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## II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

### (1) OVERVIEW

1. Canada's framework for trade and investment policy has not changed significantly since 2003. This framework is based on shared federal-provincial competencies, and involves regular consultations between the Federal Government, provinces, industry, non-governmental and public interest groups, and the public at large. It also includes an agreement to identify and reduce interprovincial barriers to trade and investment. Canada has stated that its growth prospects depend on open world markets and a stable, predictable, and transparent trading environment.

2. Canada participates actively in the WTO, which it considers as the central element of its trade policy and the best forum for broad-ranging market access improvements in many areas of interest to Canada. Canada has made numerous proposals in the context of the current round of WTO negotiations. In addition to the multilateral track, Canada pursues regional and bilateral preferential trade and investment initiatives. Canada exempted from preferential liberalization commitments certain supply-managed tariff lines and cultural activities. Canada gives paramount importance to managing its trade relationship with the United States, and achieves this largely through the NAFTA and the WTO. Negotiations towards free-trade agreements have been under way with several countries, but no new agreements have been concluded since 2003.

3. Canada maintains a policy of national treatment for foreign direct investment, subject to sector-specific restrictions related to fishing, mining and energy, air transport, telecommunications, and cultural activities. Moreover, a foreign acquisition above a given threshold is subject to review to ensure that it results in a "net benefit" to Canada.

### (2) GENERAL LEGAL FRAMEWORK

4. No changes have occurred in the constitutional regime since Canada's last Trade Policy Review, in 2003. Canada is a constitutional monarchy with a federal system of parliamentary government. Executive power is vested formally in the Queen, who is the head of State.<sup>1</sup> The Queen is represented in Canada by the Governor General. In practice, executive power is exercised by Cabinet, led by the Prime Minister, who is the head of government.

5. Legislative power is vested in the Parliament, which consists of the Queen, the Senate, and the House of Commons.<sup>2</sup> The House of Commons consists of 308 members, last elected in January 2006. The Senate comprises 105 non-elected members, appointed by the Governor General on the recommendation of the Prime Minister. Bills providing for the expenditure of public money or imposing taxes can only be initiated in the House of Commons; other bills may be initiated either in the House of Commons or in the Senate. To become law, a bill must be passed by the House of Commons and the Senate. In practice, the Senate has rarely rejected a bill passed by the House of Commons, or introduced amendments opposed by the House.<sup>3</sup>

6. The judiciary is organized in a four-tiered structure, with the Supreme Court at the apex. The next tier consists of the Federal Court of Appeal and the various provincial/territorial courts of appeal; this is followed by the Federal Court, the Tax Court of Canada, and the provincial and territorial superior courts of general jurisdiction. At the bottom of the hierarchy are the "provincial courts". The Governor General in Council appoints the judges for the Supreme Court, the federal courts, and the

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<sup>1</sup> Section 9, The Constitution Act, 1867.

<sup>2</sup> Section 17, The Constitution Act, 1867.

<sup>3</sup> Forsey (2005).

upper-level courts in the provinces/territories. The provincial and territorial governments appoint the judges for the other provincial/territorial courts. The Supreme Court hears appeals from both the federal and the provincial/territorial court systems.

7. Canada consists of ten provinces and three territories. Provincial governments operate under a parliamentary system largely similar to that of the Federal Government. The scope of federal and provincial legislative powers is defined in Part IV of The Constitution Act, 1867. The legislative powers of Parliament are set out in sections 91, 94, and 94A of this Act, and those of provincial legislatures in sections 92, 92A, and 93. Parliament enjoys exclusive jurisdiction over the regulation of international and inter-provincial trade, including tariffs.<sup>4</sup> Agriculture and immigration are recognized as being under shared federal and provincial jurisdiction.<sup>5</sup> The authorities indicated that any provincial legislation in these areas is subject to federal legislation.

