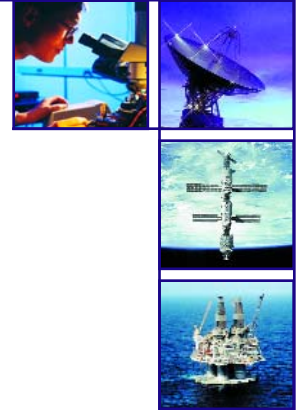




Government
of Canada

Gouvernement
du Canada



GOVERNMENT RESPONSE TO THE REPORT OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Building an Effective New Round of WTO Negotiations: Key Issues for Canada





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GOVERNMENT RESPONSE

Introduction

The Government thanks the members of the Standing Committee for their excellent work leading to the May 2002 report entitled *Building an Effective New Round of WTO Negotiations: Key Issues for Canada*. The Committee's work is an important part of preparing Canada for future trade negotiations at the World Trade Organization (WTO).

Since the Doha Declaration, substantive work has begun in all negotiating and work program areas. A rules-based, non-discriminatory multilateral trading system creates solid economic opportunities within Canada as well as the rest of the world. This type of system also promotes a climate for prosperity, democracy, justice and social stability worldwide. By continuing our cooperative dialogue throughout this round of the negotiations, Canada can achieve, together with our partners, an outcome that will create a more level playing field for trade among Member countries and allow us to achieve our global economic, political, social, and sustainable development objectives.

Our prime objectives for the agriculture negotiations are to eliminate export subsidies as quickly as possible, to substantially reduce or eliminate trade-distorting domestic support, and to significantly improve market access for all agriculture and food products. For non-agriculture market access negotiations, we are seeking the reduction or elimination of tariff and non-tariff barriers. We seek improvements and clarification of the Dispute Settlement Understanding in support of effective dispute resolution under the trade agreements. As part of the negotiations under the General Agreement on Trade in Services (GATS), and in accordance with the June 30 deadline, Canada has already submitted its market access requests to other countries for their consideration in the services negotiations. As we consider other countries' services requests to Canada, we have made it clear in unequivocal terms that the Government preserves its policy flexibility in health, public education, culture, and social services. Indeed, Canada has not and will not negotiate its public education system or its health system, social services and culture, and will safeguard its right to regulate in areas such as safety, the environment, and natural resources management. This new round of negotiations will also allow Canada to further promote the coherence agenda, particularly on the relationship between environment and trade.

With the needs of developing countries at the heart of the Doha Development Agenda, the new round of WTO negotiations gives trading nations the opportunity to strengthen the existing institution through fuller and more effective participation of all





members, particularly developing countries and the least developed among them. Canada has been recognized in the WTO for being a leader on trade and development issues, due largely to our tireless efforts in the coordination of trade-related technical assistance and our recently announced market access initiative for Least Developed Countries (LDCs), which opens Canada's markets by eliminating tariffs and quotas on most imports from 48 LDCs, 29 of which are WTO members.

The Government continues to believe strongly that the new round of WTO negotiations, and trade liberalization in general, are positive developments for all Canadians. The findings in the Standing Committee's Report highlight some of the challenges Canada faces, and are a positive contribution to assisting us in developing an approach to these negotiations that is consistent with, and reflective of, Canadians' views.

INDUSTRIAL TARIFFS

Recommendation 1

"That the Government of Canada work aggressively within the WTO to achieve measurable progress towards the reduction and/or elimination of remaining industrial tariffs."

The Government agrees with the recommendation and, in the context of the current WTO negotiations, is committed to seeking the reduction or elimination of significant tariff barriers which remain in numerous markets of interest to Canadian exporters. In pursuit of this objective, Canada actively participates in detailed discussions in the WTO on the question of the possible methods, or "modalities" to be used in the negotiations. Past experience has shown that to reach a substantial and balanced result, tariff reductions are best achieved through a number of approaches. These can include: sectoral agreements in which participating Members agree either to eliminate tariffs ("zero-for-zero" agreements) or to harmonize them; formula (percentage) cuts; and the "request/offer" process. The Government strongly favours expanded participation in the existing sectoral duty-free and tariff harmonization agreements, especially by the middle- and upper-income developing countries. We also intend to propose duty-free agreements in additional sectors of interest to Canada, with the widest possible participation by WTO Members. Any further cuts in Canadian tariff rates should be accompanied by concrete, significant improvements in the levels of access to our priority markets. Canada's main export-related objectives for tariffs include: 1. reducing and binding applied tariff levels; 2. reducing and re-binding high bound rates; 3. expanding the scope of duty free trade; 4. expanding the scope of tariff bindings by WTO Members; 5. eliminating nuisance tariffs (e.g. those less than 2%); and 6. maximizing the use of ad valorem (i.e. percentage) tariff rates.





TRADE AND DEVELOPMENT

Recommendation 2

“That Canada thoroughly assess the existing proposal to include a “development box” in the WTO Agreement on Agriculture, and make its findings public.”

The Government agrees with the recommendation that Canada thoroughly assess the various “development box” proposals submitted in the WTO agriculture negotiations. In the Doha Ministerial Declaration, WTO Members agreed that Special and Differential treatment (S&D) provisions “shall be an integral part of all elements of the negotiations” on agriculture, “to enable developing countries to effectively take account of their development needs, including food security and rural development.” The Government believes that the aim of this flexibility should be to facilitate the transition by developing countries to a fair and market-oriented agricultural trading system, which is the long-term objective of the WTO Agreement on Agriculture.

