

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Since its last Trade Policy Review in 2000, Canada has continued to liberalize its trade regime on unilateral, multilateral, and preferential bases. This has included the introduction of simplified customs procedures both to facilitate trade and reinforce border security. In addition, MFN tariffs have been slightly reduced on an array of products. As a result, the average MFN tariff has declined from 7.2% to 6.8% and the number of duty-free items has increased. However, considerably higher tariffs continue to apply to agri-food, clothing, and boats and ships. Tariff concessions previously provided under the Auto Pact were eliminated in February 2001 in consequence of a finding by a WTO dispute settlement panel.

2. Among preferential partners, tariffs applicable to imports from Chile and Mexico were further reduced. As of November 2002, tariffs on imports from Costa Rica also benefited from preferences under an FTA concluded in 2001. Each FTA negotiated by Canada contains specific origin rules, which adds complexity to its trade regime (see also Chapter II(5)). Duty-free and quota-free treatment for least developed countries was announced, effective in January 2003.

3. Through anti-dumping (AD) actions, Canadian producers have continued to seek protection from imports considered to be dumped. In 2000 and 2001, 32 new final measures and one undertaking were imposed, mostly on steel products. In December 2001, 91 AD measures plus three price undertakings were in force, but the number went down to 87 by June 2002. Canada applies its AD legislation on a non-discriminatory basis, except on imports from Chile, which has been excluded from the application of the legislation since the entry into force of the Canada-Chile Free Trade Agreement. Since Canada's last Review, the duration of AD actions has declined, but some 9% of measures have been in place for ten years or more. Canada's first safeguard investigation since the establishment of the WTO, concerning steel products, was initiated in March 2002.

4. Quantitative restrictions maintained under the WTO Agreement on Textiles and Clothing to protect domestic producers against foreign competition, are being removed gradually. These quotas affect several non-preferential partners, mostly in Asia, and are due to be eliminated at the end of 2004. Other import controls are in place for health and sanitary reasons. Although a large number of technical regulations are in place, Canada's Standards Strategy is aimed at promoting the use of (voluntary) adopted or adapted internationally accepted standards to the greatest extent possible.

5. Local-content, performance or purchasing requirements are still maintained by certain provinces. They mainly affect alcoholic beverages and the mining sector. Canada limits exports of a number of items to ensure sufficient supplies for domestic industries. Products affected include logs, and fish from certain provinces.

6. Canada has gone a long way towards setting up a transparent government procurement regime. However, access conditions to its procurement market at the federal level are based on reciprocity; Canada grants MFN and national treatment only as required by the WTO Agreement on Government Procurement. Canada has yet to table an offer at the sub-federal level under this Agreement. Provinces have their own procurement agencies, and some grant regional preferences to procurement not falling within the scope of the domestic Agreement on Internal Trade. For other procurement, provinces grant similar access conditions to suppliers from the rest of Canada, but do not extend this automatically to foreign suppliers.

7. Federal and provincial assistance is extended to selected economic activities (assistance to agriculture is discussed in Chapter IV(2)). In particular, support to the aircraft sector remains a source

of friction with trading partners. Federal and provincial government-owned enterprises with special or exclusive privileges are involved in dairy, alcoholic beverages and wheat trade. Since 2000, Canadian competition law has been amended to put in place a special regime for domestic airlines, and to add further provisions regarding predatory behaviour in the airline industry (Chapter IV(7)). A bill was passed by Parliament in 2002, giving the Canadian Competition Tribunal significant new powers.

8. Canada has shown an active interest in intellectual property-related work at the WTO, where its own legislation has faced a number of legal challenges. Canadian patent law was amended in 2001 to bring its legislation into conformity with an Appellate Body decision. Canada signed the Patent Cooperation Treaty in May 2001, which required amendments to Canadian patent rules. In December 2002, the Supreme Court ruled that higher life forms cannot be patented. A bill to amend the compulsory licence provisions of the Copyright Act is under consideration.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

9. The Canada Customs and Revenue Agency (CCRA) is in charge of customs operations. Carriers must report shipments using an approved cargo control document or "electronic data interchange" (EDI)¹ Any shipment may be examined. The frequency of examinations depend on the importer's past compliance record, as well as the type of goods that are being imported. Goods examined more systematically include food products that may carry disease (e.g. foot and mouth), hazardous products or waste, explosives, chemicals, nuclear or atomic or biological goods. Supply-managed goods (mainly dairy and poultry, see Chapter IV(2)) may also be examined more systematically, to ensure compliance with tariff quotas.

10. Since 1999, the CCRA has undertaken a number of reforms to streamline and facilitate the import process. The Customs Action Plan 2000-2004 is designed to ease the movement of legitimate trade and, at the same time, stop the entry of illegal goods. It is based on the principles of risk management, advance information, pre-approval, and self-assessment in border management.² Part of the Action Plan is a new system for traders known as Customs Self-Assessment (CSA). The system's main elements were brought into law by Bill-23, which received Royal Assent in October 2001.

11. CSA is designed to ensure the smooth flow of trade and avoid delays at the border, for example through dedicated lanes at major border crossings, while preserving security. CSA involves screening, risk-assessing, and pre-approving importers, carriers, and drivers that are deemed to be low-risk. Under CSA, shipments entering Canada will be cleared immediately at the border, upon the identification of the importer, the carrier, and the driver who will all have been pre-approved. In mid-2002, CSA was at the pilot stage; in May 2002, four importers were participating in CSA, and 15% of total imports into Canada were expected to be covered at year-end. The qualification procedure is explained in detail in CCRA's online information.³ All pre-approved carriers (by late 2002) are involved in trade with the United States carried by road.

12. An array of risk-management techniques will be used to process traders who are not approved under the CSA and to target shipments of higher and unknown risk. These include electronic

¹ Details on how to participate in the various electronic data interchange procedures for customs release are contained in the CCRA's online information. Available at: <http://www.ccra-adrc.gc.ca/customs/business/importing/e-commerce-e.html>.

² The Customs Action Plan has been described in a communication from Canada on trade facilitation (WTO document G/C/W/238, 31 October 2000).

³ For documents and procedures required for the Customs Self Assessment Program see <http://www.ccra-adrc.gc.ca/customs/business/importing/csa/menu-e.html>.

targeting, increased exchanges of information and intelligence with other law enforcement and customs agencies, analysis of compliance records and pre-arrival information, as well as pre-registration of drivers; greater use of technology, such as ion scanners and x-ray equipment; and modernized cargo control for goods requiring more data before they arrive at the border. According to the authorities, these measures will not prejudice legitimate trade that is not pre-approved under the CSA; they have noted that the more information provided in advance of the shipment, the better the assessment of shipments and the lower their risk.

13. In October 2001, the Minister of National Revenue announced additional border security measures to fight the threat of terrorism.⁴ The December 2001 budget also contained a commitment to ensuring the safety and security of Canadians, and allocated resources to the CCRA as part of a five-year security package. These commitments have entailed investment by the CCRA in new technology at borders, including inspection of whole containers and other large masses of cargo quickly and safely. In addition, Canada and the United States have stationed officers in each other's high volume ports to target containers that are in-transit to the other. No details were available on the impact, if any, of Canada's additional border security measures on its trade with other countries.

14. To revise the penalty structure applied for infractions of the Customs Act or the Customs Tariff, the CCRA introduced a new Administrative Monetary Penalty System (AMPS) in late 2001. The enforcement starts with warnings, which, if unheeded, may lead to increasingly large fines. The AMPS entered into force on 1 October 2002.

(ii) Rules of origin

15. Canada maintains both preferential and non-preferential rules of origin. MFN (non-preferential) rules of origin are in place to distinguish MFN imports from those under the General Tariff (see below (iii)). At least 50% of the cost of production of the goods must have been incurred in one or more MFN partners for them to be considered of MFN origin. In addition, a separate rule, which applies to only a limited number of imported goods, exists for marking purposes. Other MFN rules apply for textiles and clothing: for textiles, the origin is deemed to be where the fabric was woven; clothing originates where the parts of the garment are first sewn together, or where a knitted garment is first fitted to shape.

16. Preferential rules of origin ensure that preferential trading conditions are reserved for products originating in countries that are members of Canada's respective agreements. Preferential rules of origin are based on a certain percentage of the price or cost of production of the goods originating in beneficiary countries or Canada. Since its last Review, in December 2000, Canada has notified the WTO of the rules of origin under the Canada-Chile Free Trade Agreement (CCFTA), as well as the regulations amending the General Preferential Tariff and Least-Developed Country Tariff (section(iii) below).⁵ Canada's rules of origin have been described in earlier reviews.⁶

17. Origin under the NAFTA is determined according to the rules of origin specified in Chapter IV of the agreement. In general, a good incorporating non-originating materials originates in the NAFTA territory if each of these components undergoes an applicable change in tariff classification, specified for each good in an annex of 168 pages (Annex 401). For textiles and clothing the "yarn forward" rule is applied to trade partners under the NAFTA, and under the FTAs with Chile and Costa Rica. In most cases, it determines that the only textiles and clothing items to fully benefit from the free trade between the signatories are items produced from inputs originating in the respective FTA partner, starting with yarn/fibre and including all transformations.

⁴ Canada Customs and Revenue Agency, News Room, 11 October 2001.

⁵ WTO document G/RO/N/31, 13 March 2001.

⁶ See WTO (1998) Chapter III; and GATT (1995), Chapter IV.

18. The NAFTA also introduced stricter rules of origin in the automotive sector. While under the Auto Pact and the former Canada-U.S. FTA, duty-free trade between participants was contingent on a 50% Canadian or U.S. content; the threshold increased to 56% on 1 January 1998 and to 62.5% on 1 January 2002 for passenger cars, light trucks, small buses (transport of 15 or fewer persons), their engines and transmissions. The corresponding level for heavy-duty vehicles, large buses and all other parts is 60% since 1 January 2002. Thus, companies operating in Canada are required to meet these increased regional content levels in order to export to the Mexico and United States at preferential rates of duty.

19. Given the large proportion of Canadian trade that is subject to NAFTA rules of origin (Canada trades over 86% of its exports and 70% of its imports with NAFTA partners), these have come under close scrutiny by third countries. As noted in Canada's previous Reviews, the rules may have increased trade diversion in favour of NAFTA partners, notably in the clothing sector (the yarn forward rule) and the motor vehicle component sector; they may have also penalized Canadian clothing manufacturers using inputs from MFN sources, thus leading to the establishment of "Tariff Preference Levels" to allow preferential access to other NAFTA partners (see section (3)(i) for a description of this mechanism).

20. The number of preferential rules of origin expanded in 2002 as a result of the entry into force of the Canada-Costa Rica Free Trade Agreement (CCRFTA). Rules of origin under the CCRFTA are largely modelled on those of the NAFTA and the FTA with Chile. In general, origin under the CCRFTA is conferred when goods are produced in the free-trade area entirely from materials wholly obtained or produced in the area or, for goods incorporating non-originating materials, if these materials undergo a change in tariff classification under the Harmonized System (HS) as set out in a detailed annex. Where no change in tariff classification occurs (and except for goods of Chapters 39 (plastics) and 50 through 63 (textiles and clothing)), a good may still be considered as originating if its regional content value is not less than 35% or 25%, depending on the method of calculation used (transaction value or net cost.) The authorities consider that the CCRFTA origin conferring rules are more liberal than those in other FTAs.⁷

21. Rules of origin for Least Developed Country Tariff (LDCT) treatment were amended in September 2000. As a result, 40% of the ex-factory price of the goods packed for shipment to Canada may include up to 20% of the ex-factory price of the goods from other developing countries. According to the authorities, this measure allowed for an expansion of the products imported from countries benefiting from the LDCT.

(iii) Tariffs

22. Responsibility for tariff matters continues to be shared between the Canada Customs and Revenue Agency (CCRA-tariff collection)⁸, Finance Canada (tariff determination)⁹, and the Department of Foreign Affairs and International Trade (international tariff matters).¹⁰

(a) Most favoured nation (MFN) tariffs

23. Canada grants at least MFN treatment to all its trading partners except the Democratic People's Republic of Korea, and Libya. Imports from these two countries are subject to the General Tariff, levied at 35% on most products. In March 2001, MFN tariff treatment was extended to Albania and the Sultanate of Oman.

⁷ Rules of origin are contained in Chapter 4 of the Agreement (see the website of DFAIT at http://www.dfait-maeci.gc.ca/tna-nac/Costa_Rica_toc-en.asp).

⁸ Available online at: <http://www.ccra-adrc.gc.ca>.

⁹ Available online at: <http://www.fin.gc.ca/access/taxe.html>.

¹⁰ Available online at: <http://www.dfait-maeci.gc.ca>.

24. After seven years of progressive MFN tariff reductions, which followed the conclusion of the Uruguay Round, one half of Canada's MFN tariff schedule is duty-free. Remaining tariffs fulfil mainly a trade protection function; tariff revenue in 2000/01 accounted for only 1.5% of total federal budgetary revenue. The average MFN tariff was 6.8% in 2002 (Table III.1), down from 7.2% in 2000. The average of non-zero rates was 13.1% in 2002, down from 13.4% in 2000.

Table III.1
Summary analysis of Canada's applied tariff, 2002

Analysis	Applied tariffs ^a				
	No. of Lines	Avg. applied tariff (%)	Range (%)	Std-dev (%)	CV
Total	8,364	6.8	0-314	24.7	3.6
By WTO category					
Agriculture	1,263	21.7	0-314	62.0	2.9
Live animals and products thereof	155	52.7	0-253	88.6	1.7
Dairy products	37	237.3	3-314	60.9	0.3
Fruit and vegetables	298	4.8	0-19	5.2	1.1
Beverages and spirits	111	8.3	0-256	27.4	3.3
WTO Non-agriculture (exc. petroleum)	7,086	4.2	0-25	5.5	1.3
Textiles and clothing	1,467	9.9	0-20	7.4	0.7
By ISIC sector ^b					
Agriculture and fisheries	443	6.4	0-292	30.2	4.7
Mining	110	0.7	0-12	2.1	3.0
Manufacturing	7,810	6.9	0-314	24.2	3.5
By HS section					
01 Live animals and products	274	55.6	0-314	98.3	1.8
02 Vegetable products	438	4.5	0-95	9.7	2.2
03 Fats and oils	62	9.3	0-218	28.1	3.0
04 Prepared foods, etc.	498	18.3	0-277	52.1	2.8
05 Minerals	174	1.1	0-13	2.6	2.4
06 Chemicals and products	1,102	3.2	0-195	8.3	2.6
07 Plastics and rubber	370	4.2	0-16	3.8	0.9
08 Hides and skins	227	3.2	0-16	3.4	1.1
09 Wood and articles	113	2.6	0-11	3.2	1.2
10 Pulp, paper, etc.	194	0.6	0-6	1.0	1.7
11 Textile and articles	1,421	9.8	0-20	7.5	0.8
12 Footwear, headgear	104	11.6	0-20	7.9	0.7
13 Articles of stone	185	3.4	0-16	4.0	1.2
14 Precious stones, etc.	65	2.3	0-9	3.2	1.4
15 Base metals and products	893	2.2	0-11	2.8	1.3
16 Machinery	1,423	2.0	0-11	2.8	1.4
17 Transport equipment	238	5.2	0-25	6.1	1.2
18 Precision equipment	345	1.9	0-14	3.0	1.6
19 Arms and munitions	32	3.9	0-8	2.8	0.7
20 Miscellaneous manufactures	197	5.2	0-18	4.6	0.9
21 Works of art, etc.	9	1.4	0-7	2.8	2.0

^a Excluding in-quota tariffs.

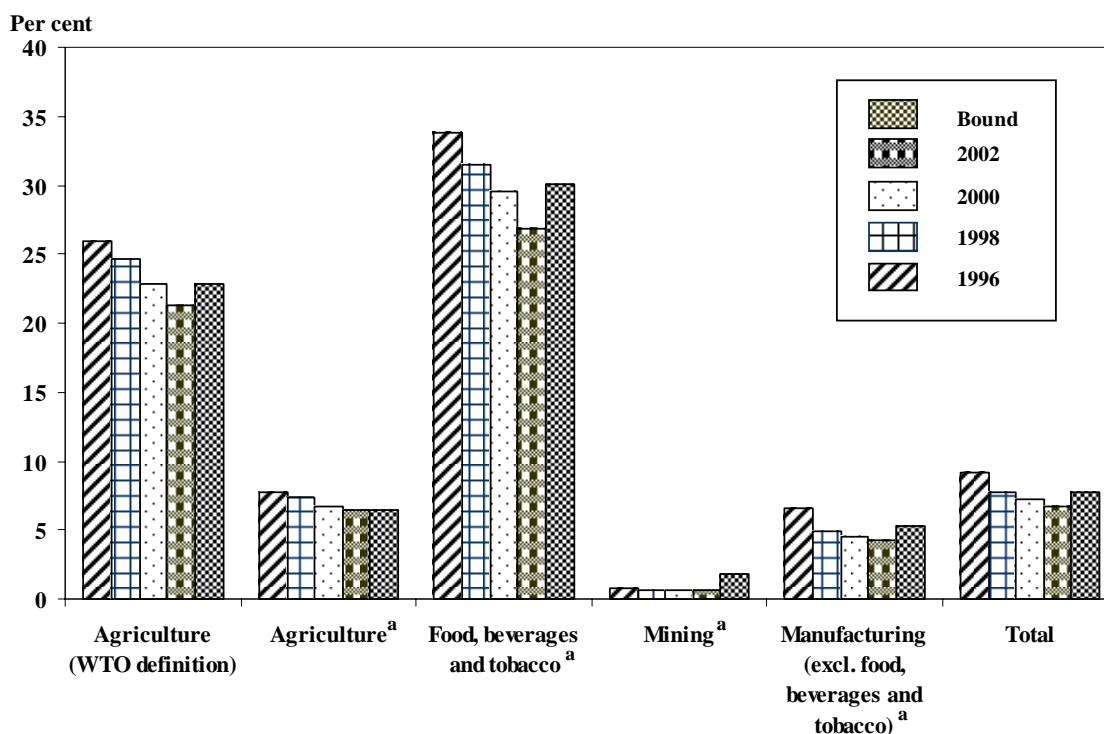
^b ISIC Classification (Rev.2), excluding electricity (1 line).

Source: WTO Secretariat estimates, based on data provided by the Canadian Government.

25. Average tariffs continue to be considerably higher for agricultural products (WTO definition) than for other products, with the highest rates protecting the food, beverages and tobacco processing activities (Chart III.1). Some 4.2% of all MFN tariff lines are non-*ad valorem*; concentrated in the agri-food sector; in some cases they mask particularly high levels of protection. To take into account their incidence on border protection, *ad valorem* equivalents are included in the tariff summary statistics presented in this section.¹¹

Chart III.1

MFN tariff averages 1996-02 (selected years), and final bound tariff (2004)



^a ISIC classification.

Note: Data for 1996-02 exclude in-quota tariffs. Final bound rate (2004) includes *ad valorem* rates only.

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

26. Applied tariff rates in 2002 were slightly below bound rates (Chart III.1). Applied rates do not exceed bound rates for any tariff line. For one line (HS code 23099020 - animal food containing cereals), the bound tariff is expressed as a specific rate while the current applied rate is *ad valorem*. There are 26 unbound lines: 13 cover mineral oils and mineral fuels (HS 27), 12 cover cruise ships, tankers, tugs, drilling and platform ships (HS 89), and one tariff line (97040000) is for postage stamps.

¹¹ In Canada, non-*ad valorem* tariffs take the form of specific rates, applied on 154 items, compound rates on 50 items, and mixed rates on 183.

27. Chart III.2 indicates the frequency distribution of tariffs, and illustrates the differences between the agri-food and other sectors. Reflecting sizeable tariff barriers in a few sensitive sectors, MFN tariffs exceed 15% on 657 tariff lines, not taking into account the 183 tariff lines covered by out-of-quota tariffs (Chapter IV(2)). The 657 lines consist mostly of textiles, footwear and clothing products, together with wine and cider, sugar, vegetables during the domestic production season, and cut flowers. Tariffs on boats (certain dredgers and most fishing vessels) are set at 25%. In the fabricated metal products industry, tariffs exceed 12% for stamped, pressed, and coated metal products as well as most structural metal goods, wire gauze, iron fittings for coffins, knives, scissors, secateurs, pottery, and china.

28. Tariff escalation, i.e. tariffs that rise with the stage of processing, continues to be a feature of the Canadian MFN tariff, inhibiting exports of downstream products to Canada by non-preferential foreign producers. Tariff escalation affects particularly food and beverages, textiles and clothing, wood products, chemicals, and non-metallic mineral products (Chart III.3).

29. Since its last Review, Canada has amended its Customs Tariff to implement the results of the second major review of the Harmonized Commodity Description and Coding System (HS) adopted by the World Customs Organization in June 1999 with effect from 1 January 2002.¹² As a result, some 441 HS codes were deleted, corresponding to tariffs averaging 4.7%. About 780 new lines were added, with tariffs averaging 4.3%. In line with the procedure agreed to by WTO Members for HS2002 changes¹³, Canada submitted its revised tariff to the WTO for preliminary verification.

30. In addition to the changes in HS nomenclature, tariffs have been reduced on 1,300 lines, or 16% of all tariff lines, which explains the decrease in the average tariff. These reductions reflected a number of policy measures, including the reduction of Canada's tariffs on textiles and clothing over a ten-year period ending in January 2004, as part of its WTO commitments, and unilateral tariff reductions to lower production costs for Canadian business. Reviews of requests for tariff relief of this nature are conducted by the Department of Finance, or, since 1994 for textile manufacturing inputs, by the Canadian International Trade Tribunal. Relief in both instances is implemented by Executive Order, on the recommendation of the Finance Minister, and the Orders amend the statutory provisions of the Customs Tariff, thus adding to the transparency of the tariff regime.

31. Half of the reductions concern textiles, clothing, and footwear products, where tariffs have declined by an average 4-6%. Tariffs on several iron and steel products have been reduced by about half or made duty free. Similar tariff reductions have taken place on several paper products. Tariffs have been reduced by 15-25% on several plastic products, and on some inorganic chemicals. Of the 125 lines recording tariff changes in the agri-food sector, 75 concerned preparations of cereals, where reductions have reached 20% in some cases. Tariffs have also been reduced on several products of the milling industry, and on a few dairy products (Chapter IV(2)).

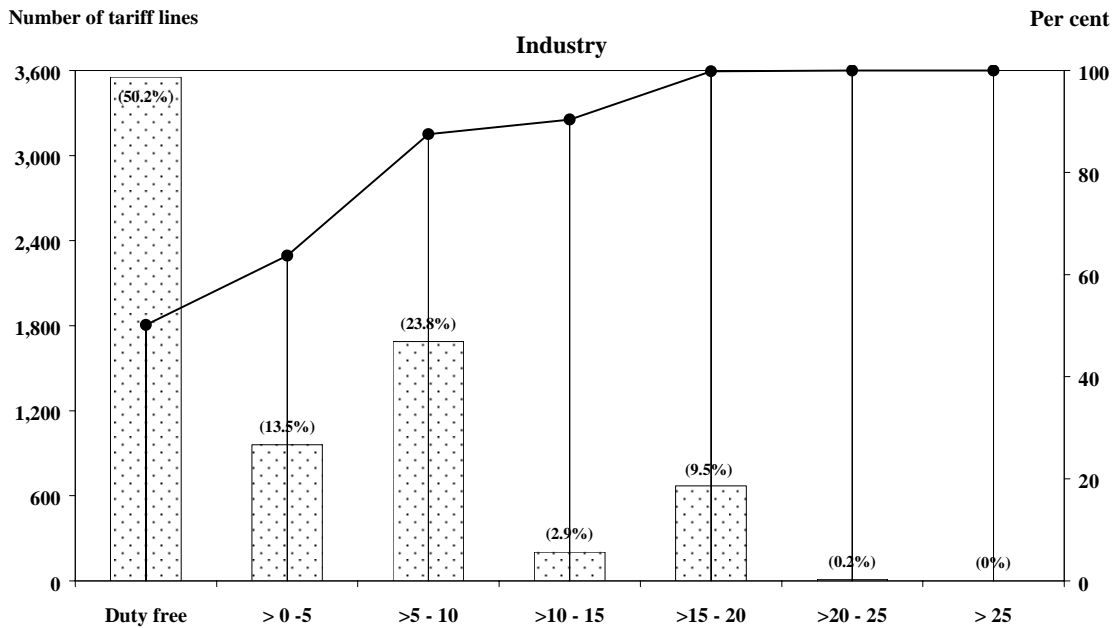
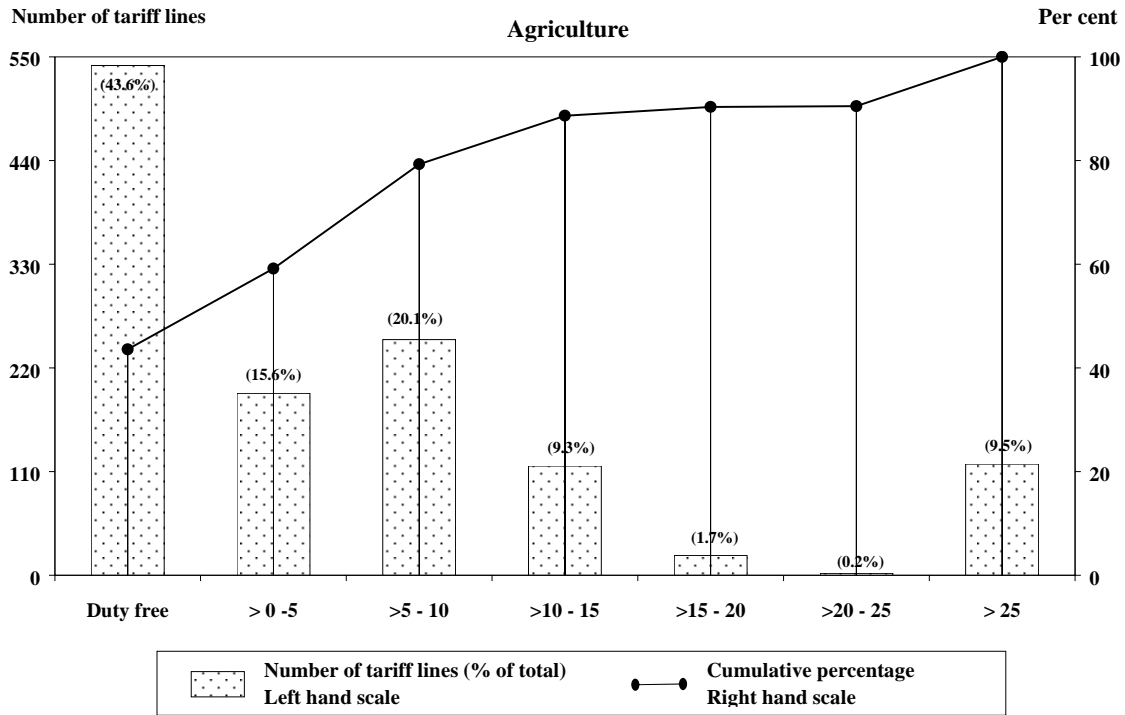
32. Canada's Customs Tariff contains legislative provisions that automatically round down both MFN and preferential tariffs to the closest half percentage point, and eliminate all tariff rates of less than 2%, both on an annual basis.

