

International regulatory cooperation and the making of “good” regulators

A case study of the Canada–U.S. Regulatory Cooperation Council

By Stuart Trew

A thesis submitted to the Faculty of Graduate and Postdoctoral Affairs
in partial fulfilment of the requirements for the degree of

Master of Arts

in

Political Economy

Carleton University
Ottawa, Ontario

© 2021, Stuart Trew

Abstract

International regulatory cooperation (IRC), an assortment of governmental techniques for facilitating trade by minimizing the burden on business of variation in international regulations and standards, is an increasingly important component of bilateral and regional free trade agreements. Yet as a *practice* of global governance, IRC is relatively understudied by critical scholars of neoliberalism and globalization. This thesis enquires into the practices of IRC and the role of state and non-state participants in the Canada–U.S. Regulatory Cooperation Council (RCC). My research draws publicly available accounts of the RCC and earlier bilateral (Canada–U.S.) regulatory cooperation efforts into conversation with the experiences of two dozen RCC participants from government, the private sector and civil society. Applying a governmentality analysis to a case study of the RCC, I conclude that IRC can be understood as a subtle technique for governing the global economy at a distance through the production of “good” (i.e., self-maximizing) regulators and regulated subjects.

Acknowledgments

First of all, I am incredibly grateful to my thesis supervisor Laura Macdonald and thesis committee member Marc-André Gagnon. Their deep knowledge of the political economy of North America, history of economic thought, and institutions of global governance was invaluable, as were their prompt, constructive comments on multiple drafts of this thesis. I must also thank the Institute of Political Economy at Carleton University for letting me hang around this long, and Cristina Rojas in particular for welcoming me back. A very special thanks to Donna Coghill for her support and encouragement over many years, and to Tabbatha Malouin for guiding me through the final stages.

Thank you to all the government officials and private sector and NGO representatives who generously took time to speak to me for this research. You do a great public service by sharing your expert knowledge and experience with students of political science.

I must acknowledge the friendship and mentorship of Scott Sinclair, without whom I would know little and possibly care much less about trade (or birds) than I do today. Thanks to Bruce Campbell for his insights on trade-related regulatory cooperation and for inviting me into the gang at the Canadian Centre for Policy Alternatives. To my amazing colleagues at the CCPA, I am thankful for your patience while I completed this thesis.

To Lucy, the love of my life, I owe much more than can be expressed here. I am indebted to you for hearing and providing feedback on my ideas, your stress-busting skills, and generally for putting up with the brooding, quiet person in the corner of the apartment during an already strange and difficult year.

Table of Contents

ABSTRACT	II
ACKNOWLEDGMENTS	III
TABLE OF CONTENTS	IV
LIST OF TABLES	V
LIST OF FIGURES	V
LIST OF APPENDICES	V
GLOSSARY	VI
INTRODUCTION	1
RESEARCH QUESTION	5
SITUATING THE REGULATORY COOPERATION COUNCIL	7
HYPOTHESIS AND THEORETICAL APPROACH	9
METHODOLOGY	12
CHAPTER OUTLINE	15
CHAPTER 1: THEORIZING INTERNATIONAL REGULATORY COOPERATION	18
LEFT-NATIONALIST, MARXIST AND NEW CONSTITUTIONALIST THEORIES OF GLOBALIZATION	26
GOVERNMENTALITY AND THE PRODUCTION OF “GOOD” REGULATORS	33
CHAPTER 2: “INSPIRED AD HOCERY”: CANADA–U.S. REGULATORY COOPERATION IN THE FREE TRADE PERIOD ..	41
RULES FOR CANADIAN REGULATORS FROM THE GATT TO NAFTA	42
ACTOR EXPERIENCES WITH THE NAFTA WORKING GROUPS	52
SMART BORDERS AND SMART REGULATION	55
CRITICAL ASSESSMENTS OF THE SPP REGULATORY AGENDA	64
CHAPTER 3: YOU CAN DO THIS! A GOVERNMENTALITY CASE STUDY OF THE REGULATORY COOPERATION COUNCIL	70
ONCE MORE, WITH FEELING: THE REGULATORY COOPERATION COUNCIL AND NORTH AMERICAN COMPETITIVENESS	73
PERPETUAL ALIGNMENT MACHINE: INCEPTION AND MUTATION OF THE RCC	82
<i>From Action Plans to Forward Plans (2014–2016)</i>	90
<i>Machine without a ghost (2016–2018)</i>	93
BEHAVE YOURSELF: RESPONSIVE REGULATORS AND PROACTIVE REGULATEES	98
<i>U.S. agency and Canadian departmental officials</i>	99
<i>Industry stakeholders</i>	107
<i>Non-industry stakeholders</i>	113
CONCLUDING REMARKS	121
CONCLUSION: INTERNATIONAL REGULATORY COOPERATION, TRADE, AND THE STICKINESS OF NEOLIBERAL GOVERNMENTALITY	125
APPENDICES	132
APPENDIX 1 – REGULATORY ACHIEVEMENTS OF THE SECURITY AND PROSPERITY PARTNERSHIP (TECHNICAL REGULATIONS AND STANDARDS-RELATED) INVOLVING CANADA, TO APRIL 2008	132
APPENDIX 2 – QUESTIONS FOR GOVERNMENT PARTICIPANTS	134
APPENDIX 3 – QUESTIONS FOR CIVIL SOCIETY PARTICIPANTS	136
REFERENCES AND BIBLIOGRAPHY	138

List of Tables

Table 1 - NAFTA standards- and regulation-related committees and working groups49
Table 2 - SPP Regulatory Cooperation Framework: Common Regulatory Principles62
Table 3 – RCC participants interviewed for this thesis, by sector73
Table 4 - Overview of Canadian industry recommended areas of Canada-U.S. alignment.....85

List of Figures

Figure 1 - Regulatory cooperation cycle96

List of Appendices

- Appendix 1 – Regulatory achievements of the Security and Prosperity Partnership (technical regulations and standards-related) involving Canada, to April 2008
Appendix 2 – Questions for government participants in this thesis
Appendix 3 – Questions for civil society participants in this thesis

Glossary

AIT – Agreement on Internal Trade
APEC – Asia-Pacific Economic Cooperation
CABC – Canadian American Business Council
CCCE – Canadian Council of Chief Executives
CEC – NAFTA Commission for Economic Cooperation
CETA – Canada–European Union Comprehensive Economic and Trade Agreement
CFIA – Canadian Food Inspection Agency
CFTA – Canadian Free Trade Agreement
CME – Canadian Manufacturers and Exporters
CPTPP – Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSRSM – NAFTA Committee on Standards-Related Measures
CUSFTA – Canada–United States Free Trade Agreement
CUSMA – Canada–U.S.–Mexico Agreement
EPA – U.S. Environmental Protection Agency
FTA – Free Trade Agreement
FTAA – Free Trade Area of the Americas
GATT – General Agreement on Tariffs and Trade
GHS – Globally Harmonized System of Classification and Labelling of Chemicals
GRP – Good Regulatory Practice(s)
IRC – International Regulatory Cooperation
NACC – North American Competitiveness Council
NAFTA – North American Free Trade Agreement
OECD – Organization for Economic Cooperation and Development
OIRA – U.S. Office of Information and Regulatory Affairs
OMB – U.S. Office of Management and Budget
PCO – Canadian Privy Council Office
PMRA – Pest Management Regulatory Agency
RCC – Regulatory Cooperation Council (Canada–U.S.)
RCF – Regulatory Cooperation Forum (Canada–EU)
SPP – Security and Prosperity Partnership of North America
SIA – Sustainability Impact Assessments (European Union)
SPS – Sanitary and Phytosanitary Standards (e.g., the WTO SPS Agreement)
TBS – Canadian Treasury Board Secretariat
TBT – Technical Barriers to Trade (e.g., the WTO TBT Agreement; CUSMA TBT chapter)
TRM(s) – Trade-related Measure(s)
WTO – World Trade Organization

Introduction

Governments and the private sector both have important roles to play—cooperative roles—in building a better society (D’Aquino and Stewart-Patterson, 2001, p. 209).

The 1989 Canada–U.S. Free Trade Agreement (CUSFTA) and 1994 North American Free Trade Agreement (NAFTA) were pioneering legal and institutional frameworks of international governance. Though popular opinion in Canada perceived these agreements to be primarily geared, for better or worse, at North American economic integration (Morales, 2008), Canadian business, political and bureaucratic leaders recognized their potential to legally disqualify national welfarism as a viable governmental objective (McBride, 2020; Inwood, 2004). These treaties moved far beyond traditional trade matters, as governed to that point by the 1947 General Agreement on Tariffs and Trade (GATT), to lock in prevailing neoliberal policy preferences favoured by the United States in areas such as intellectual property rights, the treatment of foreign investment, administrative practice, technical regulations and standards, competition policy, government procurement, and other areas (Panitch & Gindin, 2012; Lin & Liu, 2018; Gill & Cutler, 2014). The treaties were subject to binding state-to-state and, in NAFTA, investor-to-state dispute settlement, which created an international constitution of sorts for the protection of transnational capital, shielding economic decision-making from perceived democratic excess (Gill, 1998; Gill & Cutler, 2014; Clarkson, 2008b; Morales, 2008).

But as strict as these continental and, soon after, global¹ neoliberal charters appeared on paper, and however studiously Canadian governments brought their legislation and governmental practice into conformity (Clarkson, 2008b), international disputes related to standards and technical regulations persist, as trade tribunals have found it difficult to consistently determine protectionist versus protective intent (Howse, 2000). This ambiguity creates problems for multinational capital, which confronts different environmental, consumer product, public health or worker safety measures in the multiple countries through which its increasingly complex supply chains pass. Elite dialogues within the Organization for Economic Cooperation and Development (OECD) and at the World Trade Organization (WTO) have dedicated considerable thought to what “good” or “effective” domestic regulation should look like in and for a globalized world economy. At the same time, liberal-capitalist states have experimented with institutional and voluntary means to collaborate internationally, often in partnership with the private sector, to align or mutually accept each other’s technical regulations, standards and conformity assessments procedures in the name of facilitating trade. This activity is captured by the category of *international regulatory cooperation* (IRC), “a highly differentiated bundle of techniques for reconciling the needs of international trade with the diversity of national regulatory environments and public demands” (Bermann, Herdegen, & Lindseth, 2000, p. 1). Those techniques range from simple information-sharing arrangements (including the sharing of confidential business information used in the regulatory process) to mutual acceptance of national risk- or conformity-assessment procedures to full-on

¹ The NAFTA text drew from and pre-empted the single undertaking agreements of the WTO that were the result of the Uruguay Round of the GATT negotiations (1986–1993).

harmonization of business regulations. Harmonization usually means one country agrees to adopt another's standards, procedures and/or rules affecting an industry, sector or economic activity.

While there is a strong body of critical political economy research on Canadian state transformations and neoliberalization during the free trade period, less attention has been paid to the institutional, voluntary and improvisational IRC *processes* in Canada. We can include in this category the CUSFTA- and NAFTA-period technical working groups related to regulations and standards, the regulatory dialogues within the 2005 Security and Prosperity Partnership of North America (SPP), and more recently, the 2011–present Canada–U.S. Regulatory Cooperation Council (RCC). One possible reason for the lack of scholarly interest in these low-key, often technocratic practices is that it is difficult to measure their influence on public policy outcomes; some have even called them impervious to democratic practice (Clarkson et al., 2002). As noted in an early report of the NAFTA Commission for Environmental Cooperation (1997), the “complex web of NAFTA institutions, ranging from ministerial-level councils, with trinational secretariats, to lower-level committees, subcommittees and working groups, is largely invisible to those not directly involved in them” (p. 11). It is also possible that the popularity of new constitutionalism within critical globalization studies, with its emphasis on international law and the “downward” imposition on government of disciplinary neoliberalism, “leaves unexamined other potentially significant interspatial circuits through which neoliberalized regulatory programmes may be animated” (Brenner et al., 2015, p. 130). As Brunelle (2008) implores, in attempting to unravel “the sense and scope of the new order” created by

neoliberal free trade architectures and mentalities, we need “more than a study of its norms and frameworks [but] a review of its living institutions as well” (p. 111). It is my belief that a bottom-up analysis of Canadian experiments in IRC has great potential to shed light on the locally and historically contingent production of neoliberal governance in the free trade period (1989–present).

The relevance of such research is increased with the emergence and proliferation of regulatory coherence or “good regulatory practices” chapters in recent free trade agreements and other international regulatory cooperation exercises between states. According to Lin and Liu (2018), these practices, aimed at “rationalizing the domestic regulatory environment”—by shaping regulatory “inputs” rather than relying on states to contest “outputs” in binding treaty-based arbitration—may eventually “eclipse the existing international economic order,” while building “a new normative infrastructure” governing international trade (p. 150). For more than three decades, Canada has been “at the forefront” of the development of such regulatory programmes (OECD, 2002, p. 7) and signed the first-ever regulatory cooperation chapter in a free trade deal (with the EU) in 2017. Trade economists and regulatory experts supportive of IRC claim it can boost competitiveness and facilitate trade without sacrificing high standards for public safety and environmental protection. Business groups representing multinational corporations are optimistic that IRC efforts linked to the spread of “good regulatory practices” will encourage “a paradigm shift in the mind-set of regulators,” while “limiting the role of government in standard setting and conformity assessment” (U.S. Chamber, 2021, para. 8).

However, Lin and Liu (2018) worry that the dominant role given to transnational capital in practices of IRC “could not only curtail the regulatory autonomy of governments to act in the public interest, but also pose credible threats to both distributional justice and democratic legitimacy” (p. 177). Wiener and Alemanno (2015) point out that cooperation aimed always at convergence, without considering the benefits of regulatory variance (e.g., to learn which of different approaches to the same problem are more effective), can have costs for society that are just as significant as those experienced by multinational capital. The deregulatory potential of IRC is also significant, as prioritizing trade-facilitating regulation may pre-empt more precautionary or protective regulations in a period of intensifying ecological decline caused by human economic activity (Trew, 2019; Treat, 2019). The global backlash to the use of potentially carcinogenic and ecosystem-disrupting crop protection products, the prevalence of phthalates (a known endocrine disruptor) in hundreds of consumer products, and the hazardous (to marine life in particular) proliferation of single-use plastics are but three high-profile examples of where alignment of least-trade-restrictive rules may pose unnecessary risks to humans, other animals, and the environment (Trew, 2019; 2021).

Research question

Having laid out the relevance of critical research into the practices of IRC, my primary research objective in this thesis is to examine those practices developed and deployed by Canada and the United States in the Regulatory Cooperation Council. Specifically, I ask what is the role of state and non-state participants in the RCC and how does it compare with previous governmental efforts to minimize variance in and/or harmonize North American technical

regulations and standards? This question, and the qualitative methods I employ to try to answer it, are partly inspired by Braithwaite and Drahos's impressive study of global business regulation (2000) and Clarkson's efforts (2002; 2008a; 2011) to uncover the practices and outcomes of standards-related international working groups established under NAFTA and then the Security and Prosperity Partnership. Through extensive interviews, procedural histories and an analysis of then current practice, Braithwaite and Drahos conclude that corporate and hegemonic state interests usually but needn't always dominate spaces of global rule-making. Precisely because of this power imbalance, the researchers "decided to pursue knowledge that would be illuminating to social scientists, and to place that knowledge in a framework that would be most useful to the weaker players of global regulatory games—citizen groups and developing countries" (p. 5). On a similar but much smaller scale, this thesis builds on my own previous research on the RCC, which found examples of how IRC can limit the regulatory options of government for the purpose of protecting public health, worker safety and the environment. Prior to starting this thesis, I had participated as a passive observer in RCC consultations in Ottawa and Washington, D.C., as well as in Canada–EU Regulatory Cooperation Forum (RCF) stakeholder sessions organized under the purview of the Comprehensive Economic and Trade Agreement (CETA). These interactions provided me with a glimpse of the regulatory cooperation *process* that it is not possible to glean from public records on Canadian, U.S. or EU government websites. My earlier research also led to me to certain preliminary theories about the experiences and roles of government regulators and private stakeholders in the Canada–U.S. RCC process. Those theories are summarized below, developed in more detail in Chapter 1, and tested in Chapter 3, which contains a case study on the RCC as a historically and locally

situated technology of governance deriving from neoliberal global governmentality (Larner & Walters, 2004a, 2004b). Before getting to these chapters, we should familiarize ourselves a bit with the subject of this thesis, which is the Regulatory Cooperation Council.

Situating the Regulatory Cooperation Council

The Regulatory Cooperation Council (RCC) was launched by U.S. President Barack Obama and Canadian Prime Minister Stephen Harper in February 2011, as a means “to promote economic growth, job creation, and benefits to our consumers and businesses through increased regulatory transparency and coordination” (White House, 2011, para. 1). Both governments proposed this could be done while maintaining sovereign regulations and without compromising “high standards of public health and safety and environmental protection” (para. 3). Government regulators in both countries would work together to share information on, align or mutually recognize each other’s regulatory measures, standards, impact assessment methodologies and risk management practices in areas where private sector actors claimed regulatory variation created unnecessary costs or hampered trade. Industry input was key to developing the RCC’s joint action plan and, a year later, joint forward plans to be carried out by binational regulatory working groups (Treasury Board Secretariat, 2011). Consultations with Canadian and U.S. business in 2010 and 2011 produced hundreds of recommendations that were narrowed by the RCC secretariats of both countries into about 100 action items under 29 initiatives. These initiatives covered policy areas as varied as animal and plant health, food safety, pesticide approvals, food and consumer product labelling, automotive standards, rail safety and transportation of dangerous goods, management of chemicals, aquaculture,

connected vehicles, trucking, marine transportation, personal health products, medical devices, nanomaterials, and greenhouse gas emissions from trade. On top of being “of immediate concern to industry stakeholders,” these cooperation targets “were already at various stages of discussion with regulators in either country” (Carberry, 2017, p. 1). Unlike past Canada–U.S. cooperation in the CUSFTA and NAFTA technical working groups, but somewhat like what was planned for the Security and Prosperity Partnership (see Chapter 2), the RCC workplans would be led by regulatory departments, not trade officials. The goal was, “to ensure the heads of regulatory agencies were primarily accountable for the commitments from the countries’ leaders. In turn, the overall strategy and oversight was provided from the centre of government in both countries” (Carberry, 2017, p. 1).

Another key difference between the RCC and prior Canada-U.S. regulatory cooperation exercises was the explicit connection to best practices for rationalizing regulatory policy (see chapters 2 and 3) that have been progressively elaborated at the OECD and WTO since 1995. These so-called good regulatory practices include the use of regulatory impact analysis (and cost-benefit analysis) in the selection of regulatory tools, a preference for flexible or government-audited “outcome-based” regulation (versus government monitored and enforced process-based rules), requirements to adopt international standards or technical regulations wherever possible, and other means for reducing the risk that governmental action will create unneeded costs or inefficiencies for government, the private sector and the global economy. Though they have international reach, many of these “good” regulatory practices ultimately derive from U.S. administrative law (Aman, 2002; Lin & Liu, 2018). Regulatory reforms in

Canada and the U.S. since CUSFTA have bound public regulatory agencies to increasingly sophisticated disciplines in an effort to encourage market-facilitating regulation. These procedural requirements “can be rather demanding in actual practice and indeed may well go beyond the reach of many countries’ domestic institutions,” according to Lin and Liu (2018, p. 176). On the other hand, government and private sector actors favourable to the OECD benchmarks of “good” regulation claim they significantly increase the chances that international regulatory cooperation will succeed. For example, the U.S. Chamber of Commerce (2017) states that “the implementation of good regulatory practices alone is a significant step toward cooperation, since well-designed regulations produce outcomes that generate fewer cross-border challenges” (p. 4).

Hypothesis and theoretical approach

Robert Cox, in his highly cited 1981 essay, encouraged scholars of international relations to be careful not to let theory overdetermine their research into state power and world systems, but to “give proper attention to social forces and processes” that produce them both (p. 128).

Theory, continued Cox, should be based on “changing practice and empirical-historical study, which are a proving ground for concepts and hypothesis,” and as reality changes, old concepts need to be “adjusted or rejected and new concepts forged.” This can be done in a problem-solving way, as in much international relations scholarship on IRC (e.g., Wiener & Alemanno, 2015; Hale, 2019; Bull, et.al, 2015; Mattli & Woods, 2009) or in a critical way, which situates a similar problematic in a larger picture to determine how the parts and the whole are related (Cox, 1981, p. 129). Where problem-solving theory is conservative, taking the status quo for

granted, critical theory, in challenging the current order and seeking workable alternatives, can also be a guide to actions for changing it. I believe that empirical research on the practices of international regulatory cooperation in such venues as the Canada–U.S. RCC can both benefit from and inform critical international relations and political economy scholarship on free trade and regionalism, neoliberalism, globalization, and the administration of the state (Gibb 2015; Cox, 1991; Panitch & Gindin, 2008; Sassen, 2004; Aman, 1995).

I theorize that the primary target of IRC is the individual regulator herself rather than any one outcome of regulatory cooperation or harmonization. In other words, the RCC can be understood as a technology of global market governance which aims “to subtly reengineer the values, procedures and substantive forms” (Collier and Ong, 2005, p. 13) of regulatory practice. By directly enlisting regulatory officials in the management of North American trade, in close partnership with private sector and, to a lesser extent, non-industry civil society groups, executive level authorities in Canada and the U.S. become critical nodes, arbiters of legitimate governmental action, in the regulation of global capitalism. As elaborated in Chapter 1, I have adopted a global governmentality research perspective—“a manner of looking, a specific orientation” (Bröckling, Krasmann, & Lemke, 2012, p. 15)—that is intended to highlight the active production of knowledges and governmental practice (“how” questions) relevant to “specific configurations of power” (Larner & Walters, 2004b, p. 4). Power, in this analysis, is not sought out in a unified capitalist state or corporate class but, per Miller and Rose (2008), constituted by “a profusion of shifting alliances between diverse authorities in projects to govern a multitude of facets of economic activity, social life and individual conduct” (p. 53). An

analysis of international regulatory cooperation on these terms “is concerned with the means of calculation, both qualitative and quantitative, the type of governing authority or agency, the forms of knowledge, techniques and other means employed, the entity to be governed and how it is conceived, the ends sought and the outcomes and consequences” (Dean, 2010, p. 18).

International regulatory cooperation, which problematizes standard- and regulation-related obstacles to efficient global commerce, and which seeks *effective* ways to coordinate across borders, in close collaboration with regulated entities, to remove these obstacles, lends itself to this kind of research perspective. As does the putatively voluntary nature of trade-related cooperation: until very recently, IRC was not codified in international law with the same meticulousness as other neoliberal disciplines, but depended on willing partnerships between government, industry and civil society. By analyzing such activity on its own terms, we may hope to uncover the “dreams, schemes, strategies and manoeuvres of authorities that seek to shape the beliefs and conduct of others in desired directions by acting upon their will, their circumstances or their environment” (Dean, 2010, p. 45). We can then assess whose and what kinds of interests are supported by IRC projects like the RCC, and what alternative governmental rationalities and programmes may be excluded or obscured by its functioning, all without recourse to difficult-to-prove assumptions about class or ideological allegiances, for example, and while maintaining a critical distance that problem-solving assessments of the same governmental practices fail to achieve.

Furthermore, governmentality studies favour “a view of power which is dispersed, in which the state is not a necessary or logical centre but one amongst many historical

configurations of government” (Larner & Walters, 2004b, p. 4). For instance, Braithwaite and Drahos (2000) found “no master web of globalization” in their extensive interviews with participants involved with the contested production of global business regulation, but many “webs of influence” (p. 7). A governmentality lens has wide application to studies of globalization, the elaboration of trade disciplines in particular, which seek to standardize “social and policy outcomes according to ‘benchmarks’, ‘best practices’, and ‘good governance’ institutions” (Morales, 2008, p. 23). But this analysis need not exclude, and can in fact complement and enhance, critical theories of globalization such as the new constitutionalism, with their important insights into the disciplinary effect of neoliberal legal and administrative architectures.

Methodology

In 1978, Foucault said of his genealogical method to the study of government:

the target of analysis wasn’t ‘institutions’, ‘theories’, or ‘ideology’ but practices—with the aim of grasping the conditions that make these acceptable at a given moment.... It is a question of analysing a ‘regime of practices’—practices being understood here as places where what is said and what is done, rules imposed and reasons given, the planned and the taken-for-granted meet and interconnect (quoted in McIlvenny, Lindegaard, & Klausen, 2016, p. 37).

An analysis of the practices of regulatory cooperation in the Canada–U.S. context is complicated by the fact that very little of this work is documented in any detail. The available information on

government websites and in sparse primary research on Canada–U.S. regulatory cooperation almost always focuses on summaries of myriad work plans and depends on the stated objectives of government. To fill in their understanding of global business regulation, Braithwaite and Drahos (2000) employed a “combination of the qualitative methods of anthropologists and historians” to study “global regulatory communities/cultures which have sufficiently finite numbers of living key actors and sufficiently limited numbers of documentary sources...for us to be thorough enough to be persuasive” (p. 13). Their goal was to generate a “micro-macro theory of full sweep and power”:

The methodological prescription is to gather data on the most macro phenomenon possible from the most micro source possible—individuals, especially individuals who act as agents for larger collectivities. The individuals we found worth interviewing were those with a capacity to enroll others to pull one of the significant strands in a web of global influences (p. 14).

My research similarly draws the publicly available government, private sector and academic accounts of the RCC into conversation with first-hand experiences gathered from two dozen RCC participants in government, the private sector and non-industry groups. The primary aim of such a descriptive case study is “to get the story down for the possible benefit of later policy-makers, scholars, and other citizens” (Odell, 2001, p. 161). But as mentioned above, I also hope that my analysis of this qualitative “micro” data can contribute to “macro” theoretical debates about the production of global governance, particularly but not exclusively in Canada, in the recent free trade period (1989–present).

The ethics approval for my interviews was secured in November 2019 and interviews were completed by July 2020. The interviewees are concentrated in three main groups: Canadian government officials who worked in the RCC Secretariat at some point between 2011 and 2018; Canadian government regulators who were involved in sector-specific RCC work at the departmental level; and industry and non-industry civil society representatives who participated in some of the RCC's consultations with stakeholders. My interview questions (included in the Appendix) were similar for both parties, as I was aiming to draw out opinions and experiences with RCC-based regulatory cooperation as well as to clarify practices that are not clear from governmental summaries of the RCC work plans. For example, government participants were asked to describe what purpose the RCC had, how it affected their work, how Canada and the U.S. regulate differently, whether the RCC had been successful, and what role the public and civil society groups played in regulatory development, among other open-ended questions. Civil society interviewees (industry and non-industry) were asked how they felt they fit into the RCC process, whether the government took their interests seriously, how satisfied they were with the RCC outcomes, etc. There were three main reasons to focus on Canadian sources, two of them purely practical. First, it is simply not as easy to get hold of U.S. departmental officials, which was especially true in the lead-up to a hotly contested U.S. election. Second, focusing on the Canadian experience helped to limit the research to a manageable level. Third, the Canadian RCC Secretariat was more densely and permanently staffed than the U.S. secretariat within the Office of Information and Administrative Affairs (OIRA), making a historical-ethnographic approach, similar to that taken by Braithwaite and Drahos (2000), logical and potentially fruitful.

