

GOVERNMENT RESPONSE TO THE REPORT OF THE STANDING COMMITTEE ON AGRICULTURE AND AGRI-FOOD ENTITLED: *NON-TARIFF TRADE BARRIERS TO THE SALE OF AGRICULTURAL PRODUCTS IN RELATION TO FREE TRADE AGREEMENTS*

The Government of Canada is pleased to respond to the Report of the Standing Committee on Agriculture and Agri-Food (the Committee) entitled: *Non-Tariff Trade Barriers to the Sale of Agricultural Products in Relation to Free Trade Agreements* (the Report).

The Government of Canada supports the positive approach and the constructive thoughts and ideas put forth by the Committee. The Government of Canada agrees with the Committee's commitment to ensure Canadian businesses operate in a competitive environment and have an access to markets, both domestically and internationally.

In 2016, Canada's participation in the standard setting activities of International Standard Setting Bodies (ISSBs) was increased and focused on enhancing collaboration with international partners to advance and support an effective, transparent and science-based environment for Canadian industries. Budget 2017 also renewed our Government's commitment to the *Canadian Agricultural Partnership* (The Partnership), to strengthen the agriculture, agri-food and agri-based products sector while opening new markets. The Partnership will ensure continued innovation, growth and prosperity to help the agriculture and agri-food sector reach the Government's ambitious goal to grow Canada's agriculture and food exports to \$75 billion by 2025.

The Response reflects the collaborative effort among implicated federal departments and agencies including: Agriculture and Agri-Food Canada (AAFC), Canadian Food Inspection Agency (CFIA), Global Affairs Canada (GAC), Health Canada (HC), Innovation, Science and Economic Development Canada (ISED), and the Pest Management Regulatory Agency (PMRA), to support the competitiveness of Canada's agriculture and agri-food sector.

RECOMMENDATION 1

The Committee recommends that the government promote and defend rules and science-based trade on the international stage.

The Government supports this recommendation. The Government of Canada dedicates considerable resources to protect and improve access to global markets for Canadian agriculture and agri-food products. For example, the Federal Market Access Team (FMAT) comprised of AAFC, the CFIA, and GAC, works closely with other government departments and agencies, provinces, territories and industry to re-open, maintain and expand market access abroad. This work involves engaging with foreign countries, both bilaterally and in multilateral fora, to advocate for the development and implementation of science-based rules and standards that will support market access efforts.

The World Trade Organization (WTO) *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) sets out a balance of rights and obligations for WTO Members with respect to measures that protect against risks to food safety, as well as animal and plant life and health. A key obligation is that SPS measures must be based on international standards or, in instances where they deviate from such standards or a standard does not exist, a risk assessment. The development and adoption of common standards allow countries to establish science-based measures that fulfil their international trade obligations while facilitating safe and predictable trade, a key factor in ensuring that the interests of Canada's export-oriented agricultural sector are addressed.

The Government of Canada actively participates in the WTO SPS Committee where it raises concerns related to SPS measures that may not be science-based, and work collaboratively with like-minded countries to develop cohesive strategies to address SPS measures that adversely affect Canadian agricultural trade interests. The Government of Canada also undertakes advocacy activities and hosts multilateral meetings to promote adoption and implementation of science-based standards and trade rules, and address trade irritants.

The Government of Canada also contributes to the work of international standard setting bodies, including the Codex Alimentarius Commission for food safety and fair practices in the food trade, the International Plant Protection Convention for plant health, and the World Organisation for Animal Health, to contribute to and promote the development of international standards based on scientific evidence, and strategically advance Canada's positions and approaches in priority areas.

RECOMMENDATION 2

The Committee recommends that the government work closely with industry to identify and address the potential impacts of non-tariff barriers such as inconsistent maximum residue limits (MRLs) and low level presence (LLP) policies among trading partners, delays or asynchronous biotechnology approvals, and scientifically unjustified, over-regulatory measures taken by Canada's trading partners.

