REGULATION IMPACT STATEMENT

FOR A

MUTUAL RECOGNITION AGREEMENT

ON CONFORMITY ASSESSMENT IN RELATION TO MEDICINES GOOD MANUFACTURING PRACTICE INSPECTION AND CERTIFICATION

BETWEEN

THE GOVERNMENTS OF

AUSTRALIA AND CANADA

OFFICE OF DEVICES, BLOOD AND TISSUES

THERAPEUTIC GOODS ADMINISTRATION

DEPARTMENT OF HEALTH & AGEING

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BACKGROUND

With the current international focus on reduction of tariffs, non-tariff barriers to trade are coming to the forefront as market access and development issues. Of these, technical and regulatory barriers to trade, such as those caused by differences in national standards and conformity assessment regimes, have the greatest impact on trade. In certain situations, different domestic standards and conformity assessment procedures may actually impede gains from any further reduction in tariffs.

European and North American based multinational companies are calling for the alignment of countries' national standards with relevant international standards with little, or no, national deviations; the development of mutual recognition agreements; and the adoption of good regulatory practices.

Australia, through the Department of Industry, Tourism and Resources (ITR), is active in developing a range of mechanisms to address and reduce the trade restrictive effects of technical and regulatory requirements. These mechanisms include the signing of a number of multi-sectoral Mutual Recognition Agreements, for example, MRAs with the European Economic Areas and Singapore. The Therapeutic Goods Administration (TGA) has been an active participant in the development of these international agreements, in particular in relation to sectors on medical devices and medicines Good Manufacturing Practice (GMP) inspection and batch certification.

These agreements have provided the mechanism for each party to accept the results of conformity assessment activities of the other party in order to demonstrate conformity of products with each party's mandatory requirements.

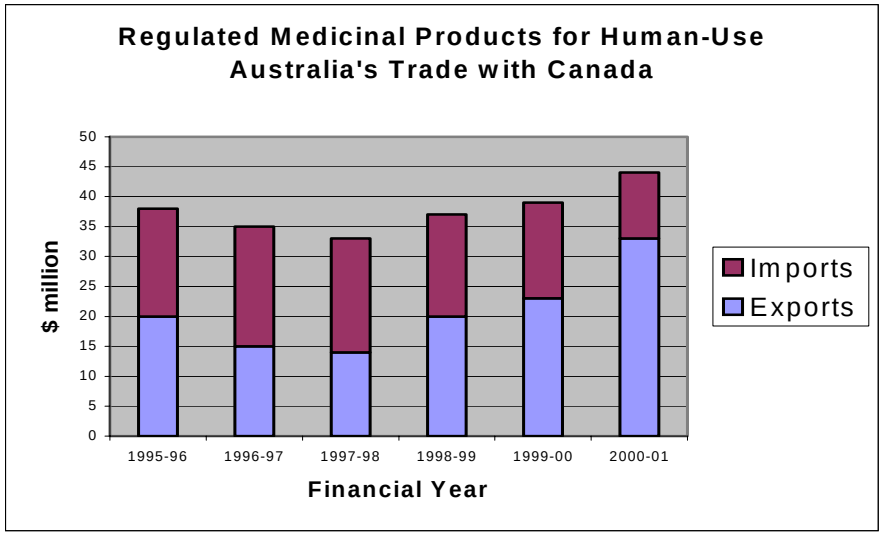
On the basis of the 1995 Trade and Economic Cooperation Arrangement signed between Australia and Canada both parties expressed an interest in establishing a more formal framework for the conduct of collaboration in relation to conformity assessment. With a view to strengthening health regulatory cooperation and trade relationships between Australia and Canada, the Therapeutic Goods Administration (TGA) and Health Canada in late 2000, commenced discussion on establishing a bilateral single sector Mutual Recognition Agreement (MRA) on Conformity Assessment in relation to Medicines Good Manufacturing Practice (GMP) Inspection and Certification.

As the proposal is for a bilateral single-sector MRA for medicines GMP inspection and certification, the TGA is taking the lead in these negotiations, with some assistance from the Department of Foreign Affairs and Trade.

