

Canada's Ban of Certain Single Use Plastic Items Will Have to Comply with The WTO TBT Agreement and Other Trade Obligations

On 7 October 2020, Canada released its preliminary list of banned single-use plastic items. The list is included in Table 3a of Environment Canada's [Discussion paper: A proposed integrated management approach to plastic products to prevent waste and pollution](#). The listed products are:

- plastic checkout bags
- stir sticks
- 6-pack rings
- food service ware made from problematic plastics
- straws
- cutlery

While Canada's trade obligations permit measures necessary to protect the lives and health of people, animals and plants, where such measures are trade restrictive or discriminatory, detailed requirements must be met. Among other things, the measures must be the least trade restrictive means of achieving the public health and/or environmental objectives and must not be designed or applied in an arbitrary manner (i.e., a manner that is not rationally connected to the objective or does not contribute to the fulfilment of the objective). Canada's measure, including its preliminary list of banned products, will have to be carefully scrutinized against these requirements.

Tereposky & DeRose is Canada's most experienced law firm in advising on compliance with Canada's international trade obligations and one of the top firms in the world on compliance with the WTO *Agreement on Technical Barriers to Trade* (TBT Agreement). Our lawyers were counsel before the WTO Appellate Body in the trilogy of WTO disputes that defined the interpretation and application of the provisions in the TBT Agreement and the *General Agreement on Tariffs and Trade, 1994* (GATT 1994) that prohibit discriminatory treatment and trade-restrictive measures (*United States – Measures Affecting the Production and Sale of Clove Cigarettes* ([DS406](#)); *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* ([DS381](#)); and *United States – Certain Country of Origin Labelling* ([DS384](#), [DS386](#))). These provisions will be directly applicable to Canada's new ban on certain single-use plastics.

If you have any questions about the ban, please do not hesitate to contact us.

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