CANADA

TRADE SUMMARY

The U.S. trade deficit with Canada was $65.8 billion in 2004, an increase of $14.1 billion from $51.7 billion in 2003. U.S. goods exports in 2004 were $190.2 billion, up 11.9 percent from the previous year. Corresponding U.S. imports from Canada were $255.9 billion, up 15.5 percent. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Canada were $26.7 billion in 2003 (latest data available), and U.S. imports were $19.1 billion. Sales of services in Canada by majority U.S.-owned affiliates were $40.3 billion in 2002 (latest data available), while sales of services in the United States by majority Canada-owned firms were $44.7 million.

The stock of U.S. foreign direct investment (FDI) in Canada in 2003 was $192.4 billion, up from $170.2 billion in 2002. U.S. FDI in Canada is concentrated largely in the manufacturing, finance, and mining sectors.

A Trading Relationship Based on Free Trade

The North American Free Trade Agreement (NAFTA) came into force on January 1, 1994 and replaced a bilateral free trade agreement implemented in 1989. The bilateral phase-out of tariffs between Canada and the United States was completed on January 1, 1998, except for tariff rate quotas (TRQ) that Canada has not eliminated on certain supply-managed agricultural products. However, Canada still maintains some non-tariff barriers of concern at both the federal and provincial levels, impeding access to the Canadian market for U.S. goods and services.

IMPORT POLICIES

Supply-Managed Products

Canada closely restricts imports of certain domestic "supply-managed" agricultural products such as dairy products, eggs and poultry through the use of TRQs. This practice severely limits the ability of U.S. producers to increase exports to Canada above the TRQ volume.

Dairy: Over a number of years, the United States has argued before the WTO that Canada's dairy programs provided export subsidies to its dairy processors and farmers above the level that Canada committed to in the WTO. In its latest ruling in December 2002, a WTO Appellate Body found that Canada's system of subsidizing exports of dairy products continue to violate its WTO commitments. The United States and Canada reached agreement in May 2003 to comply with that report. Canada agreed to end all exports to the United States of subsidized dairy products and to bring all dairy exports to third countries within WTO export subsidy limits, both by August 1, 2003. To accomplish this, by the end of April 2003 all Canadian provinces had imposed regulations on all dairy production, including production by producers who do not hold domestic marketing quotas. The United States is monitoring Canada's compliance with the WTO ruling.

Margarine: The Province of Quebec continues to apply coloring restrictions on margarine. In addition, provincial restrictions on the marketing of butter/margarine blends and imitation dairy products have served to limit and, in certain cases, prohibit the sales of these products in many provinces. The provinces of Ontario, Manitoba and Saskatchewan are challenging Quebec's provincial coloring regulations.

Cheese snack foods: Canada remains unwilling to resume duty-free trade in cheese snack foods between the United States and Canada. Prior to 1999, cheese snack foods were traded duty-free between the U.S. and Canada. Canada ceased issuing duty-free import permits, effective September 1, 2001, and resumed applying a tariff of 245 percent on U.S. exports of breaded cheese sticks to Canada. Canada was responding to a 1999 U.S. Customs Service reclassification of cheese sticks, which subjected U.S. imports of Canadian cheese sticks to a U.S. TRQ and over-quota tariff. After USTR completed consultations with Congress on November 7, 2001, USTR stated that it was prepared to request that the President issue a Proclamation to return duty- and quota-free treatment to Canadian cheese sticks, provided Canada commits to providing the same tariff treatment for imports of similar U.S. cheese snack foods. In early January 2002, the Department of Foreign Affairs and International Trade informed USTR that Canada had no intention of reducing its duties or entering into negotiations with the United States.

Processed egg products: The Canadian Egg Marketing Agency maintains a dual pricing scheme for processed egg products. Under the regime, the domestic Canadian price for shell eggs is maintained at a level substantially above the world price. Producers are also assessed a levy on all eggs sold and a portion of the levy is used to subsidize exports of eggs. This practice artificially increases Canadian exports of egg products at the expense of U.S. exporters.

