



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

NON-TARIFF TRADE BARRIERS TO THE SALE OF AGRICULTURAL PRODUCTS IN RELATION TO FREE TRADE AGREEMENTS

Report of the Standing Committee on Agriculture and Agri-Food

**Pat Finnigan
Chair**

NOVEMBER 2017

42nd PARLIAMENT, FIRST SESSION

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Standing Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website
at the following address: www.ourcommons.ca

**NON-TARIFF TRADE BARRIERS TO THE SALE OF
AGRICULTURAL PRODUCTS IN RELATION TO
FREE TRADE AGREEMENTS**

**Report of the Standing Committee on
Agriculture and Agri-Food**

**Pat Finnigan
Chair**

NOVEMBER 2017

42nd PARLIAMENT, FIRST SESSION

STANDING COMMITTEE ON AGRICULTURE AND AGRI-FOOD

CHAIR

Pat Finnigan

VICE-CHAIRS

Luc Berthold
Ruth Ellen Brosseau

MEMBERS

John Barlow	Lloyd Longfield
Sylvie Boucher	Eva Nassif
Pierre Breton	Joe Peschisolido
Francis Drouin	Jean-Claude Poissant

OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED

David Anderson	Alaina Lockhart
Jacques Gourde	David J. McGuinty
Georgina Jolibois	Bev Shipley
Jenny Kwan	

CLERK OF THE COMMITTEE

Marc-Olivier Girard

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Alison Clegg, Analyst
Frédéric Forge, Analyst
Khamla Heminthavong, Analyst

THE STANDING COMMITTEE ON AGRICULTURE AND AGRI-FOOD

has the honour to present its

EIGHTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied non-tariff trade barriers to the sale of agricultural products in relation to free trade agreements and has agreed to report the following:

TABLE OF CONTENTS

NON-TARIFF TRADE BARRIERS TO THE SALE OF AGRICULTURAL PRODUCTS COVERED BY FREE TRADE AGREEMENTS	1
INTRODUCTION	1
CANADA: AN EXPORTING COUNTRY	1
BARRIERS TO TRADE	2
A. Definition of Non-tariff Measures.....	2
B. Legitimacy of Non-tariff Measures.....	4
C. Examples of Non-tariff Barriers	4
1. International Trade	4
2. Internal Trade	8
WAYS TO LIMIT THE IMPACT OF NON-TARIFF BARRIERS ON TRADE	9
A. Legal Avenues	9
1. Dispute Settlement Mechanisms of Trade Agreements.....	10
2. Dispute Resolution Corporation.....	11
B. Diplomatic Avenues	12
1. Market Access Secretariat.....	12
2. International Standardizing Bodies	13
CONCLUSION	15
LIST OF RECOMMENDATIONS	17
APPENDIX A: LIST OF WITNESSES	19
REQUEST FOR GOVERNMENT RESPONSE	21

NON-TARIFF TRADE BARRIERS TO THE SALE OF AGRICULTURAL PRODUCTS COVERED BY FREE TRADE AGREEMENTS

INTRODUCTION

Ever since the first international trade liberalization instruments set trade rules over 60 years ago,¹ there has been a significant decrease in customs duties on traded goods. Over time, tariffs have indeed been decreasing as the number of trade agreements has grown. However, a growing number and variety of non-tariff barriers that are difficult to measure are restricting the free movement of goods.

Given the considerable rise in the number of non-tariff barriers significantly hindering trade flows, the Standing Committee on Agriculture and Agri-Food (“the Committee”) studied the issue and adopted the following motion on Tuesday, 6 December 2016:

That the Committee conduct a study examining non-tariff trade barriers to the sale of agricultural products in relation to free trade agreements; and that this study consist of no less than four meetings; and that the Committee should report its findings to the House.²

The Committee held five public hearings between 21 February and 6 June 2017 and heard from various agriculture and agri-food industry representatives, as well as officials from Agriculture and Agri-Food Canada, the Canadian Food Inspection Agency (CFIA) and Global Affairs Canada.

CANADA: AN EXPORTING COUNTRY

Exports are a powerful economic driver for Canada, since over half of the country’s agri-food and seafood products are exported. This makes Canadian companies dependent on foreign markets in order to grow and thrive. In 2016, Canada was the world’s fifth-largest exporter of agriculture and agri-food products.³ Canadian agri-food exports continue to grow, with the United States remaining by far Canada’s main trading partner.