However, given that ideas about regulatory cooperation are themselves the subject of cross-border learning and information exchange (Djelic, 2006, p. 69), and that the establishment of the RCC was initially a U.S. idea—albeit one taken up enthusiastically in Canada—I have attempted to account for my lack of interviews with executive-level regulatory officials in the U.S. by examining public records on the purpose and value of international regulatory cooperation from U.S. and Canadian sources. U.S. executive orders on good regulatory practice and, subsequent to the RCC’s establishment, regulatory cooperation provide further insights into the thinking and intended function of the RCC working groups from the U.S. perspective. In one case I was able to reach a U.S. regulatory official who was the lead in one of the RCC’s chemicals-related working groups. In fact, a significant number of my interviewees outside of the Canadian RCC secretariat, including private stakeholders and government regulators, were involved with chemicals regulation and management. This accidental outcome of the interview process somewhat limits any holistic conclusions I can make about RCC practices, but it also lets us more comprehensively fill in (see Chapter 3) a picture of IRC in a politically contentious and highly trade-sensitive area of public policy.

Chapter outline

In Chapter 1, I lay out my theoretical guidance and assumptions. The origins of the joint problematization of international regulatory variance and domestic regulatory quality are considered from a liberal-internationalist and critical point of view. The latter includes a summary of new constitutionalist, left-nationalist and Marxist critiques of neoliberal state transformation in the free trade period. After assessing the strengths and weaknesses of these

critical research approaches, I make a case for adopting a global governmentality lens for the study of IRC, one that prioritizes practice and experience over theory or institutions, to expose which actors are empowered and which governing rationalities reinforced or excluded.

Before applying this analytical approach to my case study of the Canada–U.S. Regulatory Cooperation Council, Chapter 2 situates the RCC at the tail end of a history of Canadian governmental experiments in regulatory and standards alignment with the U.S. since the CUSFTA. Much of the critical writing on these events has, as Morales notes (2008), described international cooperation institutions as being aimed at continental economic integration in North America. Continentalist ideology cannot be discounted as a factor in the persistence of Canadian government officials in these pursuits with the United States (Inwood, 2004; Clarkson, 2008), nor can business mobilization against welfarism and in support of economic governance architectures that benefit transnational capital (Inwood, 2004; Morales, 2008). But these are insufficient grounds for understanding the rationalization and outcomes of the progressive codification of horizontal regulatory disciplines on governments in CUSFTA and its progeny agreements. These disciplines, and the binational working groups established to align Canadian and U.S. regulatory policy, are considered in some detail, with a focus on “how” versus “why” questions.

In Chapter 3, I analyze the practices of the Canada–U.S. Regulatory Cooperation Council as experienced by government, business and civil society actors. As discussed above, the objective here is primarily to illuminate a largely hidden practice in international governance with implications for public policy development within and beyond North America. This case

study also serves as a theoretical testing ground for the appropriateness of global governmentality as a framework for understanding the production of “good” (i.e., enterprising and self-directed) regulators and regulatees. My analysis strays somewhat from left-nationalist and Marxist writing about continental integration by emphasizing, rather than footnoting, the fundamental supporting role played by domestic regulatory policy reforms, including refinements to cost-benefit analysis and “red tape reduction” directed centrally by the Treasury Board Secretariat in Canada and the Office of Management and Budget in the United States. These and other “good regulatory practices,” in OECD parlance, represent a “politically guided intensification of market rule and commodification” (Brenner, Peck & Theodore, 2009, p. 184) that is incompletely theorized by critical scholars, despite the importance of IRC to business strategies and the governance of international trade.

The final, concluding chapter considers the strengths and limits of this global governmentality analysis of the Regulatory Cooperation Council, while outlining practical implications of my research for citizen groups and other members of the public who may be or feel excluded from current IRC projects. I also comment on the inclusion of “good regulatory practices” and regulatory cooperation chapters in newer free trade agreements. In one important sense, this development has the potential to bring us full circle in the saga of governmental efforts to deal with international regulatory variance: from trade-based disciplines in the GATT through institutional ad-hocery and voluntary, regulator-based cooperation, right back to new legal disciplines in evolving and ever-expansive global trade architectures.

Chapter 1: Theorizing international regulatory cooperation

Regulation is about constant improvement. It's a fluid process (GOV1, personal communication, April 22, 2020).²

As discussed in the introduction, international regulatory cooperation denotes a number of governmental activities ranging from the simple but routine sharing of information (e.g., scientific data, risk assessments, confidential business information, etc.) to the mutual recognition of standards or practices (e.g., food safety protocols, conformity assessments, etc.) to the full-on alignment of regulatory approaches (e.g., where one country agrees to use the same standards or regulations as another country). IRC does not capture just any kind of international cooperation but is a specific governmental technique aimed at trade-facilitation and the effective use of government, one that “often arises from the confluence of regulatory reform efforts, generally undertaken at the national level, with trade liberalization efforts that, by definition, occur across borders (Wiener & Alemanno, 2015, p. 105). The co-evolution of Canadian regulatory reforms and trade-based practices of cooperation are outlined in detail in Chapter 2. After considering some theoretical alternatives, this chapter makes a case for applying a governmentality lens to the analysis of IRC that diverges from, but also complements, critical (e.g., left-nationalist, Marxist, and “new constitutionalist”) research into Canadian state transformation in the free trade period. First, we should briefly summarize how

² As explained again in Chapter 3, interview participants for this thesis had the option to remain anonymous, in which case they are given a code (e.g., GOV1, CS1, etc.).

IRC emerged as a possible solution to the problems of global regulatory variation and perceived regulatory overreach by liberal capitalist states since the late 1970s.

Following the lowering of global tariffs through successive negotiations of the 1947 General Agreement on Tariffs and Trade (GATT), by the Kennedy Round of the GATT in 1964, so-called non-tariff barriers to trade, or non-tariff measures (NTMs), were taking on more weight as a problem of the emergent liberal economic order (World Trade Organization, 2012b). “Lowering tariffs has, in effect, been like draining a swamp,” said Robert Pastor in 1980. “The lower water level has revealed all the snags and stumps of non-tariff barriers that have to be cleared away” (quoted in Anderson & Sands, 2007, p. 11). Up to the Tokyo Round of the GATT negotiations in the 1970s, the U.S. government had been focused on state subsidies as enemy NTM number one, based on a belief in Washington that with tariffs tamed, other countries were taking advantage of the U.S. via state domestic support programs (Destler, 2005). However, “technical barriers to trade,” such as domestic environmental and food safety regulations, were also taking on more importance in the GATT negotiations, culminating in 1979 with the signing of the U.S.-initiated plurilateral Agreement on Technical Barriers to Trade (or Standards Code) by 39 member countries. At the top of that agreement’s lengthy list of commitments, parties promised not to apply regulations or standards “with a view to creating obstacles to trade,” and were enjoined to adopt international standards where they exist, except where those standards were considered by a government to be inadequate for the purposes of protecting national security, preventing deceptive practices, protecting human or animal health or safety or the environment, or for fundamental climactic or technological

reasons.³ The rationale behind such disciplines, like that of the GATT itself, can be found in the thinking of neoliberal economists going back to the 1930s. Hayek, for example, accepted that some governmental regulation was appropriate so long as the calculable costs were not too high. In his 1944 manifesto against state planning, *The Road to Serfdom*, he wrote:

To prohibit the use of certain poisonous substances or to require special precautions in their use, to limit working hours or to require certain sanitary arrangements, is fully compatible with the preservation of competition. The only question here is whether in the particular instance the advantages gained are greater than the social costs which they impose (1965, p. 37).

With the GATT agreement on regulation and standards directed outward at perceived international regulatory barriers to trade, the U.S. government and big business lobbies were simultaneously fretting about the wave of regulatory activism at home triggered by Rachel Carson's 1963 book, *Silent Spring*. From the Carter administration on, an anti-regulation mood set in, spurred by fears that too much or too strict regulation would compromise U.S. industrial competitiveness and lead to outsourcing (Aman, 1995; Short, 2012). Government came under pressure to justify its very existence against the "often 'tyrannophobic' rhetoric that pervades elite academic discourse about regulation and that co-exists alongside arguments about regulatory efficiency and efficacy" (Short, 2012, p. 2). Democratic and Republican administrations alike responded with a variety of regulatory reforms to rationalize "light touch" government regulations, industry self-regulation and trade-based international regulatory

³ The 1979 GATT Agreement on Technical Barriers to Trade, or Standards Code, Articles 2.1 and 2.2: https://www.wto.org/english/docs_e/legal_e/tokyo_tbt_e.pdf

cooperation. These and other market approaches to domestic regulation “help to satisfy not only the domestic political demand that regulation be as cost effective and as unobtrusive as possible, but they provide the kind of flexibility that can more easily speak effectively to global entities who do business in various countries” (Aman, 1995, p. 438). Whether one saw the global market as an undeniable factor “that militates in favor of more cost-effective, less intrusive approaches to solving regulatory problems,” or one that “requires the formulation of new problems and issues in which the linkage between national regulatory regimes and global regulatory regimes is crucial” (Aman, 1995, p. 441), market-oriented regulatory reforms were taken up as essential by political parties of all sides. State regulation was increasingly seen as “a particular kind of problem—a problem of state coercion—and this channeled legal-academic dialogue about reform toward particular kinds of solutions, notably those that promised non-coercive ways of governing” (Short, 2012, p. 6).

This problematization of government in the U.S. would have deep repercussions north of the border. As a semi-peripheral liberal-capitalist state, Canada has for much of its relatively short history sought to “take advantage of international markets [while] insulating the country somewhat from their volatility” (McBride, 2020, p. 72). As McBride describes it (2020), though “the long-run structural trend” is one of “ever-increasing economic integration with the United States,” nationally oriented economic development and nation-building zeal have, at times since Confederation, trodden different ground (p. 74). Throughout the 1970s and into the ‘80s, as Western nations were building on the GATT disciplines to include many more areas of governmental authority, the collapse in oil prices and rise of “stagflation” dragged Canada into recession, heightened government debt and triggered ideological battles between national

welfarism and an emergent continentalist neoliberalism. The latter was predicated on much closer Canada–U.S. economic relations, a commitment to limited, business-like government and deregulation of government protected sectors, and the neoliberals’ almost religious belief in the self-correcting free market. Rather than taking a decisive side in this contest of ideas, as conservative governments in the U.K. and United States had done, the Trudeau government, “in true Canadian fashion, equivocated and left the question to a royal commission” (Inwood, 2004, p. 70).

The Royal Commission on the Economic Union and Development Prospects (commonly known as the Macdonald Commission, named after its Chair, Donald Macdonald) began with a series of questions to Canadians that problematized the welfare state and sought new governmental programmes adapted to the shifting economic and narrative terrain: “What is the role of government? What is the ‘unique mixture’ of public and private sector activity on which the Canadian economy is founded?” (quoted in Inwood, 2004, p. 70). On the surface, these questions were open to competing futures; the Commission’s job, in that case, would be to weigh the arguments from the public, business and academia and come to a defensible conclusion. In retrospect, we can say these were in fact leading questions, reflecting (neo)liberal doubts about “the possibility and even legitimacy of its [government’s] project for achieving effects” (Foucault, 2008, p. 319). For example, the Commission was preoccupied with finding an optimal division of roles in society, between the private and public sectors, that might effectively respond to the perceived needs of a transforming global market. Its questionnaire asked:

Is there a set of principles which can define the appropriate role of government given shifting economic circumstances, preferences and needs? Does the best course into the future involve a clear separation of the public and private sectors? Or does it involve a closer partnership? Are there ways for government and the private sector to keep each other better informed? ... Within the questions concerning the relationship between governments and the private sector lie another set of questions related to the way the bureaucratic systems of the private sector on the one side and of government on the other side affect the capacity of our national industrial structure to adapt (quoted in Inwood, 2004, p. 71).

The answers that Commission participants would provide to many of these questions were buried in the final report's thousands of pages, as Macdonald himself, helped by ambitious economists and civil servants, successfully sidelined the consultation program and all but the economic component of the academic research program (Inwood, 2004, p. 88). The idea of free trade with the United States, a blip on the commission's radar at the beginning, was given an air of rational infallibility in the final report, even if entailed a "leap of faith" on Canada's part. There was simply no alternative for Canada but to drop its nationalist or "third way" ambitions and hitch its economic future to an open, "rules-based" North American market. "Proximity, history, technology, opportunity, and policy have combined to create deep and irreversible ties between Canadians and Americans," wrote one Commission policy division employee and CUSFTA negotiating team member much later, in a briefing note advocating deeper economic integration with the United States (Hart, 2006, pp. 4-5). "Governments have little control over

the pace and direction of this integration, but they do have an important influence on its shape through their regulatory and other decisions,” he added.

The popular alternative to the “leap of faith” free-trade arrangement was a kind of third national policy founded on a statist industrial strategy, a response to a revival of left political economy since the 1960s (McBride, 2020, p. 75). But as McBride notes (2020), a new domestic industrial strategy was opposed by most of Canadian capital and by the U.S. government, and made difficult by low oil prices, which undermined its prospects under any government. In the end, the Commission’s final report would be a watershed moment, dousing interventionist impulses within the federal government and decisively shifting the political climate in favour of a free trade deal with the United States—a deal that was intended to keep those impulses at bay permanently. “Our basic international stance compliments our domestic stance,” read the final report. “We must seek an end to those patterns of government involvement in the economy which may generate disincentives, retard flexibility, and work against the desired allocation of resources” (quoted in McBride, 2020, p. 77).

Negotiations on the Canada–U.S. Free Trade Agreement were launched under the Progressive Conservative government of Brian Mulroney in 1985, a year after the Macdonald Commission report came out. The plan sparked a large and diverse countermovement against free trade in Canada, but the FTA’s proponents scoffed at concerns it would create strong pressures to harmonize policy with the United States:

Almost daily, one hears that Canada will be forced to remove any social or economic policies that are more costly than those in the United States. If this is not done, say the critics, Canadian costs will be raised above those in the United States.

Canadian firms will then not be able to compete and will leave for lower-cost sites south of the border, and many of Canada's best people will follow. This harmonization argument has little support from the experience of other countries, from Canada's own past experience, or from economic theory (Lipsey and York, 1988, p. 121).

Ironically, or inevitably to critics of the CUSFTA, Canadian business would go on to make precisely these points, and raise precisely these threats of capital flight, in the post-NAFTA period, as they sought to deepen continental integration with their proposals for a common market, common foreign policy and common regulatory space (see the section on the Security and Prosperity Partnership in Chapter 2). They justified these demands by the threat posed by emerging manufacturing powerhouses such as China. But the problem of U.S. protectionism, and the productivity gap between Canadian and U.S. industry, were also highlighted by business groups to steer government always further in a continental direction. According to Clarkson et al., these vulnerabilities in Canada's economy led government "to an increasingly singular focus...on accessing and securing access to the immensely lucrative market to the south" (Clarkson et al., 2002, p. 24).

For Inwood, the shift in dominant policy preference in Canada, from domestically oriented welfarism to a continentally and internationally oriented free-market fatalism, was primarily ideological, with policy options flowing outwards:

What the Macdonald Commission did, in short, was significantly alter the lineaments, that is, the distinctive features or characteristics, of ideology in Canada by promoting and legitimizing a neoconservative continentalist perspective

previously found only among a small number of senior government bureaucrats, a fraction of the business community, and mainstream economists.... Changes in the political framework created the conditions for limiting the role of the state; changes in the economic framework fostered and promoted greater economic integration between Canada and the United States (p. 309).

It is almost certainly the case that the consensus the Macdonald Commission succeeded in creating around free trade with the United States played a critical role in defining and constraining ideas about appropriate governmental action in Canada. However, ideology alone cannot provide a satisfying account of the specific regimes of governmental practice that would be rationalized and test-driven in CUSFTA and post-CUSFTA trade architectures. In the following sections, I examine how critical left-nationalist, Marxist and new constitutionalist thinkers have grappled with these phenomena in Canada.

Left-nationalist, Marxist and new constitutionalist theories of globalization

Left-nationalist critiques of corporate-led globalization dominated the public debate about free trade in Canada from the 1980s to well into the new century (Drache 1988; Cameron, 1988; Drache & Gertler, 1991; Clarkson, 1991; 2008a; 2008b; Grinspun & Shamsie, 2007). Often this research adopted similar continentalist framing to free trade's boosters in business and government, though of course not their enthusiasm for closer economic integration with the United States. Behind concerns for Canadian sovereignty, left-nationalists implicitly challenged the *neoliberal* governmental transformations sought by Macdonald and other continentalists, even if they did not use the term until much later. For example, on the eve of the signing of the

CUSFTA, Drache (1988) warned the Mulroney-Reagan deal would “make Canada more dependent on American judicial processes and practices and, ultimately, on the whim and mood of Congress” (p. 78). But more fundamentally, he said, the objective of the FTA was to bind government “to the crude logic of market-based liberalism, a liberalism that lets the market determine competitive advantage while requiring that governments give up the right and ability to intervene in the economy” (p. 82). The notion that the deregulatory pressures of free trade were imposed on Canada from beyond, with the backing of domestic capital, pervaded much critical as well as liberal-internationalist analysis of the CUSFTA through its evolution in the NAFTA and, post-9/11, the Security and Prosperity Partnership. On the eve of Obama’s first U.S. presidential victory, Clarkson, one of the most prolific left-nationalist scholars of the early- to mid-free trade period in North America, would describe the deregulation and reregulation of the previous twenty years as a response to “accelerating technological and organizational interconnections” under globalization (2008a, p. 14). As transnational corporations increasingly “raised their capital, installed their production operations, and pursued their marketing strategies beyond the boundaries of the states where their head offices were located,” he continued, they demanded “types and sites of regulation more supportive of their expanding entrepreneurial objectives.” States obliged big business by creating “new regulatory regimes” in regions such as the European Union, globally at the World Trade Organization or in free trade blocs such as NAFTA, “in which TNCs would be empowered to operate across the international boundary free of many of the Canadian and U.S. government regulations that had previously constrained them” (Clarkson, 2008a, p. 15). In this analysis, free-trade-era transnational governance has intentionally weakened the Canadian

state while empowering transnational capital, producing “competitive deregulation” and “regulatory chill” here and across the NAFTA region (p. 123), but nothing approaching the kind of strong “governance locus” of the European Union (p. 455). In this vacuum, U.S. norms and desires prevail, and corporate influence over public policy trumps democratic engagement on the development of environmental, public health or other regulations.

Marxist analyses of this period have, like the left-nationalists, emphasized government responses to the internationalization of capitalist modes of production which take advantage of efficiencies created by lower labour costs, declining transportation and communications costs, proximity to emerging markets, etc. In this picture, states acceded to the demands of dominant capitalist interests with respect to facilitating the globalization of their supply chains. This necessitated an “internationalization of the state,” in which economic policy was redirected from national development to the interests of “the global economy.” To ensure a smooth transition, control over finance, trade and industrial policy was centralized within the executive level of government, as a means of removing it from the purview of political contention (Cox, 1991, p. 337). Free trade agreements of the period complemented and reinforced this hierarchy of departmental interests within the state while limiting acceptable policy options to those that did not interfere with international flows of goods, services, investment and people.

Marxist writing generally emphasizes U.S. dominance and the export of U.S. governance preferences, in particular in the area of finance. Within both left-nationalist and Marxist renderings of North American integration, international regulatory cooperation—e.g., international working groups established to harmonize differences in regulations, conformity assessments and standards—shows up in footnotes, if at all, as yet another deregulatory tool of

North American capital. The deliberative process of government officials and corporate lobbyists in the creation of new global rules is similarly understated in these accounts. For example, in their important history of the expansion of U.S. power via global trade and financial architectures, Panitch and Gindin (2012) only briefly note that the U.S. desire to enforce its administrative law abroad, in sovereign states, “gave rise” to global coordination between nations on the creation of institutions for this purpose (p. 223). If Canadian officials were studious and deliberative in how governmental practice needed to be adjusted to bring about this world of U.S. clone states, it merely “reflected the role adopted by the Mexican and Canadian states in representing the interests of their bourgeoisie and bureaucracies, with their own myriad links to the American state and capital” (p. 228). Panitch and Gindin acknowledge both the centrality of the state in the formation of global rulemaking and the role of people and ideas, versus historical “law,” in bringing about this transformation: “it was brought about by human agents and the institutions they created, albeit under conditions not of their making” (p. 2). Likewise, Cox (1991) describes the “development of national policies that implement the international consensus” reached in negotiations at the OECD, WTO, International Monetary Fund (IMF), and other economic summits, which occurs as “domestic-oriented agencies of the state are now more and more to be seen as conduits between world-economy trends and the domestic economy—in other words, as agencies to promote the carrying out of tasks they had no part in deciding” (p. 337).

This suggestion of the seeming powerlessness of state actors, tasked with operationalizing hegemonic projects of global capitalism, brings us to probably the most popular critical theory of the free trade period: the new constitutionalism. Much like left-

nationalist and Marxist critiques of North American integration, new constitutionalist scholars conceive of international trade agreements as part of an external governing architecture ensuring the dominance of markets and market relations within and between states. Here the legal text is key, with its power to enforce a liberal globalist order through international arbitration. According to Gill (1998), “The aim of new constitutionalism is to allow dominant economic forces to be increasingly insulated from democratic rule and popular accountability” (p. 23). The justification for limiting political reach came from the neoliberals, who believed “private forms of power and authority in a capitalist society are only fully stabilised when questions of economic rule (e.g. workplace organisation, the rights of investors) are removed from politics” (p. 23). Through free trade and investment agreements, or the incorporation of domestic legal benchmarks handed down from the OECD, World Bank or IMF, investors are empowered as key players in an increasingly globalized political economy. But because “formal democracy is ever-more institutionalized on a world scale,” democratic forces must be channeled, coopted or attenuated so that they “do not coalesce to create a political backlash against economic liberalism” (pp. 23-24). The market, and in particular the capital market, becomes a tool for disciplining economic agents and forcing governments to “sustain their credibility in the eyes of investors by attempting to provide an appropriate business climate” (p. 25). This globalized economic governance regime, which Gill labels “disciplinary neoliberalism,” depends on three sets of processes: measures aimed at permanently separating the “economic” from the “political” via laws or treaties that “lock in” free-market policy and strengthen the “surveillance mechanisms of international organizations” such as the IMF or private credit agencies like Moodys; measures “to construct markets,” by imposing internal and

external (in the WTO, for example) constraints on public institutions, “partly to prevent national interference with the property rights and entry and exit options of holders of mobile capital with regard to particular political jurisdictions”; and measures to contain social dislocation caused by the regime of disciplinary neoliberalism, for example, prudential regulation of financial institutions, or measures to handle the negative effects of the commodification of land and labour (p. 26).

What makes this new constitutionalism “new” is that it is a response to the rise in power of multinational capital in the 1980s and 1990s and the collapse of the Soviet bloc that ended the Cold War, leading to “a return to governance of a truly global capitalism” (Gill, 1998, p. 30). Gill locates the impetus for a new round of state transformation to serve the market in the 1997 *World Development Report* of the World Bank, and the locking-in of neoliberal governance with the establishment of the WTO, with its multiple agreements covering intellectual property rights, treatment of investment, regulation of services, food safety standards, and technical barriers to trade. In this vision of world order, the state is not withering away but crucial “to the reproduction and institutionalization of a particular form of global market order” (Gill, 1998, p. 31). But so are “more consensual aspects of power” such as consumerism, education and leisure, which form “an emerging ‘market civilization’” (p. 31).

Critical scholars of international political economy have found new constitutionalism thinking helpful in describing the locking-in effect of global rules covering services trade (Sinclair, 2015) and the strong protection of foreign investment (Schneiderman, 2015), for example. Transnational regulatory cooperation efforts such as the Regulatory Cooperation Council, on the other hand, with their putatively voluntary nature and commitments to

transparency, would appear at first to slip between the cracks of new constitutionalism's focus on legal texts. For example, Brenner, Peck and Theodore (2014) have challenged new constitutionalist frameworks for not adequately incorporating studies of "upwards" and sideways transfers of highly dynamic neoliberal policy reforms that are "honed, customized and proved through policy experimentation; revamped in light of unanticipated failures, conflicts and crisis tendencies; and then sometimes also purposefully (re-)circulated back into the interspatial networks of policy transfer from which they originated" (p. 131). Furthermore, many regulatory cooperation efforts depend on multi-stakeholder participation and their results are not necessarily binding, nor do they always live up to the expectations of corporate participants. Gill (1998) does argue that the inclusion of *transparency* and *accountability* benchmarks common in IRC and domestic regulatory reforms frequently "increases the structural power of capital by providing private investors with greater information, forcing states to prove their credibility, and thus makes the power of capital more precise and effective" (p. 26). But it is not clear why transparency must produce this effect and not another, nor is the potential for participatory co-regulatory spaces to produce both neoliberal *and* market-constraining regimes considered.

In general, I would argue, with Morales (2008), that the free trade period has seen a spreading out of "global" agendas aimed "at 'standardizing' social and policy outcomes according to 'benchmarks', 'best practices', and 'good governance' institutions" (p. 23). This has not occurred in a smooth, uniform way, but is forged within, between and from below the state, "in and through real-time, in situ forms of regulatory experimentation and institutional tinkering in which previous efforts to confront recurrent problems directly influence the

ongoing search for alternative solutions” (Brenner, N., Peck & Theodore, 2010, p. 190).

Importantly for my research, I believe there is more to be said about this “carrying out of tasks” described by Cox (1991, p. 337), which critical historical appraisals of the structural outcome of neoliberal globalization have only covered in a cursory way. Critical left histories of the trajectory of neoliberalization in North America have emphasized the interests that are prioritized by these market-oriented juridical regimes in Canada. However, perhaps because of their focus on external factors such as the power and influence of capital and U.S. empire, these assessments have missed or too quickly dismissed the routine governmental techniques deployed to enlist domestic state, private sector and civil society actors in the co-production of neoliberal governance. A governmentality analysis of such practices as international regulatory cooperation, with its emphasis on “how” versus “why” questions, seems quite suited to this task of building a macro view of evolving trade architectures, but from the ground up.

Governmentality and the production of “good” regulators

Though international regulatory *variation* and domestic regulatory *quality* emerged as problems of global economic governance decades ago, as examined above, *practices* of IRC are relatively recent and still “largely improvisational” (Bermann, Herdegen, & Lindseth, 2000, p. 1). These practices are “often filtered, mitigated, and channeled through processes of bureaucratic politics and related institutional dynamics” (Hale, 2019, p. 124). Because of this, proponents of IRC believe that in order for cooperation to succeed, it should take place between countries that think about and do regulation in the same way (U.S. Chamber, 2017) and where there are “shared political priorities and objectives, established institutional and interpersonal

relationships” (Hale, 2019, p. 142). At the same time, IRC is a means of spreading “good” (i.e., market-facilitating) regulatory practices to governments that have not yet adopted them, and inducing domestic regulatory agents to make decisions that are more likely to comply with the letter and spirit of international trade rules related to standards and regulations. For these reasons and others elaborated in this section, I believe that IRC projects like the Regulatory Cooperation Council are good candidates for a governmentality analysis that draws out how governmental rationalities are “embedded within programmes for the direction and reform of conduct” (Dean, 2010, p. 27), in this case the conduct of state regulatory agents and regulated subjects.

Foucault (2008) introduced his concept of governmentality, the “rationalization of governmental practice in the exercise of political sovereignty” (p. 2) in liberal capitalist societies, in a series of lectures at the Collège de France in the late 1970s. The lectures, in particular his “birth of biopolitics” series from 1978-79, were more of a history of political thought (Saar, 2011) than an examination of current neoliberal governmentality, an effort to “grasp the level of reflection in the practice of government and on the practice of government” over a two-hundred-year period (Foucault, 2008, p. 2). It was not his intention, nor did he ever “want to study the development of real governmental practice by determining the particular situations it deals with, the problems it raised, the tactics chosen, the instruments employed, forged, or remodelled” (p. 2), yet scholars since then have done just this in a number of areas. Mostly, wrote Jessop (2011) disappointedly, “governmentality studies tend to focus on the logic, rationalities, and practices of government or governmentality in isolation from this broader concern with the state’s role as a major site for the institutional integration of power

relations within the more general economy of power” (p. 62). But scholars continue to find value in Foucault’s methods and analytical framework for examining national and international governmental practice outside of grand theories of the state or capitalism—to pass universals “through the grid of” concrete practices (Foucault, 2008, p. 3).