Fresh Fruits and Vegetables: Canada prohibits imports of fresh or processed fruits and vegetables in packages exceeding certain standard package sizes unless the Government of Canada grants a ministerial easement or exemption. To obtain an easement, Canadian importers must demonstrate that there is an insufficient supply of product in the Canadian domestic market. The bulk restrictions do not apply to intra-provincial shipments. These restrictions apply to all fresh and processed produce in bulk containers and have a particularly negative impact on U.S. potatoes, apples and blueberries. The United States entered into negotiations with Canada in 2004 in an attempt to remove this trade restriction. In addition, Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruit and vegetables in the absence of a pre-arranged buyer.

Restrictions on U.S. Grain Exports

U.S. access to the Canadian grain market has been limited due in part to Canadian varietal controls. Canada requires that each variety of grain be registered and be visually distinguishable. Because U.S. varieties may not be visually distinct, they are not registered in Canada. As a result, U.S. wheat is being sold in Canada as "feed" wheat at sharp price discounts compared to the Canadian varieties. The Canadian Grain Commission (CGC) is currently in the process of introducing a new system called Variety Eligibility Declaration, or VED, which is designed to monitor and control the type of grain that enters the grain handling and transportation system. After extensive consultations on the operational details of the VED system, the CGC is close to making its proposals public.

Personal Duty Exemption

The United States has urged Canada to take steps to facilitate cross border trade for border residents by relaxing its taxation of goods purchased in the United States by Canadian tourists. Canada allows its residents a much smaller amount in non-dutiable purchases when they visit the United States than vice versa, and U.S. border states have repeatedly protested this inequity. While U.S. and Canadian personal exemption regimes are not directly comparable, the United States allows an $800 per person exemption every 30 days, while Canada has an allowance linked to the length of the tourist's absence and allows only C$50 for tourists absent for at least 24 hours and C$200 for visits exceeding 48 hours. This practice is designed to discourage shopping visits to the United States by border residents.

Wine and Spirits

Market access barriers in several provinces continue to hamper exports of U.S. wine and spirits to Canada. These market access barriers include "cost of service" mark-ups, listings, reference prices and discounting, distribution and warehousing policies.

The Canadian Wheat Board and State Trading Enterprises

The U.S. Government continues to have concerns about the monopolistic marketing practices of the Canadian Wheat Board. USTR’s four prong approach announced in 2002 to level the playing field for American farmers is producing important results. Most notably, in WTO dispute settlement proceedings against the Canadian Wheat Board and the Government of Canada, a WTO panel found in favor of the United States on claims related to Canada’s grain handling and transportation systems. Canada now must comply with those findings. Canada and the United States have agreed on a reasonable time period for compliance, giving Canada until August 1, 2005, to make all necessary legislative and regulatory changes to its grain handling and rail transportation regimes. This time frame is consistent with the period of time for compliance in comparable disputes.

In addition, the United States is seeking reforms to state trading enterprises (STEs) as part of the WTO agricultural negotiations. The U.S. proposal calls for the end of exclusive STE export rights to ensure private sector competition in markets currently controlled by single desk exporters; the establishment of WTO requirements to notify acquisition costs, export pricing, and other sales information for single desk exporters; and the elimination of the use of government funds or guarantees to support or ensure the financial viability of single desk exporters. The United States has succeeded in gaining in the WTO support for the elimination of trade-distorting practices of agricultural state trading enterprises. In October 2003 the Commerce Department imposed 8.87% antidumping and 5.29% countervailing duties on Canadian hard red spring wheat.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Restrictions on Fortification of Foods

Canadian requirements for foods fortified with vitamins and minerals have created a costly burden for some American food manufacturers who export to Canada. Health Canada restricts marketing of breakfast cereals and other products, such as orange juice, that are fortified with vitamins and/or minerals at certain levels. The current regulatory regime requires that products such as calcium-enhanced orange juice be treated as a drug, and forces manufacturers to label vitamin and mineral fortified breakfast cereals as “meal replacements.” These standards impose costs on manufacturers who are forced to make separate production runs for the U.S. and Canadian markets.