Canadian food exports have grown 77% over the last 10 years, 20% from 2013 to 2015 alone, to \$56 billion annually. The United States alone accounts for \$29 billion. We rank as the number one supplier of agriculture and agrifood products to the U.S., which is the

1 World Trade Organization, [What is the World Trade Organization?](#)

2 House of Commons, Standing Committee on Agriculture and Agri-Food, [Minutes of Proceedings](#), 1st Session, 42nd Parliament, 6 December 2016.

3 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1100 (Frédéric Seppey, Chief Agriculture Negotiator, Trade Agreements and Negotiations, Market and Industry Services Branch, Agriculture and Agri-Food Canada).

world's second largest importer of agrifood and seafood products, with Canada's share proudly sitting at 19.2%. Mexico accounts for close to \$2 billion.⁴

Given the importance of agricultural and agri-food exports to Canada's economy, several witnesses remarked that it was essential to have competitive access to international markets, especially since the 2017 federal budget set a target of increasing agri-food exports to \$75 billion annually by 2025.⁵ However, the Canadian Federation of Agriculture said that "if we don't deal with non-tariff barriers and some of the barriers that we actually have internally in our own systems, we're not going to meet those targets."⁶

BARRIERS TO TRADE

For many years, the primary impediments to trade were tariff barriers. However, trade agreements in recent years have led to a significant decrease in duties. Although trade agreements have considerably reduced traditional barriers such as tariffs, other barriers remain. Several witnesses pointed out that despite these trade agreements, Canadian exports face several non-tariff barriers that can impede access to foreign markets.

The existence of an agreement by itself will not ensure the desired increase in trade if the reduction in tariffs reveals technical and other non-tariff measures that prevent exporters from taking advantage of the new opportunities that the FTA was expected to provide.⁷

In most cases, trade treaties reduce or eliminate import duties. However, with these reduced or eliminated tariffs often come a range of increasingly complex rules that exporting countries must follow before they can access foreign markets.

A. Definition of Non-tariff Measures

Non-tariff measures are often more complex and varied than duties. They are generally defined as measures other than customs tariffs that can have an economic effect on international trade. Non-tariff measures cover a wide range of policy instruments put in place by countries wishing to protect their markets from foreign competition. These can include quotas, standards and technical barriers, among others. The United Nations Conference on Trade and Development has identified and classified these measures under two major categories — non-tariff export measures and non-tariff import measures — subdivided into 16 chapters. Non-tariff import measures are further divided into two subgroups: technical measures and non-technical measures (see Table 1).

4 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2017, 1105 (Ron Bonnett, President, Canadian Federation of Agriculture).

5 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2017, 1205 (Martin Rice, Acting Executive Director, Canadian Agri-Food Trade Alliance).

6 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2017, 1200 (Ron Bonnett).

7 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2017, 1205 (Martin Rice).

Table 1 – Non-tariff Measure Classification

Imports	Technical Measures	A. Sanitary and phytosanitary measures: measures to protect human, animal and plant health.
		B. Technical barriers to trade: measures related to conformity assessment procedures on products, such as evaluation, verification and certification.
		C. Pre-shipment inspection and other formalities: includes quality, quantity and price control of goods prior to shipment.
	Non-technical Measures	D. Contingent trade-protective measures: includes antidumping, countervailing and safeguard measures.
		E. Non-automatic licensing, quotas, and other quantitative controls: these measures are aimed at restraining the quantity of goods that can be imported.
		F. Price controls: measures to control or affect the prices of imported goods, such as minimum import prices, excise and other taxes.
		G. Finance measures: measures to regulate access to and cost of foreign exchange.
		H. Measures affecting competition: measures to grant exclusive or special preferences or privileges to one or more limited group of economic operators.
		I. Trade-related investment measures: requirements to use a minimum level of domestically sourced products.
		J. Distribution restrictions: for example, imported beverages may only be sold in cities having a facility to recycle the containers.
		K. Restrictions on post-sales services: measures restricting producers of exported goods to provide post-sales service in the importing country.
		L. Subsidies: financial contribution by a government to an industry or business.
		M. Government procurement restrictions: measures controlling the purchase of goods by government agencies, generally by preferring national providers.
		N. Intellectual property: covers patents, trademarks, copyright, geographical indications, etc.
O. Rules of origin: rules applied by governments of importing countries to determine the country of origin of goods.		
Exports	P. Export-related measures: measures applied by the government of the exporting country on exported goods.	

