

WORLD TRADE ORGANIZATION

RESTRICTED

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Committee on Technical Barriers to Trade

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IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE

The following Statement under Article 15.2 of the Agreement has been received from the delegation of Canada.

1. Canada was a Party to the Tokyo Round Agreement on Technical Barriers to Trade since its inception in 1980 and complied with the requirements of that Agreement. The TBT Agreement, as revised in the Uruguay Round, has required limited implementation adjustments. The Canadian government's Regulatory Policy 1995 (attached) directs regulators to comply with TBT (and SPS) obligations.

2. The Department of Foreign Affairs and International Trade (DFAIT) has advised the provinces of their obligations under the revised TBT and has mandated the Standards Council of Canada (SCC) to notify non-government standardizing bodies of the Agreement's provisions, including Annex 3 of the TBT Agreement.

3. The Department of Foreign Affairs and International Trade retains overall responsibility for national implementation of the Agreement. Representation concerning Canadian implementation of the Agreement and request for consultation should be directed to DFAIT.

Foreign Affairs and International Trade
Technical Barriers and Regulations Division
125 Sussex Drive
Ottawa, Ontario
Canada K1A 0G2

Tel: (613) 996-2021
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4. DFAIT contracts with the Standards Council of Canada to operate the Canadian Enquiry Point. The SCC is responsible for identifying and providing notifications to the WTO Secretariat under the TBT Agreement.

5. The SCC monitors the weekly published federal Canada Gazette for notification of technical regulations, mandatory standards and certifications systems. For technical regulations and conformity assessment procedures prepared by provincial governments, the SCC relies upon the provincial gazettes. The Canadian Enquiry Point can be reached at the following address:

The Standards Council of Canada (SCC)
1200-45 O'Connor Street
Ottawa, Ontario
Canada K1P 6N7

Tel: (613) 238-3222
Fax: (613) 995-4564
e-mail: info@scc.ca

GOVERNMENT OF CANADA
REGULATORY POLICY
1995

Effective date

The present document contains the Regulatory Policy as approved on 9 November 1995. It replaces the 1992 version of this policy and Appendix R to the Treasury Board Contracting Policy.

Policy objective

To ensure that use of the government's regulatory powers results in the greatest net benefit to Canadian society.

Policy statement

Canadians view health, safety, the quality of the environment, and economic and social well-being as important concerns. The government's regulatory activity in these areas is part of its responsibility to serve the public interest.

Ensuring that the public's money is spent wisely is also in the public interest. The government will weigh the benefits of alternatives to regulation, and of alternative regulations, against their cost, and focus resources where they can do the most good.

To these ends, the federal government is committed to working in partnership with industry, labour, interest groups, professional organizations, other governments and interested individuals.

Application

This policy applies to federal regulatory authorities.

Policy requirements

When regulating, regulatory authorities must ensure that:

1. They can demonstrate that a problem or risk exists, federal government intervention is justified and regulation is the best alternative.
2. Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programmes.

3. The benefits outweigh the costs to Canadians, their governments and businesses. In particular, when managing risks on behalf of Canadians, regulatory authorities must ensure that the limited resources available to government are used where they do the most good.
4. Adverse impacts on the capacity of the economy to generate wealth and employment are minimized and no unnecessary regulatory burden is imposed. In particular, regulatory authorities must ensure that:
 - Information and administrative requirements are limited to what is absolutely necessary and that they impose the least possible cost;
 - the special circumstances of small businesses are addressed; and
 - parties proposing equivalent means to conform with regulatory requirements are given positive consideration.
5. Intergovernmental agreements are respected (see appendix A) and full advantages is taken of opportunities for coordination with other governments and agencies.
6. Systems are in place to manage regulatory resources effectively. In particular, regulatory authorities must ensure that:
 - The Regulatory Process Management Standards are followed (see Appendix B);
 - compliance and enforcement policies are articulated, as appropriate; and
 - resources have been approved and are adequate to discharge enforcement responsibilities effectively and to ensure compliance where the regulation binds the government.

Responsibilities

The Treasury Board Secretariat is responsible for developing and updating the federal regulatory policy and its associated regulatory process management standards. The Secretariat develops advice, guides and training to help regulatory authorities comply with the policy and achieve the management standards. The Secretariat also monitors the performance reviews that regulatory authorities conduct to assess whether the management standards have been met, and reports to the President of the Treasury Board on these reviews.

Regulatory authorities are responsible for developing, maintaining and enforcing regulatory programmes that follow the federal regulatory policy and for having regulatory management systems in place that meet the standards. Authorities must review their performance and report to the President of the Treasury Board on whether they have met the management standards.

The Department of Justice is responsible for offering legal advice to regulatory authorities on how best to meet the management standards. For example, the Regulatory Reform Group in the Administrative Law Section provides regulatory authorities with the legal tools and legal

opinions on alternative regulatory solutions, harmonization of regulatory requirements, compliance and enforcement techniques, and use of performance and international standards.

