



Modernizing NAFTA

Recommendations from Canada's Chemistry Sector

Submission to Global Affairs Canada

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**CHEMISTRY INDUSTRY
ASSOCIATION OF CANADA**



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➤ Chemistry Industry Association of Canada

CIAC represents industrial chemical and synthetic resin production in Canada, subsectors 3251 and 3252 of the North American Industrial Classification System (NAICS) chemicals sector, NAICS 325. Our membership is responsible for over three-quarters of the \$26 billion in production in this sub-sector which in turn contributes into the overall sector representing fully \$53 billion in shipments (2016). The 86,700 employees in the sector are incredibly productive and the chemistry industry has a high multiplier effect, five jobs for every one job in the sector. These are high quality jobs – second only to information technology in proportion of employees with university degrees.

CIAC's annual [Chemistry Industry Economic Profile](#) provides a detailed review of the sector and its sub-sector in charts, graphs and narrative.

Separately, we provide trade data sheets highlighting [Canada–U.S. trade statistics](#) for key provinces and states for both NAICS 325 and more narrowly for NAICS 3251+3252. To summarize, Canada has been running a trade deficit in the broader chemistry industry (NAICS 325) on the order of just over \$3 billion per year with the U.S. for over a decade. At the same time, our trade for industrial chemicals and synthetic resins (NAICS 3251 and 3252) has been roughly in balance over the same time-period. While Canada is running a small trade surplus with Mexico, our annual total trade with Mexico is the equivalent of only about 13 days of trade with the U.S.

In a joint statement by CIAC, the American Chemistry Council (ACC) and the La Asociación Nacional de la Industria Química (ANIQ), titled: [The North American Chemical Industry & NAFTA, March 1, 2017](#), the three associations confirmed their support for NAFTA and advocated for a modernization of the agreement that could better represent the 21st century. CIAC is working collaboratively with our counterparts in Washington and Mexico City. We anticipate all three North American chemistry industry associations are making consistent and complementary submissions through their respective national processes.

➤ The Importance of NAFTA – General Remarks

Over the past two decades, NAFTA has provided enormous benefit for the chemical sectors in Canada, Mexico and the United States. The Agreement has facilitated expanded economic growth, job creation, and enhanced North American competitiveness vis-a-vis the broader global marketplace. Since entering into force, trade in chemicals amongst NAFTA countries has more than tripled, from \$20 billion in 1994 to \$63 billion in 2014.

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NAFTA's success lies in the economic partnerships, supply chain synergies and efficiencies that have been created through reduced barriers to trade. The interconnectivity between the three NAFTA economies has not only lowered the cost of chemical production, it has also strengthened the sector's relevance in North America's overall manufacturing economy. More than 96 per cent of manufactured goods — from electronics to automobiles, medical equipment to our homes — are touched by chemistry. As a result, the chemistry industry has a multiplier effect on job creation and economic growth. This is a direct outcome of NAFTA's effectiveness in reducing barriers to trade. This includes trade in energy products, particularly natural gas — a critical building block for chemical production in North America. More than 10 per cent of NAFTA trade is in energy products, and there are more than 100 cross-border energy infrastructure projects in place amongst the three economies.

Modernization of NAFTA is an opportunity to address inefficiencies and upgrade the agreement to reflect technological advances and incorporate procedures adopted or proposed since the Agreement came into force in 1994. Modernizing NAFTA would include:

- facilitating digital trade, especially establishing strong protections for cross border data flows, an essential element of global value chains;
- codifying processes on regulatory coherence and simplification, including cooperation on embodying sound science, and promoting risk assessment principles and mutual recognition of chemical approvals;
- enhancing trade and customs facilitation, including prioritizing infrastructure projects that support export growth, for example more border crossings (especially between Ontario and Michigan) to eliminate bottlenecks.

Our overriding objective is for a modernized NAFTA to result in efficiencies that deepen economic integration, and make North America's co-produced products and services more globally competitive.