Source: United Nations Conference on Trade and Development, [International Classification of Non-Tariff Measures](#), 2012 Version.

B. Legitimacy of Non-tariff Measures

Non-tariff measures, the term most often used being “barriers,” may have legitimate purposes, such as protecting human, animal and plant health or protecting the environment.⁸

The witnesses support non-tariff measures as long as they are legitimate. However, they do object to measures not based in science that countries apply in order to protect national production or to circumvent free-trade rules. Witnesses said that Canada is dealing with a new international trade landscape that makes it difficult to distinguish legitimate measures from protectionism.

While we are seeing progress in lowering tariffs, non-tariff trade barriers are frequently waiting, or newly created ones are set in place to be the next wave of protectionism that we deal with. Generally, there is some effort to try to cloak these efforts under some scientific precautionary excuse, when in reality political science and protectionism are really the root cause of much of this.⁹

C. Examples of Non-tariff Barriers

Unlike duties, which are simpler and more transparent trade policy measures, non-tariff measures are more complex and difficult to quantify. Several witnesses said that because non-tariff measures are less transparent than duties, it is much more difficult to directly estimate their economic impact on trade. However, some studies have analyzed the economic impacts of non-tariff measures.

There has been a substantial amount of economic analysis on the cost implications of non-tariff measures with estimates of the sum effect of non-tariff measures for our agrifood exporters being the equivalent of a tariff of 25% to 30% in Asia and 30% to 40% for the European market.¹⁰

1. International Trade

As stated earlier, many non-tariff measures may have legitimate purposes. However, compliance with these measures has significant economic and trade consequences for the Canadian agricultural industry.¹¹

One example is country-of-origin labelling requirements, which become non-tariff barriers to trade that impose significant costs on the industry when they are mandatory and discriminate against imported products, as in the case of the country-of-origin labelling requirements imposed for beef, pork, and other commodities under the United States 2008 farm bill. They can lead to additional and costly requirements being imposed

8 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1135 (Frédéric Seppey).

9 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 23 February 2017, 1220 (Dennis Laycraft, Executive Vice-President, Canadian Cattlemen’s Association).

10 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2017, 1205 (Martin Rice).

11 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1105 (Frédéric Seppey).

on imported products, such as segregation requirements that create an incentive for processors to use domestic products.¹²

Some witnesses believe that regulatory compliance entails significant costs, particularly when a Canadian company supplies a number of markets with differing rules. Geof Gray, Past Chair of Agricultural Manufacturers of Canada, said that a large part of the cost to the agricultural equipment manufacturing industry is the registration of patents in each country. Countries have different legal requirements that are expensive to follow. The cost of a standard patent is \$25,000. On top of that are different costs for each country. Therefore, global registration could cost between \$100,000 and \$150,000.¹³ In addition to having to comply with a variety of standards, the agricultural equipment manufacturing industry faces border security issues, red tape and burdensome customs procedures.¹⁴

The maximum residue limit (MRL) standard is another perfect example of regulatory differences. While the World Trade Organization (WTO) and the Codex Alimentarius Commission have made an effort to develop a world standard for MRLs, several witnesses complained that countries are setting their own tolerance levels, and the result is inconsistent MRL standards among trading partners.¹⁵ MRL tolerance thresholds may vary from one country to another due to assessment methodology, consumption patterns or delays in regulatory approvals.¹⁶

When Canada and another trading country do not agree on these MRLs, it means the risk assessments conducted in each country differ in the amount of pesticide determined to be acceptable to remain on certain produce when it enters the market. This poses a huge technical barrier for imports and exports. For example, Nova Scotia used to export apples to the EU, but the province stopped doing so when the EU dropped its MRL for diphenylamine — a common storage treatment for apples — to 0.01 ppm. In Canada, the maximum residue limit for this product is set at 5 ppm. In the U.S. it's 10 ppm.¹⁷

Last year the canola industry was in a dispute with China, which wanted to tighten its rules to control the spread of blackleg, a fungal disease. To control this disease, China wanted to reduce levels of dockage (foreign material in Canadian canola shipments) to 1%, while Canadian standards accept 2.5% dockage. The Canadian canola industry said that “the Chinese rule was counter to the finding that showed that the threat of spread of

12 Ibid.

13 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2017, 1125 (Geof Gray, Past Chair, Agricultural Manufacturers of Canada).