The Government supports this recommendation. Government officials work in close collaboration with industry in various fora to exchange information and mitigate trade impacts arising from the implementation of unjustified measures by trading partners. Canada continues to urge trading partners to adopt measures and regulations that are based on risk and scientific evidence in order to provide a transparent and predictable trade environment for Canada's exporters.

LLP is defined as the unintentional presence in export shipments of small amounts of a genetically modified (GM) crop that has been approved in a least one country according to the Codex Alimentarius guidelines, but not in the importing country. In 2012, following the discovery of LLP of an unauthorized GM crop in a flax shipment to the European Union in 2009 that resulted in significant economic losses for the sector, the Government of Canada, in

response to industry concerns, created the Global Low Level Presence Initiative (GLI) – a group of 15 countries that work together on trade-facilitating approaches to manage low level presence in food and feed imports. The GLI serves as an important platform for industry and governments to exchange information and to identify initiatives that can assist countries in managing LLP occurrences in food and feed imports, including ways to address asynchronous approvals, so that decisions are science-based, and that actions to manage LLP occurrences are proportionate to the minimal safety risk associated with the LLP occurrence. Industry is an active observer and contributor to the GLI discussions.

MRLs are the maximum amounts of pesticide residues that are expected to remain in or on agricultural products when pesticides are used according to label directions and that will not be a concern to human health. Regulatory cooperation with key trading partners is undertaken to reconcile differences in existing MRLs to help address non-tariff trade barriers to Canadian producers. AAFC is working closely with industry, namely through an Industry-Government Working Group (IGWG) on Pesticide MRLs, and Canada's Competent Authority for MRLs, the PMRA at Health Canada to identify and address the risks and potential trade impacts associated with pesticide MRLs. In December 2016, AAFC created an Industry-Government Senior Officials Steering Committee to maximize the efforts of the IGWG by providing strategic direction and prioritizing international advocacy efforts to minimize MRLs-related risks to trade. Canada has been actively engaging with international trade partners to address trade risks related to MRL that have not been established in key export markets for pesticide products widely used by Canadian industry. A joint statement was signed on December 11, 2017 by Canada and 16 other WTO Members at the 11th World Trade Organization Ministerial Conference in Buenos Aires to examine pesticide-related issues that have an adverse impact on international trade in food and agricultural products, and to achieve consensus on collaborative actions to reduce that impact on trade.

RECOMMENDATION 3

The Committee recommends that the government work with its international partners toward a more efficient dispute resolution body under the World Trade Organization, while simultaneously prioritizing rules-based dispute resolution mechanisms in current and future trade agreements.

The Government supports this recommendation. Canada was one of the principal architects in designing the WTO dispute settlement mechanism. Since its inception, there have been over 500 disputes that have been initiated under the WTO dispute settlement process. WTO Members continue to work to negotiate new rules and procedures that aim to improve the efficiency and predictability of the dispute settlement system. Canada is a strong supporter of dispute settlement reform, playing an active role in the negotiations to update and improve the Dispute Settlement Understanding (DSU) at the Special Session of the Dispute Settlement Body in Geneva.

In addition to the DSU negotiations, Canada is spearheading other initiatives that are more cost-effective and improve the efficiency of the procedural rules for disputes before the WTO Panels and the Appellate Body. For example, the WTO Sanitary and Phytosanitary Committee developed an ad hoc consultation mechanism (G/SPS/61) entitled, *“Procedure to Encourage and Facilitate the Resolution of Specific Sanitary or Phytosanitary Issues among Members in Accordance with Article 12.2”* with respect to non-tariff measures that may be barriers to trade. This voluntary process provides an alternative recourse than dispute settlement, and is intended to help resolve specific trade irritants related to food safety, animal or plant health measures between members.

RECOMMENDATION 4

The Committee recommends that the CFIA takes steps to improve the issuance of phytosanitary certificates in order to adequately meet the needs of Canadian agricultural exporters and to simplify the associated processes and procedures.