¹² For more information see Canada Customs and Revenue Agency online information. Available at: <http://www.ccr-aadrc.gc.ca>.

¹³ WTO document WT/L/407, 26 July 2001.

Chart III.2

Distribution of MFN tariff rates, 2002^a

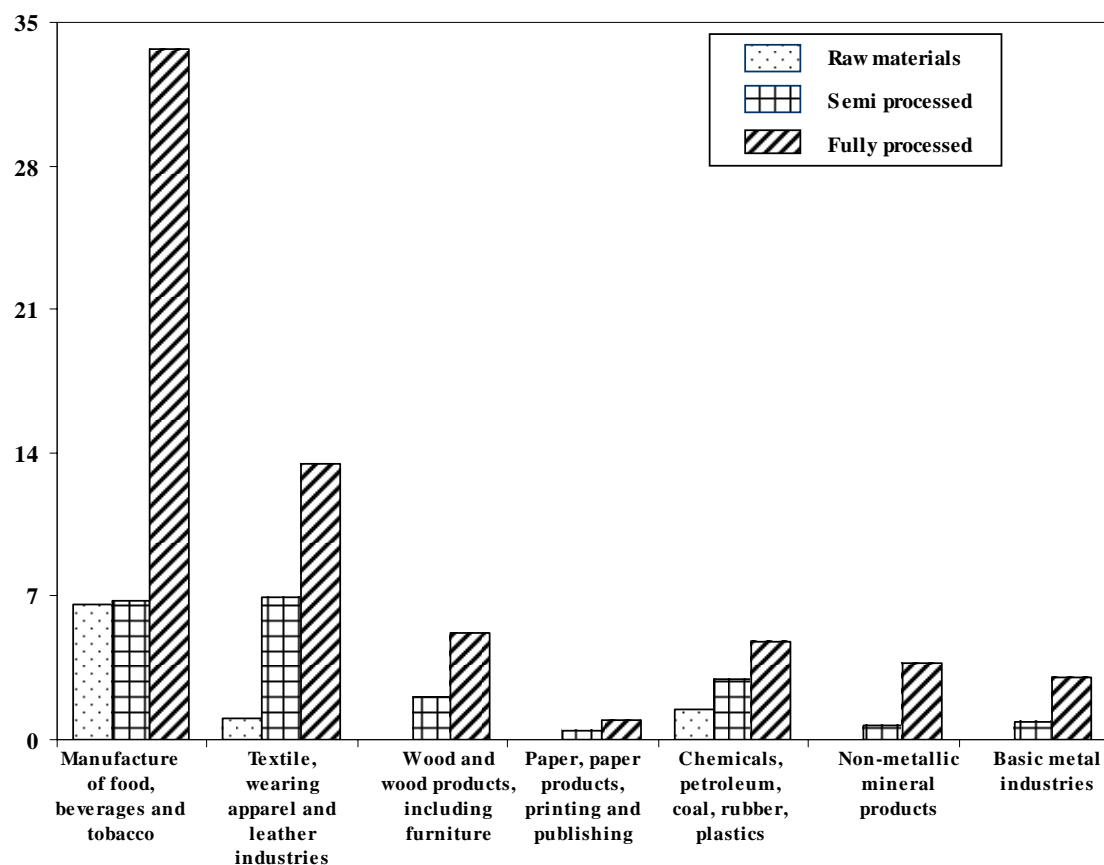


^a The total number of lines is 1,263 for agriculture and 7,086 for industry. Excludes all in-quota lines.

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

Chart III.3**Tariff escalation for selected manufactured products^a, 2002**

Per cent

^a By 2-digit ISIC category. Excluding in-quota rates.

Source: WTO Secretariat estimates, based on data provided by the Canadian government.

(b) Preferential tariffs under free-trade agreements

33. In general, preferential access under free-trade agreements entails a significant advantage in areas protected by high MFN tariffs (Table III.2). As stated in the Secretariat reports for Canada's previous Reviews, preferential agreements have contributed to above-average growth in trade flows with preferential partners, amplifying in particular Canadian-U.S. interdependence.

34. Under the North American Free Trade Agreement (NAFTA), imports from the United States benefit from the largest share of duty-free tariffs (98.8% of tariff lines in 2002, up from 98.5% in 2000). The average tariff on the 98 remaining dutiable items is substantial, as this group includes products that are most protected from import competition, mainly in the poultry and dairy sectors; tariffs on the items were as high as 224% in 2002, as out-of-quota tariffs on these products have been exempted from NAFTA tariff-reduction commitments.

Table III.2
Import duties by tariff regime, 2000^a

	MFN	UST	MT	CT	CIAT	GPT	LDCT	CCCT	AUT	NZT	CRT
Number of non- <i>ad valorem</i> lines	387	94	173	161	288	328	158	162	364	350	121.0
Share of duty-free lines	48.4	98.8	93.8	94.2	92.3	64.0	89.8	86.0	51.6	51.9	83.7
Average of dutiable rates ^b	13.1	224.8	44.3	48.0	38.0	15.1	39.8	31.9	13.3	13.3	26.0
Average tariff (%)	6.8	2.6	2.7	2.7	3.1	5.4	4.1	4.5	6.4	6.4	4.2
Of which:											
Agriculture and livestock (ISIC 11) ^c	7.7	4.4	4.9	5.0	6.7	6.9	5.2	5.0	7.3	7.3	4.5
Crude petroleum and gas (ISIC 22)	6.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	6.3	6.3	0.0
Food products (ISIC 311) ^c	24.2	20.1	20.3	20.4	23.1	23.5	20.9	20.9	23.9	23.8	20.3
Animal feeds and other food products (ISIC 312) ^c	31.8	26.2	28.0	26.6	28.9	30.7	27.2	27.2	31.6	31.6	27.5
Beverages (ISIC 313) ^c	11.5	2.7	2.7	2.8	10.8	10.6	4.7	4.7	10.8	10.8	2.7
Tobacco products (ISIC 314)	8.3	0.0	0.0	0.0	5.9	5.9	1.0	0.0	8.3	8.3	0.0
Textiles (ISIC 321)	9.2	0.0	0.2	0.2	0.0	8.2	6.5	9.1	8.7	8.7	7.7
Clothing (ISIC 322)	15.1	0.0	1.5	1.5	0.0	14.2	12.5	14.3	12.9	12.9	13.2
Footwear (ISIC 324)	12.1	0.0	0.9	1.0	0.0	11.5	9.8	12.1	9.9	9.9	10.6
Furniture (ISIC 332)	6.3	0.0	0.1	0.0	0.0	4.1	0.0	0.0	6.3	6.3	9.0
Rubber products (ISIC 355)	6.7	0.0	0.2	0.2	0.0	4.4	1.9	2.7	5.2	5.2	9.2
Plastic products (ISIC 356)	5.3	0.0	0.0	0.0	0.0	2.3	0.0	0.0	5.3	5.3	2.2
Glass and glass products (ISIC 362)	2.3	0.0	0.1	0.0	0.0	1.6	0.0	0.0	2.1	2.1	0.1
Other non-metallic products (ISIC 369)	3.6	0.0	0.0	0.0	0.0	1.2	0.0	0.0	3.4	3.4	0.2
Fabricated metal products (ISIC 381)	4.1	0.0	0.0	0.0	0.0	2.2	0.0	0.0	3.6	3.6	0.0
Shipbuilding and repairing (ISIC 3841)	11.5	0.0	0.8	0.0	0.0	10.0	0.0	0.0	11.5	11.5	0.0

a Duties consist of *ad valorem* tariff, available *ad valorem* equivalents of non-*ad valorem* lines, and/or *ad valorem* components. The total number of lines including in-quota is 8,516.

b Average of non-duty-free lines.

c Includes both in-quota and out-of-quota tariffs.

MFN Most favoured nation.

UST United States Tariff under NAFTA.

MT Mexico Tariff under NAFTA.

CT Chile Tariff under the Canada-Chile Free Trade Agreement.

CIAT Canada-Israel Agreement Tariff.

GPT Generalized Preferential Tariff.

LDCT Least Developed Country Tariff.

CCCT Commonwealth Caribbean Countries Tariff.

AUT Australia Tariff.

NZT New Zealand Tariff.

CRT Costa Rica Tariff.

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

35. Imports from Mexico, Canada's other NAFTA partner, are duty free for 93.8% of all lines, up from 83.5% in 2000. The reductions have been widespread, including in food products, textiles, clothing, footwear, furniture, and shipbuilding. In January 2002, Canada, Mexico, and the United States agreed to accelerate the elimination of NAFTA tariffs on a number of products.¹⁴ The remaining duties, on some 531 items, average 44.3%; they mostly affect dairy and poultry products.

36. Imports from Chile have benefited from sizeable tariff reductions since 2000. The share of duty-free lines has increased from 88.3% to 94.2% of all lines. The average tariff has decreased from

¹⁴ Products concerned by tariff cuts in Canada consist mainly of motor vehicles. Online information. Available at: <http://www.dfait-maeci.gc.ca/nafta-alena/canada2-e.asp>.

3.2% to 2.7%. Main reductions have occurred in textiles, clothing, footwear, and plastic products. The dutiable average was 48% in 2002. Products whose tariffs are not scheduled to be eliminated are roughly the same as under the NAFTA.

37. Tariffs under the FTA with Costa Rica came force in November 2002 (Table III.2).¹⁵

(c) Tariff quotas

38. Tariff quotas, whereby higher tariffs are applied to imports exceeding a specified volume, are used mainly in the agri-food industry (Chapter IV(2)). Tariff quotas are also used under free-trade agreements, to allow certain volumes of trade in specified textiles and clothing products that do not meet the rules of origin required for preferential treatment.

39. Under the NAFTA, specific products that do not meet NAFTA rules of origin can still qualify for preferential treatment up to a fixed import volume or "tariff preference level" (TPL) negotiated among the three NAFTA countries. Access is provided up to certain annual quantities for cotton, wool and man-made fibre clothing that is manufactured (i.e. substantially transformed) in a NAFTA country from non-originating components. Data on actual use of the TPLs suggest that they are not restricting imports into Canada from Mexico or the United States (this is not, however the case with exports – section (3)(i)).¹⁶

40. Similar mechanisms have been negotiated in the FTAs with Chile and Costa Rica: imports of specific products that do not meet the rules of origin are provided access up to specified TPLs.¹⁷

(d) Unilateral tariff preferences

41. Tariff preferences are granted unilaterally to developing and least developed countries; Caribbean countries also benefit from specific preferences. Canada's unilateral tariff preferences for developing and least developed countries are to be reviewed by 2004.¹⁸ The average tariff under these preferences is higher than that under reciprocal free-trade agreements (Table III.2). However, the tariff regime for imports from LDCs (see below) will allow duty-free imports as of January 2003 (except for out-of-quota volumes of supply managed products), and thus match conditions granted to free-trade partners.

42. The General Preferential Tariff (GPT) provides tariff preferences for most developing countries. Most textiles, clothing, and footwear, a few industrial goods, refined sugar, and certain agricultural products are not eligible for the GPT.¹⁹ The average GPT tariff was 5.4% in 2002, down from 5.8% in 2000. The extension or removal of GPT preferences is at the discretion of the Minister of Finance. No change has taken place in the list of countries and products benefiting from GPT preferences since 2000.

¹⁵ The full text of the agreement, together with Canada's tariff schedule, are available online at: http://www.dfait-maeci.gc.ca/tna-nac/Costa_Rica-e.asp.

¹⁶ DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/~eicb/textile/ntpl-imp-dec01-e.htm>.

¹⁷ These are described in DFAIT's online information.

¹⁸ WTO document WT/TPR/M/78, 5 February 2001.

¹⁹ See Canada Customs and Revenue Agency online information. Available at: <http://www.ccradrc.gc.ca/E/pub/cm/cn361em/cn361-e.pdf>.

43. Canada's Least Developed Country Tariff (LDCT) provides duty-free access for close to 90% of all tariff items. Products from LDCT beneficiary countries²⁰ are eligible for duty-free entry only when eligible for the GPT. Senegal was made eligible under the LDCT in May 2002. The average duty for LDC eligible countries was 4.1% in 2002, down from 4.3% in 2000. Dutiable rates averaged 39.8% in 2002 and applied to about 870 lines; several of these lines included products that might be of special interest to LDC exporters, such as food, beverages, textiles, clothing, and footwear. Most exports from LDC countries to Canada in 1999 were clothing products, highlighting the importance of this sector for these countries.

44. In June 2002, Canada announced that it will extend duty-free and quota-free access to imports from 48 of the world's least developed countries (LDCs), except on out-of-quota imports on supply-managed products (dairy, poultry and eggs), effective 1 January, 2003. An Order amending the Customs Tariff to effect this change has extended duty-free treatment to 905 additional tariff items under the LDCT, including textiles and clothing products that are of major importance to these countries.

45. No major changes have taken place under the Commonwealth Caribbean Countries Tariff (CARIBCAN), which provides tariff reductions to countries from the Caribbean region.²¹ Some 86% of lines were duty free in 2002, with an average tariff of 33% on the remaining tariff lines.

(e) Tariff remissions and drawbacks

46. Several drawback and remission measures are used to offset the cost-increasing effect of tariffs. In general, these measures provide tariff relief when imported goods are used for certain purposes or pursuant to certain conditions, while maintaining the general applicability of tariffs.²² The vast majority of the remission/drawback orders related to measures implementing the Auto Pact but these were all repealed in February 2001 (see below). One new order was introduced in the reporting period. This order provides eligible Canadian fashion designers duty-free access to a range of fabrics priced at Can\$14 or more per square metre for use in the manufacture of apparel. This order is intended to benefit accredited fashion designers who create unique apparel that they present to the market under their own name or label. Data on the share of total imports that enters into Canada under these mechanisms were not available. According to the authorities, it varies significantly from year to year and is thus not a good indicator of the significance of such measures.

47. The MFN tariff on certain motor vehicles was just over 6% in 2001. Companies established under the Auto Pact with the United States, however, were allowed to import those vehicles duty free from any MFN source, under various remission Orders, subject to certain performance requirements for domestic production-to-sales and Canadian value added. This was the subject of a WTO Panel established in 1999 (Table AII.1). The Panel found that the import duty exemption was not consistent with the MFN principle; and that the import duty conditional upon production-to-sales requirements constituted a subsidy conditional upon export performance (see also section (4)(iii) below).²³ Canada eliminated this duty-free treatment in February 2001. As a result, vehicles imported by Auto Pact companies now face the same duty (6.1% in 2002) as other MFN imports.

²⁰ Countries eligible for least developed country benefits in Canada are the least developed countries as defined by the United Nations excluding Myanmar (Burma).

²¹ 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.

²² See also CCRA online information. Available at: <http://www.ccra-adrc.gc.ca/E/pub/cm/d1181ed/d1181ed.html>.

²³ WTO document WT/DS/139/12, 4 October 2000.

(iv) Other charges and taxes**(a) The GST and provincial sales taxes**

48. The Goods and Services Tax (GST) is Canada's largest indirect tax by revenue, generating nearly Can\$25 billion in 2001-02 (14% of total federal budgetary revenue). It applies to virtually all goods and services at a rate of 7%. In three provinces (Nova Scotia, New Brunswick, and Newfoundland) the GST has been harmonized with the provincial sales tax; the harmonized sales tax (HST) is 15%. Some supplies, including residential rents and financial services, are exempt, others are zero-rated (e.g. certain basic groceries, medical devices, agricultural goods, and exported goods and services).

49. The GST/HST is payable on the duty-paid value of imported goods under the Customs Act, plus customs duties and taxes imposed under the Customs Tariff, the Special Import Measures Act, the Excise Tax Act, or under any other law relating to customs.²⁴ The authorities have confirmed that the application of the GST/HST does not discriminate between domestic and foreign suppliers. A number of changes took place to the GST in 2001-02.²⁵

50. Sales taxes are levied by six provinces that do not apply HST; Alberta does not have a sales tax. The rates of sales taxes in each province are presented in Table III.3. In general the basis of the provincial tax is the customs duty-paid value of imported products. Quebec and Prince Edward Island apply provincial sales taxes to the value including GST.

Table III.3
Provincial sales taxes, June 2002

Province/territory	Rate generally applicable to imported products	Source and notes
Alberta	No sales tax	
British Columbia	7%	Exemptions (http://www.rev.gov.bc.ca/ctb/publications/brochures/bcsales.htm)
Manitoba	7%	http://www.gov.mb.ca/finance/taxation/taxes/retail.html
New Brunswick	8%	HST
Newfoundland	8%	HST
Northwest Territories	No sales tax	http://www.gov.nt.ca/RWED/nwtfilm/film4.htm
Nova Scotia	8%	HST
Nunavut	No sales tax	
Ontario	8%	10-12% on alcoholic beverages http://www.rev.gov.on.ca/tare/html/trierst.htm
Prince Edward Island	10%	http://www.gov.pe.ca/infopei/onelisting.php3?number=43629
Quebec	7.5%	http://www.revenu.gouv.qc.ca/eng/taxes/tvq_tps/index.asp
Saskatchewan	6%	http://www.gov.sk.ca/answers/?_0500-0599/0544
Yukon	No sales tax	http://www.gov.yk.ca/depts/finance/budget02-03/budgetaddress

Source: Government of Canada.

²⁴ See CCRA online information. Available at: <http://www.ccra-adrc.gc.ca/E/pub/cm/d13-2-5eq/d13-2-5-e.html>.

²⁵ See the Department of Finance, News Releases, 20 February 2001, 12 April 2001, 13 September 2001, 21 December 2001, 28 December 2001, 8 February 2002, and 20 December 2002 [Online]. Available at: <http://www.fin.gc.ca/>.

51. The GST and the provincial sales taxes are refunded on inputs purchased to produce goods that are subsequently exported. As noted, exported items are zero-rated under the GST/HST and under the provincial sales taxes.

(b) Taxation of electronic commerce²⁶

52. As noted in the Secretariat report for its previous Review, Canada supports a free-trade environment for electronic commerce consistent with Canada's economic and other domestic policy objectives, including consumer and privacy protection. Imports of electronically supplied goods and services (e.g. music downloaded on an MP3 file) are free of customs duty in Canada. GST/HST applies to electronic commerce transactions whether they are imported digitally or physically.

53. Canada supports the principles on the taxation of e-commerce agreed at a 1998 conference of the Organisation for Economic Co-operation and Development (OECD) in Ottawa. These principles are known as the Taxation Framework Conditions, and establish that the rules for consumption taxes (such as VAT) should result in taxation in the jurisdiction where consumption takes place and that an international consensus should be sought on the circumstances under which supplies are held to be consumed in a jurisdiction. In 1998, an advisory committee on electronic commerce and taxation in Canada stressed the importance of international cooperation and of tax neutrality.²⁷ The authorities have noted that taxation of e-commerce transactions is no different than the application of sales taxes on other types of transactions.

(c) Excise taxes and duties

54. Federal excise duties are imposed under the Excise Act as production levies on spirits, beer, and tobacco.²⁸ They are complemented by excise taxes imposed under the Excise Tax Act as sales levies. The following products carry federal excise taxes: gasoline, diesel and aviation fuels, wines, jewellery and watches, tobacco products, automotive air conditioners, and heavy automobiles.²⁹ The authorities have stated that excise taxation does not discriminate between domestically manufactured products and imports.

55. The Government initiated a review of the legislative and administrative framework for the federal taxation of alcohol and tobacco products in 1993. The culmination of this review is the new Excise Act, 2001, which implements the Government's Excise Act Review proposals with respect to the taxation of spirits, wine, and tobacco products. The new Act received Royal Assent in June 2002 but was not expected to come into force until July 2003 to allow affected industry members and the Canada Customs and Revenue Agency time to prepare for the implementation of the new excise framework. Key features of the Act include the continued imposition of a production levy on spirits and tobacco, the replacement of the sales levy on wine with a production levy at an equivalent rate, modern administrative provisions, and a strengthened enforcement structure. According to the authorities, consumers will not be affected by the changes under the Excise Act Review.

²⁶ Electronic commerce is the buying and selling of goods and services, and the transfer of funds, through digital communications. It also includes buying and selling over the Internet, electronic fund transfers, smart cards, digital cash and all other ways of doing business over digital networks.

²⁷ "Electronic Commerce and Canada's Tax Administration", A Report to the Minister of National Revenue from the Minister's Advisory Committee on Electronic Commerce, April 1998 (see CCRA online information. Available at: <http://www.ccradrc.gc.ca>).

²⁸ See CCRA online information. Available at: <http://www.ccradrc.gc.ca/E/pub/ed/edrateseq/edrates-e.html>.

²⁹ Excise tax rates (November 2001) are available in CCRA online information. Available at: <http://www.ccradrc.gc.ca/E/pub/et/curratseq/currat-e.pdf>.

56. The new federal legislation and draft regulations are expected to allow the authorities to deal more effectively with smuggling, which particularly relates to tobacco (see also section (3)(i) below). As excise taxation is higher in Canada than in the United States, there was a strong incentive to export these products tax-free (hence the introduction of an export tax on tobacco products in 1994) and re-import them illegally for sale in Canada. In December 1999, the Government of Canada launched an action against several U.S. tobacco companies in the United States Federal Court, alleging that, beginning in 1991, there was a conspiracy to defraud Canada through smuggling, in violation of U.S. racketeering laws. According to Canada, massive cross-border smuggling frustrated Canada's national strategy to reduce tobacco consumption, especially among young people, and in 1994, the Government significantly reduced excise taxes. In June 2000, the United States District Court dismissed Canada's case; in November 2002, the U.S. Supreme Court also dismissed Canada's appeal.

57. Some provinces also impose excise taxes on specific products, generally on fuel and tobacco with different tax rates applicable for each province. According to the authorities, these taxes are levied equally on domestic production and imports.

(v) Contingency measures

(a) Safeguards

58. Safeguard remedies may be imposed under the Customs Tariff and the Export and Import Permits Act. These Acts implement the provisions of the WTO Agreement on Safeguards, the NAFTA, the Canada-Israel Free Trade Agreement, the Canada-Chile Free Trade Agreement, and the Canada-Costa Rica Free Trade Agreement.

59. Safeguard investigations are conducted by the Canadian International Trade Tribunal (CITT) under the Canadian International Trade Tribunal Act. The CITT is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous manner and reports to Parliament through the Minister of Finance. As part of its procedures for conducting inquiries, the Tribunal normally holds hearings that are open to the public. The recommendations made by the CITT to the Minister of Finance are not binding, and may be modified.

60. Canada's first safeguard investigation since the establishment of the WTO was initiated in March 2002 by the CITT, at the request of the Government of Canada. The investigation, under section 20(a) of the Canadian International Trade Tribunal Act, sought to determine whether there had been serious injury to the domestic industry from nine imported steel products, including flat rolled products, long products, and tubular products.³⁰ Imports from all sources since the beginning of 1996 were subject to the inquiry.³¹ In July 2002, the CITT made determinations of serious injury on five of the nine goods (Chapter IV(4)).³² Imports from the United States were found to have contributed importantly to the serious injury, but not imports from Chile, Israel or Mexico, which under the respective FTAs should then be excluded from any safeguard measure. In August 2002, the Tribunal provided recommendations to the Government regarding measures to be taken for each product. As of late 2002, the Government was examining the report and was expected to respond to the recommendations soon.

³⁰ Notified to the WTO Committee on Safeguards, WTO document G/SG/N/6/CAN/1, 2 April 2002.

³¹ More information may be found in CITT online information, Reference No. GC-2001-001, Notice of Commencement of Safeguard Inquiry, Importation of Certain Steel Goods, available at: <http://www.citt.gc.ca>.

³² See also CITT online information. Available at: http://www.citt.gc.ca/Safeguard/index_e.htm., in particular *Safeguard Inquiry into the Importation of Certain Steel Goods*, Reference No. GC-2001-01, August 2002. See also: <ftp://ftp.citt.gc.ca/doc/english/safeguard/reports/gc2b001e.pdf>.

61. In its details of the remedies proposed, the CITT explained that its recommendations were made taking into account both the needs of domestic producers that had been injured by increased imports and the interests of the downstream users. For four of the products, the CITT recommended tariff rate quotas, with no surtax to be applied on in-quota imports. The surtax proposed by the Tribunal for above-quota imports corresponds to the increase in the price of above-quota imports that the CITT believes is necessary to ensure that any above-quota imports enter Canada at non-injurious price levels. The CITT also decided that a share of the in-quota volume should be allocated to the United States, as a supplying country with a substantial interest in supplying the product (Table III.4). In-quota volumes are to be administered in Canada, on a quarterly first-come first-served basis on presentation of a firm order. With respect to reinforcing bars, the Tribunal recommended the imposition of a tariff.

Table III.4
Recommendation on remedies steel safeguard investigation

Product	In-quota volume	U.S. allocation volume	Rest of the world volume	Above-quota Surtax
	(000 tonnes)			Per cent
Cold-rolled sheet and coil				
First Year	360	229	131	15
Second Year	366	233	133	11
Third Year	371	237	134	7
Discrete plate				
First Year	334	213	121	25
Second Year	343	219	124	18
Third Year	352	225	127	12
Angles, shapes and sections				
First Year	300	216	84	20
Second Year	323	233	90	15
Third Year	349	251	98	10
Standard pipe				
First Year	231	168	63	15
Second Year	243	177	66	11
Third Year	256	186	70	7
Reinforcing bars				
				Surtax
First Year				15
Second Year				11
Third Year				7

Source: Canadian International Trade Tribunal.

62. Canada has never imposed special safeguards, as allowed under the WTO Agreement on Agriculture for imports of products for which tariff quotas are administered. Nor has it imposed transitional safeguards on imports of textiles and clothing under Article 6 of the WTO Agreement on Textiles and Clothing.