The “development box” proposal groups together a broad range of policy measures and different kinds of flexibility. Other “boxes” and S&D provisions have also been proposed; for example, India has proposed a “food security box”. The Government is considering the merits of all S&D proposals in the context of the three principal elements of the agriculture negotiations, which are: market access; export competition; and domestic support. As a part of ongoing consultations, the Government will hold a session for non-governmental organizations to examine policy measures captured in the development box in detail this autumn. As negotiations progress, the Government will continue to consult stakeholders on these matters, and work openly and constructively with developing countries to ensure that the path to reform responds to the needs and interests of all WTO members.

Recommendation 3

“That Canada assume a leadership role in promoting access for developing countries to the markets of the developed world. To that end, Canada should make unilateral concessions in improving access to the Canadian market for products originating in these countries. The federal government should also explore the need to provide transitional assistance to the domestic industries and/or workers affected by this measure.”

The Government agrees with the recommendation as long as it is not to be interpreted as recommending blanket unilateral concessions. Canada has been steadily improving market access for developing countries through a variety of means, both unilateral (for example reviews of the General Preferential Tariff, LDC Market Access Initiative) and





reciprocal (bilateral agreements, WTO commitments). Since 1974, Canada has provided preferential tariff rates (under the General Preferential Tariff) for imports of most products from developing countries to facilitate their economic growth and development. As well, as announced in June, the Government will significantly improve Canada's tariff treatment of products from least developed countries. Effective January 1, 2003, Canada will extend duty-free and quota-free access to all imports from such countries except dairy products, poultry and eggs (see response to Recommendation 7). Canada is exercising leadership in the Doha Development Agenda negotiations with a view to integrating developing countries more fully into the WTO's work, and will continue to promote further market access improvements for developing countries in the negotiations.

Recommendation 4

“That the federal government energetically support special and differential treatment provisions for developing countries that provide those countries with a more flexible timeframe for implementing WTO agreements. In negotiating this position at the WTO, Canada should also seek clear and equitable rules for how such an entitlement is determined in order that countries not qualify for special treatment in cases where it is not warranted.”

The Government agrees in principle with the recommendation for support of Special and Differential treatment for developing countries, and will consider a variety of provisions rather than focus on only one. The Government remains committed to the principle of Special and Differential treatment (S&D) at the WTO and has been actively advancing substantive exploration of this issue. The objective is to ensure that Special and Differential treatment provisions are relevant, to investigate which provisions are most useful to developing countries, and to seek ways to make the provisions more effective. This will entail examining which provisions have a demonstrated positive development effect and examining criteria for eligibility for special treatment.

Recommendation 5

“That the federal government take a leading-edge role in providing trade-related technical assistance to developing countries. With a view to finding the most effective way to do so, the federal government should also commit to increasing its contribution to capacity-building programs.”

Both the Department of Foreign Affairs and International Trade (DFAIT) and the Canadian International Development Agency (CIDA) are coordinating efforts with other government departments to deliver more effective trade-related technical assistance and capacity-building. Efforts are underway to capture the full range of assistance offered by the federal government in a database available to all WTO members.





The objective is to ensure that more targeted technical assistance is provided within WTO in coordination with other international organizations and donors. Canada contributed \$1 million to the WTO Global Trust Fund and \$300,000 to the WTO Training Institute.

Recommendation 6

“That Canada continue to promote its position at the WTO that calls for any modification of the existing compulsory licensing arrangement to not restrict developing countries without access to appropriate manufacturing capacity from importing generic medications in the event of public health emergencies. Canada should also promote the establishment of a dedicated international fund to help developing countries without access to such generic drugs to purchase them.”

Canada was instrumental in producing the November 14th, 2001 Declaration on the TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement and Public Health. The Declaration confirmed that the TRIPS Agreement included flexibility that allows developing and least developed countries to take measures to address public health problems and promote access to medicines for all. It also recognized that some of these countries may face particular difficulties using compulsory licenses. This issue is the subject of on-going discussions in the WTO TRIPS Council to find a solution while ensuring that research and development continues for the development of new and better medicines. Canada is an active participant in these discussions and is also facilitating access to medicines through its bilateral aid program and through multilateral initiatives such as the Global Fund to fight AIDS, TB and Malaria to which Canada recently committed \$150 million dollars. The Government supports the need for improved coordination and coherence in the provision of development assistance.

Recommendation 7

“That the Government of Canada unilaterally eliminate all remaining tariff and quota restrictions on imports from least-developed countries, save those on supply-managed agricultural products. In implementing this initiative, the federal government should do its utmost to discourage the transshipment of goods from countries remaining under quota restraint. The market access undertaking should be completed as soon as possible and certainly not later than December 31, 2002.”

The Government agrees with the recommendation. The Government announced a unilateral market access initiative for Least Developed Countries (LDCs) on June 27, 2002. Effective January 1, 2003, all products from 48 LDCs (except supply managed products: dairy, poultry, eggs) will be eligible to enter Canada duty-free and quota-free. Canada’s initiative will be the most far-reaching LDC preference scheme of any developed country in terms of the countries eligible, the products eligible, and admin-





istrative simplicity. The initiative gives Least Developed Countries preferential treatment in areas of key interest to them: apparel, textiles and agriculture. The Government also examined and confirmed the adequacy of existing programs should it be necessary to assist workers affected by the LDC Initiative. The Government is strengthening the capacity of the Canada Customs and Revenue Agency to monitor, verify, and enforce the rules of origin for apparel and textiles, to prevent the illegal transshipment of goods which are not entitled to preferential treatment.

Recommendation 8

“That, given the reality that the bulk of the economic costs associated with the Government of Canada’s proposal to provide full market access to least-developed countries will be borne disproportionately by a limited number of industries, the federal government establish a transitional assistance program for those industries affected and/or for their workers.”

