

II. TRADE AND INVESTMENT POLICY FRAMEWORK

(1) INTRODUCTION

1. Canada's framework for trade and investment policy has not significantly changed since 2000. This framework is based on shared federal-provincial competencies, and includes an agreement to identify and reduce interprovincial barriers to trade and investment, as internal barriers distort resource allocation. Reflecting the importance of trade and foreign direct investment in the economy (see Chapter I), Canada's stated policy is to maintain open markets and grant foreign companies national treatment, whilst securing access to foreign markets for Canadian firms.

2. Canada maintains a multi-track approach to trade and investment policy. Canada holds the WTO as the cornerstone of its trade policy and the foundation for its relations with trading partners, and considers that multilateral, regional, and bilateral initiatives are mutually reinforcing. Within this framework, Canada gives paramount importance to managing its relationship with the United States.

3. Since its last Review, Canada has been fully engaged in the current round of WTO negotiations, with a view to strengthening existing rules and widening the scope of WTO disciplines. At the same time, Canada has undertaken to negotiate preferential trade agreements with a number of regional partners. Canada's bilateral and regional initiatives have helped to establish an essentially outward-oriented trade strategy (see Chapter III); nonetheless, these efforts have also created an elaborate system of preferential tariffs and rules of origin. A multifaceted interaction between Canada's federal system, regional integration, and multilateral liberalization greatly influence its external relations in sectors considered sensitive, such as supply-managed farm products and cultural activities (see Chapter IV).

(2) INSTITUTIONAL AND POLICY FRAMEWORK

4. Since its last Review, there have been no major changes to Canada's trade and investment regime, which is one of the world's most transparent. Transparency and accountability in policy-making are enhanced by evaluation requirements for all federal and most sub-federal government programmes. In particular, all federal government programmes are evaluated for their cost, rationale, and efficiency by the Office of the Auditor General.¹ Provinces also have independent auditors.

5. The Department of Foreign Affairs and International Trade (DFAIT) is the leading federal agency for international trade and investment policy formulation. It coordinates with the Department of Finance and with Industry Canada for international investment policy issues.² DFAIT regularly consults provinces and territories, as a number of matters covered by WTO provisions (e.g. subsidies, procurement, technical regulations, services regulations) are subject to provincial legislation.

6. International agreements are not self-executing under Canadian law. Implementing legislation is necessary when Canada's treaty obligations are at variance with domestic law, including under the WTO. For the implementation of international agreements, the division of legislative powers between the Federal Parliament and provincial legislatures is the same as for the adoption of ordinary legislation. Under the Constitution, only the Federal Parliament is authorized to legislate on the regulation of international and interprovincial trade. The Federal Government is free in law to enter into international agreements without prior consultations with the provinces. The latter, however, have legislative jurisdiction over property and all local and private matters. This

¹ For more information see Office of the Auditor General [Online]. Available at: <http://www.oag-bvg.gc.ca/domino/oag-bvg.nsf/html/menue.html>.

² Industry Canada online information. Available at: <http://www.ic.gc.ca>.

gives them considerable leeway to enact legislation and conduct policies that affect trade or investment. Furthermore, certain areas have been recognized as being under shared jurisdiction, either expressly in the Constitution, e.g. agriculture (subject to supremacy of federal legislation) or through court rulings, e.g. the environment. As a result, cooperation by the provinces is often indispensable to implement international agreements.

7. As noted in Canada's previous Reviews, available information suggests significant differences in trade and investment policies and practices between the federal and provincial governments, as well as across provinces. In order to mitigate the effect of these policy differences on internal trade, the Agreement on Internal Trade (AIT), which came into effect in 1995, aims to "reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investment within Canada, and to establish an open, efficient and stable domestic market".³ The AIT's Secretariat provides administrative and operational support to the functioning of the Agreement.

8. As part of the AIT, the federal, provincial and territorial governments agreed to focus on 11 sectors or policy instruments that offer the greatest potential for the reduction of barriers.⁴ The authorities indicated that the federal, provincial and territorial governments have made substantial progress in key areas of procurement, investment incentives, labour mobility, consumer-related standards, transportation, and environmental protection. In late 2002, discussions were continuing to extend the AIT's procurement disciplines to provincial and federal crown corporations (i.e. companies owned by government) (Chapter III(4) (v)). Although the Chapter on Natural Resource Processing has been completed, restrictions still limit the processing of certain raw resources to local operators (see Chapter III (4)(iii)). An energy chapter remains to be completed, so as to facilitate the transmission of electricity across provinces.

9. The AIT contains a formal dispute settlement mechanism accessible to governments and private parties. There have been 165 disputes to date; most cases related to government procurement and most were resolved through consultations. The first panel report regarding a person-to-government dispute was released in December 2001: in this case, the General Accountants Association of Manitoba claimed that Ontario's licensing regime for public accountants excluded members of their association and was thus in breach of the AIT's provisions on labour mobility. The Panel found in favour of the Manitoba Certified General Accountants.

10. The private sector is central in Canada's trade policy formulation process, so as to maximize the effectiveness of government support to trade and investment. Team Canada Inc is a network of more than 20 federal departments and agencies working with the provinces, territories, and other partners to provide services to exporters, with a view to enhancing export capability and preparedness in international market development.⁵ Team Canada trade missions bring together business and government representatives in visits to various priority countries to ensure that companies take full advantage of international opportunities.⁶ The Government also consults regularly with the public to

³ Internal Trade Secretariat online information is available at: <http://www.intrasec.mb.ca>.

⁴ These are: government procurement; environmental protection; consumer-related measures and standards; labour mobility; investment; agricultural and food products; alcoholic beverages; communications; transport; natural resource processing; and energy.

⁵ Online export information is available at: <http://www.exportsource.gc.ca>.

⁶ Further online information on the priorities and the results of Team Canada visits is available at: <http://www.tcm-mec.gc.ca>.

muster support for trade policy. Interested parties are invited to submit their views regarding specific WTO trade and investment-related issues thanks to a "Consultations with Canadians" website.⁷

11. The Office of Consumer Affairs at Industry Canada⁸, together with the Competition Bureau, analyse the impact of trade and investment policy changes on consumers. The Bureau aims to prevent excessive market concentration, monopolistic pricing and other anti-competitive conduct that could cause a reduction in consumer welfare.