63. Under NAFTA rules, during the ten-year transition period ending on 31 December 2003, safeguard (emergency) measures may be imposed on the imports of another party, if, as a result of the reduction or elimination of a duty provided for in the NAFTA, a good is being imported in such increased quantities, in absolute terms, and under such conditions that the imports of the good from that party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good. The safeguard measure consists in the suspension of the further reduction of any rate of duty for the good, and an increase of the rate of duty to the MFN level for a maximum of three years (with some exceptions). With respect to safeguard investigations under the WTO, under Article 802 of the NAFTA, imports of a good from another party must be excluded from the action unless, considered individually, they account for a substantial share of total imports and contribute importantly to the serious injury, or threat thereof, caused by imports.³³ Under Article 703.3 of the NAFTA, special safeguard measures may be applied in the

³³ The text of the agreement is available online at: <http://www.dfait-maeci.gc.ca/nafta-alena/chap8-e.asp>.

form of a tariff rate quota on certain agricultural products.³⁴ The out-of-quota tariff rate may not exceed the MFN rate. Canada has used this provision in the past against some imports from Mexico, but not during the period under review.

64. Under the Bilateral Free Trade Agreement with Chile, Canada may impose safeguard measures, during the transition period only, if, as a result of the reduction or elimination of a duty, a good is imported in such increased quantities that the imports from Chile alone cause or may cause serious injury to a domestic industry. The measure may take the form of a suspension of the further reduction or the increase of a rate of duty on the good to a level not to exceed the MFN applied rate of duty. No measure may be maintained for a period exceeding three years. Under the agreement any party taking an emergency action under Article XIX of the GATT 1994 and the Agreement on Safeguards must exclude imports of a good from the other party from the action unless imports from the other party account for a substantial share of total imports and contribute importantly to injury.³⁵ Under the FTAs with Costa Rica and Israel, similar disciplines govern the application of bilateral emergency actions, but each party retains all its rights and obligations under the WTO Agreement on Safeguards.

(b) Anti-dumping and countervailing measures

Anti-dumping and countervailing duty legislation and administration

65. The Special Import Measures Act R.S.C., 1985, ch. S-15 (SIMA) is Canada's main legal instrument governing the use of anti-dumping and countervailing measures. The Department of Finance is responsible for the elaboration of SIMA policy and legislation. The Canada Customs and Revenue Agency (CCRA-formerly Revenue Canada) and the CITT are responsible for the administration of the SIMA.³⁶ The Commissioner of Customs and Revenue is responsible for initiating investigations and making preliminary and final determinations with respect to margins of dumping and amounts of subsidy. The CITT is responsible for preliminary and final injury (or threat thereof) determinations. Anti-dumping legislation and regulations are posted in CCRA's online information.³⁷

66. Canada applies anti-dumping and countervailing legislation in a non-discriminatory manner, except on Chile. Imports from Chile are excluded from anti-dumping measures if the tariff rate for the goods is zero. As of 1 January 2003, all goods from Chile are exempt from the imposition of new anti-dumping duties and any existing anti-dumping orders concerning imports from Chile will be eliminated.

67. After a preliminary determination, foreign exporters or governments can offer undertakings aimed at eliminating the dumping/subsidizing or injury to the Canadian industry. Exporters are informed of this option at the time of the initiation of an investigation and can examine the undertaking template on the CCRA's website. Undertakings are accepted only if they are given by exporters or governments of foreign countries representing all or substantially all of the trade in the product under investigation, which the CCRA interprets as those accounting normally for at least 85% of the volume of dumped or subsidized imports into Canada. Two of the three undertakings in place

³⁴ The Canadian products for which this special safeguard may be used are: fresh cut flowers and flower buds (HS 0603.10.90); tomatoes (0702.00.91); onions (0703.10.31); cucumbers (0707.00.91); broccoli and cauliflower (0710.80.20), strawberries (0811.10.10 and 0811.10.90), and prepared tomatoes (2002.90.00).

³⁵ The text of the agreement is available online at: <http://www.dfait-maeci.gc.ca/tna-nac/cda-chile/chap-f26.asp>.

³⁶ See Anti-dumping and Countervailing Directorate online information. Available at: <http://www.ccra-adrc.gc.ca>.

³⁷ Available at: <http://www.ccra-adrc.gc.ca/customs/business/sima/act-regs-e-html>.

at the end of 2001 were with the United States, the third was with France; only one (bingo paper from the United States) was entered into during the period under review.

68. The authorities have noted that Canada operates a prospective system in which exporters are informed of the normal values for the products that they export to Canada. If future sales are made at price levels equal to or higher than the normal value of the product, no duties are assessed. The authorities consider that Canada's prospective enforcement system operates in a manner that is very similar to, and has the same effect as, price undertakings at a level sufficient to remove the dumping.

69. Procedural amendments to both the SIMA and to the CITT Act were brought into effect in April 2000.³⁸ These amendments shifted responsibility for conducting preliminary determination investigations of injury from the Commissioner of Customs and Revenue to the CITT. There was a corresponding shift of dumping and subsidization responsibilities for expiry reviews, which until April 2000 were conducted entirely by the CITT. Starting from this date, responsibility for determining the likelihood of continued or resumed dumping or subsidization and for expiry reviews was passed to the CCRA. The amendments also contain provisions governing the review and termination of undertakings by the CCRA, the initiation and conduct of public interest inquiries in respect of CITT findings, and the conduct of interim and expiry reviews of existing orders.³⁹

70. In the context of the new Administrative Monetary Penalty System (AMPS) implemented by the CCRA as part of a Customs Plan to streamline customs procedures and rely more on self-assessment, measures to strengthen customs enforcement of self-assessment were introduced. As a result, for products subject to measures under the SIMA, penalties will be imposed for not providing a proper product description, not using the correct SIMA code or not keeping proper records of shipments subject to the SIMA. The new system was fully implemented in October 2002.

71. Bill S-23, an Act to amend the Customs Act and to make related amendments to other Acts, which received Royal Assent on 25 October 2001, amended the SIMA with respect to the payment, collection or refund of any duty or interest on duty levied or returned under the Act. The amendments to the SIMA came into effect on 1 July 2002. The Act also introduced provisions introducing procedural changes with respect to the imposition of provisional duties.⁴⁰ As a result, where an importer does not pay provisional duties within the required time, interest will be charged from the date on which the duties were to be paid.

Anti-dumping investigations

72. As of December 2001, 91 Canadian anti-dumping measures plus three price undertakings remained in force (Chart III.4 and Table AIII.1). This is an increase relative to the 85 measures in place at the time of Canada's last Review, and 73 at the time of its 1998 Review. Some 37 countries or customs territories are affected by these measures; EU and U.S. suppliers are the subject of most actions. Some 64 duties (70% of the total) cover steel products. During 2000 and 2001, 32 new final measures were imposed, including mostly steel products such as stainless steel round bars and hot-rolled carbon steel sheet. In the first half of 2002, four anti-dumping measures were revoked, all of

³⁸ Act to Amend the Special Import Measures Act and Canadian International Trade Tribunal Act, 1999, Statutes of Canada, chapter 12; the Regulations Amending the Special Import Measures regulations, SOR/2000-138; and the Rules Amending the Canadian International Trade Tribunal Rules, SOR/2000-139.

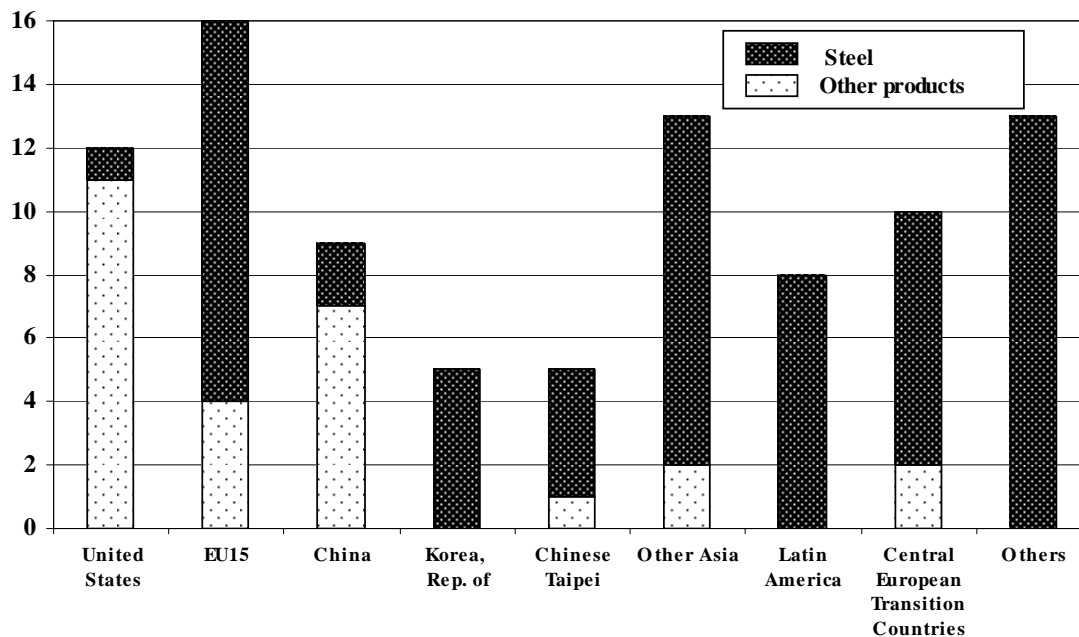
³⁹ WTO document G/ADP/N/1/CAN/3/Add.1, G/SCM/N/1/CAN/3/Add.1, 2 October 2000.

⁴⁰ Available at: http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/S-23/S-23_4/S-23TOCE.html.

which applied to the United States, bringing the number of anti-dumping definitive duties in place down to 87.⁴¹

Chart III.4

Anti-dumping duties in force, by partner, 31 December 2001



Source: WTO Secretariat.

73. In the period January 2000 to December 2001, there were 46 anti-dumping investigation initiations, of which 37 concerned products of the steel industry (Table III.5).⁴² This compares with 28 new actions initiated in the period covered in Canada's previous Review, and 20 between January 1996 and June 1998. Four new investigations were initiated in the first half of 2002, dealing with waterproof footwear from Hong Kong, China; Macao, China; and Viet Nam; and with xanthates from China.

74. Provisional duties were applied in 43 of the investigations (93.5% of the total) in the investigations initiated in 2000 and 2001, and in all but one of the investigations dealing with steel products. Three investigations were terminated at the preliminary determination. In 16 of the cases (14 dealing with steel products), a final determination of no injury was made and no final measures were applied. Four cases involving steel products were terminated due to negligible volumes of dumped imports. In the case of the steel industry, in 39% of the cases provisional duties were applied in investigations that resulted in a no injury determination, and in some cases the provisional duties were high (up to 69%). This provided protection to the domestic industry for a period of about four months at the expense of the foreign supplier (Table III.5). Moreover, in cases where final duties were applied, provisional duties have been historically, on average, as high or higher than final duties.

⁴¹ WTO document G/ADP/N/92/CAN, 25 July 2002. The orders revoked related to: polyiso insulation board; machine tufted carpeting; Iceberg lettuce; and concrete panels.

⁴² For information on all active cases see CCRA online information. Available at: <http://www.ccradrc.gc.ca/customs/business/sima/monthly-e.html>.

Table III.5
Anti-dumping investigation initiations, 1 January 2000-31 December 2001

Country/customs territory	Product	Initiation date	Provisional measures date, dumping margin	Definitive duty, date, No dumping margin	No injury date	Trade volume	Dumped imports/ domestic consumpt.
Brazil	Stainless steel round bar	31.03.00	29.06.00, 24.3%	27.10.00, 37.3%		965 tons	CF
	Hot-rolled steel sheet	19.01.01	19.04.01, 35.7%	17.08.01		24,189 m.t.	0.4%
	Cold-rolled steel sheet	12.03.01	11.06.01, 10.71%		09.10.01	74,710 tons	4.1%
Bulgaria	Hot-rolled steel sheet	19.01.01	19.04.01, 49%	17.08.01		22,178 m.t.	0.4%
China	Waterproof footwear	12.05.00	10.08.00, 33%	08.12.00, 33%		4,108,000 pairs	14%
	Garlic	31.10.00	02.01.01, 68.1%	02.05.01		7,533,369 kg.	52.1%
	Corrosion-resistant steel sheet	04.12.00	05.03.01, 37.2%		03.07.01	7,806 m.t.	CF
	Hot-rolled steel sheet	19.01.01	19.04.01, 25.4%	17.08.01		137,224 m.t.	1.8%
	Cold-rolled steel sheet	12.03.01	11.06.01, 17.99%		09.10.01	46,117 tons	2.9%
	Leath. footwear met. toecaps	15.06.01	29.08.01, 39.4%	27.12.01		1,317,887 pairs	43%
	Automotive windshields	18.12.01					
Chinese Taipei	Corrosion-resistant steel sheet	04.12.00	05.03.01, 8%		03.07.01	32,904 m.t.	CF
	Reinforcing bar (steel)	03.11.00	01.02.01, 40.9%	01.06.01		12,095 m.t.	CF
	Hot-rolled steel sheet	19.01.01	19.04.01, 46.3%	17.08.01		153,917 m.t.	2.7%
	Cold-rolled steel sheet	12.03.01	11.06.01, 28.71%		09.10.01	41,640 tons	2.66%
FYR of Macedonia	Hot-rolled steel sheet	19.01.01	19.04.01, 49%	17.08.01		10,899 m.t.	0.2%
	Cold-rolled steel sheet	12.03.01	11.06.01, 69.14%	11.09.01, terminated (negligible imports)		2,902 tons	0.1%
India	Corrosion-resistant steel sheet	04.12.00	05.03.01, 22.7%		03.07.01	15,981 m.t.	CF
	Hot-rolled steel sheet	19.01.01	19.04.01, 26.3%	17.08.01		243,471 m.t.	4.4%
Indonesia	Reinforcing steel bar	03.11.00	01.02.01, 40.9%	01.06.01		20,282 m.t.	CF
Italy	Cold-rolled steel sheet	12.03.01	11.06.01, 69.14%	11.09.01, terminated (negligible imports)		6,031 tons	0.4%
Japan	Reinforcing steel bar	03.11.00	01.02.01, 37.3-40.9%	01.06.01		33,594 m.t.	CF
Korea, Republic of	Hot-rolled steel sheet	19.01.01	19.04.01, 34.2%		17.08.01	66,429 m.t.	1.2%
	Cold-rolled steel sheet	12.03.01	11.06.01, 68.64%		09.10.01	61,505 tons	4.1%
Latvia	Reinforcing steel bar	03.11.00	01.02.01, 3.9%	01.06.01		27,228 m.t.	CF
Luxembourg	Cold-rolled steel sheet	12.03.01	11.06.01, 2.47%	11.09.01, terminated (negligible imports)		4,082 tons	0.1%
Malaysia	Corrosion-resistant steel sheet	04.12.00	05.03.01, 4.1%		03.07.01	13,605 m.t.	CF
	Cold-rolled steel sheet	12.03.01	11.06.01, 14.67%	11.09.01, terminated (negligible imports)		2,153 tons	0.2%
Moldova	Reinforcing steel bar	03.11.00	01.02.01, 40.9%	01.06.01		20,064 m.t.	CF
New Zealand	Hot-rolled steel sheet	19.01.01	19.04.01, 28.6%		17.08.01	20,839 m.t.	0.3%
Norway	Pulp-dewatering screw press	27.11.00		19.01.01 (no dumping)			
Poland	Reinforcing steel bar	03.11.00	01.02.01, 40.9%	01.06.01		9,658 m.t.	CF
Portugal	Corrosion-resistant steel sheet	04.12.00		05.03.01 (no dumping)			
Russian Federation	Corrosion-resistant steel sheet	04.12.00	05.03.01, 16.7%		03.07.01	29,452 m.t.	CF
Saudi Arabia	Hot-rolled steel sheet	19.01.01	19.04.01, 49%		17.08.01	35,300 m.t.	0.6%
South Africa	Corrosion-resistant steel sheet	04.12.00	05.03.01, 22.4%		03.07.01	5,442 m.t.	CF
	Hot-rolled steel sheet	19.01.01	19.04.01, 26.4%	17.08.01		37,631 m.t.	0.7%
	Cold-rolled steel sheet	12.03.01	11.06.01, 33.97%		09.10.01	10,302 tons	0.7%
Thailand	Hot-rolled steel sheet	19.01.01		19.04.01 (no dumping)			
Ukraine	Hot-rolled steel sheet	19.01.01	19.04.01, 49%	17.08.01		22,111 m.t.	0.4%
	Reinforcing steel bar	03.11.00	01.02.01, 13-22%	01.06.01		70,290 m.t.	CF
United States	Bingo paper	20.03.00	05.07.00, 43.5%	27.09.00		CF	CF
	Fresh tomatoes	09.11.01	25.03.02, 1.71%		26.06.02	141,041 m.t.	47%
	Grain corn	09.08.00	07.11.00, US\$0.67/bushel		07.03.01	14 million bushels	50%
Viet Nam	Garlic	31.10.00	02.01.01, 55.7%	02.05.01		389,291 kg	5.2%
Yugoslavia, F.R.	Hot-rolled steel sheet	19.01.01	19.04.01, 49%	17.08.01		30,455 m.t.	0.6%

m.t.: Metric tonnes.

CF: Confidential.

Source: WTO documents G/ADP/N/65/CAN, 30 August 2000; G/ADP/N/72/CAN, 2 March 2001, G/ADP/N/78/CAN, 29 August 2001; and G/ADP/N/85/CAN 18 February 2002.

75. A recent study conducted by the CITT, shows that, on balance, the difference in the margin of dumping between provisional and definitive determinations is relatively small. However, the study also noted that provisional margins of dumping tend to be somewhat higher than final margins, and that although far from conspicuous, there was a slightly increasing trend in recent years.⁴³ In the context of Canada's last Review, the authorities noted that the high number of investigations where provisional measures were applied reflected the high proportion of complaints rejected prior to initiation.

76. The CITT estimates that anti-dumping actions affect only a minor fraction (less than 1%) of Canada's imports. In some cases, duties are applied on imports that account for a fairly small share of the domestic market (Table III.5). Moreover, cumulation is used in most multi-country investigations to determine injury, particularly those dealing with steel products. Also, and despite cumulation, in some cases dumped imports from all the investigated countries put together have represented a relatively small share of the Canadian market. In this respect, the authorities have noted that the volume of dumped imports is only one factor examined when determining injury, and that the prices of dumped imports and their effect on the domestic market are also examined. The authorities consider that small volumes of low-priced imports, or even low-price offerings, can have a significant effect on prices in the domestic market, which in their view is competitive enough that a single offer to sell goods at a certain price is sufficient to reduce prices. This suggests, however, that injury is narrowly focused on percentage changes even in cases where the absolute market shares and the margin of dumping remain low.

77. Since Canada's last Review, as a result of sunset reviews, progress has been made with respect to the duration of actions under Canada's legislation. In May 2002, 9% of the measures had been in place for ten years or more, compared with 16% at the time of the last Review (WTO (2000)). A total of 17 anti-dumping orders were revoked in 2000 and 2001, most were expiries due to absence of request for a review.⁴⁴

78. In the period January 2000-June 2002, the CITT and the CCRA completed 12 expiry reviews, including an undertaking, affecting some 26 anti-dumping duty orders. Some 19 review orders were continued, and seven were rescinded (three of them in 2002), including one concerning an undertaking.⁴⁵

79. In the January 2000-December 2001 period, the CITT received four requests for interim reviews; in three cases (two requests regarding fresh garlic and one regarding machine tufted carpeting), the CITT decided that an interim review was not warranted, and in one case (fresh lettuce from the United States), the order was rescinded. In the same period, the CITT received two requests for public interest inquiries. In the first case, concerning a finding of injury in an iodinated contrast media investigation, the CITT was of the opinion that the imposition of the anti-dumping duties in the full amount was not in the public interest, and recommended a reduction of the duties, which were subsequently lowered by up to 80%. In the second case, a public interest request referred to injury findings in an investigation concerning certain refrigerators, dishwashers, and dryers, the CITT was not convinced that there was public interest that warranted further investigation.

⁴³ CITT (2000), Analysis of Changes in Margins of Dumping.

⁴⁴ These concerned: caps, lids, and jars suitable for home canning, from the United States; refill paper, from Brazil; certain stainless steel welded pipe from Chinese Taipei; and photo albums with self-adhesive leaves, imported together or separately, and self-adhesive leaves, from China; Chinese Taipei; Hong Kong, China; Indonesia; Korea; Malaysia; the Philippines; Singapore; and Thailand.

⁴⁵ Some of the orders continued by the CITT include: women's boots from China; certain carbon steel welded pipe from Korea; whole potatoes imported into British Columbia from the United States; and refined sugar from Denmark, Germany, the Netherlands, the United Kingdom, and the United States.

(c) Countervailing measures

80. Although Canada has initiated relatively few countervailing investigations in the past, there has been a substantial increase in initiations in the period under review. Between January 2000 and December 2001 five new investigations were initiated, four related to the steel industry. In three of these cases definitive duties had been applied by end 2001. In two cases - corrosion-resistant steel sheet from India and grain corn from the United States - no injury was found, and no final duties were applied, but provisional duties had been levied.⁴⁶ The authorities noted that these duties were refunded. In the first six months of 2002, no new investigations were started.⁴⁷

81. By the end of June 2002, there were ten countervailing duty orders in place, compared with six at the time of Canada's previous Review (Table III.6).

Table III.6
Countervailing duty measures in force, 30 June 2002

Country	Product	Date of finding
Brazil	Stainless steel round bar	27.10.00
Denmark	Canned ham	07.08.84 (16.03.90) (21.03.95) (20.03.00)
European Union	Refined sugar	06.11.95 (03.11.00)
India	Black granite memorials	20.07.94 (19.07.99)
India	Hot-rolled carbon steel plate	27.06.00
India	Hot-rolled steel sheet	17.08.01
India	Stainless steel round bar	27.10.00
Indonesia	Hot-rolled carbon steel plate	27.06.00
Netherlands	Canned ham	07.08.84 (16.03.90) (21.03.95) (20.03.00)
Thailand	Hot-rolled carbon steel plate	27.06.00

Note: A subsequent date is shown in brackets if the injury finding was reviewed and re-affirmed.

Source: WTO documents G/SCM/N/81/CAN, 22 February 2002, and G/SCM/N/87/CAN, 29 July 2002.

(vi) Quantitative restrictions and controls

82. Canada's quantitative import controls and restrictions are mostly in place to ensure national security, safeguard consumer health and morality, to implement inter-governmental arrangements, or to preserve domestic plant and animal life and the environment (see also (3)(i) for the case of exports). Quantitative restrictions and controls are implemented through a system of licences.⁴⁸ Table III.7 summarizes the products subject to import licences. The remainder of this section focuses on import restrictions maintained for economic purposes.

83. Products subject to quantitative restrictions or import licensing to protect domestic industries from import competition are listed on the Import Control List established under the Export and Import Permits Act. Items may be added to the Import Control List by the Governor-in-Council for various purposes, as cited in section 5 of the EIPA, including when it appears that they are being imported or are likely to be imported into Canada at such prices, in such quantities and under such conditions as to cause or threaten serious injury to the production in Canada of like or directly competitive goods.

⁴⁶ CITT Inquiry No: NQ-2000-005 [Online] Available at: <http://www.citt.gc.ca/dumping/Inquiries/Findings/nq2a005e/nq2a005e.htm>.

⁴⁷ Canada's latest notifications on countervailing duty measures is contained in WTO documents G/SCM/N/81/CAN, 22 February 2002, and G/SCM/N/87/CAN, 29 July 2002.

⁴⁸ These are handled by the Export and Import Bureau (DFAIT); online information is available at: http://www.dfait-maeci.gc.ca/eicb/epd_home.htm. Canada last notified its import licensing procedures in WTO document G/LIC/N/3/CAN/4, 18 January 2002.

Table III.7
Controlled or licensed importations, June 2002

Legislation	Products	Purpose
Controlled Drugs and Substances Act	Controlled drugs (e.g. amphetamine, methamphetamine, barbituric acids), narcotics (e.g. codeine, morphine), and restricted drugs (used only for research, not commercial sale)	To ensure that the quantity of drugs imported does not exceed medical needs
Food and Drug Act	Industrial hemp	To permit the legal production and processing of hemp for commercial purposes while providing compliance and enforcement mechanisms to prevent diversion of Cannabis to the illicit drug market
	Medical devices	Safety and effectiveness
Explosives Act	Blasting explosives, detonators, propellants, cartridges, and all types of fireworks and pyrotechnic devices	Safety
Nuclear Safety and Control Act	Nuclear equipment and information, radio-active devices, and nuclear substances (e.g. deuterium, thorium, uranium, their respective derivatives or compounds; radioactive nuclides; substances capable of releasing nuclear energy; radioactive by-products of the development, production or use of nuclear energy; and radioactive substances used for the development, production or use of nuclear energy)	Safety, security, health, environment
Plant Protection Act	Plants and products	Protection against pests
Canadian Environmental Protection Act	Hazardous waste; ozone-depleting substances	Environment; health
Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act	Endangered species	Conservation, environment
Firearms Act	Firearms, weapons and devices	Security, safety
Health of Animals Act	Animals, birds and products	Protection against foreign animal diseases
National Energy Board Act	Natural gas	Equitable distribution of natural gas
Export and Import Permits Act	Broiler hatching eggs and chicks; eggs and egg products; turkey and turkey products; chicken and chicken products; beef and veal; margarine; wheat and barley and their products; cheese, yoghurt, butter, milk and cream, buttermilk, ice cream and other dairy products	To implement tariff quotas maintained under the WTO Agreement on Agriculture
	Cut roses and rose buds from Israel	Implementation of Canada-Israel Free Trade Agreement
	Yarns i.e. polyester, acrylic and nylon yarns	Implementation of restraints under the WTO Agreement on Textiles and Clothing
	Fabrics, i.e. polyester or polyester-cotton, cotton, wool, nylon, cellulose acetate broadwoven fabrics	
	Made-up, i.e. cotton terry towels and washcloths; work gloves; bedsheets and pillowcases; and handbags.	
	Apparel, i.e. winter outerwear; hosiery; pants, slacks, jeans, overalls, coveralls and outer-shirts; blouses and shirts, T-shirts and sweatshirts; sleepwear and bathrobes; rainwear; sportswear, dresses, skirts, coordinates or matching sets; foundation garments; swimwear; underwear, jackets, overcoats, topcoats, professional coats and shopcoats; fine suits, sportcoats and blazers; shirts with tailored collars; sweaters, pullovers and cardigans.	
	Carbon and speciality steel	Import monitoring
Motor Vehicle Safety Act	Motor vehicles and tyres	Respect of safety regulations and emission standards

Source: WTO document G/LIC/N/3/CAN/4, 18 January 2002; and Government of Canada.

(a) Agri-food products

84. In 1995, as part of its WTO commitments Canada converted its quantitative restrictions on imports of agri-food products to a system of tariff quotas; imports within the access commitment require a permit issued through the Export and Import Controls Bureau in order to benefit from the lower rate of duty. These tariff quotas are described in Chapter IV(2).