The Government agrees in principle with the recommendation. The Government has confidence in the abilities of Canadian textile and apparel companies to adjust and compete given Canadian workers’ skills and excellent infrastructure. Over the past decade, employment, domestic production and exports have grown, even while textile and apparel imports have increased. This record was due in large part to an impressive growth in exports which represent the future for Canadian industry. Industry Minister Rock has announced a \$33 million Strategic Framework aimed at increasing the international competitiveness of the Canadian apparel and textile industries. Focused primarily on best practices, marketing initiatives and e-commerce, this initiative will help Canadian firms take advantage of global apparel and textile opportunities. The Government will be consulting closely with the industries in developing this programme.

DISPUTE SETTLEMENT

Recommendation 9

“That the Government of Canada actively seek the support of other WTO Members for revising the Dispute Settlement Understanding to make compensation mandatory if compensation is requested by the aggrieved Member in lieu of authorization to suspend equivalent concessions, in instances of non-compliance with panel decisions. Non-conforming anti-dumping and countervailing duties should have to be completely refunded.”





The Government agrees with the Sub-Committee's recommendation that Canada should encourage revisions to the Dispute Settlement Understanding (DSU) to provide more effective means to encourage Members' compliance with WTO obligations and with the rulings of the Dispute Settlement Body (DSB). The Government concurs with the Sub-Committee's observation that compliance with WTO obligations and the implementation of WTO panel and Appellate Body Reports is central to the integrity of the dispute settlement system. In most cases, Members comply. In those limited instances of non-compliance, the DSU currently encourages compensation or authorizes retaliation as temporary responsive measures pending compliance. Neither option is always viable or effective. Moreover, retaliation involving trade sanctions runs counter to trade liberalization objectives, can frustrate business and consumer interests and escalates bilateral tensions between trading partners.

The Government agrees that revisions to the DSU to provide for mandatory compensation in lieu of retaliation by way of suspension of concessions may provide an effective means to encourage compliance and an alternative to retaliation. The Government also agrees that there is merit in discussing, in the negotiations, issues associated with the refunding of anti-dumping and countervailing duties that do not conform with WTO obligations. Canada should anticipate that negotiations will identify complexities inherent in any alternative to compliance. At the Doha Ministerial Conference, Ministers established a May 2003 deadline for completion of DSU negotiations. Given the complex issues engaged in seeking alternatives to retaliation it may be difficult to forge consensus on any new approach to ensure compliance within the limited time available to Members to negotiate improvements to the DSU.

Recommendation 10

"That the federal government seek WTO consensus on clarifying the guidelines governing implementation of WTO rulings. In particular, the Government of Canada should urge Members to support DSU revisions that would expand the scope of arbitration under Article 21.3, and that would clarify the relationship between Articles 21.5 and 22 to resolve the ongoing sequencing problems."

The Government agrees that Canada should pursue efforts to clarify the Dispute Settlement Understanding (DSU) rules governing implementation of Dispute Settlement Body (DSB) rulings and, in particular, to seek the revisions to the DSU that would clarify the relationship between Articles 21.5 and 22 (sequencing) and the scope of arbitration under Article 21.3.

The DSU rules are not clear on the sequence of steps that Members must take when there is a disagreement whether a DSB ruling has been implemented and whether retaliation can be authorized. The Government seeks to ensure that this sequencing is





clear and forestalls any unilateral determination of non-compliance or retaliation. Even prior to the launch of DSU negotiations, Canada actively supported revisions to the DSU to address the sequencing problem. A proposal submitted by Canada and other co-sponsoring WTO Members prior to the Doha Ministerial has helped to inform ongoing negotiations on this issue.

Recommendation 11

“That, to improve the effectiveness of the WTO dispute settlement system, the Government of Canada actively encourage other WTO Members to implement an aggressive internal mediation process within the WTO to resolve disputes at an early stage in the process. Failing this, access to outside mediation should be explored.”

The Government agrees that mediation should be encouraged as a means of resolving disputes at an early stage in the dispute settlement process. In the upcoming negotiations, the Government will encourage discussion of ways to achieve greater use of WTO mediation as an alternative to litigation. The benefits of recourse to mediation outside the WTO rules will also be explored, though any alternative mechanisms must not detract from the current rights of other Members.

Recommendation 12

“That the federal government urge WTO Members to review the composition of panels and the Appellate Body, as well as the need for rules of evidence and dissenting opinions. Furthermore, a remand authority for the Appellate Body should be considered to assist in the correction of errors made by panels.”

The Government agrees that Canada should engage WTO Members in a review of the adequacy of the current panel system. Review should include consideration of the merits of moving to a permanent roster of professional panelists in lieu of the current ad hoc case-by-case panel selection under the supervision of the WTO Secretariat. Canada also should encourage consideration of whether the Appellate Body membership should be increased from the current roster of seven members.

The Government concurs with the proposal that Canada seek consideration in the Dispute Settlement Understanding (DSU) negotiations of the grant of a remand authority to the Appellate Body, to assist in addressing panel errors or incomplete panel findings.

With regard to the selection of panelists, the Government agrees that the current ad hoc process can be unnecessarily time-consuming. Cases before panels increasingly are complex and require specialized knowledge and experience in trade policy and law. Changes in the current process may contribute to greater timeline efficiencies,





panelist expertise and consistency in interpretation and application of the rules under the covered agreements. Any changes will need to address attendant cost implications. The current seven member Appellate Body has provided effective, efficient and credible review of panel decisions. Increased WTO Membership and active recourse to dispute settlement may warrant additional membership in the Appellate Body.