The Government of Canada is expected to soon release for public consideration a draft policy on supplemental fortification of food and beverages that will reflect the study on Dietary Reference Intakes (DRIs) undertaken by the U.S. Institute of Medicine (IOM) and may offer more latitude to manufacturers for discretionary fortification of foods and beverages than the current regulatory regime. The new policy may reduce the cross-border discrepancy in fortification rules, however, the final regulations are not expected to come into force until late 2005 and may still present barriers to efficient cross-border trade.

Restrictions on Container Sizes

The Processed Products Regulations (Canada Agricultural Products Act) prescribe standard container sizes for a wide range of processed fruit and vegetable products. No other NAFTA country imposes similar mandatory container size restrictions. Currently Canada’s “Processed Products Regulations” impose a requirement on manufacturers of baby food to sell in only two standardized container sizes: 4.5 ounces (128 ml) and 7.5 ounces (213 ml). This requirement to sell in container sizes that exist only in Canada creates an unnecessary obstacle to trade in baby food between Canada and the United States.

EXPORT AND DOMESTIC SUBSIDIES

Softwood Lumber

The 1996 U.S.-Canada Softwood Lumber Agreement expired on March 31, 2001. The bilateral agreement was put in place to mitigate the harmful effects of subsidies provided by the Canadian federal and provincial governments to Canadian lumber producers on the U.S. lumber industry. Upon expiration of the 1996 Agreement, U.S. industry filed antidumping and countervailing duty petitions regarding imports of Canadian softwood lumber. The U.S. International Trade Commission ("ITC") subsequently found that the U.S. industry was threatened with material injury by reason of dumped and subsidized imports of Canadian lumber, and the U.S. Department of Commerce ("Commerce") found company-specific antidumping rates ranging from 2.18 percent to 12.44 percent and a countrywide (except for the Maritime provinces) countervailing duty rate of 18.79 percent. On December 14, 2004, Commerce announced the results of the first administrative review of the AD/CVD orders, in which it assessed antidumping rates ranging from 0.92 to 10.59 percent, and a countervailing duty rate of 17.18 percent.

To date, Canada has challenged, or has announced its intent to challenge, the underlying Commerce and ITC findings in the original investigation in ten separate proceedings under the WTO and NAFTA, and litigation is ongoing. The WTO and NAFTA dispute settlement processes have only served to confirm the existence of Canada's subsidization of its softwood lumber industry and the dumping of lumber products into the U.S. market. On November 24, 2004, USTR requested the formation of an Extraordinary Challenge Committee ("ECC") to address deficiencies in the decisions of the NAFTA panel regarding the ITC's threat determination.

The United States continues to believe that it is in the interest of both the United States and Canada to reach a negotiated solution to their longstanding differences over softwood lumber, a view shared by many stakeholders on both sides of the border.

The United States is committed to seeking such a resolution and remains hopeful that we will be able to resume negotiations with Canada in the near future. In the meantime, the litigation will continue, and the United States will vigorously enforce its trade remedy laws.

Technology Partnerships Canada

Technology Partnerships Canada (TPC) is a Canadian Government program that supports the research and development activities of selected industries. Established in 1996, TPC provides loan funding for pre-competitive research and development activities for companies incorporated in Canada that operate in three strategic areas, including aerospace and defense. Funding covers approximately 25 percent to 30 percent of a project’s total costs, but may be significantly higher. Applicants must demonstrate that they have the capabilities to perform the R&D and that the project proposal has economic and commercial merit. To date, the program has made well over

CN$2.7 billion in funding commitments for over 600 projects, of which about 70 percent has been disbursed. Publicly available information indicates that the aerospace and defense industry receives the largest amount of funds under the TPC. Recent Canadian press coverage suggests that repayment rates are very low. The Canadian government restructured the TPC program in 1999 after a WTO Dispute Panel requested by Brazil determined that it was providing an illegal subsidy. The U.S. government will continue to monitor this program and its consistency with WTO provisions.

Pharmaceuticals

The U.S. pharmaceutical industry has raised concerns about aspects of pricing of patented medicines in Canada and encourages Canada and the Patented Medicine Prices Review Board (PMPRB) to move towards a more market-based review system.