(3) FOREIGN INVESTMENT REGIME

12. Canada's share of foreign direct investment (FDI) stocks in GDP is one of the world's highest (see also Chapter I(5)). Recent estimates indicate that about 50% of manufacturing production is carried out by foreign companies.⁹ This has been concomitant with a government policy to promote Canada as a location for investment. No single agency is responsible for formulating or implementing investment regulations in Canada. The three principal departments with direct responsibility for investment are Finance; Foreign Affairs and International Trade; and Industry Canada.

13. To promote investment inflows, Investment Partnerships Canada (IPC) works with federal investment partners, provincial/territorial departments and agencies, and the private sector to develop and implement specific initiatives related to investment policy, branding, and investment attraction in priority markets and sectors. IPC researches and analyses investment climate issues to facilitate the resolution of real or perceived investment impediments (such as border, immigration, regulatory, and foreign ownership issues).¹⁰

14. Foreign direct investment in Canada takes place within the framework provided by the Investment Canada Act (ICA) of 1985, which is administered by Industry Canada and Canadian Heritage (for matters relating to Canada's cultural industries).¹¹ The purpose of the Act is to encourage investment that contributes to economic growth and employment, and to provide for the review of significant investments by non-Canadians to ensure such benefits. Investments are judged by criteria such as their impact on competition, productivity, compatibility with national and provincial policies, and the participation of Canadians.

15. For the year 2002, foreign acquisitions by WTO-Member investors exceeding a threshold of Can\$218 million are reviewable (the threshold is adjusted annually, and is considerably lower for investors from non-WTO countries); foreign acquisitions exceeding a Can\$5 million threshold in transport, financial services, and cultural sectors are also reviewable (Table II.1). After approval, reviewable investments are monitored by Industry Canada to ensure compliance with the firm's commitments. Non-Canadian investors must notify when they commence a new business or acquire control of an existing Canadian business unless the investment is reviewable.¹² For 2001, the authorities indicated that there were 649 notifications under the ICA and only 44 reviews; none of these resulted in denials. The ICA has been grandfathered under each of Canada's free-trade agreements; their investors are therefore also subject to ICA review provisions.

⁷ Further details on these consultations is provided in the DFAIT online information. Available at: http://www.dfait-maeci.gc.ca/tna-nac/wto_opinion-e.asp.

⁸ Office of Consumer Affairs online information. Available at: http://strategis.ic.gc.ca/sc_cons/consaffairs/engdoc/oca.html.

⁹ OECD (2002b)

¹⁰ See also the Invest in Canada online information. Available at: <http://www.investincanada.gc.ca>.

¹¹ The text of the ICA is available online at: <http://laws.justice.gc.ca/en/I-21.8/75574.html>.

¹² Information is available online at: <http://icnet.ic.gc.ca/investcan/main.htm>.

Table II.1
Selected investment restrictions and controls by sector, 2002

Sector	Level of government (legal base)	Limitation
Notification and review provisions		
All sectors	Federal (Investment Canada Act (ICA))	All acquisitions of control of Canadian businesses by non-Canadians must be notified; those exceeding Can\$218 million (for 2002) are reviewed.
Uranium production	Federal (ICA)	Review thresholds: Can\$5 million for direct acquisitions and Can\$50 million for indirect acquisitions or Can\$5 million if the assets in Canada are 50% or more of the assets of the targeted company.
Transport services		
Financial services		
Cultural industries (publishing, film, video, music, and broadcasting)		Review thresholds: Can\$5 million for direct acquisitions and Can\$50 million for indirect acquisitions or Can\$5 million if the assets in Canada are 50% or more of the assets of the targeted company. All other investments in the cultural industries must be notified and may be subject to review (with the exception of broadcasting)
Ownership limitations		
Fishing	Federal (Fisheries Act)	Only Canadians or Canadian-controlled corporations are permitted to obtain fishing licences. Canadian fish-processing companies that have more than 49% foreign ownership are not permitted to hold commercial fishing licences.
Air transport	Federal (Canada Transportation Act)	Foreign ownership of an airline is limited to 25%.
Book publishing and distribution	Federal (ICA and supplementary policy guidelines)	Foreign investment in new businesses is limited to Canadian-controlled joint ventures. Foreign acquisition of existing Canadian-controlled businesses is allowed only if: (a) the business is in clear financial distress; and (b) Canadians have had full and fair opportunity to purchase. Indirect acquisitions are permissible subject to a net benefit test.
Periodical publishing	Federal (ICA and supplementary policy guidelines)	Foreign acquisitions of Canadian-owned and Canadian-controlled periodical publishing businesses are not permitted. Foreign investments in the periodical publishing sector, including investments to establish or, directly or indirectly, acquire foreign businesses to produce and sell periodicals in Canada and to access the Canadian advertising services market are allowed if a commitment to the production of majority Canadian editorial content is taken. Foreign investments with respect to the publication, distribution and sale of periodicals are subject to review for net benefit to Canada.
Broadcasting	Federal (Broadcasting Act, Direction to the CRTC (Ineligibility of Non-Canadians) SOR/97-192)	Foreign ownership of a broadcasting programming and distribution undertaking is limited to 20% of voting shares (maximum 33.3% in the case of a parent corporation).
Film distribution	Federal (ICA)	Foreign acquisition of a Canadian-controlled distributor is not allowed. Foreign investment in new distribution businesses is permissible only for importation and distribution of proprietary products, (the importer owns world rights or is a major investor). Direct or indirect acquisition of foreign distribution businesses in Canada by foreign-owned companies is permissible only if the investor undertakes to reinvest a portion of its Canadian earnings "in accordance with national and cultural policies".

