CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $28.3 billion in 2010, up $6.7 billion from 2009. U.S. goods exports in 2010 were $248.2 billion, up 21.3 percent from the previous year. Corresponding U.S. imports from Canada were $276.5 billion, up 22.2 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 $42.0 billion in 2009 (latest data available), and U.S. imports were $22.0 billion. Sales of services in Canada by majority U.S.-owned affiliates were $112.1 billion in 2008 (latest data available), while sales of services in the United States by majority Canada-owned firms were $67.0 billion.

The stock of U.S. foreign direct investment (FDI) in Canada was $259.8 billion in 2009 (latest data available), up from $239.2 billion in 2008. U.S. FDI in Canada is led by the manufacturing, nonbank holding company, and finance/insurance sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994. At the same time, the United States suspended the United States-Canada Free Trade Agreement, which had entered into force in 1989. Under the NAFTA, the United States and Canada agreed to progressively eliminate tariff and nontariff barriers to trade in goods; provide improved access for services, and strengthen the protection of foreign investment and intellectual property rights. After signing the NAFTA, the parties concluded supplemental agreements on labor and the environment which obligate them to enforce their national environmental and labor laws.

IMPORT POLICIES

Tariffs

On January 1, 1998, per the terms of the NAFTA, Canada eliminated tariffs on all industrial and most agricultural products imported from the United States. In 2010, Canada announced the unilateral elimination of MFN tariffs on imported manufacturing inputs. Most tariffs were eliminated immediately and the remainder will be eliminated by 2015.

Agricultural Supply Management

Canada uses supply management systems to regulate its dairy, chicken, turkey, and egg industries. Canada’s supply management regime involves production quotas, producer marketing boards to regulate price and supply, and border protection achieved through tariff-rate quotas (TRQs). Canada’s supply management regime severely limits the ability of U.S. producers to increase exports to Canada above the TRQ levels and inflates the prices Canadians pay for dairy and poultry products. The United States has pressed for expanded in-quota quantities for these products as part of the negotiations regarding disciplines on TRQs in the WTO Doha Round agricultural negotiations. One of the barriers created by Canada's dairy policies is a 245 percent *ad valorem* tariff on U.S. exports of breaded cheese sticks.

Early in 2008, Canada announced its intention to proceed with the implementation of the Special Safeguard (SSG) under the WTO Agreement on Agriculture for its supply-managed goods. The SSG is a provision that would allow additional duties to be imposed on over-quota trade when import volumes rise above a certain level, or if prices fall below a certain level. Canada continues to work on the details of this mechanism and monitor over-quota trade, but has not established a timeframe for announcing the SSG price and volume triggers.

Restrictions on U.S. Grain Exports

Canada has varietal registration requirements on wheat. On August 1, 2008, Canada eliminated a portion of the varietal controls by no longer requiring that each registered variety of grain be visually distinguishable based on a system of Kernel Visual Distinguishability (KVD) requirements. This KVD requirement previously limited U.S. export access to Canada's grain market because U.S. varieties are not visually distinct and cannot be registered for use in Canada. While this policy change is a step in the right direction, it will take years before U.S. wheat varieties are able to complete the necessary field trials to determine whether they will be registered for use in Canada. In the meantime, U.S. wheat, regardless of quality, will continue to be sold in Canada as "feed" wheat at sharp price discounts compared to Canadian varieties.

Personal Duty Exemption

The United States continues to urge Canada to facilitate cross border trade for returning residents by relaxing its taxation of goods that Canadian visitors purchase in the United States. Canada's allowance is linked to the length of a visitor's absence from Canada and allows a zero exemption for Canadians absent less than a day. The exemption is C$50 for visitors absent for at least 24 hours, and C$400 and C$750 for visits exceeding 48 hours and 7 days, respectively. The United States provides much more generous treatment for its returning travelers, with a minimum allowance of US$200 and, once each 30 days, a US$800 allowance for travelers returning after 48 hours.

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, labeling, discounting, distribution and warehousing policies.

The Canadian Wheat Board and State Trading Enterprises (STEs)

The United States has longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. The United States seeks a level playing field for U.S. farmers, including through the elimination in the WTO Doha Round agricultural negotiations of the monopoly power of exporting STEs.

