CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $74.2 billion in 2008, an increase of $6.0 billion from $68.2 billion in 2007. U.S. goods exports in 2008 were $261.4 billion, up 5.0 percent from the previous year. Corresponding U.S. imports from Canada were $335.6 billion, up 5.8 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 $42.9 billion in 2007 (latest data available), and U.S. imports were $24.6 billion. Sales of services in Canada by majority U.S.-owned affiliates were $88.8 billion in 2006 (latest data available), while sales of services in the United States by majority Canada-owned firms were $53.4 billion.

The stock of U.S. foreign direct investment (FDI) in Canada was $257.1 billion in 2007 (latest data available), up from $230.0 billion in 2006. U.S. FDI in Canada is concentrated largely in the manufacturing, finance/insurance, 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 $597 billion in 2008. The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994, replacing the United States-Canada Free Trade Agreement, which entered into force 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, 2008. The United States, Canada and Mexico agreed to the NAFTA with "side agreements" on labor and environment. Under these side agreements the parties are, among other things, obligated to effectively 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

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. 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 has pressed for expanded in-quota quantities for these products as part of the negotiations regarding disciplines on tariff-rate quotas in the WTO Doha Round agricultural negotiations.

Early in 2008, Canada announced its intention to proceed with finalizing the implementation of the WTO Special Agricultural Safeguard (SSG) for its supply-managed goods. The SSG is a provision that allows 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's new compositional standards for cheese entered into force on December 14, 2008, and could severely limit U.S. access to the market. These new 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. The United States is closely monitoring the implementation of these new measures. 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.

Continued progress was made in 2008 concerning the implementation of the Technical Arrangement Concerning Trade in Potatoes between the United States and Canada. This arrangement is designed to provide U.S. potato producers with predictable access to Canadian Ministerial exemptions which are necessary to import potatoes.

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 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 go through the field trials that will determine whether the 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 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 elimination in the Doha Round agricultural negotiations of the monopoly power of exporting STEs.

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 proposed policy may reduce the cross-border discrepancy in fortification rules; however, more than three years later, 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 to export their products to Canada. For example, 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).

SOFTWOOD LUMBER

The Softwood Lumber Agreement (SLA) was signed on September 12, 2006, and entered into force on October 12, 2006. Its implementation settled massive litigation in U.S. and international venues and resulted in the revocation of 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 when demand in the United States is low through the imposition of export measures by Canada. The Softwood Lumber Committee, established pursuant to the SLA, met in May 2008 and December 2008 to discuss a range of 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 SLA 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 six months of 2007. However, the Tribunal did not find that the same adjustment applies to British Columbia and Alberta. The first arbitration under the SLA concluded in February 2009. In that arbitration, the tribunal found that Canada violated the SLA by failing to properly calculate regional quota volumes for the eastern provinces during the first half of 2007. In a February 2009 decision, the tribunal ordered Canada to cure the breach within 30 days and prescribed compensatory adjustments to the export measures to remedy the breach.

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 late 2009.

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 had been provided to aerospace and defense companies. 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. According to government of Canada figures, as of July 2008, approximately C$381million has been paid back to the government out of approximately C$3.7 billion that has been committed in TPC investments.

In 2007, the government of Canada 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 C$900 million between 2007 and 2012, with funding to reach a maximum of C$225 million per year.

In 2008, the Canadian federal government and the Quebec provincial government announced aid to Bombardier not to exceed C$350 million (federal) and C$118 million (provincial) to support the launch of a new class of Bombardier "C Series" regional jets. This financial aid is independent of the SADI program, and the conditions of the arrangement have not been made public. The United States has long been opposed to market-distorting aircraft launch aid for civil aircraft and has expressed to Canada its expectation that any such aid would be provided in a manner consistent with its international obligations.

GOVERNMENT PROCUREMENT

As a signatory to the WTO Agreement on Government Procurement (GPA) and to NAFTA, Canada allows U.S. suppliers to compete on a nondiscriminatory basis for its federal government contracts covered by the two agreements. However, Canada has not opened its provincial ("sub-central") government procurement markets. 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 under the GPA, Canadian suppliers do not benefit from the U.S. coverage of procurements of 37 state governments under the GPA. 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 U.S. federal government 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 is a Party to several international intellectual property agreements, including the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Canada is also a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (together the WIPO Internet Treaties), which set standards for intellectual property protection in the digital environment. Canada has not yet ratified or implemented either treaty. In June 2008, Canada introduced legislation to implement the WIPO Treaties and to provide improved copyright protection, but no action was taken on the bill before national elections were called in September 2008.

The United States hopes that Canada will quickly reintroduce copyright legislation that will ratify and fully implement the two WIPO Internet Treaties, including prohibiting the manufacture and trafficking in circumvention devices, and 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. In addition to pirated software, many stores sell and install circumvention devices 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 Royal Canadian Mounted Police (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.

With respect to camcording, however, Canada has achieved some success in protecting and enforcing intellectual property rights. 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 one individual was convicted in November 2008.

In 2006, Canada put in place data protection regulations. There are currently legal challenges to those regulations. The U.S. pharmaceutical industry has expressed concern with the nature of infringement-related proceedings in conjunction with the approval of copies of patented drugs. The industry has also expressed concerns related to draft pharmaceutical pricing guidelines, specifically with respect to the regulatory burden that would be placed on pharmaceutical manufacturers.

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.

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.

A concern of Canada's television industries is the spread of unauthorized use of satellite television services. Industry has estimated that between 520,000 to 700,000 households within cabled areas use unauthorized satellite services. The Canadian Broadcasting Industry Coalition has estimated that piracy costs the Canadian broadcasting system $400 million per year. 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.

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. 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 Quebec government has reduced the sticker cost to C$0.30 for Quebecois films, films in French, and English and French versions of films dubbed into French in Quebec.

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.

Telecommunications Services

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

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 million. Indirect acquisitions by investors from WTO Members are not reviewable, but are subject to notification; and
    - All investments in four sectors (uranium, financial services, transportation 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 the Department of Heritage. 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. Prior to 2008 no investments had been denied under the *Investment Canada Act*, although in some instances acquisitions were approved only after prospective investors have agreed to fulfill certain conditions.

In April 2008, the Federal Minister of Industry denied the application by American firm ATK of Minnesota to acquire the space-related business assets of Vancouver-based MDA for $1.3 billion, finding that the proposed acquisition did not provide a "net benefit" to Canada. *The Investment Canada Act* provides the statutory basis for the Minister to determine whether the proposed acquisition is of "net benefit" to Canada, which is the key to approving or rejecting the proposed acquisition. When determining "net benefit" consideration is given to several factors including the effect of the investment on employment, competition, technological development, product innovation and product variety in Canada (see Section 20 of the Investment Canada Act).

In December 2008, the Newfoundland House of Assembly passed Bill 75, which set in motion a process by which the province will take ownership of certain timber rights, water and hydroelectric rights, land rights, physical assets (including dams and power stations), and other assets owned by AbitibiBowater, a company incorporated in the State of Delaware and headquartered in Montreal. Under the legislation, all of AbitibiBowater's assets, except for its pulp and paper mill, will be owned by Nalcor, a recently established provincial Crown corporation. Although the provincial government indicated that some compensation may be paid for hydroelectric assets, it remains unclear if compensation will represent the full value of the assets. The United States continues to follow developments in this matter.

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.