Table II.1 (cont'd)

Sector	Level of government (legal base)	Limitation
Financial services	Federal (Bank Act)	Individual ownership of a large bank or insurance company is limited to 20% of voting shares, regardless of nationality.
	Provincial laws	Foreign ownership is limited to 10% individually and 25% collectively of provincially regulated trust and loan companies and securities firms in several provinces.
Insurance agents	Prince Edward Island	Only residents or corporations established in the province may obtain licences.
Insurance services and other services auxiliary to insurance	Quebec (Loi sur les assurances)	Non-residents may not acquire more than 30% of the voting shares of a Quebec chartered insurance company without ministerial approval.
	British Columbia (Financial Institutions Act)	Incorporation, share acquisition or application for business authorization, where any person controls or will control 10% or more of the votes of the company, is subject to ministerial approval.
	Quebec, Saskatchewan, British Columbia	Mandatory motor vehicle insurance is provided by public monopoly.
Telecommunications	Federal (Telecommunications Act)	Foreign ownership of Canadian common carriers is limited to 20% direct, and 33 ¹ / ₃ % indirect (46.7% combined direct and indirect). There are no restrictions on foreign ownership of non-voting shares.

Source: WTO Secretariat, based on information provided by the Government of Canada.

16. A variety of laws limit foreign ownership in sectors deemed sensitive, such as certain broadcasting, film, financial, transport, and telecommunications sectors (Table II.1). Various investment restrictions maintained at provincial level also affect foreign participation in, for example, large-scale projects, privatizations, petroleum and gas projects, electric power systems, chicken production, liquor licences, and mining leases. Several provinces regulate the sale and ownership of land with respect to foreign owners, largely in the agricultural and recreational sectors.

17. Under the Canada Business Corporations Act, constraints may be placed on the issue, transfer and ownership of shares in federally incorporated corporations so as to permit corporations to meet Canadian ownership requirements, in sectors where Canadian ownership is required as a condition to operate or to receive licences, permits, grants, payments or other benefits. Similar statutes exist at the provincial level. For example, all corporations incorporated outside Manitoba must be registered in Manitoba prior to carrying on business in Manitoba, and a Manitoba-incorporated corporation which has distributed its shares to the public may restrict the transfer of its shares to non-Canadian residents. Canada has made a number of reservations concerning tax and subsidy measures at the provincial level in its Schedule of GATS commitments.

18. In October 2002, Canada notified under the WTO Agreement on Trade-Related Investment Measures the websites containing publications produced by the federal and provincial governments "in which TRIMs may be found".¹³

(4) PARTICIPATION IN THE WTO

19. Canada considers the multilateral trading system as the cornerstone of its trade policy, and is an original Member of the World Trade Organization. The WTO Agreement was incorporated in Canadian domestic law through the WTO Implementation Act, which amended various statutes to bring them into conformity with Canada's WTO obligations. Canada grants at least MFN treatment to

¹³ WTO document G/TRIMS/N/2/Rev.9/Add.10, 11 October 2002.

all its trading partners except the Democratic People's Republic of Korea and Libya. The Government is a central participant in nearly all WTO activities, and has met most of its notification obligations over the period since December 2000. Exceptions include notifications on domestic support to agriculture, on subsidies, and on import licensing (Table II.2). Provinces have not notified any measures to the WTO since 1998.¹⁴

(i) Trade policy priorities

20. Canada's priority objective for the Doha Development Agenda is to increase economic growth and social prosperity for the benefit of all Members by reducing impediments to trade and by enhancing predictability in the multilateral trading system. Central to this is fundamental agricultural reform.

(a) Agri-food trade

21. Trade in agriculture is Canada's top priority in the current WTO negotiations, and the authorities consider that the WTO is the best forum to address trade in agriculture. Canada's positions in the negotiations on agriculture have not changed since its last Review and are contained in several proposals, either individually or as part of the Cairns Group. As part of the Cairns Group, Canada seeks the complete elimination of all forms of agricultural export subsidies¹⁵; and has called for tighter disciplines on export restrictions and taxes, which would help to assure Members about their ability to access food and feedstuffs in world markets.¹⁶

22. Individually, Canada's market access proposal seeks "real and substantial market access improvements for all agricultural and food products".¹⁷ The authorities consider that this proposal constitutes a comprehensive and ambitious approach that encompasses tariffs, tariff quotas and their administration. Canada has also made an individual proposal to reduce or eliminate production and trade distorting domestic support.¹⁸

23. Canada is a relatively intensive producer of foods derived from biotechnology (i.e. containing genetically modified organisms - GMOs). Among recent developments, the Canadian Biotechnology Advisory Committee issued a report to the Government in August 2002 on the regulation of GM foods, which recommended, *inter alia*, the adoption of a voluntary system for labelling GM foods for reasons other than health or safety, and the development of an accepted international standard.¹⁹ Canada has reiterated its concerns in the WTO over the lack of agricultural biotechnology approvals by a number of European Union members, which has adversely affected Canadian exports.²⁰ Canada also expressed concerns about the mandatory nature and effectiveness of regulations proposed by certain Members on GMO labelling and traceability.²¹

¹⁴ WTO document S/C/N/89, 14 December 1998.

¹⁵ WTO document G/AG/NG/W/11, 16 June 2000.

¹⁶ WTO document G/AG/NG/W/93, 21 December 2000.

¹⁷ WTO document G/AG/NG/W/12, 19 June 2000. See also Agriculture and Agri-Food Canada (AAFC) online information. Available at: www.agr.gc.ca/itpd-dpci/english/current/proposals.htm.

¹⁸ WTO documents G/AG/NG/W/92, 21 December 2000, and G/AG/NG/W/112, 13 February 2001. See also AAFC online information.

¹⁹ Improving the Regulation of Genetically Modified Foods and Other Novel Foods in Canada [Online]. Available at: <http://www.cbac-cccb.ca/documents/en/cbac.report.pdf>.

²⁰ See, for example, WTO document WT/TPR/M/102/Add.1, 23 September 2002.

²¹ See, for example, WTO document G/TBT/M/27, 31 July 2002.

