



**The Role of Trade and Environment in a Canada-EU Context:
Strengthening Canada-EU Trade Relationships**

Submitted in response to the Canada Gazette invitation of 23 July 2005 for submissions on the potential environmental impacts on Canada of the Canada-EU Trade and Investment Enhancement Agreement negotiations

Introduction and Summary

A free trade agreement with the EU continues to be a long-held interest of Canada. While the EU remains skeptical of such a deal, the May 2005 launch of a Canada-EU Trade and Investment Enhancement Agreement (TIEA) was an encouraging sign of EU commitment towards strengthening transatlantic commercial ties. While not a free trade agreement aimed at addressing tariff-related market access issues, the TIEA negotiations are an opportunity to address existing and emerging policy/regulatory issues that have impacts on the Canada-EU commercial relationship. Opportunities may also exist to strengthen Canada–EU cooperation on the multilateral front through the Doha Round and the engagements reflected in the Johannesburg Implementation Plan¹ as these relate to trade, finance and globalization.

The purpose of this paper is to review trade and environment in a Canada-EU context. It argues that the basic benefits of trade generally support abilities of government to protect the environment, and that domestic environmental policy/regulation remains the key tool by which governments mitigate any possible negative impacts of trade liberalization. The nature of environmental policy and regulation, however, can and does have profound impacts on the extent to which bilateral commerce takes place in an unfettered fashion, and the extent to which transatlantic commerce can be promoted while still providing for effective support of environmental objectives.

The underlying premise of this paper is that there is nothing inherent in the trade and environment interface and debate that prohibits Canada and the EU from pursuing a formalized and liberalized trade agreement. The policy/regulatory environment plays a critical role, however, in determining the extent to which benefits from commercial expansion under trade arrangements/agreements will be fully realized.

The paper discusses a number of fundamental policy/regulatory issues that must be taken into account as Canada and the EU discuss ways in which they can foster the bilateral commercial relationship. Recommendations focus on approaches that should be pursued by both governments to ensure that the trade and environment policy agendas unfold in a way that is mutually supportive.

Basic impacts of trade on the environment

Most agree that the relationship between trade and environment is an intricate one, and measuring the exact impacts of trade on environment is a challenging undertaking. Nevertheless, there are some basic environmental benefits associated with trade liberalization that should not be overlooked in any discussion of the interface between the two.

CERT members support the statement from element 2.5 of Agenda 21 that reads, “An open, equitable, secure, non-discriminatory and predictable multilateral trading system that is consistent with the goals of sustainable development and leads to the optimal distribution of global production in accordance with comparative advantage is

¹ The Johannesburg Implementation Plan builds on the achievements made since the 1992 United Nations Conference on Environment and Development (UNCED) for achieving sustainable development, including commitment to the Rio principles and the full implementation of Agenda 21.

of benefit to all trading partners." Free and efficient markets provide consumers with the power to choose from a wide variety of products and put their purchasing power to work in encouraging continual improvement and sustainable industry practices. Members of CERT are committed to achieving free trade as an essential aspect to this process and believe that, as such, unjustified barriers to trade are inconsistent with sustainable development. This idea is related to Principle 12 of the *Rio Declaration on Environment and Development* and Chapter 2 of *Agenda 21* entitled, International Cooperation to Accelerate Sustainable Development in Developing Countries and Related Domestic Policies. Trade liberalization can lead to the more efficient use of resources which encourages, in general, more economically and environmentally-efficient products and, in particular, the potential for increased trade in products that are environmentally preferable. While members of CERT recognize the environmental benefits of trade liberalization, they also recognize that it is essential to have proper domestic resource management and environmental policies in place in order to fully realize those benefits.

Open trade encourages countries and regions to specialize in those activities they do best, promoting the productive use of resources. This encourages the exchange of knowledge, skills, investment and state of the art technology. This provides greatly increased income for investment in better health, education, a cleaner environment and, generally enhanced standards of living; hopefully for all. It should be pointed out that the business community is a key contributor to the diffusion of technology, skills development, and improved labour, health safety and environment conditions.

