CANADA

TRADE SUMMARY

Canada has an affluent, high-technology, market-oriented economy. Its proximity to the United States and its general liberal trade regime has resulted in the volume of two-way bilateral trade surpassing that of the United States with any other single country. In 2001, U.S. imports of goods from Canada totaled approximately $217.0 billion, a 6.0 percent decline from 2000. Exports of U.S. goods to Canada totaled $163.7 billion for the same period, an 8.5 percent decrease from 2000. The economic slowdown is primarily responsible for the decline.

U.S. exports of private commercial services (i.e., excluding military and government) to Canada were $23.2 billion in 2000 (latest data available), and U.S. imports were $16.3 billion. Sales of services in Canada by majority U.S.-owned affiliates were $33.6 billion in 1999 (latest data available), while sales of services in the United States by majority Canada-owned firms were $45.8 billion.

The United States and Canada also share one of the world's largest bilateral direct investment relationships. In 2001, the stock of U.S. foreign direct investment in Canada was $126.4 billion, while Canadian foreign direct investment in the United States was $100.8 billion. U.S. investment in Canada, which is a major contributor to the U.S. non-goods trade surplus with Canada, is concentrated in manufacturing, natural resources, and the Canadian financial sector.

A Trading Relationship Based on Free Trade

The North American Free Trade Agreement (NAFTA) came into force on January 1, 1994. 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 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 "supply-managed" agricultural products (whose domestic production is limited by quota, i.e., dairy products, eggs and poultry) through tariff- rate quotas, severely limiting the ability of U.S. producers to export to Canada.

In addition, in October 1999, the WTO Dispute Settlement Body (DSB) found that the provision of milk to exporters for processing at prices substantially below prices charged for the same milk for processing for domestic consumption constituted an export subsidy. In light of this finding, the DSB also concluded that Canada had violated its export subsidy reduction commitments by exporting a higher volume of subsidized dairy products than permitted by Canada’s obligations under the WTO Agreement on Agriculture. The DSB also found that Canada had improperly imposed a limit on the value of milk that could be imported in any single entry under the relevant tariff-quota.

Canada committed to bring its dairy export subsidy regime into compliance with its WTO obligations by December 2000, a deadline which was subsequently extended to January 31, 2001. On February 16, 2001, the United States requested that a WTO compliance panel reconvene to determine whether Canada had complied with the WTO recommendations and rulings on its dairy export subsidy regime. The United States also requested WTO reauthorization to suspend trade concessions if the panel determined that Canada had not complied.

In July 2001, the compliance review panel agreed with the United States that Canada had not taken the necessary steps to bring its dairy export subsidy program into compliance with WTO agreements. However, Canada appealed that decision, and in December 2001, a WTO Appellate Body overturned the July decision based on a legal technicality. Since the appellate Body did not specifically decide on whether Canada's dairy regime was consistent with its WTO obligations, the United States has requested a second compliance review panel.

The Province of Quebec continues to apply coloring restrictions on dairy 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 into many provinces.

The Canadian Egg Marketing Agency maintains a dual pricing scheme for processed egg products. Under that 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.

Horticultural Import Restrictions

Canada continues to restrict international trade of bulk produce. Importers may request waivers, but Canadian federal and provincial authorities may deny such requests if an equivalent supply is available from domestic sources. 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.

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

Despite recent changes in the organization of the Canadian Wheat Board (CWB), the CWB continues to enjoy government-sanctioned monopoly status as well as other privileges that restrict competition. In October 2000, USTR initiated a 12-month investigation of CWB practices in response to an industry petition filed under Section 301 of the Trade Act of 1974.

The United States is committed to using all effective tools available to end the market distorting impact of the CWB's monopoly on the sale and distribution of its wheat around the world. On February 15, 2002, USTR announced several strong initiatives to pursue these objectives. First, USTR will examine taking a possible dispute settlement case against the CWB in the WTO. Second, the Administration will work with the U.S. wheat industry to examine the merits of filing U.S. countervailing duty and antidumping petitions. Third, working with industry, USTR will also identify specific impediments to U.S. wheat entering Canada. Fourth, these short-term actions will be complemented by our position within the

Doha Development Agenda calling for the creation of disciplines for State Trading Enterprises (STE's) that would end monopoly rights, establish WTO requirements for notifying acquisition costs, export pricing, and other sales information for single desk exporters, and eliminate the use of government funds or guarantees to support or ensure the financial viability of single desk exporters.

Other Policies

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 effects of subsidies in several Canadian provinces. Upon expiration of the 1996 Agreement, the U.S. lumber industry filed antidumping and countervailing duty petitions regarding Canadian softwood lumber. Preliminary investigations found both dumping and subsidies, and led to the imposition of preliminary duties. On March 22, 2002, the U.S. Department of Commerce announced its final, company-specific antidumping duties ranging from 2.26 percent to 15.83 percent and a final, country-wide (except for the Maritime provinces) countervailing duty determination of 19.34 percent. These duties will apply if the U.S. International Trade Commission finds that these imports have caused injury to the U.S. industry.

