

RESPONSE OF THE CANADIAN GOVERNMENT
TO THE RECOMMENDATIONS OF
THE CANADA-EUROPE ROUND TABLE FOR BUSINESS

The Canadian government is grateful to the Canada-Europe Round Table for Business (CERT) for its "Recommendations" submitted June 16, 1999. The identification by the CERT of the trade and investment issues that are common to Canadian and European business obviously reflects a substantial commitment of member company resources. The views expressed in the Recommendations will serve as a valuable complement to the extensive consultations on trade and investment conducted with interested stakeholders over several months this year by the Canadian government.

In this response, the Canadian government will address in a detailed manner the recommendations specifically proposed to it. It will also consider many of the points made to both governments, notably with respect to the upcoming multilateral trade negotiations and the subject of electronic commerce. While the Canadian government supports many of the recommendations made by the CERT, it will also become apparent that there are several points on which its own consultations have resulted in views differing from those of the CERT members. This is to be expected, of course, and should be taken in the spirit of constructive dialogue between the CERT and the Canadian government.

Recommendations Addressed to the Canadian Government

Review draft Revenue Canada Information Circular IC 78-R2, and reduce the documentation requirements and penalty schemes in the context of transfer pricing

The CERT has made its recommendation based on draft Information Circular IC 87-R2, released September 21, 1997. After an internal review that incorporated comments received from third parties such as multinational companies, lawyers and accountants, a final version was released to the public on September 27, 1999. Many of the concerns raised by the CERT are based on the initial draft, and as will become clear below, are addressed by the final version.

With respect to the documentation required, although it may appear that this generates an additional tax burden, the requirements are ultimately expected to create long-term savings by speeding up the audit process and preventing disagreements between the Canada Customs and Revenue Agency and the taxpayers. The documentation of transfer prices is a prudent business practice, and the majority of taxpayers already prepare sufficient

transfer pricing documentation. The Information Circular does not require a taxpayer to go beyond what is reasonable in terms of documentation. The relevant obligations require a taxpayer to identify the participants, the terms of the transaction, the property or service transferred, a simple function analysis and the rationale the company went through to establish the transfer price. It is hard to imagine a prudent business manager not having this information readily available. The Canadian government strongly feels that its requirements are reasonable, and that they are congruent with both the OECD Guidelines and the practices of other countries.

With respect to the relevant penalties, Canada's approach is clearly not a "no-fault" one as defined by the OECD Guidelines. Even if there are Canadian adjustments to the taxpayer's transfer price, no penalty will be applied if a reasonable effort has been made to establish an arm's length transfer price. The documentation provided by the taxpayer as discussed above would demonstrate that the taxpayer has made this reasonable effort. If a penalty is imposed, it is intended to be a compliance penalty determined according to the efforts that a taxpayer makes to determine an arm's length price rather than solely on the ultimate accuracy of the transfer prices. This approach to penalties attests to the fact that Canada has followed the OECD Guidelines in a manner consistent with that of other countries.

Abolish attempts to levy \$2.50 on CD-R for the benefit of the music industry only

We do not agree with the CERT's characterization of the copyright levy. Canada's provisions for payments for private copying are part of a balanced intellectual property framework that is key to ensuring a fair, efficient and competitive marketplace that enhances and protects innovation. The levies are now under consideration by the Copyright Board, an expert quasi-judicial tribunal which operates at arm's length from the government. The Board must weigh the concerns of all interested parties and set levels for payments that are "fair and equitable". It must also decide which are the categories of blank recording media on which levies must be paid, that is, which categories (e.g. cassette tapes) are ordinarily used by consumers for private copying of sound recordings. The Copyright Board has yet to decide on either the type of media on which levies must be paid, nor the level of payments for private copying.

Recognize that following the success by the EU and Canadian alcoholic drinks industries in mutual development of each other's markets, application by Canada of 100% tariffs to spirit drink products in connection with WTO trade disputes will cause significant setbacks and disadvantages on both sides of the Atlantic

It should be noted that distilled spirits were not included in the retaliation list related to the beef hormone dispute. With respect to wine, Canada has agreed to enter into bilateral

negotiations with the European Commission with a view to concluding an agreement by April, 2000.

