

Minister of Export Promotion,
International Trade and
Economic Development



Ministre de la Promotion des exportations,
du Commerce international
et du Développement économique

Ottawa, Canada K1A 0G2

April 9, 2024

The Honourable Judy A. Sgro, P.C., M.P.
Chair
Standing Committee on International Trade
House of Commons
Ottawa, ON K1A 0G6

Dear Ms. Sgro:

Pursuant to Standing Order 109 of the House of Commons, I am pleased to respond on behalf of the Government of Canada to the recommendations made in the 14th Report of the Standing Committee on International Trade, entitled: *Non-Tariff Barriers to Trade: Some Canadian Perspectives* tabled in the House of Commons on Wednesday December 13, 2023.

I wish to convey my sincere gratitude to the Members of the Committee for its study on the impact of non-tariff barriers (NTBs) in Canada and Canada's existing and future free trade agreements (FTAs). This study and the resulting Report demonstrate the Committee's commitment to understand and seek solutions to NTBs affecting Canadian firms. I would also like to thank the 28 witnesses, including trade associations, private firms, think tanks, civil society and individuals, that took the time to appear or provide written submissions to the Committee. The Government of Canada is deeply committed to the continuation of its invaluable engagement with stakeholders to defend and grow trade opportunities for Canada. The Government has carefully considered the five recommendations identified in the Committee's Report and is pleased to provide a comprehensive response, enclosed.

Sincerely,

A handwritten signature in blue ink that reads "Mary Ng".

The Honourable Mary Ng, P.C., M.P.

Enclosure

Canada

Government Response to the Fourteenth Report of the House of Commons Standing Committee on International Trade (CIIT) entitled, Non-Tariff Barriers to Trade: Some Canadian Perspectives

Recommendation 1: The Government of Canada, in its trade negotiations, pursue the elimination of non-tariff barriers. The focus should be barriers that are not science-based, that do not achieve a legitimate objective or that are the most trade-restrictive from the perspective of Canadian exporters. In particular, the Government should prioritize enhancing its efforts designed to eliminate non-tariff barriers that limit opportunities for Canada's small and medium-sized firms. Moreover, the Government should enhance the mandate of Global Affairs Canada's Trade Commissioner Service so that trade commissioners have a responsibility to work with such firms with the goal of increasing their benefits from Canada's existing trade agreements.

The Government of Canada supports this recommendation.

To provide commercially meaningful market access for Canadian exporters, the Government of Canada pursues robust obligations in its free trade agreement (FTA) negotiations that can support the elimination of non-tariff barriers (NTBs) that are protectionist, arbitrary, discriminatory, unnecessarily trade restrictive or unjustifiable (hereafter "unjustified"). Building on and complementing the World Trade Organization (WTO) Agreements, Canadian trade negotiators seek the inclusion of strong and enforceable disciplines as well as consultative and dispute resolution mechanisms to prevent and address unjustified NTBs. This approach is reflected in Canada's most recent FTAs, such as the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Canada-United States-Mexico Agreement (CUSMA). This approach may, for example, be found in the Technical Barriers to Trade (TBT), Sanitary and Phytosanitary (SPS) Measures, National Treatment and Market Access (NTMA) and Agriculture chapters of these FTAs.

Key principles of obligations pertaining to TBT, SPS and Good Regulatory Practices (GRP) include transparency; the use of international standards, guidelines or recommendations in regulations, under certain circumstances; proportionality, whereby the measures are not more trade-restrictive than necessary; and equivalency, whereby countries should accept each other's standards where they offer an equivalent level of protection. With regards to the negotiation of SPS obligations, Canada also recognizes regional conditions, includes provisions for audits and import checks and emphasizes strong science and risk analysis as foundational obligations.

These provisions are especially important for small- and medium-sized enterprises (SMEs) with less capacity to manage regulatory burden. Beyond this, Canada supports SMEs by ensuring they have access to the right resources, information and tools required to participate in trade, access global opportunities and supply chains, benefit from international trade and investment opportunities and succeed in global markets. In essence, Canada's inclusive approach to trade seeks to ensure that the benefits and opportunities that flow from trade are more widely shared, including with under-represented groups such as women, SMEs, and Indigenous Peoples. This is achieved by seeking to mainstream inclusive trade provisions across Canada's FTAs and seeking dedicated inclusive trade chapters in FTA negotiations. The SME chapters included in Canada's most recent FTAs seek to promote cooperation and the sharing of best practices between governments to encourage all parties to take constructive measures to facilitate the inclusion of SMEs in international trade.

