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Biosafety Protocol & Voluntary Trilateral Arrangement

Speaking Notes for
Blair Coomber, Director General
International Trade Policy Directorate
Agriculture and Agri-Food Canada
Ottawa

- AS MANY OF YOU KNOW, THE CARTAGENA PROTOCOL ON BIOSAFETY (BIOSAFETY PROTOCOL) ENTERED INTO FORCE ON SEPTEMBER 11, 2003. THE PROTOCOL HAS BEEN SIGNED BY 110 COUNTRIES AND, TO THIS DATE, IT HAS BEEN RATIFIED BY MORE THAN 80 COUNTRIES.
- ITS INTENT IS TO PROTECT BIODIVERSITY FROM THE POTENTIAL RISKS THAT TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS (LMOs) MAY POSE ON THE ENVIRONMENT.
- ITS SCOPE INCLUDES ALL LIVING MODIFIED ORGANISMS, NOT JUST THE GENETICALLY MODIFIED AGRICULTURE COMMODITIES THAT CURRENTLY EXIST. LMOs INCLUDE VETERINARY BIOLOGICS, MICRO-ORGANISMS, SEEDLINGS, AND TRANSGENIC FISH.
- THE PURPOSE OF MY SHORT PRESENTATION TODAY IS TO OUTLINE A CANADIAN TRADE AND REGULATORY PERSPECTIVE ON THIS INTERNATIONAL AGREEMENT.
- AS YOU MAY KNOW, CANADA HAS RATIFIED THE PROTOCOL'S PARENT CONVENTION ON BIOLOGICAL DIVERSITY AND SUPPORTS THE BROAD ENVIRONMENTAL OBJECTIVES OF THE BIOSAFETY PROTOCOL. CANADA ALSO SIGNED THE BIOSAFETY PROTOCOL IN APRIL 2001.
- IN NOVEMBER 2003, WE ANNOUNCED OUR DECISION TO NOT RATIFY THE PROTOCOL AT THIS TIME. OUR POSITION IS THAT GREATER CLARITY IS NEEDED REGARDING ITS IMPLEMENTATION. I WILL EXPAND ON THIS POINT IN A FEW MINUTES.
- SINCE CANADA SIGNED THE PROTOCOL IN 2001, WE BEEN REVIEWING THE PROTOCOL FROM SEVERAL PERSPECTIVES:
 - o AS A COUNTRY WISHING TO CONTRIBUTE TOWARD THE OBJECTIVES OF THE PROTOCOL.

- AS A COUNTRY DEDICATED TO SUPPORT INNOVATION TO ITS AGRI-FOOD SECTOR AND TO MAINTAINING A COMPETITIVE SUPPLIER'S POSITION.
- AS A PROSPECTIVE PARTY TO THE PROTOCOL. IF CANADA BECOMES A PARTY TO THE PROTOCOL, IT WILL BE BOUND TO IMPLEMENT THE REQUIREMENTS IN ITS REGULATIONS. WE WANT TO ENSURE THAT THESE REQUIREMENTS REMAIN CONSISTENT WITH OUR CANADIAN REGULATORY REGIME.
- IN THIS REVIEW PROCESS, WE HAVE ENGAGED OUR CANADIAN STAKEHOLDERS -- PARTICULARLY AGRICULTURE AND BIOTECHNOLOGY STAKEHOLDERS -- TO REVIEW THE PROTOCOL REQUIREMENTS AND TO DEVELOP POSITIONS.
- WE SEE THIS WORK AS AN ON-GOING PROCESS TO ENSURE THAT OUR STAKEHOLDERS CAN EFFICIENTLY OPERATE AND COMPETE UNDER A CLEAR SET OF RULES.
- AT THE MOMENT, THE DISCUSSIONS REGARDING THE PROTOCOL FOCUS ON BULK AGRICULTURE COMMODITIES AS THEY ARE CURRENTLY IN PRODUCTION AND TRADED INTERNATIONALLY. EXAMPLES OF SUCH LMOs INCLUDE GENETICALLY MODIFIED CANOLA, CORN AND SOYBEAN.
- IT IS ALSO IMPORTANT TO NOTE THAT BULK AGRICULTURAL LMOs AND NON-LMOs ARE USUALLY TRANSPORTED VIA HIGH THROUGHPUT ELEVATORS AND HANDLING SYSTEMS, INCLUDING OCEAN GOING VESSELS. FOR THIS REASON, THE PROTOCOL'S PRACTICAL IMPLICATIONS GO WELL BEYOND THE GM VARIETIES OF CANOLA, CORN AND SOYBEAN THAT ARE APPROVED AND IN COMMERCE IN CANADA.
- CANADA IS A MAJOR PRODUCER OF GRAINS AND OILSEEDS AND ALSO A MAJOR EXPORTER OF THESE COMMODITIES. ON AVERAGE -- BASED ON RECENT YEARS -- CANADA PRODUCES ROUGHLY 55 MILLION METRIC TONNES OF WHEAT, OATS, BARLEY, CANOLA, CORN AND SOYBEAN. EACH YEAR, WE EXPORT APPROXIMATELY 22 MILLION TONNES OF THESE COMMODITIES.
- I MENTION THESE NUMBERS TO STRESS THAT PRODUCTION OF GRAINS AND OILSEEDS IS A MAJOR ACTIVITY IN CANADA. IT