Amend the EU-Canada zero-for-zero agreement to give a common reduction in tariffs to all spirit drinks, including gin and vodka

Canada remains open to the bilateral negotiation of tariff reductions with the EU if they can be mutually beneficial. Even in the absence of such a mutual agreement, we are still interested in making further progress on sectoral trade liberalization in the context of new WTO multilateral trade negotiations.

Recommendations Addressed to Both the Canadian Government and the European Union

Play an active role in standardization efforts of the tire industry through UN-ECE WP29

The Canadian government supports this recommendation.

CERT recommendations with respect to the Seattle Ministerial and the launch of the next trade round

The Canadian government is glad to confirm that Canadian and EU trade policy officials meet bilaterally on a regular basis to discuss their respective views on trade and investment matters as well as in the context of the meetings of the "Quad" countries. Senior officials responsible for services and investment policy also meet in Quad subject-specific gatherings which allow for an informal sharing of views.

With respect to the next trade round, Canada supports the idea of broad-based negotiations that appeal to both developed and developing countries, in order to ensure that they attract sufficient support and satisfy a wide range of interests. The Canadian government is also in favour of a "single undertaking" approach to the negotiations, with all participants undertaking the same obligations (albeit with some having longer implementation periods), while also advocating a flexible approach in order to achieve results in a manageable, digestible and timely manner. Canada agrees with the CERT that it is desirable to conclude the negotiations within three years. The Canadian government favours addressing tariffs and non-tariff measures across a broad range of industrial sectors, and we agree that the benefits would accrue to all WTO Members. In relation to the Uruguay Round, we will be placing more emphasis on the levels at which bindings are offered.

Concerning the General Agreements on Trade in Services (GATS), a general objective for these negotiations will be to broaden and deepen Member commitments in the area of

services, with the objective of providing greater market access for foreign service providers. We agree with the CERT that a broad range of services should be part of the outcome, with as few exemptions as possible. All countries acceding to the WTO, including Russia and China, are required to comply with the provisions of the GATS and to submit a schedule of commitments for services. We are actively engaged in the accession process of these and other countries, and will support their accession to the WTO to the extent that their commitments in services provide commercially meaningful access for Canadian service providers. Canada and the other Quad or OECD member countries are studying various "formula approaches" in preparation for the upcoming GATS negotiations. In this context, officials are analyzing the extent to which the pro-competitive regulatory principles of the Basic Telecommunications Agreement may be applicable or transferable to other service sectors.

With respect to investment and the ongoing discussions in the WTO on whether to include this topic in the next trade round, Canada is continuing to consult with domestic stakeholders and is evaluating the various options. If talks do proceed in the WTO, the scope of negotiations will likely be modest. In any prospective negotiation, we would want to ensure that governments retain the right to regulate in the public interest

Turning to the question of trade facilitation, Canada has strongly supported trade facilitation initiatives in the WTO and a number of regional fora. In fact, Canada and the EU continue to work closely in the WTO to convince developing countries that further WTO rules on trade facilitation, including customs procedures, will bring benefits to the developing countries. We are working to include negotiations on such rules in the new trade round.

As concerns the provision of subsidies in the aerospace sector, the Canadian government is in favour of improved multilateral rules for government support for civil aircraft. While Canada is not opposed to a simple technical rectification of the existing Civil Aircraft Agreement, it should be noted that the existing agreement adds nothing to the WTO Subsidies Agreement, and as such cannot be expected to address trade frictions in the area of subsidies. As it was during the Uruguay Round, Canada remains supportive of efforts at improving the Agreement with enhanced rules in the area of subsidies. In particular, Canada is seeking to extend the provisions of Articles 6.1, 8 and 9 of the Subsidies Agreement.

In the area of government procurement, Canada agrees that expanding national treatment in government procurement markets would be beneficial. The Review of the existing Agreement on Government Procurement, currently in progress, provides the best opportunity to examine all aspects of expanded market opening, including limiting the scope of exceptions to the agreement. Canada also supports the view that a commitment

to accession to the Agreement on Government Procurement will be an important aspects of participation in the WTO for new members.

We also agree on the need to coordinate efforts with the EU in achieving a workable bio-safety protocol which facilitates technology development and transfer to the developing world, without creating new barriers to international trade. In addition, we wholeheartedly support the call to working on predictable and transparent regulatory requirements for the approval of agri-food biotech products, on mutual sharing of safety data and assessments. We feel however that it may be somewhat premature to consider the compatibility of the European and Canadian regulatory requirements as an important long-term goal, as this has too many unknown consequences at this time (especially in light of the emerging crisis in Europe on genetically modified organisms).