The current mandate of Global Affairs Canada's Trade Commissioner Service (TCS) includes advancing trade diversification by supporting Canadian companies, especially SMEs, through the promotion of Canada's FTAs. The TCS proactively promotes FTAs to Canadian businesses and stakeholders through awareness-building activities such as events, webinars, tools and online educational content, prioritizing the CETA, CPTPP, CUSMA and Canada-Korea Free Trade Agreement (CKFTA). For example, in 2023,

the TCS offered informational FTA sessions to business delegations participating in trade missions to the United Kingdom, Chile and Japan. Future trade missions to Malaysia, Vietnam, South Korea, Indonesia and the Philippines will also feature these informative sessions. Training is also provided to trade commissioners in Canada and abroad on how to advise Canadian firms to maximize the benefits of FTAs. The TCS, with Global Affairs Canada colleagues and partner departments, will continue to assist clients in exporting their products abroad and resolving market access issues.

Recommendation 2: The Government of Canada ensure that the country's trade agreements contain timely and binding dispute-settlement mechanisms that apply to provisions addressing non-tariff trade barriers. In particular, the Government should review the mechanisms in existing trade agreements to confirm that concerns about sanitary and phytosanitary measures can be resolved quickly. If the review identifies opportunities for stronger mechanisms, the Government should discuss changes with relevant trade partners.

The Government supports this recommendation in part.

Since the foundation of the WTO and its dispute settlement mechanism, the Government of Canada has prioritized a strong and enforceable rules-based trading system. When necessary to protect Canadian interests, Canada has initiated trade challenges concerning the measures of its trading partners, such as with respect to canola, beef and autos. Moreover, recognizing the significant importance of the application of dispute settlement to substantive FTA obligations, Canada has negotiated dispute settlement mechanisms in its most recent FTAs, such as the CETA, CPTPP and CUSMA. These FTAs also contain obligations to accelerate the timelines for parties to hold consultations during the dispute resolution process for matters concerning perishable goods. This is particularly important for agriculture, agri-food and fish and seafood products, which are perishable and particularly impacted by unjustified NTBs. In undertaking new negotiations, the Government of Canada reflects on existing obligations and explores opportunities to adapt and improve its approach in future negotiations to prevent and address unjustified NTBs. Canada is firmly supportive of strong, enforceable outcomes and seeks them out in its FTA negotiations. That said, dispute settlement mechanisms are negotiated outcomes in Canada's FTAs and therefore may vary across negotiating partners.

The Government of Canada utilizes several mechanisms to address unjustified NTBs. Canada seeks robust transparency provisions in its FTAs, which provide avenues to seek clarity and provide comments on TBT and SPS measures. Canada actively participates in relevant Committees and technical working groups established under its FTAs as well as other bilateral and multilateral fora to develop strong regulatory relationships with trading partners. Canada leverages these mechanisms and relationships to address technical market access issues and trade disruptions, including through routine engagement between Canadian and foreign regulatory authorities. Cultivating strong relationships can be instrumental to prevent and address NTBs. Moreover, the SPS Technical Consultation mechanisms in the CPTPP and CUSMA require the parties to seek to resolve SPS issues in an accelerated timeframe. Where needed, the Government of Canada escalates trade issues to senior officials and the political level for additional intervention. Further, Canada is very active at the WTO, raising concerns, encouraging trade-friendly measures and seeking to defend Canadian export interests at the TBT Committee, SPS Committee, Committee on Agriculture, Committee on Market Access and Council for Trade in Goods. Lastly, the Government of Canada carefully considers the availability and appropriateness of dispute resolution mechanisms. Through the above, the Government of Canada voices its concerns and support for the rules-based trading system and seeks to address unjustified NTBs to protect Canadian interests.