A number of scientific studies in economics have investigated the issue of environmental impacts of trade with very rigorous methodologies. Most of these studies show that trade liberalization is associated with a better environment. Two studies worth noting are: Antweiler, W., B.R. Copeland and M.S. Taylor (1998): "*Is Free Trade Good for the Environment?*", NBER (National Bureau of Economic Research), Working Paper #W6707, 1998; and Grossman, G.M. and A.B. Krueger (1993): "*Environmental Impacts of a North American Free Trade Agreement*", in *The U.S.-Mexico Free Trade Agreement*, P. Garber (ed.), Cambridge, MIT Press. If anything the texts agreed to at the 2002 World Summit on Sustainable Development (WSSD) further enhance the linkages between the economic component of the sustainability agenda and issues related to environment such as "common but differentiated responsibility" (environmental degradation, for example), as well as developmental requirements of the G-77, such as technology, goods required for capacity building, etc. under mutually agreed concessional conditions, as referenced in the text of the WSSD.

Overall policy/regulatory regimes and their impact on trade

Need for Transparency

While nobody challenges the right of sovereign states to legislate and regulate for the purposes of protecting domestic environment, health and safety, such policy approaches must ensure that they achieve their environmental purpose and are not abused for trade protection purposes. Creating transparent regulatory systems is a fundamental way to avoid such abuse. Transparency in the legislative and regulatory development process itself also provides a practical way to identify potential scope for abuse before regulations come into effect.

Sound Science, Risk Assessment and the Precautionary Approach

In a similar vein, unilaterally-imposed trade barriers and bans justified by extreme interpretations of the “precautionary approach” but lacking scientific basis hold great potential to threaten two-way trade while doing little to resolve the environmental issue in dispute. In relation to the idea of precaution, members of CERT believe that the most appropriate definition that should be used in this case is as it reads within Principle 15 of the *Rio Declaration on Environment and Development*:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

In a Canada-EU context, broad guiding principles to support consistent, credible and predictable policy and regulatory decision making when applying the precautionary approach are needed. This is also true in a broader WTO context where it is critical that interpretation and implementation of any WTO-related obligations emphasize and strengthen the fundamental principles of sound scientific understanding and cooperation, risk assessment and management, and non-discrimination. Any abuse of the precautionary approach has real and negative trade consequences. The WTO Doha Round commitment to negotiations on trade and environment has increased concerns about attempts to erode the Sanitary and Phyto-sanitary (SPS) disciplines governing sound science and risk assessment currently provided for in the WTO, as well as those contained in the Technical Barriers to Trade (TBT) agreement. The Canadian and EU governments need to pay particular attention to these, as there are, unfortunately, competing versions of the principle. The results of WTO discussions on this issue will have obvious implications for the Canada-EU trading relationship, as well as for the multilateral trade regime in general. Similarly the WSSD text on the precautionary approach, although it re-affirms the language in the Rio Declaration, contains the seeds of the ongoing differences over how to implement precaution – as an approach, or a principle with the weight of international law. This debate is as much trade (market access and trade barrier fears) as it is environmental.

Regulatory Cooperation

Efforts to promote regulatory cooperation between Canada and the EU in the areas of health, safety, environment, technical standards and possibly sector specific approaches remain a highly feasible and practical way to promote increased Canada-EU trade flows, without endangering the non-trade objectives for which such standards exist. Such cooperation aimed at eliminating unnecessary technical barriers should remain an ongoing priority. Canada and the EU should capitalize on various opportunities to enhance regulatory cooperation, and encourage efforts to reduce technical barriers to trade, including efforts such as the Mutual Recognition Agreement - Conformity Assessment 1998. Ongoing cooperative efforts between the ISO and WTO on principles for international standardizing bodies is another encouraging development that supports the evolution of the standards and conformity assessment infrastructure needed by the global market. In fact, Canada has an active and technically recognized standards body which through the ISO as well as in its own right can help to develop a common approach - taking us beyond multiple protocols and measurement studies towards globally applicable standards.

Trade and environment in a multilateral WTO context

Multilateral Environmental Agreements (MEAs)

The WTO negotiations launched on trade and environment provide an opportunity to clarify the relationship between trade rights and MEAs, particularly those that include trade measures for non-compliance. The results of these negotiations will also have obvious implications for the Canada-EU trading relationship. The WTO has been grappling for years with the complexity of environmental regulations impacting the flow of goods. With so many products whose life cycles span so many jurisdictions with a variety of environmental impacts, the challenge to the international community is to ensure regulations achieve their environmental purpose and are not abused for trade protection purposes.