Australia's Trade with Canada in Regulated Medicines for Human-Use

Total trade between Australia and Canada in regulated Medicines for human use increased from $44 million in 2000/2001 to more than $67 million in 2004. Australian imports of Medicines from Canada increased from $11 million in 2000/2001 to more than $17 million in 2004 whilst Australian exports to Canada increased from $33 million in 2000/2001 to $50 million in 2004.

(2004 figures sourced from Canadian High Commission March 2005)



(Sourced from ABS Consultancy Information Service September 2001)

Current Regulation

The term Good Manufacturing Practice (or GMP) is used internationally to describe a set of principles and procedures which, when followed by manufacturers of therapeutic goods, helps ensure that the products manufactured will have the required quality and therefore be safe and reliable. Compliance with specified GMP requirements is used by most countries as the basis for licensing manufacturers of medicines.

In Australia the regulation of medicines comes under the scope of the *Therapeutic Goods Act 1989* (the Act), which provides a national system of controls for the quality, safety, efficacy and timely availability of therapeutic goods. The Therapeutic Goods Administration (TGA) of the Department of Health and Ageing administers the provisions of the Act.

The Act requires the majority of Australian manufacturers of medicines for human use to hold a GMP licence. Licence holders are required to comply with the Manufacturing Principles of the *Therapeutic Goods Act 1989*. Overseas manufacturers of therapeutic goods supplied to Australia must provide evidence that the goods are manufactured to a standard of GMP equivalent to that expected of Australian manufacturers of the same goods. The TGA only accepts GMP certification from countries where the TGA is satisfied that the standard of GMP inspections is equivalent to GMP inspections in Australia. Canada is currently accepted as having a standard of GMP inspection equivalent to Australia.

In Canada, the regulation of medicines, including veterinary products, are set out in the *Food and Drugs Act* and the *Food and Drug Regulations*, and is administered by the Health Products and Food Branch Directorate of Health Canada. A GMP licensing system was introduced in January 1998.

Overseas manufacturers of medicines supplied to Canada, in general, must provide evidence that the goods are manufactured to a standard of GMP equivalent to that expected of Canadian

manufacturers of the same goods, in particular, with Division 2 "Good Manufacturing Practices" (GMP) Regulations. This GMP compliance requirement applies to any medicine establishments that fabricate, package, label, distribute, import, wholesale or test a medicine for Canadian distribution. Normally to demonstrate this would require an inspection by the Health Products and Food Branch Directorate of the overseas manufacturing facility.

Furthermore, Canadian legislation requires that a batch certificate must accompany each batch of medicines imported into Canada. The batch certificate must be held by the Canadian importer and be available upon request by the relevant authority in Canada. The need for a batch certificate is a specific Canadian requirement; there is no similar Australian requirement.

The Pharmaceutical Inspection Cooperation Scheme (PIC/S)

Both the TGA and Health Canada are members of the Pharmaceutical Inspection Cooperation Scheme (PIC/S), which is an international arrangement which provides for the exchange of information on GMP inspections, the training of GMP inspectors, the acceptance of inspection reports and certificates and the development of guideline documents on GMP inspections. PIC/S is an informal, agency to agency cooperative scheme and has no treaty status.

Since Canada became a member of the PIC/S arrangement in 1999, the Health Products and Food Branch Directorate and the TGA accept each other's audits and GMP licensing of manufacturers, without requiring further audits or licensing. However, under the PIC/S arrangement there are no legal obligations to ensure the exchange of GMP certificates or any timeframes imposed.

IDENTIFYING THE PROBLEMS

Standards and conformance related impediments to trade generally have their basis in the non-acceptance of the results of conformity assessment procedures (eg. test reports and certificates) or, in the case of professional services, non-recognition of qualifications, training or other factors governing the right to practice. This can substantially increase costs and the degree of risk for manufacturers seeking to enter the respective markets.