Table II.2
Canada's notifications under WTO Agreements, September 1998-August 2002

Legal basis, instrument	WTO documents	Comment
Agreement on Agriculture		
Article 16.2	G/AG/N/CAN/42 – 12.03.01	Measures concerning possible negative effects of the reform Programme
Article 18.2	G/AG/N/CAN/45 – 30.07.01	Table MA:1 - Tariff and other quota commitments
Article 18.2	G/AG/N/CAN/31 – 07.12.99	Table MA:2 - Tariff and other quota commitments
Articles 5.7 and 18.2	G/AG/N/CAN/47 – 11.12.01	Table MA:5 – Special safeguards
Article 18.2	G/AG/N/CAN/43/Corr.1 – 19.10.01	Table DS:1 – Domestic support
Article 18.3	G/AG/N/CAN/44 – 11.06.01	Table DS:1 – Domestic support
Article 10 and 18.2	G/AG/N/CAN/41 – 06.03.01	Table Es:1 to ES:3 – Export subsidies
Agreement on Implementation of Article VI of the GATT 1994, Antidumping		
Article 16.4	G/ADP/N/92/CAN – 23.07.02	Semi-annual reports
Article 16.4	G/ADP/N/94 – 25.07.02	Ad-hoc reports
Article 16.5	G/ADP/N/Add.2 – 28.11.00	Competent authorities
Article 18.5	G/ADP/N/Add.1 – 13.09.00	Notification of laws and regulations
Agreement on Implementation of Article VII of the GATT 1994, Custom Valuation		
Article 22.2	G/VAL/N/1/CAN/2 – 11.11.97	Changes to legislation, regulations and their administration
GATT concessions under the Harmonized Commodity description and Coding System		
Article 16 Harmonized System Convention	G/SECRET/HS02/CAN/1/Rev.1 01.08.02	To revise the Harmonized System nomenclature
General Agreement on Tariffs and Trade (GATT) 1994		
Article XXIV:7(a)	WT/REG38/N/1 – 30.07.97	Notification of Free Trade Agreements (Canada – Chile)
Article XXVIII:5	G/SECRET/10/Add.1 – 15.12.98	Reservation of right to modify schedule
General Agreement on Trade in Services (GATS)		
Article III:3	S/C/N/90 – 16.12.98	Notification of laws and regulations
Article III:4 and IV:2	S/ENQ/78 – 23.03.01	Notification of enquiry points
Agreement on Government Procurement		
WTO Document GPA	GPA/W/168/Add.2 – 14.01.02	National threshold
	GPA/W/101/Add.1 – 14.01.02	National threshold
Agreement on Import Licensing Procedures		
Article 7.3	G/LIC/N/3/CAN/4/Corr.1 – 21.03.02	Replies to questionnaire on procedures (no notification for 1998, 2000, and 2001)
Agreement on Rules of Origin		
Annex 5.1	G/RO/N/01 - 13.03.01	No-preferential rules
Agreement on the Application on Sanitary and Phytosanitary Measures		
Article 7, Annex B	Several in series G/SPS/N/CAN (most recent 09.09.02)	Transparency of regulations
Understanding of the Interpretation of Article XVII of the GATT 1994, State Trading		
Article XVII (4)(a)	G/STR/N/4/CAN – 05.11.02	Annual state-trading activities
Agreement on Subsidies and Countervailing Measures		
Article 25.1	G/SCM/N/60/CAN – 10.06.02	Annual report on subsidies
Article 25.11	G/SCM/N/87/CAN – 29.07.02	Report on countervailing actions: semi-annual
Article 25.11	G/SCM/N/79 – 06.11.01	Report on countervailing actions: ad hoc
Article 25.12	G/SCM/N/18/Add.12 – 17.04.01	Competent authorities
Article 32.6	G/SCM/N/CAN/3/Add.1 – 02.10.00	Incorporation of the Agreement in national legislation
Agreement on Technical Barriers to Trade		
Annex 3C	G/TBT//CS/N/110 – 05.10.99	Code of good practice
Article 10.7	G/TBT/10.7/N/31 – 28.05.01	Bilateral and multilateral agreement
Article 2.9	Several in series G/TBT/NOTIF.99, 00, 01 & 02	Proposed and adopted technical regulations
Agreement on Textiles and Clothing		
Article 2.1	Several in series G/TMB/N/62 (most recent 24.07.02)	Notification of restrictions in force
Article 2.7	G/TMB/N/2/Corr.4 – 25.06.01	Integration programmes
Article 2.11	Several in series G/TMB/N/214 (most recent 25.06.01)	List of products included in the integration process
Article 2.15	G/TMB/N/402/Add.1 – 10.07.01	Ad hoc elimination of quotas
Article 2.17	G/TMB/N/440/Add.1 – 14.06.02	Administrative arrangements
Article 3.1	G/TMB/N/62/Add.3 – 16.01.02	Quantitative restrictions
Article 8.11	G/TMB/N/410 – 01.08.01	Ad hoc implementation of the ATC
Agreement on Trade-Related Investment Measures		
Article 6.2	G/TRIMS/N/2/Rev.9/Add.10 – 11.10.02	Government websites that may contain TRIMs
Agreement on Trade-Related Aspects of Intellectual Property Rights		
Article 63.2	Several in series IP/N/1/CAN/ Provisional entry (most recent 24.06.02)	Notification of laws and regulations

Source: WTO documents and Central Registry of Notifications.

(b) Trade in services

24. Canada has made several negotiating proposals for liberalization of services trade in the context of the current WTO negotiations (Table II.3). Canada seeks both improved market access and strengthened multilateral, legally enforceable rules covering international trade in services. At the same time the Government has repeatedly stressed the need to safeguard its right to regulate services in pursuit of its national policy objectives. In particular, Canada stated in its previous review that its public health and public education systems would not be jeopardized in these negotiations.

