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## ***Canada-European Union Trade Negotiations***

### ***7. Technical Barriers to Trade and Regulatory Cooperation***

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***Canada–European Union Trade Negotiations:  
7. Technical Barriers to Trade and Regulatory Cooperation  
(In Brief)***

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# **CANADA–EUROPEAN UNION TRADE NEGOTIATIONS:**

## **7. TECHNICAL BARRIERS TO TRADE AND REGULATORY COOPERATION**

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### **1 INTRODUCTION**

While negotiations for a Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) cover more than 20 subject areas, there are nine of particular interest to Canadians and their EU counterparts. These nine topics are the most sensitive or difficult negotiating issues, or the source of the greatest estimated impacts should CETA negotiations succeed, or the areas of the more controversial elements. This paper discusses technical barriers to trade (TBT) and regulatory cooperation.<sup>1</sup>

### **2 NEGOTIATION ISSUES**

Most, if not all, of the products that consumers buy are regulated by technical requirements affecting their size, shape, design, labelling, marketing, packaging, functionality or performance. Technical specifications for cars, labelling of food products, and safety and energy efficiency of home appliances are examples of such requirements. Governments introduce these requirements to meet legitimate public policy objectives, such as protecting human health and safety, animal and plant life and health or the environment, or safeguarding consumers from deceptive practices. Non-governmental organizations, such as producer associations, may also implement technical requirements (e.g., to ensure compatibility between products), mainly through voluntary standards. When such practices and standards differ among countries, they can constitute technical barriers to trade and can affect the competitiveness of exporters.

The World Trade Organization's TBT Agreement and most bilateral trade agreements globally recognize countries' rights to adopt the standards they consider appropriate to protect, for example, human and animal health or the environment, or to meet other consumer interests. Moreover, World Trade Organization (WTO) members can take the measures necessary to ensure their standards are met. That being said, these requirements are subject to certain disciplines (e.g., transparency, no discrimination and encouragement of international standards).

A number of exporters who wish to enter the European market or who are currently competing in that market, have long expressed some frustration regarding the complexity of EU regulations and standards as well as the European Commission's unwillingness to reach mutual recognition agreements in key industrial and agricultural sectors to facilitate trade.

The application of the precautionary principle<sup>2</sup> in Europe is also controversial, and some see this application as a protectionist measure. Indeed, while EU officials have frequently referred to the precautionary principle as a necessary "framework for

learning in the face of uncertainty,” others have embraced the concept as a metaphor for protecting the European “way of life” against the “Americanization” of European commercial and agricultural practices.

In that context, Canada is expected to seek CETA provisions that will ease the entry of Canadian goods into the European market by facilitating the accreditation of Canadian conformity-assessment and certification bodies, promoting mutual recognition between bodies, and increasing transparency in developing regulations and standards.

Judging from past bilateral agreements negotiated by Canada and by the European Union, it would be surprising if the final text on TBT in the CETA deviated significantly from the WTO TBT Agreement. According to initial reports, the TBT chapter is likely to include commitments from both sides to stricter transparency, such as early notification of regulatory measures and standards adopted by either party. It is also likely to spell out how regulatory impact analyses and conformity assessments are conducted.

Enhanced regulatory cooperation between the Government of Canada and the European Commission is one way that both parties could address some of the barriers to trade that result from technical regulations and conflicting standards. This is why Canada has been pushing for the inclusion of a stand-alone chapter on regulatory cooperation in the CETA. This approach would differ from other trade agreements Canada has finalized, in which only few, specific provisions, if any, on regulatory cooperation have been included in a broader TBT chapter. Even if the provisions in any such chapter are voluntary, formalizing this cooperation and encouraging an ongoing dialogue between both parties could help prevent and eliminate unnecessary barriers to trade and investment, while ensuring more effective regulations to achieve public policy objectives.

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## NOTES

1. Other subjects covered in this series are market access in agriculture, non-agricultural market access, trade in services, investment protection, government procurement, intellectual property protection, labour mobility and dispute settlement.
2. The precautionary principle states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action. When extensive scientific knowledge on the matter is lacking, this principle allows policy-makers to make discretionary decisions in situations when harm may result from taking a particular course or making a certain decision.