Recommendation 3: The Government of Canada continue with, and enhance, its efforts with trade partners to harmonize regulations and eliminate non-tariff trade barriers. In this regard, the Government should prioritize Canadian sectors that are experiencing—or have the potential to experience—non-tariff barriers with severe adverse impacts, including the agricultural and automotive sectors.

The Government of Canada supports this recommendation.

The Government of Canada works with stakeholders and foreign governments to align regulatory requirements with trading partners, as appropriate, to reduce regulatory barriers to trade and increase transparency and coordination. In Canada, the *Cabinet Directive on Regulation* requires regulators to examine the regulatory systems of relevant jurisdictions as well as the work of international standard development organizations to identify potential areas for alignment or cooperation. Through bilateral and multilateral regulatory cooperation, the development and use of international standards and the use of conformity assessment arrangements, the Government of Canada is committed to the reduction and elimination of unjustified NTBs. It is important to recall that regulations must respond to a country's unique domestic regulatory environment. It is possible that while two countries may regulate in different ways, the outcome of a regulatory process may be similar enough to give confidence that an imported product meets the same objective, such as safety, as a product produced in Canada.

Addressing NTBs is a cornerstone of Canada's approach to negotiating FTAs, including through chapters on TBT, SPS and GRP. Generally, these chapters include provisions to support transparency; the use of international standards, guidelines or recommendations in the development and application of regulations; proportionality; and equivalency. In the CUSMA SPS Chapter, the parties commit to endeavouring to enhance the compatibility of their SPS measures to reduce unnecessary obstacles to trade. Moreover, many of Canada's FTAs establish a TBT Committee and SPS Committee to support regulatory cooperation and issue resolution. For example, the CUSMA TBT Committee provides an avenue for parties to strengthen cooperation on priority areas of mutual interest, such as through new sector-specific initiatives. These commitments allow Canada to maintain close regulatory alignment, such as with United States for motor vehicle standards, as appropriate. The CETA also advances Canada's model for addressing non-tariff barriers, including in the automotive sector. For example, Annex 4-A (Cooperation in the Field of Motor Vehicle Regulations) in the TBT Chapter calls on Canada and the European Union to pursue harmonization of regulations relating to vehicle safety and environmental performance. It recognises the importance of mutual participation in the development of international safety and environmental standards at the United Nations Economic Commission for Europe. Canada's participation in the development of these international standards is an effective approach for ensuring close alignment of standards and technical regulations, thereby reducing unjustified NTBs. Moreover, the Regulatory Cooperation and Bilateral Dialogues and Cooperation Chapters establish avenues for parties to cooperate and exchange information on rules, laws, regulations, policies and standards that have the potential to impact market access.

Multilaterally, Canada actively engages at the WTO, such as the TBT Committee, SPS Committee, Committee on Agriculture, Committee on Market Access and Council for Trade in Goods, to support the implementation of WTO Agreements and to collaborate to address NTBs and promote multilateral regulatory cooperation. Beyond this, to promote global regulatory harmonization, Canada advances the adoption of international standards consistent with Canadian agricultural regulatory approaches and trade policy at the Codex Alimentarius Commission, the World Organisation for Animal Health and the International Plant Protection Convention. Canada is additionally involved in other international standard setting bodies, such as the International Telecommunications Union, the International Organization for Standardization and the International Electrotechnical Commission, to develop and encourage the use of international standards in domestic regulations and promote Canadian approaches.

The Government of Canada continuously engages with Canadian stakeholders to identify and understand NTBs of concern. This important work is carried out by trade officials and experts at Global Affairs Canada, Agriculture and Agri-Food Canada, the Canadian Food Inspection Agency (CFIA), Innovation, Science and Economic Development Canada, Natural Resources Canada and Transport Canada. Working collaboratively with stakeholders, the Government of Canada prioritizes its work to identify and address unjustified NTBs based on the real or anticipated economic effect of the measure; implications for Canadian policy objectives, such as support for the rules-based trading system and departmental mandates; and the availability of appropriate recourse mechanisms. Other factors may be considered as appropriate.

Recommendation 4: The Government of Canada be required to monitor agri-food product imports at Canada's borders to ensure that reciprocity of standards exists and is not only a theoretical objective. This monitoring should occur without negative impacts on the efficiency with which Canada's international trade occurs.

The Government of Canada acknowledges this recommendation.