It is readily apparent from the data provided that:

1. The North American chemistry industry is integrated, interdependent and functioning well under NAFTA.
2. The joint statement from the three chemical associations shows there is staunch support to retain the core elements of this agreement as it pertains to chemical manufacturing and North American trade; and to improve on the existing agreement.
3. Several of these core priorities should be built upon and strengthened when renegotiating NAFTA to bring the agreement in line with 21st century technologies, standards and needs.

➤ NAFTA Renegotiation - CIAC Priorities

1. Market Access

The seamless movement of goods and related services that has developed since the passage of NAFTA needs to continue. CIAC advocates for **maintaining free trade** (no tariffs) right across the chemical chapters of the HS (28-39, plus as a minimum the first four headings of Chapter 40 covering bulk synthetic rubber). Our industry, and its many sub sectors, have adjusted to zero tariffs and even temporary or interim duties will disrupt supply chains and trade patterns. The three countries are each others' largest markets for exports and largest or close to largest for imports. A large portion of chemicals trade within NAFTA is intra-company, which enables companies to realize significant savings within North America. Intra-company shipments from Canada to the U.S. is in the order of 70 per cent, and while lower for shipments to Mexico, clearly imposing tariffs or any other trade barriers on trade in chemicals would be tantamount to putting a barrier in the middle of our factories.

Clear, straightforward and predictable trade rules governing movement of goods are an integral part of free trade and the renegotiation of NAFTA is an opportunity to ensure these rules continue to facilitate trade in the 21st century.

2. Rules of Origin¹

The current NAFTA rules of origin should be modernized to bring them in line with rules adopted in other recent Canadian trade agreements such as the Comprehensive Economic and Trade Agreement (CETA). This would reduce the burden of gathering and reviewing vendor certificates and cost information in order to determine whether a good qualifies for duty-free treatment under NAFTA. The current NAFTA rules should be revised to eliminate the Regional Value Content (RVC) requirement, and provide for greater flexibility in determining origin, beginning with tariff shift and proceeding through a menu of options including substantial transformation, chemical reaction, purification, changes in particle size, etc. The "de minimis" amount under NAFTA should be increased from seven to 10 per cent which would bring NAFTA into alignment with many other free trade agreements (FTA). CIAC also recommends that the polymer content rule should be consistent with the language negotiated for the Trans Pacific Partnership (TPP). CIAC is particularly concerned that a modern agreement avoid constructed values calculations and regional content rules to the extent possible to specifically improve transparency and predictability for our members.

¹ CIAC will provide more details separately and is working on a joint statement with our U.S. and Mexican counterparts on rules of origin, but as a general principle, these rules should be sufficiently simple and clear to permit industry to know in advance the treatment it should expect.

3. Trade Facilitation

Trade facilitation has been an ongoing discussion in the World Trade Organization (WTO) for at least the past decade and the new WTO trade facilitation agreement should form the basis for a “WTO Plus” NAFTA. Given the nature of our economic integration as a regional block, consideration should be given to further facilitate electronic transactions, pre-clearance and harmonized placarding for rail and truck movement. There should be seamless movement at the borders, with common approaches to moving goods and treatment of conveyance equipment such as railcars. Additionally, ensuring alignment in tank car standards and phaseout schedules helps foster a competitive business environment, greater flexibility in fleet operations, and seamless movements across the border. Similarly, there should be identical approaches to moving empty containers and carriage equipment. It is important to global competitiveness that the conveyance process assist and not hinder the movement of goods.

In the digital age, digital transactions require similar and fully adequate electronic tracking and approvals. Custom services in all three countries must work to harmonize and facilitate the efficient movement of goods and not become unintended trade barriers themselves. The starting point is accepting that no one system is perfect and designing a border system that is complementary and uses similar methods, procedures, and electronic paperwork and forms is essential. Adequate IT capacity, compatibility/similarity of software, forms harmonization and similar regulations for clarification for officials are only the beginning. Electronic tracking of chemicals from production to delivery will be a challenge as these are fungible goods, making it essential that similar practices be used across all jurisdictions. Similarly, for maintenance of any audit functions, the goal of this process is overall increased safety and accuracy, not impeding the movements of goods.