SOFTWOOD LUMBER

The Softwood Lumber Agreement (SLA) entered into force in 2006 and will expire in 2013 unless renewed. Its implementation settled extensive litigation and resulted in the revocation of U.S. antidumping and countervailing duty orders on softwood lumber from Canada. The SLA is designed to create a downward adjustment in softwood lumber exports from Canada into the United States through the imposition of export measures by Canada when demand in the United States is low. The SLA also provides for binding arbitration to resolve disputes between the United States and Canada regarding interpretation and implementation of the Agreement. Under the SLA, arbitration is conducted under the rules of the LCIA (formerly the London Court of International Arbitration). The bilateral Softwood Lumber Committee, established pursuant to the SLA, meets to discuss a range of implementation issues and Canadian provincial assistance programs for softwood lumber industries.

In 2007, the United States expressed concerns regarding Canada's implementation of SLA export measures, in particular the operation of the Agreement's surge mechanism and quota volumes, and several federal and provincial assistance programs. In February 2009, an arbitral tribunal found that the equivalent of an additional $36.66 million should be collected on imports of softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan. When Canada did not cure the breach voluntarily, the United States imposed a 10 percent *ad valorem* tariff on softwood lumber products exported to the United States from Ontario, Quebec, Manitoba, and Saskatchewan. In September 2009, the tribunal rejected Canada's arguments that it had cured its breach by offering to pay the United States $36.66 million. In September 2010, the United States agreed that Canada could undertake domestic export measures to cure the breach in a manner consistent with the tribunal's decision.

In 2008, the United States filed a separate request for arbitration challenging a number of assistance programs implemented by Quebec and Ontario, which the United States believed were inconsistent with Canada's obligations under the anti-circumvention provision of the SLA. In January 2011, the LCIA found certain of the challenged programs breached the Agreement and determined that, in order to remedy the breach, Canada should impose additional charges on exports of softwood lumber to the United States originating in Quebec and Ontario. Canada began collecting the additional charges on March 1, 2011. These additional export charges will remain in place for the duration of the SLA and are anticipated to result in the collection of $59.4 million.

In January 2011, the United States requested a third arbitration under the SLA regarding the under-pricing of timber harvested from public lands in the Interior region of British Columbia. The central issue of the dispute involves the mis-assignment of public timber to the salvage "grade 4", which British Columbia has then sold to Canadian softwood lumber producers at the very low fixed rate of 25 cents per cubic meter.

DOMESTIC SUPPORT MEASURES

Aerospace Sector Support

Canada established the Strategic Aerospace and Defence Initiative (SADI) in 2007, replacing Technology Partnership Canada (TPC). The SADI "provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defence, space and security industries." There is no minimum or maximum limit on how much a company can apply to receive through SADI, although typically SADI is expected to contribute about 30 percent of a project's eligible costs. SADI repayment is generally based on a royalty applied to the company's gross business revenues. To receive funding through SADI, the level of assistance from all government sources shall not normally exceed 75 percent of a project's eligible costs. The first SADI funds were disbursed in early 2008; SADI is expected to invest nearly C$900 million between 2007 and 2012, with funding to reach a maximum of C$255 million per year.

In 2008, the Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company not to exceed C$350 million (federal) and C$117 million (provincial) to support research and development (R&D) related to the launch of a new class of Bombardier CSeries jets. Under this program, Bombardier received a contribution of C$39.6 million from the federal government in fiscal year 2009 (April 1-March 31) and C$36.9 million in fiscal year 2010. Bombardier is scheduled to receive a contribution of C$67 million in fiscal year 2011.

About one-half of the federal money is for general R&D. The other half is tied specifically to the development of the CSeries aircraft. The government of the United Kingdom is also contributing to the CSeries development, as major components of the aircraft, specifically the wings, are to be produced in Northern Ireland.

The United States has expressed its concerns to Canada that any launch aid associated with the C-Series must be consistent with Canada's international trade obligations. The United States has also expressed concern over the possible use of official export credits to support commercial aircraft sales in the U.S. market.

Ontario Feed-In Tariff Program

The Province of Ontario instituted a feed-in tariff renewable energy program as part of the *Green Energy and Green Economy Act of 2009*. Under the program, the Ontario Power Authority will provide a guaranteed tariff for energy produced through renewable means (including wind, solar/photovoltaic) on the condition that suppliers use a provincially-mandated percentage of local content (equipment, services, etc.) in their generating activity. U.S. suppliers of equipment and services have complained about the program, because its domestic content requirement provides a disincentive to purchase from U.S. suppliers. In September 2010, Japan filed a request for consultations with the WTO Dispute Settlement Body regarding the domestic content requirements of the Ontario *Green Energy and Green Economy Act 2009*. The United States and the European Union were granted third-party status in these proceedings.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Canada was listed on the Priority Watch List in the 2010 Special 301 report. Concerns listed in the report relate to Canada's failure to implement key copyright reforms, its weak border enforcement system, and its failure to implement the World Intellectual Property Organization Internet Treaties, which Canada signed in 1997. The United States continues to urge Canada to enact legislation to strengthen its copyright laws and implement these treaties.

