

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was \$76.4 billion in 2005, an increase of \$10.0 billion from \$66.5 billion in 2004. U.S. goods exports in 2005 were \$211.3 billion, up 11.3 percent from the previous year. Corresponding U.S. imports from Canada were \$287.9 billion, up 12.3 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 \$29.7 billion in 2004 (latest data available), and U.S. imports were \$20.0 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$41.7 billion in 2003 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$40.5 billion.

The stock of U.S. foreign direct investment (FDI) in Canada in 2004 was \$216.6 billion, up from \$189.8 billion in 2003. 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 the U.S.-Canada free trade agreement, which was implemented in 1989. The phase-out of tariffs between Canada and the United States was completed on January 1, 1998, except for tariff-rate quotas (TRQ) that Canada retains 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 levels.

Margarine: The Province of Quebec applies coloring restrictions on margarine. In addition, provincial restrictions on the marketing of butter/margarine blends and imitation dairy products limits and, in certain cases, prohibits the sales of these products in many provinces. The provinces of Ontario, Manitoba, and Saskatchewan are challenging Quebec's provincial coloring regulations. An inter-provincial trade dispute panel ordered Quebec to remove its ban on yellow-colored margarine in June 2005, but the province has yet to comply with the ruling, which was supposed to go into effect in September 2005.

FOREIGN TRADE BARRIERS

Cheese snack foods: Canada is 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 United States and Canada. Canada ceased issuing duty-free import permits on September 1, 2001, and started to apply a tariff of 245 percent on U.S. exports of breaded cheese sticks to Canada. Canada acted in response to a 1999 U.S. Customs Service reclassification of cheese sticks, which subjected U.S. imports to a U.S. TRQ and over-quota tariff. 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 the United States that Canada had no intention of reducing its duties on cheese snack foods or entering into negotiations with the United States.

Processed egg products: The Canadian Egg Marketing Agency operates 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, a portion of which is used to subsidize egg exports. 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 exemption, Canadian importers must demonstrate that there is an insufficient supply of a product in the domestic market. The restrictions on bulk goods do not apply to intra-provincial shipments. The import restrictions apply to all fresh and processed produce in bulk containers if there are standardized container sizes stipulated in the regulations for that commodity. For those horticultural products without prescribed container sizes, there is no restriction on bulk imports. The restriction has negative impact on U.S. potatoes, apples, and blueberries. 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 partially by 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 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.

On September 16, 2005, the Canadian International Trade Tribunal (CITT) and the Canada Border Services Agency (CBSA) launched an official investigation into alleged dumping and subsidization of U.S. grain corn imports into Canada, following a petition filed by the Canadian Corn Growers. On November 15, 2005, the CITT found that imports of unprocessed corn into Canada are injuring Canadian growers.

CBSA must make a final determination on March 15, 2006. The final Canadian International Trade Tribunal injury determination is due April 18, 2006.

Personal Duty Exemption

The United States has urged Canada to facilitate cross border trade for border residents by relaxing its taxation of goods purchased in the United States by Canadian tourists. 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 discourages shopping visits to the United States by border residents.

Wine and Spirits

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

The Canadian Wheat Board and State Trading Enterprises

The U.S. government has concerns about the monopolistic marketing practices of the Canadian Wheat Board. Announced in 2002, USTR's approach 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. In order to comply with the WTO panel's findings, the Government of Canada introduced and passed Bill C-40, which amended the Canada Grain Act and Canada Transportation Act in May 2005.

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 gained WTO support for the elimination of trade-distorting practices of agricultural state trading enterprises.

In October 2003 the U.S. Department of Commerce (DOC) imposed 8.87 percent antidumping and 5.29 percent countervailing duties on Canadian hard red spring wheat (HRS). Following a June 2005 NAFTA panel remand decision, the U.S. International Trade Commission made a negative determination that HRS imports from Canada materially injured the U.S. industry. On January 30, the NAFTA secretariat issued a notice pursuant to rule 80 that the panel review was completed

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 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. Canada's regulatory regime requires that products such as calcium-enhanced orange juice be treated as a drug. This forces manufacturers to label vitamin and mineral fortified breakfast cereals as "meal replacements." These standards impose costs on manufacturers who must make separate production runs for the U.S. and Canadian markets.