Australia currently has an informal arrangement with Canada through their respective memberships of PIC/S, which establishes minimum standards internationally for the inspection of manufacturing premises of medicinal products. Whilst information about manufacturers' GMP compliance is shared through PIC/S membership, there is no obligation on either party to provide such information nor any timeframes imposed on providing the information where requests are made by the other party. This means manufacturers are at risk of delays in obtaining recognition of their GMP license and have the risk of additional costs being imposed in order to obtain licenses from the two countries independently. Even though Australia and Canada have generally equivalent GMP standards, under the present system each batch of Australian-made medicines exported to Canada is required to be reanalysed upon entry into Canada. This can substantially increase costs for manufacturers seeking to enter that market. Hence, there is the risk of delays and costs of re-testing associated with having to meet Canada's requirements.

OBJECTIVE

The overall objective is to minimise barriers to trade by reducing or eliminating the risk of time delays and costs associated with the non-acceptance by Australia and/or Canada of the other's

GMP conformity assessment activities, while allowing each country to maintain its own standards to preserve public health and safety.

BROAD OPTIONS TO RESOLVE THE PROBLEMS

Two options were considered to achieve the objectives.

Option 1 - Retention of the current system
Option 2 - Progress a bilateral single-sector MRA between Australia and Canada on Medicines GMP Inspection and Certification.

Option 1 - Retention of the current system

Retain the current regulatory requirements for medicines GMP compliance assessment where information about manufacturers' GMP compliance is shared through PIC/S membership.

Even though Australia and Canada have generally equivalent GMP standards, under the present system each batch of Australian-made medicines exported to Canada is required to be reanalysed upon entry into Canada.

Option 2 - Progress a bilateral single – sector Mutual Recognition Agreement (MRA) between Australia and Canada on Medicines GMP Inspection and Certification

Under government to government mutual recognition agreements on conformity assessment, such as those negotiated between Australia and the European Economic Area countries, both Parties recognise that the importing party accept GMP compliance certification to their requirements undertaken by the relevant regulatory authorities of the exporting party. Accordingly, Australia will recognise Canada's GMP certificates of manufacturers of medicines as acceptable forms of evidence in support of applications for entry on the Australian Register of Therapeutic Goods (ARTG) and Canada will recognise TGA GMP certifications. This is expected to reduce the time and costs associated with the export of goods.

Mutual recognition of this type allows the standards and technical regulations of the importing country to remain unaltered and to apply to both imported and domestically produced goods.

Bilateral single-sector MRA

Bilateral single-sector agreements are most commonly negotiated on an agency to agency basis and encompass only those products and services which are covered by the respective regulatory arrangements in each party.

Such agreements are often negotiated from a regulatory reform perspective rather than a trade facilitation point of view, although quite clearly they do have a trade facilitation outcome. The benefit of developing this type of agreement is that the negotiation process is primarily between regulatory agencies, which can often facilitate a quick conclusion.

Other significant benefits to both countries include:

- bilateral agreements are usually treaty level agreements, which are enforceable through international law and therefore impose a high level of commitment on the parties. In this case formalising an agency level arrangement;
- there is a commitment by the parties to develop an agreement with substantive and operative provisions that will have an effect on overcoming regulatory barriers to trade;
- there is an opportunity for the exchange of views and information; and
- the agreement can be tailored to suit the trading relationship between the two parties.

One disadvantage of such agreements is that they offer no scope for expansion to encompass other sectors in the same manner that is provided for by multi-sector agreements.

IMPACT ANALYSIS

The Parties likely to be most directly affected by the proposed MRA are the Government, members of industry and ultimately consumers.

The costs/benefits analyses of the options are as follows:

Option 1

Although the current agency level Pharmaceutical Inspection Cooperation Scheme (PIC/S) arrangement is in place, it is not a suitable long-term option. Both parties are members of PIC/S, which establishes minimal standards internationally for the inspection of manufacturing premises, however, there are no formal obligations for the agencies to exchange information in relation to medicines GMP inspections, nor set timeframes for the provision of the information where requests are made by the other party. Such an arrangement relies on the good will of each of the parties and confidence in the technical expertise of the other to provide an equivalent degree of certainty and safety with regards to medicines.

