



Brussels, 10 December 1999

**EUROPEAN UNION REPLY TO THE RECOMMENDATIONS
BY THE CANADA EUROPE ROUND TABLE FOR BUSINESS
IN THE REPORT OF 16 JUNE 1999**

The Canada Europe Round Table for Business (CERT) has brought to our attention a number of important recommendations on trade and investment issues that affect the relationship between the European Union (EU) and Canada. We encourage the development of an enhanced business dialogue between the EU and Canada, as had been explicitly foreseen by the Joint EU-Canada Action Plan of 17 December 1996. CERT represents one of the new bridges that will allow the valuable relationship between the EU and Canada to grow further into the next century and beyond.

This reply is structured along the lines of the overview of main recommendations, as included in the CERT report of 16 June. Each bullet point and underlined sentence represents a CERT recommendation to which we have attempted to provide a brief reply. Several CERT recommendations concerned at least in part the WTO Ministerial in Seattle which has been “suspended” without adopting a Ministerial declaration. The EU agenda, encompassing both further trade liberalisation and widening of activities of the WTO remains valid.

The recommendations addressed to the European Union

- Accelerate abolition of tariffs on Canadian newsprint and other paper products

The EU paper industry is already committed to a full tariff elimination schedule that will be completed in 2004. This tariff elimination is part of the Uruguay Round package that provides to move to zero rates on paper over a 10 year period. We do not anticipate that tariff reductions in this sector could be accelerated to 1 January 2000.

As regards the adoption of forest certification standards, we are committed to sustainability in general and sustainable management of natural resources such as forests in particular. Policy measures elaborated in this framework must obviously be compatible with our

international commitments. Worries expressed in the CERT paper about discriminatory forest certification requirements in the EU are unfounded.

- Abolish the 6% tariff on primary aluminium ingots

We believe that tariff reductions in this sector could only be envisaged in the framework of global trade talks.

- Come to the rapid conclusion on and establishment of the European Aviation Safety Authority

The Council of the European Union has given a mandate to the European Commission on 20 July 1998 to negotiate the necessary Convention creating a European Aviation Safety Authority. Work has been conducted as quickly as possible to prepare the draft of the Convention as a basis for discussion with third European countries. We intend to proceed with the same degree of urgency in negotiations with these countries.

- Come to common position on Air Transport and Environment

We agree that minimum international safety and environmental standards should preferably be established and further developed by ICAO, given the international character of air transport. However, if ICAO fails to further develop these standards, the possibility of having regional or national standards in these areas should not be excluded. Impact of such technical regulations on trade in goods and possibly on trade in services should also be analysed, and should take into account the TBT Agreement. In addition, we consider that some trade tools, such as MRAs, may also lead to positive effects.

- Encourage competition in public procurement by not standardising on a single manufacturer's operating system and application packages (software sector)

The EU has a tradition of promoting open standards and solutions, with a view to encouraging competition for the benefit of consumers. For this reason, we welcome the fast development of Linux as well as open office software applications, as this could provide to EU users an alternative to existing proprietary solutions. In this context, the European Commission will be attentive to any practice which restricts competition within the EU market. We will also encourage open and compatible operating systems and software applications to be available for users, for instance through the relevant R&D activities, with a view to achieving a competitive and dynamic market.

- Implement the UMTS Directive in a manner that allows operators free choice of standard for Third Generation Wireless systems

The main aim of the UMTS Decision as a harmonising measure is to ensure pan-European roaming, i.e. that consumers in a given EU Member State can travel to any other EU Member State and be able to keep using their mobile telephones. With a view to achieving this objective, the UMTS Decision requires Member States to license at least one UMTS system. The UMTS Decision does not impose further obligations, and operators, when applying for licenses, are free to choose a 3G standard different from the UMTS standard from within the IMT-2000 set of standards.

- E-commerce – CERT recommends in particular that the EU should ensure a seamless Internal Market for e-commerce by upholding the principle of ‘country of origin’

The endorsement by CERT of the draft directive on legal aspects of e-commerce is welcome. The directive is currently being discussed by the European Parliament and the Council.

The legal issues concerning electronic contracts and in particular questions of jurisdiction are also being discussed by the European Parliament and the Council in the context of the European Commission’s proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. The explanatory memorandum to the Commission’s proposal for the Regulation clarifies that one of its purposes is to offer consumers better protection notably in the context of electronic commerce.

