CANADA

TRADE SUMMARY

Canada has an affluent, high-technology and market-oriented economy. Its close proximity to the United States fosters a volume of two-way bilateral merchandise trade that is larger than two-way trade between the United States and any other single country in the world. In 1999, U.S. merchandise exports to Canada were $163.9 billion, an increase of $9.8 billion (6.3 percent) from 1998. U.S. goods imports from Canada were $198.3 billion in 1999, an increase of $23.5 billion (13.4 percent) from 1998.

In 1998, total two-way trade in goods and services between the United States and Canada was $364.5 billion, or nearly $1 billion each day (for services, latest annual data available). This was more than U.S. trade with the rest of the Western Hemisphere, and just under three-quarters of total U.S. goods and services trade with the entire fifteen-country European Union (EU).

The United States and Canada also share one of the world's largest bilateral direct investment relationships. In 1998, the stock of U.S. foreign direct investment in Canada was $103.9 billion, an increase of 8.2 percent from 1997. In 1998, the stock of Canadian direct foreign investment in the United States was $74.8 billion. U.S. investment in Canada, which is a major contributor to the U.S. non-merchandise trade surplus with Canada, is concentrated in the manufacturing, natural resources and financial services sectors.

A Trading Relationship Based on Free Trade

The North American Free Trade Agreement (NAFTA) came into force on January 1, 1994. NAFTA superseded the U.S.-Canada Free Trade Agreement (CFTA) and expanded the free trade area to include Mexico. The NAFTA extended the CFTA to important sectors such as trade in services, investment, and government procurement. The bilateral phase-out of tariffs between Canada and the United States outlined in the CFTA, and now set forth in NAFTA, was completed on January 1, 1998, except for certain supply-managed products in Canada, and dairy, sugar, peanuts and cotton in the United States. However, there still exists 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 (dairy products, eggs and poultry), severely limiting the ability of U.S. producers to export to Canada.

In April 1999, the United States obtained a favorable ruling in a WTO dispute settlement proceeding challenging Canada's operation of an export subsidy regime for dairy products and Canada's administration of a tariff-rate quota for milk and cream. The WTO panel found that the provision of milk to exporters for processing at prices which were substantially below the prices charged for such milk when delivered for processing for domestic consumption constituted an export subsidy. In light of this finding, the Panel 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 Panel 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.

The Panel's findings were sustained by the WTO Appellate Body in October 1999 in an appeal initiated by Canada. Following these rulings, the United States and Canada engaged in discussions to reach agreement on the period available to Canada to bring its export subsidy system and tariff-rate quota administration into compliance with its WTO obligations. As the result of an agreement concluded on December 22, Canada will comply immediately with its WTO export subsidy commitments on butter, skimmed milk powder, and an array of other dairy products. Canada also has committed to reducing subsidized cheese exports and is scheduled to be in compliance with its reduction commitments on cheese by August 1, 2000. The necessary regulatory reform of the tariff-rate quota was accomplished by February 1, 2000.

The Province of Quebec continues to apply coloring restrictions on dairy margarine. In addition, provincial marketing restrictions on butter/margarine blends or imitation dairy products have served as a limitation and in certain cases, prohibition to the sales of these products into many provinces.

Horticultural Import Restrictions

Certain restrictions prohibit bulk produce imports without a special ministerial waiver of Canadian packaging regulations.

Other Products

Market access barriers in many 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 June 1998, the Canadian Parliament passed Bill C-4, an act to reform the CWB. The Canadian government contends that, as a result of this legislation, Canadian producers have a greater decision-making role in the operations and general policy direction of the CWB. Unfortunately, C-4 did nothing to result in competition, either by ending CWB's monopoly privileges or its financial link to the government. The United States is calling for the WTO agriculture negotiations to create disciplines for State Trading Enterprises (STE's) that would provide for greater openness, allow for greater competition in the marketplace, and reduce or eliminate the trade-distorting effects of monopoly STE's, like the Canadian Wheat Board.

BARRIERS TO NON-AGRICULTURAL GOODS

Restrictions on U.S. Publications

In June 1999, the United States and Canada announced an agreement under which U.S. publications would be allowed gradual access to the Canadian market. They are now permitted to carry up to 12 percent of advertising space for ads primarily directed at the Canadian market. This ceiling will rise to 18 percent by mid-2002. Canada also agreed to permit foreign investment in its periodicals industry on the condition that such investments are of net benefit to Canada. The United States will continue to monitor Canada's investment, tax, access systems and postal subsidies for Canadian-produced magazines.