85. Other restrictions on agri-food trade, described in Canada's previous Review, include the prohibition of consignment selling. Consignment selling means that fresh fruits and vegetables are shipped interprovincially or imported into Canada without a firm purchase price or agreement to purchase at a fixed price. Since February 2000, Canadian and foreign sellers of these products can join the Fruit and Vegetable Dispute Resolution Corporation (DRC), and thus be exempt from this prohibition. Approximately 80% of sellers were DRC members in late 2002; the authorities expect that percentage to rise further once the DRC is fully established.⁴⁹ Imports (and interprovincial movement) of bulk horticultural products that do not meet standardized quality, labelling, and packaging requirements are also restricted. The Fresh Fruit and Vegetable Regulations (Regulations) prescribe safety, quality, packaging and labelling standards for 30 fresh fruits and vegetables moving interprovincially or internationally. Importers or dealers moving produce interprovincially, must meet all the requirements of the Regulations. Exemptions are granted from the quality, packaging and labelling standards only where there is a shortage of domestic supply.

(b) Other products

86. Since the 1960s, tariffs on textiles and clothing have been complemented by import quotas; these are being progressively dismantled over a ten-year period until January 2005 under the WTO Agreement on Textiles and Clothing. In late 2002, about one half of the value of clothing imports entered the Canadian market under quota (Chapter IV(3)).

87. Carbon steel and specialty steel products have been on the Import Control List since 1987.⁵⁰ The monitoring system applies to imports from all countries. The authorities have stated that the programme is not intended to restrict the quantity or value of imports, but rather monitors the volume and the origin of carbon and specialty steel products (see also Chapter IV(4)).⁵¹

88. The following imports are prohibited under the Customs Tariff: second-hand motor vehicles less than 15 years old, except if manufactured in the United States; used or second-hand aircraft, except if imported from the United States; and reprints of Canadian and British works copyrighted in Canada.

⁴⁹ Import licensing requirements for fresh fruit and vegetables are described in the Canadian Food Inspection Agency online information.

⁵⁰ Carbon steel products are defined as semi-finished steel (ingots, blooms, billets, slabs and sheet bars), plate, sheet and strip, wire rods, wire and wire products, railway-type products, bars, structural shapes and units, and pipe and tube. Specialty steel products are defined as stainless flat-rolled products (sheet, strip and plate), stainless steel bar, stainless steel pipe and tube, stainless steel wire and wire products, alloy tool steel, mold steel, and high speed steel.

⁵¹ WTO document G/LIC/N/3/CAN/4, 18 January 2002.

(vii) Standards, technical regulations, and sanitary and phytosanitary measures**(a) Standards and technical regulations**

89. The Standards Council of Canada (SCC) is the focal point for standardization and conformity assessment in Canada, and operates the Enquiry Point under the TBT and SPS Agreements. The SCC approves national standards and represents Canada in international standards forums.⁵² The SCC heads and oversees the work of the National Standards System (NSS), a network of approximately 15,000 individuals and over 400 accredited organizations and partners involved in standards development, promotion, and implementation in Canada. The SCC participates in numerous international standardization activities with the ultimate goal of enabling Canadian exporters to use a single test, certification or registration to gain market acceptance anywhere in the world.

90. Standards policy is devised by the SCC with the collaboration of advisory committees; the Advisory Committee on Trade advises and makes recommendations to the SCC on international and internal trade-related matters. The SCC assists the Department of Foreign Affairs and International Trade (DFAIT) in formulating Canadian policy positions on standards-related issues in the WTO. The SCC accepted the TBT Code of Good Practice for the Preparation, Adoption and Application of Standards, in 1999, has adopted ISO/IEC Guide 59, the code of good practice for standardization, and is considering the adoption of ISO/IEC Guide 60, the code-of-good-practice for conformity assessment, currently under revision.

91. The Government of Canada Regulatory Policy, a Cabinet directive, governs the development and implementation of compulsory federal regulations. The Policy is designed to ensure that the use of the Government's regulatory powers results in the greatest net benefit to Canadian society. In accordance with the Policy, a specific directive must be followed when regulating. The Privy Council Office (the Government of Canada's central agency, reporting to the Prime Minister) has general responsibility for assessing the effectiveness of the Policy, its implementation and its elaboration.⁵³

92. Various federal and provincial authorities develop and implement technical regulations as part of their mandate, and also revise and review existing regulations. In developing regulations, regulatory authorities are encouraged to follow the Guide to the Regulatory Process. This guide outlines a multi-step process to regulating as well as key participants in the regulatory process.⁵⁴ Standards can form the basis of an entire regulation or can be partially referenced in a regulatory measure and supplemented with policies, guidelines, and operating procedures.

93. The authorities noted that, starting in the late 1980s, there has been a general downward trend in the annual rate of increase of federal regulations (Chart III.5). In comparing the total number of federal regulations (including new, amended, repealed, revised) added to the stock during the 1980s to the 1990s, a drop in the total number of regulations was observed. However, since regulations are not classified according to their nature, but under which statute they were enacted, the authorities stated that it was difficult to estimate the precise number of technical regulations in force.

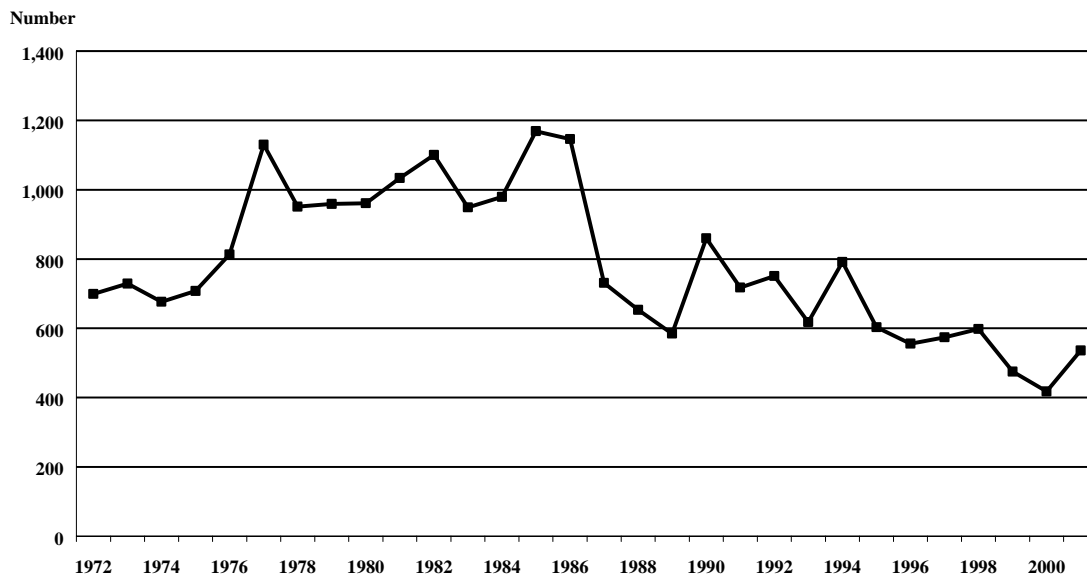
⁵² More information on the activities of the SCC may be found online at: http://www.scc.ca/home_e.html.

⁵³ The full text of the Government of Canada Regulatory Policy is available online at: www.pco-bcp.gc.ca/raoics-rdc/default.asp?Language=E&Page=AboutRegs&Sub=Policy.

⁵⁴ The full text of the Guide to the Regulatory Process is available online at: www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&Page=AboutRegs&Sub=Process.

Chart III.5

Technical regulations enacted by the Government of Canada, 1972-01



Source: Data provided by the Canadian authorities.

94. Canada maintains technical regulations in areas such as construction, chemicals, pharmaceuticals, energy, food, transport equipment, telecommunications, the environment, and others (Table III.8). It is not possible, however, to estimate the product-categories more often affected by technical regulations as the authorities do not classify its regulations using product classifications, such as the Harmonized System (HS), as regulations often have an impact across numerous product-categories.

95. The SCC has accredited four standards development organizations, which administer technical committees responsible for determining the content of standards. Accredited standards-development organizations may submit standards to the SCC for approval as National Standards of Canada (NSC). The four organizations are: the Canadian General Standards Board (CGSB); the Canadian Standards Association; Underwriters' Laboratories of Canada (UL Canada), which provides the North American Mark of Safety; and the Bureau de normalisation du Québec (BNQ). When developing standards, standards are developed on a consensus basis by the four standard-development organizations, with the participation and cooperation of all parties concerned in a sector. When developing standards, standards developers must first determine whether an international standard could be adopted or adapted to meet the required outcome. Standard developers are not involved in the development of technical regulations. However, standards developed by these organizations may become referenced in legislation.

96. The SCC operates a variety of accreditation programmes. There are currently 22 accredited certification bodies; more than half are located in the United States. As of December 2002, there were 331 accredited laboratories and 28 accredited registrars for quality management systems and environmental management systems. The National Research Council of Canada's Institute for National Measurement Standards (INMS) is responsible for metrology activity in Canada. The SCC and INMS Calibration Laboratory Assessment Service (CLAS) operates an accreditation programme for secondary calibration laboratories. This programme has accredited 25 laboratories.

Table III.8
Technical and sanitary and phytosanitary regulations, main agencies and legislation

Area	Main responsible agency	Main legislation
Chemicals	Health Canada (Product Safety Bureau, Health Protection Branch), Environment Canada, Pest Management Regulatory Agency (relating to pesticides)	Hazardous Products Act unless covered by the Explosives Act, Food and Drugs Act, Pest Control Products Act or Atomic Energy Control Act, Canadian Environmental Protection Act
Building	Provincial/territorial agencies	Provincial/territorial legislation based on national codes (National Building Code, National Fire Code, National Plumbing Code, National Energy Codes)
Consumer products other than food	Industry Canada, Health Canada	Consumer Packaging and Labelling Act and Regulations, Hazardous Products Act, Precious Metals Marking Act and Regulations, Textile Labelling Act and Textile Labelling and Advertising Regulations
Energy	Natural Resources Canada (Office of Energy Efficiency) and provincial agencies	Energy Efficiency Act and regulations, and provincial regulations based on national standards
Environment	Environment Canada, Health Canada, Canadian Food Inspection Agency, and provincial/territorial agencies	Federal and provincial acts and regulations dealing with environmental protection, pollution, preservation of wildlife and environmental assessment
Food	Canadian Food Inspection Agency, Health Canada	Food and Drugs Act and regulations and other statutes (e.g., Canada Agricultural Products Act, Consumer Packaging and Labelling Act, Feeds Act, the Fertilizer Act, Fish Inspection Act, Food and Drug Act, Meat Inspection Act, Seeds Act) complemented by provincial legislation
Measuring devices	Industry Canada	Electricity and Gas Inspection Act, Weights and Measures Act
Medical devices	Health Canada	Food and Drugs Act, Medical Devices Regulations
Pharmaceuticals	Health Canada	Food and Drugs Act and Regulations, National Narcotic Control Act and regulations
Telecommunications Equipment	Industry Canada (Director General, Spectrum Engineering Branch)	Telecommunications Act, Radio Communications Act and interference-causing equipment regulations
Transport equipment	Transport Canada and provincial/territorial agencies	Motor Vehicle Safety Act and regulations, complemented by provincial legislation

Source: Information provided by the Canadian authorities.

97. Technical regulations and standards continue to differ among provinces. The SCC's Intergovernmental Affairs and Trade (IGAT) Branch has begun to work more closely with the Agreement on Internal Trade Secretariat to reduce the effect of these differences. The SCC promotes standards and conformity assessment as solutions to interprovincial trade and regulatory obstacles. In this respect, for example, the SCC considers that the introduction of the standard ISO/IEC 17024, General Requirements for Bodies Operating Certification Systems of Persons, could improve the interprovincial acceptance of professional qualifications by providing a common basis for their recognition.

98. A Canadian Standards Strategy was launched in March 2000, and has since then been the guiding framework for the work of the SCC and the NSS. The Strategy aims, on the international front, to promote the use of adopted or adapted internationally accepted standards to the greatest extent possible. The Strategy seeks to prioritize standardization efforts and resources within three key areas: where Canadians have a major interest in health, safety, the environment or social issues; trade sectors in which there are existing or potential benefits to Canadians; and the harmonization of standards where appropriate, especially within North American markets. The Strategy calls for the SCC to become more formally involved in government-led international and regional trade initiatives such as the NAFTA, the FTAA and APEC. The SCC is also to actively pursue new international arrangements of anticipated benefit to Canada with respect to conformity assessment practices.

99. Canada considers the international harmonization of standards as an important element to enhance trade. To increase harmonization, Canadian standard development organizations are working closely with their U.S. counterparts. In 2001, Canada and the United States created a bi-national committee for IEC's technical committee on electromagnetic field exposure, to discuss positions and agree on joint strategies, while continuing to issue individual positions. The IEC National Committees of Canada, Mexico, and the United States have met annually over the past 20 years to discuss issues before IEC, to encourage greater electrotechnical cooperation and to be better prepared as a region to contribute to international standardization at IEC. To strengthen regional ties in electrotechnical standardization, the tri-national group decided to include other countries of the Americas, under an initiative known as the Electrotechnical Cooperation of the Americas launched in September 2001.

100. Another tool considered useful by Canada to harmonize standards and simplify conformity requirements is the signing of mutual recognition arrangements (MRAs). At government level, Canada has MRAs on conformity assessment with the European Union, Switzerland, and the other EFTA countries. Canada has endorsed the APEC Mutual Recognition Arrangement on telecommunications, and the MRA for Conformity Assessment of Telecommunications Equipment of the Americas. The SCC participates in voluntary MRAs with accreditation bodies at both the international and the regional levels. To ensure that MRAs do not contradict Canadian trade interests and regulatory objectives, DFAIT and the SCC have developed criteria for undertaking new negotiations and enhancing existing agreements. The goal is to ensure coordination between trade, regulatory, and standards initiatives. The authorities have noted that mutual recognition agreements can deal with issues where provincial governments have regulatory responsibility and hence, provinces play a role in the determination of the regulatory objectives to be achieved through MRAs.

101. In the period 2000 to mid 2002, Canada made 64 notifications of new technical regulations to the WTO Committee on TBT (26 in 2000, 25 in 2001, and 13 in the first half of 2002). Most measures had health, safety or environmental grounds, and concerned largely food, drugs, tobacco, chemical substances, motor vehicles, telecommunications equipment, or services.⁵⁵ As of October 2002, 18 of the 64 proposed changes had not yet been adopted, generally because the process of actioning comments had not been concluded or because insufficient time had passed for the regulation to be enacted.

102. In the period under review, Canada presented a number of communications and proposals to the TBT Committee, including with respect to labelling.⁵⁶ Canada's position is that the TBT Agreement provisions are balanced and adequate as regards labelling, and it sees no compelling rationale to renegotiate existing rules, or to begin negotiations of new rules.

103. Since the beginning of the WTO, Canada has been involved in six disputes involving the TBT Agreement, all as a complainant; it has been involved in no such disputes since 2000. Five of these disputes involved also the SPS Agreement; in four of them SPS issues were the major concern (see also section (c) below). The disputes regarded certain measures by the United States affecting the import of cattle, swine, and grain; measures by the EU affecting imports of wood of conifers from Canada; measures by the EU affecting asbestos and products containing asbestos; measures by Korea concerning bottled water; measures by the EU affecting livestock and meat (hormones); and measures by the EU with respect to the trade description of scallops.⁵⁷ In the scallop case, a mutually agreed solution was reached.

⁵⁵ WTO document series G/TBT/N/CAN/.

⁵⁶ WTO document G/TBT/W/174/Rev.1, 31 May 2002.

⁵⁷ WTO documents WT/DS144/1, G/L/260, G/SPS/W/90, G/TBT/D/18, G/AG/GEN/27, 29 September 1998; WT/DS137/1, G/SPS/GEN/84, G/TBT/D/17, 24 June 1998; WT/DS135/1, G/SPS/GEN/72, G/TBT/D/15, 3 June 1998; WT/DS20/1, G/SPS/W/35, G/TBT/D/4, 22 November 1995; WT/DS48/1, G/SPS/W/71, G/TBT/D/7, 8 July 1996; and WT/DS7/12, G/TBT/D/8, 19 July 1996.

(b) Environmental regulations and trade

104. Environmental policy is designed and monitored jointly by the federal and provincial/territorial authorities. At the federal level, it is the responsibility of the Minister of the Environment, through Environment Canada. The main legislation is the Canadian Environmental Protection Act (CEPA), as amended in 1999, and effective since 31 March 2000. The amendments created a framework for cooperation and coordination between federal, provincial, and territorial governments; they also established a public registry, and gave citizens the right to sue where a CEPA violation results in significant harm to the environment, and the federal government fails to take action. Other legislation dealing with environmental and trade issues include the Department of the Environment Act, the Canada Water Act, the Canada Wildlife Act, the National Wildlife Act, the Wild Animal and Plant Protection and Regulation of International and Inter-provincial Trade Act, and the Canadian Environmental Assessment Act, among others.

105. The Canadian Environmental Assessment Act is administered by the Canadian Environmental Assessment Agency. The Act requires federal departments, including Environment Canada and agencies to conduct environmental assessments for proposed projects where the federal government is the proponent, provides funding, grants an interest in land to enable a project, or issues a permit or licence. Departments maintain public registries of the environmental assessments carried out under the Act for which they are responsible.

106. Canada also conducts strategic environmental assessments of trade negotiations, in accordance with the non-legislated 1999 Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals. The Framework for Conducting Environmental Assessments of Trade Negotiations (2001) establishes the process and analytical requirements for conducting such assessments. The Framework's twin objectives are to assist Canadian negotiators integrate environmental considerations into the negotiating process; and to address public concerns by documenting how environmental factors are being considered in the course of trade negotiations.

107. The CEPA requires that the importation or manufacture of any new substance is subject to a notification and assessment procedure specified in the New Substances Notification Regulations (NSN).⁵⁸ The NSN Regulations apply to chemicals, polymers, and inanimate and animate products of biotechnology. The notification packages include test data relating to physiochemical properties, environmental behaviour and/or toxicity. NSN Regulations Multi-stakeholder Consultations were held between November 1999 and August 2001; representatives from Environment Canada, Health Canada, industry and public advocacy groups participated, and a report was produced with recommendations to improve the NSN regulatory framework and enhance its transparency.⁵⁹

108. All environmental measures notified by Canada to the WTO under the different agreements are contained in the WTO Environmental Data Base.⁶⁰ These include six notifications under the TBT Agreement, several under the Agreement on Agriculture, and one under the SCM Agreement.

109. As discussed above, where there are no health and /or safety concerns, Canada favours the use of voluntary labelling schemes to provide consumers with information about a particular product or service. Canada's main environmental labelling programme is Environmental Choice, a voluntary programme established by the federal government and currently operated under licence by a private

⁵⁸ See Environment Canada online information. Available at: <http://www.ec.gc.ca>.

⁵⁹ http://www.ec.gc.ca/Ceparegistry/documents/regulations/nsnr_nsp_e.pdf.

⁶⁰ WTO documents WT/CTE/W/118, 28 June 1999; WT/CTE/W/143, 22 June 2000; WT/CTE/W/195, 20 June 2001; WT/CTE/W/195/Corr.1, 12 October 2001; WT/CTE/EDB/1, 31 May 2002; and WT/CTE/EDB/1/Corr.13, 13 June 2002.

company, Terra Choice Inc. Just under 32,000 products and services have been certified to carry an EcoLogo label. Two key features of the programme are that it looks at the total impact of a product across its life cycle and the use of third party audits to verify the labelling claims.

(c) Sanitary and phytosanitary measures

110. The Food and Drug Act and Regulations are the main legal and regulatory instruments governing SPS food safety issues in Canada. The Health of Animals Act and the Plant Protection Act with their associated Regulations are the main legal and regulatory instruments governing animal and plant health SPS issues in Canada.

111. Health Canada is responsible for policy development and standard-setting with respect to food safety and nutrition. It also engages in food safety risk assessment, research, pre-market review and evaluation, surveillance of food-borne, water-borne and enteric illnesses, and assessment of the effectiveness of the Canadian Food Inspection Agency (CFIA) activities with respect to food safety. The CFIA centralizes all federally mandated food inspection services related to food safety, economic fraud, trade-related requirements, and animal and plant health programmes including quarantine services. The CFIA is responsible for preventing the introduction into the Canadian market of food products deemed unsafe, diseased animals or plants that pose a risk to public, animal or plant health. The CFIA may apply to a court for an interim injunction to prevent a contravention of the Food and Drug Act, or any other Act for which it is responsible. It has three regional Import Service Centers, which process documents and respond to information requests from importers across Canada for all goods regulated by the CFIA.

112. Canada is an active participant in the work of the WTO Sanitary and Phytosanitary Committee, the Codex Alimentarius Commission, the Office international des epizooties (OIE) and the International Plant Protection Convention of 1991. A total of 62 notifications were submitted to the SPS Committee between 2000 and mid 2002, a higher number than reported in the 2000 Review (40). Most of the notifications refer to proposed amendments to the Food and Drug Regulations; many of these amendments establish new maximum residue levels (MRLs) for various chemicals contained in edible fruit, vegetables, beans, and cereals. Other notifications refer to the approval of the use of certain enzymes for food production, or of certain pesticides or herbicides.

113. A few of the measures notified were emergency measures with a restrictive effect on imports from determined sources, for example the suspension of the importation of live animals and animal products from Argentina, European Union, and Uruguay following an outbreak of foot-and-mouth disease.⁶¹ At the end of 2002, this suspension had been lifted for the EU and Uruguay, but was still in place for Argentina. Another measure prohibits the importation of propagative or non-propagative material from nursery stock of host species, forest products with bark (logs) of host species, and soil from Germany, the Netherlands, the United Kingdom, Spain, twelve counties of the U.S. state of California, and one county in the U.S. state of Oregon to prevent the entry of the sudden oak death pest.⁶² This plant health restriction was still in place in late 2002.

114. Canada has applied import controls on live animals (ruminants), and their meat and meat products from countries that have confirmed cases of Transmissible Spongiform Encephalopathies (TSE), including BSE, in native animals, since the early 1990s. In 1990, Canada stopped importation of ruminants from the United Kingdom and Ireland. In 1994, it stopped the importation of cattle from

⁶¹ WTO documents G/SPS/N/CAN/98, 26 March 2001 (Argentina); G/SPS/N/CAN/96, 19 March 2001 (United Kingdom); G/SPS/N/CAN/99, 26 March 2001 (all EU countries); G/SPS/N/CAN/102, 4 May 2001 (Uruguay).

⁶² WTO documents G/SPS/N/CAN/97, 19 March 2001, and G/SPS/N/CAN/141, 26 July 2002.

all countries where BSE had been diagnosed. In 1996, Canada implemented a new BSE policy that allowed for importation of live animals (initially just cattle; extended to sheep and goats in 1998; then extended to all ruminants in February 2000), and their meat and meat products from countries assessed to be free from BSE. Other animal products (e.g. semen, hides and skins, dairy products) considered exempt from BSE restrictions by the OIE can be imported, subject to meeting other SPS import requirements.

115. Importation of live ruminants, their meat and meat products from any country requires a full risk assessment, taking advantage, where possible, of the work done by other NAFTA countries. Imports of permitted meat products from Brazil were temporarily suspended in February 2001, but resumed a few weeks later under new conditions. As of January 2003, Canada allowed commercial imports of meat and meat products from ruminants born, raised or processed in Argentina, Australia, Brazil, New Zealand, the United States, and Uruguay. Processed ruminant meat products may be imported from other countries with a recognized meat inspection system (e.g. UK, Italy, Poland); however, the ruminant meat must have been obtained from the above six countries only.

116. The CFIA currently manages a number of product-specific bilateral agreements and protocols with other countries on a wide range of food safety and animal and plant health issues. The authorities have noted that the purpose of this network of agreements is to ensure that Canada's food safety and animal and plant health standards, as well as other countries, are science-based and effectively adhered to in a manner that avoids unnecessarily disrupting trade.

117. Canada has been involved in six disputes involving the SPS Agreement since the beginning of the WTO; all were as a complainant and before the period under review, and five involved also the TBT Agreement.⁶³

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Export controls, restrictions and charges

(a) Main provisions

118. Most Canadian export controls are in place under the Export and Import Permits Act, administered by the Export and Import Control Bureau.⁶⁴ Section 3 of the Act, the Export Control List (ECL) contains articles controlled for any of the following purposes:

- to control the export of arms, ammunition, implements or munitions of war or articles of a strategic nature or value the use of which might be detrimental to the security of Canada;
- to encourage the further processing of certain natural resources in Canada;
- to ensure that there is an adequate supply and distribution of the article in Canada for defence or other needs;
- to limit the export of goods in circumstances of surplus supply and depressed prices; or
- to implement an intergovernmental arrangement or commitment.

⁶³ WTO documents WT/DS144/1, G/TBT/D/18, G/L/260, G/SPS/W/90, G/TBT/D/18, G/AG/GEN/27, 29 September 1998; WT/DS137/1, G/SPS/GEN/84, G/TBT/D/17, 24 June 1998; WT/DS135/1, G/SPS/GEN/72, G/TBT/D/15, 3 June 1998; WT/DS20/1, G/SPS/W/35, G/TBT/D/4, 22 November 1995; WT/DS48/1, G/SPS/W/71, G/TBT/D/7, 8 July 1996; 7/12, G/TBT/D/8, 19 July 1996. WT/DS18/1, G/L/28, G/SPS/W/29, 11 October 1995.

⁶⁴ The text of the Act is available in the Department of Justice online information. Available at: <http://laws.justice.gc.ca/en/E-19/51506.html>.

119. An export permit is required before an item included in the ECL may be exported (Table III.9).

Table III.9
Export control list

Products	
Group 1 – Dual Use List	Advanced materials; materials processing; electronics; computers; telecommunications; information security; sensors and lasers; navigation and avionics; marine; propulsion
Group 2 – Munitions List	All munitions
Group 3 – Nuclear Non-Proliferation List	All supplies and technology for nuclear production
Group 4 – Nuclear-Related Dual Use List	All supplies and technology for nuclear production
Group 5 – Miscellaneous Goods	Pancreas glands of cattle and calves (all destinations); human serum albumin (all destinations); logs of all species of wood (all destinations); pulpwood of all species of wood (all destinations); blocks, bolts, blanks, boards and any other material or product of red cedar that is suitable for use in the manufacture of shakes or shingles (all destinations); softwood lumber products (United States); peanut butter that is classified under tariff item No. 2008.11.10 of Schedule I to the Customs Tariff (all destinations); roe herring (all destinations); sugar-containing products (United States); sugars, syrups and molasses (United States); U.S. origin goods (all non-U.S. destinations); goods in transit; prohibited weapons
Group 6 – Missile Technology Control Regime List	All missile systems
Group 7 – Chemical and Biological Weapons Non-Proliferation List	Chemicals, precursors, biological agents, and related equipment
Group 8 – Chemicals for the Production of Illicit Drugs	All related chemicals

Source: Government of Canada online information. Available at: <http://www.dfait-maeci.gc.ca/~eicb/export/contente.htm>.

