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Mr. Howard A. Shelanski
Administrator
Office of Information and Regulatory Affairs
725 17th Street, N.W.
Washington, DC 20503

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Dear Administrator Shelanski:

The National Association of Manufacturers (NAM) is pleased to provide the following comments in response to the “U.S.-Canada Regulatory Cooperation Council Stakeholder Request for Comment Summer 2013”. The NAM is the largest manufacturing association in the United States, representing businesses small and large in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million women and men across the country, contributing more than \$1.8 trillion to the U.S. economy annually.

Manufacturers appreciate the U.S. and Canadian governments’ interest in greater regulatory cooperation. Given the significant costs that unnecessary incompatibilities in individual regulatory requirements impose on industry and the size of the bilateral trade relationship (valued at more than \$610 billion in 2012), such cooperation can deliver direct benefits to industry while fostering the global competitiveness of our economies. The following comments respond to your request for stakeholder views on how best to address regulatory incompatibilities and particular issues that should be considered for future cooperation.

1. Addressing Regulatory Divergences

To address costly and unnecessary regulatory divergences, the NAM believes the U.S.-Canada Regulatory Cooperation Council (RCC) should pursue three broad objectives. First it must *improve regulatory transparency, participation and accountability*. The United States and Canada should strengthen stakeholder participation in their respective regulatory development processes and insist on binding commitments to good regulatory practices in their trade agreements. They should provide a formal private sector role on the RCC, where regulatory cooperation appears to be proceeding only through government to government dialogue.

Second, the RCC must be *demand-driven and problem-focused*. It should seek to address specific existing incompatibilities in individual regulatory requirements identified by stakeholders that are unnecessary, that are limiting commercially meaningful market access and that would contribute importantly to trade, economic growth and job creation if resolved. Rather than maintain more than two dozen “Joint Action Plan initiatives” that appear to exclude work in areas not already listed, the RCC could form time-bound and mission-focused teams to address and resolve these incompatibilities.

Finally, an objective of the RCC should be removal of regulatory barriers that impede innovation and undermine the competitiveness of firms in both the United States and Canada. To that end, the RCC must measurably reduce unnecessary burdens on business, *facilitate greater market access and contribute to collective competitiveness*. Success should be evaluated on the basis of actions taken to resolve costly and unnecessary incompatibilities and on the contribution of those actions to trade, economic growth and job creation. Regulatory agencies on both sides of the border should engage in periodic and systematic review of all regulations to determine their effectiveness, their results and whether they are still needed. The best way to eliminate certain incompatibilities may be through modification of existing rules or deregulation when appropriate.

Regulations on both sides of the border must not interfere with markets unnecessarily. Regulations also must be based on high-quality science and objective, credible risk assessment and cost-benefit analysis. Regulations should not be adopted unless the benefits of the regulations justify their costs.

2. Issues for Future Cooperation

Within a transparent, demand-driven process that is delivering valuable and measurable results for industry and the wider economy, the RCC should consider addressing the following issues, among others:

- *Chemical management.* Both the United States and Canada are reviewing their chemical inventories, presenting an excellent opportunity to minimize costly duplication and facilitate trade. The RCC could consider an approach to chemical assessments similar to the one it is currently using for nanomaterials – aligning tools and principles of risk assessment and risk management. For example, where both the US and Canada have identified priority substances, efficiencies might be achieved by conducting joint hazard assessments. In instances where uses and exposures are similar, joint or mutually recognized risk assessment could be considered.
- *Consumer and industrial product safety.* U.S. and Canadian consumer and industrial product safety laws can differ markedly. The RCC could benefit industry and regulators by seeking to narrow those differences. Among other things, the RCC should consider standardizing technical approaches, adopting a single definition or interpretation of a reportable incident, removing unnecessary regulatory reporting, registrations and certifications, and aligning the scope of reportable incidents. It should consider mutual recognition agreements to permit the use of equivalent technical codes, standards and certification schemes.
- *Definitional differences.* Differences in certain definitions can create compliance challenges that increase costs and create unnecessary consumer confusion. For example, the United States and Canada have different definitions for “children’s jewelry” (under 12 in the United States and under 15 in Canada). The wider age range in Canada does not appear to have any link to risk or marketing breakdown.
- *Energy efficiency.* Lagging Canadian energy efficiency standards and test procedures for products such as residential appliances can cause significant consumer confusion and raise manufacturing costs. Typically, Canada waits for the U.S. to promulgate a test

procedure or energy efficiency standard and then works to harmonize with those regulations. Instead, the U.S. Department of Energy and Natural Resources Canada should work together to develop a single test procedure and standard with which compliance is required on the same date. The RCC should facilitate such collaboration by helping agencies in both countries develop a cooperative regulatory framework. Collaboration must include relevant industry associations on both sides of the border, which often already have in place global testing and rating standards and equipment performance verification testing that should be referenced and not duplicated.

- *OTC licensing and good manufacturing practices.* Over-the-counter (OTC) medications sold on both sides of the border often have identical formulations and functions. However, access and speed to market can differ greatly, increasing costs and posing logistical challenges. The RCC has made progress on OTC medications and good manufacturing practices. It should build on that progress by considering a fully functioning Mutual Recognition Agreement and alignment on OTC licensing mechanisms.
- *Permits and certificates for transportation of certain goods.* Closer alignment on risk assessment during review of special permit and equivalency certificate applications can cut costs and ensure more predictable and consistent outcomes. The United States and Canada allow producers to transport certain regulated goods and materials across the border if they can demonstrate a safety level equivalent to the other country. Producers must secure a special permit (for the United States) or an equivalency certificate (for Canada). However, the mechanisms and data needed to obtain these approvals frequently are not aligned and often lead to different outcomes. The process to correct discrepancies in risk review and assessment is complex and resource intensive.
- *Sub-federal trade barriers.* Manufacturers are increasingly facing technical barriers to trade at the sub-federal level. For example, one U.S. firm has long been shipping a type of equipment to customers throughout the United States and Canada. The equipment meets the applicable Canadian Standards Association (CSA) standard and relevant safety requirements. However, the Quebec government recently has adopted a French alternative to the CSA standard that is based on the precautionary principle and is contrary to basic science, risk and cost-benefit principles. This move has blocked sales of U.S. product but reportedly has not harmed Canadian competitors.

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The NAM appreciates this opportunity to provide comments and looks forward to supporting an RCC process that delivers concrete results for manufacturers and workers. Should you require additional information on the issues noted above, please do not hesitate to contact us.

Sincerely,



Linda Dempsey