

Regulatory Overreach and the Nanny-State: Insights from the Panel

At a recent panel session facilitated by Dr Melissa van der Merwe of Stellenbosch University, leading voices in agribusiness and agricultural law unpacked the growing phenomenon of regulatory overreach and its impact on value chains. The discussion explored how regulation, while essential for consumer trust and biosafety, can sometimes create unintended consequences that undermine competitiveness and inclusion.

Defining Regulatory Overreach

Dr Marietjie Botes clarified that regulatory overreach is not about disagreeing with a law but about laws failing in execution. Using the Genetically Modified Organisms Act as an example, she argued that regulation becomes overreach when compliance is so burdensome it functions as a ban. She stressed three tests for sound regulation: legal defensibility, scientific grounding, and operational effectiveness. Excessive administrative procedures, she warned, risk creating a “nanny state” that disables rather than enables industry.

Drivers of Increased Regulation

Annelize Crosby highlighted three forces behind the surge in regulation:

International conventions (e.g., climate change commitments)

Domestic NGO advocacy pushing for specific outcomes

State paternalism, where governments decide what is “good” for citizens without adequate scientific backing

She raised the principle of voluntary risk acceptance, arguing that informed adults should retain the right to make consumption choices. The cumulative compliance burden, she noted, is itself a material risk to business sustainability.

Case Study: The Sugar Tax

Dr Thomas Funke of SA Canegrowers reflected on the sugar tax introduced in 2018. While intended to reduce obesity, its unintended consequences fell heavily on smallholder cane growers and mill communities. Funke explained that the tax overlooked downstream economic impacts on value chain participants who had no role in consumption decisions.

Consequences Across Agriculture

Anthony Viljoen of PepsiCo observed that the sugar industry’s challenges mirror those across agriculture. He called for comprehensive impact analysis across the full value chain before regulations are finalised, to avoid disproportionate burdens on smaller operators and exporters.

Principles for Smarter Regulation

Two key principles emerged:

Transparency: Clear regulatory expectations build trust and allow industry to streamline compliance.

Open Science Data Repositories: Accessible (but controlled) repositories of scientific and social impact data would strengthen coherence in industry responses and improve regulatory design.

Crosby added that the real challenge lies in a trust deficit — between government, consumers, and science communication. She urged industry to continuously demonstrate its commitment to safe, affordable food.

Grounds for Optimism

Despite the challenges, the panel closed on a hopeful note:

Funke emphasised the resilience of agriculture in surviving repeated shocks.

Viljoen pointed to South Africa's strong farming capability as a global asset.

Botes highlighted the country's solid regulatory foundation, noting that fine-tuning — not reinvention — is required.

Crosby said that the sector had overcome many challenges in the past, that Agbiz and other associations have had many successes in the policy and regulatory space and that South Africa has some of the best farmers and agribusinesses in the world.

Conclusion

The session underscored that regulation is indispensable, but poorly designed rules risk eroding competitiveness and livelihoods. Smarter regulation, grounded in science, transparency, and trust, can achieve policy objectives without stifling innovation or burdening smallholders. The collective strength of South Africa's agricultural sector, combined with proactive engagement, offers a path forward.