The United States is monitoring Canadian policies with respect to patent and data protections. Canadian patent protection has improved following two WTO cases in which Canada agreed to, among other things, amend its patent law to provide 20-year patent protection to all patents filed before October 1989. Canada also has eliminated its regulations which previously allowed generic manufacturers to stockpile pharmaceuticals before a patent expired. However, Canada’s compliance with its TRIPS and NAFTA obligations continues to be a source of concern. Although Canada has statutory data protection, several judicial rulings have cast doubt on how well these protections are being enforced as required by TRIPS Article 39.3 and NAFTA Article 1711. Canadian authorities allow parties other than the right-holder effectively to gain marketing approval in direct reliance on protected confidential data and it appears Canada may be in violation of TRIPS Article 39.3. In addition to this perceived discrepancy between the standard applied by Canadian courts and that provided under the TRIPS and the NAFTA, Canada apparently is failing to apply its “linkage regulations” effectively. Such regulations require that Health Canada determine if the marketing of generic pharmaceuticals infringes on existing name-brand patents.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Canada is a member of the World Intellectual Property Organization (WIPO), and adheres to a number of international agreements, including the Paris Convention for the Protection of Industrial Property (1971), the Berne Convention for the Protection of Literary and Artistic Works (1971), and the 1952 Universal Copyright Convention (UCC). Canada is also a signatory of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (together the WIPO Treaties), which set the standards for intellectual property protection in the digital environment, but has not yet ratified either treaty. Legislation to ratify both is expected to be introduced to Parliament in 2005.

Canada's Copyright Act contains two provisions under which Canada applies reciprocal rather than national treatment. The first provision is for the payment of a neighboring rights royalty to be made by broadcasters to artists. Under Canadian law, those payments are only guaranteed to artists from countries that are signatories of the 1961 Rome Convention. The United States is not a signatory of the Convention, and Canadian authorities have still not granted U.S. artists national treatment in the distribution of these royalties. The second provision is for the payment of a levy, dubbed the private copy levy, by manufacturers and importers of blank recording media to artists from countries that provide an equivalent payment to Canadian artists. The levy covers analog and digital tapes and diskettes, and was expanded in December 2003 to include MP3 players (though this coverage of MP3 players appears to have been struck down by a court decision in December 2004). Canada's copyright law stipulates this reciprocity criterion in the distribution of the private copy levy to foreign artists. The United States does not impose a levy on analog tape, only on digital audio recording media, with proceeds distributed to applicable artists, including Canadians.

The United States regards Canada's reciprocity requirement for both the neighboring rights royalty and the blank tape levy as denying national treatment to U.S. copyright holders. Consequently, USTR has placed Canada on its Special 301 "Watch List" for the past four years. While Canada may grant some or all of the benefits of the regime to other countries, if it considers that such countries grant or have undertaken to grant equivalent rights to Canadians, Canada has yet to grant these benefits with regard to the United States. A growing coalition of technology and retail companies advocating for the elimination of the private copy levy have successfully added the levy to the list of copyright issues that will be examined as a part of the ongoing Parliamentary review of the Copyright Act.

U.S. intellectual property owners are increasingly concerned about Canada's lax and deteriorating border measures and general enforcement that appear to be non-compliant with TRIPS requirements. The lack of *ex officio* authority for Customs officers makes the importation of pirated product into the Canadian market, from Asia and elsewhere, very easy. For Customs to perform a civil seizure of a shipment under the Customs Act, the right holder must obtain a court order, which requires detailed information on the shipment. However, the Criminal Code allows for a public officer in the course of duty to seize any item discovered to be in violation of the law: Customs can detain suspected counterfeit shipments and contact the RCMP, which can then proceed with investigation under criminal law.

Pirated and counterfeit goods include everything from software and CDs to shampoo and toys, all of which are openly displayed in malls, department stores and chain stores. Of particular concern is the growing number of counterfeit electrical products that pose a significant health and safety risk, potentially compromising the reputation of the right holder. Large amounts of pirate product are openly displayed alongside legitimate product in small retail establishments. The price differential between the pirated and legitimate software is significant and the majority of the pirated products are high quality, factory produced products from Asia. In addition to the sale of pirated software, these same retail establishments sell and install the circumvention devices, also made in Asia, that allow pirated product to be played in a legitimate console. Some retail establishments also sell cable circumvention devices.