8. The power to negotiate and enter into international treaties rests solely with the federal executive.<sup>6</sup> Neither Parliament nor the provinces have a legal role in this respect. International treaties are not self-executing under Canadian law: implementing legislation may be necessary to the extent that provisions of domestic law are inconsistent with Canada's international obligations. Responsibility to implement the provisions of international treaties may rest with the Federal Government or with the provincial governments depending on the division of powers set out in the Constitution. As a result, cooperation by the provinces is often required to implement international treaties.

### **(3) TRADE POLICY FORMULATION AND OBJECTIVES**

9. Executive authority for the conduct of international trade policy is vested in Cabinet. To obtain Cabinet approval for proposed international trade policy initiatives, the Minister for International Trade submits a memorandum to Cabinet outlining the proposed initiative, its costs and benefits, and an assessment of the various issues and risks involved. The preliminary work to facilitate Cabinet approval is led by Foreign Affairs and International Trade Canada (DFAIT), in coordination with other government departments and agencies, depending on the initiative. Traditionally, consultations involve the Department of Finance, which is responsible for tariff matters, Industry Canada, which is responsible for structural economic policy, and Agriculture and Agri-Food Canada, which is responsible for agricultural policy.<sup>7</sup>

10. Parliamentary committees are a prominent part of the consultative process in the formulation of trade policy. A number of these committees have held public hearings on Canada's trade policies and positions.<sup>8</sup>

11. DFAIT regularly consults provinces and territories, industry, non-governmental and public interest groups, and Canadians at large about trade policy. DFAIT has a government-to-government consultation programme with provinces and territories. The Annual Meeting of Federal-Provincial-Territorial Trade Ministers is a consultative mechanism that addresses international trade issues. It can be complemented by annual meetings of deputy ministers. Additionally, the so-called "C-Trade" process brings together representatives at the federal, provincial, and territorial levels on a quarterly basis.

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<sup>4</sup> Section 91 (2), The Constitution Act, 1867.

<sup>5</sup> Section 95, The Constitution Act, 1867.

<sup>6</sup> Steger (1997).

<sup>7</sup> Ciuriak (2004).

<sup>8</sup> For a discussion of parliamentary involvement in international trade policies and negotiations see Berg and Schmitz (2006).

12. DFAIT has also established a broad consultative framework for dealing with non-governmental stakeholders. Various expert advisory groups have been put in place to provide strategic and technical advice on trade issues. These groups replaced previous consultative mechanisms, including the Sectoral Advisory Groups on International Trade and the Academic Advisory Council. Additionally, DFAIT maintains a public outreach programme and a web-based consultative process for the general public.<sup>9</sup> DFAIT also uses the *Canada Gazette*, the official newspaper of the Government of Canada, as a means of informing and soliciting views on its initiatives.

13. Canada considers trade a key engine for its economy, and has stated that its current and future growth and prosperity depend on open world markets and a stable, predictable, and transparent trading environment.<sup>10</sup> To that end, the Government pursues improved market access for trade in goods through negotiations at the bilateral, regional, and multilateral levels. In this context, the WTO is considered as the central element of Canada's trade policy and an important avenue to achieving Canada's market access goals. According to Canada, "only the WTO has the critical mass of countries needed to reach a deal that addresses the most harmful distortions in the international trading system, particularly trade-distorting agricultural subsidies".<sup>11</sup>

14. Canada is seeking an ambitious outcome to the Doha Development Agenda. In the WTO agriculture negotiations, it is seeking to "level the international playing field" through the elimination of export subsidies, the substantial reduction of trade-distorting domestic support, and "real and significant" market access for all agri-food products.<sup>12</sup> In the context of the non-agricultural market access negotiations, Canada is seeking reduced customs tariffs for all non-agricultural goods, and tariff elimination in some sectors. Canada has supported sector-wide agreements in fish products, environmental goods, forest products, chemicals, and raw materials.

15. Canada supports improving anti-dumping and countervailing duty disciplines to "reduce the scope for abuse", strengthening subsidy disciplines, and clarifying rules on regional trade agreements.<sup>13</sup> It also seeks improved rules on trade facilitation to maximize transparency in, and streamline, customs procedures. With regard to services, Canada is seeking increased and more secure access to professional, business, financial, telecommunications, computer, and environmental services markets abroad, and more transparent and predictable foreign regulatory environments. It is seeking an outcome to the Doha Development Agenda that responds to Canada's commercial interests and to developing country concerns.

