



CANADA EUROPE ROUND TABLE **for Business**

Recommendations directed at **Canadian Government and** **European Union**

Brussels, 16 June 1999

Introduction

CERT member companies have made a first attempt to identify trade and investment issues that are common to Canadian and European business and they have formulated a set of recommendations for their respective government bodies.

This is a first attempt and it is therefore limited in scope.

It is also not all-embracing because the companies have attempted to limit their recommendations to those that affect the Canada-EU bi-lateral relationship or where Canadian and European government co-operation can make a difference in the multi-lateral environment.

CERT in no way wants to duplicate the work done in the Trans Atlantic Business Dialogue (TABD) between US and European companies, nor does it want to be seen as an extension of the TABD. Within its limited scope as described above, it hopes that it can contribute to improved bi-lateral Canadian and European relationship and cooperation, and to more effective and efficient negotiations in the context of the ECTI, the EU-Canada Trade Initiative.

Overview of Main Recommendations

It is recommended that the Canadian government:

- **Review draft Revenue Canada Information Circular IC 78-R2, and reduce the documentation requirements and penalty scheme in the context of Transfer Pricing**
- **Abolish attempts to levy \$2.5 on CD-R for the benefit of the music industry only**
- **Recognize that following 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**
- **Amend the EU-Canada Zero-for-Zero Agreement to give a common reduction in tariffs to all spirit drinks, including gin and vodka**

It is recommended that the European Union:

- **Accelerate abolition of tariffs on Canadian newsprint and other paper products**
- **Abolish the 6% tariff on primary aluminium ingots**
- **Come to rapid conclusion on and establishment of EASA**
- **Come to common position on Air Transport and Environment**
- **Encourage competition in public procurement by not standardizing on a single manufacturer's operating system and application packages**
- **Implement the UMTS Directive in a manner that allows operators free choice of standard for Third Generation Wireless systems**
- **Ensure a seamless Internal market for E-Commerce by upholding the principle of 'country of origin'**

It is recommended that the Canadian government and the European Union:

- **Play an active role in standardization efforts of the Tire industry through UN-ECE WP29**
- **Increase cooperation in ECTI in period leading up to WTO Ministerial, making the next round comprehensive and lasting no longer than three years, and concluding an all-inclusive undertaking, that allows for sectoral agreements where required.**
- **Urge the Organizing Committee of Ministerial that equal access be guaranteed to all events to all interested parties**
- **Work towards a Multilateral Agreement on Investment in the WTO**
- **Broaden and deepen the GATS and insist on adherence to current GATS agreements by new entrants China and Russia**

- **If needed, cooperate in the formulation of a WTO Code for Aeronautics (subsidies)**
- **Progress towards EU-Canada wine and spirit drinks agreements, as agreed at the last EU-Canada Summit**
- **Urge developing countries to fully meet their TRIPS obligations by January 1, 2000.**
- **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).**
- **Co-ordinate their efforts to achieve a workable Bio-safety protocol which facilitates technology development and transfer to the developing world without creating new barriers to international trade.**
- **Commit to 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.**
- **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.**
- **Pursue strict implementation of the TRIPs concluded during the Uruguay Round and do not allow for reopening the Agreement itself**
- **Break deadlock in first product review of ITA II and concentrate on convergence of Information Technology and Telecommunications industries**
- **Put discussions on E-Commerce in WTO in the proper context, apply existing rules in GATT, GATS and TRIPs and protect technology-neutral aspects**
- **Improve WTO dispute settlement procedures**
- **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.**

CANADA-EU TRADE ISSUES

CERT companies realize that today's trade focus is very much on the multilateral side, the preparation for the launch of the new WTO round of negotiations. Nevertheless, CERT likes to draw the attention of the Canadian Government and the European Commission to a number of bi-lateral issues as mentioned below.

General

An issue that concerns many sectors is that of transfer pricing and burdensome requirements for transfer pricing documentation and the imposition of stiff penalties in Canada.

The draft Revenue Canada Information Circular IC 87-R2 reflects the OECD Guidelines' reaffirmation of traditional *transactional based methods* like CUP, cost plus and resale price over *transactional profit methods*.