Safeguarding the health and well-being of Canada's people, environment and economy is the driving force behind the Canadian Food Inspection Agency's (CFIA) programs. Similarly, Health Canada (HC) is committed to helping Canadians maintain and improve their health through the establishment of policies, regulations and standards related to the safety and nutritional quality of all food sold in Canada. The CFIA and HC set the requirements for the safety and quality of imported agri-food products based on international standards and scientific evidence. Imported agri-food products must meet Canadian regulatory requirements. To verify compliance with these requirements, the CFIA implements control measures at strategic points along the import continuum, from the foreign country to the domestic market. Canada's import programs have consistently mitigated threats in Canada to food safety and plant and animal health posed by imported agri-food. The CFIA has the authority to take action in response to non-compliance with the required import conditions. The Government of Canada continues to adapt its import control programs to meet the challenges of an increasingly global marketplace, changing industry requirements, modern tools and technology, diversification of consumer demands and evolving trading partner relationships.

The Government of Canada adheres to Canada's obligations and cooperative mechanisms under the WTO and its FTAs that support fair, predictable and mutually beneficial trade in agri-food products. This requires Canada's import requirements to be transparent, not create unnecessary barriers to international trade and be justified for the protection of health and safety including food safety, animal health and plant health or other legitimate policy objectives. These international trade obligations require Canada to base its import requirements on international standards while affording the right to be more stringent if the assessment of risk is scientifically justified or necessary to meet a legitimate policy objective and if the measure is consistent with the requirements applied to domestic agri-food products. With this in mind, the Government of Canada's monitoring of agri-food imports is limited to the processes and requirements outlined above.

Moreover, the Government should take actions to ensure that the practices and inputs that foreign manufacturers use to produce goods that are imported into Canada do not have negative impacts on the producers of equivalent domestic goods.

The Government of Canada supports this recommendation in part.

The Government places high priority on ensuring domestic manufacturers are not unfairly impacted by goods imported preferentially under an FTA. For example, rules of origin in FTAs, including the CUSMA, are negotiated to avoid indirectly granting tariff concessions to goods from outside the relevant region.

Care is taken to try to ensure that the benefits of preferential tariff access under Canada's FTAs flows primarily to Canada and its FTA partners. To help achieve this outcome, the rules of origin for each FTA are designed in close consultation with Canadian industry stakeholders. Although Canada does not prescribe specific environmental standards in our FTAs, robust labour and environment provisions can establish a level playing field for Canadian firms by helping to prevent our trade partners from reducing adherence to environmental laws to gain an unfair competitive advantage.

With regards to agriculture and agri-food products, consistent with Canada's international trade obligations and international standards, Canada applies import requirements on goods that pose a risk to food safety, animal health and plant health. This is based on an assessment of risk and is conducted in a manner that does not discriminate between trading partners, provide unjustifiable advantage to domestic goods or constitute a disguised restriction on international trade.

Recommendation 5: The Government of Canada take actions to preserve its sovereign right to legislate for the common good. As well, in situations where unjustified NTBs are alleged to exist, the Government should engage in meaningful discussions with relevant parties to resolve the issue.

The Government of Canada supports this recommendation.

Canada's right to regulate is inherent to Canada's status as a sovereign state. Canada's FTAs include the right to regulate and preserve flexibility to set legislative and regulatory priorities in the public interest, such as to protect health, safety and the environment, in a manner that is consistent with the rights and obligations in the agreement.

The Government of Canada is committed to meaningful engagement with trading partners to seek clarity and resolution of unjustified NTBs. The Government of Canada undertakes this work in close collaboration with relevant industry stakeholders and provincial and territorial governments. Engaging with trading partners to address proposed or existing NTBs is a key activity of Canada's engagement at the WTO, including by raising trade concerns at the Council for Trade in Goods and its Committees on TBT, SPS, Agriculture and Market Access. Mechanisms for engagement also exist in many of Canada's FTAs. These agreements establish channels to cooperate with other parties, such as in chapter-specific committees, as well as to request technical discussions with relevant parties to discuss issues arising under the chapter, which may include issues related to NTBs. In these fora, Canada seeks to ensure that measures taken by our trading partners pursue a legitimate objective with minimal disruptions to international trade.