16. Recognizing the existence of significant differences in trade and investment policies and practices between the federal and provincial governments, and across provinces, the Agreement on Internal Trade (AIT) aims to "reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investment within Canada, and to establish an open, efficient and stable domestic market".<sup>14</sup> The AIT entered into effect in 1995. All provinces and territories except Nunavut are signatories. The AIT Secretariat provides administrative and operational support to the functioning of the agreement.

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<sup>9</sup> DFAIT online information, "It's Your Turn". Viewed at: <http://www.international.gc.ca/tna-nac/consult-en.asp>.

<sup>10</sup> DFAIT online information, "Opening Doors to the World: Canada's International Market Access Priorities - 2006". Viewed at: <http://www.maeci-dfait.gc.ca/tna-nac/cimap2006-en.asp>.

<sup>11</sup> DFAIT online information. Viewed at: <http://www.maeci-dfait.gc.ca/tna-nac/cimap2006-en.asp>.

<sup>12</sup> DFAIT online information. Viewed at: <http://www.maeci-dfait.gc.ca/tna-nac/cimap2006-en.asp>.

<sup>13</sup> DFAIT online information. Viewed at: <http://www.maeci-dfait.gc.ca/tna-nac/cimap2006-en.asp>.

<sup>14</sup> Article 100, Agreement on Internal Trade.

17. Under the AIT, the federal, provincial, and territorial governments agreed to focus on 11 sectors or policy instruments that offer the greatest potential for the reduction of barriers. These are: government procurement; environmental protection; consumer-related measures and standards; labour mobility; investment; agricultural and food products; alcoholic beverages; communications; transport; natural resource processing; and energy.

18. Since Canada's last Review, the federal, provincial and territorial ministers responsible for internal trade have agreed to extend the procurement disciplines of the AIT to Crown corporations from 2005. Ministers also agreed on "an ambitious action plan to make major progress on internal trade".<sup>15</sup> One component of the action plan is a strategy to remove remaining restrictions on internal labour mobility by 2009. This action plan builds on an "internal trade workplan" approved in 2004 by the Council of the Federation, which is composed of the premiers of all provinces and territories. In addition to labour mobility, priority areas include improving the AIT's dispute settlement disciplines, harmonizing regulations and standards, and completing an energy chapter under the AIT.<sup>16</sup>

19. The AIT contains a formal dispute settlement mechanism accessible to governments and private parties (Table AII.1). There have been 202 disputes since 1995. Of these, 78% were related to Federal Government procurement and were heard by the Canadian International Trade Tribunal.

#### **(4) FOREIGN INVESTMENT REGIME**

20. Although Canada is among the OECD countries that have liberalized foreign investment significantly since 1998, it also belongs to the group with the highest levels of overall restrictiveness to FDI, as measured by the OECD's FDI regulatory restrictiveness index.<sup>17</sup>

21. The Investment Canada Act governs the establishment of new foreign businesses and the acquisition of control of Canadian businesses. There are also federal and provincial statutes that govern investment in particular sectors.

22. Foreign investment to establish a new business in Canada, or to acquire control of an existing one, is subject to notification, unless the acquisition is subject to review (see below).<sup>18</sup> Notifications must be filed no later than 30 days after the investment takes place. They must be submitted to Industry Canada, except for investments in cultural businesses, in which case notifications must be sent to Canadian Heritage.<sup>19</sup> Industry Canada received an average of 386 notifications annually between 2003 and 2005<sup>20</sup>; Canadian Heritage received an annual average of 35 during the same period.<sup>21</sup>

23. In general, foreign investment is not subject to review. For 2006, only direct acquisitions by investors from WTO Members of existing businesses in excess of Can\$265 million are subject to

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<sup>15</sup> AIT online information, "Federal-Provincial/Territorial Conference of Ministers Responsible for Internal Trade: Progress achieved on an action plan to improve internal trade", 7 September 2006. Viewed at: [http://www.ait-aci.ca/index\\_en/news.htm](http://www.ait-aci.ca/index_en/news.htm).