14 Ibid., 1105 (Leah Olson, President, Agricultural Manufacturers of Canada).

15 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 6 June 2017, 1215 (Rebecca Lee, Executive Director, Canadian Horticultural Council).

16 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1105 (Frédéric Seppey).

17 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 6 June 2017, 1215 (Rebecca Lee).

blackleg through dockage was nearly non-existent.”¹⁸ This created a lot of uncertainty for the canola industry, which was worried about losing a \$2.7 billion market.¹⁹

Very recently, the Canadian pulse industry faced regulatory restrictions in India, which wanted to revoke a fumigation exemption that Canada has had since 2004. Indian policy requires shipments of pulses to be fumigated with methyl bromide at the point of origin in order to control stem and bulb nematodes. During a 6 April 2017 briefing session on methyl bromide fumigation, the Committee heard from government officials who stated that India had granted Canada another temporary exemption so it can access the Indian market until a longer-term solution is found.²⁰

The case of ractopamine, a feed additive used in pork and beef production, is another illustration of regulatory differences. In July 2012, the Codex Alimentarius Commission approved an international standard that set the maximum residue levels of ractopamine that can be present safely in pork and beef products. Despite the international standard, European Union countries, Russia, China, Taiwan and Thailand refuse the importation of products that could have been in contact with ractopamine. However, the use of ractopamine is permitted in over 25 countries, with an additional 75 countries allowing the importation of pork although the use of ractopamine is not allowed in their own herds.²¹

As a result of this, the Canadian ractopamine-free pork certification program was launched in April 2013. This was in response to Russia’s requirements banning the importation of meat from hogs that have been fed or even exposed to ractopamine. The Canadian Pork Council worked closely with the Canadian Meat Council, the Animal Nutrition Association of Canada, Canada Pork International, Elanco, and the CFIA to develop the program. The certification program was implemented throughout the pork value chain, including feed mills, producers, and live animal transporters, as well as slaughter, processing, and storage establishments.²²

Some witnesses added that approval delays, particularly in biotechnology, are a form of non-tariff barrier that can have severe impacts on Canadian farmers. In China, the approval process for biotechnology products is very complex. It can take up to 40 months to get approval for genetically modified products. Such delays in the regulatory approval of genetically modified products mean that Canadian farmers cannot use the latest innovations. As a result, these delays restrict market access.²³

18 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 23 February 2017, 1100 (Brett Halstead, President, Canadian Canola Growers Association).

19 Ibid.

20 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 6 April 2017, 1135 (William Anderson, Executive Director, Plant Health and Biosecurity Directorate, Canadian Food Inspection Agency).

21 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2017, 1115 (Hans Kristensen, Member, Board of Directors, Canadian Pork Council).

22 Ibid.

23 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1130 (Frédéric Seppey).

Another illustration is the recurring challenge faced by Canadian grains and oilseeds exporters with respect to approvals of products of biotechnology in export markets, notably genetically modified products.

In many countries regulatory regimes for the approval of genetically modified products are not based on science, nor are they timely, predictable, or transparent. In other countries, genetically modified products may simply not be authorized.