In March 2005, the Government of Canada released for public consideration a draft policy on supplemental fortification of food and beverages that reflects the study on Dietary Reference Intakes (DRIs) undertaken by the U.S. Institute of Medicine (IOM). Industry welcomed the draft policy as it 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, Canada's policy is still under review and the final regulations based on it have not yet been drafted or submitted for public review. Draft regulations are now expected to be made public in mid-2006 and come into force in late 2006. They may still present barriers to efficient cross-border trade.

Restrictions on Container Sizes

Canada's 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 such mandatory container size restrictions. The Processed Products Regulations require manufacturers of baby food to sell in only two standardized container sizes: 4.5 ounces (128 ml) and 7.5 ounces (213 ml). The 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. Canada claims that the regulations are being rewritten and suggests that U.S. concerns will be addressed. However, it appears that the effort to revise the regulations has stalled, as there has been no progress for the past several years.

EXPORT AND DOMESTIC SUBSIDIES

Softwood Lumber

The United States and Canada have been involved in a dispute over trade in softwood lumber for more than two decades. The current dispute began when the Softwood Lumber Agreement expired in 2001. After the Agreement expired, the U.S. industry filed antidumping (AD) and countervailing duty (CVD) petitions. The U.S. International Trade Commission (ITC) determined that the U.S. lumber industry was threatened with material injury by imports of dumped and subsidized Canadian softwood lumber, and the Department of Commerce (“Commerce”) found company-specific antidumping rates ranging from 2.18 percent to 12.44 percent and a country-wide subsidy rate of 18.79 percent. On December 14, 2004, Commerce announced the results of its first administrative review of the AD and CVD orders, in which it calculated AD rates ranging from 0.192 percent to 9.10 percent, and a CVD duty rate of 17.18 percent. On December 6, 2005, Commerce announced the results of its second administrative review of the AD and CVD orders, with AD rates ranging from 0.51 percent to 4.43 percent, and a CVD rate of 8.70 percent.

To date, Canadian interests have filed more than two dozen cases challenging the orders in various fora, including under the NAFTA, at the WTO, and in the U.S. Court of International Trade. Most of the litigation is still ongoing. The United States continues to believe that it is in the interests of both the United States and Canada to reach a negotiated solution to their longstanding differences over softwood lumber. This view is shared by stakeholders on both sides of the border. The United States is committed to seeking a resolution to this dispute 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 to ensure a level playing field for U.S. industry.

Technology Partnerships Canada/Transformative Technologies Program

In September 2005, the Canadian federal government announced plans to launch its new Transformative Technologies Program (TTP), replacing the former Technology Partnerships Canada (TPC) program. TPC is a Canadian government program that supports the research and development activities of select industries. Established in 1996, TPC provided loan funding for so-called “pre-competitive” research and development activities for companies incorporated in Canada. Although TPC was targeted at a number of industries, a disproportionate amount of funding has been provided to aerospace and defense companies. To date, C\$2.7 billion in TPC funding commitments have been made for over 600 projects, of which about 70 percent has been disbursed. According to the Canadian government, about three percent of TPC funds have been repaid. The Canadian government restructured the TPC program in 1999 after a WTO Dispute Panel requested by Brazil determined that it provided an illegal subsidy.

The Canadian government announced plans to phase out the TPC program by April 1, 2006, after which time TPC would be operational. During the phase-out period, no new proposals for TPC funding will be accepted, except for those related to the aerospace and defense industries.

The Canadian government announced that TTP funding for aerospace and defense will continue at the same levels as under the TPC program, even though the TTP apparently will be aimed at reaching a broader range of industries than has been the case for the TPC program. It appears that the Canadian government may not expect full repayment of TP funds. An Industry Canada announcement of the TTP states “Its measure of success will not be cost recovery but sharing the risks of innovation.”

According to the Canadian Taxpayers Federation, Bombardier has been the largest recipient of Canadian federal subsidies, including funding such as the TPC program. The Canadian government has committed to provide Bombardier \$262.5 million for the purpose of developing the 110-130 seat “C series” civil transport aircraft, according to a May 2005 press report.