Experience to date with the dispute settlement system has not caused either Canada or other Members to identify specific requirements for more elaborate rules of evidence or the need for the provision for dissenting opinions as priority issues for the negotiations. This said, experience has identified instances where the Appellate Body has been unable to make a ruling on an issue due to an absence of sufficient factual findings by the panel. Remand authority for the Appellate Body such that panels could be instructed to reconsider the matter at issue within guidelines established by the Appellate Body may be appropriate.

Recommendation 13

“That, in order to enhance the transparency of the WTO’s dispute settlement system, the federal government activate an aggressive campaign to achieve consensus among WTO Members to open WTO dispute settlement proceedings to the public and to require that all Members make their submissions to WTO dispute settlement panels public.”

The Government agrees to make concerted efforts to secure consensus among WTO Members on greater transparency in dispute settlement. In particular, Canada will seek consensus that dispute settlement proceedings be open to the public and that Members make publicly available their panel and Appellate Body submissions.

Securing consensus to open the dispute settlement process to public observers and the release by Members of panel and Appellate Body submissions will also need to address improved means to protect confidential business information throughout the dispute settlement process. This recommendation is consistent with the position Canada has taken in the Dispute Settlement Body (DSB) in support of more open proceedings and the publication of submissions by all other Members; Canada’s dispute settlement submissions are publicly available and Canada for some time has encouraged other Members to follow suit.

Recommendation 14

“That the Government of Canada push for a formal WTO procedure for the submission of amicus curiae briefs, but that their consideration and acceptance be at the sole discretion of the relevant panel or the Appellate Body.”





The Government accepts the Sub-Committee's recommendation that Canada advocate a formal WTO procedure that would address the role of amicus curiae briefs in dispute settlement. Any such procedure should include an agreed and standardized procedure to enable panels and the Appellate Body to address unsolicited amicus curiae submissions.

The Government appreciates the Sub-Committee's careful consideration of the accessibility of dispute settlement to non-state actors. The Sub-Committee has noted that panels currently possess the right to seek information and technical advice from any individual or body they deem appropriate. In respect of non-governmental participation by way of amicus submissions, the Government notes the current lack of agreement among Members on the role of amicus or on a standardized procedure for addressing amicus submissions. The Government appreciates concerns raised with the Sub-Committee that any increased rights of intervention for unsolicited amicus curiae submissions be balanced against the relevance these might have to the factual and legal issues under consideration and that they not jeopardize the capacity of the panel and Appellate Body process to deliver to WTO Members prompt settlement of disputes in a manner that satisfies due process requirements.

ANTI-DUMPING, SUBSIDIES AND COUNTERVAIL MEASURES

Recommendation 15

“That the federal government seek a thorough clarification and strengthening of the WTO's trade remedy rules, with the stated objective of curbing the disturbing rise in protectionist abuses. Special focus should be placed on reforming current WTO anti-dumping rules to impose fundamental constraints on trade protectionism.”

The Government supports this recommendation. In the current WTO negotiations on anti dumping, the Government will seek clarification and improvement to the rules to promote greater consistency in the application of these measures and reduce unjustified restrictions to Canadian exports. The Government also has an interest in maintaining the effectiveness of anti-dumping measures to address dumping practices that cause injury to Canadian producers. Such measures have proven to be of particular value in the wake of economic shocks that can lead to dumping activity such as during the Asian economic crises.

Canada's prosperity is increasingly associated with reliable access to export markets, and the use of anti-dumping action against Canadian exports can have a significant and sometimes crippling impact on Canadian firms. There are now 64 countries





with anti-dumping regimes in place and the number of anti-dumping cases initiated globally has been increasing. Since 1995, 1,845 anti-dumping cases were initiated worldwide, bringing the number of measures in place to 1,063 at the end of 2001. An important element in this trend is that many developing countries have become active users of anti-dumping measures, serving to broaden Canadian concerns about the potential abuse of such actions. Despite this, Canadian exports do not stand out as a major target of anti-dumping actions, and the United States remains the most active user of anti-dumping action against Canada.

In November 2001, in Doha, WTO Members agreed to initiate negotiations aimed at clarifying and improving disciplines under the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures, while preserving the basic concepts, principles, and effectiveness of these instruments. The first phase of these negotiations is focused on the identification of issues. Broad consultations with Canadian stakeholders are now underway, and input from parties will assist the Government in identifying specific areas for negotiation.

Recommendation 16

“That the Government of Canada undertake a thorough examination of its own anti-dumping rules, including any required changes stemming from the outcome of the WTO negotiations.”

The Government periodically reviews its legislation to ensure its continued relevancy and effectiveness. In this regard, Canada’s principal antidumping/countervailing duty legislation, the *Special Import Measures Act (SIMA)*, was the subject of a comprehensive Parliamentary review in 1996 which culminated in a substantial set of amendments that entered into force in April 2000. In addition to such major reviews, the Government is committed to ensuring that Canada’s rights and obligations arising from international agreements respecting the use of trade remedy measures are fully reflected in domestic legislation and regulations. This commitment is evident in the current Canadian antidumping/countervailing regime, which reflects the results of previous rounds of multilateral trade negotiations. The Government will ensure that any examination required as a result of the current round of WTO negotiations will include a thorough assessment of the WTO-consistency of Canada’s antidumping and countervailing duty regime.





AGRICULTURE

Recommendation 17

“That the federal government seek WTO consensus to have the WTO Agreement on Agriculture stipulate that export subsidies in agriculture be immediately eliminated. The government should encourage the WTO to examine countries’ use of export credits, export promotion activity and food aid to ensure that these do not embody any subsidy component.”

