CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $64.2 billion in 2007, a decrease of $7.6 billion from $71.8 billion in 2006. U.S. goods exports in 2007 were $248.9 billion, up 7.9 percent from the previous year. Corresponding U.S. imports from Canada were $313.1 billion, up 3.5 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 $39.3 billion in 2006 (latest data available), and U.S. imports were $23.5 billion. Sales of services in Canada by majority U.S.-owned affiliates were $55.7 billion in 2005 (latest data available), while sales of services in the United States by majority Canada-owned firms were $40.1 billion.

The stock of U.S. foreign direct investment (FDI) in Canada was $246.5 billion in 2006 (latest data available), up from $233.5 billion in 2005. U.S. FDI in Canada is concentrated largely in the manufacturing, finance, and mining sectors.

A Trading Relationship Based on Free Trade

The United States and Canada conduct the world's largest bilateral trade relationship, with total merchandise trade (exports and imports) exceeding $533.7 billion in 2006. The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994, replacing the United States-Canada Free Trade Agreement, which was implemented in 1989. Under the NAFTA, the United States and Canada progressively eliminated tariff and nontariff barriers to trade in goods; improved access for services trade; established rules on investment; strengthened protection of intellectual property rights; and created an effective dispute settlement mechanism. Under 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. The NAFTA is accompanied by supplemental agreements that provide for cooperation to enhance and enforce labor standards and to encourage environmentally friendly practices and bolster environmental protection in North America.

IMPORT POLICIES

Agricultural Supply Management

Canada's dairy, chicken, turkey, and egg industries are regulated by supply management systems. Canada's supply management regime involves the establishment of production quotas as well as producer marketing boards to regulate the supply and prices farmers receive for their poultry, turkey, eggs, and milk products. Canada's supply management regime severely limits the ability of U.S. producers to increase exports to Canada above the tariff-rate quota levels and inflates prices Canadians pay for dairy and poultry products. The United States continues to press for the elimination of this trade barrier in the WTO Doha Round agricultural negotiations.

Over the last year, Canada announced two measures concerning dairy that the United States views as indicative of possible future trade barriers. On April 11, 2007, Canada, pursuant to GATT Article XXVIII, notified the WTO that it intended to modify through renegotiation its concessions in its tariff schedule with respect to certain milk protein substances. In addition, on

December 26, 2007, the Canadian Food Inspection Agency published new proposed compositional standards for cheese. United States dairy producers and processors are quite concerned about the highly prescriptive nature of these proposed compositional standards for cheese, which may likely operate as new technical barriers to trade and significantly reduce U.S. access to the Canadian market. Moreover, Canada continues to maintain a prohibitive tariff of 245 percent on U.S. exports of breaded cheese sticks.

Ministerial Exemptions

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 exemption. To obtain an exemption, Canadian importers must demonstrate that there is an insufficient supply of a product in the domestic market. 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 a negative impact on exports of U.S. 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.

Progress was made in 2007 with the implementation of the Technical Arrangement Concerning Trade in Potatoes between the United States and Canada. This arrangement will provide U.S. potato producers with predictable access to Canadian Ministerial exemptions to import potatoes. The Arrangement, when fully implemented in Year 3, will allow a 60-day forward contract between U.S. growers and Canadian processors to serve as sufficient evidence of a shortage in Canadian potatoes. In addition to addressing U.S. concerns about Canada's procedures for granting Ministerial exemptions for potatoes, the Arrangement will phase in quality inspections for potatoes at destination and will phase out spot-check inspections along the northeastern Canadian border crossing. The United States will initiate a rulemaking to allow some Canadian specialty potatoes that do not currently meet U.S. quality standards for size to enter the U.S. market.

Restrictions on U.S. Grain Exports

Canada's varietal controls limit U.S. access to Canada's grain market. Canada requires that each variety of grain be registered and be visually distinguishable based on a system of Kernel Visual Distinguishability (KVD) requirements. Since U.S. varieties may not be visually distinct, they are not registered in Canada. As a result, U.S. wheat, regardless of quality, is sold in Canada as "feed" wheat at sharp price discounts compared to Canadian varieties. In June 2006, the Canada Grains Commission announced its intention to make changes to western Canadian wheat classes to include the removal of KVD registration requirements from minor wheat classes, as well as the creation of a new General Purpose wheat class, effective August 1, 2008. The KVD requirements for the higher quality wheat, Canada Western Red Spring and Canada Western Amber Durum, will remain. While these policy changes are a step in the right direction, they only open the door to varietal registration in Canada of lower priced, nonmilling U.S. wheat varieties typically used for feed and industrial end-uses (*i.e.*, biofuels).

On June 5, 2007, the Canadian Federal Court of Appeal upheld the Canadian International Trade Tribunal's decision that U.S. grain corn imports are not causing injury and are not threatening to cause injury to Canadian growers.

