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Honorable Steven D. Aitken
Acting Administrator
Office of Information
and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Steve:

Thank you for inviting me to peer review OMB's *2006 Draft Report to Congress on the Costs and Benefits of Federal Regulation*.¹ I note with particular interest your inclusion of the new Chapter III, "International Developments in Regulatory Policy."

You ask whether I "have any comments on OMB's approach to international regulatory cooperation and how it could be improved," and I appreciate the opportunity to respond.² I recommend the following:

1. *Retain the equivalent of this chapter in future annual reports to Congress. The international groups to which you refer, the EU, the Security and Prosperity Partnership (SPP), APEC, and the OECD, will have further regulatory activities and accomplishments worthy of discussion and sharing with Congress. Publicly identifying and evaluating these international accomplishments will help them further achieve their laudable goals.*
2. *Redraft Chapter 3 to give the Security and Prosperity Partnership (SPP) "equal time" with the U.S.-EU discussion.*
3. *Provide in your report procedural details of who is doing what, and what strategies are being considered, even if development of the SPP "trilateral regulatory cooperation framework" is unfinished.*
4. *Make explicit in your report which component in the Executive Office of the President is responsible for overseeing the Security and Prosperity Partnership. If OIRA is not the "central regulatory agency," identify the institution in the Executive Office that is.*

¹ See "http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html."

² For your information, following my retirement as Senior Advisor from the Office of Information and Regulatory Affairs (OIRA) in August 2003, I became a Director of Jacobs & Associates, "International Consultants in Regulatory Reform." See our website at "www.regulatoryreform.com".

Basis for Recommendation 1.

At the end of Chapter 1 in the draft report, “The Costs and Benefits of Federal Regulations,” the report includes the topic, “Economic Growth and Related Macroeconomic Indicators.” The report begins this discussion by generalizing that “[t]he strongest evidence of the impact of smart [or better] regulation on economic growth is the differences in per capita income growth and other indicators of well being experienced by countries under different regulatory systems.”³

Later, in that discussion, the report refers to a paper that specifically supports this basic conclusion. This report points out that high levels of national regulation inhibit national growth, unless better quality government institutions are able to mitigate these adverse effects:

“Regulation is becoming a core policy factor to explain the bottlenecks to economic growth in many countries around the world. Using a large sample of industrial and developing countries, this paper provides an evaluation of the impact of business regulation on economic growth and informality.

“Our regression analysis suggests that **high levels of regulation are associated with lower growth**. This is clearly the case for product and labor market regulation. However, the quality of regulation – as captured by the overall institutional framework – makes a big difference: in most instances we find that **better institutions help mitigate, and even eliminate, the adverse impact of regulation on economic growth**.”⁴

This conclusion in Chapter 1 emphasizes the importance of having the annual report expand upon Chapter 3 next year. It appears that there is a growing international consensus that smart or better regulation, implemented by better quality regulatory institutions, can facilitate national economic growth. International institutions are all working to help individual countries move in this direction. OMB, through the equivalent of this chapter in its future annual reports, would, through its high-level recognition of these efforts to the Congress, be reinforcing international efforts to make regulations and regulatory structures smarter and better.

Recommendation 1: *Retain the equivalent of this chapter in future annual reports to Congress. The international groups to which you refer, the EU, the Security and Prosperity Partnership (SPP), APEC, and the OECD, will have further regulatory activities and accomplishments worthy of discussion and sharing with Congress. Publicly identifying and evaluating these international accomplishments will help them further achieve their laudable goals.*

³ Page 20.

⁴ “The Impact of Regulation on Growth and Informality: Cross-Country Evidence,” Norman V. Loayza, Ana María Oviedo, Luis Servén, AEI-Brookings Joint Center (May 2005), pages 9-10, emphasis added. In your footnote 35, at page 24, you appear to misspell two authors’ names.

What is Included and What is Not Included in Draft Chapter 3.

U.S.-EU Regulatory Cooperation. The title of Chapter 3, “International Developments in Regulatory Policy,” suggests an all-inclusive discussion. In fact, this chapter focuses primarily on U.S. cooperative efforts with the European Union (EU) to promote greater regulatory cooperation “based on a mutual recognition that most remaining transatlantic trade barriers are due primarily to regulatory differences, not to tariffs.”⁵

In this context, the chapter describes “Recent U.S.-EU Summits,” the June 20, 2005, “Roadmap for U.S.-EU Regulatory Cooperation and Transparency,” and various sectoral initiatives involving such topics as pharmaceuticals, consumer product safety, nutritional labeling, food safety, chemicals, energy efficiency, telecommunications, and medical devices, and automobile safety regulation.