In an effort to find a durable solution as an alternative to litigation, both sides met repeatedly in negotiations during the balance of 2001 and into early 2002. Although both sides continued good-faith efforts to resolve outstanding differences through March 21, there was (as of late March) still no agreement on a set of reforms in Canada. The United States remains prepared to offer Canadian lumber producers the market access they seek in exchange for implementing market-based pricing for sales of timber from public lands. However, the provinces did not offer sufficient commitments to ensure that competitive timber markets would operate in Canada. In the absence of an agreement on basic reforms, the United States will effectively enforce U.S. trade laws to address the U.S. industry's concerns about subsidies to, and dumping of, Canadian softwood lumber.

Barriers to Film Exports

Film classification, for the purpose of theatrical and home video distribution in Canada, is within the exclusive jurisdiction of the provinces. There are presently seven different provincial classification boards to which member companies must submit products destined for theatrical release, five of which also classify products intended for home video distribution.

In addition, the Province of Quebec requires that all video products bear a government issued classification sticker. U.S. exports are burdened by this added regulatory requirement, which results in fewer titles being made available.

The lack of a national classification system and the negative precedent established by the Quebec stickering procedures continues to create significant consumer confusion and administrative expense resulting in fewer U.S. exports.

U.S. exports are also constrained by the Quebec Cinema Act which encourages French language dubbing to be done in Quebec. The Cinema Act limits a company's ability to utilize the most cost effective means to dub a film in French, placing certain distribution restrictions on English language versions of those films that have been dubbed in French outside of the Province of Quebec.

STANDARDS, TESTING, LABELING AND CERTIFICATION

While there rarely are problems with standards-related issues at the Federal level, this is not always the case at the provincial level. For example, the Ontario Ministry of Environment (MOE) placed a moratorium on the issuance of certificates of approval or permits necessary to utilize equipment that burns used oil. The moratorium went into effect without sufficient notice or a clear justification in March 1998 and has resulted in a loss of revenue for U.S. companies. In addition, some companies in possession of permits can continue to burn used oil and the practice is acceptable in other provinces. The Ontario MOE's moratorium continues to raise serious concerns in the United States.

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). These two agreements require that Canada provide national treatment with respect to intellectual property rights. Canada is also a signatory of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, which set the standards for intellectual property protection in the digital environment. The United States has ratified both treaties and would like Canada to do the same. While Canada was a strong supporter of both treaties, which led to it becoming a signatory, intense lobbying by Canadian broadcasters and Provincial Education Ministers has prevented Canadian ratification.

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 it is not yet clear whether U.S. artists will receive national treatment in the distribution of these royalties. The second provision is for the payment of a levy by manufacturers and importers of blank analog and digital tapes and diskettes to artists from countries that provide an equivalent payment to Canadian artists. Canada's copyright law stipulates this reciprocity criterion in distribution of the blank tape 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 perceives 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." 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 announce a determination with regard to the United States.

Canada’s border enforcement measures have been the target of criticism by American intellectual property owners who express concern with the low rate of prosecution arising from counterfeit goods seizures. Deficiencies in border enforcement are compounded by the failure, or lack of resources of law enforcement authorities to conduct follow-up investigations of many illegal import cases.

The United States is also 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 allowing generic manufacturers to stockpile pharmaceuticals before a patent expires. However, Canadian enforcement of its TRIPS 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. 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 infringe on existing name-brand patents.

SERVICES BARRIERS

Broadcasting

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 points 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.

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 Commission could resolve the license of the non-Canadian service, if the new Canadian applicant requested it to do so. 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 if they change format so as to compete with a Canadian pay or specialty service.

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, 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 benefits only available to facilities-based carriers (i.e., unrestricted access to unbundled network elements and certain bottleneck facilities).

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 competitively-neutral collection system as of January 1, 2001.

INVESTMENT BARRIERS

General Establishment Restrictions

Under the Investment Canada Act, the Broadcasting Act, the Telecommunications Act and standing Canadian regulatory policy, Canada maintains restrictions which 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 cultural, 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.

The C$5 million threshold was increased to C$209 million beginning in 2001 in cases where the country of the acquiring non-Canadian investor is a member of the World Trade Organization (WTO). 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 cases. In practice, Canada has allowed most transactions to proceed, though in some instances only after compliance by the applicant with certain undertakings. 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.

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. Foreign investment to establish a new distribution firm 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 is the only GPA Party that has not yet opened "sub-central" government procurement markets (i.e., procurement by provincial governments and Canadian "crown corporations"), despite commitments 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. British Columbia, Ontario and Quebec appear to apply such restrictions systematically. In response, Canadian suppliers do not benefit from the United States' GPA commitments with respect to 37 state governments' procurement markets. In recent years, a small number of U.S. states and Canadian provinces have worked together 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.

Early in 2000, Canada passed a new personal information protection law, the Personal Information Protection and Electronic Documents Act, which took effect on January 1, 2001. It 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. This law initially applies only to the federally regulated private sector (e.g., airlines and telecommunications) but its application will expand to other commercial activities in 2003, or when provincial governments pass similar legislation, as some have already done.

CANADA