With respect to intangible property and services, Revenue Canada's views are very similar to those of the OECD.

With respect to documentation requirements, the sentiments expressed by Revenue Canada seem to follow directly from recommendations in the OECD Guidelines (for example, Paragraph 5.4 which discusses steps that a prudent business manager would take to document transfer pricing information).

With respect to penalties, the OECD Guidelines appear to caution against overly harsh penalty systems and are generally critical of penalties where "good faith" and "reasonable attempts" to comply with the objectives of transfer pricing rules are made (Paragraphs 4.26 and 4.28).

In spite of this, Revenue Canada has the power to enforce fairly harsh penalties equal to 10% of transfer pricing income and capital adjustments of transactions where they determine that the taxpayer failed to make reasonable efforts to use arm's length transfer prices. Under these Canadian rules, the taxpayer is deemed to not have made reasonable efforts to determine and use arm's length transfer prices unless the onerous documentation requirements are met.

CERT asks that the Canadian government review the Circular with a view to reducing the burden on business.

Tire sector

The tire industry is a global one, with only a few players able to assume a world wide commercial presence. Markets can be very segmented along either geographical lines (with varying import duties from country to country) or along product/type lines (with different and sometimes redundant testing procedures), which may constitute barriers to free trade.

The industry has consequently identified the need to harmonize those standards, which are recognized and approved at regional level in order to improve multilateral trade and market access, with a view to better serve the customer.

The Tire industry had the opportunity to begin this process when it produced the first harmonized standard for passenger-car tires, the GTS 2000, a new global standard for tires across the world, the result of a successful cooperation between US, Asian and European partners. This new harmonized standard has entered a formal process of approval by the competent authorities, United Nations Working Party 29 and the US National Highway Transport and Safety Agency.

CERT believes that even greater cooperation could be obtained through the adhesion of Canada and the EU to the global regulatory forum of UN-ECE WP29.

GTS 2000 was presented for consideration within the framework of the Trans Atlantic Business Dialogue and the tire sector is pleased to also present this through CERT to Canada and EU as a means of promoting global harmonized standards.

Paper and Pulp sector

The Canadian Pulp and Paper Industry is a healthy sector that is engaged in substantial trade with the European Union. The exports are over \$ 3.5 billion annually and are growing.

As a result of the Uruguay Round negotiations, the EU has agreed to eliminate tariffs on Canadian newsprint by 2002 and on other paper products by 2004.

CERT members urge the EU to accelerate the elimination of tariffs, hopefully to 1 January 2000, so as to separate these clearly from the new WTO round of negotiations.

A much broader issue is that of tariff negotiations aimed at reduction of tariffs for several sectors, including pulp and paper products in the Asia Pacific Region.

The industry is trying to engage the European Commission in supporting its efforts in APEC's Early Voluntary Sectoral Liberalization (EVSL) initiative. It is vital that this work is completed before the end of the year and CERT is asking the EU for its full support in this effort.

If not successful, the EVSL will revert to the much broader WTO Millennium Round, where it could well become buried.

The Pulp and Paper industry is also concerned by the possible adoption of discriminatory forest certification standards as a condition for a sale in Europe. Draft legislation aimed at favoring only products certified by the Forest Stewardship Council was introduced in the Netherlands this year. It was subsequently judged by the European Commission and the WTO to be discriminatory. Even though the draft legislation was withdrawn, the forces in Europe calling for certification remain loud and strong.

CERT members are concerned that these forces could result in regulations that would discriminate against Canadian forest products.

CERT urges the European Commission to be vigilant in these matters and to continue to support open and transparent trade conditions for the Pulp and Paper industry in Europe.

Aluminium sector

The European Union imposes a 6% tariff on imports of primary aluminium ingots originating from all but a relatively small number of selected countries. Commercial practices have resulted in the integration of the 6% duty into the pricing structure of aluminium, translating into a market premium (or effective price increase) of an average 5% on all primary aluminium ingots sold in the EU.