Once pirated and counterfeit products clear Canadian Customs, any enforcement efforts are the responsibility of the Royal Canadian Mounted Police (RCMP) and the local police. The RCMP lacks adequate resources, training, and staff. Because there are not adequate laws in place to address these issues, few prosecutors are willing or trained to take on the few cases that come up. Those that are willing to take on an intellectual property case must devise very creative legal plans in order to prosecute. Where an infringement case has actually gone to trial, penalties imposed can be far from deterrent and jail time is rarely imposed. Border enforcement concerns were a major factor in the maintenance of Canada on the Special 301 "Watch List" in 2004.

Music File-Sharing

In March 2004 Canada's Federal Court of Appeal ruled that downloading music from the Internet using peer-to-peer (P2P) software does not constitute copyright infringement. The court denied a motion to compel internet service providers (ISP's) to disclose the identities of clients who were alleged to be sharing copyrighted music files. The recording industry is appealing this decision. Canadian ratification of the WIPO Copyright Treaty would remedy this problem. Another recent legal decision has highlighted Canada's lack of regulations regarding Internet Service Provider (ISP) Liability, specifically a mechanism for "notice and takedown." ISP Liability is not covered by the WIPO Treaties, so Canada will need to develop its own laws to address this issue. The Canadians have indicated that ISP Liability will be covered in the copyright legislation for the WIPO Treaties that they will submit to Parliament.

SERVICES BARRIERS

Audiovisual and Communications Services

In 2003, the Government of Canada amended the *Copyright Act* to ensure that Internet retransmitters are ineligible for the compulsory retransmission license until the Canadian Radio-television and Telecommunications Commission (CRTC) licenses them as distribution undertakings. Internet "broadcasters" are currently exempt from licensing. In 2003 the CRTC confirmed its intention to leave this exemption unchanged.

The Broadcasting Act lists among its objectives, "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the Canadian Radio Television and Telecommunications Commission (CRTC), is charged with implementing this policy. The CRTC requires that for Canadian conventional, over-the-air broadcasters, Canadian programs make up 60 percent of television broadcast time overall and 50 percent during evening hours (6 p.m. to midnight). It also requires that 35 percent of popular musical selections broadcast on radio should qualify as Canadian under a Canadian government-determined point system. For cable TV and direct to home (DTH) broadcast services, a preponderance (more than 50 percent) of the channels received by subscribers must be Canadian programming services. For other services, such as specialty television and pay audio services, the required percentage of Canadian content varies according to the nature of the service.

The CRTC also requires that the English and French television networks operated by the Canadian Broadcasting Corporation (CBC) not show popular foreign feature movies between 7 pm and 11pm. The only non-Canadian films that may be broadcast during that time must have been released in theaters at least two years previously, and not be listed in the top 100 of Variety Magazine's top grossing films for at least the previous ten years.

Under previous CRTC policy, in cases where a Canadian service was licensed in a format competitive with that of an authorized non-Canadian service, the CRTC could revoke the license of the non-Canadian service, if the new Canadian applicant so requested. This policy led to one de-listing in 1995, and has deterred potential new entrants from attempting to enter the Canadian market. In July 1997, the CRTC announced that it would no longer be disposed to take such action. Nonetheless, Canadian licensees may still appeal the listing of a non-Canadian service which is thought to compete with a Canadian pay or specialty service, and the CRTC will consider removing existing non-Canadian services from the list, or shifting them into a less competitive location on the channel dial, if they change format to compete with a Canadian pay or specialty service.

Radiocommunication Act

One of the foremost concerns of the Canadian Cable Telecommunications Association (CCTA) is the spread of unauthorized use of satellite television services. Industry findings, extrapolated on a national basis, established that 520,000 to 700,000 households within cabled areas use unauthorized satellite services. Any survey of the incidence of satellite theft outside cabled areas would add to these numbers.

