– Regulatory Promulgation –
Perspective of the Business Community

Sean Heather – Global Regulatory Cooperation, U.S. Chamber of Commerce
Dr. Trevor Gunn – Medtronic Inc.
Jessica Hychalk – American National Standards Institute
Steven Bipes – U.S.-Brazil Business Council
Who is the U.S. Chamber?

- Largest Lobbying Association in Washington in terms of $$$
- Cover Virtually Every Issue Important to Business
- Members include Businesses & Association, Federation of 3 million, more than 113 AmChams around the world
- 96% of our Members have fewer than 100 employees
- Home to several hundred multinational companies headquarters outside the U.S.
Approach Taken By Business

- Members interested in “smart regulation”
- Constructive Approach to Engagement
- Some Members -Business Opportunity in Regulation

Ex, Meaningful Business Community Engagement
- Junk Fax – Business Community – Prior Approval vs. Business Relationship
- EPA Green House Gases
  Threshold 25,000 tons vs. thresholds 75,000 tons
- Review of EU Impact Assessment Guidelines - capture Trade & Investment Impact
Key Aspects to U.S. Regulatory System

- Cautious/Hesitant to Regulate – Self-Regulating View of the Market
- Highly Developed Body of Administrative law – Leads to a Professionalized Approach
  - APA, EO, Circulars, Guidance, Court Rulings
  - “Arbitrary & Capricious” Standard
- Slow & Deliberate - Better than too fast
- Congress – Primary Author/Agencies Secondary Author
- Centralization
  - Federal Registry & OIRA
- Timing & Transparency
  - Importance of Early
    - Unified Agenda of Federal Regulatory and Deregulatory Actions
  - Required to Publish Proposed Rule, Justification, Analytical Process
- Stakeholder Engagement
  - Unbiased – All Comments Welcome
  - Required to Respond
- Risk Based Approach
- Role of Cost-Benefit Analysis - $100 Million Rule
- Reliance on Private Sector Standards
- Data Quality – IQA, OMB Guidelines for Ensuring/Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies
- Checks and Balances
  - OIRA, Courts, CRA
Arguable Areas for Improvement

• Further Transparency
  – Disclosure of *all* analysis/supporting documents
  – Disclosure of the Czars – Internal Influence Peddlers

• Cost-Benefit Analysis
  – Early Engagement with OIRA
  – Prohibit/Explain Why? - Where costs outweigh benefits

• Data Quality - Information Quality Act (IQA)
  – Make IQA Judicially Reviewable
  – Adherence to IQA & Open-Peer Review of Data

• Introduce Ex-Post Assessment
• Introduce a Pro-Competitive Test
• Assess Trade and Investment Impact
Revoked E.O. 13422

- Requirement in writing to specific market failure or problem
- Requirement that agency head designate a presidential appointee as a “regulatory policy officer” who can control upcoming rulemaking activity
- Requirement that agencies estimate the cumulative regulatory costs and benefits of rules they expect to publish in the coming year
- Expansion of OIRA review to include significant guidance documents
- A provision permitting agencies to consider whether to use more formal rulemaking procedures in certain cases.
Current Debates

• Some Argue Need for Precautionary Principle Approach to Risk
• Distributional Considerations?
• Concerns for Future Generations?
  – What is the discount rate?
  – Is it applied consistently across costs and benefits?
International Dimension

- GRC Project – Align Trade, Regulatory, and Competition Policy in Support of Open and Competitive Markets
- 2008 - E&Y’s #1 Global Business Risk
- Struggle for MNCs, Killer for SMEs
- Intersection with Trade & Investment
  - GATS Requirement
  - Increased Number of Dialogues
  - Trade Agreements
Resources

• OIRA
  http://www.whitehouse.gov/omb/regulatory_affairs

• Impact Analysis – Regulatory Best Practices in OECD Countries

• APEC-OECD Joint Regulatory Reform Checklist

• EU Impact Assessment Guidelines (Updated 2009)