The chapter further refers to a U.S.-EU agreement to launch a “Regulatory Cooperation Forum” in 2006.⁶ So far, this Forum appears to have had two meetings – on January 26, in Brussels; and on May 3, 2006, in Washington, DC. Attending for the U.S. were high-level political appointees and appropriate counter-parts from the EU. Apparently, this Forum was also responsible for the issuance on June 2006 of “Best Cooperative Practices” to be used as a guide “for regulators using successful cooperative approaches” and “informally by regulatory authorities in the future to assess the quality and sufficiency of individual cooperative efforts.”

This EU portion of the chapter concludes by comparing U.S. and EC Guidelines on Regulatory Analysis and describing the “proportionality” concept.⁷

Other International Initiatives. At the end of Chapter 3, after devoting over five pages to the EU, the chapter briefly summarizes “Other International Initiatives.” This one page is broken into the “North American Security and Prosperity Partnership,” “APEC-OECD Integrated Checklist for Regulatory Reform,” and “OECD Work on Regulatory Management and Reform.”

The Security and Prosperity Partnership. I find most disappointing the single paragraph – five sentences – used to describe the “North American Security and Prosperity Partnership.” The paragraph starts with the sentence, “On March 23, 2005, Canada, Mexico, and the U.S. announced the Security and Prosperity Partnership (SPP).”⁸

⁵ Page 30.

⁶ Page 33.

⁷ Pages 33-35.

⁸ Page 35.

First Presidential Meeting. Contrary to the impression given by that bland description, the Security and Prosperity Partnership (SPP) is a Presidential initiative, supported at the highest levels in the U.S. Government. SPP was announced by Canada's Prime Minister Martin, Mexico's President Fox, and America's President Bush. Prime Minister Martin stated at the press conference: "We want to eliminate regulations that are a nuisance, not a necessity." President Fox stated: "We ... want to work toward the good performance of our economies." President Bush stated: "It's important for us to work to make sure ... our economies can grow."⁹

In their joint statement, the three heads of state stressed two goals. "Advancing our Common Prosperity" became for America the responsibility of Commerce Secretary Gutierrez, "Advancing our Common Security" the responsibility of DHS Secretary Chertoff. State Secretary Rice became responsible to coordinate the two efforts.

Follow-up Secretarial Meeting. On June 27, 2005, Secretaries Gutierrez and Chertoff and their Canadian and Mexican counterparts met in Ottawa to issue an initial report to the heads of state, providing initial results, key initiatives, and an annex containing the workplans for the many working groups involved. The designated Economic Working Groups, with their U.S. lead agencies, are "Manufactured Goods and Sectoral and Regional Competitiveness" (Commerce), "Movement of Goods" (USTR), "Energy" (DOE), "Environment" (State), "E-Commerce and Information, Communications and Technology" (Commerce), "Food and Agriculture" (USDA), "Business Facilitation" (State), "Financial Services" (Treasury), "Transportation" (DOT), and "Health" (HHS).

Roundtable Discussion. On March 15, 2006, the Council of the Americas and the U.S. Chamber of Commerce convened a private roundtable discussion with the Secretary of Commerce, the Canadian Deputy Minister of Industry, and an official from the Mexican Presidency. The purpose of this meeting was to bring representatives from the private sector together with the government leaders to discuss the Security and Prosperity Partnership in advance of the heads of state meeting shortly to be held in Cancun, Mexico.

Second Presidential Meeting. Newly elected Prime Minister Stephen Harper, President Fox, and President Bush met on March 30-31, 2006. They announced five high priority initiatives for the Security and Prosperity Partnership that warranted special attention in the coming year: the North American Competitiveness Council, Advancing Cooperation on Avian and Pandemic Influenza, North American Energy Security Initiative, North American Emergency Management, and Smart, Secure Borders. They also announced a large number of bilateral and trilateral accomplishments enhancing economic prosperity and national security.

The North American Competitiveness Council. On June 15, 2006, Secretary Gutierrez, Mexican Economy Minister Sergio Garcia de Alba and Canadian Minister of Industry Maxime Bernier met in Washington, D.C., with North American business leaders to launch officially the

⁹ White House Press Release, March 23, 2005.