Table II.3
Canada's WTO negotiating proposals for trade in services

Date	Document symbol	Title/Subject
14.03.2001	S/CSS/W/46	Canadian Initial GATS Sectoral/Modal/Horizontal Negotiating Proposals
23.03.2001	S/CSS/W/46/Corr.1	Initial Canadian Negotiating Proposal – Corrigendum
14.03.2001	S/CSS/W/47	Initial Negotiating Proposal Transparency and Predictability
14.03.2001	S/CSS/W/48	Initial Negotiating Proposal on Temporary Movement of Natural Persons Supplying Services under the GATS (Mode 4)
14.03.2001	S/CSS/W/49	Initial Negotiating Proposal on Small and Medium-Sized Enterprises
14.03.2001	S/CSS/W/50	Initial Negotiating Proposal on Financial Services
14.03.2001	S/CSS/W/51	Initial Negotiating Proposal on Environmental Services
14.03.2001	S/CSS/W/52	Initial Negotiating Proposal on Professional Services
14.03.2001	S/CSS/W/53	Initial Negotiating Proposal on Telecommunication Services
14.03.2001	S/CSS/W/54	Initial Negotiating Proposal on Tourism and Travel-Related Services
04.05.2001	S/CSS/W/54/Rev.1	Initial Negotiating Proposal on Tourism and Travel-Related Services - Revision
14.03.2001	S/CSS/W/55	Initial Negotiating Proposal on Business Services (Other than Professional Services and Computer and Related Services)
14.03.2001	S/CSS/W/56	Initial Negotiating Proposal on Computer and Related Services
14.03.2001	S/CSS/W/57	Initial Negotiating Proposal on Distribution Services
14.03.2001	S/CSS/W/58	Initial Negotiating Proposal on Oil and Gas

Source: WTO Secretariat.

25. Canada remains opposed to trade liberalization in certain services areas. For example in air transport, Canada is opposed to the inclusion of traffic rights into the sectoral coverage of the GATS (Chapter IV(7)).²² The authorities have also stated that "Canada will not make any commitment that restricts our ability to achieve our cultural policy objectives until a new international instrument can be established designed specifically to safeguard the right of countries to promote and preserve their cultural identity."²³ In the WTO Working Party on GATS Rules, Canada has described as "difficult" the notification of relevant subsidies in services, and considered that fundamental questions remained, such as how to define a subsidy; moreover, the authorities have questioned whether governmental assistance to service sectors was trade-distortive.²⁴

(c) Other issues

26. As a medium-sized economy, Canada considers that an effective trade-dispute settlement system that furthers the security and predictability of the multilateral rules-based trading system is critical to economic success. In the WTO, Canada supports negotiations on rules governing the use of trade remedies and subsidies, as well as on improvements to the dispute settlement system.

²² See, for example, WTO document S/C/M/57, 13 February 2002.

²³ WTO document S/CSS/M/10, 21 September 2001.

²⁴ See, for example, WTO document S/WPGR/M/38, 2002.

27. The coherence agenda, particularly on trade, finance and development, and the needs of developing countries in the negotiations are also integral to Canada's objectives in the Doha Development Agenda. Other Canadian objectives include concluding negotiations for a voluntary, facilitative, simple and low-cost registration system for wines and spirits. Canada also supports negotiations in the four Singapore issues (investment, competition policy, transparency in government procurement, and trade facilitation). Canada is also committed to all elements of work mandated in the Doha Declaration, including the work programmes (e.g. electronic commerce). Furthermore, the authorities have stated that Canada will continue to pursue openness and transparency at the WTO.

28. In the area of trade and the environment, Canada seeks to strengthen the mutually supportive relationship between WTO rules and multilateral environmental agreements. Canada ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change on 17 December 2002.

(ii) International investment policy

29. Canada actively participates in the WTO Working Group on the Relationship between Trade and Investment. The authorities have stressed the importance of transparency, non-discriminatory treatment, flexibility for developmental purposes and governments' right to regulate in the public interest. Canada also supports the undertaking of both pre- and post-establishment obligations based on a "negative list" approach rather than a GATS-type, positive list approach. With respect to dispute settlement, Canada supports the application of the WTO dispute settlement understanding to the prospective Multilateral Framework on Investment (MFI) and considers that an alternative dispute settlement mechanism, such as an investor-state dispute settlement option, would be inappropriate insofar as it may be incompatible with the existing WTO architecture.

(iii) Trade and development

30. Canada considers that meaningful progress in both agricultural and non-agricultural market access is required, together with rules on trade facilitation and investment for the current trade negotiations to contribute effectively to development goals.²⁵ In agriculture, the Canadian Government has intensified its partnerships with developing countries in such areas as food security, risk management, and trade policy capability. Canada's WTO objectives in the negotiations on agriculture (see above) are also part of its trade and development agenda, so that trade can help all Members address their growth and development needs. Canada considers that provisions for "special and differential treatment" may enable developing countries to adjust to more open markets.

31. Canada has been one of the proponents of a Development Round that takes into account the needs of developing countries, and particularly the least developed countries, in furthering their development. Canada has supported enhanced participation by developing countries in the negotiations, as well as in WTO programmes and activities, such as the Integrated Framework for Trade-Related Technical Assistance for Least-Developed Countries. Canada also seeks to reinforce the links between trade and poverty reduction strategies in national development plans.

²⁵ "Canada's Objectives for the Fourth WTO Ministerial Conference", tabled by the Honourable Pierre Pettigrew, Minister for International Trade, to the House of Commons Standing Committee on Foreign Affairs and International Trade, October 24, 2001 [Online]. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/WTO-obj-e.asp#V>.

(iv) WTO dispute settlement

32. The Canadian Government has continued to participate intensively dispute settlement available under the WTO Dispute Settlement Understanding (DSU), based on the conviction that Canada benefits from a system based on rules, norms, and procedures rather than on the unilateral exercise of economic leverage. Canada has participated in about one quarter of all WTO dispute settlement cases (consultations, mutually agreed solutions, and panels) since the WTO's inception.²⁶

33. Implementation of recommendations contained in WTO Panels has resulted in legislative or regulatory changes in a number of areas, including: pricing and export policy on dairy products (Chapter IV(2)); export subsidies in favour of civilian aircraft (Chapter III(3)(ii)); patent law (Chapter III(4)(vi)); and tariffs on motor vehicles. Since December 2000, the only new panel case involving Canadian trade measures concerned subsidies to the aircraft industry (see also Table AII.1).

