CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $35.7 billion in 2011, up $7.2 billion from 2010. U.S. goods exports in 2011 were $280.8 billion, up 12.7 percent from the previous year. Corresponding U.S. imports from Canada were $316.5 billion, up 14.0 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 $50.5 billion in 2010 (latest data available), and U.S. imports were $25.6 billion. Sales of services in Canada by majority U.S.-owned affiliates were $101.4 billion in 2009 (latest data available), while sales of services in the United States by majority Canada-owned firms were $70.0 billion

The stock of U.S. foreign direct investment (FDI) in Canada was $296.7 billion in 2010 (latest data available), up from $266.6 billion in 2009. U.S. FDI in Canada is led by the manufacturing, nonbank holding companies, 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 most favored nation (MFN) tariffs on imported manufacturing inputs. Most tariffs were eliminated immediately. The Canadian government announced further tariff relief on 70 items in Canada’s manufacturing sector in November 2011. Canada has pledged to eliminate all MFN tariffs on imported machinery and equipment 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.

Canada's compositional standards for cheese entered into force on December 14, 2008, and further restrict U.S. access to the Canadian dairy market. These regulations limit the ingredients that can be used in cheese making, set a minimum for raw milk in the cheese making process, and make cheese importers more accountable for ensuring that imported product is in full compliance. The regulations are also applicable to cheese that is listed as an ingredient in processed food. 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.

Canada announced in 2008 its intention to implement the Special Safeguard (SSG) under the WTO Agreement on Agriculture for 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. Canada eliminated a portion of the varietal controls in 2008 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 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 no exemption for Canadians absent less than a day. Canadians who are absent from Canada for at least 24 hours can bring in goods worth C$50 duty free and tax free to Canada. The exemption is C$400 for visits exceeding 48 hours and C$750 for visits exceeding 7 days. The United States provides much more generous treatment for its returning travelers, with a minimum allowance of $200, even for visits of less than 24 hours. The United States allows visitors returning after 48 hours an exemption of $800 once a month.

Wine and Spirits

Market access barriers in several provinces severely distort origin of imports and hamper exports of U.S. wine and spirits to Canada. These include cost of service markups, listings, reference prices, labeling, discounting, distribution and warehousing policies. In addition, the high Canadian tariffs even for casual, personal imports along the border severely limit Canadian travelers in purchasing U.S. wines and spirits for their personal use.

The Canadian Wheat Board and State Trading Enterprises

The United States has had longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. In December 2011, Canada passed the Marketing Freedom for Grain Farmers Act which is designed to transition the Canadian Wheat Board from a crown corporation to a commercial entity over a period of five years.

SOFTWOOD LUMBER

The Softwood Lumber Agreement (SLA) entered into force on October 12, 2006 and was set to expire on October 12, 2013. Article XVIII of the agreement contemplated extension stating: "the SLA 2006 shall remain in force for seven years after the Effective Date and may be extended by agreement of the Parties for an additional two years." On January 23, 2012, the United States and Canada signed a two year extension of the SLA, under which the agreement will remain in effect through October 12, 2015.

SLA implementation in 2006 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.

The United States expressed concerns in 2007 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. An arbitral tribunal found in February 2009 that the equivalent of an additional $54.8 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 from Ontario, Quebec, Manitoba, and Saskatchewan. Canada's arguments that it had cured its breach by offering to pay the United States $36.66 million were rejected in September 2009 by the tribunal. The United States agreed in September 2010 that Canada could undertake domestic export measures to cure the breach in a manner consistent with the tribunal's decision.

The United States filed a request for arbitration in 2008 challenging a number of assistance programs implemented by Quebec and Ontario, which the United States considers inconsistent with Canada's obligations under the anti-circumvention provision of the SLA. The LCIA found in January 2011 that certain of the challenged programs breached the Agreement and determined that 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 it is anticipated that they will result in the collection of $59.4 million.

The United States again requested arbitration under the SLA in January 2011 regarding the under pricing of timber harvested from public lands in the Interior region of British Columbia. The dispute involves the mis-assignment of public timber to the salvage "grade 4," which British Columbia sells to Canadian softwood lumber producers at the very low fixed rate of 25 cents per cubic meter. The hearing before an LCIA tribunal was held from February 27, 2012 through March 9, 2012.

DOMESTIC SUPPORT MEASURES

Aerospace Sector Support

Canada established the Strategic Aerospace and Defence Initiative (SADI) in 2007, replacing Technology Partnership Canada. 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 C-Series jets. Under this program, Bombardier received a contribution of C$39.6 million from the federal government in fiscal year 2009 (April 1 to 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 C-Series aircraft. The government of the United Kingdom is also contributing to the C-Series 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 provides 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) in their generating activity. U.S. suppliers of equipment and services have complained about the program because its domestic content requirement is a disincentive to purchase from U.S. suppliers.

Japan filed a request for consultations with the WTO Dispute Settlement Body in September 2010 regarding the domestic content requirements of the Green Economy Act. The WTO agreed to establish a dispute settlement panel to hear Japan's challenge in July 2011. The United States was granted third party status in these proceedings.