This policy is also dependent on the input of Canadians - industry, labour, interest groups, professional organization, other governments and individuals - into the design and review of regulations and regulatory programmes. Canadians have a responsibility, as citizens, to make a reasonable contribution by helping the government develop regulatory programmes that will benefit Canadian society as a whole.

Monitoring

The Treasury Board Secretariat will monitor the performance of regulatory authorities and the effectiveness of this policy.

To do this, the Secretariat will rely on existing sources of information, including, where appropriate, the Federal Regulatory Plan, business plans, Treasury Board submissions, major regulatory initiatives submitted for Cabinet consideration, proposals going through the regulatory process, formal programme evaluations, the results of internal audits and government reviews.

In addition, where appropriate, the Secretariat will use the work of third parties (e.g. the Office of the Auditor General, private-sector working groups or academics) to assist in determining the degree of compliance with this policy.

References

Authority

The policy is issued under the authority of the *Financial Administration Act*, section 7(1)(a).

Publications

See the notes to Appendix B.

Enquiries

Enquiries about this policy should directed to:

Regulatory Affairs Directorate
Treasury Board Secretariat

Fax: (613) 957-7875
Internet: RADDAR@tbs-cts.x400.gc.ca

APPENDIX A
TRADE AGREEMENT OBLIGATIONS FOR REGULATORS

Requirements

When developing or changing technical regulations, federal regulatory authorities must:

1. Ensure that regulatory officials are aware of their general obligations as laid out in the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT), the North American Free Trade Agreement (NAFTA) Articles on Technical Barriers to Trade (Chapter 9), and Article 405 of the Canadian Agreement on Internal Trade (AIT);
2. Ensure that regulatory officials are aware of other obligations agreed to by the Government of Canada, such as the provisions of the WTO Agreement and NAFTA addressing sanitary and phytosanitary measures (SPS), the AIT provisions relating to specific sectors of the economy, and other accords entered into by Canada such as the Safety of Life At Sea Convention of the International Maritime Organizations; and
3. Adhere to those procedural and substantive obligations agreed to by the Government of Canada through intergovernmental agreements.

In particular, for technical regulations that affect trade, federal regulatory authorities must

4. With regard to notification:
 - Prepublish proposals for new or changed technical regulations in *Canada Gazette, Part I* for a period of at least 75 days, except in urgent circumstances, and take into account comments received;
5. With regard to performance-oriented requirements:
 - Specify, where possible technical regulatory requirements in terms of performance rather than design or descriptive characteristics;
 - give positive consideration to accepting as equivalent other forms of technical regulatory requirements, if satisfied that they adequately fulfil the objectives of the existing regulations;
 - for TBT, ensure technical regulations treat products from one jurisdiction no less favourably than like products from another;
 - for SPS, ensure measures do not arbitrarily or unjustifiably discriminate where identical or similar conditions prevail;
 - ensure technical regulations are no more restrictive of entry into markets than is necessary.

6. With regard to international standards:
 - use available international standards, guidelines and recommendations where those standards achieve the regulatory objective;
7. With regard to enforcement:
 - treat regulatees and products from one jurisdiction no less favourably than those from other jurisdictions when assessing conformity to technical regulatory requirements, providing they are in comparable situations;
8. With regard to complaint resolution:
 - have in place a process to review complaints concerning conformity assessment procedures and must take corrective action when justified.

Responsibilities

The Department of Foreign Affairs and International Trade (DFAIT) is responsible for coordinating the implementation of the WTO and NAFTA Technical Barriers to Trade agreements by federal departments and agencies and for making arrangements to operate the WTO and NAFTA Enquiry Point for the TBT and SPS agreements.

Agriculture and Agri-food Canada has the main responsibility for coordinating the implementation of the WTO and NAFTA SPS agreements by federal departments and agencies, and by provincial and regional bodies.

Industry Canada (IC) is responsible for representing the federal government in the ongoing intergovernmental process under the Agreement on Internal Trade and for coordinating implementing of the Agreement by federal departments and agencies.

The Department of Justice is responsible for advising regulatory authorities on their legal obligations under the above agreements and on how to draft technical regulations so as to comply with them.

Monitoring

Treasury board Secretariat reviews all regulatory proposals for adherence to Treasury Board Policy. DFAIT or IC are notified if there are concerns regarding possible violations of trade agreement obligations.

Enquiries

Enquiries about NAFTA or WTO should be directed to:

Director, Technical Barriers to Trade (EAS),
Department of foreign Affairs and International Trade

Enquiries about the Agreement on Internal Trade should be directed to:

Director General, Internal Trade Consultations
and Federal/Provincial Relations
Industry Canada