(b) Export controls for security purposes

120. Controls may be placed on exports of strategically controlled goods and technologies (Table III.9) and on exports to particular countries listed on the Area Control List (Angola and Myanmar as at mid-2002). In addition, the Act covers re-exports of goods originating in the United States, in order to enforce U.S. restrictions on exports of controlled goods as well as U.S. embargoes to certain countries. In 2001, both the Act and the Export Control List were amended to add certain U.S. origin goods on the ECL.⁶⁵

(c) Export restrictions for environmental purposes

121. Export restrictions for environmental purposes are generally maintained either pursuant to multilateral environmental agreements (MEAs), or to national environmental and resource conservation programmes. For example the exportation of species of wild fauna and flora from Canada can be restricted under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁶⁶ CITES provisions are implemented under Canada's Wild Animal and Plant Protection Act. The Basel Convention is implemented through hazardous waste trade regulations.

122. Under the Canadian Environmental Protection Act (CEPA), exports of certain substances are controlled because their manufacture, import or use in Canada is prohibited or severely restricted, or

⁶⁵ See *Canada Gazette*, Vol. 135 No. 2., p. 116 [Online]. Available at: <http://canada.gc.ca/gazette/part2/pdf/g2-13502.pdf>. Specifically, the changes relate to the addition of an item 5504 on the ECL, containing export of U.S. origin goods such as payloads for spacecraft, ground control stations, chemiluminescent compounds, microelectronic circuits, and nuclear weapons design and test equipment.

⁶⁶ The Canadian CITES Control List is available online at: http://www.cites.ec.gc.ca/control_12/index.html.

because Canada has accepted, through an international agreement, to control their export. These chemical substances are included in the Export Control List.⁶⁷ An amendment to the CEPA in 1999, among other things gave increased power to the Federal Government to control the transboundary movement of hazardous wastes and hazardous recyclable material, as well as new power to control the import, export, and transit of non-hazardous wastes for final disposal.⁶⁸ In January 2002, Environment Canada announced that it intended to revise the Export and Import of Hazardous Wastes Regulations to implement the 1999 amendments to the CEPA.⁶⁹ The authorities expected the new regulations to be published in the spring of 2003.

(d) Export restrictions for commercial purposes

123. Canada has traditionally imported a share of inputs for its clothing industry from MFN sources. Under the NAFTA "yarn forward" rule of origin, however, exports to the United States of clothing using these non-NAFTA originating inputs would not qualify as originating in Canada. Therefore, the NAFTA allows specified quota amounts (the Tariff Preference Level) of non-originating clothing and textiles products to be traded among partners duty free. In certain cases, notably woollen and cotton or man-made apparel, these tariff quotas are just about filled, suggesting that exports of such products to the United States are restrained.⁷⁰ The quotas have hardly been used for exports to Mexico.⁷¹

124. Under the Softwood Lumber Agreement with the United States, Canada applied until 2001 fees on exports of softwood lumber, over certain amounts, to the United States.⁷² A fee of US\$50 per thousand board feet was applied to exports of between 14.7 and 15.35 billion board feet, while a fee of US\$100 per thousand board feet was levied on exports above 15.35 billion board feet. Exports below 14.7 billion board feet were not subject to a fee. In exchange, the United States agreed not to initiate any anti-dumping, countervailing duty or safeguard investigation against these imports. The Agreement was in force between 1 April 1996 and 31 March 2001.⁷³ After its expiration, the United States initiated anti-dumping and countervailing duty investigations on Canadian softwood lumber exports.⁷⁴ In May 2002, the United States imposed countervailing and anti-dumping duties on imports of softwood lumber from Canada. In late 2002 Canada was challenging the U.S. measures in the NAFTA and the WTO (see Table AII.1). In the context of this review, the Canadian authorities stated that Canada remains open to pursuing a negotiated solution.

⁶⁷ For more information, see Environment Canada online information. Available at: http://www.ec.gc.ca/CEPARRegistry/subs_list/Export.cfm

⁶⁸ For details, see CEPA regulations online information. Available at: <http://canada.justice.gc.ca/FTP/EN/Regs/Chap/C/C-15.3/index.html>; and Environment Canada online information. Available at: <http://www.ec.gc.ca/cepa>.

⁶⁹ For more information, see Environment Canada online information. Available at: <http://www.ec.gc.ca/EPARRegistry/documents/participation/eihwrdisc.cfm#sect10.4.1>.

⁷⁰ For information on utilization levels see Department of Foreign Affairs and International Trade online information. Available at: <http://www.dfait-maeci.gc.ca/~eicb/textile/ntpl-exe-dec01-e.htm>.

⁷¹ See <http://www.dfait-maeci.gc.ca/~eicb/textile/ntpl-exe-dec01-e.htm>.

⁷² Article 11(1)(b) of the WTO Agreement on Safeguards stipulates that Members "shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or import side. These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members".

⁷³ For the text of the agreement see NAFTA online information. Available at: <http://www.nafta-sec-alena.org/images/pdf/softwoodagreement.pdf>.

⁷⁴ See also Chapter II(4)(iv) as the preliminary countervailing duty actions were the subject of a request by Canada for the establishment of a panel (WTO document WT/DS236/3, 8 February 2002).

125. Other products whose exportation requires a permit include the following, to ensure adequate supply in Canada:

- unprocessed fish from Quebec (see (4)(iii) below).
- logs and pulpwood of all species of wood. In addition, British Columbia, Ontario, and Quebec restrict out-of-province exports of logs. In Alberta, exports of logs out of the province require a permit which, according to the authorities, was granted in all cases in 2000-01.
- pancreas glands of cattle and calves (all destinations).
- human serum albumin (all destinations).
- blocks, bolts, blanks, boards, and any other material or product of red cedar that is suitable for use in the manufacture of shakes or shingles (all destinations).
- unprocessed roe herring⁷⁵, to ensure access to a "reasonable" supply for processors.

126. In a WTO Panel established in September 2000, Canada challenged various U.S. laws and practice, considering that an export restraint was not a "financial contribution" and, therefore, could not be considered to be a subsidy within the meaning of the WTO Agreement on Countervailing Measures (SCM). The Panel agreed with Canada that an export restraint as defined by Canada was not a "financial contribution", but concluded that the various laws and practice in question in the dispute did not require the United States to treat export restrictions as financial contributions and thus were not inconsistent with the Agreement.⁷⁶

(e) Export duties and taxes

127. In late 2002, export duties were imposed only on Canadian-manufactured tobacco products. Export duties may, however, be imposed under the Export Act on logs and pulpwood as well as on certain ores.⁷⁷

128. In 1994, Canada imposed an export tax to reduce the risk that Canadian-manufactured tobacco products that had been exported tax-free to the United States would be smuggled back into Canada and sold illegally without payment of tax. In April 2001, Canada announced a comprehensive new tobacco strategy designed to discourage both smoking and contraband, including a revised export tax (see also section 2(iv) above). Under the Excise Tax Act, exports of Canadian-produced cigarettes, tobacco sticks, and other manufactured tobacco are subject to a two-tiered tax, with different rates for exports up to a threshold of 1.5% of a manufacturer's annual production (Can\$0.075 per cigarette) and for exports above the threshold (Can\$0.1475 per cigarette). The tax on exports up to the 1.5% threshold is refundable to the foreign importer and Canadian manufacturer upon proof of payment of foreign taxes. The tax on exports over the 1.5% threshold is not refundable and approximates the total federal and provincial taxes otherwise applicable in the lowest-tax jurisdiction in Canada. The new export tax regime and rebate mechanism seeks to ensure that exported Canadian products bear either Canadian federal excise tax or U.S. federal excise tax. According to the authorities, as a result, the supply of tax-free Canadian tobacco products that could be smuggled back into Canada has been greatly reduced.

(ii) Export financing and other assistance

129. Since Canada's last Review in 2000, two of the main statutes governing export assistance and promotion have been amended (see below). Both the federal and provincial governments encourage a

⁷⁵ DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/~eicb/notices/ser52-e.htm>

⁷⁶ WTO document WT/DS194/R, 29 June 2001.

⁷⁷ The text of the Export Act is available online at: <http://laws.justice.gc.ca>.

partnership between companies and government to generate exports, and may assist exporting companies by providing information, marketing assistance, grants, financing and guarantees, insurance or other services. Institutions that focus essentially on the agri-food sector, such as the Canadian Wheat Board, as well as Canada's agricultural export subsidy notifications are described in Chapter IV(2)).

130. The main institutions involved in export support to industrial and services companies are Industry Canada, the Canadian Commercial Corporation, and Export Development Canada (EDC). These provide a range of support measures ranging from technology and marketing support to financial support. WTO panels have found some EDC financing to constitute export subsidies. The Department of Foreign Affairs and International Trade (DFAIT) makes available to exporters advice from geographical desks, funds for the promotion of cooperative linkages such as Going Global, and export programmes such as the Program for Export Market Development (PEMD), Canada.

(b) Export Development Canada

131. The government-owned EDC is Canada's official export credit agency. In December 2001, amendments to the Export Development Act of 1993 made it a legal requirement for EDC to review the environmental effects of projects, and replaced the name Export Development Corporation with Export Development Canada. The amendment requires EDC, before entering into a project-related transaction, to determine whether the project is likely to have adverse environmental effects and if so, whether EDC is justified in entering into the transaction; and exempting EDC from the application of the Canadian Environmental Assessment Act.

132. More broadly, the legislative review focused on social responsibility issues which, in addition to environmental review, included public accountability/disclosure, anti-corruption, and human rights considerations. EDC has or is in the process of developing methodologies for incorporating these concepts into its operating procedures. The review otherwise endorsed EDC's mandate, role, strategic direction, and its commercial principles. The amendments have no effect on EDC's commercial activity as such, although environmental review procedures are expected to have business impacts.

133. As Canada's official export credit agency, EDC is authorized to borrow, lend, guarantee loans, provide export credits insurance, insure foreign investment against political risks, and to issue guarantees regarding export transactions. Its mandate also includes the power to incorporate subsidiaries, make equity investments, enter into joint ventures, engage in leasing to users abroad, as well as provide export-related domestic financing and credit insurance. EDC finances its activities by borrowing under a government guarantee, whereby the Government of Canada is ultimately responsible if EDC fails to repay. The EDC does not pay income or corporate taxes, does not normally pay dividends, and benefits from a sovereign credit rating that reduces borrowing costs. An arrangement between EDC and the Canadian Government provides for a sharing of the cost of debt forgiveness provided *ex gratia* under Paris Club Agreements.

134. The EDC maintains two accounts, the Corporate Account and the Canada Account. The Corporate Account is in principle financially independent and operates on commercial principles. The Corporate Account in some cases competes with the private sector; it also supplements private sector financing, adds capacity and/or provides services that are not available from the private sector.

135. The Canada Account has been used to support transactions that the Federal Government deems to be in the "national interest" but that the EDC cannot support under the Corporate Account for reasons of exceptional risk. The national interest involves considerations such as the employment generated or sustained by the transaction; the importance of the transaction to the exporter; foreign

policy considerations, including Canada's bilateral relationship with the country in question; and the importance of the market to Canada. Each Canada Account transaction requires ministerial authorization.

136. Table III.10 reflects the major concentrations of EDC's total commercial and sovereign exposure by country for all operations at the end of 2001. The most striking change since 1999 is the increased exposure to the United States; gross loans receivable with U.S. risks increased by 110% to Can\$10.3 billion; short-term insurance policies and guarantees increased by 51%; and medium-term insurance policies and guarantees increased by 86%.

Table III.10
EDC's total financial exposure by country, 2001
(Can\$ million)

Country	Loans portfolio		Insurance policies and guarantees outstanding		Investments and derivative financial instruments ^a	Total	2001 exposure (%)	1999 exposure (%)
	Gross loans receivable	Undisbursed commitments	Short-term	Medium-term				
United States	10,270	1,863	4,272	2,542	1,171	20,118	41	27
Canada	2,203 ^b	532 ^b	203	2,518 ^c	1,172	6,628	14	19
Mexico	1,322	464	178	328	-	2,292	5	3
China	1,090	789	167	238	-	2,284	5	5
Brazil	884	160	301	324	-	1,669	3	4
U.K.	908	-	199	103	24	1,234	3	4
Indonesia	964	34	45	9	-	1,052	2	3
Peru	934	-	10	107	-	1,051	2	3
Venezuela	675	156	43	15	-	889	2	2
Germany	243	-	223	32	214	712	1	2
Other ^d	5,733	940	1,948	2,040	67	10,728	22	28
Total	25,226	4,938	7,589	8,256	2,648	48,657	100	100

a Investments include amounts represented by cash, marketable securities, and investments.

b Includes the impact of one transaction signed in 1997 for Can\$1,497 million with recourse to the Consolidated Revenue Fund of Canada in the event of a loan default.

c Includes Can\$2,366 million of surety bond insurance where risk rests with the exporter. A total of 54% of the exports insured in the surety bond programme are to the United States. The balance represents exports to other countries.

d Includes 162 countries with total exposure ranging from Can\$0.001 million to Can\$609 million.

Source: Export Development Corporation (2001) *Annual Report* [Online]. Available at: <http://www.edc.ca>.

137. Over 1997-01, gross loans receivable increased considerably. This increase came mostly from the continued growth in commercial financing, while the share of sovereign loans continued to decline. In 1997, the ratio of commercial to total loans was 43%, while by 2001 it had increased to 70%. In 2001, new signing volume to commercial borrowers accounted for 99% of total signing volume. During 2001, 252 customers were supported through loans financing (up from 204 customers in 2000).⁷⁸

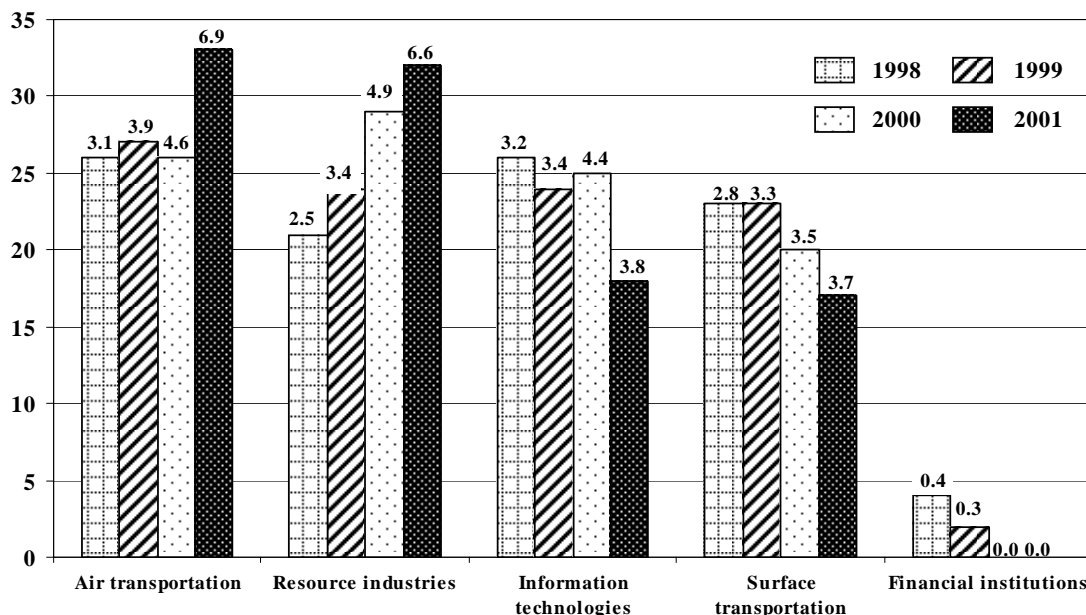
138. The commercial exposure by sector has shifted toward air transportation and resource industries, while information technologies and surface transportation have declined since 2000 (Chart III.6). Exposure to air transport and to resource industries each amounted to over Can\$6.6 billion, and over one third of the total. Five counterparties comprising the EDC's largest commercial exposure balances collectively represent Can\$5.3 billion, or 25%, of the total performing

⁷⁸ Export Development Corporation (2001), p. 41.

commercial exposure. Of these five, two are within the surface transportation sector, comprising Can\$2.7 billion, or 13% of the total. The remaining three counterparties are within the air transportation sector, comprising Can\$2.6 billion, or 12% of exposure.

Chart III.6
Commercial loans exposure, by sector, 1998-01

% of total exposure



Note: The number above the bar represents total exposure in billion US\$.

Source: EDC Annual Report, various issues.

139. The ratio of below-investment-grade loans to total commercial exposure increased significantly for loans in the air transportation sector in 2001. This was the result of numerous credit downgrades in the fourth quarter of 2001 reflecting the financial difficulty the sector has been experiencing. Commercial exposure in the information technologies sector declined 12% from 2000, reflecting impairments and contraction in this sector.⁷⁹

140. Canada's support to the regional aircraft industry continued to be the subject of frictions with Brazil. As noted in the Secretariat Report for Canada's previous Review, a WTO panel concluded in 1999 that certain financing transactions supporting the export of Canadian regional aircraft under the Canada Account constituted a prohibited export subsidy.⁸⁰ As a result of the WTO Panel, Ministerial guidelines now state that all Canada Account transactions must comply with the OECD Arrangement on Guidelines for Officially Supported Export Credits (the OECD Arrangement).⁸¹

⁷⁹ Loans are classified as impaired when EDC no longer has assurance that the full amount of principal and interest will be collected in accordance with the terms of the loan agreement.

⁸⁰ WTO document WT/DS70/R, 14 April 1999.

⁸¹ WTO document WT/DS70/8, 26 November 1999.

141. Considering that the measures taken to comply with the Panel's recommendation were not consistent with the WTO Agreement on Subsidies and Countervailing Measures (SCM), Brazil requested that the matter be referred to the original panel. The subsequent Panel Report concluded that Canada had failed to withdraw the Canada Account assistance to the Canadian regional aircraft industry within 90 days.⁸² According to the authorities, no further steps are required of Canada by way of implementation.

142. In January 2001, a new related dispute began when Brazil, *inter alia*, claimed that other subsidized export credits and loan guarantees were being extended to Canada's regional aircraft industry by both the Corporate Account and the Canada Account, notably in the case of a sale of Bombardier aircraft to Air Wisconsin Airlines Corporation of the United States.⁸³ These claims resulted in a new panel established in May 2001 (Table AII.1). The Panel found that the Canada Account and the Corporate Account were as such compliant with Canada's WTO obligations, and that financing offered by EDC at market rates does not confer a benefit and therefore does not constitute a prohibited export subsidy. However, the Panel also found that five of 13 specific transactions challenged by Brazil, including Canada Account financing to Air Wisconsin and Air Nostrum and three Corporate Account transactions with Comair, constituted prohibited export subsidies.⁸⁴

(c) The Canadian Commercial Corporation

143. The Canadian Commercial Corporation (CCC) is Canada's export contracting agency, specializing in sales to foreign governments and international institutions. By selling through CCC, Canadian companies gain direct access to U.S. defence and aerospace markets under the Canada-U.S. Defence Production Sharing Agreement (DPSA). In general, CCC's government status enables it to structure commercial sales on a government-to-government basis. This facilitates transactions with government agencies in many countries, and thus improves exporters' prospects in public-sector procurement markets around the world. The CCC also helps Canadian exporters win sales in private-sector markets.⁸⁵

144. The Canadian Commercial Corporation Act provides the CCC with a broad range of powers including, in particular, "exporting goods and commodities from Canada either as principal or as agent, in such manner and to such extent as it considers advisable." In particular, CCC offers foreign buyers a government-backed guarantee of contract performance. This guarantee raises the credibility of Canadian companies, particularly small and medium-sized firms. It increases their ability to win export contracts on improved terms and to obtain working capital from commercial sources. The CCC Act was amended in March 2002 to allow the CCC to borrow funds on capital markets, and to charge fees for its services.

145. CCC also facilitates access to commercial sources of preshipment export financing through arrangements with 19 partner banks and financial institutions. CCC's Progress Payment Program assists small Canadian exporters that have insufficient working capital to undertake specific export contracts. A project line of credit up to Can\$2 million may be set up to cover a company's production costs for any particular export sale. This project line of credit is repaid with funds received from the buyer once the goods have been shipped from Canada. According to the authorities, the project line of credit's interest rates are offered at market rates. The authorities have explained that in case of default by the company the financial institution would sell the security to the Canadian Commercial

⁸² WTO document WT/DS70/AB/RW, 21 July 2000.

⁸³ See Industry Canada (2001), "Canada Ready to Match Brazilian Financing Terms to Preserve Aerospace Jobs", News Release 10 January 2001 [Online]. Available at <http://www.ic.gc.ca>.

⁸⁴ WTO document WT/DS222/R, 28 January 2002.

⁸⁵ See CCC online information. Available at: http://www.ccc.ca/english/tnh_default.cfm.

Corporation for a value equivalent to the project line of credit. CCC would then dispose of the acquired work-in-progress and evaluate available recourse against the defaulting company.

146. Total CCC export sales reached nearly Can\$1.34 billion in 2001-01. Some 273 exporters exported to 31 countries through CCC, with about half of total sales directed to the U.S. Department of Defence and NASA. Vehicle and rail equipment recorded the highest percentage (45%) of export contracts through the CCC in 2000-01, followed by aerospace (18%) and armament.⁸⁶

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Competition policy

(a) Institutional and legal framework

147. The Competition Act of 1986, as amended in 1999, 2000, and 2002 is the main legislation governing competition issues in Canada. The Commissioner of Competition heads the Competition Bureau, which reports to the Government. In addition to applying the Competition Act, the Bureau is responsible, formally since 1999, for the administration and enforcement of the Consumer Packaging and Labelling Act, the Textile Labelling Act, and the Precious Metals Marking Act.⁸⁷ The Commissioner is responsible for the administration, application, and enforcement of the provisions of these Acts. Since Canada's last Review, in 2000, the scope of activities and enforcement power of the Commissioner of Competition have been widely increased.

148. With respect to enforcement, in non-criminal matters the Commissioner may file an application with the Competition Tribunal, a specialized quasi-judicial body, that hears and decides all applications made under relevant parts of the Competition Act.⁸⁸ Alleged violations of the Competition Act's criminal provisions are generally referred to the Attorney General. The Bureau also has the statutory right to intervene before federal regulatory boards and tribunals such as the Canadian Radio-Television and Telecommunications Commission and the Canadian International Trade Tribunal, or make representations to provincial boards, upon invitation or with the consent of the board in question.

149. Canadian competition law was amended in July 2000 by Bill C-26: An Act to amend the Canada Transportation Act, the Competition Act, the Competition Tribunal Act and the Air Canada Public Participation Act and to amend another Act in consequence (ACTA). The ACTA put in place a special regime for domestic airlines in the Competition Act, as a result of the acquisition by Air Canada of Canadian Airlines (see Chapter IV(7)).

150. The Competition Act was also amended by the entry into force, on 24 October 2001, of An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions (see Chapter IV(8)).

151. Bill C-23: An Act to amend the Competition Act and the Competition Tribunal Act (2002 Act) entered into force on 21 June 2002 and introduced substantive changes to Canadian competition policy legislation. The 2002 Act gives the Canadian Competition Tribunal significant

⁸⁶ Canadian Commercial Corporation (2001).

⁸⁷ More information on the activities of the Competition Bureau is available online at: <http://strategis.ic.gc.ca/SSG/ct01254e.html>. The complete text of the Competition Act, including recent amendments, is available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/C/C-34.html>.

⁸⁸ Competition Tribunal online information is available at: <http://www.ct-tc.gc.ca>. The Competition Tribunal Act is available at: <http://canada.justice.gc.ca>.

new powers, including the authority to award costs in respect of reviewable matters, to make summary dispositions when it finds no merit to the case or no genuine defence, and to hear references (questions involving a specific aspect of a case or interpretation of the law). The 2002 Act also allows private parties to apply directly to the Competition Tribunal to address matters regarding refusal to deal, tied selling, exclusive dealing, and market restrictions.

(b) International cooperation

152. Canada considers international cooperation in competition policy as an important element to accompany trade liberalization, and has addressed the issue at bilateral, regional, and multilateral levels. Canada also considers that cooperation on cross-border competition matters is a key element in maintaining and encouraging competition in Canada.

153. The 2002 Act (Bill C-23) introduced a new framework to facilitate cooperation between foreign competition authorities (Mutual Legal Assistance with Foreign States), in cases where the laws of the foreign State that address the conduct are substantially similar to Canadian law. The authorities noted that this will allow the gathering of evidence for and from foreign jurisdictions with respect to non-criminal competition matters. The framework contains a section that extends evidence gathering to orders for the virtual presence (i.e. video link) of a person in the foreign State. The person who is compelled to provide evidence or a statement will attend at a fixed place and by means of technology will be virtually present in the judicial proceedings taking place in the State that requested the evidence by video link.

154. At the bilateral level, Canada has signed a number of cooperation arrangements on competition policy issues in the period under review: in 2000 an arrangement with the competition authorities of Australia and New Zealand, and in 2001, a Memorandum of Understanding with Chile, and a cooperation agreement with Mexico, as well a Chapter on Competition Policy in the Canada-Costa Rica Free Trade Agreement. These complemented the agreements signed with the United States in 1995 and with the European Union in 1999. In general terms, competition policy cooperation agreements have notification requirements with respect to enforcement measures that may affect the interests of the other party, including: anti-competitive activities; mergers and acquisitions; remedies by a competition authority that would require or prohibit conduct in the territory of the other party; or involve one of the parties seeking information located in the territory of the other party.

155. The Cooperation Arrangement Between the Commissioner of Competition (Canada), the Australian Competition and Consumer Commission and the New Zealand Commerce Commission Regarding the Application of their Competition and Consumer Laws, entered into force in October 2000. The cooperation and coordination provisions are limited to sharing information where appropriate and practicable, and coordination of enforcement activities when pursuing enforcement activities with regard to the same or related matters. Meetings of the officials of the parties are to take place periodically.

156. Chapter XI on Competition Policy of the Canada-Costa Rica Free Trade Agreement includes mechanisms for cooperation on and information of anti-competitive activities in the territory of the one party that may affect the other party's interests. Issues arising from the Chapter's application may be addressed either in bilateral consultations to be held at least once every two years, or pursuant to a written request from either Canada or Costa Rica. Where a mutually satisfactory resolution cannot be reached through consultations, issues are to be referred to the Free Trade Commission, comprising

cabinet-level representatives of the parties or their designees. The Chapter was the subject of a joint communication by the two countries to the WTO.⁸⁹

157. The Memorandum of Understanding between the Commissioner of Competition (Canada) and the Fiscal Nacional Económico (Chile) Regarding the Application of their Competition Laws was signed and entered into force on 17 December 2001. The purpose of the Memorandum is to promote cooperation and coordination between the two countries and to reduce the effect of potential differences in the application of competition law in Canada and Chile. The parties agreed to cooperate and share information and, when pursuing enforcement activities with regard to the same or related matters, coordinate their enforcement activities where appropriate and practicable.