There are several areas of trade facilitation where NAFTA can lead the world and show the way. Customs harmonization needs to lead and not follow in these aspects of a 21st century trade agreement. A few suggestions include:

- updating paper filing and auditing requirements to allow for electronic filing and digital signature;
- establishing mechanisms to provide for the free flow of cross-border data;
- targeting infrastructure projects to remove bottlenecks on the movement of exports (e.g. Michigan-Ontario bridge, cross-border pipelines);
- modernizing transport security requirements to allow for the same operators or single forms of transport across borders;
- harmonizing clearance procedures within NAFTA, e.g. information required, and standardized documents;

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- unifying low value shipment criteria to minimize inconsistencies across all three members;
- extending the validity period of blanket certificates beyond one to three years would be advantageous especially if the originating process is static;
- instituting a pre-clearance program to increase border crossing efficiencies.

4. Regulatory Cooperation and Alignment

A modernized NAFTA should promote a more integrated and efficient regulatory environment within North America. Regulatory cooperation can help eliminate unnecessary burdens on cross-border trade and provide more certainty for businesses and the public. Done well, regulatory cooperation can help boost innovation, growth and job creation while maintaining high levels of protection for human health and the environment. CIAC would support the establishment of a Regulatory Cooperation Council under NAFTA, along the lines of what was envisaged under the TPP. Such a Council would help to set overall priorities, and coordinate regulatory cooperation and coherence efforts on a sectoral basis thus reducing unnecessarily duplicative activities and further leverage each other's regulatory capacities and scientific expertise, to improve efficiencies and timeliness of product regulatory assessments.

To be clear, existing bilateral regulatory cooperation efforts (such as the Canada-U.S. Regulatory Cooperation Council) should continue at their own pace outside of the NAFTA agreement. Results from these bilateral efforts, where appropriate, could then be extended throughout North America under NAFTA.

CIAC's top priority for enhancing regulatory cooperation under NAFTA is to strengthen and align the risk- and science-based approach to chemical regulation adopted in Canada and the U.S. In promoting a "North American model" for chemical regulation, NAFTA could help provide a model for other countries and regions around the world considering developing or updating their own chemical regulations, and push back against the spread of more hazard-based approaches. Specific improvements that might be pursued to enhance chemical regulatory cooperation under NAFTA include:

- Implementing a Common Electronic Submission Gateway to allow industry applicants the ability to submit large electronic documents related to pharmaceutical products simultaneously to all three countries and further catalyze increased review and collaboration on these products between the regulatory agencies.
- Extending the Lautenberg Chemical Safety Act (LCSA)/Chemicals Management Plan (CMP) model for chemical regulation to Mexico. In doing so, the first step could be having Mexico adopt either the U.S. or Canadian chemical inventory instead of trying to compile their own. Secondary options would be to consider



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mutual recognition for Mexico – for example if a chemical is on either the U.S. or Canadian inventories, it is automatically on the Mexican inventory.

