Approaches to Regulatory Coordination Mechanisms

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Purpose

• Outline regulatory coordination mechanisms available to NAFTA members
• Examine performance of NAFTA member regulatory coordination through case studies
• Consider areas where regulatory coordination could be improved
**NAFTA has had a significant impact on North American agri-food market integration**

- Rest of North America is the most important export market for each NAFTA country
- Between 1990 and 2004, exports to North America
  - increased 162% for US
  - increased 266% for Canada
  - increased 141% for Mexico*

### Agriculture and Food Exports to Rest of North America

<table>
<thead>
<tr>
<th>Average 2000-2004</th>
<th>US$B</th>
<th>Market Ranking</th>
<th>% of Total Exports</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.7</td>
<td>1st</td>
<td></td>
<td>67%</td>
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<tr>
<td>17.1</td>
<td>1st</td>
<td></td>
<td>29%</td>
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<tr>
<td>7.1</td>
<td>1st</td>
<td></td>
<td>85%</td>
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</tbody>
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*For Mexico: 1990–2003 to the U.S. only.*

Note: 2000-04 avg., with the exception of Mexico, 2000-03 avg.
Industry has taken advantage increased efficiencies through increased FDI

- Industry increased ownership linkages, as they shifted from national to continental supply chains.
- Substantial portion of the agricultural and food industries has become an integrated production complex.

Source: Bureau of Economic Analysis, USDA, ERS.
Government plays a key role in facilitating integration

• Change in cross-border trade has required that regulatory issues be given greater attention
• North American food processors must meet a whole host of regulations
• Competitiveness within and outside North America depends on regulatory coordination among NAFTA governments
NAFTA envisioned that regulatory coordination would take place through Committees and Working Groups

- Several of these entities directly concern agricultural and food sectors
  - Committee on Sanitary and Phytosanitary (SPS) Measures
  - WG on Agricultural Grading and Marketing Standards
  - Committee on Agricultural Trade
- Some Committees and WGs have played an active role while others have remained largely dormant
Not all regulatory challenges are suited to structure as laid out in agreement

• While the formal Committee structure has been used to address some issues, many activities have taken place outside this structure

• Two types of alternative venues for regulatory coordination can be observed:
  - Workaday cooperation
  - Strategic bilateralism
Workaday cooperation is part of the everyday activities of NAFTA governments and their employees

- Usually involves coordinated activities of employees within government regulatory agencies
  - Rank-and-file staff and mid-level managers
  - High level leadership only involved to the extent that participation is part of normal day to day activities
- Primarily bilateral in nature as the issue will typically only directly concern two countries
Strategic bilateralism enables high-level leadership to assume a more active role

- Leaders from highest levels of two national governments directly involved in regulatory coordination

- Examples include:
  - Consultative Committees on Agriculture (CCA)

- Few instances of strategic trilateralism
  - BSE is one example of strategic trilateralism
Assessing the effectiveness of available mechanisms through case studies

- Pesticide regulatory coordination
- Potato Wart outbreak in Prince Edward Island, Canada in 2000
- US market access for fresh Mexican Hass Avocados - from 1914 - present
- Mexican cantaloupe and Salmonella outbreaks 2000-2002
- Bovine Spongiform Encephalopathy (BSE) 2003 - present
Pesticides

• Cross-country differences in how pesticides are regulated
  - Perception that the Canadian pesticide approval process is more cumbersome than that of the US
  - Mexico has tended to follow the lead of its NAFTA partners

• SPS Committee Technical Working Group (TWG) on Pesticides established in 1996 to resolve trade irritants around differences in pesticide regulation
NAFTA TWG very active in coordinated action for pesticide regulation

- Goal is to promote harmonization and work sharing as a means to reduce costs
- TWG has actively engaged government, regulatory agencies and industry
- Transparent about communicating information
- Most efficient tool developed is the joint review