GENERATES A GOOD SHARE OF OUR AGRI-FOOD EXPORT REVENUES.

- THE ABOVE CONSIDERATIONS, NAMELY OUR SUPPORT FOR THE ENVIRONMENTAL OBJECTIVES OF THE PROTOCOL, OUR POSITION AS A PROSPECTIVE PARTY, AND AS A MAJOR EXPORTER OF GRAINS AND OILSEEDS – INCLUDING LMOs – INFLUENCE OUR NATIONAL APPROACH TO THIS MULTILATERAL ENVIRONMENTAL AGREEMENT.

- FROM A BROADER PERSPECTIVE, THE PROTOCOL CREATES A SPECIAL SET OF CHALLENGES FOR EXPORTERS OF LMOs.

- IT INTEGRATES COMPLEX SCIENCE, TECHNOLOGY, REGULATORY POLICY AND TRADE. YET, SOME OF ITS MAIN PROVISIONS LACK THE CLARITY REQUIRED FOR IMMEDIATE IMPLEMENTATION.

- A LARGE NUMBER OF CURRENT PARTIES TO THE PROTOCOL ARE DEVELOPING COUNTRIES, COUNTRIES THAT HAVE RICH BIODIVERSITIES AND DO NOT CURRENTLY HAVE IN PLACE REGULATORY REGIMES TO DEVELOP OR EFFECTIVELY REGULATE PRODUCTS OF BIOTECHNOLOGY, INCLUDING LMOs.

- OTHER PARTIES TO THE PROTOCOL HAVE ADOPTED A PRECAUTIONARY APPROACH TOWARD BIOTECHNOLOGY AND FOOD SAFETY ISSUES IN GENERAL. THE APPLICATION OF THIS APPROACH CAN REDUCE TRADE PREDICTABILITY FOR EXPORTERS.

- WITH THE EXCEPTION OF BRAZIL NONE OF THE MAJOR EXPORTERS OF LMOs HAVE RATIFIED THE PROTOCOL AT THIS STAGE.

- WHETHER CANADA -- AS MAJOR EXPORTER OF LMOs – IS A PARTY TO THE PROTOCOL OR NOT, THE RULES OF THE PROTOCOL ARE SUCH THAT CANADIAN EXPORTERS MUST COMPLY WITH REGULATIONS OF THE PARTIES OF IMPORT.

LACK OF CLARITY

- DEVELOPERS, PRODUCERS, IMPORTERS, AND EXPORTERS OF LMOs HAVE A LEGITIMATE INTEREST IN KNOWING HOW THE PROVISIONS OF THE PROTOCOL WILL AFFECT THEIR BUSINESS.

