



Competition Working Group

2003 Discussion Paper – Draft

1 Introduction

- 1.1 The main priority of CERT is to act in such a way that all Canadian and EU government policies affecting bilateral trade should be the least restrictive possible, avoiding unnecessary barriers to trade².
- 1.2 The Canada Europe Roundtable for Business (CERT), whose goal is to reduce obstructions to business flow and enhance trade, points out that there are considerable gains to be made from Europe and Canada working more closely on the development and alignment of their regulatory structures.
- 1.3 As a consequence, the European Commission's report on EU governance as well as the Smart Regulation initiative launched by the Canadian government which aims at creating greater regulatory coherence have been particularly well greeted by CERT.
- 1.4 Like other regulation, competition laws and policies can impede trade and investment.
- 1.5 In order to facilitate bilateral trade, competition laws should be transparent and non-discriminatory, and regulatory barriers in the competition filed that impede investment are as serious as other impediments such as tariff barriers.
- 1.6 Regulatory barriers in the competition context include not only the existence of regulation, but also the degree of convergence of regulation between trading partners. For example, more onerous or different reporting obligations, longer pre-merger waiting periods, and enforcement techniques that raise business concerns and lead to a chilling effect on investment.
- 1.7 In addition, business has concerns about differing regulatory filing requirements and filing thresholds among jurisdictions.
- 1.8 The special contribution that CERT can make is to help the Canadian and European Community develop rules that maximize the scope and ability of business to work productively to create wealth and employment, while maintaining appropriate individual and business freedoms.
- 1.9 In that spirit, CERT has identified two particular areas in which we welcome the opportunity to engage in a dialogue aimed at developing initiatives to reduce barriers to trade and investment between Canada and Europe:
 - 1.9.1 Provide input regarding possible steps to reduce impediments to bilateral trade and investment in the context of competition laws in Canada and Europe and bilateral cooperation between Canadian and EU competition authorities; and
 - 1.9.2 Provide input regarding business views on the competition elements of the Doha declaration and the mandate of the Working Group on the Interaction between Trade and Competition.

² In terms of tariff issues as well as in terms of non-tariff barriers.

2 Steps to Reduce Barriers to Trade and Investment

- 2.1 Business representatives are concerned about safeguards for the protection of confidential information that is exchanged between competition authorities. This is an international issue and one where Canada and the EU can set a new standard in cooperation that addresses the concerns of business. Further, business would benefit from greater convergence in both procedural and substantive aspects of Canada and Europe's respective competition laws to facilitate ease and efficiency of investment initiatives.
- 2.2 In particular, the existing cooperation agreement between Canada and the EU could be strengthened to enhance the transparency and fairness of the cooperation process, and strengthen and clarifying the safeguards for confidential information.
- 2.3 In 1999 an Agreement was adopted between the European Communities and the Government of Canada regarding the application of their competition laws¹.
- 2.4 This Agreement has two main purposes: on the one hand, promote cooperation and coordination between competition Authorities of the European Union and Canada; on the other hand, lessen the possibility or impact of differences between the Parties in the application of their competition laws.

3 Three years after the adoption of the Agreement and in order to prepare the CERT meeting in connection with a EU-Canada Summit, it is necessary to check if it has fulfilled the roles it had been attributed and to identify the ways and means to improve this regulatory framework in the interest of the undertakings.

3 Regulatory co-operation

- 3.1 Regulatory cooperation has been an achievement for both the EU and Canada regarding the application of their competition laws. However, improvements are still possible.
- 3.2 As a matter of fact, CERT is particularly pleased about the adoption of the 1999 Agreement and can conclude to the effectiveness of this Agreement.
- 3.3 Indeed, the Agreement facilitates the running of competition procedures that concern both the European and Canadian markets. This achievement has been possible thanks to the coordination between Commission officials and their Canadian counterparts. These officials remained in close and mutually beneficial contact all along the procedure by sharing information and by discussing and developing consistent analysis of the substantive issues.
- 3.4 Through the verifications carried out beforehand (i.e. notification and consultations, semi-annual meetings of the competition Authorities) and the measures coming after a merger (e.g. coordination of enforcement activities), a real bilateral practice has been developed as regards the application of EC and Canada's competition laws.
- 3.5 Thus, the cooperation is of mutual benefit to both sides in terms of better understanding of each other's competition policy regimes. This is the reason why CERT would like to go further in this direction.

Effectiveness of
the bilateral
Agreement

¹ OJ L. 175/50, July 10th 1999.

Perspective of evolution

- 3.6 Regarding the encouraging results linked to the Agreement, CERT wishes to reach a higher convergence of competition rules and procedures, especially concerning vertical and horizontal agreements, mergers and concentrations. Such a convergence of rules and procedures would facilitate the tasks of EU and Canadian undertakings when they have to deal with antitrust authorities. This may imply improving the Agreement.
- 3.7 For instance, it may be appropriate to initiate an assessment of their respective legislations concerning exemption regulations. An assessment of notification rules (thresholds, timing of notification, market definition) for mergers would be valuable.
- 3.8 Thus, to improve the cooperation between the EU and Canada, CERT proposes a systematic consultation with businesses on these matters.

4 Action within a multilateral framework

- 4.1 In light of the ongoing negotiations of the Doha Round, the majority of the bilateral trade and tariff issues will be dealt with from a multilateral perspective.
- 4.2 CERT does fully support the objectives of the Doha Round. It estimates that the European Union and Canada, working together, should have a leading role within a multilateral framework such as the WTO. Indeed, it strongly believes in the need to eliminate any obstacle to trade and investment.
- 4.3 The “core principles” identified in the Doha declaration that set out the mandate of the Working Party on the Interaction Between Trade and Competition – transparency, non-discrimination and procedural fairness – are fundamental and they should be reflected in trading partners’ competition laws.
- 4.4 CERT strongly supports the view that competition laws should not discriminate on the basis of nationality, and that non-discrimination should be considered a core principle of all competition laws. The principle of national treatment should apply to competition laws, i.e., the principle that a government should treat the goods, services and persons of other nationalities no less favorably than it treats its own.
- 4.5 Due process and transparency are also important core principles to be respected and applied in the design, implementation and enforcement of competition laws at the national level and with respect to any multi-jurisdictional enforcement cooperation. Both principles are essential because they provide stakeholders – the public, consumers and competitors – some assurance that the system will produce consistent and rational results and generate confidence in the system of competition law enforcement.
- 4.6 While the future direction of any development of competition norms in a multilateral agreement within the WTO remains to be determined at the Cancun round of negotiations this fall, CERT would like to see enhanced consultation with business people by governments participating in the international convergence discussion to allow them to understand the commercial costs of inconsistent rules in this area.
- 4.7 CERT could provide to both partners the business perspective on competition policy issues currently being studied by the WTO working group on the interaction between trade and competition policy.
- 4.8 Indeed, guaranteeing a level playing field between undertakings implies implementing appropriate competition rules in other economic areas, such as Japan, China or India. This would avoid non tariff-barriers issues and lead to suitable competition conditions.
- 4.9 In the perspective of the WTO negotiations, CERT would also be inclined to discuss how best to encourage developing countries to participate and develop their own competition regimes.