The United States also urges Canada to enact legislation to give customs officers the authority, without the need for a court order, to seize products suspected of being pirated or counterfeit. Canada's IPR enforcement regime would also benefit from the provision of increased resources and training to customs officers and domestic law enforcement personnel. Canada and the United States are working together on enhanced training.

In addition, the U.S. pharmaceutical industry has expressed concerns related to Canada's 2010 pharmaceutical pricing guidelines, specifically with respect to the regulatory burden placed on pharmaceutical manufacturers.

Canada has been an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which were concluded in November 2010. The ACTA establishes an international framework that will assist Parties in their efforts to effectively combat the infringement of intellectual property rights, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

SERVICES BARRIERS

Telecommunications

Canada maintains a 46.7 percent limit on foreign ownership of suppliers of facilities-based telecommunications service, except for submarine cable operations. This is among the most restrictive regimes among developed countries. In addition to the equity limitations, Canada requires that at least 80 percent of the members of the board of directors of facilities-based telecommunications service suppliers be Canadian citizens. As a consequence of these restrictions on foreign ownership, 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. 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). This limits those U.S. companies' options for providing high quality end-to-end telecommunications services, since they cannot own or operate their own telecommunications transmission facilities. In 2009, an Egyptian-controlled cell phone service provider was permitted to acquire wireless spectrum rights in Canada, but the company has since faced difficulties leasing space for cellular equipment on incumbent-owned towers, and that license has now been challenged in court, adding to the uncertainly to the Canadian regulatory regime. Canada is currently considering a range of possible legislative steps to further liberalize the sector, but the narrow range of options *(e.g.* excluding cable platforms, one of the most viable means to compete in the telecommunications sector) and uncertain political support undercut potential progress.

Canadian Content in Broadcasting

The Canadian Radio-television and Telecommunications Commission (CRTC) requires that for Canadian over-the-air broadcasters, Canadian programs must make up 60 percent of television broadcast time overall and 50 percent from 6 p.m. to midnight. It also requires that 35 percent of popular musical selections broadcast on the radio should qualify as "Canadian" under a Canadian government-determined point system. For cable television and direct to home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian programming services.

The CRTC also requires that the English and French television networks operated by the Canadian Broadcasting Corporation not show popular foreign feature movies between 7 p.m. and 11 p.m. The only non-Canadian films that may be broadcast during that time must have been released in theaters at least two years previously. 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. Canadian licensees may appeal the listing of a non-Canadian service which is thought to compete with a Canadian pay or specialty service. 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.

The CRTC is holding hearings to determine whether it can and should regulate media content distributed over the Internet. Despite the impracticality of imposing a quota regime on on-demand digital services with limitless titles, Canada's traditional broadcasters have called for Canadian content requirements to be imposed on services such as Netflix, iTunes, and Google video, which have begun to establish a presence in Canada.

Distributors of theatrical films in Canada must submit their films to six different provincial or regional boards for classification: there is no national classification system. Most of these boards also classify products intended for home video distribution.

INVESTMENT BARRIERS

General Establishment Restrictions

Under the Investment Canada Act (ICA), the Broadcasting Act, the Telecommunications Act, and standing Canadian regulatory policy, Canada screens new or expanded foreign investment in the energy and mining, banking, fishing, publishing, telecommunications, transportation, film, music, broadcasting, cable television, and real estate sectors.

The 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 the acquisition by non-Canadians of existing Canadian businesses, as well as the establishment 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 in the public interest. In 2009, the Harper government increased the threshold for review to C$1 billion (enterprise value), allowing almost all U.S. investment to enter the country without notification. At the same time, the government added national security considerations as an additional component of investment review. Industry Canada is the reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage. The ICA sets time limits for the reviews. Once an application for review is received, the Minister has 45 days to determine whether or not to allow the investment. A 30 day extension is permitted if the investor is notified prior to the end of the initial 45 day period. Reviews of investments in cultural industries usually require the full 75 days to complete.

Under the ICA, the Minister of Industry can make investment approval contingent on meeting certain conditions such as minimum levels of employment and R&D. Since the global economic slowdown in 2009, some foreign investors in Canada have had difficulties meeting these conditions. On November 3, 2010, the Canadian government blocked a C$38.6 billion hostile takeover by an Australian company, BHP Billiton, of Potash Corp. of Saskatchewan, as not being of "net benefit" to Canada under the ICA. This was only the second time an investment has been blocked since 1985.