Delays in approvals of genetically modified products in major export markets have varied consequences for Canadian farmers. They can, for example, limit their access to beneficial, innovative agricultural technologies, as growers will hold off on using new products approved in Canada until they are approved in key export markets.²⁴

Dave Carey of the Canadian Seed Trade Association (CSTA) told the Committee that “[a]synchronous approvals and zero tolerances for products of biotechnology continue to be an issue.”²⁵ According to CSTA, zero tolerance is not possible to achieve. Yet countries are requiring legal declarations that there is zero presence of genetically modified product in seed shipments. This requirement has a significant impact on CSTA members.²⁶

Organic industry standards apply a zero tolerance policy regarding genetically modified products. The industry is subject to strict standards, including third-party inspection and MRL inspection standards. The fact that the industry assumes all the business risks and funds its own standard setting hinders its competitiveness and its ability to capitalize on opportunities.²⁷ The industry would like to see more competitive and less cumbersome regulations to foster its development and growth.²⁸

Several witnesses believe that non-tariff barriers without a legitimate purpose create uncertainty. They believe that regulatory alignment between trading partners and the elimination of illegitimate and discriminatory non-tariff measures would mitigate the risk of trade and stimulate the Canadian economy.

Recommendation 1

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

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

24 Ibid., 1105.

25 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 6 June 2017, 1215 (Dave Carey, Director, Government Affairs and Policy, Canadian Seed Trade Association).

26 Ibid.

27 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 23 February 2017, 1210 (Tia Loftsgard, Executive Director, Canada Organic Trade Association).

28 Ibid., 1215 (Wallace Hamm, General Manager, Pro-Cert Organic).

level presence (LLP) policies among trading partners, delays or asynchronous biotechnology approvals, and scientifically unjustified, over-regulatory measures taken by Canada's trading partners.

2. Internal Trade

While a major part of Canada's economy is focused on exports, the domestic market continues to be important for many Canadian businesses.

Many observers of the industry will say that if we are able to negotiate free trade agreements with foreign countries, we should be able to have a single economic space in Canada. This is why more than 20 years ago the agreement on internal trade was negotiated.²⁹

Although the Agreement on Internal Trade (AIT) came into force in 1995, barriers continue to hamper the free trade of goods and services within Canada. Yet, the purpose of the AIT was to reduce these barriers. Interprovincial barriers stem for the most part from different provincial regulations, particularly with respect to alcoholic beverages, dairy and meat products.³⁰

Some witnesses were critical of inconsistent provincial and federal requirements, which prevent the free movement of goods and services among the provinces. During their appearance before the Committee, government officials admitted that because of the shared jurisdiction over agriculture, in some situations the provincial regulations from one province to the next and federal regulations do not align perfectly.³¹ For example, a provincially registered meat processing plant cannot sell its products in another province.³²

[W]e equally recognize that the regulatory frameworks have grown up independently, so you do have differences. Those differences can result, as my colleague noted, in a provincially regulated slaughter plant operating in Gatineau being unable to ship its products to Ottawa or from Timiskaming to Temiskaming. That situation arises.³³

Another example of a barrier to internal trade involves the alcohol industry. Interprovincial trade of alcoholic beverages has been a stumbling block in provincial talks for years. Despite the passage of Bill C-311, which relaxed the *Importation of Intoxicating Liquors Act* to allow the free movement across provincial borders of alcoholic beverages for personal consumption, there are still provisions in certain provinces hindering this free movement.³⁴

29 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1235 (Frédéric Seppey).

30 Ibid.

31 Ibid., 1245 (Paul Mayers, Vice-President, Policy and Programs Branch, Canadian Food Inspection Agency).

32 Ibid., 1235 (Frédéric Seppey).

33 Ibid., 1245 (Paul Mayers).

34 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2017, 1225 (Dan Paszkowski, President and Chief Executive Officer, Canadian Vintners Association).

The Canadian Vintners Association discussed the success of British Columbia's wine industry, which produces enough wine to supply Canadian and export markets.³⁵ Thus, if the industry wishes to access foreign markets, it must first capture greater domestic market share.³⁶

For the Canadian wine industry to succeed internationally, we have to remove what I view as a non-tariff barrier within our own country, which is the ability to ship a case of wine to a Canadian consumer in another province, which isn't the case, with the exception of three jurisdictions, namely, British Columbia, Manitoba, and Nova Scotia.³⁷

To promote internal trade flows, various agriculture and agri-food stakeholders believe that regulatory cooperation and a greater harmonization of provincial and federal rules are needed. There have been recent efforts to improve the AIT. Negotiations on renewing the AIT aimed to "significantly increase the mobility of goods, services, and people across the country."³⁸ These negotiations resulted in the [Canadian Free Trade Agreement](#) (CFTA), which came into force on 1 July 2017. It replaces the AIT and extends to almost all sectors of the economy.