The real effect of the duty increases the price of input paid by the primary ingot customers and supports the profitability of the EU producers and those having free market access. In 1997, this premium totalled some \$445 million. Of this amount, aluminium producers in the EU made a profit incentive of \$205 million with an additional \$100 million – on duty-free ingot - made by producers in countries with duty free access. Governments collected the balance as duty - \$140 million. Therefore, the EU market is subsidizing aluminium producers that are already competitive by themselves.

The EU aluminium customers pay the highest prices of all and yet would have a very strong buying position if the 6% duty were removed. This situation would translate into a direct 5% reduction in the average price of primary metal. In the medium term, the reduction in primary prices would be passed on to customers, faster in some markets and products than in others. Global flow of metal would be slightly realigned on the basis of logistics and demand: more sources of supply would be available to Europe and that could lead to a lower market premium. CERT recommends that the tariff be abolished. Lifting the duty would lead to a lower cost of supply, a major stimulus for European semi-fabricators. Since semi-fabricating accounts for 90% of the employment in the EU aluminium industry (190,000), the prospect for overall job growth is stronger than by maintaining the tariff.

The EU countries have fallen significantly behind the U.S. and Japan in aluminium consumption per capita. Whereas aluminium consumption per capita is 31.3 kg in the U.S, the figure for the EU-big-4 (Germany, Italy, the UK and France) is only 19.5kg. Japan, a major competitor in the world markets, has the highest per capita aluminium consumption at 31.7 kg, despite virtually no domestic ingot production. This wide discrepancy between Europe and the U.S., both advanced industrial economies that compete globally, is an anomaly given the importance of aluminium as a strategic material with superior recyclability and life cycle value.

The aluminium industry has been and remains beneficial to the economy of Europe. Aluminium fabricating is a knowledge-based industry driven by development and design as well as manufacturing methods and processes. Europe has demonstrated its expertise in developing innovative technologies and applications that leverage the intrinsic qualities of aluminium to generate an increased demand for aluminium through new products containing the metal.

With the abolition of the tariff, there will be pressure on European smelters to be more efficient as the 6% cushion will be removed. Canada's economically and environmentally efficient smelters will be well positioned to benefit from the removal of the duty.

Aerospace sector

The industry applauds the agreement of the EU Transport Council to empower the European Aviation Safety Authority (EASA) with real legislative powers delegated from member States in the near future. This will lead to significant simplification and greater transparency of joint procedure in Europe.

CERT continues to emphasize the need for a rapid conclusion and establishment of EASA at an early date.

Regarding Air Transport and Environment, CERT would like to make the following point. The European Commission is seeking new rules in the field of noise and emissions and this has become a very sensitive issue. While recognizing that ICAO should remain the center of decision in this matter, discussions have been taking place between the aerospace industry, airlines and trade associations to reduce aircraft CO₂ emissions. Any potential consideration of industry's voluntary agreement in this field is strongly supported by Canadian and European industry.

Software sector

CERT urges the European Union government bodies to encourage competition by recognizing competing software systems – operating systems, application packages, etc. As an example, Linux is effectively a free Operating System, highly stable, and in use by an estimated 12 million people around the world. Yet, almost all government procurement offices have adopted Microsoft Operating Systems as a standard and have eliminated competition. Many software manufacturers do provide application systems for Linux; example Corel Word Perfect Office 2000 and CorelDRAW 9 are being developed for Linux. The Mexican government has installed Linux in 140,000 schools and 1 million attempted downloads have been recorded in the EU for WordPerfect 8 for Linux. CERT would expect the Canadian government and the European Commission to support open borders and open trade for the software sector.

It is worth to signal a positive example, that of the European Court of Justice, which has agreed to standardize its electronic documentation on XML standards, supported by the entire software sector, and not on MSXML which is a proprietary and non-compatible Microsoft version.

CERT also draws the attention of the Canadian government to the Canadian Copyright Board attempt to impose a \$ 2.5 levy on CD-R and a varying rate on any recordable media, such as cassettes. This is done for the protection of the Canadian music industry supposedly hit by counterfeiting and loss of royalties through MP3 recordings. This completely ignores software companies and the impact theft and counterfeiting have on its industry, which is a far greater user of CD-R's and the like.

