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GEORGE MORRIS CENTRE

Canadian Agri-Food Regulatory Reform- The Myth of Tantalus

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INTRODUCTION

In recent months, a number of governments in Canada have reported on, or discussed policy directions to reform regulatory systems in their agri-food sector. For many observers of Canada's agri-food sector, such initiatives are not new; they have been implemented in many ways, and usually with limited results. New governments, or those facing harsher economic outlooks, initiate their reform efforts as part of overall economic growth/innovation agendas. However, the inability to gain permanent improvements in their regulatory regimes brings to mind the eternal dilemma facing the mythical Greek figure, Tantalus.

In ancient Greek mythology, Tantalus, a mortal, was greatly favoured by the gods. However, he was jealous of their power. To embarrass the gods, he horribly affronted them. He was punished with eternal thirst and hunger in Hades. He was forever doomed to stand in a shallow pool of clear water and below a heavily laden fruit tree-both out of reach- such that if he stretched to scoop some water, the pool would drain below his grasp; and if reached up for the luscious fruits, the tree boughs would spring up away from his reach-forever.

Despite numerous efforts at both levels of government to reform Canada's agri-food regulatory system, the sector seems caught in such a dilemma. Governments strive to achieve needed efficiencies in existing regulatory activities; to reduce or eliminate unneeded or outdated regulations; and to attempt to implement improved processes for developing and enforcing new agri-food regulations. Yet, Canada's agri-food value chain identifies the continued need to address the regulatory burden on producers, processors and others in order to improve competitiveness, innovation, and reduce costs. Indeed, while these efforts to reduce existing "regulatory burden" are pursued, Canada's agri-food sector faces new legislative and regulatory burdens which can expand the regulatory costs, rather than limit them.

This paper is the first in a planned series of short reports from the George Morris Centre on Canada's agri-food regulatory framework. This paper will focus on regulatory reform initiatives and their challenges, with policy suggestions for improvements.

CURRENT POLICY CONTEXT

In a high wage economy such as Canada's, all efforts to improve the innovation and competitiveness of the national agri-food sector are critical to its longer term prosperity. The ability to effectively and sustainably reform Canada's agri-food regulatory framework will further support those innovation and competitiveness initiatives.

In addition, Canada's agri-food sector faces significantly changed dynamics in its global and domestic market opportunities for sustained growth and prosperity. Competition from farms/firms in other

jurisdictions is getting tougher. One of the factors in that improved competitiveness is the regulatory framework in competing jurisdictions which provide their sector reduced regulatory burdens with similar public policy goals. The opportunity costs to Canadian farms/food firms can be very real.

Finally, there are increased demands on this sector to achieve a number of newer public policy objectives (environmental, health, equity) that are historically beyond the normal realm of the sector, or its regulatory capacity. The resulting new “regulatory burden” on the innovation and competitiveness capacity within this sector, as well as the development of a risk aversion culture in Canada’s regulation development/enforcement are also well identified¹.

Caught in the Myth of Tantalus

The Government of Ontario, just prior to the September 7, 2011 launch of its October 6th election released media materials along with the Ontario Federation of Agriculture on the success of the government-industry interaction for the Province’s Open for Business initiative. This initiative was launched by the Government of Ontario in 2007/08. It is the latest attempt by the Government of Ontario to alter the regulatory burden faced by Ontario businesses in all sectors of the economy. The Open for Business process has led to several sectors of the Province’s economy undertaking joint government-industry processes to review, analyze, and then prioritize activities designed to reduce existing regulatory burdens on those sectors, and to improve future regulatory processes.

The Ontario policy direction is essentially replicated in similar ways within each province and federally. There is a sustained public demand to reduce the regulatory burden (the costs, paperwork, adverse impacts on competitiveness and innovation) facing Canadian agri-food businesses. Reduction in the regulatory burden will be directed to improve future agri-food regulatory processes while still achieving desired social, health, environmental and economic interventions to improve upon market performances. Such regulatory reform directions are now a full part of the nation’s agri-food sector policy development and implementation

Yet, for all the efforts, and all the years, spent in reforming the system, the overall situation at the national or provincial levels of this sector-and indeed, across all business sectors- never seems to improve considerably or sustainably. Renewed efforts to reduce/eliminate such burdens constantly reoccur. New program titles arise but with similar processes, and unfortunately with limited long term results. The above noted Ontario initiative is the latest attempt to address these long standing policy challenges.

Any past successes at eliminating outdated regulations are often overmatched with new and even more interventionist regulatory demands upon the Canadian agri-food sector. As a result Canada’s agri-food sector never achieves a new, sustained, and effective process to thoroughly examine, review and revise new regulatory directions or their enforcement. Attaining such a goal would avoid repeated patterns of increased costs/burdens on day-to-day business activity from additional regulations, on top of existing ones.

¹The George Morris Centre completed a study for the Food and Consumer Products of Canada titled: Food Regulatory Systems: Canada’s Performance in the Global Marketplace. It can be accessed at: “<http://www.georgemorris.org/GMC/Publications/Competitiveness.aspx>”

The challenge is how to best avoid this policy trap and achieve sustained regulatory reductions now and into the future. It is critical to review the lessons learned on what has worked in the past, and what has not.

Key Policy Steps/Lessons Learned- Effective Agri-Food Regulatory Reform

In order to avoid the policy trap of spending considerable time and resources in regulatory reform processes and yet not reach and sustain longer term regulatory reform in the Canadian agri-food sector, the following policy fundamentals are evident.