This survey, combined with information obtained through Canadian film producers' investigations and related Internet newsgroups, supports the conclusion that there are approximately 1,000,000 illegal users of U.S. satellite systems in Canada, resulting in a significant annual loss to the legitimate satellite industry. Of this number of illegal users, it is estimated that over 90 percent are involved in the "black market" (i.e., signal theft without any payment to U.S. satellite companies), with the remaining 10 percent subscribing via "gray market." "Gray market" signal theft may be less attractive because of the unfavorable currency conversion in U.S. dollars. These survey results have led the Motion Picture Association to recalculate total losses to the U.S. motion picture industry due to signal theft in Canada. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Canada were estimated to have been $122 million in 2002.

Late in 2003, the GOC introduced amendments to the Radiocommunication Act which would significantly increase penalties for signal theft and for the sale of unauthorized hardware. This draft legislation expired at the end of the Parliamentary session in November 2003 but has been reintroduced in substantially the same form in the current session.

A Quebec court ruled in October 2004 that the Canadian government's measures to prevent Canadians from subscribing directly to U.S.-origin satellite television services are unconstitutional. This ruling, which comes into general effect in October 2005 and which the government has appealed, could be read as striking down any measure to prevent Canadians from viewing foreign-origin television broadcasts. It is not yet clear whether the ruling "decriminalizes" only "gray market" signal theft, or "black market" theft as well.

Basic Telecommunications Services

Under the terms of the WTO Agreement on Basic Telecommunications Services, Canada's commitments permit foreign firms to provide local, long distance, and international services through any means of technology, on a facilities or resale basis. However, Canada retained a 46.7 percent limit on foreign ownership for all services except fixed satellite services and submarine cables. In addition to the equity limitations, Canada also retained a requirement for "Canadian control" of basic telecommunications facilities which stipulates that at least 80 percent of the members of a board of directors must be Canadian citizens. These restrictions prevent global telecommunications service providers from managing and operating much of their own telecommunications facilities in Canada. In addition, these restrictions deny foreign providers certain regulatory advantages only available to facilities-based carriers (e.g., access to unbundled network elements and certain bottleneck facilities). In April 2003 the House of Commons Committee on Industry recommended the complete removal of these restrictions.

Canada has revised its universal service system. Previously, contributions to universal service funds were based upon on a per-minute assessment. This system potentially overcompensated incumbent local suppliers, who also competed in the long distance sector. The Canadian regulator, CRTC, established rules for a more competition-neutral collection system as of January 1, 2001. On May 30, 2002, the CRTC released its price caps decision, which cut contribution rates by 10 percent to 20 percent. This new regime extends through 2006.

As a consequence of foreign ownership restrictions, U.S. firms' presence in the Canadian market as wholly U.S.-owned operators is limited to that of a reseller, dependent on Canadian facilities-based operators for critical services and component parts. This limits those U.S. companies' options for providing high quality end-to-end telecommunications services as they cannot own or operate their own telecommunications transmission facilities.

Barriers to Film Exports

The classification of theatrical and home video product distributed in Canada is within the exclusive jurisdiction of the provinces. There are six different provincial or regional classification boards to which MPA members must submit product destined for theatrical release. Most of these boards also classify product intended for home video distribution.

As a control device, and to display a video's Québec classification, the Québec Cinema Act requires that a sticker be acquired from the Régie du Cinéma and attached to each pre-recorded video cassette and DVD at a cost of C$0.40 per unit. The Québec government proposes to reduce the sticker cost to C$0.30 for English and French versions of films dubbed into French in Québec. In addition to the direct cost of acquiring the stickers, there are the administrative costs of attaching stickers to each unit and removing them from all returns, plus the per-title, per-distributor administrative fee of C$55.00 charged by the Régie.

In an effort to create a uniform, consumer-friendly classification system that more readily comports with national advertising campaigns and other practical concerns of the industry, the Canadian video distribution industry has initiated a voluntary national classification system for works distributed on videocassette and DVD. Under this system, a film's national rating is determined by averaging its provincial ratings and is displayed on the packaging. While some provinces accept the average national classification for the purpose of providing consumer information on pre-recorded video material, three of the provincial/regional boards - Manitoba, Québec, and the Maritime Provinces (New Brunswick, Nova Scotia and Prince Edward Island) - also require that their own classification be displayed.

The lack of unanimous acceptance of the voluntary national classification, and the negative precedent established by the Québec stickering regime continue to create significant consumer confusion and expense.