158. The Agreement between the Government of Canada and the Government of Mexico regarding the Application of their Competition Laws was signed in November 2001. The agreement is similar to the 1995 agreement between Canada and the United States, as well as the 2000 agreement between Mexico and the United States. The signing of the agreement completes the cooperative framework for competition law enforcement in the NAFTA region, illustrating that competition authorities from all three NAFTA countries want to ensure that anti-competitive business practices do not detract from the benefits of free trade. In November 2002, the agreement had not yet come into force pending Senate approval in Mexico.

159. The authorities have noted that, during 2000-02, the Competition Bureau worked closely with its counterparts around the world, primarily in the European Union and the United States, but also in other jurisdictions. This cooperation, which encompassed work on both specific cases and general policy issues, included the exchange of documents, meetings and other contacts. Case-related cooperation dealt primarily with merger review, and cartel and deceptive marketing practices enforcement, and included notifications of enforcement actions, exchange of information on the parties and markets, the economic analysis of particular cases, and the coordination of enforcement actions, including remedies. Merger cases included those involving Lafarge and Blue Circle, GE and Honeywell, Nestlé and Ralston Purina, and Seagram/Diageo and Pernod Ricard. Cartel investigations included those relating to graphite and carbon products, bulk vitamins and related products, and methylglucamine.

160. In June 2002, Canada and Japan launched negotiations for a cooperation agreement regarding competition law enforcement. The proposed agreement is expected to provide a framework for coordination and cooperation to deal effectively with cross-border anti-competitive business activities affecting both countries.

161. Canada also seeks to promote cooperation on competition issues at the regional level, through the NAFTA Working Group on Trade and Competition, the Working Group on Competition Policy in the FTAA negotiations, and the APEC workshop on Competition Policy and Deregulation. Canada observes the revised 1995 OECD Recommendation concerning Cooperation between Member countries on Restrictive Business Practices and International Trade, which provides for notification, exchange of information, mutual assistance in investigations, coordination of investigations positive comity, consultations, and a conciliation mechanism in the field of competition law enforcement, as well as the OECD Recommendation on Hard Core Cartels.

162. Multilaterally, Canada has been active in the WTO Working Group on the Interaction between Trade and Competition Policy, to which it has submitted several communications. Canada's general position in the WTO has been that, "as governmental trade barriers fall, competition authorities need to assume a greater role in the market liberalization process to ensure that the

⁸⁹ WTO document WT/WGTCP/W/173, 2 July 2001.

expected benefits of the market economy are not undermined by the anti-competitive behaviour of private actors."⁹⁰ Canada also considers that, since the rise in world trade and investment flows has also increased the possibility for concurrent jurisdiction of two or more competition authorities over the same international economic activity, it is necessary for competition authorities to cooperate internationally.⁹¹ In Canada's view, a multilateral agreement on competition policy would provide a flexible framework for cooperation, which could include a variety of activities related to developing institutional capacity, sharing non-confidential information among competition authorities and administering the agreement.⁹² The WTO, in Canada's view, is in a position to furnish all the essential elements of a multilateral agreement on competition, but should not become a *supra*-national competition authority.

163. With regard to multilateral cooperation, Canada actively participates in International Competition Network (ICN), which brings together agency representatives and competition experts to develop best practice recommendations and to foster convergence in enforcement policy approaches. The Commissioner of Competition recently led the ICN's Interim Steering Group to establish a new forum to discuss practical policy issues of common concern. Canada also maintains a technical assistance programme with developing countries, through which Canadian officials assist in the conceptualization and drafting of a national competition statutes in countries without such legislation. Assistance is also provided on the design of enforcement programmes and capacity building.

(c) Enforcement and other activities

164. A review of competition cases is published annually by the Competition Bureau. In the fiscal year 2000/01, the Bureau received 16,570 complaints and information requests, up from 1,424 in the fiscal year 1995/96 (Table III.11). Misleading advertising and deceptive marketing practices made up for most of the cases. In fiscal year 2000/01, prosecutions have led to companies being fined approximately Can\$18.7 million.

165. Merger examination activity has continued to increase. In 2000-01, the Competition Tribunal delivered judgements on two litigated merger cases involving propane and waste, which were appealed, and several merger examinations. The Bureau also looked at vertical issues concerning media convergence. Other industries with transactions that raised competition concerns included pulp and paper, food services, food processing, and broadcasting.⁹³ Since 2000, the Competition Bureau has also received and examined complaints that Air Canada has abused its dominant market position (see Chapter IV(7)). Salient criminal cases analysed during the period under review included misleading advertising, false telemarketing, deceptive marketing practices, false or misleading representation.

166. With respect to the activities of international cartels, in fiscal year 2000-01 fines totalled more than Can\$16 million. Firms fined in excess of Can\$1 million included SGL Carbon Aktiengesellschaft for its participation in a conspiracy concerning graphite electrodes; Daicel Chemical Industries Ltd for a conspiracy involving sorbates; Ueno Fine Chemicals Industry Ltd. for participating in a conspiracy related to preservatives used in the food industry; and Pfizer Inc for its involvement in a conspiracy concerning a food preservative agent.

⁹⁰ WTO document WT/WGTCP/W/155, 19 December 2000. See also document WT/WGTCP/W/183, 19 April 2002.

⁹¹ WTO document WT/WGTCP/W/146, 12 September 2000.

⁹² WTO document WT/WGTCP/W/202, 12 August 2002. Additional information on Canada's views on competition policy may be found in WTO document WT/WGTCP/W/174, 2 July 2001.

⁹³ For a complete description of the mergers reviewed by the Bureau in 2000-01 and 1999-00, refer to Strategies online information. Available at: http://www.strategis.ic.gc.ca/pics/ct/perform2_e.pdf.

Table III.11
Selected activities of the Competition Bureau, 1997-01

	1997/98	1998/99	1999/00	2000/01
Number of complaints, examinations, inquiries and advisory opinions				
Total complaints/information requests	6,939	11,087	13,803	16,570
of which Civil matters	503	819	613	618
Criminal matters	1,285	937	1,945	966
Fair Business Practices Branch activities	5,600	8,730	11,240	14,986
Examinations (two or more days of review)	870	601	655	711
Disposition of inquiries				
Inquiries formally discontinued	29	21	18	11
Matters referred to the Attorney General of Canada	8	8	12	14
Matters referred where further action is not warranted	2	0	1	0
Prosecutions or other proceedings commenced	6	8	9	14
Applications to the competition tribunal	8	5	4	6
Merger examinations				
Examinations commenced	320	309	361	373
Examinations concluded	340	302	338	389
Posing no issue under the Act	406	346	392	381
With pre-closing restructuring	0	0	2	0
With post-closing restructuring and undertakings	3	1	6	5
With consent orders	1	2	1	1
Through contested proceedings	0	2	0	0
Parties abandoned proposed mergers	0	3	1	2
Advance ruling certificates issued	123	186	128	215
Advisory opinions issued (included in total examinations concluded)	3	7	3	2
Examinations ongoing at year-end	37	44	67	54
Total examinations during the year	377	346	405	443

Source: Competition Bureau.

(ii) Financial and other assistance to business

167. Canada maintains a number of financial assistance programmes for businesses including programmes run by Crown corporations, such as the Business Development Bank, or provided in the context of alliances between a Crown Corporation and a private sector bank.⁹⁴ Regional programmes include the Atlantic Canada Opportunities Agency (ACOA), the Canada Economic Development for Quebec Regions Agency, and Western Economic Diversification. Some programmes are run by provincial governments. Assistance may take the form of financial contributions, loans, tax breaks or specific services (information, marketing, audit, and analysis). The main recipients of assistance include the agri-food sector, and the aircraft industry. This section focuses on non-agri-food sectors (for agri-food, see Chapter IV(2)).

(a) WTO participation

168. Information on certain subsidy programmes is provided in Canada's notifications under the Agreement on Subsidies and Countervailing Measures (SCM). Canada's latest notification, for the period 1999/00, describes agricultural, cultural (book and magazine publishing), and industrial goods

⁹⁴ For example, see Strategis, "Sources of Assistance" [Online]. Available at: <http://strategis.ic.gc.ca/SSG/sc01562e.html>.

programmes, regional development assistance extended by the Federal Government, and shared-cost federal/provincial assistance.⁹⁵ Expenditure under notifiable industrial subsidy programmes totalled about Can\$1 billion in 1999/00, up from Can\$850 million in 1997/98.⁹⁶ No province has indicated to the federal government that it has subsidies that are subject to the notification requirements of the SCM Agreement.⁹⁷

169. Over the past two years, Canada has participated actively in WTO negotiations to reduce trade-distorting subsidies in the goods sector, describing effective rules and disciplines on the use of government subsidies as critical to the reduction of distortions to trade and investment and to the promotion of global competition. In this context, Canada has called for clarification of a number of provisions contained in the SCM Agreement.⁹⁸ Regarding the issue of fisheries subsidies specifically referred to in the Doha Ministerial Declaration, Canada's preference has been to support generic subsidy disciplines rather than a sectoral approach.

(b) Indicators of assistance

170. Statistics Canada's Provincial Economic Accounts provide one of the few available indicators of the value of subsidies and capital transfers to business, both by the Federal Government and by provincial and territorial governments. Data suggests a modest overall increase in current and capital assistance extended by the provinces to businesses in 1999 and 2000 and a larger increase in 2001 (Chart III.7). The latter mostly reflected Alberta's electricity auction rebate and natural gas rebate. At Can\$18 billion, total financial assistance that year amounted to 1.7% of GDP at factor cost, up from 1.3% in 1998. Chart III.8 excludes tax expenditures, which also constitute an important form of assistance or incentives to business. Finance Canada provides an annual overview of federal tax expenditure.⁹⁹

(c) Selected federal measures and programmes

Technology Partnerships Canada (TPC)

171. Established in 1996, TPC is a technology investment fund that invests in private sector companies, and shares in both the risks and rewards of their projects; the rewards to the Government consist of both financial returns and economic benefits to Canada. In 1999, TPC was found by a WTO panel to provide subsidies to the Canadian regional aircraft industry that were contingent upon export performance; it has since been amended.¹⁰⁰ TPC investments are typically conditionally repayable, with terms negotiated on a case-by-case basis. TPC's sharing ratio will normally range between 25% and 33% of eligible costs of the project, except in exceptional cases where the sharing ratio may reach 50%. Examples of investments since Canada's last Review include fuel cell technology, aircraft data communications systems, motor-vehicle-powering ethanol, aerospace systems, aircraft landing gear, and management system for aircraft fault resolution.¹⁰¹

⁹⁵ WTO document G/SCM/N/60/CAN, 10 June 2002.

⁹⁶ WTO document G/SCM/N/48/CAN, 9 May 2000.

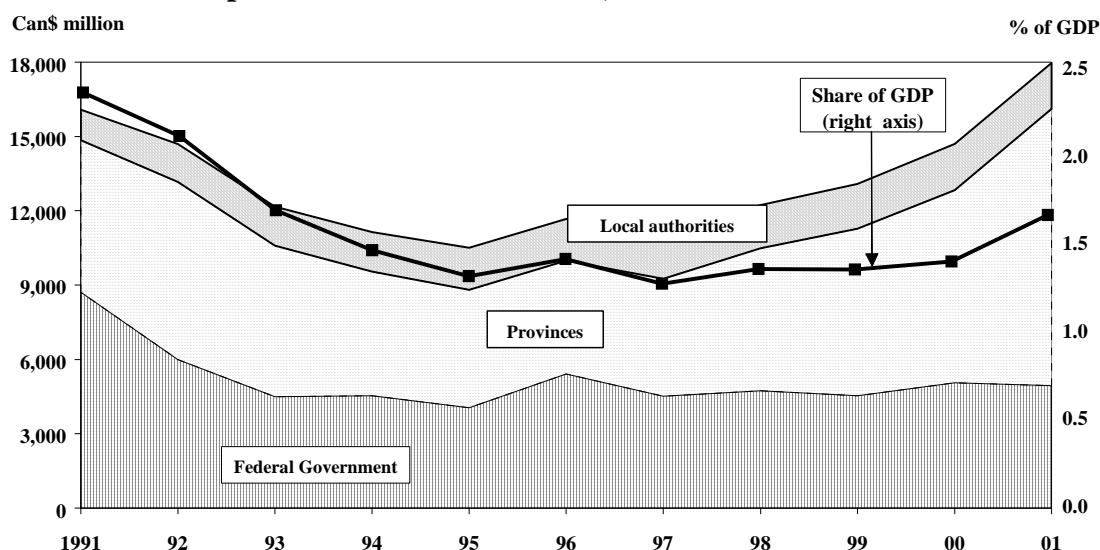
⁹⁷ WTO document WT/TPR/M/78, 5 February 2001.

⁹⁸ WTO document TN/RL/W/1, 15 April 2002.

⁹⁹ See "Tax Expenditures and Evaluations 2002", Finance Canada online information. Available at: http://www.fin.gc.ca/toce/2002/taxexp02_e.html. A discussion of the theoretical underpinnings to tax expenditures is provided at: http://www.fin.gc.ca/toce/2000/taxexp_e.html. Detailed information on the various tax expenditure is available at: http://www.fin.gc.ca/toce/2000/taxexpnot_e.html.

¹⁰⁰ WTO documents WT/DS70/R, 14 April 1999 and WT/DS70/AB/R, 2 August 1999. See also Industry Canada online information. Available at: <http://strategis.ic.gc.ca/SSG/tp00245e.html>.

¹⁰¹ TPC News Room, available online at: <http://strategis.ic.gc.ca/SSG/tp00179e.html>.

Chart III.7**Current and capital assistance to business, 1991-01**

Note: Subsidies and capital transfers to business and persons, national accounts definition (excluding tax breaks). Federal transfers include agricultural subsidies, business subsidies and payments to government-owned enterprises, such as the Canada Mortgage and Housing Corporation. Capital transfers to persons exclude transfers from the personal sector regarding the actuarial surplus of the government employee pension accounts.

Source: WTO Secretariat calculations, based on Statistics Canada, *National Economic and Financial Accounts (13-001)*; and data provided by the authorities.

172. Following the WTO ruling, Canada was required to make adjustments to the administration of TPC support for the Canadian regional aircraft industry. Thus, TPC's contribution agreements for the industry were amended to terminate all obligations to disburse funds effective November 1999; as a result, some Can\$16.4 million of funding pursuant to those agreements was cancelled. New terms and conditions have been issued, as well as a new operating framework and a new investment application guide. Reflecting the WTO ruling, export performance is not a consideration of TPC, and eligible activities have been redefined based on the WTO definitions for industrial research and pre-competitive development.¹⁰²

Regional assistance

173. As described in Canada's subsidy notifications, the Federal Department of Western Economic Diversification was established in 1987 to promote the development and diversification of the economy of Western Canada. It disbursed both non-repayable grants and conditionally repayable contributions, mostly to small and medium-sized business organizations in Western Canada. The authorities have explained that after 1995 the Department virtually eliminated direct assistance to businesses. In 2000-01, assistance under the programme included non-profit research, and partnerships with universities, communities, business service delivery organizations, and industry-wide "systemic" projects. The latter are intended to benefit an entire industry or sector and not,

¹⁰² Further details may be found in TPC online information. Available at: <http://strategis.ic.gc.ca/SSG/tp00212e.html>.

according to the authorities, to provide direct support to any one company. The Department's total programme expenditure was close to Can\$200 million in 2000-01.¹⁰³

174. The Federal Government, through Industry Canada's Federal Economic Development Initiative (CFDC) in Northern Ontario (FedNor, also described in Canada's latest subsidy notification) provides operational funding, support, and advice to a network of 54 Community Futures Development Corporations located throughout Ontario. In turn, these non-profit organizations provide repayable financing of up to Can\$125,000 as well as loan guarantees and equity investments to small businesses located in Ontario. According to Industry Canada, all loans are on commercial terms. Available data on the operation of the CFDC programme, indicate that between 1986 and March 1999, 11,900 loans exceeding Can\$300 million were distributed to clients. Total leveraged loans and owner equity amounted to Can\$500 million.¹⁰⁴

175. In order to assist the development of the small and medium-sized business (SME) sector, in 2001 FedNor and the Credit Unions of Northern Ontario formed a strategic alliance that, *inter alia*, will supply capital to small and medium-sized businesses in Northern Ontario. Eligible companies must have less than 250 employees and annual total sales of less than Can\$20 million. Credit Unions can grant these companies loans of Can\$25,000-500,000. Interest rates charged under this programme will not be less than the prime rate available to Credit Union members, plus 3%. Projects that involve refinancing or do not result in new or increased economic activity are not eligible. FedNor assumes a share of the risk associated with the establishment of the associated Can\$15 million commercial loan fund.

176. FedNor and the Business Development Bank of Canada (BDC) have created a Can\$25 million fund for viable projects initiated by small businesses in Northern Ontario. New and existing businesses qualify for this fund.

177. The Federal Department of Fisheries and Oceans has in the past run an array of programmes to support the fisheries sector, sometimes in coordination with provincial authorities (see below). The authorities explained in the context of this Review that the Federal Government has phased out all contributions aimed at price and vessel support. In recent years, federal assistance has focused largely on advancing fisheries conservation objectives through efforts to reduce fishing capacity and dependence on the fishery (e.g. licence buyback and other adjustment programmes). In the fish-processing industry, there has been a moratorium since 1994 on federal public expenditures for primary and most secondary processing activities; there are no plans to remove this moratorium.

(d) Selected provincial assistance measures and programmes

178. Provinces also extend financial and other assistance to business in support of employment or other objectives. For example, as noted in the Secretariat Report for Canada's previous Review, the pulp mill of Skeena Cellulose at Prince Rupert received financial assistance from the Province of British Columbia. As a result, the British Columbia Government had become the majority shareholder in Skeena Cellulose Inc. In total, since 1997 the total debt owed by Skeena Cellulose to the Province surpassed Can\$400 million, including more than Can\$270 million in public loans, loan guarantees, and contributions. The company was sold in April 2002.¹⁰⁵

179. The New Brunswick Fisheries Development Board provides financial assistance to aid and encourage the establishment or development of fisheries in the Province; amounts are payable out of

¹⁰³ See the Department's online information. Available at: <http://www.wd.gc.ca/eng/rpts/plans/rpp00-01/5.htm>.

¹⁰⁴ See "Task Force on Rural Economic Renewal", Ontario Ministry of Agriculture and Food online information. Available at: <http://www.gov.on.ca/OMAFRA/english/about/galttaskforce/endnotes.html#1>.

¹⁰⁵ British Columbia Ministry of Competition, Science and Enterprise, News Release, 30 April 2002.

the Provinces Consolidated Fund.¹⁰⁶ According to the most recent annual report of the Department of Business New Brunswick, commercial fishers are provided loans for: the purchase or construction of vessels and for major retrofits and repairs to encourage the development of fisheries in the Province; loans for capital expenditures; and loan guarantees for working capital purposes, to encourage development of the New Brunswick aquaculture industry.¹⁰⁷ During 2000-01, the Board reviewed 68 submissions; 51 were approved, involving assistance totalling about Can\$7 million. According to information provided by New Brunswick in the context of this Review, direct loans (repayable at provincial lending rates) are provided only if the funds are not commercially available.

180. The Ontario Sound Recording Tax Credit is a 20% refundable tax credit for certain expenditures incurred by a qualifying corporation in the production of "eligible Canadian sound recordings" by "emerging Canadian artists or groups".¹⁰⁸

181. Investissement Québec provides companies located in Quebec with interest-bearing or interest-free loans, and loan guarantees (Table III.12). For 2000-01, Investissement Québec contributed to 929 projects totalling over Can\$5.4 billion. Several related programmes provide incentives for local investment, including the Small and Medium Size Business Guarantee (Garantie Québec, loan guarantees for specific activities, notably exports or innovation)¹⁰⁹; the FAIRE Programme, which provides refundable or non-refundable contributions; or the Quebec Business Investment Company (Société de placements dans l'entreprise québécoise).¹¹⁰

Table III.12
Selected support measures by Investissement Québec

Date of announcement	Beneficiary company/sector	Amount/type of measure
06/11/00	Mometal (metal frameworks and fabricated metals)	Can\$750,000 in financial assistance for capital investment and guaranteed export line of credit
07/11/00	Venmar Aston Inc. (commercial ventilation units)	Can\$729,000 financial contribution for job creation
10/11/00	Scott Paper Limited	Can\$650,000 financial contribution for acquisition of two new processing machines
10/11/00	Technologies Globales ICP (solar panels)	Can\$490,000 financial contribution for capital expenditure
22/11/00	Ced-Or (cedar laminboard plant)	Can\$15 million financial contribution under the FAIRE programme
01/12/00	RCM Modulaire (home manufacturing)	Can\$450,000 interest-free loan
01/12/00	Commonwealth Plywood Co. Ltd	Can\$900,000 repayable contribution
11/12/00	Stryker Bertec (furniture and beds for hospitals)	Can\$1,275,000 financial support
11/12/01	Groupe Teknion (office furniture and systems)	Can\$2.3 million non-repayable financial contribution
17/12/01	Bridgestone/Firestone	Can\$2.5 million financial support
17/12/01	Gaspesia (pulp and paper)	Can\$89 million interest-free and interest bearing loans
11/03/02	Mecachrome (precision machining)	..
12/03/02	Harfan technologies (infrastructure management software)	Can\$250,000 financial assistance
12/04/02	Fibro Concept Inc. (sports equipment)	Can\$100,000 from Investissement Quebec
16/04/02	Steris Canada (biomedical sector)	Can\$1,250,000 non-repayable financial contribution through FAIRE

.. Not available.

Source: Investissement Québec Press Releases.

¹⁰⁶ See Fisheries Development Act [Online]. Available at: <http://www.gnb.ca/acts/acts/F-15-1.htm>.

¹⁰⁷ Business New Brunswick *Annual Report* 2000-2001 [Online]. Available at: <http://www.gnb.ca/0398/index-e.asp> (imbedded file).

¹⁰⁸ Department of Finance online information. Available at: http://www.fin.gc.ca/taxexp/2001/taxexp01_e.pdf

¹⁰⁹ Investissement Québec online information. Available at: <http://invest-quebec.com>.

¹¹⁰ For more details, see Invest Québec online information. Available at: <http://invest-quebec.com/p-financiers/societe-speq-htm>.

(iii) **Local-content requirements**

182. A number of local-content requirements are in place at the provincial level. Under the Wine Content and Labelling Act of 2000 and implementing regulations, licensed wine manufacturers in Ontario may sell wine containing imported grapes through private retail outlets only if the wine contains a minimum of 30% per bottle of Ontario grapes¹¹¹; if this minimum content is not met, the wine has to be sold by the Liquor Control Board (see section (iv) below). Farm wineries in Nova Scotia selling wines from their own farm outlets (rather than through the provincial liquor board) are required to sell products containing not less than 50% Nova Scotia grapes. This requirement is set to increase yearly until it reaches 75% in 2006. Only wines that are bottled in Quebec may be distributed through Quebec grocery stores; others must be sold through the Société des Alcools du Québec. In British Columbia, private retail operations are authorized for domestic wines only, not for imported products.

183. Newfoundland and Labrador have reserved the right under the Agreement on Internal Trade to deny out-of-province beer and beer products access to brewers' agents (convenience stores). This policy was under review in late 2002.

184. In New Brunswick, under the Mining Act the Minister may require an economic impact analysis from companies in regard to the feasibility of in-province processing. However, according to the authorities the New Brunswick's Department of Justice has declared this power as *ultra vires* because of the Agreement on Internal Trade, and the Minister has never denied a company application to export concentrates for further processing elsewhere.

185. In Newfoundland and Labrador, petroleum and gas projects are approved only if they result in sufficient local employment and purchases of goods and services produced. For instance in the Voisey's Bay nickel project, the Newfoundland government required that the mining company Inco locally process concentrate produced from the proposed mine and mill rather than shipping it to existing processing plants in Manitoba and Ontario.¹¹² In Nova Scotia, petroleum exploration rights are conditional on an attempt to use local labour, goods, and services.¹¹³

186. In Quebec, under the Loi sur la transformation des produits marins (T 11.01) and implementing regulations, a variety of fish (including cod and mackerel) and seafood (including shrimp and crab) must be processed by companies located in Quebec, so as to preserve local employment opportunities.

187. At federal level, local-value-added requirements in motor vehicle production under the Auto Pact were the subject of a WTO Panel established in 1999, which concluded, *inter alia*, that this resulted in less favourable treatment for imports relative to domestic parts and materials and non-permanent equipment. The Canadian value-added requirements (the CVA requirements) related to the tariff exemption on cars imported from the United States under the Auto Pact were contained in the Motor Vehicles Tariff Order, 1998 (the MVTO 1998) and the Special Remission Orders (the SROs, see also (2)(iii) above).¹¹⁴

¹¹¹ The text of the Wine Content and Labelling Act, 2000, is available online at: http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/00w26_e.htm.

¹¹² See the statement by Lloyd Matthews, Minister of Mines and Energy, 19 November 2001 [Online]. Available at: the website of the Government of Newfoundland at <http://www.gov.nf.ca/releases/2001/mines&en/1119n08.htm>.

¹¹³ Petroleum Resources Regulations of Nova Scotia, Section 27 of the Petroleum Resources Act, available online at: <http://www.gov.ns.ca>.

¹¹⁴ The MVTO and SROs are regulations promulgated by the Governor-General-in-Council. See WTO document WT/DS139/R, 11 February 2000, as modified by the Appellate Body Report, WTO document WT/DS139/ABR, 31 May 2000.

188. On 15 February 2001, the Order Repealing the Motor Vehicles Tariff Order, 1998 and amending the Schedule to the Customs Tariff, and the Order Repealing Certain Remission Orders made under the Financial Administration Act 2000-2 were introduced to revoke the Orders implementing the Auto Pact in Canada and to thereby complete Canada's implementation of the WTO Auto Pact ruling.

(iv) State-owned enterprises

189. Canada's state-trading enterprises (STEs), as notified to the WTO Working Party on State Trading Enterprises in 2002, are: the Canadian Wheat Board (CWB), the Canadian Dairy Commission (CDC), the Canadian Freshwater Fish Marketing Corporation, the twelve provincial and territorial liquor boards, and the Ontario Bean Producers Marketing Board; the same STEs were included in Canada's previous notification, in 1997).¹¹⁵

190. The CWB has exclusive authority to export Western Canadian wheat, durum wheat, and barley. The CDC has a de facto monopoly on the importation of butter under the tariff quota system; although it is active in export markets, it has no exclusive authority for the export of any product. The activities of the CWB and CDC are described in Chapter IV (2)).