Governmentality studies adopt more of an analytical posture than a theory that can be applied or tested against different representations of liberal government. Bröckling, Krasmann and Lemke (2010) propose five methodological principles that might guide an analytics of government. These include an emphasis on the ties between ideas and practices versus dichotomies such as power and subjectivity, or state and society; moving from the local, e.g., from specific “patterns of rationality” (p. 12), upward to potential “globalizing theoretical concepts” (p. 12); investigating “the discursive operations, speakers’ positions, and institutional mechanisms through which truth claims are produced, and which power effects are tied to these truths” (p. 12); emphasizing technologies of government, including procedural devices to shape individual and group behaviours (e.g., Who is empowered? What is ordered?); and a concern with the ways the political is “is produced in the first place” (p. 13). Grand theories are eschewed for “a research perspective in the literal sense: an angle of view, a manner of looking, a specific orientation” (p. 15). This shallowness of theory is intended to give primacy to the active production of knowledges and governmental practice “that can be used heuristically to interrogate specific configurations of power” (Larner and Walters, 2004b, p. 4).

Using this approach, we seek to understand the RCC’s “regimes of practices by means of their own terms” (Dean, 2008, p. 56). That does not discount comparisons with predecessor institutions of Canada–U.S. regulatory cooperation. In fact, such comparisons are an essential

part of contextualizing the work of the RCC—locally, in recent North American history and its political setting, but also globally as one among many efforts by government to think through the same problem of non-tariff barriers to trade. However, a governmentality approach does not assume that these past formations are “necessary stages towards the present” (Dean, 2008, p. 56). Rather, researchers should be “more nominalistic about the diversity of global spaces,” while still seeing in global governance “a particular technology of rule and placing it within the much longer trajectory of liberal political reason” (Larner & Walters, 2004b, p. 16).

Cristina Rojas (2004) deploys a governmentality approach to break through the liberal-realist dichotomy in studies of international development financing. By seeing liberalism (and neoliberalism) as a practice of governmental reason rather than a fully formed ideology, as Foucault proposed we should, Rojas posits economic development techniques as “a way of governing” globally that has shifted with changing problematizations of “the third world”—and with them new knowledge-based interventions on population whose failures, like that of conditionality after the 1980s debt crisis, spawned new governmental mentalities (p. 106). From philanthropic aid to state-led development to financialized structural adjustment, states are now, in some respects, “governed at a distance” (p. 111), by the IMF and World Bank, but expected to take the lead in coordinating antipoverty programs with their own poor constituencies and private business. Conditionality on state aid is still directed toward market reforms, with the potential for violence for non-compliance, but is concealed by the eager participation of recipient governments: “Recent divisions between good reformers—able to receive aid—and bad performers—to be reformed by force—gives almost incommensurate

power for intervention in the name of freedom from poverty in the affairs of an already stigmatized population,” says Rojas (p. 11).

In their book, *Governing the Present*, Miller and Rose (2008) propose a governmentality research agenda in which connections are sought between governmental rationalities, programmes and technologies, and the subjectivities that are empowered and activated by them. Political rationalities are defined as “the changing discursive fields within which the exercise of power is conceptualized, the moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics, and conceptions of the proper distribution of such tasks among secular, spiritual, military and familial sectors” (p. 55). Rationalities have an epistemological character, in that “they are articulated in relation to some conception of the nature of the objects governed” (p. 58). They also have an idiom, “a kind of intellectual machinery or apparatus for rendering reality thinkable in such a way that it is amenable to political deliberations” (p. 59). Programmes of government, again for Miller and Rose (2008), include the designs put forward by a multitude of government and civil society actors, including philosophers, economists, philanthropists, labour, etc., to “seek to configure specific locales and relations in ways thought desirable” (p. 61). Miller and Rose cite the examples of Britain’s language of “national efficiency” in the early 20th century, or programmes for administering the enterprise in postwar United States of America, which, they claim, created the basis for managerial authority based on “ideals of personal freedom, initiative and democracy” (p. 62). In our case, trade economics, behavioural sciences, and complex calculus modelling the precise costs of regulatory variation provide the “intellectual machinery” for the government of cross-border commerce, “in the form of

procedures for rendering the world thinkable, taming its intractable reality by subjecting it to the disciplined analysis of thought” (Miller & Rose, 2008, p. 62). Finally, for Miller and Rose, are the governmental technologies, or “calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions” (p. 55).

Jessica C. Lawrence (2018) applies Miller and Rose’s method to an analysis of the European Union’s trade and environmental agendas. Lawrence’s project does not seek “to develop a novel account of the global liberal order as a whole, but to apply Foucauldian and post-Foucauldian insights regarding the relationship between rationalities of government, technologies of government, and subject formation to the discourses and practices of the EU’s external trade/environment agenda” (p. 21). Market rationalities behind EU trade policy are “preoccupied with questions of efficiency and effectiveness,” and “recognize that power is exercised through a diversity of means that spread far beyond the state, including international organizations, non-governmental organizations, private actors, and expert bodies” (p. 61). These rationalities, found equally in EU environmental policy in competition with “rights” rationalities, are premised on the “construction of entrepreneurial subjects who will be responsible for themselves and seek to maximize their own interests and satisfaction so long as the right market conditions are in place” (p. 61). Lawrence claims a focus on governmental technologies—essentially how these rationalities are deployed to meet governmental objectives—“draws attention to the concrete mechanisms—the knowledge regimes, systems of experts, treaties, diplomacies, and so on—that produce the EU and its targets as actors, disseminate rationalities, and induce particular behaviors and conflicts” (p. 103). Citing Dean

(2010), Lawrence claims that technologies of performance, for example, involve the subsuming of domains of expertise (e.g., the doctor, the government environmental scientist) to “new formal calculative regimes,” such as auditing, transparency, accountability and “best practices,” which enable groups to be managed “at a distance,” since they are responsible for “enforcing performance standards against themselves and one another” (Lawrence, 2018, p. 113). She finds an example of these market technologies in the EU’s sustainability impact assessments (SIAs) of EU trade agreements. SIAs emphasize good governance, networks and non-governmental actors, and “utilize technologies of agency—including contractualism (e.g., outsourcing SIAs to expert consultants) and involvement (e.g., consultations with ‘stakeholders,’ third country governments, and national experts)” (p. 128). The SIA practice, she adds, also de-centres the state, is “flexible and case-specific,” and makes an effort to de-politicize trade policy, to shield it from charges of anti-environmentalism or as an encroachment on sovereignty.

There is a risk, in adopting a governmentality approach, of ultimately finding what you assumed to be true going into the research, e.g., that this or that microphenomenon (in our case, Canada–U.S. regulatory cooperation) is just another example of neoliberal governmentality at play. According to Bröckling et al. (2011), “this represents a paradoxical development: precisely because studies of governmentality possess high potential for a diagnosis of the present, they encounter resonance; but to the extent they do so, they run a danger of diminishing that diagnostic potential by repetition. As the critique itself rather than what is being criticized becomes common sense, the gesture of critical unveiling becomes obsolete” (p. 16). In a similar spirit, Tellmann (2011) argues,

It is because liberalism forms our political horizon, and because the “conduct of conduct” is indeed such pervasive form of power, that one has to be especially diligent in maintaining this distinction between the historical and the conceptual while remaining aware of their permanent oscillation. Otherwise, the very success of governmentality as a way of capturing adequately some very dominant types of power might ironically turn into an impediment to seeing other sites of power (p. 296).

We need to be diligent, in other words, in keeping historical, social and class contexts in mind—in recognizing that despite its diffuse and indeterminate nature, power in global regulatory practices remains, as Braithwaite and Drahos found, concentrated within dominant corporate-state networks. Like these researchers, I aim to be part anthropologist, part historian of a small, localized but still “global” community of mostly Canadian regulators and regulatees, through interviews with “individuals who act as agents for larger collectivities” (Braithwaite & Drahos, 2000, p. 14). My interrogation of the experiences of government and private sector participants in the RCC seeks to draw out how “the aims, methods, and targets of political reason are inscribed on subjects” (Lawrence, 2019, p. 48). Before getting to my case study in Chapter 3, the following chapter situates the RCC historically and geopolitically, at the tail end of an evolving set of global and domestic governmental technologies—institutional and normative—for dealing with the problems of regulatory variation and regulatory quality.

Chapter 2: “Inspired ad hocery”: Canada–U.S. regulatory cooperation in the free trade period

This chapter considers the recent history of technical barriers to trade as a problem of North American governance and the governmental techniques deployed in Canada and the United States to address that problem. Specifically, I examine the formal and informal institutions established in northern North America to harmonize regulations and standards and otherwise regulate in a trade-facilitative way, as envisioned in the 1989 Canada-U.S. Free Trade Agreement, the 1994 North American Free Trade Agreement, and the 2005 Security and Prosperity Partnership of North America. According to Hart (2006) these and hundreds of other informal bilateral arrangements were an essential result of “inspired ad hocery” on the part of both countries, “to manage and implement a vast array of similar but not identical regulatory regimes, from food safety to refugee determinations” (p. 14). Where possible and relevant, I draw out links between practices of international regulatory cooperation and the evolution of ideas about “good regulatory practices” within Canada and in elite international decision-making forums such as the OECD and WTO. This limited history of the free trade period in Canada breaks, to some extent, with left-nationalist and new constitutionalist accounts of Canada-U.S. economic integration, which emphasize power imbalances, free-market ideology, regulatory capture or institutional rigidity as the defining feature—or failing—of bilateral economic cooperation. Instead, my intention is to demonstrate the gradual shift in governmental emphasis from the refinement of treaty-based obligations to institutional

experimentation to governance, “at a distance,” by “good” (economizing, self-maximizing and market-oriented) regulatory subjects.

Rules for Canadian regulators from the GATT to NAFTA

In the introduction, and again in Chapter 1, I mention how free trade with Canada offered the United States a chance to test drive a binding means of internationalizing U.S.-favoured neoliberal governmental law and practice. With respect to the CUSFTA and NAFTA provisions on standards, technical regulations and conformity assessment procedures, however, these treaties reaffirmed and in some cases refined commitments both countries had already agreed to in GATT negotiations (in the Tokyo and Uruguay rounds) on rules covering technical barriers to trade (TBT) and sanitary and phytosanitary standards (SPS). CUSFTA Chapter 6, for example, reaffirms the GATT prohibition on standards-related measures or procedures that create “unnecessary obstacles to trade” except for a legitimate domestic objective *and* in a way that does not “operate to exclude goods of the other Party.”⁴ Adding a cooperative twist to the GATT commitments, Canada and the U.S. also committed, “to the greatest extent possible, and taking into account international standardization activities, [to] make compatible its standards-related measures and procedures for product approval with those of the other party” (Article 604), including standards set by private bodies. Testing and certification bodies of one country were to be recognized by the other for the purpose of demonstrating compliance with standards or technical regulations, and there could be no requirement that the body be located

⁴ Excerpts from the CUSFTA taken from the Government of Canada website, last accessed March 31, 2020: <https://www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusfta-e.pdf>.

domestically. In language that would become common in later international trade treaties, Canada and the U.S. agreed to limit the fees charged to companies for certifying their goods to the reasonable cost of providing these services—an elaboration of GATT commitments that fees not discriminate against imported like products. In another refinement of the GATT notice procedures, Article 607 of CUSFTA, “Information Exchange,” requires Canada and the U.S. to provide “persons of the other Party” (e.g., private sector representatives and other members of the public) with the full texts of proposed new regulations and at least 60 days’ time to develop responses “and to discuss them with the appropriate regulating authority.” Such “transparency” provisions, drawn from the U.S. Administrative Procedure Act and adopted in Canadian federal regulatory practice in 1986 (Steger, 1988), would become standard features in future trade negotiations, adapted based on evolving dialogues at the OECD on “good” regulatory management (see below). In the CUSFTA agriculture chapter, parties agreed to “seek to harmonize such technical regulations” that may hinder agricultural trade, such as meat inspection, which was to be limited to spot checks “to ensure compliance with inspection requirements” (Article 708). This last item—technical regulations in the agricultural sectors, including border inspections—was a priority for Canadian as well as U.S. producers (Hart, 1994, p. 218). Canadian complaints with U.S. food safety measures remain an issue to this day and are part of recent non-treaty-based regulatory cooperation efforts (see Chapter 3).

To help govern these new trade-based rules for regulation, at least in areas related to food safety, CUSFTA Chapter 7 established bilateral working groups, “with equal representation from each Party,” in the following areas: animal health; plant health, seeds and fertilizers; meat

and poultry inspection; veterinary drugs and feeds; food, beverage and colour additives and unavoidable contaminants; pesticides; and packaging and labelling of agricultural, food, beverage and certain related goods for human consumption. The working groups were to meet not less than once a year and report on progress to the Canadian minister and U.S. secretary of agriculture, respectively. Through this work, Canada agreed to move toward an equivalence agreement with the U.S. on pesticide safety.

Environmental advocates pointed out that such regulatory harmonization provisions in trade deals could undercut high standards in jurisdictions showing environmental leadership. For instance, according to Shrybman (1993), prior to CUSFTA, Canada required “that a pesticide be shown to be safe before it is approved, whereas in the United States a pesticide can be approved if the benefits of its use are shown to outweigh the risks” (p. 282). Shrybman also worried about the relegation of decisions about regulatory harmonization to the GATT and similar institutions that “are less accountable to the community and more amenable to corporate influence and control” (p. 282). This was very likely the point of including such regulatory disciplines in the CUSFTA, which created a mechanism for achieving the Macdonald Commission’s recommendation for “detailed codes of national conduct...to govern resort to non-tariff measures such as discriminatory government procurement practices, product standards, and customs and administrative procedures” (Inwood, 2004, p. 95). However, despite refining the GATT text on technical barriers to trade somewhat, the CUSFTA disciplines were not precise on which non-tariff measures were legitimate and which so-called disguised trade barriers, and no CUSFTA disputes were ever launched to test the matter. The resolution of such problems remained a diplomatic and technical endeavour, carried out in working

groups whose poorly documented efforts would be rethought and reworked a few years later with the passage of NAFTA.

The coming into force of NAFTA in 1994 pre-emptively codified (in a binding regional FTA) revised disciplines on standards, regulations, and food safety measures that were then being negotiated in the Uruguay Round of the GATT, which culminated in the establishment of the WTO in 1995. Reflecting the growing environmentalism of the period—and the threat that ENGOs posed to NAFTA’s safe passage through the U.S. Congress—Chapter 9 of NAFTA (Standards-Related Measures)⁵ specifies that the parties (Canada, the U.S. and Mexico) maintain the right to adopt measures “relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation,” even if these measures prohibit imports from other parties that fail to meet these standards or requirements. Article 907 of NAFTA refines once more the criteria on which the legitimacy of environmental measures is to be tested. For example, the measures must be based on an assessment of risk that takes into account the available science, intended end uses, processes or production, operating, inspection, sampling or testing methods, or environmental conditions, among other considerations. In the event of inconclusive scientific data on the risks posed by a certain product or activity, parties to NAFTA may adopt provisional technical regulations that create trade barriers, but these should be *temporary* and governments should reassess the regulation when a fuller scientific impact assessment becomes possible. NAFTA requires standards-related measures to be based on “relevant

⁵ Excerpts from the NAFTA text taken from the Government of Canada website, last accessed March 2, 2020: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/09.aspx?lang=eng>.

international standards” except where these “would be an ineffective or inappropriate means to fulfill its legitimate objectives.” And Article 905.3 states that nothing in the chapter prevents a Party, “in pursuing its legitimate objectives, from adopting, maintaining or applying any standards-related measure that results in a higher level of protection than would be achieved if the measure were based on the relevant international standard.”

The NAFTA TBT provisions also move the goalposts forward with respect to harmonizing standards and technical regulations across borders. As in the CUSFTA, Article 906.2 of NAFTA states (emphasis added):

Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, *the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties.*

But the process of making standards and regulations compatible is elaborated in subsequent articles in the TBT chapter in ways that begin to shift the responsibility for prioritizing trade-facilitative regulations and standards from trade officials to regulatory departments. First, parties to the agreement (the national governments of Canada, the U.S. and Mexico) are expected to heed requests from other parties to promote compatibility of technical regulations or standards or conformity assessment procedures if the requesting party can show their own measures are similar. If a responding country refuses, it must provide written reasons for doing so. Conformity assessment procedures must not be more strict than necessary to assure a party

that a product meets a technical regulation or standard, and the procedures must follow a long list of rules with respect to reasonable timelines, prompt examination of documentation and good communication with applicant firms, reasonable fees, limited procedures for goods that have been approved but then modified, etc. Notifications and transparency provisions are much expanded in NAFTA from CUSFTA and create multiple new responsibilities with respect to informing and providing room to comment for “interested persons” (usually companies or industry associations) of the other party. And the agreement requires NAFTA countries to clearly identify inquiry points in government for all federal, state or provincial level standards-related measures, notification and consultation procedures, information about a party’s risk assessment procedures, etc.

Though the technical standards-related aspects of NAFTA do not feature prominently, and sometimes not at all, in many accounts of the trilateral negotiations, domestic regulatory reforms by the Mulroney government post-CUSFTA and Canada’s engagement in the Uruguay Round of the GATT on technical barriers to trade and sanitary and phytosanitary standards show a government working to rationalize regulatory policy for a new globalized era. The 1986 federal regulatory policy required departments to demonstrate that the benefits of new rules exceed the costs (as in the U.S.) and sought to promote “accessibility, fairness and accountability” in the regulatory process (OECD, 2002, p. 55). These domestic administrative reforms then fed back into continental and global trade discussions. For example, a WTO Committee on Technical Barriers to Trade—a global version of the committees established under CUSFTA and NAFTA to govern the implementation of those agreements—quickly concerned itself with how governments can effectively cooperate to minimize the trade

impacts of regulatory variance. In 1997, the committee agreed that “coordination between governmental regulatory authorities, trade officials and national standardizing bodies is essential,” and invited WTO members, “on a voluntary basis, to submit descriptions of their approach to technical regulations” (World Trade Organization, 2019, p. 6). Much of the WTO’s TBT committee business from this point would involve discussions of country experiments with regulatory cooperation and the integration of “good regulatory practice” in domestic law.⁶

Like the CUSFTA, NAFTA established a number of international working groups (see Table 1) in the area of standards, technical regulations and conformity assessment procedures that were intended to de-politicize the process of making these government measures more compatible with the trade agreement’s disciplines. A report of the Secretariat for the Commission for Environmental Cooperation (CEC, 1997) three years into the agreement looked favourably at the potential of these working groups, in particular those subgroups of the Committee on Standards-Related Measures (CSRSM) dealing with the environment,⁷ to bridge “differences between the concerns of traders and the concerns of regulators [and] identify, in ways that respect national sovereignty, methods for harmonizing standards in a manner that will lower economic costs and ensure the highest levels of environmental enhancement

⁶ The WTO (2019) says this of good regulatory practices, as amended over time at the TBT Committee: “Good Regulatory Practice (GRP) can contribute to the improved and effective implementation of the substantive obligations under the TBT Agreement. Effective implementation through best practices is seen as an important means of avoiding unnecessary obstacles to trade. Institutionalizing the various mechanisms, processes and procedures of GRP through laws, regulations and guidance, as well as through the creation and designation of institutions within Member governments to oversee regulatory processes, is seen as a means of giving effect to GRP. Effective internal policy coordination, including among regulators, standardizing bodies and trade officials implementing the TBT Agreement, is stressed. Additionally, regulatory cooperation between Members is an effective means of disseminating GRP” (p. 6).

⁷ The four main subcommittees were: Land Transportation Standards Subcommittee; Telecommunications Standards Subcommittee; Automotive Standards Council; and Subcommittee on Labeling of Textile and Apparel Goods.

throughout the region (p. 27).⁸ On top of the four official subcommittees, NAFTA encouraged the CSRM to establish other subcommittees for the consideration of a uniform chemical hazard classification and communication system, common criteria and methodologies for assessing the risk to the environment of goods, and guidelines for testing chemicals. But as of early 1997, no such bodies had been established. Where cross-border working groups were established or incorporated from the CUSFTA period, they usually did not directly involve non-governmental actors from industry or non-industry civil society groups. However, all three NAFTA countries established industry consultative groups that they could meet with before and after official bilateral and trilateral meetings. In some cases this consultation was extensive, as discussed in the next section.

Table 1 - NAFTA standards- and regulation-related committees and working groups

<p>Committee on Sanitary and Phytosanitary Standards (CSPS) (Article 722, DFAIT, Agriculture)</p> <p>Technical Working Group on Pesticides (created jointly by CSPS and CSRM)</p> <p>Trilateral/Bilateral Working Groups adopted from Canada–US FTA (FTA Article 708, DFAIT):</p> <p>Meat, Poultry and Egg Inspection Working Group (CSPS)</p> <p>Plant Health, Seeds and Fertilizers Working Group (CSPS)</p> <p>Animal Health Working Group (CSPS)</p> <p>Dairy, Fruit and Vegetable Inspection (CSPS)</p> <p>Veterinary Drugs and Feeds (CSPS)</p>

⁸ The NAFTA text laid out the following potential activities of the CSRM: a uniform chemical hazard classification and communication system; criteria for assessing the potential environmental hazards of goods; methodologies for assessment of risk; and guidelines for testing of chemicals, including industrial and agricultural chemicals, pharmaceuticals and biologicals (CEC, 27).

Food, Beverage, Color Additives and Unavoidable Contaminants (CSPS)

Packaging and Labeling Working Group (CSPS)

Fish and Fisheries Products Inspection (CSPS)

Committee on Standards-Related Measures [CSRM] (Article 913, DFAIT)

Land Transportation Subcommittee [LTSS] (Annex 913.5. a-1, Transport and DFAIT)

LTSS I - Driver and Vehicle Safety Compliance

LTSS II - Vehicle Weight and Dimension

LTSS III - Road Signs

LTSS IV - Rail Operations

LTSS V - Committee on Transportation of Dangerous Goods

Telecommunications Standards Subcommittee (Annex 913.5, a-2, Industry)

Automotive Standards Council (Annex 913.5.a-3, Industry, Transport)

Textile/Apparel Labeling Subcommittee (Annex 913.5.a-4, Industry)

Source: Adapted by author from Appendix A (NAFTA's Intergovernmental Bodies) in CEC, 1997, pp. 67–69 (see references).

On sanitary and phytosanitary standards such as food safety measures and animal welfare, several existing or previously existing Canada–U.S. technical working groups were trilateralized to include Mexican officials following the passage of NAFTA. According to the CEC (1997), the effect of NAFTA on food-related standards and regulations was important not for producing more harmonization but for encouraging domestic regulatory restraint:

NAFTA has had an autonomous effect on sanitary and phytosanitary measures. All three countries are constantly modifying their sanitary and phytosanitary rules, but

since NAFTA, the countries have demonstrated a much greater sensitivity to the effects of trade disciplines on sanitary and phytosanitary measures, such as the need for risk assessments to support rule changes. The NAFTA Parties not only conduct such risk assessments but also bring proposed rule changes to the attention of their trading partners at an early stage. Indeed, they often use [Committee on Sanitary and Phytosanitary Standards] meetings as a forum to inform each other of proposed rule changes or rules under development (p. 39).

The NAFTA SPS committee dealt with two kinds of issues, according to the CEC. The first, taking up about a third of its time, were general policy issues such as the harmonization of technical standards and regulations and the development of joint positions on these issues at international venues such as the Free Trade Area of the Americas (FTAA) negotiations, Asia Pacific Economic Cooperation (APEC) meetings and the WTO. Through this work, government officials have tried to elaborate the obligations in NAFTA Chapter 7 while “ensuring consistency in the application of appropriate levels of protection for humans” (CEC, 1997, p. 40). According to the CEC assessment, NAFTA created pressure to harmonize appropriate levels of protection since “a country must be able to demonstrate to a dispute resolution panel that it is conscious of harmonizing the risk assessment methodology set out in Chapter 7” (p. 40). If this assessment were true it might confirm the new constitutionalist emphasis on the disciplinary effect on governance of the legal texts themselves. However, given the flexibilities in NAFTA on the point of standards and regulations, as described above, it is not at all clear from the documents I have found whether the Canadian government would or should have felt such external pressures, or whether other factors—including the cooperation process via NAFTA

working groups or internal considerations—were bigger factors. The difficulties in determining intentionality heighten the value of process-focused analyses of these institutions of global governance. And in this respect the CEC report is of great value.

According to that report, when the NAFTA SPS committee was not developing joint positions or harmonizing policy, it was discussing other ways to deal with trade irritants, 95% of which were bilateral in nature (CEC, 1997, p. 40). Scientific experts within government were brought into some meetings in the role of “neutral” experts, as a way to avert the establishment of dispute panels. Though formal technical exchanges were meant to take place annually, this rarely happened. Instead, many individuals with technical responsibility were in contact “almost weekly among the three governments” (p. 42). Still, of the nine SPS technical working groups established, only the pesticides group had any longevity (it continued to meet into the year 2020). The pesticides group was unique, according to the CEC, in that it included industry and non-industry NGOs, including the World Wildlife Fund, Consumers Union, and National Coalition Against the Misuse of Pesticides (p. 42). However, in the areas of pest management, product approvals and maximum residue levels, as environmentalists such as Shrybman had warned, “[s]ome observers feel the more stringent Canadian residue standards have been lowered to better harmonize pesticide residue standards in all three countries” (p. 45).

Actor experiences with the NAFTA working groups

CEC report aside, as Stephen Clarkson et al. noted in a 2002 article, there is little secondary literature of any great detail “that addressed the significance of the NAFTA Committees and

Working Groups themselves” (p. 1). Brunelle (2002) has commented on the potential of these new institutions “to defuse,” in the sense of rendering untouchable by democratic forces, “politically sensitive issues in the field of environment, human and aboriginal rights, etc.” (p. 12). He points to the extensive list of technical matters that were within the purview of the Committee on Standards-Related Measures described above, including with respect to product labelling, plant inspections, methodologies and assessment of environmental hazards, etc., as examples of areas of economic governance that are removed from legitimate public debate by NAFTA. Once again, however, precisely how this integrated governance (Canada–U.S. *and* public–private) occurs in practice remains obscure. Clarkson and team set out to document and analyze the governmental reasoning that went into the construction of the working groups, choice of participants, and the effectiveness of NAFTA’s institutional experiments in governing a North American economy. Clarkson et al. based their analysis on a survey of government officials who had participated in the NAFTA groups. As mentioned in the last chapter, the authors accept the liberal-institutionalist analysis in which deeper North American economic integration necessitated the establishment of transnational governing bodies such as the technical working groups. While sharing broad-based civil society concerns in all three countries about the democratic deficit in North American governance (Ayres & Macdonald, 2006), Clarkson et al. also criticized the selection of institutional arrangements for being “meager and highly decentralized,” providing officials from the three governments mainly with a space to “exchange relevant information, resolve minor disputes, and discuss future liberalization” (p. 3). However, from the perspective of Canadian government officials interviewed for their research, there were important benefits to creating “de-politicized” spaces of cooperation that

might “encourage the formation of epistemic communities of technical and sectoral experts who might be more inclined to favour long-term benefits over politically dangerous short-term costs” (p. 3). One government official felt the working groups “fulfilled these criteria as they were seen to be conducive to the formation of small networks of working relationships and the consolidation of bodies of experts” (p. 3). Another said the working groups’ relative autonomy would increase the likelihood of the “fair and consistent” application of NAFTA—that it would be “more likely to operate in a rules-based fashion if at least partly removed from the sphere of domestic politics,” and to “create favourable conditions for the generation of objective solutions to policy conflicts” (p. 8).