Personal Duty Exemption

The United States continues to urge Canada to facilitate cross border trade for border residents by relaxing its taxation of goods that Canadian tourists purchase in the United States. Canada's allowance is linked to the length of a tourist's absence from Canada and allows C$50 for tourists absent for at least 24 hours, and C$400 and C$750 for visits exceeding 48 hours and 7 days, respectively.

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 American farmers, including through the Doha Round WTO agriculture negotiations. The U.S. WTO agriculture proposal in these negotiations calls for: (1) the end of exclusive STE export rights to ensure private sector competition in markets currently controlled by single desk exporters; (2) the establishment of WTO requirements to notify acquisition costs; and (3) the elimination of the use of government funds or guarantees to support or ensure the financial viability of single desk exporters.

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 that 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. The regime forces manufacturers to label vitamin and mineral fortified breakfast cereals as "meal replacements," which imposes 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 a study on Dietary Reference Intakes undertaken by the U.S. Institute of Medicine. 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, the final regulations based on it have not yet been submitted for public review.

Restrictions on Container Sizes

Canada is the only NAFTA country to impose mandatory container sizes on a wide range of processed fruit and vegetable products. The requirement to sell in container sizes that exist only in Canada makes it more costly for U.S. producers of baby food to export their products to Canada. Canada's Processed Products Regulations (Canada Agricultural Products Act) 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 United States has asked Canada to abolish the container size requirements for baby food jars as it did in 2001 when Canada abolished container size requirements for prepared mustard. In 2007, the government of Canada rejected a request by some companies to test market alternative container sizes in Canada claiming it would be a disruption to trade.

SOFTWOOD LUMBER

The Softwood Lumber Agreement (SLA) was signed on September 12, 2006, and entered into force on October 12, 2006. Pursuant to a settlement of litigation, the U.S. Department of Commerce revoked the antidumping and countervailing duty orders on imports of softwood lumber from Canada. (The settlement ended a large portion of the litigation over trade in softwood lumber.) Upon revocation of the orders, U.S. Customs and Border Protection ceased collecting cash deposits and returned previously collected deposits with interest to the importers of record.

The SLA provides for unrestricted trade in softwood lumber in favorable market conditions. When the lumber market is soft, Canadian exporting provinces can choose either to collect an export tax that ranges from 5 percent to 15 percent as prices fall or to collect lower export taxes and limit export volumes. The SLA also includes provisions to address potential Canadian import surges, provide for effective dispute settlement, and monitor administration of the Agreement through the establishment of a Softwood Lumber Committee. The Committee met in February 2007 and October 2007, during which the United States and Canada discussed a range of SLA implementation issues and Canadian provincial assistance programs for softwood lumber industries.

On March 30, 2007, the United States requested formal consultations with Canada to resolve concerns regarding Canada’s implementation of the export measures, in particular the operation of the Agreement’s surge mechanism and quota volumes, as well as several federal and provincial assistance programs that benefit the Canadian softwood lumber industry. After formal consultations failed to resolve these concerns, the United States requested international arbitration under the terms of the Agreement on August 13, 2007, challenging Canada’s implementation of the import surge mechanism and quota volumes. On March 4, 2008, the arbitral tribunal agreed with the United States that Canada violated the SLA by failing to properly adjust the quota volumes of the Eastern Canadian provinces in the first 6 months of 2007. However, the tribunal did not find that the same adjustment applies to British Columbia and Alberta.

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.

Technology Partnership Canada

Technology Partnership Canada (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 3 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.

In 2006, Canada's Minister of Industry closed the program to new TPC applicants except for the aerospace and defense sectors. The government announced increased transparency and accountability requirements for all future projects to be funded under the TPC with the aim of better ensuring company compliance with the terms of their TPC contribution agreements. These new contractual requirements are designed to provide the government with more leverage to act on any breaches of the contribution agreements and will also allow the Minister of Industry to publish the amount of each repayment made by recipient companies that have received investments under the improved agreement. However, these efforts to promote transparency do not remove the potential for trade distortions caused by the TPC and other programs. Of particular concern to U.S. industry is a December 2007 news report that government aid may be used to support the launch of a new class of Bombardier "C Series" regional jets and to support the development of more efficient aircraft engines. The United States continues to monitor this program as well as certain Quebec provincial programs.

GOVERNMENT PROCUREMENT

As a party to the Government Procurement Agreement (GPA), Canada allows U.S. suppliers to compete on a nondiscriminatory 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). 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 United States 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.

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) and the Berne Convention for the Protection of Literary and Artistic Works (1971). Canada is also a signatory to 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 or implemented either treaty. Canada has indicated it is preparing legislation to provide stronger copyright protection. However, no bill has yet been introduced during the current Parliamentary session.