191. Under the 1928 Importation of Intoxicating Liquors Act (IILA), each province and two territories have monopolies on the introduction of all alcoholic beverages into their territories both from abroad and from other provinces. Under the IILA, liquor, including wine, considered intoxicating by provincial law may be imported only by a board, commission, officer, or governmental agency legally authorized to sell intoxicating liquor. Distribution and warehousing services for importers are generally also reserved for the provincial liquor boards.

192. The new Excise Act 2001 includes amendments to the IILA so as to ensure consistency with the new terminology and concepts relating to spirits and wine under the new Act. The authorities have stated that amendments will not affect market access conditions for foreign suppliers, and maintain the existing import restrictions and trade-related exemptions on bulk spirits.¹¹⁶ There are no plans to overhaul the IILA.

193. The IILA has been scheduled as a quantitative restriction maintained as an exception to the free-trade provisions of both the NAFTA and the FTA with Chile.¹¹⁷ Such an exception has also been scheduled in the FTA with Costa Rica, and is contemplated by the Government for inclusion in other ongoing FTA negotiations (Chapter II). Conditions for the sale of alcoholic beverages in Canada are a source of concern for some of Canada's trading partners.¹¹⁸

194. Eight of the twelve provincial liquor jurisdictions in Canada apply a higher services charge to imported products. According to the authorities, the difference reflects higher carrying costs (e.g. the interest cost of holding product in inventory) as well as higher operational costs associated with imported products.

195. Among the exceptions to Canada's monopoly system, Alberta privatized both warehousing and retail distribution in 1993. In 2001, there were more than 18,800 liquor products registered for

¹¹⁵ WTO documents G/STR/N/3/CAN, 5 September 1997, and G/STR/N/4/CAN, 5 November 2002.

¹¹⁶ Department of Finance online information. Available at: <http://www.fin.gc.ca/news01/data/01-113-1e.pdf>, and information provided by the authorities.

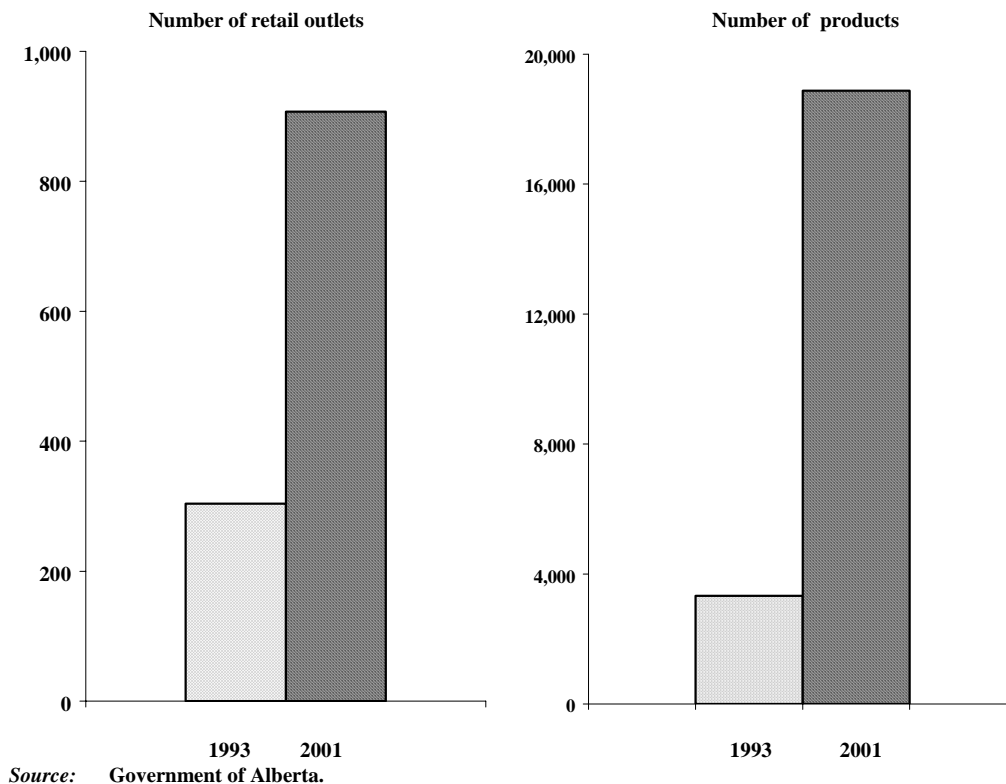
¹¹⁷ See DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/cda-chile/4-cda26.asp>, Annex IV.

¹¹⁸ See for example WTO document WT/TPR/M/78, 5 February 2001.

potential importation in Alberta compared with approximately 3,300 prior to privatization.¹¹⁹ The retail network also expanded significantly (Chart III.8).

Chart III.8

Retail outlets and products for sale, in Alberta, 1993 and 2001



196. The Liquor Control Board of Ontario (LCBO) continues to have a monopoly over wholesale trade. Private retail operations are authorized for domestic wine (see section (iii) above), but not for imported products. A private company also sells domestic and foreign beer. In fiscal year 2000/01, wholesale sales to these private outlets accounted for just under 20% of total LCBO sales; the remainder were through LCBO's and other government-controlled retail outlets. All spirits are marketed by the LCBO; together with other government-owned outlets it controls 45% of the outlets in Ontario.

197. Available statistics do not suggest a significant difference in the evolution of imports between Alberta and Ontario. Between 1997-98 and 2000-01, sales of imported alcoholic beverages in Alberta advanced by an average 8.7% annually, to reach Can\$341 million, and sales of domestically produced beverages increased by 3.7%. In 2001, imports accounted for 27% of total sales value in Alberta, up from 24% in 1997-98. In comparison, sales of imported alcoholic beverages by LCBO increased by 10.6% annually on average between 1997 and 2001, to reach Can\$1.4 billion; domestic sales

¹¹⁹ Alberta Gaming and Liquor Commission, *Annual Report 2000-01* [Online]. Available at: http://www.aglc.gov.ab.ca/pdf/annual_reports/2001_aglc_annual_report.pdf.

increased by 5.4%, to reach Can\$1.3 billion.¹²⁰ In 2001, imports accounted for 52% of LCBO's total sales value, up from 47% in 1997-98.

198. Nationwide data on sales of domestic and imported products suggest that import penetration has increased in all three product groups (Table III.13).

Table III.13
Domestic and imported sales of beer, wine and spirits, 1995-01
(⁰⁰⁰ hectoliters)

	1995	1996	1997	1998	1999	2000	2001
Beer							
Domestic	19,242	18,913	18,826	19,276	19,333	19,215	19,536
Imported	659	867	1,018	1,167	1,415	1,495	1,678
Total	19,902	19,780	19,844	20,443	20,748	20,710	21,213
% Share							
Domestic	96.7	95.6	94.9	94.3	93.2	92.8	92.1
Imported	3.3	4.4	5.1	5.7	6.8	7.2	7.9
Wine							
Domestic	704	731	749	769	816	827	849
Imported	1,283	1,337	1,363	1,444	1,545	1,622	1,727
Total	1,987	2,068	2,112	2,213	2,362	2,449	2,576
% Share							
Domestic	35.4	35.4	35.5	34.7	34.6	33.8	33.0
Imported	64.6	64.6	64.5	65.3	65.4	66.2	67.0
Spirits							
Domestic	850	858	849	858	859	877	885
Imported	321	335	342	359	390	405	425
Total	1,171	1,193	1,191	1,218	1,249	1,281	1,310
% Share							
Domestic	72.6	72.0	71.3	70.5	68.8	68.4	67.6
Imported	27.4	28.0	28.7	29.5	31.2	31.6	32.4

Source: Brewers Association of Canada, *Annual Statistical Bulletin 2001* [Online]. Available at: <http://www.brewers.ca>; and data provided by the authorities.

(v) Government procurement

199. The estimated annual value of government procurement at the federal level is approximately Can\$10 billion annually, or less than 1% of GDP.¹²¹ Reported procurement at the provincial and territorial level is estimated at some Can\$7 billion.¹²² In 2000, contracts representing 89.8% of the total value were allocated through competitive methods, while 10.2% was allocated in a non-competitive fashion. Canada last notified annual statistics under Article XIX:5 of the WTO Agreement on Government Procurement in October 1998.¹²³ Procurement by municipalities, municipal organizations, publicly funded academic institutions, and health and social services entities (MASH entities) is estimated at some Can\$20 billion a year. Procurement for all levels of government and governmental institutions represents some 3.5% of GDP.

¹²⁰ LCBO *Annual Report 2000*, available online at: http://legacy.lcbo.com/images/pdfs/lcbo_an_report.pdf.

¹²¹ Information provided by the authorities, based on Treasury Board Secretariat reports for federal procurement for departments and agencies for the years 1997 to 2000. Purchases totalled Can\$9.9 billion in 1999 and Can\$9.4 billion in 2000. More detailed information is available online at: http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/con_data/siglist_e.html.

¹²² The latest available complete information is for fiscal year 1999-00 and can be found on the Internal Trade Secretariat's online information. Available at: http://www.intrasec.mb.ca/index_he.htm.

¹²³ WTO document GPA/21/Add.1, 16 October 1998.

(a) Institutional and legal framework

200. The Treasury Board of Canada establishes the rules for contracting in the Government Contract Regulations (GCRs), which also provide the overall policy direction through the Treasury Board Contracting Policy. The Financial Administration Act outlines the financial responsibilities and authorities for contracting, and forms the basis of the GCRs. The Department of Public Works and Government Services Act gives the Minister of Public Works and Government Services exclusive authority to buy goods and services for other Departments and Agencies and to delegate this authority to other Ministers. Public Works and Government Services Canada (PWGSC) is the Government's principal purchasing arm.

201. Federal procurement policies, procedures, notices and circulars are available online.¹²⁴ They apply to all federal government contracting activities, and require procurement to be conducted in a manner that will meet operational requirements in the most cost-effective manner and provide equal opportunity to tender, while being consistent with Canada's international obligations.¹²⁵ Procurement policy is evaluated and updated on a regular basis. Industry Canada is responsible for the evaluation of the effectiveness of procurement in support of industrial and regional development.

202. Canada is party to a number of trade agreements all of which are reflected in Canadian law and function concurrently. Canada has been a party to the WTO Agreement on Government Procurement (GPA) since 1 January 1996. Government procurement in Canada is also affected by provisions contained in national and international arrangements such as the Agreement on Internal Trade (AIT), the North American Free Trade Agreement (NAFTA) and the Canada-Korea Telecommunications Equipment Procurement Agreement (CKTEA). The other FTAs signed by Canada do not have provisions on procurement (see also Chapter II).

203. For procurements not subject to NAFTA Chapter 10 and to the GPA, the Federal Government is of the view that its procurement activities should be consistent with and supportive of such national objectives as industrial and regional development, aboriginal economic development, the environment, and other socioeconomic objectives. To this end, the Government requires that all federal procurements in excess of Can\$2 million are reviewed for potential regional and industrial benefits. For the most part, this review is achieved administratively by an interdepartmental Procurement Review Committee.

204. Information on procurement matters is accessible online.¹²⁶ Annual reports on contracting at the federal level and reports by the provinces are available online.¹²⁷ Most federal procurement notices for goods and services, including construction, above Can\$25,000 are posted on the Government Electronic Tendering Service (GETS). The service currently operates under the name MERX and is provided by contract to the Federal Government.¹²⁸ GETS is the designated publication for opportunity notices, information on permanent lists of qualified suppliers, and administrative rulings and procedures under the GPA, the NAFTA, AIT, and CKTEA. Sole sourcing may be used in a pressing emergency; when the estimated expenditure is less than Can\$25,000 for goods and services, or Can\$100,000 for architectural and engineering services or for the Canadian International Development Agency (CIDA) service contracts related to international development programmes or

¹²⁴ Treasury Board online information. Available at: <http://www.tbs-sct.gc.ca>.

¹²⁵ Treasury Board of Canada Secretariat, "Procurement Policy Review", January 2002 [Online]. Available at: http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/dwnld/contractingpol_e.rtf.

¹²⁶ Contracts Canada online information. Available at: www.contractsCanada.gc.ca.

¹²⁷ Treasury Board online information. Available at: www.tbs-sct.gc.ca; and Internal Trade Secretariat online information. Available at: www.intrasec.mb.ca/index_he.htm, respectively.

¹²⁸ Available at: www.merx.cebra.com.

projects; a competition is not in the public interest; or only one supplier is capable of performing the work, as in the case of a supplier who owns a copyright or software licence.¹²⁹

205. The Contract Claims Resolution Board (CCRB) provides dispute resolution services and is one of five directorates in the Audit and Ethics Branch of PWGSC. With the exception of bid challenges, CCRB acts as an appeal/review agency in PWGSC for all procurement-related disputes and claims arising from commercial, construction, and consulting contracts. CCRB administers the Contracts Settlement Board (CSB), and the Contract Disputes Advisory Board (CDAB). CSB is an independent review body that resolves disputes concerning extra cost claims, which are referred to it by contractors providing goods and services to PWGSC. CDAB is an independent review board that provides non-binding advisory arbitration for contract-related disputes that are referred to the Minister by contractors or consultants under contract with PWGSC for construction, leasing, and building maintenance. CCRB also settles contractors' claims arising under PWGSC and Canadian Commercial Corporation (CCC) contracts that are terminated for convenience of the Canadian and U.S. governments, and arranges for Assist Audits for terminated contracts on behalf of the U.S. Government. In 2001, PWGSC announced the launch of the Dispute Resolution Pilot Project in Construction, a two-year pilot project covering all construction requirements valued between Can\$100,000 and Can\$5 million, applicable to tender documents since 12 November 2001, where the work is carried out in Canada.

(b) Access conditions to procurement at the federal level

206. Canada grants national treatment to foreign suppliers in respect of procurement covered by the GPA and other international agreements. For transactions covered by the GPA, national treatment conditions apply to most federal procurement, subject to the agreed thresholds of SDR130,000 for goods and services and SDR5 million for construction contracts. In addition to general exceptions, a number of specific goods and services are excluded from the scope of the GPA.¹³⁰

207. As required by the GPA, the thresholds for procurement contracts in Canadian dollars are revised and notified to the WTO every two years. For the period 2002-03, the relevant thresholds are Can\$255,800 for supplies of goods and services and Can\$9.8 million for construction contracts. These thresholds are some 2% lower in Canadian dollar nominal terms than those applied in 2000-01.¹³¹

208. The NAFTA grants national treatment to Canadian, Mexican and U.S. goods and services. Goods and services exclusions are similar to those in the GPA. As required by NAFTA, the thresholds for procurement contracts in Canadian dollars are revised every two years. The current thresholds for procurement contracts in Canadian dollars are revised every two years. The current thresholds for federal departments and agencies are Can\$37,500 (Canada-United States), Can\$84,400 (Canada-Mexico) for goods, Can\$84,400 for services, and Can\$10.9 million for construction. The thresholds for crown corporations are Can\$422,200 for goods and services, and Can\$13.5 million for construction.

¹²⁹ Contracts Canada online information. Available at: <http://contractscanada.gc.ca/en/chap1-e.htm>.

¹³⁰ These include shipbuilding and repair; urban rail and transportation components; transportation services; some communications, detection, and coherent radiation equipment; oil purchases related to any strategic reserve requirement; purchases made in support of the safeguarding of nuclear materials; dredging work; and some office equipment and special industry machinery for the Departments of Transport, Communications, and Fisheries and Oceans; research and development; utilities; and health and social, financial, communications, photographic, mapping, printing, and publications services.

¹³¹ WTO documents WT/GPA/W/168/Add.2, 14 January 2002, and WT/GPA/W/101/Add.1, 9 February 2000.

209. Chapter 5 of the AIT, the Procurement Chapter, attempts to ensure equal market access conditions to procurement for "Canadian" suppliers, meaning those that have a place of business in Canada. The AIT covers procurement by the signatories of the agreement, namely the Federal Government, 10 provincial governments, and two territories. The AIT also covers procurement by municipalities, municipal organizations, publicly funded academic institutions, and health and social services entities (MASH). The AIT applies to all Government procurement of goods valued at Can\$25,000 or more and of services and construction valued at Can\$100,000 and up. For MASH entities the thresholds are Can\$100,000 for goods and services, and Can\$250,000 for construction. The AIT does not cover MASH entities in the Yukon, and includes only seven of the 43 crown corporations (public utilities). Some services are excluded altogether from the AIT.¹³² The AIT does not apply to procurement related to cultural industries, or aboriginal culture.¹³³

210. For procurement not covered by the GPA or NAFTA, entities covered by the AIT may accord a preference for Canadian value-added, provided that the preference margin is no greater than 10%. They may also limit its tender to Canadian goods or suppliers, provided the procuring entity is satisfied that there is sufficient competition among Canadian suppliers.

211. The CKTEA, which came into effect on 1 September 2001, applies to most federal government departments and agencies and covers purchases of telecommunications equipment and materials plus any services included in goods contracts covered by the agreement valued at Can\$255,800 or more. Exceptions to its coverage include purchases for commercial resale or use in the production of goods for commercial resale; for Canada, purchases under set-asides for small and minority businesses; purchases for the Departments of Transport, Fisheries and Oceans, and certain types of communications equipment.

212. Complaints involving alleged federal government breaches of the AIT, the GPA, the NAFTA, and the CKTEA may be brought to the Canadian International Trade Tribunal (CITT) by potential suppliers in respect of procurement by the federal government. When a complaint is found to be valid, the CITT determination may contain recommendations to the government institution, such as re-tendering, re-evaluation or providing compensation. The CITT may also award reasonable costs to a complainant to cover expenses for participation proceedings related to a complaint or in bid preparation. The review process generally takes 90 days, with an express option of 45 days; a requested extension of up to 135 days may be granted. The CITT reviews only complaints involving procurement by the federal government, not by provinces and the MASH sector. The bid protest procedures contained in Chapter 5 of the AIT apply in the case of provincial procurement practices.

213. In the period 1999-01, a total of 145 complaints with respect to procurement were under review by the CITT. Of these, ten complaints were resolved by the parties or were abandoned, 59 did not lead to the initiation of an investigation, 55 were investigated on merit, and the rest were still in progress at the end of the period. Of the 55 complaints that were investigated, the CITT determined 27 complaints to be valid, and 28 not valid. A few of the complaints were made by foreign suppliers, and many of them came from foreign-owned companies based in Canada. Most of the determinations with respect to the validity of a complaint were with respect to breaches of the AIT, followed by breaches of the NAFTA, and the GPA.

214. Federal regional development agencies maintain a number of schemes to promote the participation of small or regional businesses in the procurement process. Under the Atlantic Canada Opportunities Agency's (ACOA) Business Development Program, Atlantic-based small or medium-

¹³² These include some professional services; services for sporting events; services of financial analysts or the management of investments or of government financial assets and liabilities; health and social services; and advertising and public relations services.

¹³³ AIT Secretariat online information. Available at: http://www.intrasec.mb.ca/pdf/consol_e1.pdf.

sized businesses may receive up to Can\$250,000 over a period of two years to help cover the cost of preparing bids and other procurement activities.¹³⁴ Incentives of this type are also provided by Canada Economic Development for Quebec Regions.¹³⁵ One of the purposes of Western Economic Diversification Canada is to increase access to procurement opportunities for companies in Manitoba, Saskatchewan, Alberta, and British Columbia.

(c) Procurement by provincial governments

215. Procurement at the sub-federal level, is ruled by provincial or other sub-federal government laws and procurement regulations. Canada did not table an offer in the GPA at the sub-federal level. Canada's position in this respect has not changed since its last Review: it is prepared to table an offer at the sub-central level only if other parties are prepared to include sectors of priority to Canadian suppliers, such as steel and transportation, and to agree to circumscribe the use of small business and other set asides. In particular, Canada considers that U.S. federal government policies must be addressed to assure market access and non-discriminatory treatment for suppliers to U.S. state and municipal governments before tabling a schedule at the sub-federal level.¹³⁶

216. Provinces may have their own procurement agencies and thresholds, as well as their own procurement policies, under the general framework of the AIT (Annex III.1). For procurement falling within the scope of the AIT, the provinces grant similar access conditions to procurement from the rest of Canada, but do not extend this automatically to procurement from foreign suppliers. In the framework of the AIT, the provinces are currently negotiating the extension of the scope of the agreement to entities of an industrial or commercial nature (e.g., crown corporations).

217. Some provinces grant provincial or regional preferences to procurement not falling within the scope of the AIT or other internal procurement agreements, since such practices are not covered by the GPA or NAFTA. Under British Columbia's Purchasing Commission Act, British Columbia's Purchasing Commission has power to give a preference in favour of goods or services produced, manufactured or sold in British Columbia, or in a local area. Although in practice no price preference is granted to British Columbia suppliers, the Commission may decide to limit the opportunity to bid to British Columbia suppliers, subject to the AIT. The authorities have noted that British Columbia was engaged in a comprehensive process to cut the red tape and regulatory burden by one-third within three years. This would include a review, and possible repeal of the Purchasing Commission Act.

218. In New Brunswick, for procurement below the thresholds defined in the interprovincial procurement agreements, the province may (but is not obliged to) apply a preference for New Brunswick products, services or suppliers. When determining if a preference will be given, the New Brunswick's Central Purchasing Branch applies a policy of reciprocal treatment to bidders from other provinces. The authorities have noted that the magnitude of the preference margin, by policy, does not exceed 5%, and that the actual percentage of the preference depends on factors such as local content. They have also noted that the preference is used rarely: some 10 to 12 times per year out of 4,400 tenders. New Brunswick, by policy, will not apply a preference against vendors from Nova Scotia since they do not use one against New Brunswick suppliers. The authorities of New Brunswick look at the preference policy for other provinces, and at the access New Brunswick vendors have.

219. In Nova Scotia, the Procurement Branch may consider and evaluate bids from other jurisdictions on the same basis that the purchasing authorities in those jurisdictions would treat a similar bid from a Nova Scotia supplier.

¹³⁴ More online information on the Atlantic Procurement Agreement is available at: <http://www.gnb.ca/0337/01-e/3-e.htm>, and <http://www.gov.nf.ca/tenders/APA.stm>.

¹³⁵ More information about this programme is available online at: <http://www.dec-ced.gc.ca>.

¹³⁶ WTO document WT/GPA/51, 18 June 2001.

220. Ontario applies a Canadian Steel Preference Policy, using a 10% price preference for Canadian structural steel products. The preference is applied by deducting 10% of the value of products identified in a construction bid of Can\$100,000 or more, as Canadian structural steel products.¹³⁷ Under the Environmental Choice Program, environmental factors are given special consideration in purchasing decisions for all contracts worth more than Can\$10,000.

221. In Quebec, contracts for goods and auxiliary services valued at or above Can\$25,000 and services and construction projects of or over Can\$100,000 must be tendered publicly. Purchases of goods and auxiliary services under Can\$25,000 are made by the different departments, and suppliers are generally chosen from a list, or are invited to tender; in the latter case, only suppliers from Quebec receive an invitation. Procurement of services is subject in many cases to meeting ISO requirements. In the case of auxiliary services compliance with ISO 9003 standards is rewarded with a 10% reduction in the offer price.¹³⁸ Apart from the AIT, Quebec has government procurement market access liberalization agreements with New Brunswick and Ontario, and with the U.S. State of New York. The Quebec-Ontario Bilateral Agreement, signed in 1994, applies to procurement above Can\$25,000 for goods, Can\$200,000 for services, and Can\$100,000 for construction. The agreement with New Brunswick and Quebec establishes some basic principles governing public procurement of goods, services, and construction by the governments of the two provinces. The authorities have noted that, in practice, this agreement is inactive, because the AIT is more trade liberalizing and therefore prevails in most cases. The agreement with New York, which entered into force in November 2001, has thresholds of Can\$25,000 for goods and Can\$100,000 for services and construction, and grants reciprocal non-discriminatory treatment.

222. In Alberta, British Columbia, Manitoba, and Saskatchewan, there is a regional preference for goods tenders valued between Can\$2,500 and Can\$25,000, which are restricted where possible to firms located in the four western provinces. The authorities have noted that this preference is in keeping with the Western Accord, a Memorandum of Agreement signed in 1989 for the reduction of Interprovincial Trade Barriers in Western Canada. The Western Accord calls for equal non-discriminatory access to government procurement to all vendors in Western Canada (Alberta, British Columbia, Manitoba, and Saskatchewan). Although the Accord stipulates no minimum thresholds, for operational reasons, the procurement of goods has a threshold of Can\$2,500 and services and construction Can\$100,000. The authorities have noted that the preference clause is used sparingly.

223. In Yukon the provincial procurement agency maintains a source list, which identifies businesses that qualify as Yukon businesses.¹³⁹ In addition, local-content requirements may be applied for contracts under Can\$50,000.

(vi) Intellectual property rights

(a) WTO activity

224. Canada notified its IPR legislation to the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS), which reviewed it in 1998.¹⁴⁰ Canada has also notified its contact point for TRIPS, including for technical cooperation.¹⁴¹

¹³⁷ Canadian steel content is defined as the total value of the supplier's structural steel product minus the dutiable value of any imported goods or services applied to that product. See. "Tips on how to do Business with the Government of Ontario" [Online]. Available at: [http://www.ppitpb.gov.on.ca/mbs/psb/psb.nsf/feca7955f260027587256738007faf3e/3439ac3dc008760a85256a79006605d3/\\$FILE/tips_eng.pdf](http://www.ppitpb.gov.on.ca/mbs/psb/psb.nsf/feca7955f260027587256738007faf3e/3439ac3dc008760a85256a79006605d3/$FILE/tips_eng.pdf).

¹³⁸ Further information is available online at: <http://www.tresor.gouv.qc.ca/marche/accords/textes.htm#>.

¹³⁹ This requires meeting at least two of the following criteria: the business employs Yukon residents; the business owns, for purposes directly related to the operation of the business, real property in the Yukon; the business operates a permanently staffed office, year-round in the Yukon; or the business is owned, or is a corporation that is owned 50% or more by Yukon residents.