As regards the question of law applicable to contracts, this issue is governed by the Rome Convention on the law applicable to contractual obligations. The European Commission has announced that it is considering an update of this Convention in order to, inter alia, clarify its application in the online environment.

Bearing in mind that e-commerce is a global phenomenon, rules governing it should be established at the same level. In this respect, the OECD is currently discussing Guidelines for Consumer Protection in the Context of Electronic Commerce, which include recommendations concerning fair business and market practices, on-line disclosure, payment, dispute resolution and redress. It is, inter alia, foreseen that future national frameworks on applicable law and jurisdiction should seek to ensure they facilitate electronic commerce and provide consumers with meaningful access to fair and timely dispute resolution and redress without undue cost or burden.

Recommendations addressed to the Canadian Government and the European Union

- **Play an active role in standardisation efforts of the Tire industry through UN-ECE WP 29**

We share the view that the tire industry is a global player and particularly sensitive to technical barriers to trade. The industry proposal for harmonised passenger car tire standards (GTS 2000), to be established at the level of the UN-ECE, is therefore a logical step which we welcome and are ready to support. UN-ECE Working Party 29 has already created a subgroup to look into this matter. We favour early progress in harmonisation of requirements but industry should be aware that several members of the UN-ECE Working Party feel that the next steps should build on the existing rules, and possibly also address additional aspects compared to those covered by the GTS 2000 project.

- **Progress towards EU-Canada wine and spirits agreement, as agreed at the last EU-Canada Summit**

We share the desire for progress in this area. On wine, we believe that we should move rapidly to formal negotiations embracing the full range of issues – including winemaking rules, intellectual property protection and labelling issues, and facilitated certification – to achieve a framework for trade that is based on non-discrimination and mutual recognition. We agree that many issues regarding to spirits can be dealt with separately. However, for questions like labelling and intellectual property protection, it is only sensible to deal with these in the same framework as wine.

We underline that – although not mentioned in the CERT paper – the trade distorting effects of the operation of Liquor Boards in some Canadian Provinces should be addressed.

- **Improve WTO dispute settlement procedures**

We have been supportive of greater transparency in WTO dispute settlement procedures, especially if accompanied by a greater professionalisation of the panel procedure in the framework of the DSU review. The EU and Canada will continue to collaborate closely to achieve this objective.

- **Work towards a Multilateral Agreement on Investment in the WTO**

We welcome the support by CERT for inclusion of investment in the WTO agenda. However, we believe that the direct linkage made in the recommendation between the failure of the MAI in the OECD framework and taking up the subject in the WTO should be avoided since it could send the wrong message to other WTO partners.

We fully agree that market access conditions for foreign investors should be improved. But in our view, liberalisation should follow a GATS-style gradual approach based on positive commitments by each country. The wording “right of establishment” could, however, be understood as full liberalisation. We prefer to say that the WTO should address the issue of access to investment opportunities for foreign investors. Opening discussions on investment was indeed one of our objectives for the opening of a new global trade round. We will continue to support the idea.

- Broaden and deepen the GATS and insist on adherence to current GATS agreements by new entrants China and Russia

We favour negotiations on services with no a priori sectoral exclusions to bring about broader and deeper liberalisation and reach a comprehensive coverage of world trade in services by the GATS. Horizontal formulas, although not mentioned in the CERT recommendations, should be considered as a useful tool for negotiations in order to maximise negotiating efficiency and results while at the same time ensuring coherence of commitments.

Market opening should be coupled, where necessary, with regulatory disciplines. The aim is to achieve real and meaningful liberalisation, and at the same time ensure the development of a transparent and predictable domestic regulatory environment, justified on the basis of specific public policy objectives, which can provide legal certainty and confidence to service suppliers, investors, users and consumers.

We certainly favour the accession of key players as China and Russia to the WTO, provided they are ready to offer meaningful commitments.

- If needed, co-operate in the formulation of a WTO Code for Aeronautics (subsidies)

We agree with the comment under this heading. Considering, however, the recently failed attempts to rectify the 1979 Agreement on Trade in Civil Aircraft, the recommendation for a specific Code on Aeronautics looks premature for the time being.

- Pursue strict implementation of the TRIPS concluded during the Uruguay Round and do not allow for reopening the Agreement itself

This has been our usual practice, except that we insist on ‘correct’ rather than ‘strict’ implementation.