The NAFTA working groups were staffed by officials from all three countries and occasionally drew in private sector participation, “with mandates to evaluate and even help direct public policy within the member states” (Clarkson et al., 2002, p. 4). Consultation and brainstorming with the private sector were core functions and “extensive” in some cases, according to one civil servant on a land transportation subcommittee. A U.S. Department of Commerce official told Clarkson et al. this was only natural, “nothing beyond the usual day-to-day interaction” for many government departments (p. 13). Clarkson later wrote that while private sector involvement was “appropriate” to the task at hand, the NAFTA working groups “blurred the lines between the consultant and the consulted,” and that “their almost total lack of transparency prevented individual citizens, civil society organizations, or researchers from having any knowledge about the nature of privileged private-sector access, let alone its influence on whatever regulatory changes might result” (Clarkson, 2008a, p. 61). However, Clarkson weighed this democratic deficit against the “largely inconsequential” role the working

groups ended up playing “as instruments of governance,” determining the threat to democracy was “miniscule” (2008a, p. 62). These observations, which are consistent for Clarkson across his 2002 to 2008 assessments of NAFTA’s cooperative working groups, seem out of step with the enthusiasm among Clarkson’s interview subjects for the work they were doing. They also clash with government’s willingness to continually rejuvenate similar cross-border international regulatory cooperation efforts, as discussed in the next section with respect to the post-NAFTA, war-on-terror period.

Smart borders and smart regulation

Ten years into NAFTA’s life, new priorities for global trade liberalization and new competitors to U.S. economic dominance were emerging on the world scene. In response, government adapted programmes for the simplification of regulatory requirements as a means to reduce the cost of doing business. In Canada, like in the U.S., conservative governments have been more likely to frame regulatory policy reforms since CUSFTA as ways to reduce government “red tape.” While liberal governments in both countries retain this language, they have tended to emphasize the need for regulation that balances public demands for strong protections and the benefits to society of innovative products and technologies that, so the reasoning goes, would be held back by overly precautionous government responses (Government of Canada, 2000, 2003; External Advisory Committee on Smart Regulation, 2004). In this way, Canada and the U.S. independently responded in similar ways to the perceived exigencies of a globalizing economy, which both informed and drew from OECD and WTO dialogues on “good” regulatory practice (Trew, 2019). Egging the federal government on domestically were powerful business

interests such as the Canadian Council of Chief Executives (CCCE, now the Business Council of Canada). In their 2001 book, D'Aquino & Stewart-Patterson, then president and vice-president of the CCCE, wrote: "If the role of government is to help create the climate for change, the role of business is to be the engine of change. Companies today more than ever before operate in a Schumpeterian environment where the virtues of creative destruction can be seen at work. New ideas, new companies, new products, new skills, and an ever-accelerating cycle of innovation are revolutionizing the way we work and live" (p. 35). Still, continentalism loomed large over the new regulatory dialogue. Harmonization with the United States was seen as an efficient way to address business's concerns with competitiveness and regulatory burden (External Advisory Committee on Smart Regulation, 2004, p. 22). Crisis would once again challenge and create opportunity for North American governments to adapt regulatory mentalities—and global institutions and norms of regulatory cooperation—to new geopolitical circumstances.

In December 2000, Mexican President Vicente Fox proposed that the three countries should work on a post-NAFTA agreement that within 20 years would create a common market for goods, services, trade and labour. But according to Fagan (2003), "it was 11 September that gave the issue gargantuan impetus, and convinced many Canadians—especially in the business community—that Ottawa had to become more active in trying to shape the Canada–U.S. relationship" (p. 37). The terrorist attacks on New York and Washington sparked a national emergency in the United States, which temporarily closed its northern and southern borders to all travellers, including commercial vehicles. Stunned by the potential for a new U.S. security mindset to impede Canada–U.S. trade, the Chrétien government initiated a plan "to make the

Canada-U.S. border virtually invisible for legitimate trade and travel” (Waddell, 2003, p. 55). By October, the Chrétien government had established a “small task force of bureaucrats based in the Privy Council Office to coordinate a new approach to border discussions with the United States” (Waddell, 2003, p. 55). Canadian business lobbies set to work preparing papers advocating “secure trade and open borders” (Waddell, 2003, p. 60). Supportive think tanks joined the fray with proposals for a new “strategic bargain” in which Canada would “meet the security interests of the United States,” by helping them police the continent as they saw fit, “in exchange for its agreement to some customs-union- and common-market-like arrangements” (Dobson, 2002, p. 29).

It was not long before the idea of pursuing even closer economic integration, as a solution to the problem of the U.S. border, became mainstream. Think tanks such as the C.D. Howe Institute, the Conference Board of Canada, the Public Policy Forum and others “supplied the analytical details that were largely absent from the business proposals” (Clarkson & Banda, 2007, p. 130). The Canadian Manufacturers and Exporters took a lead in establishing a Coalition for Secure and Trade-Efficient Borders to start to revise their pre-9/11 demands for a more seamless border so that they fit within the emergent security paradigm in Washington. These and other Canadian business groups worked with and within the Canadian-American Business Council, the Canadian-American Border Trade Alliance and the group Americans for Better Borders to set a binational policy vision that blended proposals for Canada to adopt U.S. security and immigration measures and for the two countries “to establish a regulatory framework for the continent-wide regime of capital accumulation that had emerged from integrated supply chains, cross-border intra-industry trade, U.S. corporate investment in

Canada, Canadian corporate investment in the United States, and transnational border alliances” (Clarkson & Banda, 2007, p. 134). In 2003, the CCCE would present a document to senior Bush administration officials called the Security and Prosperity Initiative, which “acknowledged and reflected the fusing of trade and security matters” (Grinspun & Shamsie, 2007, p. 24).

Following the business lead, the Privy Council Office (PCO) drew up the first draft of a “smart borders” declaration to “consolidate the principal ideas that had emerged from two years of discussions between Canada and the United States on easing border problems, modified to address the new security concerns of the U.S.” (Waddell, 2003, p. 61). Departmental officials in both countries were responsible for putting into action the thirty points in the “smart border” declaration, work that was overseen by the PCO, with difficult-to-sort problems kicked upstairs to Deputy Prime Minister John Manley and U.S. Homeland Security Director Tom Ridge or handled through “trade-offs across departments and agencies” (Waddell, 2003, p. 64). The whole process, in which long-standing problems of NAFTA governance were dressed up in new military garb, reminded Waddell (2003) of the CUSFTA negotiations (emphasis added):

In many ways the Smart Border approach in Ottawa duplicated the way the government of Canada negotiated the original Free Trade Agreement with the U.S. In both cases Canada gained American attention and influenced joint trade and economic policy *by being first with ideas, by crystallizing its objectives, and then by finding a way to persuade the U.S. administration that it is in Washington’s best interest to deal with the issues as well.* In both cases a small central group did the

work in Ottawa, and these officials had the influence within the Canadian government to negotiate, finding the pressure points in the U.S. administration and pushing whatever buttons were needed, regardless of rules and protocol, to get a desired outcome. On the Canadian side, in the autumn of 2001 there was also a private-sector advocacy group and campaign pushing for action on easing border congestion and simplifying rules, just as the Canadian private sector played a vocal and influential role as advocate for free trade in the 1980s (p. 69).

A year later, Canadian officials quietly proposed a NAFTA-plus agenda to the Bush administration that would build on the “smart borders” declaration. The document, titled *Securing Growth: Beyond the Border Accord*, “contemplated the widespread co-ordination of government regulations in the testing, inspection, and labelling of goods so as to eliminate impediments to trade,” among other ideas for improving on NAFTA governance (Fagan, 2003, p. 38). Around the same time, the federal Speech from the Throne in September 2002 laid out the government’s “smart regulation” agenda, which included plans to more closely co-ordinate regulatory oversight with Washington. According to Fagan (2003), Canada had begun consultations with the Food and Drug Administration on aligning drug approvals processes “beyond the simple exchange of information” (p. 46). The Canadian government was, he wrote, “more confident of establishing other joint efforts, including the testing of medical devices and chemicals, and establishing common nutritional standards for foods,” along with “joint safety standards for road and rail transportation” (p. 46). All of these proposals would find their way into the Security and Prosperity Partnership of North America (SPP) established by the three NAFTA governments in 2005.

While security themes dominated the SPP dialogue, Anderson and Sands (2007) note that the pact was “designed in part to address the perceived shortcomings of the NAFTA Working Groups and to renew work on the unfinished ‘built-in agenda’ of NAFTA” (p. 29). Even fans of the plan described the SPP as being “full of pledges, promises, future strategies, and (recycled) action plans” (Moens and Cust, 2008, p. 16). According to Studer and Wise (2007):

at least half of the designated issue areas (for example, manufactured goods, financial services, information and communication technologies, and agriculture) overlap with the NAFTA text and side agreements; moreover, the working groups tasked with linking prosperity and security within the selected issue areas are themselves poorly coordinated. Tellingly, the three NAFTA member governments avoided terms like integration and community in the context of the SPP and instead relied on “agenda, process, framework, and mechanisms for tri-national dialogue” (p. 6).

The SPP was promoted to elected officials and the public as a non-treaty executive or administrative-level arrangement, in part to appease a U.S. Congress increasingly divided on questions of free trade, according to Anderson and Sands (2007). “With presidential and cabinet-level political support,” they wrote, “the dozens of objectives outlined under each of the 20 SPP working groups would proceed on the basis of trilateral consultation at the staff-level within respective government agencies already responsible for those policy areas” (p. 18). As with the NAFTA technical working groups, it was hoped this “would ostensibly de-politicize the policy work being done by leaving it in the hands of technical experts,” whose negotiations were expected to “reduce the power-politics dimension of the talks, since the size of a

country's GDP is hardly relevant to the question of the appropriate crash test standard for a sport utility vehicle" (p. 18). But there was no central bureaucratic direction of the SPP working groups in the U.S. In Canada, on the other hand, this role was initially given to the PCO (later devolved to Industry Canada by Prime Minister Harper), which acted as a "traffic cop" to make sure the ministerial priorities were being addressed by Canadian departments (Moens and Cusp, 2008, p. 6).

One novelty of the SPP over the NAFTA technical working groups was the inclusion of a Regulatory Cooperation Framework and set of working principles (see Table 2) drawn from the 2005 OECD Guiding Principles for Regulatory Quality and Performance. The OECD principles supplemented recommendations on regulatory reform endorsed by OECD ministers in 1997 and reflected developments in the "concept of regulatory change" in that period, according to the organization (OECD, 2005, p. 1). "The focus in the 1990s was on steps to reduce the scale of government, often carried out in single initiatives," said the OECD, but countries now recognized the need for a "whole-of-government approach to create a regulatory environment favourable to the creation and growth of firms, productivity gains, competition, investment and international trade" (p. 1). The SPP framework highlighted three such interconnected goals taken from the OECD guidance: strengthening regulatory cooperation, "including at the outset of the regulatory process"; streamlining regulations and regulatory processes; and encouraging compatibility of regulations, as well as the promotion of "relevant international standards" and "domestic voluntary consensus standards." (U.S. Department of Commerce, 2008a).

Table 2 - SPP Regulatory Cooperation Framework: Common Regulatory Principles

<ol style="list-style-type: none">1. Justify the need for regulation, including the consideration of market failures.2. Identify alternatives to addressing a regulatory need, including non-regulatory options.3. Assess the costs and benefits of regulatory and, where appropriate, non-regulatory alternatives so that options that maximize net benefits can be identified.4. Minimize the adverse impact of regulation on a fair, competitive and innovative market economy.5. Minimize unnecessarily divergent or duplicative requirements within North America.6. Promote performance-based regulation where appropriate and to the extent practicable.7. Ensure timelines in regulatory decision-making.8. Write regulations in plain language so they are easily understood.9. Ensure transparent regulatory development and implementation, making regulations and regulatory impact analyses easily accessible.10. Evaluate and review existing regulations routinely.

Source: U.S. Department of Commerce (2008b). Accessed via Way Back Machine search for spp.gov, circa 2008.

The regulatory framework agreement was strongly supported by the North American Competitiveness Council (NACC), an all-corporate, mostly self-organized⁹ group of CEOs from

⁹ In the United States, the U.S. Chamber of Commerce and the Council of the Americas formed the U.S. secretariat of the NACC; in Canada the Canadian Council of Chief Executives played that role. Canadian NACC members, all of them presidents and chief executives of top Canadian-based transnational companies, were selected by the federal government (Anderson & Sands, 2007, pp. 21-22).

the three NAFTA countries, brought officially into the SPP after the Cancun summit in 2006 to provide focus to the meandering trilateral process (Anderson & Sands, 2007). The NACC claimed a single North American standard “should be the default approach when crafting new regulations in all three countries...unless there are unique national circumstances or well-founded reasons to distrust the regulatory standards or practices of one of the North American Partners” (NACC, 2007, p. 28). The justification went beyond reducing the cost of doing business, to confronting the threat of Chinese competition for production in the wake of China’s accession to the World Trade Organization in December 2001. It was thought that a more efficient North American regulatory space would help level the field.

Despite the best efforts of regulators in all three countries to cooperate and exchange information, differences continue to arise. Furthermore, even if the three countries were to succeed in eliminating unnecessary differences between existing rules, there would be little to prevent new differences from arising. A new approach to North American regulation is required (NACC, 2007, p. 28).

As part of that new approach, the NACC (2007) recommended the establishment of a North American Regulatory Cooperation and Standards Committee that would include the private sector. The committee would “survey on a regular basis the variety of standards and regulatory differences by industry that impede trade, and seek to reduce the identified differences or develop other mechanisms to lessen their impact on the competitiveness of North American industry” (p. 29). Shortly after tabling its 2008 report to leaders, the NACC would watch in dismay as the SPP dialogue fell apart with the election of a new federal government in the United States.

Critical assessments of the SPP regulatory agenda

Some sector-specific regulatory cooperation efforts did move forward in the SPP period.

Canada agreed, for example, to continue to harmonize pesticide rules with the U.S. under the existing NAFTA technical working group, “on the grounds that the difference in residue limits on domestic and imported food had long been a barrier to trade” (Clarkson, 2008a, p. 445). The trilateral statement from the 2007 SPP summit in Montebello, Quebec, agreed to “undertaking trilateral cooperation to accelerate and strengthen our national and regional risk-based chemical assessment and management efforts” (quoted in Campbell, 2007, p. 3). The NAFTA countries released a two-page framework titled Regulatory Cooperation in the Area of Chemicals, which committed governments to “enhance appropriate coordination in areas including testing, research, information gathering, assessment and risk management actions” (Campbell, 2007, p. 3). Campbell (2007) noted the move was a response to a European chemicals management plan (Registration, Evaluation, Authorisation and Restriction of Chemicals, or REACH for short) that came into force two years earlier, in 2007, and whose central feature “is that it applies the precautionary principle, which is anathema to the industry,” and shifts the burden of proving a chemical is safe from government to industry (p. 4). European regulations are more cautious, for example, on maximum residue levels of pesticides on produce, which are lower than in the United States and Canada (Boyd, 2006), and the EU’s hazard-based cutoff criteria results in more pesticides not being approved for use compared to North America (U.S. International Trade Commission, 2020, p. 121). While Canada’s chemical regulation system sits somewhere between the U.S. and European models of risk assessment and risk management, according to Campbell, the SPP toxics initiative steered

Canada further toward North American harmonization of regulatory risk assessment methodologies and risk management plans that were allegedly less protective than the European alternative. Echoing or confirming fears voiced by left-nationalists in the CUSFTA debates, Campbell (2007) highlighted the broader implications for Canadian sovereignty from this kind of cooperation with the U.S.:

Don't expect the regulatory harmonization process to be dramatic. It is taking place stealthily in the sub-basement of bilateral relations: small technical steps—some inconsequential others significant—largely invisible to the public. The cumulative effect, however, is hugely significant as we move closer to the endpoint: a single continental regulatory regime whose shape is determined informally by the large partner (p. 7)

Other civil society groups came to a similar assessment of the SPP regulatory cooperation program following sectoral discussions on food safety regimes and inspection. In July 2008, Canadian media reported on confidential Canadian Food Inspection Agency (CFIA) documents that had been insecurely posted online, which “laid out sensitive plans to turn over food inspections and labelling to industry,” and “appear to involve a re-organization of food inspection that will shift more of the onus for food safety to the suppliers that manufacture and distribute food and other products” (quoted in Trew, 2008). The article continued that this is “a direction in which the agency has been heading for years,” despite opposition from the government union representing food inspectors and concerns among public health advocates. One U.S. scientist with the New York-based Consumers Union told the *Calgary Herald* a few days after the initial report, “They’re moving towards the U.S. model, where the inspectors

don't actually do the inspection, they just oversee and the companies actually do the inspection. That's a really dangerous thing" (quoted in Trew, 2008). The *Herald* quoted University of Guelph professor Ann Clark, a specialist in risk assessment of genetically modified crop varieties, who called the food safety reforms "illogical," and warned: "The initiatives outlined in this [leaked] document suggest government is trying to get out of the business of government, by downloading responsibility for safeguarding human and environmental health to the same industry interests which stand to make money from what is being regulated" (quoted in Trew, 2008).

In his 2008 book, Clarkson claimed that the credit for any successful sector-based harmonization under the SPP should go to Canada's unilateral "Smart Regulation" initiative rather than the trilateral pact itself. "With six of its ten members being senior corporate executives and one a leader of the OECD's regulatory reform program, the [smart regulation external advisory] group had an obvious interest in relaxing regulations," wrote Clarkson (2008b), noting concerns raised by some critics of the initiative that it "placed a premium on economic competitiveness and industrial promotion at the expense of the environment and public health and safety" (p. 445). Smart regulation, and its reflection in OECD benchmarks of "good" regulatory practice, was fundamentally an exercise in transparency and accountability to government "stakeholders"—a business term adopted by government in the neoliberal period—including the public, business, other levels of government and international trading partners. All of these "stakeholders" should, according to the 2004 final report on smart regulation, see their views reflected in regulatory decisions if Canada is to build a "high-performing 21st century system," where regulation is "used more strategically...to advance

Canadian interests and priorities” (External Advisory Committee on Smart Regulation, 2004, p. 9). Canadian regulatory policy directives dating back to 1978 progressively refined language on the objectives of government regulation, transparency of the regulatory process, reporting requirements for government departments (e.g., in regulatory impact assessments), and the importance of international regulatory cooperation. Questions of public trust, legitimacy and the need for constant self-examination and improvement have preoccupied regulatory reforms in Canada and the U.S. for nearly three decades. A Harper-era Treasury Board Secretariat document was sensitive to the need to approach regulatory cooperation—as a tool for streamlining regulatory policy development in Canada—in ways that “maintain public confidence in the Canadian regulatory system” (TBS, 2007, p. 1). It is around this point that we see international regulatory cooperation discussed by government as a technology, directed at regulators and regulated subjects, for achieving “good regulatory practices.” According to the Treasury Board Secretariat (2007), “By taking a strategic, proactive approach to achieving greater regulatory compatibility with key international counterparts, departments and agencies can reach policy goals more readily, with lower cost to the government and to Canadians” (p. 2). IRC thus became a key part of Canadian regulatory impact assessments.

As mentioned already, the SPP stalled out at the end of the Bush presidency, leaving a temporary but ultimately short-lived vacuum in the regulatory cooperation department in North America. From the point of view of the “grand bargain” or “deep integration” advocates, Canada’s strategy ultimately failed. Canada significantly harmonized security, immigration and policing measures with the U.S. Department of Homeland Security, and there was a small list of regulatory achievements from the SPP days (see Appendix 1). But little progress was made on

trade facilitation or other Canadian economic priorities with the United States. Critical political economists and political scientists would blame the SPP's demise, at least in part, on a lack of democratic participation, attempts by government to fly the NAFTA-plus talks under the radar, and the limited nature of the regional institutions that were established (Clarkson, 2011; Ayres & Macdonald, 2012). And yet as these post-mortems were coming out, another bilateral effort focused on Canada-U.S. regulatory cooperation was already taking shape within the PCO and U.S. Office of Management and Budget, with close co-ordination with North American business sectors and based on U.S. and Canadian domestic regulatory and administrative policy reforms. Once again, as explored in the next chapter, "inspired ad hocery" would be called upon in Canada to learn from past failures in order to rethink and redevelop techniques of international regulatory cooperation for a new political moment and new administration in the United States.

After locating the neoliberal origins and international elaboration (in the GATT negotiations) of technical barriers to trade as a problem of global governance, this chapter has highlighted the IRC practices deployed by Canada and the United States, under three distinct continentalist architectures (CUSFTA, NAFTA and the Security and Prosperity Partnership), to facilitate trade by minimizing regulatory variance and/or promoting regulatory harmonization. Though information about these practices is spotty, we know enough about the objectives of, and participants in, CUSFTA, NAFTA and SPP regulatory working groups to suggest a trend from what I would call more *formalized*, treaty-based and government-dominant to more *regularized*, multi-actor technical cooperation. In the absence of clear legal boundaries, trade-based disciplines on regulations and standards are only as good as government's ability to

actualize them through central regulatory discipline. Even then, though Canada and the United States are considered global leaders in the refinement and adoption of OECD-approved “good regulatory practices,” divergent rules and standards persist. As we will see in the next chapter, North American governments have sought to address this problem by empowering “good” regulators and responsive, self-maximizing regulatees in the governance, at a distance, of an efficient regional economy.

Chapter 3: You can do this! A governmentality case study of the Regulatory Cooperation Council

The evolving technologies of Canada–U.S. regulatory cooperation post-CUSFTA, and some of the governmental rationalities and programmes that give them shape, were covered in the last chapter. In doing so, a picture emerges of how practices of regulatory cooperation changed with the production of new knowledges, including new means of quantifying the costs of regulatory variation¹⁰, and new ideas about how IRC can help spread good regulatory practices to other countries. Throughout this period, the state is positioned as one among multiple market actors, albeit one with a central responsibility for creating regulatory environments conducive to private sector innovation and entrepreneurialism. This chapter seeks primarily to bring light to the practices of international regulatory cooperation in the RCC between 2011 and 2018. This period was selected to focus the research on what government and industry participants in RCC processes seem to agree was its most active period (2012–2016), while allowing an opportunity to consider the analytical ramifications for this research of the shift in RCC responsibility from the Privy Council Office to the Treasury Board Secretariat in 2016.

¹⁰ For example, Von Lampe, Deconinck, & Bastien (2016) adopt a game theory approach to provide a basis “for regulators and trade negotiators to determine which specific IRC approach would be promising to pursue” (pg. 4) in a given situation. For several types of cooperation, from simple information exchange to harmonization and mutual recognition of regulations or standards, mathematical calculations are used to find allegedly optimal (i.e., most welfare enhancing for both countries) levels of regulatory heterogeneity. The calculation assumes countries will first determine their own welfare maximizing levels and types of regulation and acknowledges that the factors going into deciding this (e.g., socially demanded levels of environmental protection or consumer product safety) will differ. Harmonization is therefore “not a theoretically optimal outcome” unless these preferences are identical in both countries (pg. 27). However, where there is full information sharing on regulatory preferences, the paper argues, “even a non-cooperative process of regulation setting will be welfare improving,” and is “thus an important way to obtain efficiency gains” (pg. 27). The authors conclude from their calculations that, “from a welfare perspective the best approach would be for countries to set their regulations to maximize their joint surplus. If bundles of regulations are agreed upon jointly, the set of potential trade-offs is broadened and some redistribution of the resulting gains is possible” (pg. 27).

The analysis here is based partly on a reading of government, civil society and academic writing and pronouncements on the RCC and international regulatory cooperation. On the one hand, there are simplified government workplans containing the hundreds of cooperation agenda items under the 29 initiatives agreed to in 2011. There is also plenty of aspirational writing from government and business practitioners on the potential of the RCC to produce systemic change in the Canada–U.S. economic space and in domestic regulatory actions. On the other hand, the OECD (2013) has noted that quantitative data is hard to come by for the Canada–U.S. RCC, making it difficult to substantiate qualitative assessments of the RCC’s benefits and/or costs. A more recent UNCTAD report on regulatory cooperation provisions in regional trade agreements similarly notes that, “While there is little evidence to show whether these measures had any impact, one cannot overlook that these well-intended, well planned, and timely measures were a commendable attempt to prevent regulatory barriers from becoming bottlenecks to trade” (Ngo, C.H., Prabhakar, D., Li, M, & Lee, S., 2021, p. vii). An analysis of RCC texts is therefore of limited value in determining the RCC’s impact on regulatory policy development and ideas about good regulation. This chapter hopes to add to our understanding of the RCC by emphasizing information gleaned from original interviews with RCC participants. These interviews attempt, first of all, to fill in gaps in the public record about the project, but also to create a picture of the kinds of subjectivities that are engendered in the interest of efficiently regulating international commerce. Participants who did not want their names included are identified by a code indicating whether they are from government or civil society (e.g., GOV1, CS3, etc.). Where pertinent, and with care not to compromise their anonymity, these participants are described below as being from industry or non-industry civil

society groups, or from administrative or regulatory departments in government, and in both cases their country of origin. Table 3 breaks down these interviewees by sector, while the guiding questions for government and NGO participants are included as appendices.

In the first section below, I review the political rationalities—the “discursive fields within which the exercise of power is conceptualized” and “notions of the appropriate forms, objects and limits of politics” (Miller & Rose, 2008, p. 55)—and programmes of government animating Canada-U.S. regulatory cooperation in the RCC. The latter include policy documents and statements from government, business lobby groups, international organizations such as the OECD, and academic writing, which provide the “intellectual machinery” for the governance of regulation, “in the form of procedures for rendering the world thinkable, taming its intractable reality by subjecting it to the disciplined analysis of thought” (Miller & Rose, 2008, p. 62). The following section explores the technologies of government at play in the RCC, i.e., “the complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions” (Miller & Rose, 2008, p. 62), which includes procedural devices to shape individual or group behaviours (Bröckling, Krasmann and Lemke, 2012). In the final section, I describe and analyze the experiences of two dozen participants in RCC work between 2011 and 2018, based on original interviews I did with these participants in 2019 and 2020.

Table 3 – RCC participants interviewed for this thesis, by sector

Government (regulatory policy)	8
Government (regulatory agency)	7
Civil society (industry)	5
Non-industry civil society	5
Total participants	25

Note: In total, 52 RCC participants in government and civil society (industry and non-industry) in Canada and the United States were invited to participate in this research: six declined for various reasons; 21 did not respond to the initial or follow-up interview requests. Among the study’s 25 participants, five are from the United States, including one from government and four from industry and non-industry civil society.

Once more, with feeling: The Regulatory Cooperation Council and North

American competitiveness

As explored in the last chapter, previous efforts at harmonizing regulations—and ways of regulating—between Canada and the United States were influenced, at least in Canada, by a combination of continentalist ideology, institutional arrangements in CUSFTA and NAFTA, and evolving knowledges of “good regulatory practice” developed in domestic exercises such as the External Advisory Committee on Smart Regulation and international venues such as the WTO Committee on Technical Barriers to Trade and the OECD. Government in Canada takes the rationale behind these regulatory agendas, and regulator- and standards-related commitments in international trade agreements, very seriously and arguably to a fault. For example, according to one Canadian official (emphasis added), “We (the government) can maintain or introduce higher standards *only if they are scientifically justifiable by appropriate risk*

assessments and actual risks involved” (Short, 2000, p. 4). In fact, WTO appellate body rulings related to technical standards have granted governments leeway to adopt more precautionary measures, or higher standards than the international benchmark proposes, if there is *any* uncertainty about the science on a given regulatory matter (Howse, 2000). Rather than use this regulatory flexibility (e.g., to raise the bar on public and environmental protection measures), successive Canadian governments imposed progressively stricter regulatory impact analysis requirements on federal departments and agencies, to make sure Canada is regulating in trade-facilitating ways and aligning, whenever possible, with existing international standards. It is not surprising, then, that when the U.S. government came looking to restart a regulatory cooperation dialogue in 2010, they found a willing partner in the Harper government.