Furthermore, currently Canada requires all imported batches of medicinal products to be reanalysed before being supplied on the market. Hence, Australian exporters may continue to experience time delays and incur costs related to the export of their medicinal products to Canada as a result of this retesting. Australia does not have any equivalent requirement for re-testing of batches of medicines on import.

It is difficult to quantitatively measure the benefits of retaining the current PIC/S level arrangement without an MRA being in place to provide a comparison. However, the impacts of retaining Option 1 are to have continued uncertainty and, in some cases, actual delays and costs associated with re-testing batches of medicines on import into Canada.

Option 2

An MRA with Canada has the strong potential to improve bilateral regulatory cooperation in relation to medicines GMP, improve bilateral trade and provide substantial benefits to Australian exporters.

The MRA will improve market access for Australian exporters by reducing barriers to trade through providing greater certainty that medicines manufactured by licensed or certified manufacturers in Australia shall be accepted in Canada and vice versa. The TGA will recognise

Canada's GMP certificates as acceptable forms of evidence in support of applications for entry on the Australian Register of Therapeutic Goods. It is expected that this would provide cost-savings to manufacturers, importers and consumers by the reduction, if not removal, of the costs associated with obtaining GMP approvals for entering products onto other markets, including the need to conduct duplicative tests.

Furthermore, the MRA will reduce the need for the TGA to inspect manufacturers in the jurisdiction regulated by Health Canada by ensuring the reduction of regulatory duplication through the ability to recognise each other's GMP inspections.

There are other potential benefits from formalising existing informal agreements in the 'voluntary' sector that appears to be functioning well. For example, while assessment bodies in the two countries may accept each other's medicines GMP certification, with no restrictions being imposed by the regulatory authorities, there is always the possibility that one of the party's may introduce new legislative requirements that change the standards for medicines GMP certification. In this case a government-level MRA provides a greater degree of certainty for trade between both parties. It should be noted that the mutual recognition and acceptance of certificates of GMP for manufacturers of medicines does not constitute medicine approval; GMP inspection is only one element of this process.

At present, all imported medicines are usually reanalysed or retested upon entry into Canada. Under the MRA, a batch certificate issued by the manufacturer in Australia will have to accompany each batch of medicines shipped to Canada, which will attest that the batch meets with the Canadian requirements and hence will eliminate the need for reanalysis at import. Hence, an MRA will allow Australian exporters to have goods assessed to the importing countries requirements prior to export, which is expected to reduce the time and cost for Australian exporters sending medicines to Canada. Australia requires the sponsor to hold a batch certificate for imported products, but TGA does not have the requirement to retest on import.

The effect on risk to health and safety of the community is minimal if not zero under the agreement, as assessments of manufacturers of medicines must still be carried out to satisfy the importing country's mandatory requirements. Therefore, there is no reduction in Australia's level of standards. In addition each party retains the right to interpret and implement its mandatory requirements and to determine the level of protection it considers necessary with regards to health and safety. This includes the ability to take appropriate action such as withdrawing a product from or prohibiting their placement on the market or initiating a product recall.

Overall, the impacts of Option 2 will be to strengthen the health regulatory cooperation and trade relationship between Australia and Canada and formalise the current agency level PIC/S arrangement. Furthermore, it will increase certainty and, for those Australian manufacturers who would otherwise be required to go through re-testing, the reduction or removal of associated delays and costs.

In conclusion, a government to government MRA on conformity assessment will provide immediate and longer-term benefits to industry, such as reduced costs to exports and imports as a result of a reduction in regulatory duplication without reducing the health or safety of the community or access to new medicines.

CONSULTATION

Consultation has occurred in relation to this agreement with industry associations and other representative bodies, relevant government representatives and Federal and State/Territory governments and interested parties. The comments received as a result of the consultation indicate a broad level of support for the proposed MRA with Canada in relation to Medicines GMP Inspection and Certification.

There were concerns raised by the Complementary Healthcare Council of Australia (CHC) in relation to the effect of the proposed MRA in relation to natural health products, given that Canada was in the process of developing new GMP guidelines for natural health products (NHP's).