North American Competitiveness Council (NACC).

“The NACC is made up of high level business leaders from each country. Each country’s council consists of ten members who will meet annually with the SPP Prosperity and Security Ministers to provide recommendations and priorities on promoting North American competitiveness globally. In addition, the governments of North America will work with the NACC to remove barriers in order to increase the competitiveness of North American firms in the global marketplace and spur economic growth.”¹⁰

The SPP Trilateral Regulatory Cooperation Framework. As to the more specific consideration of regulatory coordination by these three heads of state, the single paragraph in the draft report states simply that “One of the SPP initiatives commits the three countries to develop a trilateral Regulatory Cooperation Framework by 2007. The three governments are currently working together on this important initiative.”¹¹

Given that 2007 is not far away, the report discloses very little – particularly given the importance of this initiative to the three heads of state and the efforts that have been made to bring it to fruition.

Presidential Statement of Goals for Regulatory Cooperation. The first goal stated in the March 2005 “Prosperity Agenda” adopted by the three heads of state is “Regulatory Cooperation to Generate Growth.” The two specific goals for “Regulatory Cooperation” are:

- “Lower costs for North American businesses, producers, and consumers and maximize trade in goods and services across our borders by striving to ensure compatibility of regulations and standards and eliminating redundant testing and certification requirements.
- “Strengthen regulatory cooperation, including at the onset of the regulatory process, to minimize barriers.”

Follow-up Secretarial Meeting. The initial June 27, 2005, report signed by Secretaries Gutierrez and Chertoff explained that: “President Bush, President Fox and Prime Minister Martin committed our countries to enhancing North American competitiveness and improving the life of our people. On that basis they tasked Ministers and officials, in consultation with stakeholders, to develop workplans that would give effect to that fundamental goal.”

Workplan to Develop a “Trilateral Regulatory Cooperation Framework.” One of the first workplans described in that June report is “Enhancing and Streamlining Regulatory Processes in North America.” This initiative is to “Develop a trilateral Regulatory Cooperation Framework

¹⁰ Department of Commerce Press Release, June 15, 2006.

¹¹ Page 35.

by 2007.”

The “framework will support and enhance existing cooperation as well as encourage new cooperation among regulators, including at the outset of the regulatory process, and encourage the compatibility of regulations and the reduction of redundant testing and certification requirements, while maintaining high standards of health and safety.”

The first two of the “key milestones” for that workplan are to “[f]orm a trilateral ‘core’ group to work on drafting the framework: by fall 2005” and “[h]old a trilateral seminar on regulatory cooperation to review the regulatory systems of Canada, the U.S. and Mexico. This should work toward determining ways and means of enhancing cooperation: by March 2006.” That core group is to “[f]inalize a framework for trilateral regulatory cooperation: by 2007,” and “[m]onitor cooperation efforts, with a view to producing a progress report/assessment: by 2008.”

Developing a Trilateral Regulatory Cooperation Framework. That trilateral core group met on December 9, 2005, in Ottawa Canada, to develop a trilateral regulatory cooperation framework.¹² The trilateral core group then met on April 18-19 in Washington, DC, to continue its work. There may have been other working group or related meetings since then.

Affirmation of Presidential Commitment for “a Trilateral Regulatory Cooperation Framework.” On March 31, 2006, at the second SPP Presidential meeting, the two Presidents and the Prime Minister emphasized:

“We are convinced that regulatory cooperation advances the productivity and competitiveness of our nations and helps to protect our health, safety and environment. For instance, cooperation on food safety will help protect the public while at the same time facilitate the flow of goods. **We affirm our commitment** to strengthen regulatory cooperation in this and other key sectors and **to have our central regulatory agencies complete a trilateral regulatory cooperation framework by 2007.**”

Basis for Recommendations 2-4.

Recommendation 2: Redraft Chapter 3 to give the Security and Prosperity Partnership (SPP) “equal time” with the U.S.-EU discussion.

¹² On December 8, 2005, as a lead-in to the trilateral core group meeting, the Policy Research Initiative (PRI) held a Symposium on *North American Regulatory Co-operation: A Results Agenda*. The PRI, while conducting independent policy research projects, is attached to Canada’s Privy Council Office. At that Symposium, I spoke for Jacobs & Associates on “Achieving Results.” I suggested that the core group should consider such institutional issues as “information flow,” “staffing allocation,” and “administrative oversight.” For the symposium report, see “http://policyresearch.gc.ca/doclib/NAL/SR_NAL_reg%20Coop_200603_e.pdf”.