The European Union joined Japan in issuing a formal challenge to the WTO concerning the Green Economy Act in August 2011. The EU alleges that the local content requirements in the Canadian law violate WTO rules that prohibit linking subsidies to the use of domestic products. The EU contends that its exports in wind power and photovoltaic equipment to Canada would be higher if the law's local content provisions were reformed.

A Texas-based renewable energy firm initiated an investor-state claim under NAFTA Chapter 11 against the Canadian government in July 2011, claiming the Green Economy Act violates Canada's obligations under NAFTA to provide foreign investors with fair and equitable treatment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Canada has been listed since 2009 on the U.S. Special 301 Priority Watch List. 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 (WIPO) Internet Treaties (*i.e.*, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty), which Canada signed in 1997. The Canadian government reintroduced the Copyright Modernization Act in September 2011 in an effort to align its copyright laws with international standards and implement the rights and protections of the WIPO Internet Treaties. 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 intellectual property rights (IPR) enforcement regime would also benefit from the provision of increased resources and training to customs officers and domestic law enforcement personnel.

U.S. stakeholders have also expressed strong concerns about Canada's current administrative process for appeals of the regulatory approval of pharmaceutical products, and limitations in Canada's trademark regime.

Canada, the United States and other key trading partners, signed the Anti-Counterfeiting Trade Agreement (ACTA) in October 2011. The ACTA establishes an international framework that will assist Parties in their efforts to effectively combat the infringement of IPR, 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 services, except for submarine cable operations. This is one of the most restrictive regimes among developed countries. Of the OECD countries, Canada is ranked last in its level of liberalization. Canada also 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.

The Canadian government pledged in March 2010 to further open key sectors to foreign investment, including its telecommunications industries. Canada is considering a range of possible legislative steps to further liberalize the sector, but the narrow range of options (*e.g.*, options do not include providing cable platforms, one of the most viable means to compete in the telecommunications sector) and uncertain political support diminish the potential for progress. The government has promised to clarify its position on foreign telecommunications investment before the next wireless spectrum auction in 2012.

A cell phone service provider with significant U.S. financial backing was permitted in 2009 to acquire wireless spectrum rights in Canada. This represented a rare new entry into a telecommunications sector dominated by several large Canadian-owned firms. The provider has since faced numerous legal challenges from its competitors, who claim that the company violates the Canadian ownership requirements in the *Telecommunications Act*, because a foreign conglomerate controls a majority of its debt. Canada's Federal Court of Appeal ruled in the provider's favor in June 2011, securing the company's right to operate in Canada. An appeal against this decision has been filed to the Supreme Court of Canada.

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.

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.

Canada's traditional broadcasters have called for Canadian content requirements to be imposed on "over-the-top" (OTT) providers such as Netflix, iTunes, and Google video. The results of a CRTC study found insufficient evidence to suggest that online media companies have negatively impacted Canada's traditional broadcasters. The CRTC found no reason to pursue regulatory restrictions on OTT providers. The CRTC pledged to closely monitor the impact of OTT providers on the Canadian broadcasting environment and plans to begin another study on the subject in May 2012.

OTHER BARRIERS

The strong growth of cross-border data flows resulting from widespread adoption of broadband-based services in Canada and the United States has refocused attention on the restrictive effects of privacy rules in two Canadian provinces, British Columbia and Nova Scotia. These two provinces have laws mandating that personal information in the custody of a public body must be stored and accessed only in Canada unless one of a few limited exceptions applies. These laws prevent public bodies such as primary and secondary schools, universities, hospitals, government-owned utilities, and public agencies from using U.S. services when personal information could be accessed from or stored in the United States. The public sector represents approximately one-third of the Canadian economy, and is a major consumer of U.S. services. In today's information-based economy, particularly where a broad range of services are moving to "cloud" based delivery where U.S. firms are market leaders, this law hinders U.S. exports of a wide array of products and services. The United States will continue seeking to work with Canadian authorities to identify means of addressing this issue.

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. The Canadian government amended the ICA to increase the threshold for review to C$1 billion over a four year period. This increase will take affect once regulations implementing the amendments come into force.

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.

GOVERNMENT PROCUREMENT BARRIERS

Canadian Crown Corporations

Canada is a signatory to three international agreements relating to government procurement (the WTO Agreement on Government Procurement, NAFTA, and the 2010 United States-Canada Agreement on Government Procurement). The agreements provide U.S. businesses with access to procurement conducted by most Canadian federal departments and certain provincial entities. U.S. suppliers have access under trade agreements to procurement of only seven of Canada's Crown Corporations. The Canadian Air Transportation Security Authority (CATSA), a Crown Corporation not covered by a trade agreement, awarded sole-source contracts for baggage screening X-ray systems in 2009 and 2010 to a UK supplier and unreasonably excluded a U.S. supplier from the procurements based on claims of urgency and unique technical specifications. The U.S. supplier has been unable to challenge this procurement because foreign companies may not use Canada's bid-challenge mechanism, administered by the Canadian International Trade Tribunal, unless the procurement is covered by a trade agreement. CATSA has effectively shielded itself from applying competitive procedures in two procurements worth approximately $46 million.