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 continue 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 by placing certain distribution restrictions on English language versions of those films that have been dubbed in French outside of the Province of Quebec. The Cinema Act thus limits a company's ability to utilize the most cost-effective means to dub a film in French.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Articles 33 and 70 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) require all WTO members to provide a patent term of at least twenty years from the date of filing of the patent application. For a large group of patents, Canada applies a term that in many cases is shorter – calculated as seventeen years from the date that a patent is issued. A term of seventeen years from issuance is not the same as a term of twenty years from filing. With respect to a large number of existing patents, Canada is in violation of the TRIPS Agreement because of its failure to provide an adequate patent term. Thus, on April 30, 1999, the United States initiated a WTO dispute settlement proceeding against Canada on this issue. On September 22, 1999, the WTO established a panel to review the issue and the final panel report is scheduled to be circulated in April of 2000.

In 1999, the European Union initiated a WTO dispute settlement proceeding against Canada with respect to Canadian generic drug companies being allowed to "early work" and "stockpile" their products. ("Early working" is the production by a generic drug manufacturer of a patented drug – during the patent term – for the purposes of obtaining regulatory approval of the generic drug, and of marketing it without delay after the patent expires. "Stockpiling" is, in effect, inventory building of the "early worked" generic product.) On March 17, 2000, a panel report was circulated, finding that "early working" is permissible under the TRIPS Agreement, while "stockpiling" is not.

Canada is a member of the World Intellectual Property Organization (WIPO). Canada also adheres to a number of international agreements, including 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 (IPR). On December 18, 1997, the Canadian government committed itself to sign two new international treaties dealing with copyright and with protection for performers and "phonogram" producers. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty are designed to establish international minimum standards in the area of copyright and related rights.

The 1997 amendments to Canada's Copyright Act contain two provisions whereby Canada is applying the principle of reciprocity rather than national treatment. The first provision is for the payment of a neighboring rights royalty to be made by broadcasters to artists from countries that are signatories to the 1961 Rome Convention. The royalty has been set for five years, 1998 – 2002, and Canada started collecting it retroactively as of January 1, 1998. 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 afford an equivalent benefit to Canadian artists. On December 17, 1999, the Canadian Copyright Board (CCB) officially set the levy on recordable media, which took effect the same day. The levy covers 1999 and 2000 only. However, the Canadian Private Copyright Collective (CPCC) can file by March 31, 2000, for an extended levy to go into effect the following year. 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 USG 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. The U.S. Trade Representative (USTR) has placed Canada on its Special 301 "Watch List." While the GOC may grant to countries some or all of the benefits of the new regime if it considers that such countries grant or have undertaken to grant equivalent rights to Canadians, the GOC has yet to announce a determination with regard to the United States.

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 Canadian conventional, over-the-air broadcasts make up 60 percent of television broadcast time – 50 percent during prime time hours (6 p.m. to midnight). It also requires that 35 percent of musical selections broadcast on radio should qualify as "Canadian" under a Canadian Government-determined points system. Direct-to-home (DTH) broadcasts must contain a preponderance (more than 50 percent) of Canadian content. For some specialty services like pay audio services, the applicable percentage of Canadian content is subject to change.

The Broadcasting Act also requires Canadian cable television providers to carry a majority of Canadian signals and services. Non-programming service packages may consist of entirely non-Canadian signals and services whereas programming service packages must contain at least one Canadian signal or service. U.S.-origin signals on non-basic pay television must be selected from a CRTC approved list. U.S.-based services deemed to be competitive with already licensed Canadian services are not eligible for this list.

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 drop the non-Canadian service, if the new Canadian applicant requested it to do so. This policy led to one "de-listing" in 1995, and 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 competitive services. In this connection, the CRTC will consider the removal of existing non-Canadian services from the list if they change format so as to compete with a Canadian pay or specialty service.

USTR will continue to closely monitor the effect of these policies on U.S. commercial interests.

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-based 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 (at least 80 percent of the members of a board of directors must be Canadian citizens), and a routing restriction to promote the use of Canadian facilities.

In September 1998, Canada eliminated third country routing restrictions for international traffic routed to and from Canada through the United States. Teleglobe Inc. is no longer the sole overseas facilities-based provider as of January 1, 1999, and licenses to land submarine cables are no longer limited. Telesat Canada will relinquish its monopoly control of fixed satellite space segment facilities used to provide national and U.S.-Canada telecommunications services on March 1, 2000.

