

Terms of Reference for the High-Level Regulatory Cooperation Council

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Mexico and the United States have long recognized the potentially significant benefits of improving regulatory cooperation. These benefits include increased economic growth in both nations; lower costs for citizens, businesses, producers, governments, and consumers; increased trade in goods and services across borders; and greater protection of health, safety, and the environment.

Mexico and the United States rely on regulation to maintain a high level of health, safety, and environmental standards, while acknowledging that regulation can sometimes impose significant burdens and costs. We are convinced, as President Calderón has stated, that, “[t]he rationale of a good government is to simplify peoples’ lives; the best government is the one that takes the least time from its citizens.” We are jointly committed to (a) ensuring that the benefits of regulations justify their costs, (b) maximizing the net benefits of regulations, and (c) guaranteeing that regulations do not impose unjustified burdens on private citizens or businesses, especially in periods of economic difficulty. In the words of President Obama, “Sometimes regulation fails, and sometimes its benefits do not justify its costs.” We are also jointly committed to promoting open government, to increasing transparency, and to identifying innovative, low-cost methods of achieving regulatory goals.

In accordance with these findings, the following Terms of Reference outline the mandate, organization, and initial plans of the new High-Level Regulatory Cooperation Council. The establishment of the Council in no way diminishes the sovereignty of Mexico or the United States, with each government continuing to carry out its regulatory functions according to its domestic legal and policy requirements.

Recognizing that some regulatory challenges require trilateral cooperation among the three Parties to the North American Free Trade Agreement (NAFTA), the United States and Mexico intend to involve the Government of Canada when it is necessary to focus on issues of common interest in North America. North American regulatory cooperation may be conducted under the auspices of the U.S.-Mexico High-Level Regulatory Cooperation Council, the U.S.-Canada Regulatory Cooperation Council, or other forums deemed appropriate by all three governments, including existing NAFTA Committees on Standard Related Measures (CSRMs) and Sanitary and Phytosanitary Measures (CSPMs).

I. Mandate for a High-Level Regulatory Cooperation Council

The primary focus of the Council is to promote six goals:

1. **Making regulations more compatible, increasing simplification, and reducing burdens without compromising public health, public safety, environmental protection, or national security:** These objectives should be pursued through agency-to-agency working groups and other undertakings, with a possible focus on issues and

sectors with high levels of integration, representing a significant percentage of the area's economic activity, above-average growth potential, rapidly evolving technologies, and a history of cooperative activities, to be developed in accordance with the Work Plan mentioned below. To this end, regulatory agencies and other entities are to consider the use of regulatory cooperation mechanisms such as (a) information sharing arrangements, (b) multilateral and bilateral harmonization activities, (c) comparability, compatibility, or equivalence of standards, technical regulations, and conformity assessment procedures and results, and (d) facilitation of the recognition, accreditation, and/or acceptance of standards or standardization bodies, conformity assessment bodies, and/or conformity assessment results of the other Participant. These regulatory cooperation mechanisms are also to be considered for sanitary and phytosanitary measures, and their related control, inspection and approval procedures. In addition, the Participants, consistent with their national interests, and mindful of their commitments derived from other international agreements to which they are Party, intend to seek a common position in international bodies, as well as promote the use of international standards, guidelines, or recommendations as a basis for new measures, consistent with NAFTA and World Trade Organization rules.

2. **Increasing regulatory transparency to build national regulatory frameworks designed to achieve higher levels of competitiveness and to promote development:** Regulatory cooperation should be strengthened by committing to open government, including increased transparency in the rulemaking process (e.g., through notice and comment procedures, allowing participation by relevant stakeholders and the general public). Such cooperation should involve information sharing among regulators, including, as allowed by law, information regarding regulatory programs, proposed initiatives and “early warnings” with respect to upcoming rules that are of significance and of mutual interest.
3. **Simplifying regulatory requirements through public involvement:** Taking into account the point of view of citizens and businesses, governments should consider new steps to simplify regulations and requirements with respect to starting a business, obtaining construction and other required permits, and trading across borders. Individual steps toward simplification will not lead to sufficient improvements if other elements in the process are inefficient and impose unjustified burdens. Simplification in these areas will make it easier to do business on both sides of the border by decreasing transaction costs and increasing efficiency.
4. **Improving and simplifying regulation by strengthening the analytic basis of regulations:** In recent years, regulators have taken significant steps to improve regulations by (a) requiring careful attention to analysis of costs and benefits, (b) encouraging the use of the best available science and social science (including recent work in economics), and (c) emphasizing low-cost tools (e.g. such as information disclosure and public-private partnerships). Regulations and regulatory processes could be further improved through cooperative activities such as sharing regulatory impact analyses and risk assessments, exchanges of best practices, and collaboration on regulatory issues of mutual interest.