CERT companies are against any new taxes or tariffs because it distorts the notion of equal treatment and it can have a tremendous negative impact on trade.

Alcoholic Beverages Sector

CERT companies have mutual business interests on both sides of the Atlantic and have worked closely together successfully on a number of international issues. They have, therefore, welcomed the Zero-for-Zero agreement between the EU and Canada for the phased elimination of import tariffs. Whereas this has included brown spirit drinks (such as whisky), the agreement does not, however, currently cover white spirit drinks (e.g. gin and vodka).

Although raised in recent bi-lateral negotiations, there appears to be little progress on reducing Canadian tariffs for EU gin and vodka. This is reportedly dependent on the Canadian insistence of a trade-off against their paper exports to the EU. Our companies urge progress on these points in EU-Canada negotiations, or, failing that, ask for the case to be taken forward in the Millennium Round.

Following the latest EU-Canada Summit, both parties agreed to work towards a wine and spirits agreement for completion by the end of 1998. Given that progress has reportedly been slow, CERT companies would suggest that wine and spirits now be segregated with separate negotiations for each.

The record of Canadian and EU companies' close cooperation in this sector, has, however, been put at considerable risk recently by Canada's inclusion of gin and vodka on its provisional list of EU products on which 100% tariffs may be imposed if the beef hormone dispute is not resolved. The Canadian Government is asked to recognize the disadvantages to both sides of the alcoholic drinks sector if retaliation is enforced on these products.

ELECTRONIC COMMERCE

Electronic Commerce can be regarded as the current and future key generator of economic growth and it is responsible for the creation of new jobs on both sides of the Atlantic. E-Commerce related policies should be developed by governments on the principle that these policies must be *technology-neutral and will be based on industry recommendations*.

Industry is hard at work in a number of global organizations as listed under “E-Commerce in WTO”, to formulate its recommendations.

The Canadian Government and the European Union should act as catalysts in the promotion of this principle in global organizations such as WTO, WIPO, and OECD.

The development and growth of E-Commerce depends on an open and nurturing environment within each industry sector. In many areas, laws, policies, and regulations constitute barriers to E-Commerce. In most cases, the barriers are not specific to E-Commerce. Rather, they are endemic to the environment itself, but they disproportionately affect E-Commerce. Examples are tele-medicine and cross-border electronic services.

EU draft Directive on certain legal aspects of E-Commerce

CERT companies welcome the draft Directive that in realistic terms recognizes the cross-border nature of E-Commerce. We strongly believe that the proposal's principle focus on the further strengthening of the country of origin principle in Internal Market law will be crucial to Europe's future growth and prosperity. CERT companies urge the European Union to not deviate from this approach.

E-Commerce will expose many companies to hitherto unknown forms of competition and market players will become more competitive and efficient to the benefit of the European economies.

Protection of personal data

While industry should continue to develop mechanisms for privacy protection that parallel the evolution of E-Commerce, the European Commission and the Member States should continue to implement the EU Directive on the protection of personal data in a flexible and practical manner. The implementation of an overly regulatory approach to privacy could interrupt trans-border flow of personal data and become a trade barrier without increasing consumer confidence in E-Commerce.

Taxation and Tariffs

There should not be any new or additional new taxes for E-Commerce. Nor should business be obliged to obtain or to keep records unrelated to normal business operations in order to facilitate tax collection.

Digital products delivered in an E-Commerce transaction should not be categorized as a supply of services for tax purposes; comparable goods should not be categorized differently depending on the mode of operation.

Consumption taxes should neither advantage nor disadvantage Canadian or EU suppliers and recipients of goods and services traded through E-Commerce. CERT members urge the Canadian Government and the European Union to keep in mind the burden put on Small and Medium sized Enterprises (SMEs) when implementing rules for registration in their territories for tax purposes. CERT recommends one single place for consumption tax registration purposes to facilitate tax compliance.

The WTO Standstill Agreement on duty free treatment for electronic transmissions should be maintained.

Intellectual Property Rights

The WTO Trips Agreement should be implemented and fully enforced in a timely fashion. The Canadian Government and the European Union should insist on acceleration of the ratification and implementation process of the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty, together with legislation limiting potential copyright liability for on-line service providers, information service providers and telecommunications companies.