- Adopt a common strategy to remove the current optional exclusion from patent protection for certain biotechnological inventions (Article 27.3(b) of the TRIPS agreement)

We cannot recommend the removal of this exclusion. The removal of the exclusion option would pose a particular problem for the EU as it would conflict with the Directive on Biotechnological Inventions and the European Patent Convention.

We would be willing to consider options to improve mutual supportiveness between the Biodiversity Convention and the TRIPS Agreement.

- Increase the level of criminal enforcement activities in the IT/software industry, with special attention to prosecution of Internet piracy, increased inter-agency co-operation and further raising of public awareness of criminal sanctions in this area

We agree that it is essential to ensure strict enforcement of the rights granted under intellectual property law. The IT/software industry, due to the ease at which the products may be pirated, is one of the areas that would be most seriously affected in case of inadequate enforcement. Measures such as co-operation between different agencies responsible for enforcement and prosecution of infringers, adequate penalties for

infringement and increased public awareness of those sanctions can only serve to improve the situation. However, industry itself should also make the appropriate technological measures to combat piracy, such as anti-circumvention means, rights management information systems, encryption, watermarks, and anti-copying devices.

Furthermore, we are taking part in the Council of Europe negotiations to establish a Cybercrime convention (Canada and the Commission as active observers). We also cooperate in the Lyon Group (G-8) on high-tech crime issues. This important work and co-operation will continue.

- Break deadlock in first product review of ITA II and concentrate on convergence of Information Technology and Telecommunications industries

The EU would have been ready to conclude an ITA II negotiation in Seattle if Malaysia had come on board. This was not the case, and we see little prospect for balancing the dossier in the absence of comprehensive market access negotiations.

Trade and environment

We are examining options for clarifying the relationship between WTO rules and MEAs.

Our agenda on trade and environment is much broader than what is reflected in the CERT recommendations. Our position is that environmental considerations should be integrated in the international trading system in order to (i) avoid the establishment of undue constraints to the development of effective environmental policies, and (ii) maximise positive synergies between trade liberalisation and environmental protection. Three specific issues should be addressed: MEAs, ecolabelling/PPMs and core environmental principles in particular the precautionary principle. As regards MEAs, our view remains that trade measures pursuant to MEAs should be accommodated within the WTO system.

- Co-ordinate their efforts to achieve workable Bio-safety Protocol which facilitates technology development and transfer to the developing world without creating new barriers to international trade

The Bio-safety Protocol has as a primary focus to ensure biosafety in the context of safe transboundary movement of Living Modified Organisms and does not deal with technology transfer as such.

Furthermore, our efforts are aimed at avoiding the creation of “unnecessary” barriers to international trade instead of “new” barriers.

- Work on predictable and transparent regulatory requirements for the approval of agri-food biotech products, on mutual sharing of safety data and assessments and to consider the compatibility of the European and Canadian regulatory requirements as an important long term goal to achieve

We agree that the approval of agri-food biotech products should be transparent. Therefore, we are currently in a process to change its regulation. Mandatory labelling, monitoring of products and public consultations are seen by us as means to achieve a transparent approval process.

- Put discussions on e-commerce in WTO in the proper context, apply existing rules in GATT, GATS and TRIPS and product-neutral aspects (but CERT also recommends to classify e-commerce as a class of service per-se)

While confirming that the WTO agreements should remain technology neutral, CERT nevertheless recommends that e-commerce should be classified as a class of service per-se. We do not agree with this idea: e-commerce is already covered by the present WTO obligations and agreements, the GATS in particular. We endorse the principle of technological neutrality of e-commerce-related policies. This implies that, as far as GATS is concerned, e-commerce should not be classified as a new category of services.

- Take broad view of e-commerce outside the realm of WTO, protect its potential for job creation, and accept the input from the many industry associations

On taxation and tariff aspects of e-commerce, we do have a problem with CERT's recommendation that "digital products delivered in an e-commerce transaction should not be categorised as a supply of services for tax purposes ...". We do not recognise the existence of "digitalised products", but only of electronic deliveries that in our view are always services. Those deliveries are considered as services not only for the purposes of application of international rules, but also for the purposes of taxation.

In addition, the CERT paper runs into a contradiction in this point. On the one hand, it states that "comparable goods should not be categorised as differently depending on the mode of operation". On the other hand, the CERT paper indicates that the WTO standstill on customs duties should be maintained. If the standstill is maintained for electronic transmissions, then "comparable goods" would be discriminated.