The Government agrees in principle with this recommendation. Canada’s WTO agriculture negotiating objectives, announced in August 1999, call for the elimination of all export subsidies in agriculture as quickly as possible, as well as the creation of rules to ensure that government-funded export credit and export credit guarantee programs, export market promotion and development activities, certain types of food aid, or other forms of export assistance do not become a substitute for export subsidies. Canada has aggressively pursued these objectives in the negotiations to date and will continue to do so.

Recommendation 18

“That the WTO Agreement on Agriculture be altered to dramatically restrict the provision by Members of production- or trade-distorting domestic support. In this reform effort, serious consideration should be given to establishing maximum limits on support that distorts production or trade; eliminating the blue box category of domestic subsidies and clarifying green box support programs to ensure that they have no production- or trade-distorting effects.”

The Government agrees in principle with this recommendation. Canada’s negotiating objectives include seeking the maximum possible reduction or elimination of production and trade-distorting support (amber support), including support under so-called “production-limiting” or “blue-box” programs; an overall limit on the amount of all types of domestic support which would include green (little or no production and trade effects), blue and amber support; a review of the criteria of the green category to ensure that green support does not distort production and trade, and the permanent recognition that such support should not be subject to countervailing measures.





Recommendation 19

“That, in an effort to improve market access as part of the WTO’s negotiations on agriculture, the Government of Canada advocate the establishment of a product-specific minimum access requirement of 5% using the most recently available consumption period as a base period. Clear and binding rules should govern the administration of the tariff rate quotas. Moreover, all in-quota tariffs should be abolished and those not protecting a tariff rate quota markedly reduced. A negotiated phase-in of import access level increases should also be implemented in parallel with the implementation and enforcement of new market access rules.”

The Government agrees in principle with this recommendation. In the WTO agriculture negotiations, the Government is vigorously pursuing the objectives set out in Canada’s negotiating position. Canada is seeking real and substantial market access improvements for all agricultural and food products through a variety of negotiating techniques. For those products facing ordinary tariffs, Canada seeks maximum tariff reductions including substantial reductions in both the disparity in final bound rates for similar competing products and tariff escalation between primary and processed forms of the same product. For products facing tariff rate quotas (TRQs) Canada is seeking duty-free in-quota-access for a volume equal to at least 5% of current consumption of the product concerned, with the tariff quotas established on a product basis (e.g. pork, not meat) so that disparities in effective market access are reduced. Canada is also seeking rules to ensure that TRQ administration does not impede the access provided by the TRQ.

SERVICES

Recommendation 20

“That the federal government undertake, and render public, an examination of the impact of Canada’s existing commitments under the GATS on the effective provision by Canadian governments of health, education and social services and on the Canadian regulatory structure affecting them. This study should be updated once the WTO negotiations on services are nearing completion.”

The Government agrees with this recommendation. Canada’s participation in the WTO GATS negotiations is aimed at improving upon its services trade performance and enhancing market access abroad for Canadian service exporters. These important objectives can be achieved while preserving our flexibility in key policy areas. Hence, the Government will commission a study regarding the impacts of Canada’s current





commitments under the GATS on the effective provision by Canadian governments of health, education and social services and on the Canadian regulatory structure affecting them. The results and public release of the study will contribute to strengthening the understanding of the interplay between international trade agreements and domestic regulatory frameworks. Canada's longstanding position of preserving its policy flexibility in health, public education and social services in the context of trade agreements continues to guide the Government in the current trade negotiations, notably WTO General Agreement on Trade in Services (GATS) and the Free Trade Area of the Americas (FTAA). Canada's health, public education and social services are not on the table.

CULTURE

Recommendation 21

“That the Government of Canada ensure its ability to preserve and promote cultural diversity by accelerating its efforts to achieve the desired New International Instrument on Cultural Diversity.”

The Government has continuously promoted the development of a New International Instrument on Cultural Diversity since adopting its policy in support of an Instrument in October of 1999. Since then, the Government has sought to engage the international community on the challenges globalization poses for cultural diversity in a wide variety of international fora. This has been the case, for instance, in the G-8, where the communique of the 2000 Okinawa Summit set out the shared perspectives of the leaders of the G-8 countries on a number of cultural diversity issues.

The April 2001 declaration of the Summit of Americas, held in Quebec City, also included a statement outlining the hemispheric leaders' perspectives on the importance of cultural diversity. As a result of the Summit's Action Plan, Canada hosted an experts seminar on cultural diversity under the aegis of the Organization of American States (OAS) which met in Vancouver in March 2002. There was also a meeting of OAS Culture Ministers or Highest Appropriate Authorities in July 2002, in Cartagena, Colombia - the first ever such meeting at the hemispheric level.

At the WTO, Canada is following its established approach of not making any new commitments that would impede its cultural policy objectives. In the GATS negotiations, Canada has stated in its initial negotiating position that it will: “not make any commitment that restricts our ability to achieve our cultural policy objectives until a new international instrument, designed specifically to safeguard the right of countries





to promote and preserve their cultural diversity, can be established.” Canada has also promoted the development of an Instrument during informal bilateral meetings with important trading partners such as France, Sweden, Switzerland and Italy.