Effective legal regimes should be established and maintained that give right holders the ability to authorize or prohibit the use of their works and to enforce such rights.

Backbone Networks

E-Commerce depends on a good telecommunications infrastructure and the ability to provide goods and services electronically across borders.

CERT urges governments to adopt pro-investment and pro-competitive policies to promote market-driven growth in bandwidth capacity in order to encourage global E-Commerce and new and innovative added-value services.

In addition, the WTO agreement on basic telecommunications services should encompass all WTO members with meaningful market-opening commitments.

Furthermore, WTO members should fully implement their commitments on the basis of the Regulatory Principles adopted in the so-called “Reference Paper”.

Electronic Contracts

The parties to an electronic contract should be permitted to choose which body of law and court will govern the contract, establish jurisdiction over the involved parties and conduct dispute resolution. Should parties fail to specify the governing laws, the default option should be the law or court of the country of origin of the supplier of a good or service.

Electronic and written contracts should have the same legal status.

WTO Seattle Ministerial and launch of Millenium Round

Introduction

While cooperation between the United States and the European Union is critical to the success of the Seattle Ministerial, it is felt that Canadian-EU cooperation could forge compromises, which might otherwise not be achieved.

Since November 1998, EU and Canadian officials have met to prepare the ground on issues of mutual interest and in particular the preparatory process for a comprehensive new round of negotiations, which will be launched in Seattle in November 1999.

The major issue is the way the next round will be shaped. It is in everybody's interest that the round be completed as quickly as possible. In addition, the completion of pending work from the Uruguay Round is equally important. Renewed vigilance by the WTO and pressure to meet obligations will be important to ensure that all member countries meet even the most sensitive obligations.

CERT strongly supports the Canada-EU WTO alliance building initiative in ECTI and proposes to contribute to this process with the aim to:

- Draw the US Administration position closely to the positions shared by the EU and Canada
- Encourage developing countries to take full part in the WTO process

Canada, as a CAIRNS Group member, may not always share the EU views on agriculture issues, but CERT hopes that both will be able to find enough common ground to make it possible to cooperate in many areas of the agriculture sector.

CERT members urge the Canadian Government and the European union to adhere to two key principles:

- Making the next round comprehensive and lasting no longer than three years, while allowing for "early harvest" when agreement has been reached in particular areas
- Concluding an all-inclusive undertaking, that also allows for sectoral agreements, where required

CERT members have identified several issue areas, as stated below, on which Canada and the EU could cooperate productively.

Organization of Ministerial Conference

CERT is concerned about the lack of transparency, restrictions to access, and absence of neutrality displayed by the Organizing Committee. The preferential treatment given to so-called "sponsor companies", mostly of US origin, in terms of being able to attend

sessions, dinners, cocktail parties, etc. is a display of commercialization that should not be prevalent in an inter-governmental conference like a WTO Ministerial Conference. CERT hopes that the Canadian government and the European Commission will see to it that the Organizing Committee guarantees equal access to all events to all interested parties.

Market access, tariffs and investment

The new WTO round should include negotiations on binding reductions of tariff and non-tariff barriers in as many industrial sectors as possible. Special emphasis must be placed on regulatory barriers, a form of non-tariff barriers. A broad market access package such as negotiated during the Uruguay Round, would provide important savings for business and a significant boost to the world economy.

The EU Spirit Drinks Industry has welcomed the Zero-for-Zero agreement between the EU and Canada, but, as mentioned above, white spirit drinks are not currently covered. If negotiations do not resolve this shortly, our companies ask for the case to be taken forward in the Millennium Round. As regards more general market access in the rest of the world, the industry will be looking for early improvement through significant reductions in applied tariffs, which should be bound at the lower rates.

Canadian and European companies share a strong interest in improving market access and in the protection of foreign investment worldwide. As governments were unable to agree on a Code at the OECD, every effort should be made to conclude a multilateral agreement on investment during the next round. In addition, requirements in the Trade-Related Investment Measures (TRIMs) of the Uruguay Round on the phase-out of existing investment barriers should be fully enforced. WTO rules on right of establishment, national treatment, transparency, transfer or repatriation of funds, and protection from expropriation are some of key issues for Canadian and European business.