Case: Pesticides
**Case: Pesticides**

**TWG working to expand efforts with Mexico and internationally**

- Traditionally many projects have involved Canada and the US as a result of bilateral work that preceded NAFTA
- Working toward greater Mexican involvement
  - First trilateral review to be completed by summer 2005
- Harmonization being pursued by OECD
**NAFTA TWG on Pesticides good example of effective WG ...**

- Workaday interaction product of technical work and cooperative approach
- Work sharing important and innovative practice
- Developing a NAFTA approach to pesticide regulation
- Recognition that harmonization improves competitiveness within North American marketplace and in third markets
**Potato Wart**

- A quarantine pest that renders potatoes unmarketable and reduces yield
- Trade disruption following the discovery of potato wart in 2000 in a single field in Prince Edward Island, Canada
- Dispute escalated as a result of failure to resume trade following containment mechanisms put in place by CFIA
- Canada initiated consultations through formal dispute resolution mechanism provided by NAFTA
Challenges to resolving the potato wart issue

• Perishability of product required quick resolution to dispute
• Threat from disease required that all parties be satisfied with the control measures in place to mitigate risk
• Industry may be under pressure from over-production
  ❖ Surplus of potatoes in North America at the time of the 2000 outbreak
Workaday and high-level efforts required to resolve dispute

- No disease monitoring system in place at the time of the 2000 outbreak
- Dispute resolved through the efforts of bilateral technical working group and strong political negotiation
- Less formal workaday approach allowed technical experts to develop a solution outside the political realm
- Strategic bilateralism ensured the issue maintained a high level of visibility
Science and effective communication key to resolution

- Developing a risk-based protocol was the key to gaining US confidence that the disease was contained
- Able to regionalize issue
- Benefited from solid Canada-US relationship at the technical and political levels
- Subsequent discoveries in 2002 and 2004 resulted in minimal trade impact
**Mexican Hass Avocados**

- US banned the import of fresh avocados from Mexico after the detection in 1914 of avocado pests not present in US
- Repeated attempts to lift the ban were unsuccessful
- NAFTA provided the opportunity for Mexico to re-open the issue
- Extensive technical negotiations resulted in a published rule in 1997 to allow restricted import of Mexican avocados
- In November 2004, APHIS published a rule to further ease restrictions
California avocado producers have resisted easing of trade restrictions

- Valid concerns about pest infestation, but economic considerations a factor
  - Economic assessment for rule estimates losses of $71.4 million for California avocado producers
- APHIS received numerous comments related to market share during comments period on rule
- At the same time significant positive economic gain for consumers
**Case: Mexican Avocados**

*Process to gain access has been gradual and lengthy*

- Mexican producers perceived the sanitary restrictions as a non-tariff barrier
- Mexico did not use dispute resolution
- Some effort to address the dispute within the framework of the SPS Committee
- US and Mexican regulators worked together to develop science-based mitigation system
- Featured workaday cooperation for technical expertise and high level leadership to ensure issue remained a priority
**Mexican Cantaloupe**

- In the spring of 2000, 2001 and 2002 outbreaks of *Salmonella* occurred as a result of individuals in the US and Canada eating cantaloupe imported from Mexico.
- In 2000 and 2001 the FDA placed Import Alerts on specific shippers and growers whose melons were linked to outbreaks or were contaminated.
- Mexican regulatory authorities and the FDA began to develop a certification program following the 2000 and 2001 outbreaks.
Balancing trade commitments and consumer safety

• The outbreak in 2002 led to an Import Alert on all Mexican cantaloupe despite outbreak being traced back to producers in just two states
  - FDA justified ban as preventative measure
  - CFIA took similar action

• Timing of the ban was damaging to Mexican producers in the midst of their harvest, as well as US distributors who were unable to navigate new requirements
**NAFTA and WTO Agreements protect sovereignty around SPS issues ...**

- Countries have the right to protect human, animal or plant life
- But cannot be used to treat a country differently
- Following total ban, Mexico brought the issue to the WTO SPS Committee
  - Primary complaint from Mexico was the lack of communication between US and Mexican officials
  - Also felt there were inconsistencies
Issue too important to be resolved by workaday cooperation alone