34. Canada has been involved as a complainant in nine cases since December 2000; seven were against the United States, confirming the importance of the WTO for the Canada-United States bilateral relationship. Anti-dumping and countervailing duty legislation was the main cause of dispute. Canada has also joined consultations and participated as a third party in several cases (Table AII.1).

(5) PREFERENTIAL TRADE AND INVESTMENT RELATIONS

35. Canada has entered into a number of preferential relations with bilateral and regional partners (Table II.4), partly to promote diversification but also to intensify political cooperation. Canada sees such relations as complementing the multilateral trade system. Most of Canada's preferential partners are in the Americas; other trade generally takes place on an MFN basis or under unilateral tariff preferences. Canada provides unilateral tariff preferences to developing countries under the Generalized Preferential Tariff (GPT), the Least Developed Country Tariff²⁷, and under the CARIBCAN Chapter III(2)(iii)). Trade with developing countries (WTO definition) accounts for 16% of Canada's imports and 5% of exports.

36. Most of Canada's trade with the United States takes place under the NAFTA. Since Canada's last Review, a new free-trade agreement (FTA) has entered into force, with Costa Rica, and negotiations have begun or continued with countries in Central America, with EFTA countries, and with Singapore. Exploratory discussions towards the possible negotiation of free trade agreements have begun with CARICOM, the countries of the Andean Community, and with the Dominican Republic.

37. Canada's FTAs and unilateral preferential schemes exclude out-of-quota tariffs on supply managed products (dairy, poultry and eggs – see Chapter IV(2)) and certain services sectors (Chapter IV), and are otherwise of varying scope in their coverage. The most complete, such as the NAFTA and the FTA with Chile, not only provide for near complete tariff elimination and rules regarding investment and services, but also for agreements on technical issues such as SPS inspections. In addition, Canada believes that the use of anti-dumping and countervailing measures between integrated markets is inappropriate and has sought their elimination under free-trade agreements with NAFTA and with Chile (see below).

²⁶ WTO document WT/DSB/26/Add.1, 12 October 2001.

²⁷ Countries eligible for least developed country benefits in Canada are the least developed countries as defined by the United Nations excluding Myanmar (Burma).

Table II.4
Canada's preferential trade and investment agreements and arrangements, December 2002

Agreement (entry into force)/Coverage	Partners	Developments since 2000
CARIBCAN (1986) Duty-free treatment extended unilaterally to goods that originate in Caribbean countries covered by an economic and trade development assistance programme for the Commonwealth Caribbean countries and territories. Excluded are textiles and clothing and agri-food products subject to out-of-quota tariff quotas.	Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Turks and Cayman Islands.	Ongoing discussions toward a possible FTA with CARICOM partners.
Generalized Preferential Tariff and Least Developed Country Tariff Preferential treatment on most products except certain agricultural products, textiles and clothing, footwear, and steel products. All imports from least developed countries except agri-food products subject to out-of-quota tariff quotas enter duty free.	163 developing countries and countries in transition.	The Government announced in June 2002 that Canada would extend duty-free and quota-free access to imports from LDCs on 1 January 2003.
NAFTA (1994) Duty-free trade in originating goods. National treatment in services trade, except public social services, basic telecommunications, financial services, and most maritime and air transport services. Rules on investment, competition policy, monopolies and state enterprises, IPRs, standards, SPS measures, government procurement, environmental cooperation, labour standards, and dispute settlement, including specifically in AD and CVD matters. Sectoral agreements (automotive, textiles and clothing, energy, and agri-food).	Mexico, United States	Accelerated tariff reductions with Mexico in January 2002; Clarification of Chapter 11 provisions
Canada-Israel Free Trade Agreement (January 1997) Duty-free trade in industrial products and in agri-food products amounting to approximately 80% of agri-food and fish trade. No provisions on trade in services. The text of CIFTA is contained in WTO document WT/REG31/2, 23 January 1997.	Israel	As provided by the Agreement, Canada and Israel began negotiations in 1999 to further liberalize trade in agriculture and food products. Negotiations are ongoing.
Joint Canadian Palestinian Framework on Economic Cooperation and Trade^a Signed in 1999. Same coverage as the CIFTA.	Palestinian Authority	
Canada - Chile Free Trade Agreement (July 1997) Duty-free treatment by 2003 on most goods, including a mutual exemption from the use of AD measures bilaterally, and a committee on subsidy disciplines and CVD measures. Provisions on services and on investment modelled on NAFTA. MFN and national treatment for investment. Also includes a labour cooperation agreement. WTO document WT/REG38/2, 28 January 1998.	Chile	Accelerated tariff reductions in October 2001. Clarification of Chapter 11 provisions in October 2002.
Canada - Costa Rica Free Trade Agreement (April 2001) Duty-free treatment by 2014 on most goods. Also includes labour and environment cooperation agreements.	Costa Rica	Entered into force on 1 November 2002.

^a DFAIT online information. Available at: <http://www.dfait-maeci-gc.ca/tna-nac/framework-e.asp>.

Source: WTO Secretariat, based on information provided by the Canadian authorities.

(i) Relations with the United States and Mexico

38. Canada and the United States maintain the world's largest two-way trade and investment flows, and the relationship with the United States constitutes one of Canada's key policy priorities. After the 11 September 2001 attacks in the United States, border measures have been introduced to tighten security while not disrupting bilateral trade (see Chapter III(2)(1)).

39. Most of the relationship with the United States and Mexico takes place under the NAFTA, which provides for duty-free trade in all goods with the exception of the supply-managed dairy and poultry products, and rules on trade in services and investment.²⁸ Very few tariffs remain on items imported from Mexico; those remaining are scheduled for elimination on a ten-year staging period (to be completed by 2003). With respect to other agreements the authorities have stated that Article 103 of the NAFTA covers agreements in effect as of 1 January 1994 and therefore does not cover Canada's WTO obligations.²⁹

40. In general, bilateral trade and investment flows between Canada and the United States have remained to a large extent problem-free, with the exception of anti-dumping and countervailing measures. NAFTA parties retain the discretion to settle matters under both NAFTA and WTO rules.