- Extending U.S.-Canada alignment on the Hazard Communication Standard – as a means of implementing the Globally Harmonized System for Classification and Labeling (GHS) – to Mexico.
- Reducing or eliminating other variances between the U.S. and Canadian adoption of GHS. Examples include reporting requirements for changes to Safety Data Sheets (SDS), labeling requirements, and requirements applicable to combustible dust.
- Harmonizing documentation by government regulatory agencies across NAFTA, e.g. uniform permits, certificates, Chemical Data Reporting (CDR), chemical nomenclature rules, and regulatory controls, (e.g. Ministerial Conditions and Prohibitions in Canada versus the Toxic Substances Control Act (TSCA) Section 6 requirements);
- In this regard, the Environmental Protection Agency (EPA) and Environment Canada have a Regulatory Cooperation Council working group to align New Substance Notifications (NSNs), risk evaluations and classifications, Significant New Use Rules (SNURs) and Significant New Activity (SNAs). Mexico should be encouraged to align their new chemicals program with those of the U.S. and Canada and we understand that work is already underway in this area. A more formalized process would be welcome in relation to all of these matters, to ensure timely and consistent results. At the same time, Environment Canada is considering an export regulation akin to TSCA 12(b), so efforts to align the two systems from the outset would help to avoid complicated and potentially competing regulatory requirements.
- Companies face a set of challenging options under Canada's revised Workplace Hazardous Materials Information System (WHMIS) for SDS: companies must provide the government with sensitive business information (either exact chemical concentrations or product-specific concentration ranges), or they must pay a per-product application fee for review and approval of the confidentiality of chemical concentrations, an option that quickly becomes expensive. These requirements do not align with both corresponding U.S. and European regulations. Ongoing work to harmonize safety data sheets should be extended and artificial barriers in the protection of confidential business information should be eliminated while continuing to preserve worker protection.
- Canada maintains strict rules to define hazardous waste that cross its borders that disrupts trade in the chemistry industry with the U.S. Specifically, the Canadian government does not provide any exemption to allow empty containers with hazardous waste residue to bypass the substantial Basel Convention paperwork requirements that normally accompany transit of hazardous waste –



even though many of its provinces, and many other governments (including the U.S.) do so. Such policies mean that any containers transiting the border for cleaning must go through onerous and time-consuming transboundary paperwork requirements, impacting not only makers of chemicals, but downstream industries that use those products as well as hazardous waste cleaning facilities on both sides of the border. Alignment on a definition of “empty” containers would increase regulatory efficiency while relieving industry of a burdensome regulatory requirement that provides no benefit to human health, safety, or the environment.

5. Additional areas for consideration

Environment, Health and Safety (EH&S) harmonizing approaches are an important component of any “WTO Plus” trade facilitation process. As noted earlier, a Chemicals Management Plan standard of all three countries can serve as a core to harmonizing safe and efficient movement of goods. Timing of changes to Canada’s systems and procedures at an administrative level is key to maintaining an integrated approach. Here the GHS is an excellent case study. Unless timing is coordinated, Canada will inadvertently introduce trade barriers, barriers to the movement of goods which will undermine our industry’s global competitiveness outside of North America. Regulators in our respective countries need to be part of the solution and should consider the competitiveness pressures that come with competing in the global market, thereby avoiding duplicative, erroneous and burdensome barriers to chemistry products.

Finally, the goals in the area of market access, while touching many areas, needs to take into account that in today’s world we are not just moving the goods, we are also providing an element of service with every transaction. Members of this trade agreement need to be able to provide after-sales services linked to the goods. Movement of specialists in the business of chemistry will be covered in greater detail as discussions evolve and around the trade in services negotiations, but at this point and as a principle, experts must be able to provide advice to customers and NAFTA needs to facilitate, not hinder this crucial aspect of trade in chemical goods.

An agreement which provides a regular assessment of regulatory systems and methods of compliance and review, is a start in achieving a sustainable trade agreement. Trade considerations are a must in the EH&S process and our respective regulatory agencies need to be part of the solution and their regulatory improvements need to rigorously assess potential impacts to trade before regulations are promulgated. The Canada-U.S. Regulatory Cooperation Council mentioned earlier is a good model to adopt across the continent.

➤ Conclusion

CIAC strongly supports the launch and timely completion of negotiations on modernizing NAFTA. For the chemistry industry, and for the broader economy, it has the potential to provide a significant boost to growth and job creation, which in turn would promote innovation and strengthen the international competitiveness of exporters. A successful conclusion of negotiations on modernizing NAFTA would also send an important signal to the rest of the world, particularly in terms of promoting risk- and science-based decision making. CIAC looks forward to maintaining a dialogue with negotiators and regulators as the NAFTA negotiations proceed and as we move from principles to specifics, to the details of a new agreement for the future.



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