- IN MY SHORT INTRODUCTION, I REFERRED TO THE LACK OF CLARITY OF THE PROTOCOL PROVISIONS. THE STRONG MESSAGE THAT WE TOOK BACK FROM OUR CANADIAN INDUSTRY CONSULTATIONS IS THAT THE RULES FOR THE TRANSBOUNDARY MOVEMENTS OF LMOs MUST BE CLEAR AND PREDICTABLE IN ORDER FOR THEM TO OPERATE INTERNATIONALLY, WITHOUT UNNECESSARY BARRIERS TO TRADE. IN PARTICULAR, I REFER TO POTENTIAL TECHNICAL TRADE BARRIERS WHICH HAVE VERY LITTLE OR NO RELATION WITH ENVIRONMENTAL OBJECTIVES.
- A CRITICAL PROVISION FOR OUR INDUSTRY IS THE REQUIREMENT THAT DOCUMENTATION SHOULD ACCOMPANY SHIPMENTS OF LMOs FOR FOOD OR FEED OR FOR PROCESSING AND WHICH CLEARLY IDENTIFY THAT THE SHIPMENT “MAY CONTAIN” LMOs.

BILATERAL/MULTILATERAL ARRANGEMENTS

- WHILE CANADA IS COMMITTED TO SEEK CLARIFICATION ON THIS PROVISION AT MOP-1, IT IS DIFFICULT TO ANTICIPATE THE EXTENT TO WHICH PROGRESS WILL BE REALIZED IN KUALA LUMPUR. GIVEN THE COMPLEXITY OF THE ISSUE AND THE LACK OF REGULATORY CAPACITY OF SEVERAL PARTY MEMBERS, THE ISSUE MAY TAKE MORE THAN ONE MEETING OF PARTIES TO RESOLVE.
- IT IS FOR THIS REASON THAT CANADA’S STRATEGY CONCERNING THE PROTOCOL INCLUDES THE NEGOTIATION OF BILATERAL/MULTILATERAL ARRANGEMENTS WITH IMPORTING COUNTRIES.
- THE OBJECTIVE OF THE ARRANGEMENT IS TO PROVIDE INTERIM RULES ON DOCUMENTATION REQUIREMENTS OF THE PROTOCOL TO FACILITATE TRADE OF LMOs DESTINED FOR FOOD OR FEED, OR FOR PROCESSING.
- THIS VOLUNTARY ARRANGEMENT CONCEPT BEGAN TO TAKE SHAPE AT A MEETING OF EXPORTING COUNTRIES IN JULY 2003 (BUENOS AIRES). THE UNITED STATES, AUSTRALIA, NEW ZEALAND, ARGENTINA, BRAZIL, URUGUAY AND CANADA WERE REPRESENTED.
- THE MEETING GENERATED CONSENSUS ON COMMON ELEMENTS OF AN ARRANGEMENT FRAMEWORK. WE ALSO CLARIFIED THE SCOPE FOR THE APPLICATION OF THE “MAY CONTAIN” DOCUMENTATION ON SHIPMENTS OF LMOs.