The Government supports this recommendation. The CFIA, as Canada’s national plant protection organization under the International Plant Protection Convention (IPPC), ensures that Canada’s phytosanitary certification system conforms to the requirements of the Convention and its relevant standards. The CFIA implements export certification procedures to meet the phytosanitary import requirements defined with our trading partners, through technical negotiations. In addition, the CFIA strives to maintain and develop its system to ensure that it continues to meet the evolving needs of Canadian agricultural exporters. Canada’s phytosanitary certification process was updated in June 2017 to improve the efficiency of the phytosanitary certification system. Focused efforts to review and improve the efficiency of the issuance of phytosanitary certificates are ongoing.

The CFIA is implementing the Digital Service Delivery Platform (DSDP) which will streamline business transactions for individuals, industry, international trading partners, and CFIA inspectors. Phytosanitary certificates will be issued through the DSDP after January 2018.

The IPPC is working on a project to facilitate the efficient electronic exchange of phytosanitary certificates between countries. The CFIA is directly supporting this work through in-kind contributions. The global system for the production and exchange of electronic phytosanitary certificates (known as the ePhyto Hub) will simplify trade in plants and plant products while helping to reduce transaction costs and eliminate fraud. The CFIA is closely monitoring the project to ensure that our domestic system will be compatible with the ePhyto Hub.

RECOMMENDATION 5

The Committee recommends that the CFIA have adequate resources to ensure the timely and efficient technical measures such as pre-shipment inspections, sanitary and phytosanitary measures, and that the government continue to work toward aligning these measures with our trading partners.

The Government supports this recommendation. As Canada's only regulatory agency dedicated to food inspection and the safeguarding of animals and plants, the CFIA ensures that Canadian food, plants and animals, and their associated products can be traded internationally. The CFIA works on a regular basis with central agencies and other government departments on options to secure adequate resources to deliver its mandate in a timely and efficient manner.

Canada has a wide range of trading partners with which it engages consistently. Regulatory counterparts work collaboratively to address mutual challenges and reduce common risks while preventing and eliminating unnecessary barriers to trade. To build confidence and trust amongst regulatory counterparts, the CFIA leads regulatory cooperation initiatives (including bilateral and plurilateral regulatory cooperation endeavours) aimed at increasing regulatory alignment. When CFIA engages with trading partners that have regulatory systems that are similar to the Canadian regulatory system, the result is a better understanding of and increased confidence in each system and, ultimately, provides the foundation for a thinner border and more effective and efficient use of resources on both sides.

One example of this type of relationship is the relationship that CFIA has with its United States (US) counterparts. CFIA, US Department of Agriculture, and the US Food and Drug Administration (FDA) jointly participate in formal regulatory cooperation partnerships such as the Canada-US Regulatory Cooperation Council to facilitate closer regulatory cooperation and enhance economic competitiveness by aligning regulatory systems where appropriate.

The CFIA will continue to work to strategically identify opportunities and, where appropriate and possible, pursue and promote the alignment of regulatory approaches.

RECOMMENDATION 6

The Committee recommends that the government establish a single dispute resolution body in Canada to ensure the adherence of fresh produce sellers to a unified set of trading rules and to mitigate slow, partial and/or non-payment by solvent buyers.

The Government supports this recommendation. *Safe Food for Canadians Regulations*, to be published in *Canada Gazette*, Part II in June 2018, will permit the Fruit and Vegetable Dispute Resolution Corporation (FVDRC) to act on behalf of the Minister of Agriculture and Agri-Food as a single dispute resolution body. The FVDRC will ensure the adherence of fresh fruit and vegetable buyers to a unified set of trading rules and govern against slow, partial and/or no payment by buyers, with strict penalties for buyer non-payment. This single dispute resolution body is expected to resolve the majority of non-payment issues in Canada, and will achieve comparable results to the *Perishable Agricultural Commodities Act* (PACA) in the US for non-payment of solvent buyers.