The recently elected Obama administration had already launched a domestic regulatory modernization that sought to make rules affecting business “simpler” to enhance U.S. industrial competitiveness (Sunstein, 2013). Having enacted two expensive (for industry) pieces of legislation (the Affordable Care Act expanding health insurance coverage, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, to re-regulate the financial sector), the Obama administration felt it needed to balance out the costs to business from U.S. regulations (Sunstein, 2013, p. 178). One of the first things Obama did as president was to issue a memorandum directing the OMB to update former president Clinton’s 1993 executive order on regulatory review, on the grounds that new knowledge of good regulatory practice had developed since the 1990s that needed to be reflected in policy:

Far more is now known about regulation—not only about when it is justified, but also about what works and what does not. Far more is also known about the uses of

a variety of regulatory tools such as warnings, disclosure requirements, public education, and economic incentives. Years of experience have also provided lessons about how to improve the process of regulatory review. In this time of fundamental transformation, that process—and the principles governing regulation in general—should be revisited (U.S. Federal Register, 2009, p. 5977).

The OMB review culminated, in January 2011, in a new executive order (EO 13563), which gave all federal agencies 120 days to propose how they will perform a “retrospective analysis” of past rules, with the goal of streamlining the regulatory system. According to OMB chief Cass Sunstein (2013), the administration “believed that in a difficult economic period, there was a pressing need to eliminate unjustified requirements and to reassess rules on the books.... We also heard this suggestion, loud and clear, from business both large and small” (p. 178).

Executive Order 13563 reinforced the role of the Office of Information and Regulatory Affairs (OIRA) as a central arbiter of effective, low-cost regulation. Federal agencies would be required to seek out regulatory goals “that are designed to promote innovation,” and that “reduce burdens and maintain flexibility and freedom of choice for the public” (Federal Register, 2011, p. 3822).

U.S. business had also long problematized regulatory variation outside of the United States, in Europe in particular, and believed that efforts to eliminate transatlantic differences “have not been materially significant” (Ahearn, 2008, p. 1). Business lobbies urged the Obama administration to “reduce that problem,” concerns the administration took “very seriously” (Sunstein, 2013, p. 178). Shortly after the formation of the RCC, in May 2012, the U.S. president would issue Executive Order 13609, “Promoting International Regulatory Cooperation” (U.S.

Federal Register, 2012), which handed OIRA's existing Regulatory Working Group a new coordinating role for IRC and required state agencies to consider regulatory cooperation as a means of meeting their regulatory review and simplification responsibilities under Executive Order 13563. A U.S. Trade Representative official described the rationale behind the IRC order in relation to the Canada-U.S. experiment:

One way to build the necessary political will for regulatory cooperation was to ensure that regulators considered regulatory cooperation as a GRP [good regulatory practice], and an important element of the regulatory process. In the US, the USTR and the Office of Information and Regulatory Affairs (OIRA) issued a policy memorandum asking regulators to consider regulatory cooperation in their normal process of regulating. Although this was not possible in all situations, and additional efforts were required, it was valuable to begin institutionalizing the idea of regulatory cooperation as a GRP" (World Trade Organization, 2012a, para 67).

The Obama administration's regulatory and administrative reforms were in line with bipartisan Canadian thinking on regulatory management. In 2007, the Treasury Board Secretariat released a Cabinet Directive on Streamlining Regulation that had been under development since the final report of the "smart regulation" process initiated by the Paul Martin-led Liberal government. The directive said that government should ensure that "its regulatory activities result in the *greatest overall benefit to current and future generations of Canadians*" (Treasury Board Secretariat, 2007, p. 1—emphasis in original). This entailed protecting the public interest in health, security and environmental quality, but according to the policy, regulatory departments should also equally consider how they can "promote a fair and competitive

market economy,” make decisions “based on evidence,” make sure regulations are “accessible, understandable, and responsive...through inclusiveness, transparency, accountability, and public scrutiny,” “advance the efficiency and effectiveness of regulation” via cost-benefit analyses and by focusing resources “where they can do the most good,” and do all of this in a timely manner that ensures “policy coherence, and minimal duplication,” via coordination across government and “with businesses and Canadians” (Treasury Board Secretariat, 2007, p. 1). Regulatory analysis and public consultations are closely connected in the directive, which requires agencies to demonstrate, “through the best available evidence and knowledge *that government intervention is needed*” (Treasury Board Secretariat, 2007, p. 4—emphasis added) and why the regulator has chosen one course of action over another. The objectives of regulation should be measurable and linked to performance indicators so that performance can be monitored over time to determine the regulation’s effectiveness. And regulators must coordinate across the federal government, and with provincial and international governments, “to maximize effectiveness and minimize the cumulative and unintended impacts on Canadians and the economy” (Treasury Board Secretariat, 2007, p. 7).

Canadian and U.S. government programmes for regulatory cooperation had also been affected, since before the SPP days, by bilateral regulatory dialogues with the European Union. In one of my interviews for this thesis, a former head of the Canadian Manufacturers and Exports explains, “The whole discussion [between Canada and the EU] was about how do we identify and eliminate regulatory differences where it did not affect health and safety and environment” (Myers, personal communication, May 14, 2020). He said the Canadian government position—that you can improve regulatory compliance and processes “without

undermining the objectives of the regulations themselves”—was shared by the EU and made it possible to initiate a broad free trade agreement just as the Obama administration was getting settled into its first term. “I think it’s important to see the RCC in light of what was already going on there,” he added.¹¹

However, for key architects of the Regulatory Cooperation Council, the primary rationale was closer to home. Prime Minister Harper urged President Obama at the G8/G20 summit in Toronto in 2010 to prioritize relations with America’s neighbours. Shortly after, the two leaders agreed to begin negotiations on the Beyond the Border and Regulatory Cooperation Council action plans. Issues related to security and border facilitation that had been part of the Security and Prosperity Partnership were back on the agenda, now bilateralized at Canada’s request (with parallel U.S.–Mexico dialogues), but the regulatory exercise “was initiated by the U.S” (Robertson, 2013, p. 39). A Canadian official based in Washington, D.C. located the origins of the RCC in “Mr. Obama’s mid-term electoral ‘shellacking’,” and the president’s desire to make amends with “certain private sector groups” who charged his administration of being “anti-business” (Miller, 2011, slide 10).

One cross-border business group leader and future regular RCC participant who spoke to me for this research explained how the Obama administration consulted business on what should be on the agenda with Canada:

¹¹ Canada and the EU agreed, at a bilateral summit in 2002, “to intensify our regulatory dialogue and to work towards a new framework in this field,” mirroring EU-U.S. regulatory cooperation commitments since 1995 (https://ghum.kuleuven.be/ggs/research/biosafety_biodiversity/publications/meuwese_final.pdf). A bilateral Framework on Regulatory Cooperation and Transparency, signed by Canada and the EU in 2004, committed both jurisdictions “to address new challenges and opportunities by enhancing regulatory co-operation, and to work towards preventing and eliminating unnecessary barriers to trade and investment while ensuring better quality and effective regulations to achieve public policy objectives” (quoted in TBS, 2007, p. 3).

In the business community, post-2008 economic collapse, we said if you really want to stimulate the economy, regulatory cohesion would be a great way to do it.

Government would not have to spend a lot of money, but it would save businesses a lot by removing differences (many of them small differences) in Canadian and U.S. rules.... It's not controversial. There are no constituencies that are against it, and it can be a meaningful part of the agenda (Greenwood, personal communication, May 19, 2020).

On the Canadian side, business groups had already been in touch with the Prime Minister's Office and were promoting regulatory cooperation as a way to pursue "more efficient regulation between the United States and Canada but also within Canada itself, and more generally within the federal government" (Myers, personal communication, May 14, 2020). A Canadian regulatory policy official who was involved in setting up the RCC remembers that: "It was the Americans who came to Canada proposing this idea. Most of the time we're a bit of an afterthought, but here they said let's do this. We said great, let's do this, and then did much of the work" (Heynen, personal communication, April 9, 2020). Both governments "had a strong incentive to work with each other," according to another official who worked in the Canadian RCC Secretariat in its early days (Chancey, personal communication, April 28, 2020). The U.S. administration saw Canada as a safe country with which to experiment with new forms of international regulatory cooperation because of the high degree of regulator-to-regulator cooperation that had existed for some time already. This, along with Harper's and Obama's common regulatory reform agenda and "a shared commitment on the part of the U.S. and Canada to a successful outcome, meaning concrete changes where there was a shared policy

agenda,” created the “necessary conditions for success” (Chancey, personal communication, April 28, 2020). Just as Waddell had observed with respect to the “smart border” negotiations (see last chapter), this same official compared the RCC development dynamic to the negotiations of the CUSFTA (he was an analyst in the negotiating team for Canada). In both instances, he claimed, the U.S. saw a deal, or in this case a permanent Regulatory Cooperation Council, as a benchmarking exercise that could be copied into arrangements with other countries:

Regulatory cooperation was starting to appear in the trade discussions (TPP, CETA, TTIP) and the expectation was that it would continue to be a factor. The Americans said, let’s do one with Canada (get the kinks out of this and establish the benchmarks). By contrast there was a U.S.–Mexico RCC discussion at the same time and it was producing nothing. There were some attempts to turn them into trilateral RCC talks, but everyone realized the essence of regulatory cooperation is bilateral. It needs trust and relationships. If you add a third or fourth country, it breaks down. The Americans were using the Canadian RCC to try to...move the Mexicans in that direction (personal communication, April 28, 2020).

The rationale for the RCC was also an extension of the global market liberalization launched in many respects by the CUSFTA, according to this RCC official. CUSFTA “established the principle of market-driven economies with progressive harmonization of standards. RCC is an extension in some respects of that philosophy and its success is a sign of how committed our countries are to that idea” (Chancey, personal communication, April 28, 2020). With respect to “similarities and commonalities and acceptable levels of risk, and so forth, they’re [Canada and

the U.S.] as close as two countries you're going to get," he said. Similarities in ways of regulating in Canada and the U.S., and ways of reforming how governments regulate to lower costs to business, were also a factor. While both countries had recently released regulatory guidance documents requiring federal agencies to consider the effect of new rules across all of society, including their effect on trade and administrative burden, the RCC was thought to create an additional check or "challenge process" on regulations:

This was intended to be a way of identifying opportunities of improving the regulatory process in the federal government itself and the U.S. administration.

People were looking at reducing the cost of regulation and there have been various domestic groups that had made recommendations about reducing paperwork, red tape, burden... that was a large part of the thinking behind the RCC itself. It would help to identify needless requirements in federal regulation (Myers, personal communication, May 14, 2020).

In summary, both Canadian and U.S. government and private sector originators and backers of the RCC envisioned the project as being a potential solution to the problem of regulatory inefficiency as well as the tendency of national regulatory sovereignty to produce minor but potentially costly variation across spaces of economic production and consumption. Regulatory independence—the belief that regulatory agencies must pursue their legislative mandates free from political or undue business influence—was valued highly in both Canada and the U.S., but so was the belief in the need for efficient market interactions and the perceived harms to the general welfare of too much state intervention. Regulatory policy has in both countries centralized procedures for regulatory review and co-ordination across

government, required consultation with the public to create transparency in government, and prioritized “red tape reduction” on the assumption that less paperwork and fewer duplicative product approvals would facilitate trade while maintaining high standards of protection. Despite these similarities in how Canadian and U.S. regulations are made, and common assumptions behind how those decisions should be made, regulatory variation persisted, creating a demand for international coordination. The RCC “grew out of an environment where both sides realized regulation was important to meeting social objectives, and you wanted to make sure compliance was as efficient as possible, but that relied on a proactive regulatory policy, not one where you’re dismantling regulations” (Myers, personal communication, May 14, 2020). The international supply chain was king: the task for the Canadian and U.S. governments was now to find more effective ways than previous institutional experiments could to stop imposing “redundant or unnecessary requirements and costs” on transnational business (Carberry, 2017, p. 1).

Perpetual alignment machine: Inception and mutation of the RCC

Prime Minister Harper and President Obama announced the creation of the Canada-U.S. Regulatory Cooperation Council in February 2011. A few weeks later, Obama announced a similar project, the High-Level Regulatory Cooperation Council, with Mexican President Felipe Calderón, “returning to the dual-bilateral approach to North American diplomacy” (Sands, 2012, p. 333) pursued by the Clinton Administration after NAFTA ratification and the George W. Bush Administration prior to the SPP. From the beginning, the RCC was meant to break new ground from SPP-era regulatory cooperation. One Canadian RCC Secretariat member and

former policy analyst for the prime minister on Canada–U.S. relations during the SPP period (2005–2007) recalls that the trilateral regulatory cooperation framework “was negotiated at a large distance to the actual regulators,” and served mainly as a set of principles and commitments about advance notice and other good regulatory practices (Heynen, personal communication, April 9, 2020). “That was about as valuable as the paper it was written on in terms of contributing to cooperation,” he said. This time around, cooperation would be regulator driven—informed by business stakeholder input, though with “sensitivity towards the optics of business at the helm” (Manak, 2019, p. 13). The Canadian and U.S. governments separately invited input from industry, regulatory departments and provincial and state governments. In Canada, the government received 170 submissions, almost all of them from industry, industry associations and think tanks favourable to closer Canada-U.S. economic integration, such as the Fraser Institute and the Conference Board of Canada (Department of Foreign Affairs, 2011). This feedback was sorted into areas of potential sectoral alignment that included many leftover items from the NAFTA working groups (see Table 4), proposals for making government regulatory frameworks more “efficient and effective,” examples of regulatory alignment elsewhere (e.g., in the European Union, between Australia and New Zealand, and internationally in the areas of chemicals management, etc.), and proposals for how regulatory cooperation should be carried out, i.e., via what techniques and under what principles (Department of Foreign Affairs, 2011). A RCC Secretariat, established within the PCO to lead the work centrally in Canada, was populated by government analysts with experience in regulatory policy across multiple departments (Carberry, personal communication, April 28, 2020).

According to Carberry, the hope at the outset was that Canadian regulatory departments would have their own ideas for cooperation, but they were “drawing blanks,” which the RCC Secretariat lead ascribed to their lack of experience or interest in considering the economic impacts of health, safety, environmental and other rules under their authority (personal communication, April 28, 2020). Instead, he said, industry initiatives among the initial proposals “that would have a tangible effect on companies” were discussed with relevant Canadian regulatory leads to determine which were legally and practically possible. “There had to be a willingness by regulatory departments in both countries to address an issue jointly,” wrote Carberry in a 2017 assessment of the RCC. “This had the effect of eliminating longstanding unresolved trade irritants or one-way barriers from the scope of the regulatory cooperation effort” (p. 2). Other individuals interviewed for this research highlighted that regulatory cooperation should take place “where there are compatibilities” (Chancey, personal communication, April 28, 2020) or where there will not be “winners and losers” from adopting one country’s regulations or the other’s (Chhabra, personal communication, April 27, 2020). Regulatory cooperation is “not about screwing the other guy on market access. It’s got to be in the interests of both countries...because you’re saving money or developing economies of scale,” said another RCC secretariat member (Heynen, personal communication, April 9, 2020). Likewise, Hale proposed the success of international regulatory cooperation will depend on “credible prospects of strategic or continuing incremental gains” to justify “scarce” governmental resources, and to avoid high-profile measures “that could arouse countervailing or blocking coalitions of domestic interests” (Hale, 2019, p. 125). While this theory or strategy of incremental regulatory alignment is similar to past experiments with Canada-U.S.

cooperation, and similarly anti-democratic, the RCC introduced some novel methods for putting it into practice.

Table 4 - Overview of Canadian industry recommended areas of Canada-U.S. alignment

Sector	Key issues raised
Agriculture and food	Food safety requirements, biotechnology approvals, crop protection, labelling and packaging, animal and plant health, veterinary drugs, product verification, etc.
Transportation	Motor vehicle safety, movement of trucking and rail shipments, marine security, cargo and passenger screening, shipping of dangerous and hazardous materials, etc.
Health and consumer products	Duplicative testing, classifications, labelling, and safety standards for a range of products including pharmaceuticals, cosmetics, toys, personal care products, chemicals, etc.
Environment and energy	Greenhouse gas standards for vehicles and engines, energy efficiency of consumer products, chemicals management, environmental assessments of border infrastructure, etc.

Cross-cutting issues	Nanotechnology regulation, rules-of-origin requirements, conformity assessment, cost-benefit analysis of regulations, transparency of rule-making process, reducing duplication, coordinating information gathering within and between governments.
----------------------	---

Source: Regulatory Cooperation: What Canadians Told Us (Department of Foreign Affairs Canada, 2011), summarized by author. These issue areas provided the basis for the RCC work plans up to about 2018.

Once the RCC secretariat had settled on Canada’s national agenda items, negotiations took place in Washington at the Assistant Deputy Minister (ADM) level to determine where Canada and the U.S. might both be able to declare a “win” (Heynen, personal communication, April 9, 2020). The negotiations produced a 28-point Joint Action Plan endorsed by the Canadian prime minister and U.S. president and announced to the public in December 2011. According to that plan, the RCC would be guided by six principles, some of which were drawn from the Department of Foreign Affairs’ “what we heard” report published earlier in the year. For example, the plan (Treasury Board Secretariat, 2011) emphasized that “each country will maintain its own sovereign regulation” while mutually relying on each other’s system “to inform one’s own decision-making” (para. 8); transparency and “early engagement” with stakeholders (para. 12); and regulatory outcomes that do not compromise outcomes for consumer protection, health, safety or the environment. The high-level statement of principles encouraged government officials in both countries “to challenge the status quo, create new

synergies and opportunities for alignment, and look at systemic regulatory changes that will result in permanent change—with alignment as a key objective in future regulatory work” (para. 14).

This challenge function, and indeed much of the bilateral regulator-to-regulator coordination on the RCC action items, would fall largely to the Canadian side, according to multiple participants in this research. While in the U.S., the Office of Information and Regulatory Affairs (OIRA) had a few people working in a regular capacity on regulatory cooperation with Canada, a team of up to twenty-five government employees from various departments were drafted into the Canadian RCC Secretariat for six- to 12-month stints; if they worked out, they were offered a renewal (Carberry, personal communication, April 28, 2020). Hiring was informal but competitive and team members selected for their knowledge of the economic sector and businesses they would be coordinating. Glyn Chancey, a former executive director of plant health and biosecurity at the Canadian Food Inspection Agency, had just finished a two-year term at TBS working with various departments on the Harper government’s Red Tape Reduction Action Plan when he was selected to direct the RCC (February 2012 to October 2015). He said it was helpful to house the RCC within the PCO because of its likeness to OIRA, from an administrative point of view (personal communication, April 28, 2020). In our conversation, he recalled the discrepancy between the Canadian and U.S. resources put towards getting RCC priorities completed:

We knew we would have to do all the work to lay the framework and say, “How do you like this cake? Is it baked to your satisfaction?” And they’d say, “Yeah, we’re ok with that.” Occasionally, I can count it on one hand, I got a U.S. proposal that was

fleshed out. They didn't need to do that. We did the work and by having the pen you have some influence on the outcome.

Small “but powerful” coordinating groups were established by the Canadian RCC Secretariat including ministers, deputy ministers and analysts to “ride herd,” i.e., to ensure that Transport Canada, Environment Canada and other departmental people were taking on the work (Heynen, personal communication, April 9, 2020). “We didn't say you must do this on vehicle emissions, but we actively encouraged them to push their U.S. counterparts to agree to such an agenda with fairly strict timelines—this is what we want you to accomplish in six months, 18 months, etc. It was regulator led, had key deliverables and objectives, and some concrete outcomes,” said Heynen in our interview. In this way, the Canadian RCC secretariat had some influence over the activities of U.S. as well as Canadian regulators.

Private sector stakeholders were also critical to the challenge function of the RCC, not just in setting the initial objectives. Semi-annual stakeholder gatherings in the early stages of the RCC were meant to hold government officials accountable or, as one government official put it, “shame regulators in Canada into faster progress” (GOV1, personal communication, April 22, 2020).¹² This created some “distrust on the part of regulators with respect to the central [RCC] agency,” said the same person, distrust that other RCC coordinators attribute to static thinking about what regulation can do:

¹² Carberry told industry participants at an RCC stakeholder session in 2012, “So at this point in time, we really need some acute industry attention, frankly, on the working groups and in the Regulatory Cooperation Council's work in general,” and suggested they go to the Assistant Deputy Manager level leads within departments in particular (Woodrow Wilson Centre, 2012).

[W]e were changing decades of understanding and levels of trust.... People said the culture of regulators is not to cooperate to this degree. I said from where I stand, we'll make some procedural changes, bring them together, which will create behavioural changes, and that will create a different culture. Get into the scientific technicalities and these people all know each other... In an integrated market where consumers want the same stuff...it's ludicrous to have regulations that aren't talking to each other (Carberry, personal communication, April 28, 2020).

Between 2011 and 2014, the Canadian RCC secretariat also monitored Canadian regulatory proposals published in the Canada Gazette I and II and the prepublication of rules in the U.S. for potential items to include in the RCC agenda. The RCC secretariat would engage with Canadian departments to ask if they had considered alignment, and what the reasons were for not aligning in those cases. According to one secretariat member, there were many proposals for cooperation coming in from U.S. and Canadian stakeholders, which were sent to departments for their views and discussed between the Canadian RCC Secretariat and OIRA, with a view to determining how feasible the proposals were (e.g., whether they would require legislative changes to implement):

Departments weren't on their own. PCO staff were assigned departments to be responsible for following up [with] and troubleshooting. There were monthly reports (progress reports) coming in from departments. It was a pretty intensive process. Some departments were pushing back on all the reporting. That's another reason why these things can be sustained for a short amount of time. Other priorities come up. (Chhabra, personal communication, April 27, 2020).

The NAFTA technical working groups institutionalized manager-level government-to-government interactions, across multiple departments, in the pursuit of trade-facilitating government regulation of the economy over the long-term. In contrast, the Canadian RCC secretariat was built to move relatively quickly, with support from the highest levels of government and a vision to change the *culture* of Canadian regulators themselves. But like previous iterations of North American cooperation, the theoretical assumption was that early progress on RCC priorities would need to be demonstrated for corporate, and importantly U.S. government, participants to stay interested.

From Action Plans to Forward Plans (2014–2016)

In 2014, the U.S. and Canada issued a Joint Forward Plan (Treasury Board Secretariat, 2014) that recapped what was intended by and achieved within the 2012 Joint Action Plan. The document exudes a spirit of experimentation. A section on “General Lessons Learned,” for example, speaks of the “dialogue on deeper cooperation” (para. 28) about regulatory cooperation that was triggered across multiple departments; the importance of relationships, communication, trust and the building of rapport that is “essential for implementing specific initiatives” (para. 29); and that “regulators must lead the way to create and sustain change” (para. 30). The document reiterated that stakeholders have “a critical role to play in identifying unnecessary differences that create costs and challenges, as well as suggesting opportunities for new initiatives” (para. 36). Also important is “high-level commitment to, and support of, the RCC” (para. 40). Despite the emphasis on regulatory departments leading the cooperation and alignment process, the RCC retained its central guidance role: industry, departmental, political and foreign government communications, input, priorities and ideas would be filtered by the

RCC Secretariat for their usefulness to the programmatic objectives of the RCC. However, the end goal was still to routinize international regulatory cooperation:

Our hope and expectation was to embed it, in a way, into the normal processes such that *that* consideration of alignment or misalignment just happened, and there had to be good reasons not to align. (Chhabra, personal communication, April 27, 2020).

To that end, the Joint Forward Plan announced the intention to have Canadian and U.S. regulatory departments develop and sign Regulatory Partnership Statements. Though these statements were allowed to vary based on departmental priorities and working methods, they were to all include:

- High-level governance between the agencies and a commitment to work together moving forward.
- Opportunities for stakeholders to provide input, to inform strategies, identify priorities and discuss progress on the implementation of initiatives as appropriate.
- A mechanism for annual reviews of work plans to consider adjustments and provide status updates on the progress (Treasury Board Secretariat, 2014, paras. 55–57).

A scan of the 13 Regulatory Partnership Statements shows similarities related to governance, stakeholder involvement in binational regulatory cooperation and review mechanisms.¹³ In almost all cases, top-level departmental officials are supported by senior technical specialists who commit to meet at least once annually to review existing Joint Forward Plan priorities and

¹³ The partnership statements can be found on the website of the U.S. International Trade Administration: <https://www.trade.gov/rcc-partnership-statements-and-work-plans>.

consider new areas of cooperation. In one sense, this arrangement appears to replicate the NAFTA technical working group setup. But outside of RCC-identified priority projects, international departmental cooperation was to be more or less self-directing and more closely involve the private sector. Within some regulatory partnership statements (e.g., on pesticides regulation and food safety standards) stakeholders are given unique opportunities to provide feedback on RCC work at annual meetings and in between, on webinars and joint conference calls, while in other cases pre-existing domestic consultation processes are listed in the partnership statements as the appropriate point for feedback. Likewise, review mechanisms are not all uniquely RCC-related. For example, a regulatory partnership agreement between Health Canada and the U.S. Food and Drug Administration commits the two agencies to meeting once a year on the sidelines of the annual Summit of Heads of Medicines Regulatory Agencies Meeting.

According to one government official, the focus of the RCC on central oversight and “beating up departments” until you reach the level of alignment industry wants with the U.S. was itself misaligned with the realities of domestic regulatory development (GOV1, personal communication, April 22, 2020). What were needed instead, this official claimed, were better metrics—a better calculation of the real costs of inefficiencies, “sector by sector,” of regulatory variance and what it would take to increase trade in those sectors. “I think that regulators need to see that their efforts are doing something,” the official said, adding that you need to measure the economic benefits, not “have a PCO henchman knocking people when they fall out of line.” Whether or not the incoming Trudeau government agreed with that assessment of the RCC, after a year in office the PCO was out as central RCC watch dog and the job handed to the

Treasury Board Secretariat (TBS). Some of the implications of this shift in responsibility—for the RCC and Canada’s international regulatory cooperation agenda—are considered in the next section and again in the conclusion.

Machine without a ghost (2016–2018)

The election of Donald Trump as U.S. president in late 2016, and his administration’s aggressive deregulation agenda, did not initially affect Canada’s willingness to engage in regulatory cooperation. In fact, a Canadian TBS official proposed during a stakeholder session in Ottawa in June 2017 that the RCC “complements the U.S. regulatory reform agenda as both seek to reduce regulatory burden” (author’s notes from event). Just over a year later, Scott Brison, then president of the Treasury Board, told the annual RCC stakeholder session in Washington that he had “proposed an idea to OIRA and the OMB for their two-for-one rule to actually take into account any successful RCC initiatives to actually count as credits for the two-for-one rule or the one-for-one rule in Canada” (author’s notes from the event).¹⁴ This was not just a rhetorical play to keep a deregulatory Trump administration interested in the RCC. That same year (2018), the Trudeau government amended a section of the Harper government’s *Red Tape Reduction Act* on controlling the “administrative burden” of federal regulations. Section 5(1) of the Act read, as amended: “If a regulation is made that imposes a new administrative burden on a

¹⁴ According to the TBS Policy on Limiting Regulatory Burden on Business, the one-for-one rule has two elements: 1) “When a new or amended regulation increases the cost of administrative burden on business, the government must offset from its existing regulations an equal amount of administrative burden on business (Element A)”; and 2) “The government must remove a regulation each time it introduces a new regulation that imposes new administrative burden on business (Element B). Such an offset must occur within 24 months of the regulatory change.” See: <https://www.canada.ca/en/government/system/laws/developing-improving-federal-regulations/requirements-developing-managing-reviewing-regulations/guidelines-tools/policy-limiting-regulatory-burden-business.html> (last accessed April 2, 2021).

business, one or more regulations must be amended or repealed to offset the cost of that new burden against the cost of an existing administrative burden imposed by a regulation on a business.” A new section, 5.1(b), said that departments could “offset” the additional administrative burden, with approval of the Treasury Board, if the new burden “is the result of an agreement—between the Government of Canada or any of its institutions and the other jurisdiction that made, amended or repealed the regulatory instrument—relating to the promotion of cooperation in the design, monitoring, enforcement or review of regulations and that other jurisdiction’s regulatory instruments.” According to Brison, again speaking to the RCC stakeholder session in 2018, these and other procedures of IRC are meant to give agencies and regulators “an incentive to actually cull some of the existing stock of regulations on an ongoing basis” (personal notes from the event). Continentalism, diplomacy, and industry pressure drove Harper-period RCC onward in its quest for regulatory cultural change. As guidance of the RCC in Canada shifted from the PCO to TBS, procedural refinement, momentum, routinization and metrics would take over.