In other fora, consideration of cultural diversity in the context of globalization had led to specific references to work on the Instrument. For example, in November 2001 the UNESCO General Conference passed the Universal Declaration on Cultural Diversity. Its Action Plan urged members to deepen “the international debate on questions relating to cultural diversity, taking forward notably consideration of the opportunity of an international legal instrument on cultural diversity.” At their June 2001 meeting, Francophonie Culture Ministers supported “the principle of a universal international regulatory instrument that supported the promotion of cultural diversity.” The International Network on Cultural Policy (INCP), the informal grouping of over 45 national culture ministers, is another forum where work has progressed on the design of a possible instrument. An INCP Working Group, chaired by Canada, has produced a draft text of the Instrument, including the notion of its enforceability, which will be presented at the next annual meeting in Cape Town, South Africa, in the Autumn of 2002. The International Network for Cultural Diversity, an NGO grouping that meets concurrently with the INCP, is expected to release the text of its own draft Instrument in the Autumn.

Solid progress is being made toward the development of a New International Instrument on Cultural Diversity. The Government has been, and will continue to be, at the forefront in promoting such development internationally.

INVESTMENT AND COMPETITION POLICY

Recommendation 22

“That the Government of Canada diligently strive to attain WTO consensus on the importance of creating a comprehensive international agreement to protect investment. Investor-state provisions should be excluded from the agreement.”

The Government agrees with this recommendation regarding the need to work toward building consensus among WTO members on the importance of establishing a comprehensive multilateral framework for investment. International investment is important for Canada, with \$389.4 billion of outward stock and \$320.9 billion of inward stock in 2001. A multilateral investment agreement providing transparent and predictable conditions for Canadian direct investment abroad would complement existing WTO agreements (such as the GATS and the TRIMS) that contain investment-related obligations. It would also extend a degree of protection and non-discrim-





inatory treatment for Canadian investments that are not currently covered by regional or bilateral agreements.

To encourage a positive outcome at the next WTO Ministerial with respect to a launch of multilateral investment negotiations, Canada will continue to work closely with Members in the WTO Working Group on Trade and Investment to clarify possible elements of a potential multilateral framework on investment, as set out by Ministers in the Doha Declaration. These elements are: scope and definitions; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultations; and the settlement of disputes between Members. The WTO Dispute Settlement Understanding (DSU) is by construction designed to address only disputes between Member governments. Resolution of disputes between investors and governments is not contemplated in the WTO institutional framework. With respect to technical assistance and capacity building, Canada will collaborate with other WTO Members on formulating a strategy to provide developing and least-developed countries with greater support in this area.

With respect to competition policy, the Government supports the establishment of a multilateral agreement on competition policy on the understanding that such an agreement would not prejudice the independence of competition authorities. A multilateral agreement could include mechanisms for voluntary cooperation but would not interfere with ongoing, case-specific cooperation that occurs under bilateral cooperation arrangements. A WTO framework for cooperation would likely support capacity-building and technical assistance, and provide opportunity for the exchange of views on competition policy issues which would be of particular value for newly-established authorities in developing countries. WTO cooperation provisions, however, will not take the place of bilateral arrangements which provide case-related enforcement activities.

TRADE AND ENVIRONMENT

Recommendation 23

“That the federal government urgently examine recent environment-related decisions at the WTO Appellate Body in an effort to determine the extent to which WTO case law has evolved and whether or not there is a pressing need for negotiations on the relationship between the trade obligations contained in Multilateral Environmental Agreements and existing WTO rules.”

With respect to this recommendation, the Government continually analyzes and assesses all WTO Panel and Appellate Body decisions, including those relating to the





environment. Panel and Appellate Body decisions dealing with environmental measures have been few in number but the reasoning in those decisions indicates that the WTO rules are flexible enough to accommodate such measures as long as they are scientifically based, and are not applied in a manner that is arbitrarily discriminatory or a disguised restriction on international trade. To date, no WTO Member has challenged the WTO consistency of the measures implemented by another Member to give effect to specific trade measures contained in multilateral environmental agreements (MEAs).

Several MEAs have been negotiated, and others may be negotiated in future, which incorporate trade-related measures in order to achieve their objectives. Canada had argued, in the regular work programme of the Committee on Trade and Environment prior to Doha, that it would be prudent, both for trade and environmental reasons, for WTO Members to clarify the relationship between WTO rules and trade measures in MEAs. Canada had supported further work on this issue, short of negotiations, going into the Doha Conference.

The Government believes that liberalized trade and environmental protection can and should be mutually supportive, and that liberalized trade is compatible with sustainable development. It is essential to foster coordination and cooperation, both domestically and internationally, to meet the cross-cutting nature of trade and environment issues. The Government is pleased with the inclusion of environment and sustainable development elements in the Doha Development Agenda, which represent a significant advance in integrating environmental considerations in the WTO, as well as the call for environment negotiations, including the reduction or elimination of remaining tariff and non-tariff barriers to trade in environmental goods and services.

The Ministerial Declaration mandates negotiations on the relationship between existing WTO rules and specific trade obligations in MEAs. These negotiations are limited to the specific situation where a WTO Member is also a Party to the MEA and there are additional conditions in the provisions of paragraph 32. The Government's goal in these negotiations will be to take advantage of this unique opportunity to ensure that the outcome of the negotiations reinforces mutually supportive multilateral trade and environment policies, and benefits both the multilateral trade system and multilateral environmental governance. The Doha Ministerial Declaration also refers to the regular work programme of the Committee on Trade and Environment, in which the discussions on other aspects of the WTO-MEA relationship can continue. The Committee will be preparing a report on all elements of its work programme for the Autumn 2003 Fifth Ministerial, which, where appropriate, is to include recommendations with respect to future action, including the desirability of negotiations.