1. **Measurement**-to start the process correctly, the base case or the measurement of the impacts of the existing “regulatory burden” must be undertaken. Cost/benefit analysis is often offered to assist regulatory decision makers on potential impacts of their future decisions. Such analyses could be used with improved, firm, consistent analytical approaches to defining, measuring, and reporting on “regulatory burden”. This is not a policy failure or a bureaucratic one- in most cases the questions were never asked. Regulatory reform processes are usually added onto the existing regulatory processes- and almost always long after the implementation of the legislation/regulation.

The most recent Ontario Ministry of Agriculture, Food and Rural Affairs press release on that province’s Open for Business initiative and its agri-food sector identified a “28%” reduction in the burden on the sector. This estimate is now into public media-which was the intent. There is no clarification of what was meant by the 28%- Is the impact of these efforts truly 28% reduction for all participants in the Ontario agri-food sector? for some? variable by commodity? Since the overall base is not known, measurements of what truly constitutes the reduction of the “burden” have also not been undertaken thoroughly. It is then difficult to determine whether or not if the sector will see any real benefit in their day-to-operations or their innovation efforts from both the initiative and longer term results of such regulatory reforms.

In this case, does this mean only 72% of the Province’s regulatory burden still exists? Are those regulations/processes that were reformed/eliminated equal to the next 28% set of Open for Business activities in this sector? As the original measurement is not known, it is very difficult to determine if the sector is better off prior to the announcement day or after it. Indeed, with the recent election now over, and a review of the Government of Ontario’s FIT process for renewable energy, it may be that higher priorities for reform are now contemplated

2. **“Early Wins”**- The desire to achieve immediate practical results and remove identified outdated/ineffective legislation is often a key policy trap in itself. The “early wins” focus shifts the “reform” process to identifying and removing those regulations which by definition have limited economic impact on the sector. This “low hanging fruit” can be optically beneficial. But, it will use scarce resources of time and effort while leading to minimal economic improvements in the sector. Establishing a continuous process to identify and remove such legislation/regulation based upon clear, transparent decision processes will be far more effective, and more sustainable. It will not have the same media impact, but will lead to longer term results.
3. **Transparency**- for any regulatory reform process to work, it is critical to be as transparent as possible in the consultative, analytical and decision-making processes. This transparency

challenge is not just the initiation of the process or its completion, but in the steps undertaken, the analysis used, the decision process to prioritize the reform choices. More critical to industry and public acceptance is that the reform process is fair, and appropriate. If even the base measurement process is unclear, it is difficult then to persuade all industry participants that real reform is occurring-and will continue to occur. This limits the effectiveness of the regulatory reform process, and its applicability across other parts of the Canadian agri-food sector, or the consistency of the approach between different jurisdictions.

For Canada's agri-food sector, improved transparency leads to focus on those choices or trade-offs which will gain the greater economic benefit to the sector at the most reasonable cost to the public. Eliminating an antiquated regulation may provide an "early win" but with no/limited benefit to the sector; in turn, a major change in an innovation constraining regulation would be a major improvement for some segments of the sector. Only with full transparency can these decisions be quickly and then concisely conveyed to the sector participants, and to the general public.

If little or no tradeoffs are involved in these reform initiatives, then the gains to the sector, or the costs to the broader public must be assumed to be minimal or even illusory. A major shift in environmental regulation of Canadian farming practices if it is truly to benefit the farming industry- would have some visible impacts for those supporting the status quo environmental regulation.

Successful regulatory reform must also include a transparent process for a regulatory review of future legislation/regulation. To be effective, the process must be open, accessible to private and public sector participants, and the analysis of the choices made, and estimated impacts on the sector/other parts of the national/provincial economies, must be clear and persuasive, all in the public domain.

4. **Industry Analysis-** a critical component in any regulatory reform process is to develop and maintain analytical capacity within the sector to properly evaluate the real costs of the "burden" rather than just provide anecdotal estimates. Thorough industry analysis will lead to formal policy discussions. In light of potential costs to the public in areas of food safety, environmental degradation, or even on competitiveness and innovation, it is critical that the sector have solid analyses of the impacts of the regulation(s) to be changed. This is sadly not the case in most reform processes

The industry challenge- in cooperation with public sector participants is to analyze critically the real costs- costs of compliance, costs of duplication, costs of inefficiency in operations, costs in competition with other jurisdictions, costs to innovation activities. These must also be properly measured and transparent-to all-so that those arguing in favour of such regulatory activities must meet the same tests. This is a difficult challenge as the sector has used anecdotal evidence in the past or high level estimates of overall costs- without considering differential impacts by region, commodity, scale of firm, or capacity. This also means an effort to analyze not just the incremental "burden" of a regulatory activity, but also of the entire framework.

CONCLUDING REMARKS

With a series of new market opportunities for Canada's agri-food sector in both global and domestic markets, and increased, sophisticated competition from other jurisdictions in those same markets, it is critical that the regulatory processes/activities do not overburden the competitiveness and innovation in this sector. It is timely that almost all governments- federal and provincial-are examining again the costs/burden of their regulatory frameworks- and looking for improvements, reductions in number and impacts of those regulations, revised future processes, and avoiding duplication.

However, the challenge for this sector is to avoid the policy trap of continual investment in such Red Tape/Open for Business/Smart government processes- find some immediate gains-and never truly resolve the regulatory burden. Indeed, all too often short term gains are easily eclipsed by longer term new regulatory initiatives in new priority public demands. The Myth of Tantalus applies to this sectoral challenge and explicit efforts must be undertaken to avoid the policy trap. Moreover, these sectoral efforts- even in pilot stage form- must be undertaken to ensure a more sustainable process for reducing the regulatory burden, and improving the longer term competitiveness and innovation in this sector.

The challenge is one which both public and private sector participants agree on principle, now it is critical that both segments of this sector work together to avoid continually returning to the same policy dilemma, with the same unfortunate result. Greek mythology can be an interesting read, but it is a bitter example of poor public policy, and poor public policy implementation.