5. **Linking harmonization and regulatory simplification to improvements in border-crossing and custom procedures:** In order to maximize the benefits of free trade under the NAFTA rules, it is important to consider a more comprehensive approach to border-crossing and customs procedures. A comprehensive approach should link regulatory cooperation in these areas with technological innovation, administrative and legal cooperation, and mutual recognition where appropriate and consistent with law.
6. **Increasing technical cooperation:** Mexico and the United States should consider new steps to promote cooperation among domestic constituencies, as well as between regulatory agencies, and strengthen technical cooperation, so as to increase the level of development of their regulatory systems. These steps may include capacity building and training activities, as well as technical assistance for standards related measures.

II. Organization of the High-Level Regulatory Cooperation Council

The Council is to 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 and the regulatory agencies within their federal governments, when appropriate. The Council is also to include participants from regulatory agencies, with reference to the specific cooperative objectives being addressed.

The Council is to create committees at the technical level in order to follow up the regulatory cooperation activities included in each annual work-plan. This responsibility may be delegated to existing bodies.

Central Agency Role: In addition to co-chairing the Council, the central agencies, working with other relevant agencies, are to (1) examine the feasibility and appropriateness of promoting the compatibility or equivalence of regulations (e.g., through use of voluntary consensus standards, including international standards, and revised guidance to agencies on regulatory impact analysis); (2) explore possible ways to facilitate acceptance of conformity assessment results; and (3) work collaboratively with regulatory, trade, and customs agencies to identify areas where the gains and burden reduction that result from regulations, including mandatory testing, certification requirements and inspection processes, could be increased and their costs reduced.

To this end, each central agency, through an interagency process with other relevant agencies, is to work to produce bi-national regulatory cooperation priorities on an annual basis, to disclose such priorities in their annual regulatory agendas, and, when possible, to solicit public comment using online communication tools. This approach will help to ensure that regulators integrate and focus on improving regulations that fit within the organizational mission of their current governments. The overall purpose is to identify opportunities that promote economic and social goals, including economic growth and protection of health, safety, and the environment.

Trade/Foreign Affairs Agency Role: The trade and foreign affairs agencies of both countries are to work closely with the co-chairs of the Council to promote consistency with pertinent international obligations of any regulatory cooperation efforts and to assist in identifying

opportunities to enhance regulatory cooperation. In the interests of open government, the trade and foreign affairs agencies may, as appropriate, consult and engage with their legislative bodies and key stakeholders regarding efforts on regulatory cooperation. They intend also to report publically on the Council's activities using online communication tools.

Regulatory Agency Role: The principal role of regulatory agencies, consistent with agency budgets and priorities, is to work with counterpart agencies to achieve progress on sectoral initiatives as mutually determined by regulators and to provide periodic progress reports to the Council and at the meetings of the technical Committees.

III. Work Plan

The Council's first task is to create a Work Plan to implement the goals identified in Section I. The Work Plan is to identify areas of mutual interest for cooperation, taking appropriate account of the goals and objectives described in Section I, both to facilitate intra-North American commerce and to enhance the competitiveness of North American producers in key export markets, with a special (but not exclusive) emphasis on small and medium enterprises, while enhancing our collective ability to achieve regulatory ends.

In identifying sectoral issues to include in the Work Plan, the United States and Mexico share the view that they should be feasible and have a high impact on economic growth and reduce transaction costs. For this purpose, the following methodology should help the Participants measure the impact of regulatory cooperation in specific sectors. Specifically, the methodology is to take into account the following evaluation criteria:

1. Usefulness of the regulation.
 - i. Standards and technical regulations should be oriented to mitigate risks (safety, health, and the environment).
 - ii. Standards and technical regulations should be consistent within the NAFTA region.
 - iii. Costs of compliance should be reduced to the minimum necessary to mitigate the risk.
 - iv. Whether the regulation is still being used by the producers or consumers, or the consumers and producers do not apply the regulation because it has become obsolete or anachronistic.
2. Measures of economic impact.
 - i. Unnecessary transaction costs.
 - ii. Underinvestment in the sector.
 - iii. Productivity below international reference.
 - iv. Economic impact: Measured as percentage of GDP.
 - v. Incidence: Measured as the product of the frequency with which the regulation is used and its coverage.

To the extent possible, the Council is to seek relevant stakeholder input as the Work Plan is developed and prior to posting it online.

The Work Plan is to outline activities for a period of two years. At the end of the first year, the United States and Mexico intend to evaluate their progress and achievements, with the aim of identifying areas of improvement, as well as ways to increase the effectiveness and revitalization of the Council's activities. The Work Plan thereafter is to be reviewed and modified as appropriate, on an annual basis.