An Industry Canada spokesman is reported to have said that the funding would operate along the lines of the TPC program. As of early 2006, it appeared that no decision had been made to launch the C series aircraft.

Pharmaceuticals

The U.S. pharmaceutical industry has raised concerns about the 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 on patent and data protections. Canada’s compliance with its TRIPS and NAFTA obligations remains a matter of concern. Although Canada has instituted 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. Regulations proposed in 2004, to extend the duration of data protection to eight years, have not progressed and it is unclear whether they will be reopened for comment. Canada is also apparently failing to apply its “linkage regulations” effectively. Such regulations require Health Canada to determine whether the marketing of generic pharmaceuticals infringes on existing name-brand patents.

The U.S. pharmaceutical industry estimates that Canadian trade barriers, including insufficient intellectual property protection, cost their companies between \$100 million and \$500 million annually.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Canada is a member of the World Intellectual Property Organization (WIPO) and adheres to several 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 standards for intellectual property protection in the digital environment. Canada has not yet ratified either treaty, however. Ratification legislation was introduced into Canada's Parliament in 2005, but will have to be reintroduced following the election of a new government, and will not pass until 2006 at the earliest.

Canada's Copyright Act contains two provisions under which the country applies reciprocal rather than national treatment. The first provision is for the payment of a neighboring rights royalty to be made by broadcasters to producers and artists. Under Canadian law, those payments are only guaranteed to producers and 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 not granted U.S. producers and 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 audio recording media to producers and artists from countries that provide an equivalent payment to Canadian artists. The levy covers analog and digital tapes and discs, and was expanded in December 2003 to include MP3 players (although coverage of MP3 players was 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 producers and artists. The United States does not impose a levy on analog tape, but does impose a levy on digital audio recording media and devices, with proceeds being distributed to applicable producers and artists on a non-discriminatory basis, including to Canadians.

The United States regards Canada's reciprocity requirement for both the neighboring rights royalty and the blank media levy as detrimental to U.S. copyright holders. For this reason (and other reasons including Canada's delay in implementing the WIPO treaties) USTR has placed Canada on its Special 301 "Watch List" for the past four years. Canada is authorized under its statute to grant some or all of the benefits of the two regimes to other countries if it considers that such countries grant or have undertaken to grant substantially equivalent rights to Canadians, but it has not granted these benefits to the United States. A growing coalition of technology and retail companies advocating the elimination of the private copy levy have 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 concerned about Canada's lax and deteriorating border measures and general enforcement. The lack of *ex officio* authority for Canadian Customs officers makes it difficult for Customs to seize shipments of counterfeit goods. 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, Canada's Criminal Code allows for a public officer in the course of duty to seize any item discovered to be in violation of the law. For example, Customs can detain suspected counterfeit shipments and contact the Royal Canadian Mounted Police (RCMP), which can then proceed with investigation under criminal law.

Pirated and counterfeit goods include software, CDs, shampoo, and toys, which are often openly displayed in Canadian 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 rights holder.

The price differential between pirated and legitimate goods, especially software, is significant. The majority of the pirated products are high quality, factory produced products from Asia. Aside from pirated software, many stores sell and install circumvention devices, also made in Asia, that allow pirated products to be played in a legitimate console. Once pirated and counterfeit products clear Canadian Customs, enforcement is the responsibility of the RCMP and the local police. The RCMP lacks adequate resources, training, and staff. Because Canadian laws are inadequate to address IPR issues, few prosecutors are willing or trained to take on the few cases that come up. Where an infringement case has gone to trial, the penalties imposed can be too weak to act as a deterrent, and jail time is rarely imposed. Border enforcement concerns were a major factor in keeping Canada on the Special 301 "Watch List" in 2005.

U.S. anti-piracy analysts have estimated that Canadian IPR protection weaknesses cost the U.S. economy between \$100 million and 500 million annually.

