fronts to reduce greenhouse gas emissions over the coming years. It is expected therefore, that regulatory agencies in both countries will take a more active role in regulating a wide swath of the energy technology industry, from vehicle emissions to Smart Meters from photovoltaic panels to wind turbines and SmartGrid. A transparent engagement towards a North American regulatory scheme that is transparent and which engages our member companies will be critical in meeting our emission targets, while providing the market incentives to offer well-paying jobs for our communities.

The harmonization of regulations to support alternative energy vehicles, including electric and hydrogen fuelled vehicles, and the infrastructure to support their introduction, is also important to creating a North American industry and assuring that there is a similar approach to safety, efficiency and infrastructure to support the next era of automotive manufacturing. As well, the harmonization activities related to energy and water efficiency such as standards, codes and verification is equally important.

#### **Harmonized (HS) Code product classifications:**

For most products there is full alignment of Canadian and U.S. HS classifications and product descriptions, particularly on the first six (6) digits of the ten (10) digit code. However, on the last 4 digits as well as in the product descriptions, there are often significant differences. This causes significant complexity for companies to maintain records and accurately classify goods for importation and reporting and has no impact on national security or consumer health and safety. HS codes and product descriptions should be fully harmonized between Canada and the U.S.

#### **Food approvals and certification:**

Canada and the United States have a strong history of regulatory collaboration on food safety with highly congruent, scientific underpinnings to risk management, particularly related to food safety, animal health and plant health. However, compared to many other trading blocks, NAFTA has fallen behind regulatory alignment and coordination in these areas and there is a risk of new trade barriers as the U.S. Food Safety Modernization Act comes into effect and new legislation is contemplated in Ottawa. We believe that there is considerable opportunity to reduce regulatory differences and duplicative compliance and enforcement programs in relation to traded product. There are a number of specific areas where a renewed effort to align our regulatory environment would result in a more competitive and safe delivery of products. Chief among these would be in the areas of food safety, nutritional standards, animal health, plant health and truth in labelling. For example, in the livestock and meat sector, the high degree of congruence in food safety and animal health risk management, coupled with the integration of supply chains, presents an immediate opportunity for several regulatory cooperation initiatives. This was detailed in a separate submission by the American Meat Institute and the Canadian Meat Council, which we support. In addition, the governments should work towards eliminating the requirements for duplicative inspections at the border on food products that have originated in one country and previously inspected by domestic food inspection agencies.

#### **Off-Road Compression-Ignition Engine Emission Regulations:**

Canada and U.S. emissions regulations for off-road compression-ignition engines should be fully aligned enabling the sale of the same products in both countries.



**Chemicals Management:**

Canada has a world leading existing substance program that was announced by Prime Minister Harper in 2006. Both the Canadian and U.S. governments are in the processes of completing independent, comprehensive, systematic assessments of their chemical management inventories and this is an excellent opportunity to work together to streamline reviews of existing chemicals common to the North American marketplace. By working in tandem, we can ensure that business remains competitive and ensure that companies can secure production mandates and trade within the integrated market and internationally. Our respective regulatory bodies in the two countries state the same objectives, and are taking similar steps to address the sound management of chemicals. To this end, we encourage both governments to coordinate these efforts where possible, so to ensure consistency in such management activities in the future.