The witnesses were unanimous in hoping that the issue of trade barriers will be resolved so that there can be freer trade in agri-food products both internationally and domestically. In addition, several witnesses said that it was not enough to simply sign trade agreements — it is imperative that the barriers facing Canadian businesses be identified.

WAYS TO LIMIT THE IMPACT OF NON-TARIFF BARRIERS ON TRADE

In order for Canadian businesses to succeed in export markets, they need to be able to compete on a level playing field with other exporters. To ensure this is the case, Canada has a variety of approaches and mechanisms to prevent and monitor non-tariff barriers that could have negative consequences for Canada's economy.³⁹ These options can be divided into two categories: legal avenues and diplomatic avenues.

A. Legal Avenues

The complexity of non-tariff measures often makes it difficult to understand their true objectives, which can result in inaccurate interpretations of these measures. Occasionally, legitimate measures put in place by Canada are deemed excessively restrictive by its trading partners. Disputes arise when trading partners deem that trade treaty rules are not being followed.⁴⁰

35 Ibid., 1230.

36 Ibid., 1240.

37 Ibid., 1225.

38 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1235 (Frédéric Seppey).

39 Ibid., 1105.

40 Ibid., 1135.

1. Dispute Settlement Mechanisms of Trade Agreements

Trade agreements address issues surrounding duties as well as non-tariff barriers. For instance, the Comprehensive Economic and Trade Agreement (CETA) includes a forum for discussion on biotechnology as well as provisions to address non-tariff barriers. In trade disputes, Canada has legal options available. Trade agreements such as NAFTA and the WTO include dispute settlement provisions.

There are two key WTO agreements that are particularly important to the agriculture sector: the Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Examples of technical barriers are regulations, standards, testing and certification procedures that create unnecessary obstacles to trade. As for sanitary and phytosanitary measures, these are aimed at ensuring food safety and animal and plant health.⁴¹

Common principles in these agreements include transparency — that is, informing countries of new regulations or regulatory changes and accepting comments on the regulatory proposals; the use of international standards; proportionality — that is, measures should not be more trade-restrictive than necessary; and equivalency — that is, countries should accept each other's standards when they offer an equivalent level of protection.⁴²

Under these agreements, the parties can address non-tariff measures that affect export interests.⁴³ Usually, Canada uses the dispute resolution mechanism only as a last resort, since the parties can often come to an agreement through informal talks.⁴⁴

The legal avenue to addressing a trade dispute takes years before a satisfactory resolution is reached. In 2008, the U.S. imposed country-of-origin labelling (COOL) requirements. In response, Canada brought a complaint to the WTO, alleging that U.S. labelling requirements unfairly harm Canadian exports. It took until 2015 for Canada to win its case.⁴⁵ Canada decided to bring the COOL issue to the WTO rather than NAFTA because “we could have other countries join the dispute as a third party if they were interested in the same legal question.”⁴⁶

Recently, the U.S. brought a complaint to the WTO against Canada with respect to British Columbia wines. The British Columbia policy allows only local wines to be sold in grocery stores. The U.S. alleges that this is a discriminatory practice that puts American

41 Ibid., 1105.

42 Ibid.

43 Ibid.

44 Ibid., 1130.

45 Ibid.

46 Ibid., 1220.

wines at a disadvantage. The process has just started and Canada is trying to resolve the dispute informally.⁴⁷

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.

Recommendation 4

The Committee recommends that the CFIA take 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.

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.

2. Dispute Resolution Corporation

Resolution services through CFIA and the Dispute Resolution Corporation (DRC) in the horticultural sector are legal tools available to Canadian companies. To market products in Canada, sellers must either have a CFIA licence to sell interprovincially or import products, or have a DRC membership.⁴⁸ Dispute resolution services address cases of slow payment and non-payment. Because the DRC does not provide payment protection in cases of bankruptcy or insolvency, the Canadian horticultural industry is calling for a payment protection system similar to the one under the U.S. *Perishable Agricultural Commodities Act* (PACA).⁴⁹ In 2014, the U.S. revoked Canada's preferential access to the payment protection guaranteed by PACA.

