

exported only with the written consent of the receiving country. As evidenced by this example, the high degree of environmental risk associated with red-list products results in a more restrictive regulatory measure (prior informed consent) than does the low degree of environmental risk associated with green-list products (which may move more freely between countries).

Explicit inclusion of the proportionality concept in the Agreement on TBT means that the degree of environmental risk should be a prime factor when determining the trade restrictiveness of environmental measures. The application of this concept, in the context of environmental measures, has not to date been subject to a challenge under either Article XX or the Agreement on TBT.

v) International Standards and Harmonization

The new Agreement on TBT supports the international harmonization of standards-related measures by two means. First, like the Tokyo Round text, it requires that relevant international standards be used as much as possible. Second, it adds a further incentive to the use of international standards by stating that they shall be rebuttably presumed not to create unnecessary obstacles to international trade.

Notwithstanding its encouragement of international standards, the Agreement on TBT neither requires their use nor treats international standards as a ceiling. It states explicitly that domestic measures may be used when international standards would be an ineffective or inappropriate means of achieving a country's chosen level of protection.

Therefore, while participating in multilateral initiatives aimed at the upward harmonization of international standards, Canada may continue to adopt and implement more stringent domestic measures when these are necessary to achieve the levels of environmental protection that Canadians consider appropriate.

vi) Equivalency

Countries are sometimes able to choose from a menu of options when determining how to pursue their desired levels of environmental protection. The new Agreement on TBT recognizes that different sets of standards-related measures can result in similar levels of environmental protection by encouraging countries to consider as equivalent standards-related measures of other countries that achieve the same levels of protection as those maintained by the importing country.

For equivalency to be granted, the importing country must be satisfied that its legitimate objectives will be fulfilled by the standards-related measures of the exporting country. This important condition will allow Canada to ensure that its selected levels of environmental protection will not be undermined by imported products.