CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $20.2 billion in 2009, down $58.2 billion from 2008. U.S. goods exports in 2009 were $204.7 billion, down 21.6 percent from the previous year. Corresponding U.S. imports from Canada were $224.9 billion, down 33.8 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 $46 billion in 2008 (latest data available), and U.S. imports were $24.4 billion. Sales of services in Canada by majority U.S.-owned affiliates were $100.5 billion in 2007 (latest data available), while sales of services in the United States by majority Canada-owned firms were $65.4 billion.

The stock of U.S. foreign direct investment (FDI) in Canada was $227.3 billion in 2008 (latest data available), down from $234 billion in 2007. U.S. FDI in Canada is led by the manufacturing, finance/insurance, and nonbank holding companies 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, superseding the United States-Canada Free Trade Agreement, which entered into force in 1989. Under the NAFTA, the United States and Canada agreed to continue progressively eliminating bilateral tariff and nontariff barriers to trade in goods; provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the United States, Canada and Mexico concluded supplemental agreements on labor and the environment. Under these agreements the parties are, among other things, obligated effectively to enforce their environmental and labor laws. The agreements also provide frameworks for cooperation among the parties on a wide variety of labor and environmental issues.

IMPORT POLICIES

Tariffs

Pursuant to the terms of the NAFTA, Canada eliminated tariffs on all remaining industrial and most agricultural products imported from the United States on January 1, 1998.

Agricultural Supply Management

Canada uses supply management systems to regulate its dairy, chicken, turkey, and egg industries. Canada's supply management regime involves the establishment of production quotas, producer marketing boards to regulate the supply and prices farmers receive for their poultry, turkey, eggs, and milk products, 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 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 finalizing the implementation of the Special Safeguard (SSG) under the WTO Agreement on Agriculture for its supply-managed goods and initiated a comment period on their draft calculations of trigger levels. 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. The government of Canada continues to work on the details and monitor over-quota trade, but has not established a timeframe for announcing the SSG.

Restrictions on U.S. Grain Exports

Canada has varietal registration requirements on its 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 limited U.S. access to Canada's grain market since under these requirements U.S. varieties could not 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 U.S. varieties 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 tourists purchase in the United States. Canada's allowance, which is linked to the length of a tourist's absence from Canada and allows a zero exemption for tourists absent less than a day, is approximately $47.00 for tourists absent for at least 24 hours, and approximately $379.00 and $711.00 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 $200 and, once each 30 days, a $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, and 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) was signed on September 12, 2006, and entered into force on October 12, 2006. Its implementation settled extensive litigation in U.S. and international venues 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 the 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 Softwood Lumber Committee, established pursuant to the SLA, met in June 2009 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, as well as several federal and provincial assistance programs. In February 2009, an arbitral tribunal found 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 to the United States from Ontario, Quebec, Manitoba, and Saskatchewan. In September 2009, after the tribunal confirmed its earlier decision and rejected Canada's arguments that it had cured its breach by offering to pay the United States $36.66 million, Canada announced its intention to undertake domestic export measures to cure the breach consistent with the tribunal's decisions.

The United States filed a second request for arbitration on January 18, 2008, challenging a number of assistance programs implemented by Quebec and Ontario, which the United States believes are inconsistent with Canada's obligations under the anti-circumvention provision of the SLA. An award in this arbitration is expected in 2010.

DOMESTIC SUPPORT MEASURES

Aerospace Sector Support

In 2007, the Canadian federal government established the Strategic Aerospace and Defence Initiative (SADI), 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 (federal, provincial, territorial, municipal) 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 $854 million between 2007 and 2012, with funding to reach a maximum of $213 million per year.

In 2008, the Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company not to exceed $332 million (federal) and $112 million (provincial) to support research and development (R&D) related to the launch of a new class of Bombardier "CSeries" jets.

About one-half of the federal money is for "generic" 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 "CSeries" development because some of the aircraft will be produced at facilities in Northern Ireland.

In a separate but related matter, the Administration has expressed its concerns to Canada over the possible use of official export credits to support commercial aircraft sales in the U.S. market.

Ontario Feed-In Tariff Program

The government of the Province of Ontario has announced a feed-in tariff energy program that is set to begin in early 2010. Under the program, the Ontario Power Authority will buy energy produced through alternative means (wind, solar/photovoltaic) on the condition that suppliers use a provincially-mandated percentage of local content (equipment, services, etc.) in their generating activity. The program is provoking complaints from U.S. suppliers of equipment and services, because the program's domestic content requirement provides a disincentive to purchase energy efficient goods and services from the United States.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Canada was elevated to the Priority Watch List in the 2009 Special 301 report. Key concerns cited 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, which Canada signed in 1997. The United States continues to urge Canada to enact legislation in the near term to strengthen its copyright laws and implement these treaties. The United States also urges Canada to implement legislative changes to provide for a stronger border enforcement system by giving its 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 greater resources and training to customs officers and domestic law enforcement personnel.

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. 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 services suppliers be Canadian citizens. 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. 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). 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.

Canadian Content in 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 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 the radio should qualify as "Canadian" under a Canadian government-determined point system. For cable television and direct to home broadcast services, a preponderance (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 and not be listed in the top 100 of Variety Magazine's top grossing films for at least the previous 10 years. 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. 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 $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 the cultural industries usually require the full 75 days to be completed.