To ensure exporter confidence, the fruit and vegetable industry has proposed establishing a mechanism for resolving disputes with Canada's trading partners.⁵⁰ Such a

47 Ibid., 1230.

48 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2017, 1120 (Ron Lemaire, President, Canadian Produce Marketing Association).

49 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 6 June 2017, 1225 (Ken Forth, Chair, Trade and Marketing Committee, Canadian Horticultural Council).

50 Ibid.

mechanism is already in place in Canada and the U.S. for fresh produce. It could become a global model.⁵¹

An entity has to be created. The responsibility within the entity, and it can be a third party with the support of government regulation, is to manage the disputes. Those disputes, as they are managed, follow international law. When a decision is made, that decision is bound by Canadian courts as well as an international court if there is a concern, and the parties are able to go down that route.⁵²

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.

B. Diplomatic Avenues

In addition to legal avenues, diplomatic avenues such as participating in the development of global standards, diplomatic missions and so forth, have proven to be worthwhile conflict resolution approaches. Several Canadian diplomatic missions have resolved barriers to market access.

1. Market Access Secretariat

All the witnesses acknowledged the important role of the Market Access Secretariat (MAS) in maintaining and improving access to foreign markets. MAS brings together a variety of experts from the CFIA, the Health Canada Pest Management Regulatory Agency, Agriculture and Agri-Food Canada, Global Affairs Canada, the provinces and Canadian embassies abroad, all working to defend Canada's agricultural interests.⁵³

According to the [Agriculture and Food Trade Commissioner Service](#), Canada has 35 agriculture trade commissioners present in 15 priority markets abroad. In addition, there are some 100 Canadian diplomats at Global Affairs Canada also responsible for promoting Canada's agricultural interests.⁵⁴

To date, MAS has identified roughly 300 market access issues to be addressed. In order to manage these issues efficiently, a single desk has been created to thoroughly manage all market access activities based on a prioritization process. This single point of contact provides a timely response.⁵⁵

51 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2017, 1150 (Ron Lemaire).

52 Ibid.

53 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 23 February 2017, 1110 (Brian Innes, Vice-President, Government Relations, Canola Council of Canada).

54 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1125 (Frédéric Seppey).

55 Ibid.

The witnesses had nothing but praise for MAS and other government agencies that have helped Canadian businesses succeed in foreign markets. That is why the witnesses stressed the need to provide sufficient human and financial resources to support market access activities and initiatives. As well, the witnesses agreed that the industry's close cooperation with various levels of government has also helped promote the Canadian industry internationally.

Through all of this effort, we have seen first-hand that market access is truly a team effort. We've had success because we've worked together, both within industry and across industry and government. For example, by working with the market access secretariat at Agriculture and Agri-Food Canada on non-tariff barriers, we've maintained markets worth \$2.7 billion in 2016. These were addressing non-tariff barriers, like canola seed going into China and our access to biofuel markets in the European Union and the United States. By eliminating those non-tariff barriers, just in 2016, we've maintained access to markets worth \$2.7 billion.⁵⁶

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.

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.

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.

2. International Standardizing Bodies

Many of Canada's national standards are based on international standards. The international standardization bodies called the "three sisters" — the Codex Alimentarius Commission for food safety, the International Plant Protection Convention for phytosanitary risks, and the World Organisation for Animal Health — work to develop science-based global standards. Canada is actively involved in international standard-setting forums.⁵⁷ The country supports the work of these organizations by providing them

56 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 23 February 2017, 1115 (Brian Innes).

57 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1115 (Paul Mayers).

with human resources in the form of technical expertise and financial resources to support the development of international standards. These standards are very important and relevant in creating greater predictability in terms of trade and greater protection.⁵⁸ Canada has increased its engagement by recently providing \$1 million to support the activities of these three bodies.⁵⁹

Despite efforts by these international bodies to implement global standards, witnesses pointed out that these standards are not recognized by all countries. For example, the vast majority of countries set their own concentration thresholds for phytosanitary product residues, and the result is inconsistent MRL standards among trading partners.⁶⁰ The lack of consistent MRLs also makes it more difficult for MAS, which often has to deal with the peculiarities of various trading partners.

