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Sent: Tuesday, March 31, 2009 4:58 PM
To: FN-OMB-OIRA-Submission
Subject: Canada Comments re: Federal Regulatory Review

The Treasury Board Secretariat of Canada, on behalf of the Government of Canada, would like to thank the Government of the United States of America, and the Office of Management and Budget, for the opportunity to comment on this very important initiative.

The United States operates a well-managed regulatory process supported by sound policy, which produces high quality regulations that protect the security, health, safety and environment of the American people. In an economic space as integrated as North America, US regulatory policy also plays a key role in facilitating the movement of goods and services across our shared border, and in promoting the innovation and competitiveness of our significantly interdependent economies, while assisting in the management of transboundary risks. The strengths of the US regulatory system will ensure that current and future generations of Americans can prosper and compete in a global marketplace.

The role of regulatory policy takes on new importance in the context of a global economic downturn. Within the North American economic space, regulatory differences can impose significant compliance costs on businesses, at a time when those costs can no longer be afforded. The strength of cross-border supply chains and the integrity of the Canada-US shared market is therefore directly dependent on the responsiveness and compatibility of the Canadian and US regulatory systems.

To that end, the Office of Management and Budget (OMB) plays a key role in ensuring that new regulations, at a minimum, do not create new trade impediments, and at best facilitate and promote freer trade. With over \$2 billion in goods and services moving across our border every day, and an economic relationship supporting millions of American and Canadian jobs, this role is especially important for our two countries. Consideration of trade impacts should therefore be a prominent feature of the regulatory analysis overseen by the Office of Management and Budget.

At present, Executive Order 12866 requires that agencies assess "any adverse effects on the efficient functioning of the economy" during regulatory development. However, there is no explicit requirement for agencies to consider their regulatory actions with respect to international trade obligations. In an interdependent trading area such as North America, the analysis of regulatory impacts on overall trade flows could be specific, rather than part of a general assessment of impacts on the functioning of private markets. Continued American prosperity depends on the ability of American manufacturers to access inputs from other countries, and on consumers to have access to the variety of products produced worldwide. This reliance on global trade requires that regulations be designed in a way that keeps trading systems as open as possible. Canada therefore suggests that any new Executive Order include an explicit requirement that US agencies consider international trade obligations during regulatory development.

Guidance on how to fulfill this requirement could be elaborated in the documents produced by OMB to support agency compliance with the new Executive Order. Circular A-4, OMB's current guidance document, does note that "concerns that new US rules could act as non-tariff barriers to imported goods should be evaluated carefully". However, this document does not offer clear guidance on *how* to consider the international trade and investment effects of new US regulation.

The Government of Canada is encouraged by a recent report released by OMB and the Secretariat General of the European Commission, which contained a discussion of issues to consider when incorporating international trade and investment effects into regulatory impact analysis. Canada supports the approach outlined in this document, and suggests that it could be expanded into either a formal set of stand-alone guidelines, or as a section within the successor to Circular A-4.

Integration of trade impacts in regulatory impact analysis could be further strengthened through a reverse-onus requirement regarding international regulatory norms. The new Executive Order could require regulators to demonstrate – in cases where a unique American regulation is being proposed that could have the potential to impede trade – why an international norm, or other alternative and less trade-restrictive measures, cannot be used. This requirement would effectively limit impediments to trade, while still protecting the ability of jurisdictions to regulate in their own self-interest.

The Treasury Board Secretariat, on behalf of the Government of Canada, once again thanks the Government of the United States of America, and the Office of Management and Budget, for this opportunity to comment, and hopes that these comments prove useful in your efforts to continually improve what is already a very strong regulatory system.

Michael Presley

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