Some believe that the results of the WTO dispute over Shrimp/Turtles suggest that trade restrictions based on process and production methods (PPMs) are increasingly becoming permissible under WTO rules. While others argue that this is certainly not the case, it does point to the need to clarify the rules under which individual countries may invoke such restrictions for environmental purposes. Without such clarification, pressures could build for the trading system in essence to preside over issues related to domestic environmental standards, a task it is neither qualified nor mandated to undertake. As former WTO Director General Renato Ruggiero has argued, "The WTO is not - and has no intention of becoming - a supranational body with the power to determine values and standards for the international community - especially in the absence of internationally agreed standards and rules." The Canadian and EU governments should resist any attempts to load additional and potentially confusing obligations onto the WTO. The WTO is one international institution that works and through its work is helping to expand the benefits of free markets and new technologies, throughout the world.

Life Cycle Analysis

Regulations adopted to protect the environment need to undertake full and proper life cycle analysis in order to ensure that regulations adopted do not result in impacts that, in fact, can be even more harmful overall to the goals of environmental improvement. Regulations to govern the trans-boundary movements of wastes, for example, need to encourage increased recycling of wastes. Changes to Canadian regulations being made in this regard will more effectively manage movement of environmentally-hazardous wastes between Canada and other jurisdictions, while creating greater commercial opportunities in Canada to recycle such wastes, thereby ultimately contributing towards their original environmental objectives, such as the encouragement of waste minimization, discouragement of waste disposal, and facilitation of responsible recycling.

We do recognize, however, that great caution must be taken into account when life cycle analysis is used in developing environmental regulations, as well as its use in developing eco-labeling schemes. Life cycle analysis approaches used should attempt to conform to international standards and best practices, when possible, and governments must be aware of and respond to any potential for the unintentional creation of barriers to trade when using life cycle analysis.

Eco-labeling Schemes

The proliferation of multi-criteria ecolabeling programs is of concern to the business community in that they can become unfair and discriminatory barriers to trade. There is a need for improvement in the rules regarding multi-criteria ecolabeling

schemes, particularly those that include criteria for production processes in addition to the product itself. The practice of ecolabeling needs to embody transparency as a way to enhance their environmental benefits, and minimize any potentially adverse impacts on trade. Intergovernmental work and cooperation aimed at minimizing the discriminatory trade impacts of ecolabeling schemes should be encouraged, including work through the WTO's Committee on Trade and Environment, and the OECD's Joint Working Party on Trade and Environment. The members of CERT believe that ecolabeling programs should be developed and operated according to a set of principles, as outlined in Appendix I.

Trade in Environmental Goods and Services

The WTO General Agreement on Trade in Services (GATS) negotiations and the Doha Round covering market access for goods provide opportunities to explore further reductions in the barriers to trade of both environmental goods and services. Removing barriers to trade in the provision of environmental services, for example, has the prospect of opening up market access. Current issues being discussed include: certification; movement of personnel; contracting requirements; withholding taxes on fees; and local sourcing requirements. The WTO Doha Round has also opened prospects for removal of barriers to trade in a wide variety of environmental goods and technologies. The environmental benefits will be obvious as the costs of investing in clean production technologies become lower, and increase the ability of dealing with environmental problems at source. Scrubbers for smelters, water treatment equipment for municipalities, and catalytic converters for cars are examples of products that could benefit through a reduction of existing trade barriers. Without the application of tariffs, all products, including those with the least harmful environmental impacts and those that facilitate reduced environmental impacts, will be more easily available and more affordable to consumers, thus potentially increasing the demand for environmentally preferable products, and in turn increasing the trade of these products.

Green Procurement Policy

While the implementation of procurement policies that are aimed at purchasing products and services that are environmentally sensitive, including a reduced environmental impact versus other products or suppliers can contribute to environmental improvements that can make a valuable contribution to the achievement of sustainable development; if too narrowly defined, they can also have a discriminatory effect and limit choice in the marketplace. To ensure that this is not the case, such policies should be transparent, voluntary and be inclusive as opposed to exclusive to avoid unnecessary discrimination and the establishment of monopolies which could severely limit the buyer's access to products and services.