The United States hopes that the expected legislation will not only adequately ratify and implement the two WIPO Treaties, including prohibiting the manufacture and trafficking in circumvention devices, but also enact a limitation-of-liability for Internet service providers that effectively reduces copyright infringement on the Internet by using the "notice-and-takedown" model, rather than the less effective "notice-and-notice" model.

U.S. intellectual property owners are concerned about Canada's weak border measures and general enforcement efforts. The lack of *ex officio* authority for Canadian Customs officers makes it difficult for them to seize shipments of counterfeit goods. To perform a civil seizure of a shipment under the Customs Act, the rights holder must obtain a court order, which requires detailed information on the shipment. The majority of the pirated goods 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 for this purpose. Few prosecutors are willing or trained to prosecute the few cases that arise. Where an infringement case has gone to trial, the penalties imposed can be insufficient to act as a deterrent. Incarceration is rarely imposed.

Camcording

In June 2007, Canada enacted Bill C-59 which makes unauthorized camcording of theatrically exhibited motion pictures a federal criminal offense. Industry reports that this new law has had a deterrent effect. Since the new law was enacted, several individuals have been arrested and are awaiting trial.

Pharmaceuticals

The U.S. pharmaceutical industry is concerned over recent judicial and administrative developments that are putting a number of patents and products at risk before relevant patent protections expire. The U.S. pharmaceutical industry has also raised concerns about the pricing of patented medicines in Canada and encourages Canada and the Patented Medicine Prices Review Board to move towards a more market-based review system.

SERVICES BARRIERS

Audiovisual and Communications Services

In 2003, the government of Canada amended the Copyright Act to ensure that Internet retransmitters are ineligible for a compulsory retransmission license until the Canadian Radiotelevision and Telecommunications Commission (CRTC) licenses them as distribution undertakings. Internet "broadcasters" are currently exempt from licensing.

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.

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 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.

Until 1997, CRTC policy in cases where a Canadian service was licensed in a format competing with that of an authorized non-Canadian service was to revoke the license of the non-Canadian service if the new Canadian applicant so requested. 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. 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 concern of Canada’s legitimate television industries is the spread of unauthorized use of satellite television services. Industry findings, extrapolated on a national basis, have estimated that between 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 one 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 the “gray market” where the unauthorized user does in fact purchase the signal from a U.S. satellite company, but only by pretending to be a U.S. resident.

Telecommunications Services

In its schedule of WTO services commitments, Canada retained a 46.7 percent limit on foreign ownership for all facilities-based telecommunications service suppliers 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). 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.

In 2004, the CRTC decided that telephone communication over the Internet (VoIP) should be subject to the same regulatory regime as conventional telephone systems. In November 2006, however, the Canadian government overruled the CRTC and determined that Canada would not regulate "access independent" VoIP services, those services that can reach the customer through any broadband Internet connection. "Access dependent" VoIP services, which connect customers over the service provider's own network, are still subject to regulation.

Barriers to U.S. 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 Motion Picture Association members must submit product destined for theatrical release.

Most of these boards also classify product intended for home video distribution. As a control device 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 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.

Investment Canada Act (ICA)

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 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. Specifically:

- The government of Canada must be notified of any investment by a non-Canadian to establish a new Canadian business (regardless of size);
- An investment is reviewable if there is an acquisition of an existing Canadian business and the asset value of the Canadian business being acquired equals or exceeds the following thresholds (which are adjusted annually based on changes in Canadian gross domestic product):

    - For investors from non-WTO Members, the review threshold is C$5 million for direct acquisition and over C$50 million for indirect acquisition;

    - Investors from WTO Members benefit from higher direct acquisition thresholds. As of January 1, 2008, the review threshold for investors from WTO members is C$295. Indirect acquisitions by investors from WTO Members are not reviewable, but are subject to notification;

    - All investments in four sectors (uranium, financial services, transportations services, and cultural businesses) are reviewable at the following thresholds: C$5 million for a direct acquisition and over C$50 million for an indirect acquisition.

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 for the reviews. The Minister of Industry has 45 days to determine whether or not to allow a proposed investment. The Minister can unilaterally extend the 45 day period by an additional 30 days by sending a notice to the investor prior to the expiration of the initial 45 day period. Further extensions are permitted if both the investor and the Minister agree to the extension. In practice, Canada allows most transactions to proceed, though in some instances only after prospective investors have agreed to fulfill certain conditions.

Publishing Policy

Foreign investors may directly acquire Canadian book publishing 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 book publishing and distribution businesses continues to be prohibited, except in extenuating circumstances, such as when the business is in clear financial distress and Canadians have had "full and fair" opportunity to purchase.

Film Industry Investment

Canadian law prohibits 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.