



CERT Working Groups – Overview of Policy Priorities

March 10, 2004

Introduction

In the relationship between Canada and the EU, the most restrictive obstacles to trade and investment are those related to different regulatory requirements on both sides of the Atlantic. With the aim of strengthening trade and investment within the transatlantic business community, the Canada Europe Round Table for Business (CERT) has developed a number of recommendations to intensify regulatory dialogue between the EU and Canada, and to address regulatory issues affecting specific sectors. These recommendations are related to:

- Enhanced transparency between Canadian and EU authorities in regulatory formation
- Mutual recognition of national standards, conformity assessment procedures, regulatory requirements and professional qualifications. This includes:
 - certification/verification requirements that determine how compliance with regulations is to be determined, including labelling and similar procedures; and,
 - testing procedures for conformity assessment.
- The convergence of Canadian and EU competition policies.
- Enhanced cooperation in research & development.

Enhanced Transparency between administrations

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Simply put, different regulatory outcomes should be avoided from the beginning. Therefore it is necessary that EU and Canadian authorities define mechanisms by which they inform each other at an early stage when formulating legislation or regulatory decisions. These mechanisms should include, among others, regularly scheduled exchanges and contacts of EU and Canadian officials and data sharing between both partners.

This exchange of information at an early stage should be initiated in areas where there is a clear need to work together and where a basis for co-operation exists. Thus, and as a preliminary step, we call for a prioritisation of sectors where enhanced co-operation should be developed in the first place. The specific sectors identified in the next section of this paper entitled, "Sectoral Regulatory Issues" should form the initial list in this case.

A good step in the right direction would also be to keep both sides informed of all the new actions and regulatory changes undertaken under the Smart Regulations initiative in the Canadian case and of those changes introduced under the framework of the different communications on "Better Regulation" issued by the European Commission. An annual comparison of the legislative work plans on business relevant issues could also be helpful.

International coherence-WTO / use of international standards

Strengthened regulatory co-operation should also support international schemes already in place, such as the implementation of the World Trade Organisation (WTO) Agreements on Technical Barriers to Trade (TBT) and on Sanitary and Phytosanitary Measures (SPS). Also, according to WTO principles, regulatory co-operation should ensure respect for the concepts of "national treatment" and "most favoured nation".

Furthermore, standards and technical regulations should not be used to favour national products and create barriers to trade. The mutual recognition of national standards and regulatory requirements by recognition of each other's conformity assessment procedures will enhance competitiveness at the global level while allowing for differences in national environmental policy objectives.

Coherence between regulatory schemes with US.

Additionally, an enhanced regulatory dialogue between the EU and Canada should seek a maximum degree of coherence with the co-operation that both, the EU and Canada, have already developed with the US in this area.

Involvement of stakeholders

A higher involvement of stakeholders, both national and foreign, is essential to improve the quality of new regulations and prevent the adoption of requirements that may result in new trade barriers between the EU and Canada. Accordingly, and in parallel to the current Commission activities in this area, the Canadian administration and the European Commission should develop common "minimum standards of consultation" to be applied on both sides of the Atlantic. These standards should also include information transparency for any meeting between Canadian and European regulatory authorities on specific policy issues and the conclusions of such meetings.

Risk assessment

The area of risk assessment and precautionary measures to prevent harm to the environment or the health/safety of consumers constitutes one of the main sources of divergence in regulatory outcomes. A common approach in this area based on the principles of mutual recognition¹, equivalency² and harmonisation³ should be guided by a series of core principles. First, any decision must be based on sound science and not be misleading. Second, the communication of information about risk between experts, policy-makers and legislators from both sides of the Atlantic must be improved.

Mutual Recognition

Priority Areas

Furthermore, standards and technical regulations should not be used to favour national products and create barriers to trade. When governments regulate for the purposes of protecting domestic environment, health and safety, such measures must ensure that they achieve their policy objectives and are not abused for trade protection purposes. Therefore, when setting national regulations, both governments should be guided by international standards wherever appropriate. More importantly, they must ensure mutual recognition of national standards and regulatory requirements by recognition of each other's conformity assessment procedures through, for example, Mutual Recognition Agreements (MRAs) or other means. This type of policy approach will enhance competitiveness at the global level while allowing for differences in national environmental policy objectives.

CERT is in favour of MRA's in the following areas:

- Stock exchanges
- Forest products
- Professional qualifications – engineering services
- Pharmaceuticals – paediatric indications
- Environmental standards (aluminium sector)
- Chemicals

¹ Meaning mutual recognition of conformity assessment of regulated products so that products are tested just once where each importing party is given the authority to test and certify products against the regulatory requirements of the other party, in its own territory and prior to export.

² May be applied when regulations in each territory are different but they have and fulfil a similar objective. In this case, both parties can agree that products conforming to the other party's regulations can be placed on the market in the territory of either party as though it conformed to the rules in force there.

³ Drawing up of common or identical rules by a group of authorities, with the intention that the mandatory rules governing a product or service shall be the same among them. Shortcomings of this approach are that it is costly and that different regulatory systems may not be compatible.

Competition Policy

Like other regulation, competition laws and policies can impede trade and investment. In order to facilitate bilateral trade, competition laws should be transparent and non-discriminatory, and regulatory barriers in the competition field that impede investment are as serious as other impediments such as tariff barriers.

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. In addition, business has concerns about differing regulatory filing requirements and filing thresholds among jurisdictions.

Priority Areas

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:

- 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
- 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.

Confidential Information

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.

1999 Canada-EU Competition Agreement

In particular, the 1999 Agreement was adopted between the European Communities and the Government of Canada regarding the application of their competition laws¹. Bilateral cooperation could be strengthened to enhance the transparency and fairness of the cooperation process, and strengthen and clarifying the safeguards for confidential information.

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.

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. Thus, to improve the cooperation between the EU and Canada, CERT proposes a systematic consultation with businesses on these matters.

WTO

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.

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.

¹ OJ L. 175/50, July 10th 1999.

Research & Development

Priorities

The CERT working group on Research & Development will soon be operational. The overall goal of this working group will be to promote a higher rate of transatlantic participation in R&D initiatives. This includes the development of agreements that allow for simpler and more uniform application rules, streamlined processes and harmonized time frames for R&D programmes. Sharing of research funds, especially in highly specialized areas where one or other of the trading partners lacks the facilities or expertise to conduct the research on domestic soil, will also be a priority. Initiatives such as the FEAST programme between Australia and the EU could serve as a model for future Canada-EU R&D cooperation.

Conclusion

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To further promote and strengthen trade and investment within the transatlantic business community, especially in the context of avoiding non-tariff barriers, CERT urges Canada and the European Union to negotiate a trade and investment enhancement agreement on that incorporates all of the recommendations outlined in this paper.

Implementing these recommendations in such an agreement will lead to a Canada-EU regulatory framework that will:

- Avoid duplication;
- Streamline processes;
- Reduce and eliminate obstructions to business transactions;
- Facilitate trade, and;
- Prevent trade disputes.

More detailed policy papers on the issues raised in this document are available by request from info@canada-europe.be. Further information on CERT, our working groups and our programme of events is available on our website, in both English and French, at www.canada-europe.org