Global Governance on Environmental Issues

Accepting the argument that the WTO mandate should not be broadened to include the adjudication of environmental issues, the discussion needs to point to ways in which to strengthen other existing international bodies that are responsible for environmental issues. Strengthening of such global environmental governance structures will be the best approach to ensure environmental progress in a way that does not jeopardize trade objectives. Efforts by the United Nations Environment Program (UNEP) to systematically address governance issues and promote the abilities of governments to more effectively cooperate on environmental issues in a global context need to be encouraged. This should include a discussion of Multilateral Environmental Agreements (MEAs) and the relationship between trade measures in such MEAs with WTO rules.

Subsidies and other trade distorting practices

It is widely acknowledged that many subsidies can distort trade flows while resulting in significant environmental damage, such as agricultural subsidies that can result in overuse of pesticides and fertilizers on marginal land, or energy subsidies that favour use of more polluting fuels vis-à-vis their cleaner alternatives. CERT members strongly support further multilateral work to reduce such subsidies, as follows:

Support the completion of the work programme of the Doha Ministerial Declaration on subsidies so as to promote sustainable development and enhance the environment, and encourage reform of subsidies that have considerable negative effects on the environment and are incompatible with sustainable development.

Recommendations:

It is recommended that:

- Canada and the EU continue negotiations on the TIEA to build on the Canada-EU regulatory cooperation framework for promoting bilateral cooperation on approaches to regulatory governance, advancing good regulatory practices and facilitating trade and investment.
- In adopting regulations under the Canada-EU Trade and Investment Enhancement Agreement (TIEA), Canada and the EU should consistently strive to take a transparent approach that avoids any potential for abuse for trade protection purposes.
- Canada and the EU should consider full life cycle approaches in designing policy/regulations to ensure that regulations adopted do not result in unintentional negative environmental or trade impacts, and truly support the environmental goals they are intended to achieve. Efforts to further develop international standards and best practices in terms of life cycle analysis should be supported.
- Canada and the EU should capitalize on various opportunities to enhance regulatory cooperation, and encourage efforts to reduce technical barriers to trade, including efforts such as the Mutual Recognition Agreement - Conformity Assessment 1998.
- Canada and the EU should avoid unilateral trade barriers and bans justified by extreme interpretations of the “precautionary approach” and work towards broad guiding principles to support consistent, credible and predictable policy and regulatory decision-making when applying the precautionary approach.
- Canada and the EU should avoid trade restrictions based on process and production methods and use the opportunity created by the Doha Round negotiations to clarify the relationship between trade rights and Multilateral Environmental Agreements (MEAs), particularly those that include trade measures for non-compliance.

- Interpretation and implementation of agreements such as the WTO SPS and TBT should emphasize and strengthen the fundamental principles of sound scientific understanding and cooperation, risk assessment and management, and non-discrimination.
- Canada and the EU should seek to improve rules regarding multi-criteria ecolabeling schemes and support work aimed at grappling with such issues, such as the WTO Committee on Trade and Environment. Canada and the EU should ensure that any ecolabeling schemes in their respective jurisdictions embody transparency as a way to enhance the environmental benefits, while minimizing any potentially adverse and discriminatory impacts on trade.
- Canada and the EU should strongly support elements in the WTO GATS negotiations and the Doha Round covering market access that will foster further reductions in the trade of both environmental goods and services.
- Canada and the EU should support the strengthening of existing global environmental governance structures as the best approach to ensure environmental progress in a way that does not jeopardize trade objectives, and recognizes that the trading system (WTO) is not mandated nor qualified to preside over issues related to domestic environmental standards.
- Canada and the EU should avoid subsidies that distort trade flows while resulting in environmental damage, and commit to reducing existing subsidies in conjunction with their international trading partners.