225. Canada has continued to participate actively in the review by the TRIPS Council of the IPR legislation of other WTO Members. In the context of Council work since 2000, Canada, alone or with other Members, has made proposals in relation to non-violation, nullification or impairment under the TRIPS Agreement¹⁴²; geographical indications¹⁴³; and the Doha Ministerial Declaration on the TRIPS Agreement and public health.¹⁴⁴

226. Canada's legislation on patents has been challenged twice in the WTO. The first case was initiated by the European Union and its members; it related to the two exceptions to the otherwise exclusive rights of the patentee to make, construct, use or sell a patented invention. The first exception allowed producers of generic pharmaceuticals to work a patented product for the purpose of completing the regulatory approval process applicable to that product (early working provisions). The second exception allowed manufacturers to manufacture and stockpile patented drugs for the six months before the patent expiry (the stockpiling provision). A WTO Panel found that early working provisions were consistent, and that the stockpiling provision was inconsistent with the TRIPS Agreement; the Panel recommended that Canada bring the Patent Act into conformity with the TRIPS Agreement.¹⁴⁵ Canada agreed to implement this recommendation; the "reasonable period of time" for implementation was determined, through binding arbitration, to end in October 2000.¹⁴⁶

227. A second WTO Panel examined the U.S. claim that Canada had failed to grant a full 20-year patent term to patents applied for prior to October 1989; the Panel agreed with the U.S. claim.¹⁴⁷ The panel decision was subsequently upheld by the WTO Appellate Body, which recommended that Canada bring the Patent Act into conformity with the TRIPS Agreement.¹⁴⁸ Canada agreed to do so; through binding arbitration the "reasonable period of time" was determined to expire in August 2001.¹⁴⁹

(b) Legislative developments

Patents

228. To comply with the WTO Panel concerning the stockpiling provision, as of 7 October 2000 the Regulations Repealing the Manufacturing and Storage of Patented Medicines Regulations rescinded the Manufacturing and Storage of Patented Medicines Regulations of 1993.¹⁵⁰ The regulations of 1993 had been adopted as part of the reforms to the Patent Act, which included the phasing-out of the compulsory licensing regime whereby generic drug companies could, on the payment of royalties to patent-holders, obtain licences to sell generic versions of patented drugs. The reforms introduced instead the two provisions challenged by the EU. In particular, the regulations

¹⁴⁰ Canada's notified IPR statutes may be found in WTO document series IP/N/1/CAN/; its replies to Members' questions concerning those notifications may be found in document series IP/Q3/CAN/ and IP/Q4/CAN/.

¹⁴¹ WTO document IP/N/3/Rev.6, Add.2, 14 October 2002, contains the latest notification.

¹⁴² WTO documents IP/C/W/191, 22 June 2000, and IP/C/W/249, 29 March 2001. The issue concerns measures that do not violate the TRIPS Agreement but may nonetheless nullify or impair benefits that can be expected to be derived from it.

¹⁴³ WTO documents IP/C/W/133/Rev.1, 26 July 1999, IP/C/W/289, 29 June 2001, and IP/C/W/360, 26 July 2002.

¹⁴⁴ WTO document IP/C/W/313, 4 October 2001.

¹⁴⁵ WTO document WT/DS114/R, 17 March 2000.

¹⁴⁶ WTO document WT/DS114/13, 18 August 2000.

¹⁴⁷ WTO document WT/DS170/R, 5 May 2000.

¹⁴⁸ WTO document WT/DS170/AB/R, 18 September 2000.

¹⁴⁹ WTO document WT/DS170/10, 28 February 2001.

¹⁵⁰ *Canada Gazette*, Part II, Volume 134, Number 21, 11 October, 2000.

of 1993 gave effect to the stockpiling exception, and by repealing such regulations the authorities sought to render the exception of no practical force.

229. On issuing the Regulations Repealing the Manufacturing and Storage of Patented Medicines Regulations, the authorities noted that even without the stockpiling exception generic manufacturers typically have a number of months to manufacture and store product in the period between the regulatory approval date and the date a drug becomes listed on provincial formularies (upon which market penetration of generic drugs largely depends). The authorities thus consider that, given that generic drug manufacturers have expressed confidence in their ability to generate industrial-scale production levels in a very short time, the loss of the ability to stockpile patented drugs within the six months preceding patent expiry would not have significant economic consequences on the generic drug industry, nor on consumers' access to generic drugs.¹⁵¹ However, the Canadian Drug Manufacturers Association, an industry association representing generic drug manufacturers, was of the view that the loss of stockpiling could, in certain circumstances, lead to the delay onto the market of generic drugs.¹⁵²

230. To bring the Patent Act into conformity with the Appellate Body's decision concerning patent terms, An Act to Amend the Patent Act came into force on 12 July 2001.¹⁵³ Previously, the Patent Act provided for two different terms of protection for patents, depending on the date the application was filed. "Old Act" patents benefited from a term of 17 years from the date the patent was granted for applications filed before 1 October 1989; "New Act" patents benefited from a term of 20 years from the date the patent application was filed in Canada when this occurred on or after 1 October 1989. As of 12 July 2001, non-expired "Old Act" patents with terms less than 20 years from the date of filing in Canada, are automatically extended to the 20-year term required by the TRIPS Agreement.

231. The authorities noted that approximately 129,000 "Old Act" patents were in force in 2001.¹⁵⁴ About 45,000 patents had a term of protection of less than 20 years from the date of filing. In 2000, patented drugs in Canada were, on average, priced 8% below international median prices and about 40% below those in the United States.

232. In May 2001, Canada signed the Patent Law Treaty (PLT), which is designed to simplify and harmonize administrative practices for processing patents among national and regional intellectual property offices (IPOs). As of late 2002, the PLT has not yet been ratified by Canada. The authorities noted that, by signing the Treaty, Canada is agreeing in principle with the Treaty and its Rules, committing to launch the ratification process and to subsequently amend its national patent law so that Canada's patent administrative formalities conform with the Treaty. The authorities consider that joining the PLT will benefit inventors through a streamlined process for filing and processing patent applications, encourage the use of intellectual property systems, stimulate innovation, and facilitate access by Canadians to foreign IPOs.¹⁵⁵

233. Canada has amended its Patent rules, effective 1 April 2002, to extend the time limit for transmitting a Patent Cooperation Treaty (PCT) application to the Canadian Intellectual Property Office from 20 to 30 months, irrespective of whether the applicant has requested an International

¹⁵¹ Available online at: http://www.canada.gc.ca/gazette/part1/ascII/g1-13432_e.txt.

¹⁵² Available online at: http://www.canada.gc.ca/gazette/part2/ascII/g2-13421_e.txt.

¹⁵³ *Canada Gazette*, Part III, Volume 24, Number 3, 7 September 2001.

¹⁵⁴ Strategis online information. Available at: http://strategis.ic.gc.ca/sc_mrksv/cipo/new/bill_s17-e.html.

¹⁵⁵ Strategis online information. Available at: http://strategis.ic.gc.ca/sc_mrksv/cipo/new/newpatent-law-e.html.

Preliminary Examination.¹⁵⁶ The amendments are a result of a unanimous decision taken by the PCT Assembly at WIPO in September 2001.

234. In December 2002, the Supreme Court of Canada ruled that higher life forms such as mice and chimpanzees cannot be patented unless Parliament modifies the Patent Act. As it stands, the Patent Act states that patents can be issued for "any new and useful manufacture, or composition of matter". The Court deemed that "manufacture" denoted a non-living, mechanistic product or process, and that "composition of matter" could apply to lesser life forms such as yeast, but not to higher life forms. The ruling was in connection with Harvard University's request for a patent for its genetically engineered "oncomouse", a breed that develops cancer swiftly because of a cancer-promoting gene introduced into it by researchers.

Copyright

235. In June 2001, the Government of Canada published "A Framework for Copyright Reform", which outlines the context and process for reform and sets out its intention to consider possible amendments that may be necessary to keep pace with technological and international developments.¹⁵⁷ At the same time the Government published two policy papers. The "Consultation Paper on Digital Copyright Issues" explored potential solutions to key digital copyright issues, and the "Consultation Paper on the Application of the Copyright Act's Compulsory Retransmission Licence to the Internet" raised the issue of the scope of the compulsory licence. Domestic consultations followed.

236. A bill to amend Section 31 of the Copyright Act was tabled in the House of Commons in December 2001.¹⁵⁸ In December 2002, the bill was still in Parliament. Section 31 sets out the compulsory licence applicable to the retransmission of copyright protected works in signals broadcast over the air by television and radio stations. The new bill aims to clarify that distribution systems such as cable and satellite may continue to rebroadcast over-the-air radio and television signals by paying royalties and respecting other provisions in the Copyright Act. The bill excludes Internet-based retransmission of broadcast signals from compulsory licensing regulations unless the Canadian Radio-television and Communications Commission (CRTC) specifically adapts its regulatory framework to accommodate such transmissions. On 30 October 2002, the Government tabled the report that initiates the Parliamentary Review of the Copyright Act, which is required under section 92 of the Act.

237. The Canadian Intellectual Property Office (CIPO) has plans to improve other IPR legislation, and has requested feedback from stakeholders for a possible second Intellectual Property Law Improvement Bill.¹⁵⁹ This bill would continue the process of modernization begun by the first IP Law Improvement Bill enacted in 1993, the last provisions of which came into force in October 1996. Some preliminary consultations on the new bill were held in early 1997; the authorities propose to carry out further consultations with a view to tabling legislative amendments by December 2003.¹⁶⁰

¹⁵⁶ *Canada Gazette*, Part II, Volume 136, Number 7, 27 March 2002.

¹⁵⁷ Details on A Framework for Copyright Reform are available online at: <http://strategis.ic.gc.ca/SSG/rp01100e.html>.

¹⁵⁸ The text of the bill, C-48, is available online at: http://www.parl.gc.ca/common/Bills_ls.asp?lang=E&Parl=37&Ses=1&ls=C48&source=Bills_House_Government.

¹⁵⁹ Text of the letters inviting comments are available online at: www.cipo.gc.ca. CIPO is responsible for the granting or registration of ownership for patents, trade marks, copyrights, industrial designs, and integrated circuit topographies. Further details on CIPO's mandate and activities are available in its online information.

¹⁶⁰ Strategis online information. Available at: http://www.strategis.ic.gc.ca/sc_mrksv/cipo/tm/tm_ip_letter-e.html.

(c) Market competition and related issues

238. Provisions for IPR-related compulsory licensing exist under the Patent Act, the Integrated Circuit Topography Act and the Competition Act. Under Section 65 of the Patent Act, following a period of three years after the patent is granted, any person interested may request relief, including (but not limited to) a compulsory licence alleging abuse of exclusive rights. Under Section 66 of the Patent Act, if the patentee has been found to have abused the exclusive rights, a licence may be granted on terms and conditions deemed fit for the particular case. Only one such compulsory licence has been granted since the entry into force of the TRIPS Agreement in 1996, concerning a gadget for hockey sticks. Under Section 19 of the Patent Act, the federal and provincial governments may also apply for non-exclusive use of patented inventions, subject to certain conditions. There have been no such cases since the entry into force of the TRIPS Agreement.

239. Under Section 7.1 of the Integrated Circuit Topography Act, the public non-commercial use of a registered topography by the federal or a provincial government may be authorized; if so, the user must pay "adequate remuneration", and the use must be non-exclusive and predominantly to supply the domestic market, subject to certain conditions. The authorities indicated that these provisions had not been used to date.

240. Section 32 of the Competition Act grants the Federal Court powers to limit certain rights used to restrain trade (those concerning patents, trade marks, copyrights, and registered topographies) when those rights lead to unjustifiable anti-competitive activities. In such cases the Federal Court may, among other things, order the granting of licences on such terms as it deems proper or the revocation of the IPR in question provided such actions are not at variance with Canada's international commitments. The authorities indicated that there have been no such orders.

241. In September 2000, the Competition Bureau released its Intellectual Property Enforcement Guidelines seeking to promote transparency in the enforcement of the Competition Act in regard to issues involving IPRs.¹⁶¹ The guidelines explain how the Bureau determines whether conduct involving IPRs raises an issue under the Competition Act, and describe how the Bureau distinguishes between circumstances that warrant a referral to the Attorney General for an examination under section 32 of the Competition Act (i.e. cases involving the mere exercise of an IPR), and circumstances that warrant an examination under the general provisions (i.e. going beyond the mere exercise of an IPR).

242. Although parallel imports for commercial purposes are not allowed, the authorities have noted that prevailing legal interpretation makes it generally difficult for a Canadian right holder to prevent the importation of products that have been lawfully manufactured and marketed in a foreign country. The Copyright Act allows exclusive distributors to prevent the parallel importation of books covered by exclusive distribution contracts, subject to conditions set by regulation. There are exceptions listed in Section 45 of the Act, which allow, under certain conditions, the parallel importation of works in general and of books in particular. Although a statutory provision preventing the parallel importation of used textbooks remains in place, the authorities have noted that section 8 of the Book Importation Regulations SOR/99-324 effectively overrides the statutory exclusion in most cases. Booksellers are able to bring into Canada parallel imports of used textbooks if they meet the requirements of section 8 of the Regulations.

243. Canadian patent jurisprudence permits a right holder to apply for a court order to prevent the importation, distribution or sale of goods infringing any person's rights under the Patent Act. Canada's Trade Marks Act allows "any interested person" to apply for a court order to prevent import,

¹⁶¹ The guidelines are available online at: <http://strategis.ic.gc.ca/SSG/ct01992e.html>.

distribution or sale of goods infringing any person's rights under the Act. Parallel imports cannot be barred under the Integrated Circuit Topography Act, which provides complete exhaustion of property rights.

244. Canada is the only country that explicitly issues regulations on drug prices through its patent legislation. Those prices are reviewed by the Patented Medicine Prices Review Board (PMPRB), an independent, quasi-judicial body under Industry Canada, created in 1987 as a result of revisions to the Patent Act. The PMPRB's responsibilities are to protect consumer interests by regulating the maximum prices charged by manufacturers for patented medicines to ensure that they are not excessive, and to report to Parliament on its price review activities, the price trends of medicines, and on the ratio of research and development in Canada's patented pharmaceutical industry. If the PMPRB determines in its review process that the price of a drug is too high, the patentee can request a hearing with the PMPRB Arbitration Board or can voluntarily agree to reduce the price and return the excess revenue earned through the higher price, while it applied, to the Federal Government through a voluntary compliance undertaking (VCU). The Patent Act was amended to enable the Minister of Health to enter into negotiations with the provinces to reach agreement on how best to distribute the money that has been paid back through this system. Some 23 VCUs have been taken since 1993.¹⁶²

245. The work of the PMPRB was examined by the Auditor General of Canada in 1998, which made a number of recommendations.¹⁶³ In its 2001 Annual Report, the Auditor General concluded that the PMPRB had made good progress in implementing those recommendations, particularly those within its control. One recommendation led to the amendment of the Patent Act allowing the Minister of Health to enter into agreements with provinces respecting distribution of funds collected through voluntary compliance undertakings by patentees. However, the Auditor General noted that no action had been taken to clarify the PMPRB's jurisdiction over patented medicines whose patents are dedicated for public use.

246. As a result of its consultations with stakeholders, the PMPRB took steps to review its pricing guidelines. In 2000, it implemented the recommendations of the Working Group on Price Review Issues to use the prices charged to the U.S. Government (Federal Supply Schedule) in calculating U.S. prices for the purpose of international price comparison.¹⁶⁴

247. Under the Copyright Act, a private copying regime imposes levies on blank audio recording media such as blank cassettes and CDs sold in Canada (both domestically manufactured and imported). Manufacturers and importers of blank audio recording media are required to pay these levies to the Canadian Private Copying Collective (CPCC). These levies are then distributed by the CPCC to eligible authors (composers and lyricists), performers, and makers of music sound recordings (including all foreign authors whose copyright in musical works subsists in Canada). The levies are set by the Copyright Board, an economic regulatory body whose responsibilities include to establish royalties for the use of works protected by copyrights administered by a collective society.¹⁶⁵

¹⁶² Online information is available at: <http://www.pmprb-cepmb.gc.ca/>.

¹⁶³ The recommendations are part of the Auditor General's 1998 Annual Report. The Auditor General's annual reports are available online at: <http://www.oag-bvg.gc.ca/>.

¹⁶⁴ The Working Group report on the Appropriate Use of U.S. Department of Veteran Affairs Prices is available online at: <http://www.pmprb-cepmb.gc.ca/PDF/wg/dvae-pri.pdf>.

¹⁶⁵ Further information on the Copyright Board is available online at: <http://www.cb-cda.gc.ca/>.

248. From 1 January 2001, the Copyright Board increased private copying levies to Can\$0.29 on audio cassette tapes of 40 minutes or longer, to Can\$0.21 on CD-Rs and CD-RWs, and to Can\$0.77 on CD-Rs Audio and CD-RWs Audio and Mini-Discs.¹⁶⁶ The rationale for the rise in the levies was mostly related to an increased usage of digital media for copying pre-recorded music. The Copyright Board estimated that private copying levies would raise some Can\$27 million in 2001 and Can\$32 million in 2002. The Board also noted that while prices for blank audio recording media have generally been declining, consumer prices for such media could likely be higher as a result of the new levy rates.¹⁶⁷ In late 2002, the Copyright Board was examining proposed levies for 2003 and 2004.

¹⁶⁶ The private copying levies for 2001 and 2002 were published in *Canada Gazette*, Part I, Volume 134, Number 51, 16 December 2000.

¹⁶⁷ Copyright Board's Backgrounder, 15 December 2000 [Online]. Available at: <http://www.cb-cda.gc.ca/news/c20012002fs-e.html>.

Annex III.1 Provincial and Territorial Government Procurement

Province: Alberta

Main procurement agency: the Supply Management Branch (SMB)

Procurement conditions: The SMB of Government Services is responsible for the centralized purchasing on behalf of Government of Alberta departments of their materials, equipment, supplies and information technology systems development and outsourcing services. Contract awards are based either on the lowest compliant or the most cost-effective bid. Services and construction are procured directly by the different departments. All purchases for goods, services, and construction are subject to the AIT procurement provisions of Chapter 5. Departments may purchase goods valued at up to Can\$10,000 per transaction directly from suppliers using a Purchase Order, or the Government Procurement Card. If an emergency exists, purchases over Can\$10,000 may also be made directly by departments. Standing offers, supply arrangements that enable departments to order goods directly from suppliers over a specific period of time at prescribed prices and terms and conditions, are established by the Procurement Section as required. Purchases made on behalf of departments are generally exempt from the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST). There is no dollar limit on departmental purchases of Standing Offers established by the Procurement Section.¹

Transparency: The SMB advertises procurement opportunities for goods valued at Can\$10,000 or greater and development of information technology application software valued at Can\$100,000 or greater on the national electronic tendering system (MERX). Where the procurement value for services and construction is Can\$100,000 or greater it is advertised on MERX. Construction is also advertised online.²

Province: British Columbia

Main procurement agency: Purchasing Commission (PC)³

Procurement conditions: The PC is responsible for procurement of goods above a Can\$5,000. Services are generally procured directly by the different ministries.

Transparency: Procurement opportunities tendered are posted online.⁴

Province: Manitoba

Main procurement agency: Procurement Service Branch (PSB)

Procurement conditions: The PSB is in charge of the procurement of goods but departments also engage in procurement directly. Departments have been delegated the authority to purchase goods up to Can\$2,500, including taxes, with some restrictions. Some goods over Can\$2,500 (e.g. highway construction contracting and IT requirements) may also be bought by the departments, however they have to advertise them on MERX. Departments have also been delegated the authority to purchase their own services.

¹ <http://www.infras.gov.ab.ca/>.

² <http://www.coolnet.ca>.

³ <http://www.pc.gov.bc.ca/>.

⁴ <http://www.bcbid.ca/>.

Transparency: The Manitoba Government tenders on MERX goods with a value greater than Can\$2,500, and services and construction contracts greater than Can\$100,000. Departments are required to tender in an approved format, and for contracts over Can\$100,000 have to advertise on MERX. Actual purchases made by departments are available online.⁵

Province: New Brunswick

Main procurement agency: Central Purchasing Branch (CPB)

Procurement conditions: The CPB is responsible for purchases of goods valued at Can\$1,500 or more. Below this threshold, Government departments are entitled to purchase goods, directly from a vendor. For purchases between Can\$1,501-4,999, Central Purchasing may solicit price quotations from registered vendors; for purchases of Can\$5,000 or above, tenders may either be invited from registered vendors or publicly advertised. For services, departments may purchase up to Can\$9,999 directly without tender; from Can\$10,000 to Can\$49,999 the CPB may invite or advertise tenders. Transparency: Tenders of Can\$25,000 and up, (goods) and of Can\$50,000 and up (services) must be publicly advertised. The authorities have noted that, although they are allowed to invite tenders for goods purchases between Can\$5,000 and Can\$24,999 and services between Can\$10,000 and Can\$49,999, in practice those tenders are advertised. All tenders are advertised on the New Brunswick's Government internally run web site (NBON) as well as on the BIDS and MERX private sector services. The version of the Standard Terms and Conditions effective 25 June 2001 applies to all tender invitations for goods and services issued by the CPB.⁶ The authorities have noted that the Standard Terms and Conditions are periodically updated, and subject to change as required.

Province: Newfoundland and Labrador

Main procurement agency: Government Purchasing Agency (GPA)

Procurement conditions: Tendering takes place generally in a competitive manner, under the AIT; there are no price preferences or provincial set-asides. The GPA endeavours to obtain a minimum of three price quotations for all acquisitions under Can\$10,000.

Transparency: Tenders that exceed Can\$10,000 are publicly advertised, and the Agency endeavours to obtain a minimum of three price quotations for all acquisitions under Can\$10,000.

Territory: Northwest Territories (NWT)

Main procurement agency: The Department of Public Works and Services (PW&S)

Procurement conditions: Tendering takes place generally in a competitive manner, for thresholds covered by the AIT. Sole source contracts are allowed for goods urgently needed; when only one supplier is available and capable of performing the contract; or when the contract is valued at less than Can\$1,000.⁷ Negotiated contracts, where a specific firm is targeted may be used, but must be approved by the Government of the Northwest Territories; there is no specific policy for these contracts. Standing Offer Agreements (price agreements with suppliers) may be entered. The Cabinet directed that PW&S extend this kind of agreement for key commodities on a centralized basis starting FY 2001/2002. Preferences are granted for NWT suppliers. For contracts valued at less than Can\$1,000, sourcing is restricted to approved northern businesses. For contracts valued between

⁵ http://www.manitobamarketplace.com/open_update.html.

⁶ The Terms and Conditions are available online at: <http://www.gnb.ca/0337/01-e/28-e.htm>.

⁷ See online information. Available at: <http://www.gov.nt.ca/>.

Can\$1,000 and Can\$5,000 a 20% preference margin is granted to approved NWT suppliers. In the case of contracts valued over Can\$50,000, a NWT preference margin of 15% and a local preference margin of 5% are granted.

Transparency: Tenders that exceed Can\$30,000 for goods and Can\$100,000 for construction are publicly advertised on a local newspaper and on PW&S's website. Invitational tendering is recommended for contracts under Can\$30,000.

Province: Nova Scotia

Agency: Procurement Branch (PC) of the Department of Transportation and Public Works (DTPW)

Procurement conditions: All purchasing is through the Corporate Financial Management System (CFMS). Departments have been delegated purchasing authority for goods up to Can\$5,000, and for services and construction contracts up to Can\$10,000.⁸ All other procurement is done centrally, or with the approval of the PC.

Transparency: All tender opportunities are shown on the Department of Finance online information.

Province: Ontario

Main procurement agency: Procurement Policy and Information Technology Procurement Branch (PPITPB)

Procurement conditions: PPITPB is responsible for all procurement of goods above Can\$25,000 and services above Can\$100,000.

Transparency: Tenders by PPITPB are subject to competitive tendering, either through advertising in the MERX, or through newspaper advertising.

Province: Prince Edward Island

Agency: Procurement Services Section, Office of the Comptroller, Department of the Provincial Treasury, established under the Public Purchasing Act of Prince Edward Island to purchase all goods and supplies required by government departments located throughout the province. Other than Local Purchase Orders (LPO's) for emergency goods to a value of Can\$250, or certain exemptions provided for in the Public Purchasing Act, the Procurement Services Section is the sole body authorized to purchase supplies for the Provincial Government.

Procurement conditions: Purchases are generally made on the basis of the lowest overall total price that meets the specifications of the competition and subject to guidelines established in the Public Purchasing Act and Regulations. Standing Offer Tenders, through which departments order supplies at pre-arranged prices and delivery conditions, may be issued for items to be purchased over a specified period of time on an "as and when required" basis, for tenders below the AIT thresholds. Also for the latter, the Government reserves the right to give preference to tenders received from suppliers based In Prince Edward Island or other Atlantic provinces.

Transparency: All tenders for goods above Can\$25,000, services above Can\$50,000, and construction above Can\$100,000 are advertised on the MERX. Tenders for goods below Can\$25,000 are generally also advertised and distributed via the MERX, although where competition exists, these

⁸ See also Government of Nova Scotia online information. Available at: <http://gov.ns.ca/fina/tour/>.

tenders may be restricted to suppliers based on Prince Edward Island or Atlantic Canada. In emergency or urgent situations, tenders may be called by telephone or facsimile.

Province: Quebec

Main procurement agency: Direction générale des acquisitions (DGA)

Procurement conditions: Contracts for goods valued at or above Can\$25,000 and construction projects of or over Can\$100,000 must be tendered publicly, subject to the AIT, and must go through the DGA. Purchases of goods and services under Can\$25,000 are usually made by the different departments; suppliers are generally chosen from a list or are invited to tender.

Transparency: DGA procurement is advertised on MERX, in the case of goods and services, and on CIEC (electronic database for construction contracts) in the case of construction.

Province: Saskatchewan

Main procurement agency: Purchasing Branch (PB) of Saskatchewan Property Management Corporation (SPMC)⁹

Procurement conditions: The PB coordinates the purchase of goods and some services for government departments, boards, agencies, and commissions, and some crown corporations. Source lists are normally used for goods tenders valued at less than Can\$5,000 and services tenders valued at less than Can\$100,000. The authorities have noted that competitive bidding is the norm for most of Saskatchewan's procurement and that invitational or known-supplier lists are used in few cases and comprise a small proportion of the total goods purchased by the PB.

Transparency: Goods tenders valued at Can\$5,000 or more, and services tenders valued at Can\$100,000 or more, are advertised and distributed through MERX.

Territory: Yukon

Main procurement agency: Procurement Services (PS), a dependency of the Department of Infrastructure

Procurement conditions: The PS buys goods and related services for all government departments. The office maintains a source list, which is a directory of contractors, consultants, and suppliers of goods and services. Service are publicly advertised, as noted below, or the bid must invite everyone registered on the source list. For contracts under Can\$50,000, only three bidders on the list have to be invited.¹⁰

Transparency: Service contracts with an estimated value of Can\$50,000, and goods contracts valued at Can\$25,000 or more, must be publicly advertised.

⁹ See also SPMC online information. Available at: <http://www.spmc.gov.sk.ca/spmc/>.

¹⁰ See also Government of Yukon Department of Infrastructure online information. Available at: <http://www.gov.yk.ca/source/>.