



Out of Tune

Lack of harmonization between Canadian and U.S. food regulations has manufacturers singing a sour note

For over a decade, governments have been saying that they will harmonize food safety regulations between Canada and the U.S. Now, even President Bush and Prime Minister Harper are talking about it. On March 30 in Cancun they made a public commitment to strengthen regulatory co-operation on food safety and to tell their officials to finally make this a priority. But will anything actually happen this time?

Previous attempts to achieve harmonization have lapsed into the black hole of bureaucratic inertia, usually because the lead was with officials who did not actually practice the regulatory craft. Instead, they misunderstood the regulatory reality because of the persistence of six myths:

1. Harmonizing means Canada and the U.S. work together to bring their regulations closer. This is wrong and naïve. Harmonizing means Canada must change its regulations; the U.S. has no intentions of changing its laws.

2. Harmonizing could lead to lowering Canadian food safety standards. This is a non-starter and always was a red herring.

3. Most food safety laws are not harmonized now. This is not true. Nearly all Canadian food safety laws are already in line with American laws. We have had free trade in meat long before NAFTA on the basis of Canada adopting all U.S. standards and obtaining equivalency certification. This is why we continue to over-inspect meat at the federal level. The U.S. audits us annually to ensure that we meet their standards. Most other commodities cross the border both ways with virtually no re-inspection, as we consider our food safety standards to be roughly equivalent. The trade is huge – most Canadians don't realize that we import 6,000 truckloads of food from the U.S. every day. Most of our regulatory differences relate to food additives, food fortification laws, food labelling, health claims, requirements for pre-market approval and the hundreds of non-food safety regulations associated with standards of identity and standard container sizes.

4. There is consensus within the food industry to harmonize these food quality standards. There is no such consensus. American-owned companies can live with bilingual labelling, but are annoyed by arbitrary barriers to trade such as standard container sizes and standards of identity. On the other hand, domestic firms are happy to have some protection from imported products, since U.S. exporters would be required to change their production lines in order to enter the Canadian market.

5. Over time, areas of continued divergence will erode. Actually, our systems for non-food safety are moving apart. Fortification, additive and food labelling laws are becoming less harmonized as the U.S. moves towards less regulation and Canada moves towards more. The U.S. First Amendment (free speech) and successful lawsuits against the government have caused the U.S. to abandon most pre-market approvals and to emphasize freedom. At the same time, the Canadian government continues to regulate more, emphasizing protection. For example, in the U.S., with a few exceptions, claims are true if you can say it; in Canada, even if a claim is scientifically proven to be true, it is a criminal offence to say it unless the regulations allow it.

6. Lack of regulatory harmonization with the U.S. is the biggest problem with our food regulatory system. While it is an important issue, the system has other faults that are far more hurtful. Extraordinary approval delays, overly rigorous and uneven enforcement, and the slowest regulatory change system in the Western world have combined to create a sclerotic food regulatory system that is just not nimble enough to remain responsive to the changing, globalized food system. There is now general consensus among both the regulators and the regulated that the status quo is not acceptable and that our regulatory system is undermining innovation and competitiveness. What is still unclear is just what type of government-industry mechanism should be used to champion the needed changes.

The Cancun announcement on strengthened co-operation in food safety regulation was made under the umbrella of the Security and Prosperity Program, a high-level agreement designed, among other things, to promote North American competitiveness. The competitive threat coming from China and India is bringing new urgency to this issue. Now it's time for industry to get its act together and replace these myths with concrete direction to government on what needs to be done. It's also time to ensure there are structural mechanisms for industry engagement in place. Only in this way can we ensure this important window of opportunity isn't lost.

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