- AS PER THE ARRANGEMENT, THE “MAY CONTAIN” DOCUMENTATION WILL BE USED FOR ALL TRANSBOUNDARY MOVEMENTS OF COMMODITIES INTENDED FOR FOOD OR FEED, OR FOR PROCESSING, WHERE AN LMO OF THAT COMMODITY SPECIES IS AUTHORIZED IN, OR SOLD FROM, A COUNTRY OF EXPORT.
- TWO EXCEPTIONS WILL APPLY, AS FOLLOWS:
 - (i) SHIPMENTS FOR WHICH THE EXPORTING COUNTRY DOES NOT HAVE IN COMMERCE ANY LMO OF THAT SPECIES. IN OTHER WORDS, A SHIPMENT OF CANOLA FROM A COUNTRY WHICH DOES NOT HAVE GM VARIETIES OF CANOLA IN COMMERCE; or
 - (ii) WHEN THE EXPORTER AND IMPORTER HAVE CONTRACTUALLY DEFINED A “NON-LMO SHIPMENT”; PROVIDED THAT SUCH SHIPMENT ACHIEVES A MINIMUM OF 95 PERCENT NON-LMO CONTENT, AND THAT SUCH DEFINITION DOES NOT CONFLICT WITH REGULATIONS OF THE IMPORTING COUNTRY.
- AS SUCH, A NON-LMO SHIPMENT DOES NOT REQUIRE THE “MAY CONTAIN” DOCUMENTATION, AS LONG AS THE DOMESTIC REGULATIONS OF THE IMPORTING COUNTRY ARE MET.
- THE ARRANGEMENT INDICATES THAT ADVENTITIOUS PRESENCE OF LMOs IN A NON-LMO SHIPMENT SHOULD NOT BE CONSIDERED A TRIGGER FOR THE “MAY CONTAIN” DOCUMENTATION. ADVENTITIOUS PRESENCE REFERS TO THE POTENTIAL UNAVOIDABLE PRESENCE OF TRACE LEVELS OF LMOs THAT MAY RESULT FROM THE COMMON USE OF BULK COMMODITY HANDLING FACILITIES.
- THE ARRANGEMENT INDICATES THAT THE “MAY CONTAIN” LANGUAGE, WHEN INCLUDED, SHOULD STATE THE FOLLOWING:

“Cartagena Biosafety Protocol Provision: This shipment may contain living modified organisms intended for direct use as food or feed, or for processing, that are not intended for intentional introduction into the environment.”
- THE ARRANGEMENT ALSO INDICATES THAT THE “MAY CONTAIN” LANGUAGE SHOULD APPEAR ON THE COMMERCIAL INVOICE AS PROVIDED BY THE EXPORTER. AND THAT THE IMPORTER IS

RESPONSIBLE FOR RECEIVING THE INVOICE AND MAINTAINING IT AFTER ENTRY.

- LAST BUT NOT LEAST, THE ARRANGEMENT DOES NOT AFFECT A PARTICIPANT'S DECISION ON THE IMPORT OF LMO FOR FEED, OR FOOD OR PROCESSING UNDER ITS DOMESTIC REGULATORY FRAMEWORK OR ACCORDING TO A RISK ASSESSMENT, PURSUANT TO ARTICLE 11 OF THE BSP.

WHAT THE ARRANGEMENT ACCOMPLISHES

- THE NON-BINDING TRILATERAL ARRANGEMENT SIGNED BY CANADA, MEXICO AND THE UNITED STATES ON OCTOBER 28, 2003 ACCOMPLISHES A NUMBER OF THINGS.
- THE ARRANGEMENT PROVIDES PREDICTABLE AND PRAGMATIC CONDITIONS FOR EXPORTERS OF LMOs DESTINED FOR FOOD OR FEED OR FOR PROCESSING. (IT IS ALSO CONSISTENT WITH THE ENVIRONMENTAL OBJECTIVES OF THE PROTOCOL.)
- THE TRILATERAL ARRANGEMENT OUTLINES WHICH SHIPMENTS REQUIRE THE "MAY CONTAIN" DOCUMENTATION.
- IN SHORT: IF THE SHIPMENT CONTAINS LMOs APPROVED IN THE COUNTRY OF PRODUCTION AND IN COMMERCIAL PRODUCTION, AND IS NOT EFFECTIVELY SEGREGATED TO MEET THE 95% THRESHOLD, THE SHIPMENT REQUIRES THE "MAY CONTAIN" DOCUMENTATION.