Currently, buyers of fresh produce who sell inter-provincially or internationally must be:
a) members of the FVDRC, or b) licensed by the CFIA. Both entities provide dispute resolution services and can require the posting of financial security by buyers as a risk mitigation measure.

The choice of two separate dispute resolution entities can lead to issues of slow, partial and/or no payment. For example, some buyers will choose the entity that meets its immediate needs, in order to evade seller payment and posting of financial security. Exemptions within the current *Licensing and Arbitration Regulations* have also increased the potential for fraudulent activities. For example, buyers who buy produce from sellers located within their own province are able to trade internationally and inter-provincially, without a Dispute Resolution Corporation (DRC) membership or CFIA license. In this manner, they are not required to adhere to trading rules of conduct, including those related to payment.

The single dispute resolution body proposed in the *Safe Food for Canadians Regulations* is expected to address these issues.

RECOMMENDATION 7

The Committee recommends that the government continue to provide market access support agencies with sufficient human and financial resources to maintain and grow the sector's export capacity.

The Government supports this recommendation. The Government of Canada recognizes the agriculture sector as a key contributor to Canada's economic success. Ongoing sustained and collaborative efforts are required to re-open, maintain and expand market access for Canadian agriculture and agri-food products abroad which contributes to the sector's export capacity growth.

The Market Access Secretariat, now part of the joint CFIA-AAFC International Affairs Branch, is dedicated to coordinating agriculture market access activities on behalf of AAFC, the CFIA and GAC. Together, they make up the Federal Market Access Team (FMAT) and share complementary mandates concerning market access for agriculture and agri-food products. In addition, AAFC's Market Access Secretariat Single Window email account provides a contact point to communicate between industry and FMAT regarding market access issues.

In order to leverage synergies between their two mandates, in January 2018, AAFC and CFIA created a joint branch focused on maximizing the use of resources to better support the government's ambitious goal of increasing agriculture, seafood and agri-food exports to \$75 billion by 2025. The Market Access Secretariat is housed within the joint branch, and is dedicated to coordinating agriculture market access activities, such as the market access prioritization process and priority market strategies, on behalf of the FMAT, serving as a focal point for a whole-of-government approach.

FMAT will continue to focus effort and resources on resolving issues with significant export potential for Canadian industry, as determined by the established prioritization process.

RECOMMENDATION 8

The Committee recommends that the government maintain or increase the number of Agriculture and Food Trade Commissioners in Canada's embassies and consulates, ensuring that an agriculture and CFIA presence remains in our priority markets abroad.

The Government supports this recommendation. AAFC's Agri-Food Trade Commissioner Service (AFTCS) works hand-in-hand with CFIA Technical Specialists Abroad and GAC's Trade Commissioner Service. GAC and AAFC share common goals and provide key services to Canadian companies wishing to do business abroad. In addition, CFIA's presence facilitates the exports of Canadian food, plant, animal and animal products, through the demonstration and reassurance of Canada's comprehensive regulatory regime.

The AFTCS provides valuable support to the Canadian agriculture and food sector by assisting Canadian businesses in their efforts to access and expand markets around the world. Trade Commissioners work to gain and capture the benefits of market access, and provide business development and marketing support to Canadian agriculture and food industry seeking to establish or expand their markets. The 35 AAFC-funded positions are incremental to GAC's resources working on the agriculture and food sector. These 35 resources are located in 20 different embassies and consulates, all in priority markets (including China, US, Mexico, EU, Japan, and India).

CFIA's network of Technical Specialists Abroad works alongside the AAFC and GAC resources to initiate, participate in and facilitate bilateral discussions between the CFIA and foreign country representatives to promote understanding of Canada's food safety, animal health, and plant health systems, advance resolution of market access issues, and avoid trade disruptions. CFIA's network includes the equivalent of 10.5 full time resources located in priority markets (including China, US, Mexico, EU, Japan, Russia and India).