Music File-Sharing

In March 2004, Canada's Federal Court 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 (ISPs) to disclose the identities of clients who were alleged to be sharing copyrighted music files. The recording industry appealed the decision and although the appeals court upheld the denial of disclosure of client identities, the denial was without prejudice to file a new application, and the appeals judge clearly stated that the 2004 decision was incorrect to state that P2P file-sharing is legal. The question of whether P2P file-sharing is legal in Canada remains unclear. Canadian ratification of the WIPO treaties would help remedy this problem.

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 CRTC, implements this policy. The CRTC requires that for Canadian conventional, over-the-air broadcasters, Canadian programs must 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 television and direct to home (DTH) broadcast services, a preponderance (more than 50 percent) of the channels received by subscribers must be Canadian programming services.

Non-Canadian channels must be pre-approved ("listed") by the CRTC. For other services, such as specialty television and satellite radio 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 been released in theaters at least two years earlier and not be listed in the top 100 of Variety Magazine's top grossing films for at least the past ten years.

Under previous CRTC policy, in cases where a Canadian service was licensed in a format competing 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 entering 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

A principal concern of the Canadian Cable Telecommunications Association (CCTA) is the spread of unauthorized use of satellite television services. Industry findings, extrapolated on a national basis, estimated that 520,000 to 700,000 households within cabled areas use unauthorized satellite services. Any survey of the incidence of satellite signal 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 may be 1 million illegal users of U.S. satellite television systems in Canada, resulting in a significant annual loss to the legitimate satellite television 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 remainder subscribing via "gray market" where the unauthorized user does in fact purchase the signal from a U.S. satellite company for the signal, but only by pretending to be a U.S. resident. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Canada were estimated at \$122 million in 2002.

Late in 2003, the Government of Canada (GOC) introduced amendments to the Radiocommunication Act to 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 was reintroduced in substantially the same form in the past session, which ended in November 2005 with no action.

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. The GOC appealed this ruling and it was overturned by a higher court in April 2005.

Basic Telecommunications Services

Under the terms of the WTO Agreement on Basic Telecommunications Services, Canada permits 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 over-compensated 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 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 Quebec classification, the Quebec 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 Quebec.

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, Quebec, 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 Quebec 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 and mining, banking, fishing, publishing, telecommunications, transportation, film, music, broadcasting, cable television, and real estate sectors.

Investment Canada Act

The Investment Canada Act (ICA) has regulated foreign investment in Canada since 1985. Foreign investors must notify the Government of Canada prior to the direct or indirect acquisition of an existing Canadian business of substantial size (as defined below). The Canadian government also reviews acquisitions by non-Canadians of existing Canadian businesses or establishments or of new Canadian businesses in designated types of business activity relating to Canada's culture, heritage or national identity 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; is in a business that is identified by regulation to be culturally sensitive; or is in uranium production, financial services, or transportation services; or
- Acquire indirect control over 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 2005, the C\$5 million threshold for investment in sensitive sectors was increased to C\$250 million for non-Canadian investors from World Trade Organization (WTO) member countries. The WTO exemption 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 Canadian GDP. In 2006, the review threshold for WTO members is expected to be C\$265 million, rather than the C\$5 million level applicable to non-WTO investors. There is no review process for indirect acquisition of a Canadian business by any member of the WTO, with the exception of foreign acquisitions of any size in "cultural industries" (publishing, film, music, etc.).

Industry Canada is the reviewing authority for most investments, except for those related to cultural industries which come under the jurisdiction of Heritage Canada. The ICA sets time limits within which the reviewing authority must complete its analysis. In practice, Canada allows most transactions to proceed, though in some instances only after prospective investors have agreed to fulfill certain conditions.

FOREIGN TRADE BARRIERS

Publishing Policy

Foreign investors may directly acquire Canadian book firms only under certain 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 in its GPA commitment, 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 Canadian Radio-television and Telecommunications Commission announced in 1999 that it would not attempt to regulate the Internet, a decision which is subject to review after five years (i.e., in 2004) but that review has not yet begun. In 2004, the CRTC decided that telephone communication over the internet (VoIP) should be subject to the same regulatory regime as conventional telephone systems, although no regulations have yet been proposed.

Canada's Personal Information Protection and Electronic Documents Act, which took effect on January 1, 2001, requires persons or firms that 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.