BENEFITS TO THE NON-BINDING TRILATERAL ARRANGEMENT

- THE ARRANGEMENT CLARIFIES THE SCOPE FOR THE APPLICATION OF THE "MAY CONTAIN" DOCUMENTATION ON EXPORTS OF AGRICULTURE COMMODITIES. AS A RESULT, EXPORTERS CAN DETERMINE WHAT SHIPMENTS DO OR DO NOT REQUIRE DOCUMENTATION.
- BY COMMERCIAL CONTRACT, EXPORTERS CAN IDENTIFY WHAT CONSTITUTES A "NON-LMO" SHIPMENT, PROVIDING THAT IT MEETS A MINIMUM 95% PURITY LEVEL. THIS PROCESS AVOIDS APPLYING DOCUMENTATION ONTO ALL SHIPMENTS.
- AS AN EXAMPLE, IDENTITY PRESERVED SOYBEANS DESTINED FOR FOOD OR FEED OR FOR PROCESSING IN ANOTHER COUNTRY WILL NOT REQUIRE PROTOCOL DOCUMENTATION IF THE

COMMERCIAL CONTRACT STIPULATES THAT THE EXPORTER MEETS THE CONDITIONS OF A NON-LMO SHIPMENT.

- I ALSO STRESS THAT COMMERCIAL CONTRACTS UNDER THE TRILATERAL ARRANGEMENT CANNOT COMPROMISE THE DOMESTIC REGULATIONS OF THE EXPORTING COUNTRY AND OF THE IMPORTING PARTY.

EXPANSION OF THE TRILATERAL

- TOGETHER WITH THE UNITED STATES AND MEXICO, WE ARE CURRENTLY PROMOTING THE ARRANGEMENT AMONG COUNTRIES THAT HAVE IN PLACE A DOMESTIC REGULATORY REGIME.
- THIS WAS THE CASE TWO WEEKS AGO IN BUENOS AIRES AT A SESSION OF THE INTER-AMERICAN INSTITUTE FOR COOPERATION IN AGRICULTURE (IICA) HOSTED BY ARGENTINA.
- THE MEETING ALSO PROVIDED AN OPPORTUNITY TO DISCUSS THE COMMERCIAL ASPECTS OF THE PROTOCOL AND TO EXCHANGE INFORMATION REGARDING MECHANISMS TO FACILITATE THE PRACTICAL APPLICATION OF THE DOCUMENTATION REQUIREMENTS.

NEXT STEPS

- IN TERMS OF IMMEDIATE NEXT STEPS, OUR CANADIAN DELEGATION IS CURRENTLY ON ITS WAY TO THE FIRST MEETING OF PARTIES IN KUALA LUMPUR.
- ASIDE FROM THE DOCUMENTATION REQUIREMENTS, THERE ARE SEVERAL OTHER PROVISIONS FOR WHICH CANADA IS SEEKING CLARITY. THESE INCLUDE:
 - . OBLIGATIONS RELATING TO TRANSIT;
 - . UNINTENTIONAL SHIPMENTS;
 - . WHETHER THERE NEEDS TO BE ADDITIONAL RULES FOR TRADE WITH NON-PARTIES;
 - . PROTOCOL'S DECISION MAKING PROCEDURES;
 - . HOW TO ENSURE COMPLIANCE WITH THE PROTOCOL; AND,
 - . HOW THE PROTOCOL WILL WORK WITH OTHER INTERNATIONAL AGREEMENTS SUCH AS THE WORLD TRADE ORGANIZATION (WTO).

- IN CLOSING, WE BELIEVE THAT TRADE AND ENVIRONMENT OBJECTIVES CAN BE MUTUALLY COMPATIBLE, PROVIDED THAT THE RULES ARE CLEAR AND DO NOT CONTRIBUTE TO ERECT UNNECESSARY TECHNICAL BARRIERS TO TRADE.

- WHILE CANADA IS NOT CURRENTLY A PARTY TO THE PROTOCOL, IT IS COMMITTED TO DEVELOP A PRAGMATIC INFLUENCE IN FUTURE NEGOTIATIONS AND DECISIONS THAT WILL HELP TO SHAPE THIS NEW ENVIRONMENTAL DISCIPLINE.

- THANK YOU FOR YOUR ATTENTION

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