Ongoing collaboration between AAFC, the CFIA, GAC and industry stakeholders in Canada and abroad is critical to resolving current and future market access issues.

RECOMMENDATION 9

The Committee recommends that the government encourage the Agri-Food Economic Strategy Table, among other entities, to examine options to accelerate growth in the Canadian agriculture sector, including topics such as international market access, addressing non-tariff barriers, lowering domestic red tape and studying domestic policies that inhibit the sector's ability to innovate, expand and succeed.

The Government supports this recommendation. The Government agrees there are a range of factors that need to be addressed to remove bottlenecks to growth and seize new opportunities in the agriculture and agri-food sector. For example, international market access to meet growing global demand is critical for continued export growth, with market access and non-tariff barriers having a direct impact on the competitiveness of the sector. Significant efforts, via expansive trade agreements and investments to open, expand, and maintain market

access, have been made to support the sector. In addition, regulatory challenges have been noted as key concerns for industry. To this end, the Government of Canada is committed to lowering domestic red tape burden as showed by *the Red Tape Reduction Act* and the entry into force of the Canadian Free Trade Agreement (CFTA) on July 1, 2017. Under the new CFTA, all governments commit to reduce the patchwork of rules and regulations that can hinder trade across provinces and territories and stifle the growth of Canadian businesses.

Recognizing that a comprehensive approach to bolstering growth in the sector over the longer term is needed, the Government is committed to working with entrepreneurs, innovators, and industry leaders to generate new business opportunities and inclusive growth via the Agri-Food Economic Strategy Table. The table was struck to develop an action plan that identifies business-led solutions, government policy recommendations and public-private partnerships that can be actioned to bolster sustained economic growth in the sector. Like all six economic strategy tables, the agri-food table is an industry-led initiative, led by an industry chair and a number of key private-sector executives. The Government plays a supporting role, in helping the Table to focus on key priorities and providing background material to help Table members propose potential solutions. The final report of the table – expected in Summer 2018 – will provide industry and government with a framework to undertaken actions to further accelerate the growth of the sector.

RECOMMENDATION 10

The Committee recommends that the government set out regulatory requirements at the start of trade negotiations to prevent non-tariff barriers from appearing after trade agreements are signed.

The Government supports this recommendation. Non-tariff barriers such as unjustified sanitary and phytosanitary (SPS) measures or technical barriers to trade (TBT) can have a significant effect on Canadian producers and exporters' ability to take advantage of the market access opportunities negotiated in Canada's free trade agreements. In some cases, non-tariff trade barriers can nullify the market access gains achieved through tariff elimination. The Government works closely with stakeholders to identify issues at the outset of the negotiations, as well as throughout the negotiating process, through mechanisms such as the Canada Gazette and direct consultations. As regulations may change over time and unforeseen barriers may arise, Canada relies on a rules-based trading system and continuous engagement with industry to identify and seek to address challenges as they arise in accessing markets.

The WTO Agreements, including the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) and the *Agreement on Technical Barriers to Trade* (TBT Agreement) allow WTO members to maintain regulatory measures necessary to fulfill legitimate purposes provided that they are not adopted or applied with a view, to or with the effect of, creating unnecessary obstacles to trade. The SPS Agreement requires measures to be science-based. Both the SPS and TBT Agreements also require that measures are non-discriminatory, and not more trade restrictive than necessary.

A clear, rules-based framework to ensure that the regulatory requirements of our trading partners are no more restrictive of trade than necessary to meet legitimate objectives is a core Canadian negotiating objective pursued in all of Canada's trade agreements. In bilateral and regional trade agreements Canada negotiates SPS and TBT chapters which build upon the roles and responsibilities of the WTO SPS and TBT Agreements, thereby ensuring the Parties' right to regulate in the public interest, while establishing additional rules aimed at preventing the unjustified use of regulatory measures as non-tariff barriers to trade. These chapters may include, for example, additional disciplines aimed at improved transparency in the Parties regulatory process, which are among the key concerns raised by Canadian stakeholders. In addition, Canada often seeks the establishment of bilateral/regional mechanisms such as Committees and/or Contact Points to further regulatory cooperation and communication among the Parties, and to serve as a forum to discuss and resolve bilateral irritants arising from regulatory measures.

