

—DISCUSSION—
**ISSUES, IMPLICATIONS AND IMPACTS OF HARMONIZATION,
CONVERGENCE/COMPATIBILITY**

Debra Bryanton

Bredahl/Holleran's paper serves to highlight the complexity of technical requirements and their impact on the trade of agriculture and food products. A common understanding of objectives and adherence to the rights and obligations under bilateral and multilateral trade agreements should lead to greater harmonization/convergence/compatibility, reducing the complication and costs of trade.

GOVERNMENT AND INDUSTRY ROLES IN STANDARDS SETTING

Agriculture and food products are commonly regulated for the protection of human, animal and plant health and consumer/economic fraud prevention. Government standards can be mandatory or voluntary depending on the policy objectives of the standard, with consumer protection requirements most frequently mandatory and quality criteria often voluntary. While governments have traditionally been seen as standard setters and enforcers, over the past decade there has been an increased trend toward industry taking on more responsibility for the safety and quality of products they sell. Many food manufacturers and retailers are taking steps to introduce total quality management and Hazard Analysis and Critical Control Point (HACCP) concepts, which introduce private requirements for suppliers and distributors.

The requirements of private sector buyers may result in domestic and international trade concerns; there is limited authority for government to resolve associated technical issues. While governments must take reasonable measures to ensure that non-governmental entities comply with the relevant provisions of trade agreements, it is not expected that this would extend to government involvement in private buyer-seller transactions.

TRADE AGREEMENTS AND INTERNATIONAL HARMONIZATION

The World Trade Organization (WTO) which resulted from the Uruguay Round on the General Agreement on Tariffs and Trade is important to agriculture and food in that it established and confirmed rights, obligations and disciplines on food safety, animal health, plant health and technical measures (standards, procedures) that directly or indirectly impact on trade. This is of particular importance in a time when tariffs are being reduced as a result of bilateral and multilateral trade agreements and countries are in some cases looking at non-tariff measures as a means to hinder trade. As noted below, several of the rights and obligations under WTO may influence the harmonization and compatibility of standards internationally. Provisions relating to technical trade requirements under NAFTA are consistent with those of the WTO.

Level of Protection/Legitimate Objectives

Countries can establish a desired level of protection for human, animal or plant life or health within its territory e.g., disease freedom, and introduce sanitary and phytosanitary measures to achieve that level of protection. Technical measures such as quality criteria or labelling provisions can be introduced to achieve legitimate objectives e.g., consumer protection. These measures must be consistent with other provisions of the WTO, e.g., they must not be more trade restrictive than necessary to fulfil a legitimate objective, be applied in an arbitrary or discriminatory manner nor constitute a disguised restriction on international trade.

International Standards

The WTO Agreement provides that WTO Members should use international standards where such standards meet their level of protection, and specifically cites three international standards-setting organizations as reference points for such international standards. If a country uses an international standard as the basis for its import measure, it is presumed to be consistent with the obligations of the WTO and, therefore cannot be easily challenged.

Risk Assessment and Science Base

If a country chooses not to use an international standard, then it is to demonstrate, through a risk assessment and sound science, that the international standard does not meet the desired level of protection or legitimate objective.

Equivalency

Countries are required to accept the sanitary or phytosanitary measures of other countries as equivalent, even if these measures differ from their own, if the exporting country can objectively demonstrate that its measures achieve the importing country's appropriate level of protection. Bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures are encouraged. The equivalency concept will be important when international standards are established. Harmonization has traditionally meant "same as" — adoption of international standards may be encouraged through outcome-based rather than prescriptive standards, permitting countries more flexibility in how a level of protection may be met.

THE CHALLENGES

Countries will be requested to provide more detail and scientific rationale for their import measures if they choose to adopt standards that are more stringent than the international standard. There will be a need to put more resources into risk assessment and scientific rationales to support import measures.

The WTO encourages countries to look at the equivalency or outcome of a measure rather than defining a prescriptive standard from which there can be no deviations. This will require resources and the building of scientific and technical expertise on the part of both importing and exporting countries — creating a strong case for international harmonization. The international standards-setting bodies have an important role under the WTO and must focus their efforts on establishing standards that will be adopted with confidence by member countries.

The WTO raises the question of consistency among levels of protection. For example, if a country has stringent requirements to prevent food-borne illnesses in one food product, does not have similar requirements for another food product where the hazard and likelihood of food borne illness are similar, there could be a challenge on the basis of a lack of consistency. The question of consistency has not yet been specifically defined, however, it is anticipated that a common approach among products of similar risk may be a factor to be considered.

The agreement sets out rights and obligations, but is not prescriptive about how such rights and obligations are to be interpreted. It is expected that there will be further interpretation of the WTO as a result of challenges of member countries and decisions made by panels established through dispute settlement processes.

THE OPPORTUNITIES

Trade in food and agricultural products is becoming more global in nature. Food companies have a more global perspective and more often are looking to processing product that will meet the requirements of domestic and export markets. They will strongly influence the move to international standards. As noted by Bredahl/Holleran, international adoption of HACCP-based approaches should lead to greater harmonization of food safety inspection approaches. They also note however, that Canada and the United States are approaching the adoption of HACCP in a different manner. While the approaches to adoption of HACCP may differ, they are based on common HACCP principles and objectives and are expected to be assessed as equivalent for trade purposes.

In response to resource pressures, governments are revisiting their role as regulators. The introduction of cost recovery for activities that are seen to provide private benefit will result in pressure from industry to harmonize rather than face the additional costs of maintaining a unique national approach.

Rights and obligations under the WTO will force governments to revisit the policy and rationale behind their standards and inspection programs. However, it will remain a challenge to balance the sovereign rights of countries to legitimately protect borders against risks and at the same time to provide disciplines on countries using technical requirements as barriers to trade.