The Doha Development Agenda is a carefully negotiated package reflecting the priorities of various WTO Members. Progress, or its absence, in one area of the negotiations can affect other negotiating groups. Canada will work to ensure that the negotiations on the relationship between WTO rules and specific trade obligations in MEAs are constructive and keep pace with progress in other negotiating groups. The Department of Foreign Affairs and International Trade coordinates the development of Canada's position in these negotiations in close cooperation with Environment Canada and other departments, including Industry Canada and the Canadian International Development Agency (CIDA).

Recommendation 24

“That Canada actively pursue at the WTO, the reduction of barriers to trade in the environmental goods and services industry. In negotiating this position at the WTO, Canada should also be mindful of the potential limitations that barriers to trade in services may have on the ability of Canadian firms to offer product support and after-sales services for their environmental products.”

The Government agrees with this recommendation. The negotiations on the reduction or elimination of tariff and non-tariff barriers to environmental goods and services is clearly an area where trade liberalization will be good for the environment, trade and development, a “win-win-win” scenario.

Canada has significant export interests in environmental services, including, but not limited to, the areas identified in the SCFAIT Report. Canada is working to reduce barriers to trade in environmental services in the GATS negotiations. Negotiations on environmental goods will take place in the Non-Agricultural Market Access Negotiating (NAMAN) Group. The Committee on Trade and Environment in Special Session will monitor progress in both these areas and discuss definitions. Coordination between Canadian negotiators in all three negotiating groups is on-going to ensure coherence and to achieve synergies between liberalization in environmental goods and services sectors.

Liberalization in this sector has long been a priority for Canada. In 1997, Canada was one of four economies in APEC which identified environmental goods and services as an industry sector with potential for accelerated trade liberalization. Canadian technical experts worked with other countries to develop a trade liberalization proposal for the sector based on previous OECD work. The resulting proposal was presented and endorsed by APEC leaders at their annual meeting in Kuala Lumpur, in November 1998. Canada believes that the APEC work can provide a basis for the negotiations on environmental goods taking place in the WTO.





Recommendation 25

“That to eliminate ambiguity on the subject of bulk water exports, the federal government conclusively demonstrate to Canadians its legal understanding of how the Doha negotiating mandate does not compromise its position that no such export from Canada is permitted. Furthermore, Canadian negotiators should ensure that no ambiguity exists on Canada’s position on this subject during the forthcoming round of trade negotiations. Finally, upon the conclusion of the negotiations, the federal government should provide to all Canadians its legal interpretation of any negotiated agreement in order to minimize any further misunderstandings.”

The Government’s position on water is clear: to prohibit bulk water removals from all major Canadian water basins to ensure that this critical freshwater resource is protected for future generations. Prohibiting the bulk removal of this vital natural resource protects the ecosystems and communities that depend upon a sustainable supply of water. Legislation was passed on December 18, 2001 that prohibits bulk removals and transfers of boundary waters from water basins in Canada and establishes a licensing regime for in-basin activities in Canada involving boundary waters that could affect natural levels or flows of water on the other side of the border. As part of the Government’s strategy, the Minister of the Environment worked with the provinces and territories to ensure that all of Canada’s freshwater resources are protected, and today all provinces have already put in place or are developing legislation or regulations to prohibit bulk water removal from within their jurisdiction.

The Government is committed to maintaining Canada’s sovereignty over water. Nothing in the World Trade Organization agreements obliges Canada to exploit its water for commercial use. Canadian governments have full sovereignty over the management of water in its natural state, and in exercising this sovereignty, they are not constrained by trade agreements.

Canada’s position in the negotiations at the WTO is and will continue to be fully consistent with this policy. Canadian negotiators are fully cognizant of the Government’s position and will reflect it in all areas of the negotiations. In addition to consulting widely with Canadians in preparation for negotiations, it is the Government’s practice to inform Canadians of the results of negotiations and to make public the text of negotiated agreements.





TRANSPARENCY AND OUTREACH

Recommendation 26

“That the Government of Canada actively and with renewed urgency continue its efforts to achieve WTO consensus on the establishment of a permanent WTO parliamentary mechanism to provide closer association of Members of Parliaments and elected officials with the work of the WTO, and in connecting the WTO with citizens and the global public. Issues to be addressed in designing such a mechanism include: how to structure and finance the organization; how to determine representation; and how to define its institutional links with the WTO.”

Canada actively supports the Inter-Parliamentary Union (IPU) in organizing events to raise awareness of the valuable role that Parliamentarians can play in promoting greater transparency and engagement during trade negotiations and the two-way flow of information between citizens and the WTO members. Canada supported the resolution adopted by the IPU in Doha that proposed the establishment of a steering group which, among other objectives, would prepare options for the establishment of a parliamentary dimension for the WTO. Canada supported a reference in the Doha Ministerial Declaration to their role in this regard. Although, in the end, no reference was made in the Declaration due to a lack of consensus, Canada continues to support the work of the Steering Committee established by the IPU to continue examining this issue. Moreover, the Government continues to advocate regular informal meetings of Parliamentarians to discuss WTO and trade matters.

Recommendation 27

“That the Government of Canada revisit this Sub-Committee’s Recommendation 14 contained in its June 2001 report on Canada-Europe Economic Relations (Crossing The Atlantic: Expanding The Economic Relationship Between Canada And Europe) and work together with like-minded countries to encourage the WTO to craft and employ more formal, efficient and effective decision-making procedures within its organization. Separate procedures should be developed to cover both administrative (i.e. process) decisions and those involving trade issues.”

The Government agrees with this recommendation, and continues to work with like-minded WTO Members to ensure that WTO decision-making is efficient, transparent, and inclusive. Consistent with fifty years of combined GATT and WTO practices, the WTO operates on a consensus-based decision-making model. Although voting is possible in limited scenarios, this option has rarely been exercised. Most commenta-





tors acknowledge that consensus-based decision-making is the best formula to ensure that the process is inclusive and that the outcome reflects the interests of all 144 WTO Members.