Turning to the topic of trade and the environment, Canada supports the view that trade policy and environmental policy should be mutually supportive. It is Canada's position in the WTO that each negotiating group should consider the relevant trade and environmental issues, while the WTO Committee on Trade and the Environment should continue its discussions as the negotiations proceed so as to act as a focal point for the integration of environmental considerations. At the same time, Canada feels that it would be prudent for both environmental and trade reasons, to clarify the relationship between WTO rules and trade measures in multilateral environmental agreements (MEAs). Canada has advocated a "principles and criteria" approach to MEAs that would assist both WTO panels in assessing the legitimacy of MEA trade measures and MEA negotiators in contemplating the appropriate use of trade measures in MEAs.

With respect to the several issues identified by the CERT related to the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs), Canada continues to urge developing countries to fully meet their TRIPs obligations by January 1, 2000. In the forthcoming WTO negotiations, Canada urges full and timely implementation of TRIPs obligations, and reaffirms the TRIPs built-in agenda and reviews, which cover many key issues. Canada thus holds that the review under Article 27.3(b) should continue in addressing appropriate protection for certain inventions related to plants and animals. Canada seeks to build on provisions of the TRIPs, and to respond to challenges of new technologies while maintaining desired policy objectives. Canada also believes that existing multilateral agreements and frameworks, including the TRIPs, already apply to electronic commerce. The focus should hence be on determining how they apply. However, Canada believes that more work is needed on the concept of nullification and impairment as it relates to the TRIPs. As a result, a moratorium on its use should be extended until such work is completed.

Focusing in on the deadlock in the first product review of ITA II, Canada has been participating actively in these negotiations and has tried to help bridge the gaps between

the positions held by various participants. We have also taken part in putting together the Information Technology Symposium which was held under WTO auspices in Geneva on July 16. With respect to the recommendation to concentrate on convergence of the IT and telecommunications industries, the Canadian side would appreciate a clarification from the CERT whether this only includes the issue of product coverage and tariffs, or if industry wishes non-tariff measures to be covered, and if so which ones.

As concerns the dispute settlement provisions within the WTO, the Canadian government agrees that the strength of the framework of the world trade system depends on an effective system for resolving differences and disputes. Our efforts continue to build support for concrete measures that will ensure and enhance the transparency, accessibility and efficiency of the WTO Dispute Settlement Understanding.

CERT recommendations with respect to electronic commerce

Finally, the CERT has presented Canada and the EU with a number of recommendations on electronic commerce, both on its own and as a topic linked to the Seattle Ministerial. Canada and the EU are working toward a Joint Statement on Electronic Commerce in the Information Society which echoes many of the positions set out by the CERT in this field. Canada is of the view that Bill C-6, recently passed by the House of Commons and now under consideration by the Senate, provides adequate protection for personal data while offering the flexibility required to support the expansion of E-commerce.

Turning to certain specific comments linked to electronic commerce, the Canadian government would agree with the CERT view that E-commerce related policies should be developed in a technology-neutral manner. It is the Canadian view that the development and growth of E-commerce will be facilitated by an open, predictable and transparent trading environment. In order to ensure an appropriate balance of all interests, governments should retain the ability to pursue public policy objectives. With respect to the taxation of E-commerce, the Canadian government agrees that tax policy should continue to be technology neutral and that Canada should continue to work within the OECD on relevant aspects of tax policy.

The CERT also calls for the acceleration of the ratification and implementation process for the WIPO treaties. Canada agrees that the elements in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty which address uses of protected works in the networked environment provide a sound basis for enhancing the level of protection for certain elements of copyright in electronic commerce. Canada is currently examining the provisions of the WIPO WCT and WPPT in consultation with Canadians, and is considering how best to address other copyright issues in the digital environment.

We recognize that governments acting alone cannot create the enabling environment necessary for the growth of electronic commerce. Consultation and partnership among all levels of government, business, and consumer interests are critical in defining and addressing electronic commerce issues and are at the heart of Canada's approach to E-commerce. The CERT could become an important mechanism for bringing together Canadian and European private sector interests and providing ongoing advice to governments. The CERT also has the potential to enhance the impact of Canada and the EU within existing international business initiatives such as the Alliance for Global Business (AGB) and the Global Business Dialogue on Electronic Commerce (GBDe).