According to a government official who spoke to me for this research, the justification for moving the RCC was “to make sure it was closely embedded with the rest of the regulatory efforts that the government is doing” (GOV2, personal communication, January 27, 2020). These now included the Regulatory Cooperation Forum (RCF) established between Canada and the European Union in the Comprehensive Economic and Trade Agreement (CETA), which came into force in September 2017, and the interprovincial Regulatory Reconciliation Tables established in the Canadian Free Trade Agreement (CFTA) that replaced the Agreement on Internal Trade (AIT) on January 1, 2017. As Brison told the 2018 RCC summit, “global regulatory

competitiveness” was Canada’s top priority, and this required close collaboration with the United States (personal notes from the event).

The “cues” for regulatory cooperation under the new regime still came from “the stakeholder community” (see Figure 1), sometimes at RCC stakeholder events in Washington but largely through official bilateral calls-for-proposals advertised in the Canada Gazette and the equivalent regulatory notification system in the United States. But the job of cooperating and aligning was to an even greater extent left up to departmental leads, who were accountable in a less immediate and more bureaucratized way to central coordinators in the Canadian RCC secretariat. For example, officials discussed the “challenge role” that TBS continued to play on most federal regulatory proposals as mandated by the 2018 Cabinet Directive on Regulation (and before it, the 2012 Cabinet Directive on Regulatory Management). This role includes vetting departments’ regulatory impact analysis statements (RIAs) and questioning regulators about whether all appropriate stakeholders were consulted. But, in contrast to the earlier RCC period, “there’s nobody with the sticks telling regulators they have to participate” (GOV3, personal communication, January 27, 2020). As long as a regulator can demonstrate they have considered the objectives and principles related to regulatory coherence and cooperation (e.g., where a trading partner’s rules would meet similar health, safety or environmental objectives) and decided a unique Canadian approach is warranted, that assessment would hold. Nonetheless, the accumulation of RIAs, stakeholder input and inter-governmental communications within the TBS and/or OIRA renders these central regulatory agencies powerful. As Miller and Rose write (2008), a group’s centrality:

confers upon them the capacity to engage in certain calculations and to lay a claim to legitimacy for their plans and strategies because they are, in a real sense, in the know about that which they seek to govern. The inscriptions of the world which an individual or group can compile, consult or control play a key role in the powers they can exercise over those whose role is to be entries in these charts” (p. 66).

Figure 1 - Regulatory cooperation cycle



Source: Treasury Board Secretariat (2019), International Regulatory Cooperation, a presentation to the Queen’s Institute on Trade Policy, November 19, 2019, p. 9.

The submission of a barrier triggers a “regulatory cooperation cycle” depicted in Figure 1. The information gleaned from these submissions is routinely discussed with TBS’s counterparts in at OIRA in Washington, D.C. According to one government official:

If an issue comes up, or a stakeholder says I have a problem with something to do with, I don’t know, food inspection processes, we would pick up the phone and

we'd have a call with OIRA and say, 'We're hearing from a stakeholder that there's an issue in this realm. We're having conversations with our regulators about whether, one, this is a true issue (because sometimes it's about perspective, right?). And then, if it is, what do we do about it.' So, prompting them to have the same conversation on the other side, or 'Are you hearing the same thing?', is also a really important conversation to have. So we have regular calls with [OIRA], sometimes weekly, in slow areas it may be biweekly or monthly, but there is a regular communication (GOV3, personal communication, January 27, 2020).

In summary, while industry participants and some earlier RCC Secretariat members interviewed for this research believe the RCC to have fizzled out following its transferal to the Treasury Board Secretariat (Carberry, 2018; Greenwood, personal communication, May 19, 2020; Myers, personal communication, May 14, 2020; Chancey, personal communication, April 28, 2020), it seems clear from my interviews and the inclusion of new RCC agenda items in and after 2018 that a machine of sorts was established, though it was a machine without a ghost, a procedural shell into which potentially fruitful Canada–U.S. regulatory cooperation activities can be fitted as desired. That is, as long as the proposed activities are aimed at lowering regulatory or administrative burden on business. The next section examines the experiences and interactions of public and private sector actors with the RCC, as a means of drawing out perceived roles and responsibilities within this historically and geographically contingent recent experiment in IRC.

Behave yourself: responsive regulators and proactive regulatees

The previous two sections outlined the governmental programmes and technologies which bring together state and non-state actors in the RCC with the objective of eliminating regulatory difference, facilitating trade, reducing administrative “burden” on business, and “simplifying” domestic regulatory requirements, or making regulation more “efficient” and “effective.” For many participants in this thesis, it was important that these practices of regulatory cooperation become automatic or second nature to those involved—from both industry and government—so that the coordinating role of the RCC secretariat could eventually be wound down (Carberry; Chhabra; Myers; Chancey—personal communications). This was said to involve behavioural or “culture” shifts in regulatory departments that are not accustomed to considering the economic impacts of government rules (Carberry, personal communication, April 28, 2020). After leaving office, Obama’s top regulatory policy officer Cass Sunstein (2013) wrote, “The best nudges move people in the direction they would go if they were fully rational. Indeed that is a central point of good choice architecture” (p. 205). Though the people Sunstein was describing here were company officials or consumers faced with choices resulting from government regulation (consumer product safety labels, for example), the RCC can be said to also create a “choice architecture” aimed at helping domestic regulators make rational, i.e., welfare-maximizing, choices. In this section we focus on the experiences of some of these RCC participants at being thus nudged and consider how these subjectivities reinforce and/or contest governmental rationalities.

U.S. agency and Canadian departmental officials

Between 2011 and 2018, the RCC involved about a dozen Canadian and U.S. departments or agencies working to complete a list of 100 or so tasks within bilateral (agency-to-department) action plans and forward plans (after 2014). Each of these forward plans was the responsibility of U.S. and Canadian departmental leads. In many cases, it is not apparent who these people are from publicly available RCC documents, though private sector stakeholders will have met most of them during RCC stakeholder sessions in Washington, D.C. For this research, departmental leads who could be found in RCC documentation were contacted, along with government officials in Canada and the U.S. whose LinkedIn profiles mention current or past work on the RCC. In some cases, the RCC-relevant department was contacted with a request for the lead forward plan contact. Of these contacts, seven departmental officials involved in RCC cooperation activities agreed to be interviewed for this research. (Coincidentally, all of the participants were involved with chemicals-related regulation of one kind or another.) This information is supplemented by personal observations of RCC stakeholder events based on the author's notes of two such events, one in Washington, D.C. and one in Ottawa, Ontario, or else by secondary writing on the RCC.

Canadian government participants recalled discussing, around 2015, the areas on which they might want to engage with U.S. regulators. It was “a neat experience” and produced three work plan ideas that were shopped to the U.S. Environmental Protection Agency (Zidek, personal communication, October 22, 2019). Chemicals management, including chemicals risk assessments, made sense to Canadian regulators because it was both a key interest of private stakeholders, who would like to see more harmonization and greater alignment on the timing

and administrative requirements for things like chemicals approvals, and an area where there was a “well developed relationship with EPA” (GOV4, personal communication, October 22, 2019). Also, according to this same official, both Canada and the U.S. had “strong stakeholder processes” in this area, meaning regularized domestic consultations with industry, as through Canada’s Chemicals Management Plan. On the other hand, one government official recalls the EPA being “reticent to work with Canada” and believes this had to do with the EPA not wanting to cede its authority over regulations to the White House (GOV1, personal communication, April 22, 2020).

When asked how the RCC differed from past cooperation with the U.S. on chemicals, such as that established under the SPP, participants said the RCC process “puts your feet to the fire” (GOV5, personal communication, October 22, 2019), while having top-level political endorsement gives the cross-border work “momentum and credibility” (GOV4, personal communication, October 22, 2019). Interviewees differentiated between a Phase 1 (under the PCO), where there were lots of monitoring and reporting requirements, monthly check-ins, and the broader stakeholder meetings to do follow-up with industry, and the Phase 2 work under TBS, which is more “ongoing cooperation in a casual way” (GOV5, personal communication, October 22, 2019). “RCC 1 was a project with a finish line,” said this same source, whereas there is less guidance from TBS on how to cooperate. They added that there are pros and cons to both approaches, and that time-limited projects “keep you going.” Another official said that strict timelines are difficult to meet when you do not have control over your U.S. partner agency’s agenda (GOV 4, personal communication, October 22, 2019). The opportunity to have all stakeholders “at the table” was also valued by one official in part because it showed

regulators how inconsistently stakeholders understand the regulatory process (Zidek, personal communication, Oct. 22, 2019). Another said the RCC brought to light variances in Canadian and U.S. regulations related to workplace chemicals—e.g., occupational exposure triggered a review for more information in the U.S. but not in Canada (GOV5, personal communication, October 22, 2019)—and the handling of confidential business information. In fact, much of the RCC work is considered to be in the area of sharing information, “not adopting norms” (GOV4, personal communication, October 22, 2019). In the area of nanomaterials, for example, the U.S. had released policy principles with respect to regulation and oversight, which Canada agreed to take into account in its evolving approach to nanomaterials regulation.¹⁵ But as similar discussions were underway at the OECD, Canada and the U.S. only agreed to continued dialogue on this issue (GOV5, personal communication, October 22, 2019).

One U.S. government official said that with trading partners as close as Canada and the U.S., working closer together on regulation can create “synergies” that don’t just come from regulator-to-regulator dialogue, but also from providing benefits to stakeholders (GOV10, personal communication, May 10, 2020). Reflecting governmental priorities for the RCC, the official said common hazardous goods labels, for example, might create benefits for workers without reducing levels of protection. They saw Canada–U.S. regulatory cooperation on chemicals labelling as something that would need to take place continually, as the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) is a “living document” and that, over a decade, divergences could appear rapidly. The GHS is itself the product of

¹⁵ See “RCC Nanotechnology Policy Principles for Decision-Making Concerning Regulation and Oversight of Nanotechnology and Nanomaterials” <https://www.yumpu.com/en/document/read/36874441/policy-principles-for-the-us-decision-making-concerning-regulation->.

international regulatory cooperation beginning in the 1990s that was brought under the UN in the early 2000s. Since then, multiple guidance documents have been produced for country regulators to bring into their national systems. Canada and the U.S. had been cooperating on GHS at the UN for many years prior to the establishment of the RCC. According to the same U.S. official, the RCC was not meant to change the regulatory framework in Canada or the United States, where constitutional responsibilities on both sides of the border (federal–provincial, federal–state) complicate the regulation of workplace safety. Canadian labour unions, on the other hand, have contested Canada’s decision, in 2018, to remove the precise concentrations of certain chemicals on labels for the sake of aligning with the U.S. and in response to industry lobbying (Trew, 2019).

Like the Canadian officials above, the same U.S. participant recalled a shift in reporting requirements as the RCC Action Plan became the Joint Forward Plan in 2014. They explained that OMB/OIRA still required RCC leads to produce work plans and report back, sometimes using forms to fill out, sometimes with routine phone calls, and sometimes direct one-on-one calls if there was a specific question. According to this participant, the RCC opened up different ways for Canadian and U.S. regulators to work together. Joint guidance documents, “where we did a deep dive” on regulatory variation, would not have happened without the RCC, they claimed. They also said the RCC “improved” stakeholder engagement processes related to the UN GHS conversations, in that Canada and the U.S. agreed to start doing public meetings before every GHS subcommittee meeting. “In this way, stakeholders had a chance to provide feedback and generally “see what was going on.” When questioned about how competing interests are balanced in their area of RCC cooperation, this U.S. participant emphasized that “our mission is

foremost,” which in the participant’s case is “to protect the American worker.” But they added that there is pressure from industry stakeholders to deal with:

So the important thing is we continue to talk with one another, look at the merit of what is being said to us when an issue arises, and look at how it affects our mission. And with that, with those goals in mind, Canada and the U.S. can usually come to some resolution with each other. We may decide that what the stakeholder is saying doesn’t have merit or might reduce protection.... Once we decide there is something we can do here...we will do that (GOV 10, personal communication, May 28, 2020).

The participant expressed minor frustration with the amount of work the RCC created, in particular around guidance documents on Canadian and U.S. regulatory policy, but they were overall favourable to the process: “I’ve been a cheerleader for the RCC. It’s been very helpful for us.”

Another Canadian government official also highlighted the amount of cooperation that was already taking place (on pesticide risk assessments, for example) prior to the establishment of the RCC (GOV7, personal communication, May 28, 2020). “It was unofficial cooperation,” they said. “Even if we didn’t agree, it was collaborative and we shared info. Then if we did not align with the U.S. in our assessment, at least we could explain why.” The Canadian participant also spoke of the transition from PCO to TBS leadership of the RCC as having an upside and a downside. One upside was the “layer of expectation” it created, or “clout,” for negotiating resources for a project. “If it was an RCC priority, then we would get extra resources when sometimes we wouldn’t get the money and priority,” they said. The downside was the extra

work of an RCC work plan and coordinating with U.S. colleagues: “It gets very red tapey.” It also can be “complicated” to go through the TBS-related RCC process when otherwise a regulator might simply pick up the phone to “bounce ideas off” their U.S. counterparts. “Sometimes you just want someone to disaster check something,” they explained.

Like the previous U.S. participant, this Canadian official agreed with the justification for coordinating with the U.S. on risk assessment and risk management of chemicals:

When two different countries come to different conclusions [about] risk, then mitigation measures could conflict with trade, which is fluid in our North American context. If I decide a product is toxic and ban it in Canada, it has implications for trade. It’s almost easier to ban it. But if you have restrictions on the product in Canada and there’s none in the U.S., there are many implications for a company (GOV7, personal communication, May 28, 2020).

At the RCC stakeholder session in Washington, D.C. in 2018, multiple industry representatives from the chemicals and cosmetics sectors voiced their irritation with Canadian and U.S. regulators, who were present, that while progress had been made on harmonized risk assessment methodologies, regulatory variance persisted with respect to risk management approaches and procedures to protect confidential business information (author’s notes). This same Canadian official acknowledged hearing similar concerns from industry, but pointed out that it is difficult to carbon copy regulations, notably because situations affecting enforcement and other risk management decisions are rarely if ever identical. Canadian and U.S. environmental legislation is also different to the point that it would be impossible for both countries to manage risk in some cases (e.g., risk posed by formaldehyde) in exactly the same

way. On something like implementation of the GHS in Canada and the U.S., however, the official claimed it would be frustrating to industry for Canada and the U.S. to have to abide by two different sets of guidelines. They also reflected the position, expressed by RCC coordinators in the previous section, that industry stakeholder input is valuable for taking government regulators out of their “bubble.” And they said the added cross-border communication has multiple benefits to their work:

[I]t gives you approval to talk [to U.S. colleagues]. You can say [to TBS], I want to talk to them about this because it’s part of the RCC. You’re allowed to do this at a level that’s more collegial, that lets you be more candid. You’re in a safe place where you can discuss with colleagues (GOV7, personal communication, May 28, 2020).

One possible outcome of extra communication, said this participant, was the potential to cooperate not only on industry-backed requests for alignment, but on how to respond to industry complaints or pressure for a different governmental approach: “That’s an opportunity the RCC allows. Stakeholder reactions can be anticipated and dealt with in unison. You get a heads up on the reactions.”

Another Canadian official said they felt that Canada “influenced the U.S. policy on workplace hazards in particular,” and that the “meaningful regulator-to-regulator conversations...had impacts. It was huge” (GOV9, personal communication, July 14, 2020). However, they added, “As it [the RCC] got bigger and bigger it got less effective.... Early low-hanging fruit were achieved and what remained were harder to achieve.” This official recalled industry stakeholders showing up in large numbers to RCC events in Washington hoping to

leverage the Canadian government for changes they would like to see in the U.S. (on paint coatings and GHS, for example). The official spoke of regulators also leveraging the RCC to make progress on a harmonized (Canada–U.S.) GHS implementation, which had started before 2011. The RCC “gave us impetus and something we have to report on regularly,” they said. Furthermore, the PCO “came back and checked on us all the time and reported to the PMO and cabinet.... We had to report in regularly on it and they had to report back to stakeholders, industry in particular. Our feet were held to the fire.”

The same official also spoke of regulations as being “about protecting people,” and said questions of alignment (e.g., with whom and on what issues) were political as well as technical. They pointed to trade implications and the imperative to align being a feature of regulatory review in Canada since at least the “smart regulation” reforms of the 2000s and in particular under cabinet directives on regulation since 2007. “The controls are in place for pushing public servants to make sure they’re aligned where necessary. The question is always who are you aligning with and why,” they explained. And while this official said that regulatory systems should be “insulated from the politics of the day, or protected from undue capture,” the RCC created risks of “capture by industry.” They elaborated:

One of the downsides was that it gave an opportunity for the industry associations or others to continually appeal decisions they didn’t like to a different place. If I’m developing a regulation and they didn’t like my explanation, they can go to me and my boss and the minister and then go to TBS and complain again. Your answer never changes, you’re just saying it in more meetings (GOV9, personal communication, July 14, 2020).

In summary, regulators interviewed for this research expressed mostly favourable opinions of cross-border cooperation and a few acknowledged the impact that misalignment of regulations can have on international trade. My interviews drew out some annoyance with how the RCC created an additional avenue for industry stakeholders to apply pressure on government regulators. But for the most part participants were used to dealing with industry in domestic regulatory processes as well, processes outlined in federal directives on regulatory policy and department-specific procedures for stakeholder engagement such as in Canada's Chemicals Management Plan. Finally, the use of the RCC by Canadian and U.S. regulators to draw attention and resources to their own departmental priorities, and to coordinate bilateral responses to industry pressure on a common file, has the potential to conflict with industry and governmental objectives for the RCC as a means to reduce "burden" on business. On the other hand, such self-directed cooperation also suggests that regulators "view IRC as a mechanism for advancing their regulatory mission" (Bull et al., 2015, 22), precisely as governments had hoped they would.

Industry stakeholders

"We've committed to allowing you folks in the door, to have discussions about how things are going and to put ideas on the table," said Robert Carberry at a RCC stakeholder session in Washington D.C., six months after the launch of the Action Plan (Woodrow Wilson Centre, 2012). While there were non-industry stakeholders in the room, they were few, according to participants interviewed for this research. This access for industry came with responsibilities as well as privileges. For example, according to Carberry (personal communication, April 28, 2020),

a key RCC secretariat coordinator from 2012 to 2016, industry stakeholders were expected to provide data on the costs of regulatory misalignment or duplication between Canada and the U.S., not just examples of such burdens, since the additional information about costs would help justify spending scarce government money on regulatory cooperation. Industry was also expected to be more forward-looking in the kinds of information they brought to regulators' attention, he added, to provide a kind of situational awareness that government regulators were said to lack:

There was this glaring gap of lack of awareness of what was going on in the marketplace and in industry by the regulators who were supposed to be regulating that industry. I was shocked. That's why we needed senior industry people telling senior regulators where the industry is going and where will we need regulation going forward. That was part of the process, it was about making people [regulators] see the train coming well in advance (Carberry, personal communication, April 28, 2020)

For example, at the 2018 RCC stakeholder session in Washington, D.C., Kristin Willemsen, vice-president of scientific and regulatory policy at Food, Health and Consumer Products of Canada, described how her association proposed an RCC pilot project on sunscreen inspections as an experiment to remove allegedly unneeded duplication in Canada and facilitate trade (author's notes). With coordinating help from industry, Canada agreed to allow qualifying importers to import their product directly to retailers where before it would be quarantined and tested under Canadian regulations. In her presentation to the RCC event, Willemsen described industry as being caught in the middle of "multiple mandates" by regulatory departments, for

example health and economic growth, and that these mandates should “merge during the regulatory development process.” She noted the government of Canada’s efforts to reduce “administrative barriers,” through policies such as the one-for-one rule within the *Red Tape Reduction Act*, but added, “what makes regulatory cooperation unique is that you don’t have to wait for regulations to be repealed, in order to benefit. You can exercise that same objective through policy and guidance, which is what we’ve done with [sunscreen].” Willemsen’s advice to other stakeholders in the room was to “work with your members on both sides of the border.... And be very specific.” For example, industry groups should identify precisely what regulatory initiative is creating the barrier and propose alternatives and reinforce this request with a quantified assessment of burdens. Complicated regulatory problems should be broken down into short- and long-term objectives by industry, she said. “Engage at every opportunity... Both OIRA and Treasury Board Secretariat are always open for business for new ideas.”

Several industry groups collaborated on the development of priorities for the RCC through the Canadian Manufacturing Council, which was chaired at the time by the Canadian Manufacturers and Exporters (CME) and included members from associations representing the cosmetics, chemistry, special chemicals, steel, auto, motor vehicles, aerospace and other sectors.¹⁶ According to Jayson Myers, then head of CME, “It [the Council] was a discussion about policy, trying to coordinate key issues we were focusing on. It was also an opportunity to coordinate responses to the RCC. Those groups followed up themselves [on their unique priorities], but we also coordinated feedback to the associations from the RCC and the feed-in

¹⁶ A Regulatory Partnership Statement signed by Health Canada and the EPA encouraged stakeholders to “organize themselves bi-nationally and identify regulatory challenges and opportunities to the degree possible.” See: <https://legacy.trade.gov/rcc/documents/b-rps-pmra-epa-rps.pdf>.

[to the RCC agenda]" (personal communication, May 14, 2020). Myers said the Canadian industry coalition also coordinated with the Canadian American Business Council (CABC)—a Washington, D.C.–based advocacy group with offices in Ottawa that tried “to build political support and get industry involved with [the RCC] in the U.S.” (Greenwood, personal communication, May 19, 2020)—on “high level strategic objectives” for the RCC and Beyond the Border actions plans that concerned long-standing border and trade facilitation issues. Inter-industry coordination produced examples of specific regulatory divergences that the RCC could prioritize. These included, for example, the case of deodorant inspections by Health Canada, which, before the RCC, took place both at U.S. manufacturing plants (for the purposes of ensuring manufacturing processes meet Canadian standards) and then again at the Canadian border when the deodorant bars were packaged alongside other bathroom products for sale as a combo product:

If you go into the U.S., like Walgreens, you could buy a package of deodorant, toothpaste and mouthwash together. You can't do that here in Canada since every package had to be inspected separately. If it was already being inspected in Carolina, why do it again in Niagara Falls? There wasn't any good reason.... That was an early example of an RCC win (Myers, personal communication, May 14, 2020).

Another industry participant whose association was a member of the Canadian Manufacturing Council described the objective of that group within the RCC context as being to preserve the reputations of the industries involved. The message to government was, in part, “We want to bring products to Canada and maintain them, but you need to work with us so we can meet the requirements, particularly where they are different.... I think there's now a better

understanding of that—less of an us versus them mentality in government now” (CS3, personal communication, July 6, 2020). The same participant noted there is far more regulator-to-regulator dialogue, not just between Canada and the U.S. but between regulators in both countries and third countries, compared to a decade ago. They explained they were “less focused on the overall work plans and sticking to our knitting, focused on what was relevant to us as an industry, where there was an opportunity for dialogue and engagement.” But the participant added that there is value in the capacity of RCC-like projects to change government “thinking” about regulation:

To reiterate, regulators talking to each other, regulators taking similar comparable approaches when they’re doing things in ways that assure health and safety.... The more they can do things in a similar way in terms of access to products and the challenges for industry, I think there’s a lot of mutual benefit there (CS3, personal communication, July 6, 2020).

For phase one RCC coordinators (2011–2016) and some industry representatives, regulatory cooperation needed to stick to the Canada–U.S. context. One industry representative remembers talking to Health Canada officials who said they would rather align with Europe than the United States on a certain policy. “I said, you don’t get to disagree because your government is asking you to align,” said Maryscott Greenwood, CEO of the CABC (personal communication, May 19, 2020). Greenwood acknowledged that regulators may see the RCC as “not their full-time day job,” since they have a lot of other business to get through. “If the stakeholder isn’t willing to keep banging the drum, your thing probably isn’t going to be done,” she said. The CABC met frequently with the RCC secretariat, including the responsible minister

and senior leadership, to discuss the RCC between 2012 and 2018 and joined bigger panel calls with 30 different regulators. “In Canada it was broader as a result of the RCC secretariat,” said Greenwood.

As mentioned above, the political support given to the Canadian secretariat while it was at the PCO was seen by several participants interviewed for this thesis as critical to maintaining momentum in the RCC agenda. Industry participants in this study all commented on the transition from the PCO-led RCC to the one under the ambit of the Treasury Board Secretariat, which handles both regulatory cooperation and overall federal regulatory policy. According to Greenwood, “In specific cases where U.S. and Canadian stakeholders were in total agreement, and they were able to articulate the economic impact of the alignment, and they stuck with it a couple of years, those changes got made” (personal communication, May 19, 2020). However, she added, after the transition to TBS, “Industry got tired of another round table, where we hear the same things from the same officials, but no real progress was made.” Another industry participant from Canada described a “lack of sustained political attention” on the RCC, and a lack of “incentives to continue” for regulatory departments, following the transition from PCO to TBS (CS2, personal communication, October 23, 2019). Myers told me the leadership role played by Carberry and his team was critical to keeping the original agenda on track: “I don’t think people set out to dilute it, but to improve it. But I think it was done by people who didn’t understand the challenge. And also, there were many officials who wanted it to fail, or at least didn’t want to do anything differently” (personal communication, May 14, 2020). Another industry stakeholder in the chemicals sector said “the RCC certainly helped move the needle on files and was likely as a result of the structure they had and the goals that they had, enough

that we want it to happen again” (Watt, personal communication, November 21, 2019). They claimed the RCC focused energies to begin with, but that in general now alignment of regulatory approaches or the timing of product assessments, etc., is more likely to happen organically, through regulator-to-regulator communication. Recall from above that the justification for shifting the RCC from the PCO to TBS was “to make sure it was closely embedded with the rest of the regulatory efforts that the government is doing” (GOV2, personal communication, January 27, 2020).

Industry and non-industry attendees at the 2018 Regulatory Cooperation Council stakeholder session in Washington told me participation was significantly down from the previous meeting in 2016. Nonetheless, since 2018, items have been quietly added to the RCC work plan, including, in 2019, plans to coordinate approaches to the regulation of small modular nuclear reactors, energy efficiency reporting by industry, harmonization of precursor chemicals (security-related explosives regulations), and codes and standards for low-carbon and alternative fuels (e.g., hydrogen and compressed natural gas). At the same time, updated work plans were posted in 2019 for medical devices, veterinary drugs, workplace chemicals labelling, and pesticides. It was not clear during the writing of this thesis when or whether the Biden administration and Trudeau government planned to hold another RCC stakeholder session in Washington to report on progress and receive feedback from participating stakeholders.

