

GETTING THE INTERNATIONAL RULES RIGHT: THE WORLD TRADE ORGANIZATION

The WTO Agreement on Technical Barriers to Trade (TBT) defines the international rights and obligations of Members with respect to the development and application of standards-related measures that affect trade. The agreement is based on the principle that countries have the right to adopt and apply mandatory technical regulations (i.e. to regulate), as long as these do not restrict international trade more than is necessary to achieve a legitimate objective. TBT-related measures are subject to WTO rights and obligations including dispute settlement provisions.

Canada promotes wide acceptance of and adherence to the Technical Barriers to Trade Agreement, and its Code of Good Practice which applies to voluntary standards. Canada also participates in the activities of a large number of international standardizing bodies, including the International Organization for Standardization (ISO). Canada was among the first countries to develop the necessary infrastructure for Canadian companies to adopt ISO 14000 environmental management system standards, thus facilitating our exports by meeting the requirements of our foreign customers.

The issue of precaution in regulation and its intersection with trade is becoming an increasingly important issue in a large number of areas of interest to Canada. Exercising a science-based application of precaution is pervasive throughout Canada's regulatory regime, and is commonly applied for protecting the health, social, economic, and environmental interests of our citizens, as well as our international reputation for safe high quality products and services. However, the terms "precautionary approach"⁶, or the "precautionary principle" have emerged in recent years, which can take different forms both domestically and internationally, based on the specific context, and for this reason, it has been open to misunderstanding and misuse. It has already been invoked in an attempt to justify trade-distorting measures, such as the beef hormones dispute with the European Union, and in ways that undermine a science-based approach to regulation. It is Canada's position that the precautionary approach should be based on an agreed understanding, including science-based risk assessment, and

should not be susceptible to abuse or arbitrary decision-making. Moreover, in Canada, legal advice indicates that we do not consider the "precautionary principle" to be a rule of customary international law. Canada will work to ensure that there is a clear and coherent Canadian understanding on the definition and operation of the precautionary approach/principle both at home and internationally, and ensure that our rights related to international trade, including those defined under the auspices of the WTO Agreements, are respected by our trading partners.

Under the WTO Technical Barriers to Trade Agreement, Canada will continue to press for the removal of unnecessary or inappropriate regulatory, standards and conformity assessment based trade barriers, thus maintaining or enhancing market access and lowering costs to producers and exporters. We will also work to improve transparency, promote regulatory reform and good regulatory practice by WTO Members, align or harmonize standards internationally and with trading partners, and, if appropriate, negotiate mutual recognition agreements (MRAs) on conformity assessment. On this point, Canada has developed a policy approach to MRAs that assesses proposals on a case by case basis and includes full consultation with federal and provincial regulatory and trade officials, and stakeholders including industry.

Canada is an active participant in the ongoing work program of the WTO Committee on Technical Barriers to Trade and was a full and active participant in the second Technical Barriers to Trade Triennial Review in 2000, which provided Canada with an opportunity to work toward further implementation of the agreement internationally. Canada's participation facilitated further clarification, transparency, and implementation of the various obligations and rights stipulated in the Technical Barriers to Trade Agreement, which will reduce technical barriers to trade among Canada's trading partners and will facilitate the flow of Canadian goods to other countries. In addition, the Triennial Review also provided Canada with an opportunity to enhance and strengthen the multilateral discussions on specific issues of importance to Canadian producers, exporters and governments. As a result, Canada was able to encourage the international community to address and strengthen their approach in areas such as defining of international standards based on their process of

⁶ The context for the precautionary approach/principle as a distinct element of a science-based risk management framework is the existence of both significant scientific uncertainty and the risk of serious or irreversible harm.