- Prior to 2002 outbreak, US and Mexico were engaged in workaday cooperation
- Stakes became higher with 2002 outbreak, requiring high-level leadership
- Good collaboration but need to further streamline requirements
  - Federal Recognition Program (FRP) agreement to provide clearer process for documenting food safety
Bovine Spongiform Encephalopathy (BSE)

- BSE detected in Canada in May 2003 in an Alberta cow
- Upon confirmation of the positive BSE case over 40 countries, including the US and Mexico, placed import restrictions on Canadian cattle, beef and other bovine products
- Canadian Animal Health Coalition estimates total economic impact from BSE at Cdn$6.3 billion by early 2004
Canada acted swiftly to protect human and animal health

• The CFIA initiated an epidemiological investigation
• Canada took additional risk measures
  - Invited an International Team of Experts to participate in the investigation and to make recommendations
  - Canada acted on all four key recommendations
Science-based approach is the key to regaining market access

• Extensive technical and scientific discussion between Canada and the US resulted in the development of a minimal risk rule

• US published rule January 4, 2005
  - When implemented, the rule will provide the necessary authority to re-open the border for Under Thirty Month (UTM) cattle and some classes of other young ruminants

• Requirements are considered to provide the utmost protection to US consumers and livestock, based on science
Also working to establish more scientifically-based global rules

- World Animal Health Organization (OIE) acknowledged some trade bans are inconsistent with OIE guidelines and standards
- Canada/US/Mexico working together to influence OIE to update guidelines on BSE
- Encourage a more practical, risk-based approach to BSE
- Canada continues to make progress in gaining access to other markets on the basis of science-based risk management system
Protracted interaction at every level to resolve the issue

- Workaday cooperation needed to develop the technical protocols
- Importance of issue requires high-level political involvement
- Strategic trilateralism given importance of BSE detection on entire NA beef market
- One significant obstacle for the normalization of trade is certain US cattle producer interests

Case: BSE
Consequences for integration

• Prior to the detection of BSE in 2003 and 2004, the North American cattle market had become highly integrated

• Prolonged border closure has disrupted North American beef and cattle sector, making it much less efficient

• May have discouraged cross-border integration in other sectors

• Weakens North American ability to get back into third markets
Conclusions ...
Regulatory coordination is an exercise in national sovereignty

- Countries have the right / responsibility to determine appropriate level of protection and regulation needed
- Can be legitimate reasons for different regulations and standards
- However some regulatory differences cause needless frictions to trade and market integration
- Can result in less efficient industries and higher costs to the consumer
Regulatory coordination likely to rely on similar mechanisms moving forward ...

- Desire for autonomy makes creation of enhanced NAFTA Secretariat or supranational entity unlikely
- Appointing high-level official to lead efforts consistent with strategic bilateralism
- Need greater flexibility in establishment / maintenance of committees and WGs
- Implement best practices to increase effectiveness of committees and WGs
Effective coordination requires effort at many different levels ...

- Nature of the issue dictates mechanism required to be effective
  - NAFTA committees work well when political sensitivity is low and need for technical ability is high
  - Emerging bilateral issues often resolved through workaday cooperation
  - Hot button issues often require a combination of strategic bilateralism and workaday cooperation
- Given importance of workaday cooperation and strategic bilateralism best practices could also be useful outside NAFTA entities
Science based risk mitigation systems to neutralize narrow interests ...

• Recognition of mutual benefit of trade
• Downside that science-based risk assessment can be used as a delay tactic
• Ideally develop science-based systems in times of “calm”
  ◆ Established protocols and coordination mechanisms can be easily employed
  ◆ Use less restrictive measures to minimize the risk to importing country

... and minimize trade disruptions
From Negotiation to Collaboration ...

- Coordination can feel like negotiation
- Move beyond negotiation and engage in joint projects and other cooperative activities
  - Includes commitment to improve productivity through improved regulatory cooperation