Canada also uses the opportunity of bilateral/regional free trade agreement negotiations to seek, in parallel, to address specific priority regulatory non-tariff barriers to trade so that Canadian exporters are able to take maximum advantage of market access opportunities resulting from the concluded agreements.

RECOMMENDATION 11

The Committee recommends that the government support the work of international standardizing bodies such as the Codex Alimentarius, the International Plant Protection Convention for phytosanitary risks, and the World Organisation for Animal Health in developing science-based global standards, and encourage Canada's trading partners to recognize and abide by these global standards.

The Government supports this recommendation. International standards, guidelines and recommendations developed by the International Standard Setting Bodies (ISSBs), specifically the Codex Alimentarius Commission (Codex) for food safety and fair practices in the food trade, the International Plant Protection Convention (IPPC) for plant health, and the World Organisation for Animal Health (OIE) for animal health are of major importance to Canada. The WTO's *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) recognizes Codex, the IPPC and the OIE as the relevant international bodies that set the standards in their respective mandates. The SPS Agreement encourages Members to base their measures on the standards developed by these organizations, which presents an opportunity for the international community to harmonize standards for the protection of food safety, plant and animal health while facilitating trade.

Canada participates actively in the three ISSBs to influence policy and to promote the adoption of science-based international standards, guidelines and recommendations that are consistent with Canadian approaches. The development of international standards based on scientific evidence and the implementation of those standards by trading partners enables Canadian exporters to compete in a transparent and open global marketplace.

In addition to Canada's active participation in the development of standards at ISSBs, Canadian scientific experts contribute to international risk assessment activities, which underpin the development of science-based standards. Further, in the past two years, Canada enhanced its commitment to advancing the development of international standards through additional in-kind as well as financial contributions to the work of ISSBs. Canada has provided in-kind contributions in the form of scientific experts embedded in some of these organizations, to support initiatives relevant to Canada and the global marketplace. Canada has also provided \$2 million in extraordinary contributions to the ISSBs over the past two years to support the provision of scientific advice by expert committees to ensure that international standards are based upon scientific evidence and to facilitate their implementation.

RECOMMENDATION 12

The Committee recommends that the government establish a national committee to analyze and monitor the non-tariff barriers that exist in order to identify them and thus facilitate the negotiations leading to the elimination of these barriers.

The Government supports this recommendation. The Government of Canada has mechanisms in place to identify, analyse, monitor and resolve non-tariff barriers affecting Canadian agriculture and agri-food exports, and relies on a whole-of-government approach and close collaboration with the provinces and territories and industry for that purpose. The Portfolio Market Access Committee (PMAC), co-chaired by AAFC, and the CFIA, and with participation from GAC, is an existing national committee that facilitates this collaborative approach.

More generally, the Market Access Secretariat, housed within the joint CFIA-AAFC International Affairs Branch, is dedicated to coordinating agriculture market access activities on behalf of AAFC, the CFIA and GAC, serving as a focal point for a whole-of-government approach to monitor and manage bilateral trade irritants and market access issues, including those caused by non-tariff barriers. This approach has led to the advancement and resolution of a number of key market access issues. For example, in 2016, China's proposal to implement more restrictive measures on imports of Canadian canola had the potential to significantly impact trade. As a result of sustained efforts by AAFC, CFIA and GAC, Canada signed a Memorandum of Understanding with China, ensuring continued access for Canadian exports until 2020 (work is continuing to secure a long-term solution).

PMAC monitors and identifies non-tariff trade barriers to trade to strengthen the Government of Canada's ability to effectively eliminate these barriers, including undertaking the necessary bilateral and multilateral negotiations.