41. Chapter 19 of the NAFTA provides for bi-national panel review of anti-dumping and countervailing duty final determinations and underlying legislation. In December 2002, three Canadian determinations were being reviewed under Chapter 19; at the same time, 21 such determinations by the United States were under review, eight of which at the request of Canadian producers or authorities. The main recent issue of contention, because of its economic impact, was the softwood lumber dispute, which was once again brought to both the GATT/WTO and NAFTA Chapter 19 dispute settlement bodies. Another issue of bilateral trade friction is the Canadian Wheat Board and its trading privileges (Chapter III(4)(iv)).³⁰

42. Disputes relating to the investment provisions of Chapter 11 may also be referred to either of two dispute settlement mechanisms under the agreement: government-to-government dispute settlement or investor-state arbitration. In July 2001, pursuant to Canada's initiative, the NAFTA parties issued binding Notes of Interpretation regarding the operation of proceedings under Chapter 11. The Notes reaffirm the NAFTA partners' understanding that there is no general obligation of confidentiality and that the parties may make available to the public virtually all documents submitted to, or issued by, Chapter 11 tribunals, and therefore aim to enhance the transparency of the Chapter's dispute resolution provisions. In addition, the Notes clarify the minimum standard of treatment required under Chapter 11 as being that required under the customary international law for the treatment of aliens.

43. Information on Chapter 11-related disputes involving Canada since 1999 is available publicly on the DFAIT website.³¹ In November 2002, three arbitrations involving foreign private investors against the Government of Canada were ongoing.

(ii) Other preferential trade agreements

(a) Chile

44. By January 2003, all tariff cuts will have been completed between Canada and Chile under the 1997 Canada-Chile Free Trade Agreement (CCFTA), except out-of-quota tariffs on supply-

²⁸ The text of the agreement is available in the NAFTA Secretariat online information. Available at: <http://www.nafta-sec-alena.org>.

²⁹ Article 103 of the NAFTA, relation to other agreements: 1. The Parties affirm their existing rights and obligations with respect to each other under the *General Agreement on Tariffs and Trade* and other agreements to which such Parties are party. 2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

³⁰ Further information is available online at: <http://www.ustr.gov/releases/2002/02/02-22-finding.pdf>.

³¹ See <http://www.dfait-maeci.gc.ca/tna-nac/gov-e.asp>.

managed dairy and poultry products, which remain at the MFN level.³² In addition to regular ministerial meetings of the bilateral Free Trade Commission, eight committees and working groups are in place to ensure implementation, resolve problems, and devise ways of facilitating trade. As of late 2002, no dispute had arisen under the CCFTA. The CCFTA is the only FTA entered into by Canada that contains a bilateral exemption from the mutual use of AD measures; it also provides for a committee on subsidy disciplines and CVD measures. Safeguard actions, however, may be taken. In December 2000, Canada joined others in WTO consultations regarding safeguard measures imposed by Chile on powdered milk and liquid UHT milk.³³ Subsequently, Canada was excluded from the application of these measures; under the CCFTA, the parties must exclude imports of a good from the other party from global emergency action measures, unless these imports account for a substantial share of total imports and contribute strongly to the serious injury or threat thereof.

45. The agreement includes provisions on services and on investment, which are modelled on those of the NAFTA.³⁴ In late 2002, Canada and Chile signed notes of interpretation to clarify certain provisions of the CCFTA investment chapter. These notes are based on similar NAFTA notes (see above). To date, no cases have been brought against either Canada or Chile under the investment chapter under the CCFTA. Parallel agreements to the FTA provide for bilateral cooperation on labour and environment issues.³⁵

(b) Costa Rica

46. The Canada-Costa Rica Free Trade Agreement (CCRFTA) was signed on 23 April 2001, together with cooperation agreements on labour and the environment. The three agreements came into force on 1 November 2002. The CCRFTA eliminates tariffs on bilateral trade by 2011 at the latest on all products except, in the case of Canada, beef and supply-managed dairy and poultry products.³⁶ According to Canada, one of the main accomplishments of the CCRFTA is the establishment of a framework for competition policy that could serve as a model for the region; the CCRFTA establishes a concrete framework for cooperation and consultation to enhance the effectiveness of enforcement activities by the competition authorities in both countries (Chapter III(4)(i)). Additionally, the CCRFTA includes a comprehensive chapter on trade facilitation that aims for more efficient trade procedures and reduced formalities and business costs. The parties, for example, commit to taking steps to coordinate all agencies involved in the import and export of goods and harmonize their data requirements, with the objective of allowing importers and exporters to present all data to only one border agency.

47. Upon implementation of the agreement, Canada is to eliminate its quantitative restrictions on imports of textiles and clothing from Costa Rica (Chapter III(2)(vi)). The parties have retained the right to apply anti-dumping and countervailing duties and safeguards. The agreement does not contain any commitments in the area of services or investment, procurement or intellectual property rights, but it notes the existence of the Agreement between the Government of Canada and the Government of Costa Rica for the Promotion and Protection of Investments, which came into force in 1999. The agreement also contains specific provisions on rules of origin and dispute settlement, and establishes a Free Trade Commission comprising cabinet-level representatives, together with a Secretariat.

³² WTO document WT/REG38/2, 28 January 1998.

³³ WTO document G/SG/24/Suppl.2, 13 October 2000.

³⁴ WTO document WT/REG38/M/4, 11 June 2002.

³⁵ For information on this agreement, see "Canada and Chile: Five Years as Free Trade Partners", and other DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/bilateral-e.asp#01>.

³⁶ Canada's Schedule of tariff elimination under the CCRFTA can be found in DFAIT online information. Available at: http://www.dfait-maeci.gc.ca/tna-nac/canada_schedule-e.pdf.