Non-industry stakeholders

In contrast to the role of industry, the role of non-industry stakeholders in regulatory cooperation is more ambiguous. This is true whether we are talking about the PCO-led,

U.S.-focused RCC or the more holistic (i.e., international and interprovincial) regulatory cooperation efforts of the Treasury Board Secretariat. In a 2017 article, Carberry claims to have reached out to environmental, consumer and non-governmental organizations to participate at the outset, but “there was not any acute interest in the work of the RCC” (Carberry, 2017). In our interview, Carberry elaborated on why he thought this was the case:

I didn't want them to misunderstand what we were up to. I did not want this to be seen as a race to the bottom. I made it clear we would be using this [RCC] to create better standards and safer standards. This was not about adopting U.S. regulations. The initiatives were all where Canada and the U.S. would have to adopt the same standard. It was not about sovereignty either; it was about collaborating up to the decision.... So where the consumer organization saw all that, they said great, we're not worried (personal communication, April 28, 2020).

Whether or not non-industry groups were so casual about the objectives of the RCC at the outset, this statement does not quite reflect the views of the civil society representatives I interviewed for this research. As mentioned earlier in this chapter, NGOs, like any member of the public, are expected by government to keep track of domestic regulatory proposals and other government activities relevant to their work or business through the Canada Gazette notice system, and to seek to make comments on those activities as they deem appropriate. In the same spirit, anyone who wanted to stay abreast of the RCC in its earlier days could sign up to an email list organized by the U.S. and Canadian RCC secretariats. It was their individual responsibility to keep track of and attend annual

stakeholder gatherings, if they so desired, which government presented as an opportunity to assess progress on RCC action plans and for stakeholders to bring their ideas or concerns directly to Canadian and U.S. regulators.

Sharon Treat, a senior attorney at the U.S.-based Institute for Agriculture and Trade Policy, commented that keeping track of government activities related to policy and regulations takes time and money, and that at least in the early days, it was not obvious what the RCC had to do with domestic regulations: “You might not have the knowledge that it would affect you. Then you have to make the case with your organization that it matters. Then how do you have capacity to sit through tons of meetings that might be in another country? I’ve tried to get myself invited [to RCC events], but I have no idea” (Treat, personal communication, June 4, 2020). In any case, she added, the agenda of the RCC was not conducive to raising public protections:

The goal is to improve trade, not to develop the highest protections for people so they’re not exposed to chemicals that could harm them. If the overarching goal is to get rid of differences to impede trade while keeping your standards at the appropriate level of protection, to me the only thing that makes sense as an alternative is to do some targeted work where we ask how we replace these terrible chemicals we use on food with a different system or better products that don’t cause as much harm. But that’s not what it’s designed to do or what industry wants (Treat, personal communication, June 4, 2020).

Tony Corbo, another U.S. NGO representative, told me he only found out about the first RCC stakeholder event in Washington during a consultation with USDA’s Food

Safety and Inspection Service in late July 2011. “They said a meeting was coming up and that there were some proposals to eliminate the border inspection for imported meat and poultry,” he said (personal communication, April 30, 2020). He explained how USDA inspectors work in partnership with U.S. meat companies that offer cold storage at the border with Canada, which gives inspectors screening for things like E. coli the capacity to hold a shipment in a refrigerated unit while waiting for test results, which can take up to a few days. Corbo said he was asked by this public-private group to attend the RCC meeting because “it’s important for consumers to weigh in, because there’s a proposal to eliminate the border inspection.” Canadian government officials and Canadian meat industry groups are hostile to the border inspection regime, which they see as a protectionist measure that duplicates U.S. inspections of Canadian meat processing plants.¹⁷ Corbo said that at the second RCC meeting in Washington he raised the point in a Q&A session that, with respect to Canadian pork inspections at the U.S. border, “there is a little scandal going on in Europe right now where horsemeat was being sold as beef or pork. Canada still slaughters horses. That’s why USDA does additional inspection—that’s why your pork bellies got stopped at the border. That quieted everything down in the breakout session.”

Though Corbo said he became critical of the “obscure” RCC process after attending the first stakeholder meeting, he felt a responsibility to be at future meetings if he could.

¹⁷ “There were groups on meat inspection who didn’t want an agreement because it would impact their ability to collect rents from their stakeholders,” said Samir Chhabra in our April 27, 2020 interview. For more on the RCC-related cooperation on food safety and compatibility of food inspection regimes, see <https://www.fda.gov/media/98467/download>.

“I feel compelled to get out there and let them have it if I don’t agree where it’s going. I’ll attend, especially since there may be meetings going on in private. This gives me another opportunity to jump on them about the transparency of the process,” he said. Another reason to participate, for Corbo, is the chance to use the RCC as a means to “harmonize up,” but he said this is unlikely to happen unless government engages more non-industry stakeholders. “It requires letting all of the stakeholders know and for them to participate in the public meetings and those in between,” he said.¹⁸ At the same time, other NGOs the participant approached about attending the 2018 RCC meeting felt it was not worth their time. When asked if he felt U.S. officials take his organization’s concerns seriously, he replied yes, “to some extent”:

On the USDA side, they did listen to our concerns. But the thing that forced them to listen was a foodborne illness outbreak where our regulatory agency helped the Canadian regulatory agency find the location of where the contaminated food was coming from. So there was an event that confirmed in a lot of people’s minds, who may have been receptive to eliminating border inspection, that this was not the time to do this (personal communication, April 30, 2020).

Another Canadian NGO representative recalled receiving an invitation from the federal government to attend the first RCC stakeholder session in Washington, D.C., in January 2012, less than two weeks in advance of the event. The participant said their

¹⁸ In our interview, Maryscott Greenwood of CBAC said that industry was not bothered whether the harmonization was up or down or to which country’s standards: “We thought, pick a regulation, even the higher, and just go with it. Make it the most rigid you want, we’re all for that. Don’t just lower the standard. Our point was, just don’t have any daylight between how both countries deal with it” (personal communication, May 19, 2020).

main interest in going were the sessions on Canada–U.S. cooperation with respect to implementation of the United Nations’ Globally Harmonized System of Classification and Labelling of Chemicals (GHS).¹⁹ “Once the RCC was established, it’s like we were playing catchup to go backwards, finding out what we were not going to be doing,” the participant said (CS4, personal communication, May 19, 2020). The NGO representative was referring to their expectations that Canada would move in a similar direction as the European Union with respect to implementing the latest revisions of the GHS, but then opting to harmonize with a “significantly less safe U.S. version” via the RCC.²⁰ The participant felt there was “zero chance to set the agenda for the RCC,” but that it was important to be represented at the stakeholder meetings:

No [environmental organizations] were there, no vulnerable people, no foreign governments who get chemicals dumped on them... There was no way in my mind that the RCC meetings could go on without having Canadian labour representations to ensure the continuity of regulations at home, and to make sure the voice of workers is not being left out.”

While department and agency officials were expected to engage with public stakeholders in ways and at intervals which they deemed suitable, in some cases multi-stakeholder working groups were established and advertised in publicly available RCC records. This was the case in

¹⁹ For more information on the RCC work related to labelling of hazardous goods, see Trew (2019). The 2019-20 RCC workplan on GHS alignment is here (last accessed February 21, 2021): <https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/acts-regulations/canada-united-states-regulatory-cooperation-council/work-plan-workplace-hazards-2019-2020.html>.

²⁰ As noted in the previous section, U.S. and Canadian departmental officials do not share this interpretation of bilateral cooperation on GHS via the RCC, but claim the outcome creates a net benefit for workers and industry in both countries.

the RCC work related to chemicals risk assessment²¹ and possible alignment of Canadian and U.S. regulations governing significant new uses (SNURs in the U.S.) or significant new activities (SNACs in Canada) for existing chemicals. An NGO participant recalled being very involved at one point. On the one hand, this participant commends the Canadian and U.S. regulators for producing a “helpful” document comparing both countries’ SNAC and SNUR systems for reporting new uses of existing chemicals (CS1, personal communication, April 23, 2020).²² However, they said they were discouraged that by the time non-industry groups were invited to participate in the chemicals risk assessment working group, much of the agenda had already been set by industry. According to RCC documents (Environment and Climate Change Canada, 2016), in May 2015, five chemicals were selected from a list of chemicals that “are forward priorities for risk assessment in Canada and United States” to be used as case studies “to examine differences and similarities in certain approaches used in risk assessment in Canada and United States” (p. 4). This work was carried out by “Case Study Sub-Groups” composed of industry stakeholders on the RCC risk assessment work group. The NGO representative said they were concerned that industry was being asked to draft the initial risk assessment for their own chemicals of interest, since although companies will have expertise on their own chemicals, “they are not the experts on the policy on the chemicals.” Furthermore, according to

²¹ The RCC risk assessment working group is published in Trew, S. (2017). From NAFTA to CETA: Corporate Lobbying Through the Back Door. P. 12-13: https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2017/02/From_NAFTA_to_CETA.pdf.

²² The jointly produced primer on Canadian and U.S. significant new use rules and significant new activity rules, subtitled “An educational primer intended to promote compliance,” is available from the ECCC website here (last accessed April 3, 2021): <https://www.canada.ca/content/dam/eccc/documents/pdf/pded/eccc-epa-snac-snur-primer/2018-04-10-Primer-EN.pdf>.

this participant, “they [the risk assessment sub-groups] were trying to look at how to harmonize the assessments, but downwards; whichever country had the weaker approach.” The participant recalled one in-person meeting and several over the telephone:

It was like a party and we hadn’t been invited.... We felt like outsiders, constantly having to have things explained. Sometimes it wasn’t the government people explaining it to us, it was the industry people.... They were working behind people’s backs to weaken the process (CS1, personal communication, April 23, 2020).

The NGO participant claimed it was helpful to be able to share time and resources with other non-industry stakeholders on the RCC chemicals workgroups, though only 10% of their time went toward the RCC for a short period of time. “It was interesting to see what was happening, and it was important, but we were exactly enough people to put a slight blip on their budget when they had to buy lunch and that was it.... If they invited me again, I wouldn’t go.”

Outside of the chemicals-related RCC work groups, my research suggests non-industry stakeholders played a very limited role and were not as frequently updated or consulted about RCC work plans as industry groups were. If we recall the regulatory cooperation cycle diagram in Figure 1, this discrepancy was not an oversight but a design feature of the RCC. Whether we are talking about the PCO-led RCC or the RCC under the Treasury Board Secretariat, industry proposals for cooperation trigger a review within the RCC secretariat for the proposals’ potential to lower trade costs and eliminate regulatory duplication or market-inefficient variance in rules and standards. Non-industry stakeholders’ primary input into the process was at annual and then less regular events in Washington, D.C. where they were largely passive observers. In contrast, as I experienced at the 2018 RCC stakeholder session and as we can

witness in video of an earlier session (Woodrow Wilson Centre. 2012), industry stakeholders have both a similarly passive role (to hear about progress on RCC work plans), but also a role on panels as cheerleaders for the potential for the RCC to help other industry sectors remove perceived regulatory burden. The Canadian and U.S. governments have avoided “countervailing or blocking coalitions” from emerging not, as Hale proposes, by avoiding high-profile or controversial topics (the management of chemicals and pesticides, and regulation of nuclear power, for example, surely count among the most sensitive and urgent areas of government intervention), but by empowering one set of stakeholders (industry) and not another (non-industry) in the purpose and practices of regulatory cooperation via the RCC.

Concluding remarks

This chapter has drawn attention to the experiences of regulators, regulatory policy officials, and industry and non-industry stakeholders in the Canada–U.S. Regulatory Cooperation Council from its inception in 2011 to the last RCC stakeholder event in 2018. In general, non-industry stakeholders and observers described their having limited or no impact on a captured process in which regulatory alignment could only go in one direction: whichever direction industry is pushing. This sentiment was not reflected in the descriptions of government regulators interviewed for this research, though several acknowledged experiencing some pressure from either industry or central regulatory agencies to achieve results on regulatory cooperation action plan items. My previous research into RCC outcomes found examples of broadly beneficial or simply benign cooperation (e.g., to harmonize energy efficiency standards for consumer goods in ways that maintain standards while lowering consumer costs) but also areas

where compromises were clearly made to come to a more trade-facilitating, less protective outcome (e.g., in workplace chemicals labelling) (Trew, 2019). In this research, participants' views of the RCC were influenced by whether they felt their interests were reflected in cooperation activities. Some industry participants interviewed were dissatisfied with the pace or progress of RCC cooperation, while others whose interests were more clearly represented in the results of cooperation (e.g., the cosmetics and chemicals industries) were more supportive.

Based on my limited interviews with RCC state and non-state participants, and my analysis of the regulatory mentalities expressed in governmental knowledge of “good regulatory practice” and IRC, it is not clear to me that the RCC represents a simple capture of the state by private interests, or the Canadian state by the U.S. state, or that government agents are unwittingly or wittingly acting out a hidden ideology. This is not to say the RCC does not empower one group of interests over another: it is clearly and expressly built as a governmental service to transnational capital. But the language of capture and ideology does not adequately reflect what is going on. Rather, we can think of the state as colonizing other power relations at play in the market, “in a conditioning-conditioned relationship to generate a kind of ‘meta-power’ that renders its own functioning possible” (Jessop, 2011, p. 68). Liberal-capitalist governments are compelled to protect populations from harmful market activities, yet they do so with great trepidation and always, as Foucault (2008) commented, with measures that have been tested through an economic grid. This involves “scrutinizing every action of the public authorities in terms of the game of supply and demand, in terms of efficiency with regard to the particular elements of this game, and in terms of the cost of intervention by the public authorities in the field of the market” (p. 246). Regulatory practices

such as performance-based rules (in which companies choose how they are to meet a specific governmental health or safety standard) and corporate self-auditing have flourished in the free trade period as alternatives to prescriptive government intervention. IRC experiments like the RCC, which legitimize trade-facilitating regulatory action by enlisting “regulated parties” in their own governance, are another tool of this neoliberal governmentality.

In her work on the state and globalization, Sassen (2004) described the mix of processes for governing the global as producing, “deep inside the national state, a very partial but significant form of authority, a hybrid that is neither fully private, neither fully national nor fully global” (p. 1153). Morales (2008) noted that the “sharing of power and authority among distinct ‘stakeholders’,” in the post-NAFTA North American context, “does not eliminate state politics and policies, but it entails asymmetrical impacts on states’ capabilities,” with some departments or agencies empowered over others (p. 22). By enlisting the private sector in limited state-to-state (regulator-to-regulator) exercises in regulatory cooperation, Canadian and U.S. executive-level regulatory authorities (the OMB in the U.S. and the Treasury Board in Canada) make themselves critical nodes in global governance, managers of globally oriented decision-making which tries to answer the question: “how do you go about getting that [shared] public policy objective without having to waste too much of the overall economy's time and effort” (GOV2, personal communication, January 27, 2020). Domestically, regulatory impact assessments, transparency and public notice procedures, and other components of OECD-endorsed “good regulatory practices,” while opening up the workings of government to democratic scrutiny, simultaneously instill a calculative technology on regulators (Miller & Rose, 2008), which changes how regulatory mandates intersect with larger, you could say global,

governmental objectives. Central regulatory agencies such as OMB/OIRA and TBS, as arbitrators of the rigorousness of these “inscriptions” play a key role as co-ordinators and powerbrokers in the Regulatory Cooperation Council, managing the interests of industry and non-industry civil society organizations and the general public in the legitimation of market-facilitating ways of achieving social objectives that “operationalize the self-governing capacities of the governed in the pursuit of governmental objectives” (Dean, 2010, p. 83).

In drawing out the expectations and experiences of RCC participants, we find faint hints of alternative subjectivities which could, in some cases, be considered oppositional to the governmental rationalities which problematize regulatory variation: departmental officials who use the RCC to draw resources toward their own scientific priorities and shared defences against industry pressure; NGO stakeholders whose monitoring of the process brings light and may create its own checks or countervailing pressure on industry-favoured results (e.g., in meat inspection); the potential opened up by the routinization of stakeholder input to propose cooperative activities that would heighten standards while reducing costs by eliminating duplication, and some business groups’ openness to just such a result. And yet there is little evidence to date that these potential sites of opposition to the governing rationalities of international regulatory cooperation have any transformative power, any influence on the expansive and still evolving ideas, rules and practices of IRC as more and more countries seek to embed them in modern international trade treaties. The final, concluding chapter will consider this last development and review the potential for governmentality analyses to enrich critical studies of globalization in light of this case study on Canada–U.S. regulatory cooperation.

Conclusion: International regulatory cooperation, trade, and the stickiness of neoliberal governmentality

International regulatory cooperation and reduction of cumulative burdens remain high priorities and major challenges for the future. We should expect bipartisan consensus on that point (Sunstein, 2013, p. 185).

Miller and Rose (2008) write that government is “a problematizing activity” and that “[t]he ideals of government are intrinsically linked to the problems around which it circulates, the failings it seeks to rectify, the ills it seeks to cure” (p. 62). As tariffs came down globally through postwar negotiations of the GATT, regulatory variance and the incompatibility of standards (e.g., technical, environmental, health and food related, etc.) emerged as a problem of global governance arising from the confluence of two historical phenomena. On the one hand, from the 1970s onward, multinational capital has pressured governments to reduce administrative and other regulatory “burdens,” and to harmonize regulatory or standards-related policy between trading partners, in order to boost domestic competitiveness and open export markets. On the other, increasing knowledge of the impact of certain goods (e.g., single-use plastics) or their component parts (chemicals, fossil fuels), industrial practices, and the constant growth of commerce itself on human and animal bodies and the environment has prompted popular demands for stronger regulatory protections. Western nations, including Canada and the United States, have responded to the first pressure by developing codes of regulatory conduct, first in the plurilateral GATT Agreement on Technical Barriers to Trade, and then

through refinements to these disciplines and institutional techniques for their implementation in bilateral or regional trade treaties such as CUSFTA and NAFTA. These countries have simultaneously rationalized domestic regulatory policy with the aim of ensuring that governmental interventions in the market are reasonable, limited, take into account industry feedback and provide a net benefit to society—reforms that have fed into but have also drawn from elite regulatory benchmarking exercises at the OECD and WTO in an example of how governmental practices are “partly produced by and partly constitutive of globalization and are, thus, critical for understanding the global age” (Sassen, 2006, p. 150). In Canada, as in the United States, domestic regulatory policy rationalization and the pursuit of international regulatory cooperation are bound up in governmental programmes that sought to govern rationally, efficiently and in partnership with the private sector, based on a belief that the state had no choice but to adapt to external market realities (Hart, 2006). While critical scholars have sought the source of these programmes in fairly recent neoliberal campaigns against state welfarism backed by class interests, Foucault’s history of governmentality shows how, rather than ideology, liberalism and its neo versions are fundamentally “a technology of government whose objective is its own self-limitation insofar as it is pegged to the specificity of economic processes” (Foucault, 2008, p. 297).

Self-limitation in the neoliberal (post-1970s) period has not entailed a shrinking of government. According to Djellic and Anderson (2006), rule-making activity has in fact expanded with globalization (pp. 378-379). But critical scholars are correct that the centralization of this expanded activity, at the executive level within government, has the effect of progressively removing areas of economic governance from democratic control (Cox, 1991,

p. 337). State “capture,” by private or foreign interests, is too convenient a term for this transformation. Instead, we can say, with Djellic and Anderson (2006), that governments have undergone and continue to undergo “significant re-invention,” becoming more business-like “as they incorporate management tools and modes of organizing,” while corporations “are expected to act as ‘citizens’ of global society...and to claim a degree of political power and responsibility” (p. 379). This transformation is expressed clearly in Canadian and U.S. regulatory reforms dating to the 1980s but intensifying in the post-NAFTA period, as trilateral working groups for the implementation of the treaty’s disciplines on technical regulations and food safety standards fell into disuse. In U.S. presidential executive orders since the Clinton years and Canadian cabinet directives on regulation dating back just as far, agencies and departments are enjoined to pass regulatory decisions through a screen to block potentially overreaching or overly costly (to government or the private sector) measures, increase transparency in the decision-making process, and avoid creating unnecessary regulatory barriers to trade. In both Canada and the U.S., for example, the cost-benefit analysis now “provides the übernorm for public policy making” (Kysar, quoted in Short, 2012, p. 11).

Beyond the “analytic demands it placed on agencies,” however, Short (2012) claims that cost-benefit calculation is actually “a ‘cognitive reform’ designed to change fundamentally the way regulators defined the possibilities and limitations of regulation” (p. 12). If a factor could not be quantified, such as the social welfare or fairness or justice benefits of a particular regulation, the factor was deemed marginal to the cost-benefit assessment. This weighing of measurable costs and benefits of regulation “required regulators not only to *justify* regulation very differently than they had before, but literally to *think about* regulation very differently

than they had before. In this way, [cost-benefit assessments] changed the *logic* of regulation, not merely the procedures by which it was enacted” (p. 12, emphasis in original). In my interviews with Canadian regulatory policy officials and business practitioners, and in Treasury Board Secretariat (TBS) material dating from the 1990s, this idea of changing the “culture” of regulators themselves comes up again and again. For example, in a “lessons learned” exercise about regulatory impact assessments from 1997, TBS comments that “a RIA programmes’s major benefit can be achieved by changing the culture within regulatory departments to internalize the principles of RIA” (Treasury Board Secretariat, 1997, para. 12). The desired result is the “systematic generation and consideration of evidence regarding a regulation’s effect before it is implemented [and] stakeholder consultation,” with the aim of producing “a rational consensus over the regulatory decision” (Dudley & Wegrich, 2015, p. 1143). One effect of this regulatory rationalization is to create a wedge between legislative intent and regulatory outcomes. A democratically elected government may wish, for example, to ban in law the production, trade and sale of a harmful product (e.g., single-use plastics, or a category of pesticides). An increasingly professionalized and insulated regulatory community, guided by outward disciplines on regulatory options and a sense of internal responsibility for the efficient use of governmental resources, is more likely to find a rational compromise with industry or major trading partners.

I contend that we should understand international regulatory cooperation to be another, perhaps more subtle governmental technique aimed reinforcing these governmental programmes by reengineering regulatory practice (Collier & Ong, 2005), through the production of “good” regulators and “good” regulated subjects. The Regulatory Cooperation Council breaks

from institutional cooperative exercises under CUSFTA and NAFTA, in which trade officials and trade agendas prevailed, by making regulatory officials themselves responsible for a “cycle” of cooperation—an idea that was considered under the 2005 Security and Prosperity Partnership but never actualized before that pact was disbanded in 2009. The RCC, as a voluntary project of global governance, does not fit comfortably under new constitutionalist theories of disciplinary neoliberalism, with their emphasis on co-optation and institutional rigidity. Nor is IRC properly accounted for in Marxist and left-nationalist histories of capitalist globalization, which bracket the comings and goings of individual actors. I therefore chose to approach the RCC from the bottom up, analyzing its practices and the experiences of participants through a governmentality lens. I believe this approach can help critical research uncover how neoliberal governance is “forged in and through real-time, in situ forms of regulatory experimentation and institutional tinkering in which previous efforts to confront recurrent problems directly influence the ongoing search for alternative solutions” (Brenner, N., Peck & Theodore, 2010, p. 190). Djelic and Sahlin-Andersson (2006) similarly emphasize internal as well as external factors in the constitution of governance spaces, which “are formed as new issues arise and networks of actors mobilize to be involved, have a say or gain control” (p. 7). This was the case when a new Obama administration sought to align its domestic regulatory reform agenda with the objectives of U.S. transnational business lobbies to lower standards- and regulation-related impediments to competitiveness via a new round of regulatory cooperation with Canada—and the Canadian government’s openness to IRC as a tool for regulatory restraint domestically—as discussed in in Chapter 3.

What goes on in the RCC is important for global discussions about appropriate regulation, regulatory variance and regulatory “coherence” in international trade negotiations. According to Lin and Liu (2018), “a notable normative diffusion exists, from which the notion of regulatory coherence—originally an American regulatory yardstick—has emerged as a trade governance objective at both the regional and multilateral levels” (p. 162). In Chapter 3, Myers (personal communication, May 14, 2020) described how U.S. and in fact Canadian interest in non-trade-based regulatory cooperation has transatlantic as much as North American origins. While ideas of IRC have been converging across the Atlantic for decades, the technical means by which this might be carried out effectively have yet to be established. In approaching Canada, a willing partner with a long history of institutional cooperation on regulatory matters, to develop new models of IRC, the U.S. may now be able to once more “trigger a sequence of modelling behaviour that results in the proliferation of a bilateral model” (Braithwaite & Drahos, 2000, p. 216). Canada did not waste time in pursuing RCC-like arrangements with the European Union in the 2017 Comprehensive Economic and Trade Agreement (CETA) and adapting RCC-tested voluntary regulatory cooperation techniques to solve the problem of interprovincial regulatory variation through Regulatory Reconciliation Tables in the 2017 Canadian Free Trade Agreement. The NAFTA replacement agreement, Canada–U.S.–Mexico Agreement (CUSMA), includes a “good regulatory practice” chapter and strong commitments to international regulatory cooperation on food safety standards, chemicals and technical regulations. This integration of voluntary IRC *back into* the neoliberal administrative disciplines of trade architectures (Gill, 1998; 2015) may open new paths of analysis within more dominant new constitutionalist studies of globalization. But as explored in this paper with respect to

trade-based disciplines and institutions for the harmonization of technical regulations and standards, the legal text may not be as important a disciplinary technology as the often hidden practices of IRC themselves.

Appendices

Appendix 1 – Regulatory achievements of the Security and Prosperity

Partnership (technical regulations and standards-related) involving Canada, to

April 2008

- Under the Regulatory Cooperation Framework, Canada, Mexico and the United States have agreed to a common set of principles to guide their respective regulatory policies and practices, as well as an illustrative inventory of regulatory best practices.
- Canada, Mexico and the United States improved regulatory cooperation on pesticides, undertaking two joint reviews for the coordinated approval of new conventional pesticides, completing the review of two NAFTA label candidates; and launching a chemical-based database to be used as a management tool for resolving priority trade irritants.
- The three partners identified “Electronic stability control” in vehicles as the regulation that will serve as a pilot project to study the feasibility of a joint cost-benefit analysis exercise among the three countries.
- Canada, Mexico and the United States agreed to harmonize standards in accordance with the World Organization for Animal Health to allow for the export of Canadian and American breeding cattle to Mexico.

- Canada, Mexico and the United States updated agreements and developed mechanisms to coordinate and exchange information on food safety investigations and follow-up activities, including test results and recalls, in response to food safety issues that may affect another trilateral partner.
- Canada, Mexico and the United States have agreed to a common approach to update dietary reference values for the labelling of food products based on current science to promote consistency of nutritional information and are working towards a common set of risk assessment tools for food allergens.
- Canada, Mexico and the United States put in place a mechanism to improve the timely exchange of information on product safety issues affecting the North American market, including significant recalls and updates on domestic regulatory developments.
- Canada, Mexico and the United States continue to harmonize a number of energy-using consumer products, such as central air conditioners. The new suite of products, including clothes washers and water heaters, are being assessed under the new framework to systematize energy efficiency harmonization between all three countries. Canada, Mexico and the United States have committed to assure that energy efficiency standards are harmonized each time opportunities exist.

Source: Wayback Machine search of spp.gov, “Key accomplishments since August 2007.”