Since CHC's concerns were raised Health Canada has introduced a new regulatory framework for natural health products with its own GMP requirements for NHP's. This new regulatory framework includes vitamins, minerals, herbal remedies and homeopathic medicines. Canada does not require GMP certification for NHP's and Australia does, therefore these products have been excluded from the scope of the MRA. As Canada have indicated that NHP's will not require retesting at import, Australian manufacturers should not be disadvantaged by this exclusion.

CONCLUSION AND PREFERRED OPTION

Option 2 is the recommended option for meeting the objectives and entails a government to government bilateral single–sector MRA on conformity assessment of medicines GMP inspection and batch certification. This MRA provides for the mutual recognition of certification and acceptance of certificates of Good Manufacturing Practice (GMP) of Australian and/or Canadian manufacturers of medicines, and thus accordingly improves market access for Australian exporters from both an efficiency and trade facilitation perspective. The MRA will also assist in minimising barriers to trade by reducing the risks of possible time delays and costs involved with the export of medicines.

Although Option 1 is currently in practice, it does not address the statutory obligations between the parties with respect to barriers to trade neither does it address the risks of costs and time delays.

IMPLEMENTATION, EVALUATION AND ENFORCEMENT

Industry will be notified of the implementation of the agreement through advice to the relevant industry associations.

Mutual recognition agreements are treaties that are binding under international law. Hence they are required under the Australian Constitution to have Federal Executive Council approval before coming into force[1]. The MRA on Conformity Assessment in Relation to Medicines Good Manufacturing Practice (GMP) Inspection and Certification shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of this Agreement. A Joint Sectoral Group consisting of representatives from each Party to the Agreement shall be established to administer and facilitate the effective functioning of the Agreement. Either party may terminate the Agreement by giving the other party six months advance notice in writing.

In compliance with the Commonwealth Legislation review process, it is proposed that evaluation of this MRA will commence within 3 years of ratification of the agreement and its entry into force. This will enable manufacturers to have the opportunity to extract benefits from the provisions of the Agreement before an assessment is made. It will also allow Australian and Canadian regulators to establish greater confidence in each other's medicines Good Manufacturing Practice compliance assessment programs.

The evaluation shall address the appropriateness, effectiveness and efficiency of the agreement in meeting its objectives. The evaluation could take a number of forms but, in essence, will address the extent to which the agreement reduces or eliminates conformity assessment-related technical barriers to trade between Australia and Canada.

The evaluation will use criteria such as:

- the extent to which exporters and importers are able to place their medicines on the market in the receiving territory with no additional delays imposed by regulatory authorities;
- the extent to which the mutual recognition agreement has created trade opportunities and/or reduced conformity assessment costs for Australian exporters that did not previously exist;
- the response of industry and consumer groups to the mutual recognition agreement in terms of the perceived costs and benefits to their members;
- the ease with which the agreement is administered and, in particular, the speed and manner in which disputes about conformity assessment are resolved; and

Evaluation will take the form of:

- detailed discussions between the regulatory agencies; and
- qualitative feedback from industry on the changes to the trading environment with the other party.

The Agreement has a range of provisions that sets out the obligations of each party. For example, the parties shall exchange any information that is necessary for the mutual recognition of GMP

[1] *Negotiation, Conclusion and Implementation of International Treaties and Arrangements*: Treaties Secretariat, Department of Foreign Affairs and Trade, Canberra, March 1999

inspections (Article 3). This includes ensuring the notification of any significant changes to mandatory requirements and GMP compliance programs, including any new technical guidance or inspection procedure. Furthermore, in accordance with the Agreement and by mutual agreement between the parties, joint GMP inspections may be conducted which are intended to develop common understanding and interpretation of practice and requirements (Article 12.1). The parties are also required to conduct a confidence building exercise to determine the equivalency of their respective mandatory GMP requirements in relation to medicines and the equivalency and capabilities of GMP inspection procedures and GMP compliance programs of the regulatory authorities in each country (Article 14.1).