Extensive work on improving internal transparency and strengthening the WTO decision-making process was undertaken by Members in 2000 and 2001, culminating in the successful launch of the Doha Development Agenda at the Fourth Ministerial Conference. The draft Declaration that emerged from the Geneva preparatory process and formed the basis on which Ministers launched negotiations at Doha was a concise and unbracketed nine-page document, the result of several months of intensive and wide-ranging bilateral, plurilateral, and multilateral consultations undertaken by the General Council Chair with active Canadian participation. The effective preparations for this Conference, together with a negotiating process that was far more transparent and inclusive than was the case at previous trade ministerial conferences, undoubtedly contributed to its successful outcome.

On the establishment of a small, informal steering committee that would be representative of the broader WTO membership to help develop consensus on trade issues during critical moments, this was discussed at some length in the General Council in 2000. However, there was no broad support for it among WTO Members.

With respect to internal decision making, WTO Members recently agreed to a new set of streamlined procedures for the circulation and derestriction of WTO documents. In addition, discussions are currently ongoing in the WTO to develop new procedures for the selection of Directors-General, with a view to avoiding split and protracted decisions.

Recommendation 28

“That the federal government propose to WTO Members that the International Labour Organization and the United Nations Environment Programme be allowed to contribute their specialized expertise to the negotiating process.”

The Government agrees with this recommendation. The Government recognizes the valuable contribution of the International Labour Organization (ILO) and the United Nations Environment Program (UNEP) in building understanding of, and appreciation for, the relationship between trade and labour, and trade and the environment. Therefore, the expertise and perspectives that these organizations can offer from their respective mandates are welcome. They may come in a variety of forms, such as analytical papers or presentations at annual WTO symposia organized in Geneva, or at conferences and/or meetings jointly organized by these organizations with the WTO.





The WTO and the ILO Secretariats co-operate on an ongoing basis, including in the deliberations of the ILO Governing Council's Working Party on the Social Dimensions of Globalisation, which Ministers noted in the Doha Declaration. The WTO Director-General was a keynote participant at the Working Party's March 2002 meeting, which focused on the recent establishment of the ILO's *World Commission on the Social Dimension of Globalisation*. He confirmed that the WTO Secretariat will collaborate with the ILO Secretariat in providing input to assist the Commission in preparing its report.

Cooperation between the WTO Secretariat, Secretariats of Multilateral Environmental Agreements, and the UNEP is extensive and has included collaboration on conferences and seminars to help build capacity on trade and environment, as well as information exchanges and briefings for the WTO Committee on Trade and Environment. With Canada's encouragement, in 1999 the WTO and UNEP Secretariats pledged to further enhance their cooperation, building upon the global arrangement reached between the WTO and the United Nations in 1995.

With respect to the negotiations launched at Doha, Canada has strongly advocated that all intergovernmental organizations currently accredited to observe WTO bodies also be granted the right to observe the corresponding negotiating bodies. In the case of the environment negotiations, this would mean that UNEP, an observer to the Committee on Trade and Environment (CTE), would be permitted to attend meetings of the CTE in Special Session (where the actual negotiations take place) and to contribute its specialized expertise to the process.

Although the ILO has been an observer at recent WTO Ministerial Conferences, including Doha, it is not an observer in the General Council or any of the WTO Committees or Councils, nor has it requested observer status in any of these bodies. In the ongoing discussions regarding which criteria should be applied to future requests from international inter-governmental organizations wishing to observe the General Council, Canada supports criteria under which, *inter alia*, the ILO would be welcome to observe, should it so request.

DEMOCRATIC RIGHTS

Recommendation 29

"That the Government of Canada promote the injection of clauses within WTO agreements that would tie countries' access to the benefits from WTO membership to proven respect for democratic rights."





The WTO does not have the mandate or the expertise to determine which among its Members respect democratic rights. The WTO administers the framework of rules governing trade between Members. It provides a forum for trade negotiations; for monitoring the implementation of obligations and commitments under its agreements; for the review of Members' trade policies and practices, and other technical assistance activities; and for settling disputes between Members arising under the WTO agreements. The WTO can best support the promotion of democracy among its Members through its contribution to economic prosperity and the maintenance of a rules-based system. Increasing national income can contribute resources necessary for the promotion and protection of human rights and good governance that are crucial to democracy. Similarly, the rule of law that is cultivated for commerce will also be available for the protection of human rights and good governance.

The Government also believes that respect for democratic principles and human rights is necessary for economic prosperity. Consequently, the promotion of greater coherence of international economic and social policy is an important objective of the Government. Canada strives to build understanding amongst its trading partners about how respect for human rights and democratic principles fit into a coherent whole that contributes to and benefits from opportunities presented by trade and investment. It does this through a variety of initiatives at the bilateral, regional and global level. A good example is the Summit of the Americas process, which provides a framework for parallel progress on a broad range of political, economic and social issues. The development of the Summit's "democracy clause" was a singular achievement of the Quebec Summit of the Americas.

Success in reaching Canada's objectives of promoting economic prosperity, as well as democratic principles and human rights, requires flexibility, both in choosing where to pursue initiatives and how to measure success. It also requires building on the particular strengths of each of the international institutions in which Canada is active.

Canada's trade policy seeks to take account of the work in international fora that contributes to sustainable development in all its facets, including economic development, democracy, human rights and good governance, and environmental protection. To the extent that the deliberations of these other fora are related to international trade, the Government endeavours to take them into account in its international trade policy, including in the WTO.