Appendix 2 – Questions for Government Participants

- 1) Tell me about your job within the government and your role in regulatory co-operation through the RCC. How long have you been involved with the RCC? How has your role changed over that time?
- 2) What do you see as the main purpose(s) of the RCC? The main problems it is meant to fix? Has it been effective and in what ways?
- 3) Tell me about your overall impression of the RCC work. Has it benefited your work or improved how your department functions, for example, and in what ways?
- 4) In what ways do Canada and the United States regulate differently (in your area of focus/working group) and how do you explain those differences? Do you think the differences are unjustified? Always, sometimes?
- 5) The initial joint action plan for the RCC mentions the goal of seeking “new approaches to regulatory alignment.” In your opinion, what is new about this work—what is different, for example, than past Canada-U.S. co-operation efforts?
- 6) How was the initial joint action plan developed? Who decided on the priority areas for cooperation? Was the process the same for all issue areas (e.g., agriculture and food, food safety, workplace chemicals, transportation, etc.)?
- 7) How has the government engaged civil society (including business) in the co-operation process? Tell me your impressions of this collaboration with civil society. How does it affect the cross-border co-operation process—positively, negatively, in other ways, etc.?

- 8) The joint action plan talks of bilateral co-ordination toward making “systemic regulatory changes that will result in permanent change—with alignment as a key objective in future regulatory work.” Can you tell me any examples of where you see this systemic change happening and what it entails?
- 9) Do you have any experience with regulatory co-operation in other venues (with Europe, APEC, interprovincially or at the WTO, for example)? If yes, how does the work of the RCC compare to these other efforts?
- 10) Regulators must balance many competing interests when setting new rules. Do you feel that the RCC also operates in this way? How are competing interests balanced in RCC working groups/tables?
- 11) Do you think it is appropriate that the majority of civil society organizations involved in the RCC tables have come from industry versus other non-industry representatives? Please explain.
- 12) Tell me about an area of bilateral co-operation that has been especially successful and why you think that is. How about a case where co-operation has been more difficult.
- 13) What is the role of elected officials in the RCC process? Do you feel they are informed and engaged? What role should elected officials play in overseeing the co-operation process?
- 14) How much of your work is taken up by co-operation activities/duties under the RCC? Has this been going up, going down or staying about the same since you’ve been involved?
- 15) Is there anything else about the RCC, your organization’s/business’s role, the way government regulates, or international regulatory co-operation generally that you’d like to tell me? Any questions you feel I should have asked but didn’t?

Appendix 3 – Questions for Civil Society Participants

- 1) Tell me what your organization/business does.
- 2) How did you hear about the RCC? (I.e., were you invited by the government to participate, or did you learn about the RCC and request involvement?)
- 3) What is your organization's/business's main interest in the work of the Regulatory Co-operation Council (qualify for specific RCC working group where appropriate)?
- 4) How important is it to your organization/business that you take part in the RCC?
- 5) What was the process for selecting agenda items for bilateral regulatory cooperation in the working group you are a member of?
- 6) Tell me about your responsibilities as part of the RCC working group? What are your expectations for this bilateral cooperation?
- 7) Tell me about your experience with the RCC so far: is it positive, negative, inspiring or frustrating, and in what ways?
- 8) What are some of the accomplishments of the work of the RCC?
- 9) If you or your organization were involved in pre-RCC regulatory co-operation projects (Canada-U.S.), how does the RCC compare to those efforts?
- 10) Do you feel the Canadian and/or U.S. governments take your organization's/business's priorities seriously?
- 11) How do you see the RCC working group's work feeding into or affecting national policy/regulations? Do you see this as positive or negative (or neither)? Please explain.

- 12) Does the work of the RCC affect how your organization/business operates, i.e., does it inform priorities? Has it changed how and/or when you engage with government on your organization's/business's interests?
- 13) What, if anything, have you learned about how governments regulate from your experiences with the RCC? Do you see any evidence of the RCC affecting government regulatory practice and in what ways?
- 14) How might the RCC be improved from the perspective of your organization? Please be precise.
- 15) Do you communicate with other organizations/businesses about the work of the RCC (or specific table)? To what extent do you feel your priorities for the RCC are shared by other organizations/businesses in your sector.
- 16) Have you engaged in other venues of international regulatory co-operation (e.g., with Europe, through APEC, through the WTO, etc.)? If so, how does the RCC compare to these activities?
- 17) Do you feel the Canadian and U.S. governments have found an appropriate balance of interests in the RCC working groups (e.g., between business and non-business stakeholders, between U.S. and Canadian priorities, etc.)?
- 18) Is there anything else about the RCC, your organization's/business's role, the way government regulates, or international regulatory co-operation generally that you'd like to tell me? Any questions you feel I should have asked but didn't?

References and bibliography

- Ahearn, R. J. (2008). *Transatlantic Regulatory Cooperation: Background and Analysis*.
Congressional Research Service.
- Aman, A. C. Jr. (1995). A Global Perspective on Current Regulatory Reforms: Rejection, Relocation, or Reinvention. *Global Legal Studies* 429, pp. 429–464.
- Aman, A. (2002). Globalization, democracy, and the need for new administrative law. *UCLA Law Review*, 49(6), 1687-1716.
- Anderson, G., & Sands, C. (2007). *Negotiating North America: The Security and Prosperity Partnership*. Hudson Institute:
https://www.hudson.org/content/researchattachments/attachment/680/hudson_negotiating_north_america_final.pdf
- Ayres, J., & Macdonald, L. (2006). Deep Integration and Shallow Governance: The Limits of Civil Society Engagement Across North America. *Policy and Society*, 25:3, pp. 23–42. DOI: 10.1016/S1449-4035(06)70081-9.
- Ayres, J., & Macdonald, L. (2012). *North America in Question : Regional Integration in an Era of Economic Turbulence*, University of Toronto Press.
- Basedow, R., & Kauffmann, C. (2012). *International Trade and Good Regulatory Practices: Assessing the Trade Impacts of Regulation*. OECD Regulatory Policy Working Papers No. 4. <https://dx.doi.org/10.1787/5jlv59hdgtf5-en>.
- Boyd, D. (2006). *The Food We Eat: An International Comparison of Pesticide Regulation*. Vancouver: David Suzuki Foundation.
- Braithwaite, J., & Drahos, P. (2000). *Global Business Regulation*. Cambridge University Press.

- Brenner, N., Peck, J., & Theodore, N. (2010). Variegated neoliberalization: geographies, modalities, pathways. *Global Networks*, 10(2), 182–222. doi: 10.1111/j.1471-0374.2009.00277.xgeographies, modalities, pathways. *Global Networks*, 10, 2, Pp. 182–222.
- Brenner, N., Peck, J., & Theodore, N. (2014). New constitutionalism and variegated neoliberalization. In Gill S., & Cutler, W. (Eds.), *New Constitutionalism and World Order* (pp. 126–142). Cambridge University Press.
- Bröckling, U., Krasmann, S., & Lemke, T. (2010). From Foucault’s Lectures at the Collège de France to Studies of Governmentality: An Introduction. In Bröckling, U., Krasmann, S., & Lemke, T. (Eds.). *Governmentality: Current Issues and Future Challenges*. Routledge. Pp. 1–33.
- Brunelle, D. (2002). The US, the FTAA, and the Parameters of Global Governance. *Continentalisation, Cahier de recherche 02-08*, August 2002.
- Brunelle, D. (2008). *From World Order to Global Disorder: States, Markets, and Dissent*. Vancouver: UBC Press.
- Cameron, D. (1988). *The Free Trade Deal*. Toronto: James Lorimer & Company.
- Callison, W. & Manfredi, Z (Eds.) (2020). *Mutant Neoliberalism: Market Rule and Political Rupture*. Fordham University Press.
- Carberry, R. (2017). *Regulator Considerations: Leveraging Opportunities through Regulatory Cooperation*. International Centre for Trade and Sustainable Development (ICTSD) & Inter-American Development Bank. <http://e15initiative.org/wp-content/uploads/2015/09/RTA-Exchange-Regulatory-Coherence-Carberry-Final.pdf>

- Carberry, R. (2018). Making a Good Thing Better: Finishing What Was Started and Leveraging NAFTA to Advance Canada–U.S. Regulatory Cooperation. Washington: Wilson Center Canada Institute.
- Clarkson, S. (2008a). Does North America Exist? Governing the Continent After NAFTA and 9/11. Toronto: University of Toronto Press.
- Clarkson, S. (2008b). Canada’s Secret Constitution: NAFTA, WTO and the End of Sovereignty. Ottawa: Canadian Centre for Policy Alternatives.
- Clarkson, S., & Banda, M. (2007a). “Community of Law:” Proposals for a Strategic Deal with the United States. In Grinspun, R., & Shamsie, Y. (2007). Whose Canada? Continental Integration, Fortress North America, and the Corporate Agenda. Montreal: McGill-Queen’s University Press. Pp. 129 – 153.
- Clarkson, S., & Banda, M. (2007b). Paradigm Shift or Paradigm Twist? The Impact of the Bush Doctrine on Canada’s International Position. In Grinspun, R., & Shamsie, Y. (2007). Whose Canada? Continental Integration, Fortress North America, and the Corporate Agenda. Montreal: McGill-Queen’s University Press. Pp. 107 – 128.
- Clarkson, S., Ladly, S.D., & Thorne, C. (2002). De-Institutionalizing North America: NAFTA’s Committees and Working Groups. Third EnviReform Conference, November 8, 2002. Accessed: <http://www.envireform.utoronto.ca/conference/nov2002/clarkson-paper2.pdf>.
- Clarkson, S., & Mildemberger, M. (2011). Dependent America? How Canada and Mexico Construct U.S. Power. Toronto: University of Toronto Press.

Commission for Environmental Cooperation (CEC). (1997). NAFTA's Institutions: The Environmental Potential and Performance of the NAFTA Free Trade Commission and Related Bodies.

Corporate Europe Observatory. Regulatory Cooperation (undated web page).

<https://corporateeurope.org/en/topics/regulatory-cooperation>.

Cox, R. W. (1981). Social Forces, States and World Orders: Beyond International Relations Theory. *Millennium: Journal of International Studies*, 10(2), 126–155. doi: 10.1177/03058298810100020501

Cox, R. W. (1991). The Global Political Economy and Social Choice. In Drache, D. & Gertler, M. S. (Eds.), *The New Era of Global Competition: State Policy and Market Power*. McGill-Queen's University Press.

D'Aquino, T., & Stewart-Patterson, D. (2000). *Northern Edge: How Canada Can Triumph in the Global Economy*. Toronto: Stoddart. Dean, M. (2010). *Governmentality: Power and Rule in Modern Society*. Los Angeles: Sage.

Department of Foreign Affairs Canada. (2011). *Regulatory Cooperation: What Canadians Told Us. A Report on Consultations on Regulatory Cooperation Between Canada and the United States*.

Djelic, M.-L., & Sahlin-Andersson, K. (2008). *Transnational governance: institutional dynamics of regulation*. Cambridge: Cambridge University Press.

Drache, D. (1988). North American Integration. In Cameron, D. (Ed.), *The Free Trade Deal*. Toronto: Lorimer & Company.

- Drache, D., & Gertler, M. (1991). *The New Era of Global Competition: State Policy and Market Power*. Montreal & Kingston: McGill–Queen’s University Press.
- Drestler, I.M. (2005). *American Trade Politics: Fourth Edition*. Washington: Institute for International Economics.
- Dudley, S., & Wegrich, K. (2015). The role of transparency in regulatory governance: comparing US and EU regulatory systems. *Journal of Risk Research*, Vol. 19, No. 9. Pp. 1141–1157.
- Environment and Climate Change Canada. (2016). 2016 chemicals management workplan: regulatory cooperation council: <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-countries-regions/north-america/2016-chemicals-management-workplan-regulatory.html>.
- External Advisory Committee on Smart Regulation. (2004). *Smart Regulation: A Regulatory Strategy for Canada*. Report to the Government of Canada.
- Fagan, D. (2003). Beyond NAFTA: Towards Deeper Economic Integration. In Carment, D., Hampson, F.O., & Hillmer, N. *Canada Among Nations: Coping with the American Colossus*. Oxford University Press. Pp. 32 – 53.
- Foucault, M. (1982). The Subject and Power. *Critical Inquiry*, Vol. 8, No. 4, pp. 777–795.
- Foucault, M. (2008). *The Birth of Biopolitics: Lectures at the College de France, 1978–1979*. Picador.
- Gill, S. (1998). New Constitutionalism, Democratisation and Global Political Economy. *Pacifica Review*, Vol. 10, No. 1.
- Gill, S., & Cutler, A. C. (2014). *New constitutionalism and world order*. Cambridge: Cambridge University Press.

Government of Canada. (2000). A Framework for Science and Technology Advice: Principles and Guidelines for the Effective Use of Science and Technology Advice in Government Decision Making.

Government of Canada. (2003). A Framework for the Application of Precaution in Science-Based Decision Making About Risk. Privy Council Office.

Government of Canada. (2007). Cabinet Directive on Streamlining Regulation.

Government of Canada. (2012a). Cabinet Directive on Regulatory Management.

Government of Canada. (2012b). Red Tape Reduction Action Plan. Treasury Board Secretariat.

Government of Canada. (2012c). Canada-United States Regulatory Cooperation Council Joint Action Plan: Progress Report to Leaders:

http://publications.gc.ca/collections/collection_2012/sct-tbs/BT1-29-2012-eng.pdf

Grinspun, R., & Shamsie, Y. (2007). Canada, Free Trade, and “Deep Integration” in North America: Context, Problems, and Challenges. In Grinspun, R., & Shamsie, Y. (2007). *Whose Canada? Continental Integration, Fortress North America, and the Corporate Agenda*. Montreal: McGill-Queen’s University Press. Pp. 3 – 53.

Hale, G. (2019). Regulatory Cooperation in North America: Diplomacy Navigating Asymmetries. *American Review of Canadian Studies*. 49:1, pp. 123–149.

Hart, M. (1994). *Decision at Midnight: Inside the Canada-US Free Trade Negotiations* (with Bill Dymond and Colin Robertson). Vancouver: UBC Press.

Hart, M. (2006). *Steer or Drift: Taking Charge of Canada-US Regulatory Convergence*. C.D. Howe Institute – The Border Papers. No. 229, March 2006.

https://dev.cdhowe.org/sites/default/files/attachments/research_papers/mixed//commentary_229.pdf

Hayek, F. (1965). *The Road to Serfdom*. University of Chicago Press.

Health Canada. Regulatory Partnership Statement of Health Canada's Pest Management Regulatory Agency and the United States Environmental Protection Agency Office of Pesticide Programs: <https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/acts-regulations/canada-united-states-regulatory-cooperation-council/regulatory-partnership-statement-health-canada-pest-management-regulatory-agency-united-states-environmental-protection-agency-office-pesticide.html>

Howse, R.L. (2000). *Managing the Interface between International Trade Law and the Regulatory State: What Lessons Should (and Should Not) Be Drawn from the Jurisprudence of the United States Dormant Commerce Clause*. In T. Cottier and P. C. Mavroidis (eds.), *Regulatory Barriers and the Principle of Non-Discrimination in World Trade Law*, World Trade Forum, 2. Ann Arbor: University of Michigan Press, pp. 139-66.

Jessop, B. (2011). *Constituting Another Foucault Effect: Foucault on States and Statecraft*. In Bröckling, U., Krasmann, S., & Lemke, T. (Eds.). *Governmentality: Current Issues and Futures Challenges* (pp. 56–73). Routledge.

Kahler, M., & Lake, David A. (2009). *Economic Integration and Global Governance: Why So Little Supranationalism?* In W. Mattli & Ngaire Woods (Eds.), *The Politics of Global Regulation* (pp. 242–275). Princeton University Press.

- Larner, W., & Walters, W. (2004a). Globalization as Governmentality. *Alternatives*, 29 (pp. 495–514).
- Larner, W., & Walters, W. (2004b). *Global Governmentality: Governing international spaces*. Routledge.
- Lawrence, J. C. (2018). *Governmentality in EU External Trade and Environmental Policy: Between Rights and Market*. Routledge.
- Lin, C.F., & Liu, H.W. (2018). Regulatory Rationalisation Clauses in FTAs: A Complete Survey of the US, EU and China. *Melbourne Journal of International Law*, 19. SSRN: <https://ssrn.com/abstract=3234159>.
- Lipsey, R.G., & York, R.C. (1988). *Evaluating the Free Trade Deal: A Guided Tour through the Canada-U.S. Agreement*. C.D. Howe Institute Policy Study No. 6.
- Macey, J.R. (2000). The 'demand' for international regulatory cooperation: a public-choice perspective. In Bermann, G.A., Herdegen, M., & Lindseth, P.L. *Transatlantic Regulatory Cooperation: Legal Problems and Political Prospects* (pp.147–166). Oxford University Press.
- Majone, G. (2000). International regulatory cooperation: a neo-institutionalist approach. In Bermann, G.A., Herdegen, M., & Lindseth, P.L. *Transatlantic Regulatory Cooperation: Legal Problems and Political Prospects* (pp. 119–146). Oxford University Press.
- Manak, I. (2019). *Regulatory Cooperation in North America: Institutional Continuity and Change*. Draft prepared for the Latin American Studies Association Meetings and shared with the author.

- Mattli, W., & Woods, N. (2009). In Whose Benefit? Explaining Regulatory Change in Global Politics. In W. Mattli & Ngaire Woods (Eds.), *The Politics of Global Regulation* (pp. 1–43). Princeton University Press.
- Mcllvenny, P., Klausen, J.Z., & Lindegaard, L.B. (2016). New perspectives on discourse and governmentality. In Mcllvenny, P., Klausen, J.Z., & Lindegaard, L.B. (Eds.), *Studies of Discourse and Governmentality: New Perspectives and Methods* (pp. 1–72). John Benjamins Publishing Company.
- Meuwese, A. (2009). EU-U.S. Horizontal Regulatory Cooperation: Two global regulatory powers converging on how to assess regulatory impacts. Draft paper for the California-EU Regulatory Cooperation Project Leuven, Conference Brussels 10 June 2009. Last accessed February 26, 2021:
https://ghum.kuleuven.be/ggs/research/biosafety_biodiversity/publications/meuwese_final.pdf.
- Miller, Eric. (2011). Perspective from Washington on the Canada-U.S. Business Relationship. International Trade and Investment Centre, Conference Board of Canada, October 5, 2011: https://www.conferenceboard.ca/docs/default-source/itic-public/2011_oct_pres_Eric_Miller.pdf?sfvrsn=0&AspxAutoDetectCookieSupport=1
- Miller, P., & Rose, N. (2008). *Governing the Present: Administering Economic, Social and Personal Life*. Cambridge: Polity.
- Moens, A., & Cust, M. (2008). *Saving the North American Security and Prosperity Partnership: The Case for a North American Standards and Regulatory Area*. Fraser Institute.

- Morales, I. (2008). *Post-NAFTA North America: Reshaping the Economic and Political Governance of a Changing Region*. Palgrave Macmillan.
- Moss, D. (2005). *Cultivating Development: An Ethnography of Aid Policy and Practice*. London: Pluto Press.
- North American Competitiveness Council (NACC). (2009). NACC Statement to Leaders in Advance of 2009 North American Leaders' Summit: <https://www.as-coa.org/articles/nacc-statement-leaders-advance-2009-north-american-leaders-summit>
- Odell, J. S. (2001). Case Study Methods in International Political Economy. *International Studies Perspectives*, 2(2), 161–176. doi: 10.1111/1528-3577.00047
- Ong, A., & Collier, S.J. (2005). *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*. Malden: Blackwell Publishing.
- Organization for Economic Cooperation and Development. (1995). *Recommendation of the Council on Improving the Quality of Government Regulation*. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0278>
- Organization for Economic Cooperation and Development. (2002). *Government Capacity to Assure High Quality Regulation: OECD Reviews of Regulatory Reform – Regulatory Reform in Canada*.
- Organization for Economic Cooperation and Development. (2020). *International Regulatory Cooperation: Adapting rulemaking for an interconnected world (Policy Brief, April 2020)*. Paris: Secretary-General of the OECD.
- Panitch, L. (1996). Rethinking the Role of the State. In Mittelman, J. H. (Ed.), *Globalization: Critical Reflections*. Boulder, Colo.: Lynne Rienner Publishers.

- Panitch, L., & Gindin, S. (2012). *The Making of Global Capitalism: The Political Economy of American Empire*. New York: Verso.
- Pitts, G., & Freeman, A. (2007). The case of the jellybean and cross-border commerce. *Globe and Mail*. August 22, 2007. <https://www.theglobeandmail.com/news/national/the-case-of-the-jellybean-and-cross-border-commerce/article18143335/>.
- Reid, S. "Reinstate top regulatory cooperation official, say business groups," *iPolitics.ca*, June 30, 2016: <https://ipolitics.ca/2016/06/30/reinstate-top-regulatory-cooperation-official-says-business-group/>
- Robertson, Colin. (2013). Unfinished business: Taking stock of Beyond the Borders and Regulatory Cooperation. *Inside Policy*, 38, Feb-Mar 2013: Macdonald-Laurier Institute <https://www.macdonaldlaurier.ca/files/pdf/MLIInsidePolicy/FebMar2013/Robertson.pdf>
- Rojas, C. (2004). Governing through the social: Representations of poverty and global governmentality (pp. 97–115). In Larner, W., & Walters, W. (Eds.). *Global Governmentality: Governing international spaces*. Routledge.
- Saar, M. (2011). Relocating the Modern State: Governmentality and the History of Political Ideas (pp. 34–55). In Bröckling, U., Krasmann, S., & Lemke, T. (Eds.). *Governmentality: Current Issues and Futures Challenges*. Routledge.
- Sands, Chris. (2012). Restoring Respect for the Law in Canada-U.S. Commerce: The Regulatory Cooperation Council So Far. *Canada-United States Law Journal*. Vol. 37, Issue 2. Pp. 319-339.

- Sassen, S. (2006). *Territory, Authority, Rights: From Medieval to Global Assemblages*. Princeton University Press.
- Schneiderman, D. (2014). How to govern differently: neo-liberalism, new constitutionalism and international investment law. In Gill S., & Cutler, W. (Eds.), *New Constitutionalism and World Order* (pp. 165–176). Cambridge University Press.
- Short, J. (2012). *The Paranoid Style in Regulatory Reform*. Georgetown Public Law and Legal Theory Research Paper No. 11-10.
- Sinclair, S. (2014). Trade agreements, the new constitutionalism and public services. In Gill S., & Cutler, W. (Eds.), *New Constitutionalism and World Order* (pp. 179–196). Cambridge University Press.
- Shrybman, S. (1993). Trading Away the Environment. In Grinspun, R., & Cameron, M.A. (1993) *The Political Economy of North American Free Trade*. New York: St. Martin's Press. Pp. 271 – 294.
- Steger, D. (1988). *A Concise Guide to the Canada–United States Free Trade Agreement*. Toronto: Carswell. Accessed online via Hathi Trust.
- Studer, I., & Wise, C. (2007). *Requiem or Revival: The Promise of North American Integration*. Washington: Brookings Institution.
- Sunstein, C. (2013). *Simpler: The Future of Government*. New York: Simon & Schuster.
- Tellmann, U. (2011). The Economics Beyond Governmentality: The Limits of Conduct. In Bröckling, U., Krasmann, S., & Lemke, T. (Eds.). *Governmentality: Current Issues and Futures Challenges*. Routledge.

- Treasury Board Secretariat. (1993). Responsive Regulation in Canada: The Government Reply to the Sub-Committee on Regulations and Competitiveness, April 1993.
- Treasury Board Secretariat. (1997). Regulatory Reform Through Regulatory Impact Analysis: The Canadian Experience.
- Treasury Board Secretariat. (2007). Guidelines on International Regulatory Obligations and Cooperation.
- Treasury Board Secretariat. (2011). Joint Action Plan for the Canada-United States Regulatory Cooperation Council. <https://www.canada.ca/en/treasury-board-secretariat/corporate/transparency/acts-regulations/canada-us-regulatory-cooperation-council/joint-action-plan.html>
- Treasury Board Secretariat. (2014). Canada-United States Regulatory Cooperation Council Joint Forward Plan August 2014.
- Treasury Board Secretariat. (2019). International Regulatory Cooperation. A presentation by Jeannine Ritchot, Executive Director, Regulatory Affairs Sector, to the Queen's Institute on Trade Policy. Last accessed April 2, 2020: https://www.queensu.ca/sps/sites/webpublish.queensu.ca.spswww/files/files/Events/Conferences/TradeInstitute/2019/Ritchot_Jeannine_QITP2019.pdf.
- Treat, S. (2019). FAQ—Regulatory Cooperation, Harmonization and “Good Regulatory Practices” in USMCA. Washington: Institute for Agriculture and Trade Policy. <https://www.iatp.org/new-nafta-grp>

Trew, S. (2008). Harper launches major assault on food safety, fires government scientist; regulatory harmonization blamed. Council of Canadians (Integrate This! website). Accessed via Way Back Machine.

Trew, S. (2019). International Regulatory Cooperation and the Public Good: How "good regulatory practices" in trade agreements erode protections for the environment, public health, workers and consumers. Ottawa: Canadian Centre for Policy Alternatives.

Trew, S. (2021). If We Want to Clean Up the Oceans, We Have to Confront the Fossil Fuel Giants. *Jacobin*, February 10, 2010.

US Chamber of Commerce. (2017). The Bridge to Cooperation: Good Regulatory Design. Last accessed February 24, 2021:

https://www.uschamber.com/sites/default/files/good_regulatory_design_paper_-_4-24-2017_-_final.pdf.

US Chamber of Commerce. "Better Regulation & Cooperation." 13 Feb. 2019, www.uschamber.com/international/global-regulatory-cooperation/center-global-regulatory-cooperation/better-regulation.

United States Department of Commerce. (2008a). Security and Prosperity Partnership of North America Common Regulatory Principles. Accessed via Way Back Machine search circa 2008.

United States Department of Commerce. (2008b). Canada/United States/Mexico SPP Regulatory Cooperation Framework. Accessed via Way Back Machine search circa 2008.

- U.S. Federal Register (2009). Regulatory Review: Memorandum for the Heads of Executive Departments and Agencies. Accessed: <https://www.federalregister.gov/documents/2009/02/03/E9-2434/regulatory-review>.
- U.S. Federal Register (2011). Executive Order 13563: Improving Regulation and Regulatory Review. Accessed: <https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review>
- U.S. Federal Register. (2012). Executive Order 13609: Promoting International Regulatory Cooperation. Accessed: <https://www.federalregister.gov/documents/2012/05/04/2012-10968/promoting-international-regulatory-cooperation>.
- U.S. International Trade Commission. (2020). Global Economic Impact of Missing and Low Pesticide Maximum Residue Levels, Vol. 1. Washington.
- Waddell, C. (2003). Erasing the Line: Rebuilding Economic and Trade Relations after 11 September. In Carment, D., Hampson, F.O., & Hillmer, N. Canada Among Nations: Coping with the American Colossus. Oxford University Press. Pp. 54 – 76.
- Wiener, J.B., & Alemanno, A. (2015). The Future of International Regulatory Cooperation: TTIP as a Learning Process Toward a Global Laboratory. Law and Contemporary Problems, Vol. 78, No. 4, pp. 103–136.
- White House (2011). Joint Statement by President Obama and Prime Minister Harper of Canada on Regulatory Cooperation: <https://obamawhitehouse.archives.gov/the-press-office/2011/02/04/joint-statement-president-obama-and-prime-minister-harper-canada-regul-0>

Woodrow Wilson Centre. (2012). The Regulatory Cooperation Council Action Plan at Six Months. YouTube: <https://www.youtube.com/watch?v=0sOhWcNIID8>

World Trade Organization. (2012a). Summary Report of the TBT Workshop on Regulatory Cooperation Between Members, 8-9 November 2011. Note by the Secretariat. https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=131032,85352,50747,98991,93791,86196,86668,97091,68966,90563&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

World Trade Organization. (2012b). World Trade Report 2012. Geneva. https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report12_e.pdf

World Trade Organization. (2019). Decisions and Recommendations Adopted By The WTO Committee on Technical Barriers to Trade Since January 1 1995. September 24, 2019.