Contact Details

Jason Langrish
Executive Director

Canada Europe Roundtable for Business (CERT)
2800 – 199 Bay Street
Commerce Court West
Toronto, ON M5L 1A9

Tel: 1 416 362 7143
Fax: 1 416 863 5270
E-mail: j.langrish@canada-europe.be

Website: www.canada-europe.org

Appendix I

Development and Operation of Eco-labeling Programs

The members of CERT believe that eco-labeling programs should be developed and operated according to the following principles:

1. Eco-labeling should be based on information that is truthful, supported by data and not misleading. It should also be voluntary and Canada and the European Union should encourage other countries' eco-labeling programs to be voluntary as well.
2. Eco-labeling programs should distinguish between products on the basis of their environmental attributes and not, directly or indirectly, on the basis of their country of origin. Eco-labeling programs should not create unnecessary trade restrictions.
3. All government-sponsored or government-recognized eco-labeling programs should be subject to the WTO Agreement on Technical Barriers to Trade (TBT) and its Code of Good Practice*. The fundamental provisions of the TBT require that measures be transparent, non-discriminatory, and no more trade-restrictive than necessary to fulfill a legitimate objective.
4. Governments should recognize only those eco-labeling programs that take into consideration the life-cycle of the product and are based on scientific methodology. However, if governments choose to award an environmental label that is based on a single criterion, life-cycle impacts should be considered to ensure that the granting of the label has an overall positive impact on the environment.
5. The government's of Canada and the European Union should encourage and support the use of international standards and criteria for eco-labeling programs, including ISO 14020 (General Principles) and 14024 (Eco-labeling Programs).
6. Governments should encourage to the maximum extent possible mutual recognition and equivalency among eco-labeling programs (i.e. those programs that are consistent with ISO 14024), subject to maintaining the environmental effectiveness of the program.

*Under the TBT Agreement, measures that are mandatory are called technical regulations and those that are voluntary are called standards. They fall under different provisions of the TBT Agreement: eco-labeling schemes that are mandatory, would come under articles 2 and 3 of the TBT Agreement: voluntary eco-labeling programs would fall under article 4 and annex 3 (Code of Good Practice) of the Agreement. The provisions relating to the conformity assessment procedures of eco-labeling programs are articles 5,6,7,8 and 9 of the Agreement.

The TBT Agreement is based on the following four principles to minimize unnecessary obstacles to trade that might result from the preparation, adoption and application of technical regulations, standards and procedures for conformity assessment.

- Non-discrimination (national treatment and most-favoured-nation treatment);

- Avoidance of unnecessary barriers to trade;
- Use of international standards where appropriate for local needs, accepting equivalent standards and mutual recognition; and
- Creation of a very high degree of transparency by prior notifications, affording opportunity for comments and consultations, as well as establishing enquiry points. The TBT Code of Good Practice for voluntary standards provides similar provisions on transparency such as the obligations to notify, provide copies of work programs on draft standards, allow a period of at least 60 days for the submission of comments by interested parties, afford opportunity for consultation, make objective efforts to solve any problem and publish adopted standards.

Central governments are responsible for the compliance of standardizing bodies with the provisions of the Code of Good Practice and should take “such measures as may be available to them” to ensure that local governments and non-governmental standardizing bodies accept and comply with the Code’s provisions. A WTO Member can be challenged in the WTO by another Member if the latter can establish that benefit accruing to it under the TBT has been nullified or impaired as a result of the failure of the other party to carry out its obligations under the Agreement.

Appendix II: Participating Organisations in CERT

1. Alcan
2. Aecon Group Limited
3. AMEC Americas Limited
4. American European Communities Association (AECA)
5. Atomic Energy of Canada Ltd.
6. Blake, Cassels & Graydon LLP
7. Bombardier
8. Canadian Centre for Energy Information
9. Canadian Chamber of Commerce
10. Canadian Manufacturers & Exporters (CME)
11. CD Howe Institute
12. Centrica
13. CGI Inc.
14. Conference Board of Canada
15. Deloitte
16. Direct Energy
17. Dundee Securities Corporation
18. European Aeronautic Defence & Space Company (EADS)
19. European Union Chamber of Commerce in Toronto (EUCOSIT)
20. Fleishmann Hillard International
21. Forest Products Association of Canada (FPAC)
22. Fraser, Milner, Casgrain LLP
23. Gide, Loyrette, Nouel
24. Golder Associates
25. InBev
26. International Emissions Trading Association (IETA)
27. Macquarie North America
28. Monsanto Canada
29. Natural Gas Exchange (NGX)
30. North American Carbon Inc.
31. Power Corporation
32. Rabobank
33. Secor Consulting
34. Sussex Strategy Group
35. Siemens
36. Spirits Canada
37. Suez-Tractebel
38. TSX Group