While I can fully understand why OMB would want to discuss U.S.-EU transatlantic regulatory cooperation as a way to reduce transatlantic trade barriers, it is not clear to me that strengthening the overall Canadian-Mexican-American trade and security relationships is less important. In fact, the level of Presidential commitment, the number and scope of Federal agency accomplishments, the relative volumes of international trade, and security concerns all suggest that the Security and Prosperity Partnership is more important.

In 2003, Canada had exports to America of \$223.1 billion (85.75% of their total exports); Mexico to America of \$146.8 billion (88.79% of their total exports). America had exports to Canada of \$169.9 billion (23.45% of our total); to Mexico of \$97.5 billion (13.45% of our total). In comparison, American had exports to EU countries of \$155.2 billion (21.41% of our total – less than two-thirds of the trade that America had with Canada and Mexico combined).¹³

I believe it was Pogo who said, “We have met the enemy and he is us.” With Canada, we have the world’s longest undefended border. According to the 2000 Census, 12.55% of the American population identified itself as Hispanic.¹⁴ Whatever the state of the Mexican-American border, over 35,000,000 Hispanics now live here, most of whom are American citizens or legal immigrants, and – as long as the income disparity is as great as it is – more are coming. (For income disparities, see first table attached at end of this letter.)

For trade, security, and more pragmatic neighborly reasons, the three heads of state have agreed that we have to work together. The SPP is a public Presidential initiative.¹⁵ There have been two meetings of the three heads of state, and countless follow-up discussions and agency actions at all levels of the three governments. OMB’s report should describe these efforts – particularly as they relate to regulatory cooperation – as much as it reasonably can.

Although there are many differences among the regulatory structures operating in Canada, Mexico, and America, all three countries are federalist in structure – with Canadian and Mexican Provinces, and American States – each with their own legal and regulatory systems. In general terms, based on rankings of “Economic Freedom” and the “Ease of Doing Business,” Canada and America are commensurate, while Mexico is making a number of efforts to improve. (For rankings, see second to fourth tables attached at the end of this letter.)

But even with the close “rankings” between Canada and America, our regulatory systems – our national regulatory standards and procedures (both in legislation and regulations) – are disparate.

¹³ See “http://strategis.ic.gc.ca/sc_mrkti/tdst/tdo/tdo.php#tag”, for Canadian-US trade data and US-EU trade data. See “http://mexico.usembassy.gov/mexico/trade_info.html”, for Mexican-US trade data.

¹⁴ See “http://www.censusscope.org/us/print_chart_race.html”.

¹⁵ SPP has its own website at “www.spp.gov”.

Over time, all three countries have developed their own patterns for deciding who and what to regulate, and in what ways.

The three heads of state have not made trivial commitments. They fully recognize the need for additional, ongoing, comprehensive, regulatory cooperation among our three countries.

The OMB report should be used constructively to enhance these trilateral cooperative efforts.

The fact that just this March the three heads of state reaffirmed their 2005 commitment “to have **our central regulatory agencies** complete a trilateral regulatory cooperation framework by 2007” suggests that progress has been slow. But there have been working group meetings, and progress is being made.

Recommendation 3: Provide in your report procedural details of who is doing what, and what strategies are being considered, even if development of the SPP “trilateral regulatory cooperation framework” is unfinished.

Even if there has been no progress in developing workable strategies shared by the “central regulatory agencies” in the three countries, it would be productive to know who these agencies are. USTR appears to have the Executive Office lead for the U.S.-EU regulatory coordination effort. Given the stated purpose is to “reduce regulatory barriers to trade,” that is a logical choice. USTR does not have the Executive Office lead for the Security and Prosperity Partnership (SPP).

I assume for SPP that the Office of Information and Regulatory Affairs (OIRA) in OMB is the “central regulatory agency” referred to by the two Presidents and the Prime Minister in their March 31, 2006, affirmation of commitment to “a Trilateral Regulatory Cooperation Framework.” Only OMB, and only OIRA within OMB – with the authorities granted under E.O. 12866 – can serve as the Executive Office catalyst to “[s]trengthen regulatory cooperation, including at the onset of the regulatory process, to minimize barriers.”