Services

The next round should substantially broaden and deepen existing commitments from the Uruguay Round. A broad range of services should be part of the outcome and with as few exemptions as possible.

Pro-competitive regulatory principles, such as those agreed to by many WTO members in the Basic Telecommunications Agreement should be included in new services to ensure real competitive opportunities.

The Basic Telecommunications Agreement should be implemented by all signatories and be improved upon. Additional countries should make commitments and all those participating in the agreement should agree to pro-competitive regulatory principles in the so-called Reference Paper.

CERT urges Canadian and EU negotiators to insist on substantial service commitments in their WTO negotiations with new entrants like China and Russia. These commitments must include liberalization, elimination of service trade restrictions and full distribution rights, together with the Basic Telecommunications Agreement.

Trade facilitation

Adoption of a number of measures should be sought to facilitate trade including further simplification, harmonization and computerization of customs procedures are needed on a global basis. Canada and the EU could play a role in convincing developing countries to implement these measures.

Subsidies

The Aerospace sector has been a subject of constant tensions between the EU and the USA for the last decade. Acknowledging the fact that the government support system in Canada is quite similar to the one used in Europe, and considering also the close positions between Canada and the EU at the end of the Uruguay Round, industry on both sides feel that there is enough ground to elaborate a common position on the rectification of the 1979 Agreement on Civil Aircraft.

Since the entry into force of WTO rules it has been impossible to rectify the Aircraft Agreement due to refusal of the US, because of its possible impact on the Subsidy Code. CERT companies recommend that the Canadian government and the European Commission take the initiative for the establishment of a specific code for Aeronautics (*Lex specialis*).

Public Procurement

CERT members urge the Canadian Government and the European Union to seek elimination of existing restrictions, such as in defense matters, and share the objective of achieving national treatment.

We would hope that Canada and the EU would work together to ensure that Public Procurement is put on the agenda and that it be broadly addressed to also include lower levels of government in federally organized states.

Accession to the Public Procurement Agreement should also be a firm condition for new members of the WTO organization, in particular China and Russia.

Trade and Environment

CERT hopes that both governments will support the development of specific guidelines to trade measures in multilateral environmental agreements.

Trade-Related Intellectual Property Rights (TRIPs)

In today's competitive world only industrial sectors and individual companies focusing on innovation are able to build a successful future, to create jobs and to add value to the economy. The investment in research and leading edge technology, however, requires an adequate protection of the intellectual property.

CERT members wish to highlight two sectors that rely heavily on intellectual property rights, i.e. life-sciences industry and information/software sector.

The bedrock of the international trade policy for intellectual property based industry sectors is the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) to which all WTO members are subject. The TRIPS Agreement, considered as one of the most fundamental results of the Uruguay Round, establishes a baseline set of requirements which nations must meet in order to effectively protect intellectual property rights. Nations that fail to meet its requirements are subject to trade sanctions under the WTO's "dispute settlement mechanism". The deadline for developing countries (who make up the majority of WTO member states) to meet their TRIPS obligations is 1 January 2000. The requisite deadline for developed countries has already passed.

Both Life Sciences and IT/Software industries would like to emphasize the importance of full and timely implementation of TRIPS minimum standards for patents by all WTO members. They urge the European Union and Canada to ensure that WTO developing countries comply fully with the TRIPS agreement by 1 January 2000 at the latest. Such a move would foster the transfer of technology to these countries.

Among the most important obligations under the TRIPS Agreement are requirements that nations will:

- Prosecute copyright theft and impose adequate (i.e. deterrent) civil and criminal penalties;
- have judicial procedures in place which are fair and equitable and ensure that cases are resolved in a reasonable amount of time and
- have procedures in place which permit surprise ("ex parte" searches in civil as well as criminal cases of copyright infringement.

These obligations are both legal and substantive in nature, in that nations must not only have adequate laws in place but also substantively those laws.