Each country has its own issues, and the market access secretariat has to deal with China today and India tomorrow, etc. When we see more progress in this area of harmonization, if we have more countries subscribing to a codex MRL, for example, maximum residue level, then we don't have to deal with each country's issues; we can deal with them through a more collective process.⁶¹

Several witnesses encouraged Canada to play a leading role in promoting science-based rules while also continuing to actively participate in international standards organizations.⁶²

Our trade advocacy can also lead to the creation of international fora to provide accurate information, advance trade policy discussions, and address potential trade irritants at an early stage. For example, Canada created the global low level presence initiative in recent years to address the trade risks associated with the management of the low level presence of genetically modified crops in imports. This initiative brings together 15 countries that work together to develop global solutions for the effective management of low level presence occurrences. This initiative illustrates how we are able to work with like-minded countries to promote the development of international approaches to manage trade-related issues.⁶³

The witnesses recommended that trade negotiations include discussions on the mutual recognition of regulations and that the rules for the relevant Canadian exports be set out right from the start in order to prevent non-tariff barriers from arising once trade agreements are signed, creating an uneven playing field that could hamper the competitiveness of Canadian businesses.

58 Ibid., 1140.

59 Ibid., 1105 (Frédéric Seppey).

60 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 6 June 2017, 1215 (Rebecca Lee).

61 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2017, 1245 (Martin Rice).

62 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 23 February 2017, 1140 (Catherine Scovil, Director of Government Relations, Canadian Canola Growers Association).

63 House of Commons, AGRI, [Evidence](#), 1st Session, 42nd Parliament, 21 February 2017, 1110 (Frédéric Seppey).

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.

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.

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.

CONCLUSION

Regardless of their purpose, non-tariff measures can hamper the competitiveness of Canadian businesses in international markets. Non-tariff barriers restrict not only international trade, but internal trade as well. The prosperity of Canada's agricultural and agri-food sector will depend on its ability to overcome market access barriers and non-tariff barriers.

LIST OF RECOMMENDATIONS

Recommendation 1

The Committee recommends that the government promote and defend rules and science-based trade on the international stage. 7

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. 7

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. 11

Recommendation 4

The Committee recommends that the CFIA take 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. 11

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. 11

Recommendation 6 12

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. 12

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. 13

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..... 13

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..... 13

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..... 15

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. 15

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. 15

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Canadian Food Inspection Agency Paul Mayers, Vice-President Policy and Programs Branch</p> <p>Department of Agriculture and Agri-Food Frédéric Seppey, Chief Agriculture Negotiator Trade Agreements and Negotiations, Market and Industry Services Branch</p> <p>Global Affairs Canada Shendra Melia, Acting Director General Market Access, Trade Agreements and Negotiations</p>	2017/02/21	45
<p>Canada Organic Trade Association Tia Loftsgard, Executive Director</p> <p>Canadian Canola Growers Association Brett Halstead, President Catherine Scovil, Director of Government Relations</p> <p>Canadian Cattlemen's Association Dennis Laycraft, Executive Vice-President</p> <p>Canola Council of Canada Brian Innes, Vice-President, Government Relations</p> <p>Pro-Cert Organic Wallace Hamm, General Manager</p>	2017/02/23	46
<p>Canadian Federation of Agriculture Ron Bonnett, President</p> <p>Canadian Produce Marketing Association Ron Lemaire, President</p>	2017/05/30	59
<p>Agricultural Manufacturers of Canada Geof Gray, Past Chair Leah Olson, President</p> <p>Canadian Agri-Food Trade Alliance Brian Innes, President Martin Rice, Acting Executive Director</p>	2017/06/01	60

Organizations and Individuals	Date	Meeting
Canadian Pork Council Hans Kristensen, Member, Board of Directors Gary Stordy, Public Relations Manager	2017/06/01	60
Canadian Vintners Association Dan Paszkowski, President and Chief Executive Officer		
Canadian Horticultural Council Ken Forth, Chair, Trade and Marketing Committee Rebecca Lee, Executive Director	2017/06/06	61
Canadian Seed Trade Association Dave Carey, Director, Government Affairs and Policy		

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings N^{os} 45, 46, 59 to 61, 74 to 76](#)) is tabled.

Respectfully submitted,

Pat Finnigan
Chair