In a bureaucratic context, identifying those responsible for completing the job helps ensure that – in times of resource, time, and other constraints – an institutional structure has been specifically made accountable to carry out this Presidential initiative. While the Departments of Homeland Security and Commerce have been given operational responsibilities for carrying out the Security and Prosperity Partnership, some institution in the Executive Office is invariably responsible to oversee, evaluate, and encourage the progress of such Departmental efforts to carry out a Presidential initiative.

Having worked in OIRA for over 25 years, I am fully aware of the many significant responsibilities that OIRA already has, and the staffing constraints under which OIRA operates. However, it is important to the President that the Security and Prosperity Partnership succeed – and through specific initiatives – continue to succeed over time.

To ensure that this happens, it is extremely important that OIRA contribute fully to the development and then implementation of the “trilateral regulatory cooperation framework.” To bring it about, and then make it work effectively, will not be easy. It will take time, lots of effort, and an ongoing commitment by the career Executive Office to move SPP forward over the years.

There is every indication that the Security and Prosperity Partnership, supported by the North American Competitiveness Council, is intended and will continue to operate and function during this and subsequent Presidential Administrations. While the Department of Commerce, with its existing staff and resources, can be of considerable assistance in providing logistical and organizational support, it is very difficult for one Department to seek to lead other Departments without ongoing support, oversight, and assistance by some institution within the Executive Office of the President. For ongoing interagency regulatory initiatives to reduce regulatory barriers and coordinate agency regulatory policies, that institution can only be OIRA.

Recommendation 4: Make explicit in your report which component in the Executive Office of the President is responsible for overseeing the Security and Prosperity Partnership. If OIRA is not the “central regulatory agency,” identify the institution in the Executive Office that is.

SPP is aimed at and is accomplishing actual results. It is not only an effort to consider “best practices” for how to conduct a regulatory analysis. It is an effort to cause specific governmental agencies – in three countries – to work more effectively together and, within the context of each country’s specific institutional, cultural, and legal structures, reduce needless barriers and reach regulatory goals effectively and efficiently.

The Security and Prosperity Partnership is ongoing. SPP builds upon the trilateral cooperation mechanisms supporting NAFTA, an ongoing treaty obligation for America as well as Canada and Mexico. SPP will continue past 2007.

The OMB report should demonstrate how this “trilateral regulatory cooperation framework” will be strengthened by OMB evaluation and involvement.

I appreciate the opportunity to comment.

Sincerely,

/s/

Jefferson B. Hill

Comparison of Canada, Mexico and the U.S.

GNI Per Capita Income (atlas method, \$)

	2000	2001	2002	2003	2004
Canada	21,810	22,100	22,660	24,560	28,310
Mexico	5,110	5,560	5,960	6,290	6,790
U.S.	34,400	34,800	35,230	37,780	41,440

Source:

“<http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20535285~menuPK:64133163~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html>”.

Economic Freedom of the World -- summary rating (rank):

	1980	1985	1990	1995	2000	2003
Canada	7.2 (7)	7.2 (6)	7.5 (5)	7.8 (8)	8.1 (7)	8.0 (7)
Mexico	5.5 (49)	4.7 (83)	6.0 (40)	6.4 (45)	6.3 (68)	6.5 (59)
U.S.	7.5 (4)	7.7 (4)	7.9 (3)	8.3 (4)	8.6 (2)	8.2 (3)

Source: “<http://www.freetheworld.com/release.html>”.

Indicator: The chain-linked summary index permits comparison over time. The average economic freedom score rose from 5.17 (out of 10) in 1985 to 6.4 in the most recent year for which data are available.

Heritage Foundation Index of Economic Freedom

	1996	1998	2000	2002	2004	2006
Canada	2.03	2.14	2.11	1.95	1.98	1.85
Mexico	3.31	3.41	3.09	2.96	2.90	2.83
U.S.	1.99	1.94	1.89	1.89	1.85	1.84

Source: “www.heritage.org/research/features/index/downloads/PastScores.xls”.

Indicator: Scores range from 1.28 for Hong Kong to 5.00 for North Korea in 2006.

Ease of Doing Business (ranking)

	2006
Canada	4
Mexico	73
U.S.	3

Source: “<http://www.doingbusiness.org/EconomyRankings/>”.

Indicator: The ease of doing business index ranks economies from 1 to 155. The index is calculated as the ranking on the simple average of country percentile rankings on each of the 10 topics covered in Doing Business in 2006. The ranking on each topic is the simple average of the percentile rankings on its component indicators.