Canada requires all long-distance telecommunications firms to pay "contributions" to cover the costs of local service companies, whose facilities the long distance companies use. The contribution funds are redistributed to local service companies to defray the cost of deploying local residential lines to all regions of Canada. However, the dominant local service companies are also long distance market competitors, controlling more than half of long distance market share. Companies that do not provide local residential services argue that the contribution charges are set unjustifiably high, disadvantaging them compared to the competitors who receive (as well as pay into) monies from the contributions scheme. Recipients of contributions monies are not required to account for how they expend these funds to provide local residential services. The Canadian Radio-Television and Telecommunications Commission (CRTC) refused in a December 1999 ruling to reduce the contribution charges, a decision which is likely to be appealed.

Insurance

In Canada's insurance market, companies can incorporate under provincial or federal law. Foreign ownership remains subject to investment review thresholds, and several provinces continue to subject foreign investments in existing, provincially incorporated companies to authorization. Insurance companies may supply their services directly, although life insurance companies are not generally allowed to offer other services (except for health, accident and sickness insurance), but may be affiliated with, and distribute the products of, a property and casualty insurer. A commercial presence is required to offer insurance, reinsurance and retrocession services in Canada. However, insurance companies may branch from abroad on condition that they maintain in trust assets equivalent to their liabilities in Canada. Insurance companies can own deposit-taking financial institutions, investment dealers, mutual fund dealers and securities firms. In addition, insurance companies may engage directly in lending activities on an equal footing with deposit-taking institutions.

In British Columbia, Saskatchewan and Manitoba, consumers must purchase the required minimum automobile insurance from the government insurer. Additional coverage is provided by government and private providers. In Quebec, bodily injury claims are covered by a government insurer; however, automobile and property damage is covered by private insurers. All other provinces are served by private insurers, but both premiums and insurance policy terms are highly regulated.

Engineering Services

The Canadian government, at the provincial and federal level, subsidizes Canadian firms' bids for feasibility studies and other work in third countries. Export subsidies are provided through the Export Development Corporation, the Canadian International Development Agency, and the Program for Export Market Development. Local engineers and construction firms are given preference for all government contracts. U.S. companies must form joint ventures with Canadian firms to bid on a project. There are also many interprovincial barriers to trade in AEC services in Canada which favor locally established firms over extra-provincial firms.

Legal

For foreign legal consultants (advisory services on foreign and public international law only), a commercial presence must take the form of a sole proprietorship or partnership. In addition, for lawyers, permanent residence is required for accreditation in Prince Edward Island, Ontario, Alberta, and Newfoundland; and citizenship is required in Quebec.

INVESTMENT BARRIERS

General Establishment Restrictions

Under the Investment Canada 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 encourage, regulate and facilitate foreign investment in Canada. Investment Canada, the federal regulatory agency, only reviews (a) the direct or indirect acquisition by a non-Canadian of an existing Canadian business of substantial size (as defined below); and (b) 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.

Investment Canada must be given notice of any investment by a non-Canadian to establish a new Canadian business (regardless of size) or to 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 to acquire the indirect control of any existing Canadian business the assets of which exceed C$50 million in value. The C$5 million threshold is increased to C$192 million in the case where the acquiring non-Canadian is from a member of the World Trade Organization (WTO), and there is no review process applicable to an indirect acquisition of a Canadian business by any acquirer from a member of the WTO. In practice, the Minister of Industry has allowed most transactions to proceed, though in some instances upon compliance by the applicant with certain undertakings. ICA also sets strict time limits within which Investment Canada 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 fall into foreign hands through indirect acquisition need not be divested to Canadian control, 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 reached with the United States in May 1999 on periodicals, Canada will permit up to 51 percent foreign ownership in the establishment and acquisition of foreign-owned businesses to publish, distribute and sell periodicals. However, acquisition of Canadian-owned businesses continues to be prohibited. After one year, Canada will permit up to and including 100 percent foreign ownership. Partnerships of foreign investors with majority Canadian ownership will be permitted. The United States is monitoring the effect of these policies on U.S. interests.

Film Industry Investment

Canadian policies prohibit foreign acquisitions of Canadian-owned film distribution firms and allow investment to establish new distribution firms only for 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

In addition to Canada's international obligations in the area of procurement under the NAFTA, Canada is also a party to the WTO Agreement on Government Procurement (GPA). Canada is the only party to the GPA that has not assumed obligations to cover procurements of entities below the central government level. A number of Canadian Provincial governments maintain 10 percent price preferences favoring Canadian suppliers over U.S. and other foreign suppliers.

ELECTRONIC COMMERCE

There are currently few barriers to U.S.-based electronic commerce in Canada. The Canadian Radio-Television and Telecommunications Commission (CRTC) announced in 1999 that it would not attempt to regulate the Internet.

Early in 2000 Canada passed a new personal information protection law, Bill C-6, which 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, telecommunications), but its application will expand to other commercial activities in 2003, or when provincial governments pass substantially similar legislation.