(c) Israel

48. The Canada-Israel Free Trade Agreement (CIFTA) entered into force in January 1997. It eliminated tariffs on industrial products and reduced or eliminated tariffs on certain agri-food products. The agreement also covers certain competition policy issues and government procurement. Over 1996-01, bilateral merchandise trade nearly doubled.³⁷ As of late 2002, negotiations were ongoing to expand the list of agricultural and food products under the agreement.

49. Although, in practice, the CIFTA covers the territory where Israel's customs laws apply (this includes the West Bank and Gaza following the signing of the Paris Protocols in 1995), in February 1999, Canada and the Palestine Liberation Organization on behalf of the Palestinian Authority signed the Joint Canadian-Palestinian Framework on Economic Cooperation and Trade, designed to improve market access and customs procedures on a reciprocal basis. The Framework exactly mirrors the CIFTA.

(6) OTHER TRADE AND INVESTMENT RELATIONS

(a) The Americas

50. Caribbean countries benefit from preferential tariff treatment under CARIBCAN (Table II.4). However, no tariff preferences are granted on out-of-quota imports of supply-managed agri-food products, or on textiles and clothing products. A recent report to the WTO on trade under CARIBCAN suggests a strong increase in Canadian imports from the region, in particular from Jamaica and from Trinidad and Tobago.³⁸ Some 96% of imports from these countries entered Canada duty free in 2001. Of this however, only 14% took place under CARIBCAN duty free provisions; the remainder were duty free under MFN or GPT provisions.

51. In January 2001, Canada and CARICOM members agreed to explore enhancing of their trade relationship, including through a free-trade agreement.

52. In April 2001, at the Summit of the Americas in Quebec, leaders endorsed the decision to conclude negotiations by January 2005 on the Free Trade Area of the Americas (FTAA) among all the countries of the Western Hemisphere except Cuba.³⁹ Leaders also agreed that the FTAA would enter into force no later than December 2005. The third phase of negotiations was launched in November 2002 in Ecuador.

53. In November 2001, free-trade negotiations were launched with El Salvador, Guatemala, Honduras, and Nicaragua (CA4). Through such a free-trade agreement, Canada's stated aim is to inject further momentum into FTAA and WTO negotiations by serving as a model for cooperation between developed and developing countries.⁴⁰

54. In March 2002, the President of the Dominican Republic and the Canadian Prime Minister agreed to consider bilateral free-trade negotiations. In August 2002, Canada announced that it would begin preliminary talks towards a possible free-trade agreement with the countries of the Andean Community (Bolivia, Colombia, Ecuador, Peru, and Venezuela).

³⁷ See also DFAIT (2002), p. 108.

³⁸ WTO document WT/L/483, 4 October 2002. The CARIBCAN programme benefits from a waiver from WTO rules until 31 December 2006.

³⁹ FTAA online information. Available at: <http://www.ftaa-alca.org>.

⁴⁰ See DFAIT online information. Available at: http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/104688.htm.

(b) The Asia-Pacific region

55. Trade and investment relations with Asia are largely MFN, although in October 2001 the launch of negotiations was announced on a free-trade agreement with Singapore. These negotiations cover several areas including market access, trade in services, financial services, investment, government procurement, dispute settlement, and competition.⁴¹ Canada is also a founding member of the Asia-Pacific Economic Co-operation (APEC), a forum for trade relations in the Asia-Pacific region.

56. Japan and China are Canada's two largest economic partners in Asia. Canada's relations with Japan take place under the 1976 Framework for Economic Cooperation. Canada's current priorities regarding trade and investment relations with Japan are to advance regulatory cooperation between the two governments with a view to facilitating trade in regulated products.

(c) Europe

57. Relations with the European Union, Canada's second-largest trading and investment partner, also take place on an MFN basis, although the Canadian Government has as a current priority to "engage the EU to explore the advantages and the disadvantages of a Canada-EU FTA".⁴² Meanwhile, a recent study concluded that, independent of all other factors (e.g. rules of origin, NTB's), tariff elimination on all merchandise trade under such an FTA would increase Canadian exports to the EU by 15.6%, or Can\$3.4 billion annually.⁴³

58. Canada-EU relations are also framed by a number of instruments: the 1976 Framework Agreement for Commercial and Economic Cooperation established the Joint Cooperation Committee, which meets annually at the senior officials level. The 1996 Joint Political Declaration on Canada-EU Relations and the Canada-EU Action Plan set goals for broadening Canada-EU relations in the trade and economic areas, and on a range of foreign and domestic policy issues.⁴⁴ The EU-Canada Trade Initiative (ECTI), launched in December 1998, established a subset of objectives for market access and economic cooperation drawn from the action plan, which were considered achievable within a reasonable time frame.⁴⁵ A report on progress made under ECTI is submitted to trade ministers at each twice-yearly Canada-EU Summit. Canada-EU trade questions are also dealt with by officials through a Joint Cooperation Committee and a Trade and Investment Sub-Committee. In October 2001, the Government tabled its response to the 25 recommendations found in a report by the Standing Committee on Foreign Affairs and International Trade entitled, "Crossing the Atlantic: Expanding the Economic Relationship between Canada and Europe."⁴⁶

59. Efforts have been ongoing since 1998 to negotiate a Canada-EFTA Free Trade Agreement, which would be the first "free-trade bridge" with Europe. The negotiations have covered tariff elimination for non-agricultural products, trade facilitation, and competition policy; no discussions have taken place on new obligations in areas such as services, investment, intellectual property or government procurement. Negotiations have been held up over a number of issues, including the elimination of tariffs and subsidies to the shipbuilding sector.

⁴¹ See DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/singapore-e.asp#negotiations>.

⁴² DFAIT (2002).

⁴³ Cameron and Loukine (2001).

⁴⁴ See DFAIT online information. Available at: www.dfait-maeci.gc.ca/english/geo/europe/eu/action-e.htm.

⁴⁵ See DFAIT online information. Available at: www.dfait-maeci.gc.ca/english/geo/europe/EU/ECTI-Dec-2000-E.html.

⁴⁶ The report is available in DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/fifth-report-english.pdf>.