INVESTMENT BARRIERS

General Establishment Restrictions

Under the Investment Canada Act, the Broadcasting Act, the Telecommunications Act and standing Canadian regulatory policy, Canada maintains restrictions that inhibit new or expanded foreign investment in the energy, publishing, telecommunications, transportation, film, music, broadcasting, and cable television sectors.

Investment Canada Act

The Investment Canada Act (ICA) is intended to regulate foreign investment in Canada. The Government of Canada reviews the direct or indirect acquisition by a non-Canadian of an existing Canadian business of substantial size (as defined below). It also reviews the specific acquisition of an existing Canadian business or establishment of a new Canadian business by a non-Canadian in designated types of business activity relating to Canada's culture, heritage or national identity (as described below) where the federal government has authorized such review as being in the public interest. The Government of Canada must be notified of any investment by a non-Canadian to:

- establish a new Canadian business (regardless of size); or

- acquire direct control of any existing Canadian business which either has assets of C$5 million or more, or is in a business that is identified by regulation to be culturally sensitive, or in uranium production, financial services or transportation services; or

- acquire the indirect control of any existing Canadian business, the assets of which exceed C$50 million in value in a non-cultural business, or between C$5 million and C$50 million in a cultural business.

In January 2005, the C$5 million threshold was increased to C$250 million in cases where the country of the acquiring non-Canadian investor is a member of the World Trade Organization (WTO). The WTO exemption for amounts over $5 million does not include investments in production of uranium; financial services; transportation services or a cultural business. The dollar threshold varies year-to-year and is a function of GDP growth.

In addition, there is no review process applicable to an indirect acquisition of a Canadian business by a non-Canadian whose country is a member of the WTO. The reviewing authority is the Department of Canadian Heritage in the case of investments related to cultural industries, and the Department of Industry in other instances. The ICA sets strict time limits within which the reviewing authority must respond, in an effort to ensure that the legislation does not unduly delay any investment in Canada. In practice, Canada has allowed most transactions to proceed, though in some instances only after compliance by the applicant with certain undertakings.

Publishing Policy

Since January 1992, Canadian book publishing and distribution firms that would transfer to foreign ownership as a result of an indirect acquisition need not be divested to Canadians, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited circumstances. Under an agreement on periodicals reached with the United States in May 1999, Canada permits 100 percent foreign ownership of businesses to publish, distribute and sell periodicals. However, direct acquisition by foreign investors of existing Canadian-owned businesses continues to be prohibited.

Film Industry Investment

Canadian policies prohibit foreign acquisitions of Canadian-owned film distribution firms. A new distribution firm established with foreign investment may only market its own proprietary products. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian Government.

GOVERNMENT PROCUREMENT

As a party to the WTO Government Procurement Agreement (GPA), Canada allows U.S. suppliers to compete on a non-discriminatory basis for its federal government contracts covered by the GPA. However, Canada has not yet opened "sub-central" government procurement markets (i.e., procurement by provincial governments), despite commitments in the GPA to do so no later than July 1997. Some Canadian provinces maintain "Buy Canada" price preferences and other discriminatory procurement policies that favor Canadian suppliers over U.S. and other foreign suppliers. Because Canada does not cover its provinces, Canadian suppliers do not benefit from the United States' GPA commitments with respect to 37 state governments' procurement markets. In recent years, several U.S. states and Canadian provinces have cooperated to make reciprocal changes in their government procurement systems that may enhance U.S. business access to the Canadian sub-federal government procurement market. However, the Administration and a number of U.S. states have expressed concern that Canadian provincial restrictions continue to result in an imbalance of commercial opportunities in bilateral government procurement markets.

ELECTRONIC COMMERCE

There are currently few barriers to U.S.-based electronic commerce in Canada. In the WTO context, Canada has consistently supported the U.S. initiative for duty-free cyberspace. The CRTC announced in 1999 that it would not attempt to regulate the Internet, but this decision is subject to review after five years (expected in 2004).

Canada’s Personal Information Protection and Electronic Documents Act, which took effect on January 1, 2001, requires persons or firms which collect personal information in the course of commercial activities to inform the subject of all purposes to which the data may be put, and to obtain informed consent for its use.