Another issue requiring utmost importance is the review of Article 27.3(b) of the TRIPS Agreement. This article allows members to exclude from patentability certain biotechnological inventions related to plants or animals. Moreover, it accepts alternative *sui generis* property systems for the protection of plant varieties.

It was agreed in the first place to accommodate the widely accepted system of Plant Variety Protection, which generally works well. This concept is now being used to include a broader set of alternative ownership models, such as traditional knowledge, including knowledge collectively owned by communities.

CERT companies urge the Canadian government and the European Union to adopt a common strategy to remove the current optional exclusion from patent protection for certain biotechnological inventions.

Lastly, CERT would like to point out that the deadline for developing countries to meet their obligations is 1 January 2000. We ask that the Canadian government and the European Union insist that all existing and new adherents to the Agreement will meet their requirements.

Furthermore, the majority of CERT members feel that the Seattle Ministerial should not "reopen" discussion of the TRIPs Agreement itself, as doing so would open the gates for further delay of implementation or otherwise weakening of the provisions of the Agreement.

Information Technology Agreement

CERT asks that Canadian and EU negotiators work together to help break the deadlock in the negotiations on the first product review under the Information Technology Agreement (ITA II). We support rapid implementation of currently agreed issues and ask negotiators to concentrate on the enlargement of the agreement with a view to the rapid convergence of Information Technology and Telecommunications industries.

Electronic Commerce

Electronic Commerce is not a new sector, but rather a new distribution mechanism. It cuts across all industry sectors, it enables these sectors to be more efficient and competitive, and it facilitates trade. In WTO terms, we would classify E-Commerce as a class of service per-se. In fact, E-Commerce is already greatly covered by previous WTO commitments.

In the absence of government intervention, E-Commerce is thriving and is expected to generate more than \$ 3 trillion in sales by the year 2003. As it expands across borders, the role of trade policy becomes fundamentally important. The 1999 WTO Ministerial in Seattle presents a key opportunity to confirm that WTO does not have the task to provide a regulatory environment for E-Commerce on a global scale. A widely agreed upon set of principles is already being developed, which should guide any government action in this rapidly changing means of commerce.

CERT is asking the Canadian government and the European Union to keep the following recommendations in mind.

- E-Commerce should be exempt from tariffs, and this exemption should apply to both the transmissions themselves and to their contents;
- Ministers should confirm that the current WTO obligations and commitments under GATT, GATS and TRIPs rules are and remain technology-neutral and apply to E-Commerce;
- Countries should refrain from enacting trade-related measures that could impede, actually or potentially, international E-Commerce, and such rules could be enacted only where a legitimate policy objective necessitates doing so and the least trade-restrictive measure is chosen;

- The General Council of the WTO, in addition to overseeing work on E-Commerce within GATT, GATTS, and TRIPs, should direct such future negotiations as are necessary to ensure that international trade law evolves as E-Commerce grows.

Business at large is assisting governments through industry groups like Business Advisory Committee of the OECD (BIAC), Global Business Dialogue on E-Commerce (GBDe), Global Information Infrastructure Commission (GIIC), International Chamber of Commerce (ICC), World Information Technology and Services Alliance (WITSA) and the E-Commerce Working Group of TABD (Working Group V).

Dispute settlement

The rules need to be sharpened in order to improve transparency and avoid ambiguous rules that allow for different interpretations (e.g. regional trade agreements).

Where possible, CERT urges the Canadian government and the EU to take common approaches to the DSU review, in particular as regards improvement of transparency and functioning of panel proceedings.

Electronic Authentication

Governments should refrain from passing premature and potentially conflicting legislation and should resolve problems caused by existing legislation that could inhibit the development of a competitive E-Commerce environment.

Industry developed standards, business models, and market-driven development of Authentication technologies and electronic signature should be permitted.

Encryption

The Canadian Government and the European Union should strive for increased cooperation to create global encryption policies that provide a high level of security, trust and choice. Present restrictions in global use of encryption techniques should be removed and there should not be any direct or indirect mandates by political authorities for key recovery and trusted third parties key escrow features.

CERT recommends that OECD guidelines be adopted, particularly the principles regarding choice, the market-driven developments of encryption products and services, and international standards that users trust.