<sup>16</sup> Council of the Federation (2006).

<sup>17</sup> OECD (2006c).

<sup>18</sup> Section 11, Investment Canada Act.

<sup>19</sup> The term "cultural business" covers publication, distribution, and sale of books, magazines, periodicals, newspapers, and music; and production, distribution, sales, and exhibition of film, video recordings, and audio and video music recordings. Section 14.1(5), Investment Canada Act.

<sup>20</sup> Industry Canada online information. Viewed at: [http://strategis.ic.gc.ca/epic/internet/inica-lic.nsf/en/h\\_lk00015e.html](http://strategis.ic.gc.ca/epic/internet/inica-lic.nsf/en/h_lk00015e.html).

<sup>21</sup> Canadian Heritage online information. Viewed at: [http://www.canadianheritage.gc.ca/progs/ac-ca/progs/eiic-csir/notif\\_e.cfm](http://www.canadianheritage.gc.ca/progs/ac-ca/progs/eiic-csir/notif_e.cfm).

review.<sup>22</sup> For non-WTO investors, the threshold is Can\$5 million, unless the existing business is controlled by a WTO-Member investor, in which case the higher threshold applies.<sup>23</sup> The Can\$5 million threshold also applies to direct acquisitions in uranium production, transportation services, financial services, and cultural businesses, irrespective of the origin of the investor.<sup>24</sup> Indirect acquisitions by investors from WTO Members are not reviewable, except for those in transportation services, financial services, and cultural businesses exceeding Can\$50 million.<sup>25</sup> However, if the assets in Canada of the business being acquired indirectly are 50% or more of the total global assets of the business, the review threshold for indirect acquisitions is reduced to Can\$5 million. Industry Canada reviewed 25 acquisitions per year on average between 2003 and 2005; none was denied.<sup>26</sup> Canadian Heritage reviewed an annual average of 13 during the same period; one was denied.<sup>27</sup> The Canadian authorities indicate that all investment-related information obtained in the course of the administration of the Investment Canada Act is privileged and cannot be disclosed by officers or employees of the Crown.

24. Investments in certain cultural sectors that fall below the review thresholds may nonetheless be reviewed if the Governor-in-Council considers that a review would be in the "public interest" and issues an Order-in-Council to that effect on the recommendation of the Minister of Canadian Heritage.<sup>28</sup> The investor concerned must be informed that a review will take place within 21 days of the notification. The cultural sectors subject to this provision are listed in Schedule IV of the Investment Canada Regulations.

25. As a general rule, for investments subject to review, a foreign investor may not acquire control of an existing business unless the Minister of Industry or the Minister of Canadian Heritage (for investments in cultural businesses) is satisfied that "the investment is likely to be of net benefit to Canada".<sup>29</sup> Under the Investment Canada Act, a reviewable investment is deemed approved if the Minister does not notify the investor about the outcome of the review within 45 days of receiving a completed application.<sup>30</sup> The Minister may extend this period by an additional 30 days, provided that the investor is notified in advance of the expiry of the initial period. Further extensions are permitted with the agreement of the investor. The average completion period for a review is 43 days for Industry Canada and 75 days for Canadian Heritage.

26. The Investment Canada Act specifies the factors that must be taken into account in assessing the "net benefit" criterion.<sup>31</sup> These include the investment's effect on: economic activity, employment, resource processing, exports, the use of Canadian products, productivity, efficiency, technological development, product innovation and variety, and competition. They also comprise the investment's compatibility with national industrial, economic, and, where applicable, cultural policies,

<sup>22</sup> Section 14.1(1) et seq., Investment Canada Act.

<sup>23</sup> Sections 14(3) and 14.1(1), Investment Canada Act.

<sup>24</sup> Section 14.1(5), Investment Canada Act. "Transportation services" are defined in section 2.2 of the Regulations as "a Canadian business directly or indirectly engaged in the carriage of passengers or goods from one place to another by any means, including, without limiting the generality of the foregoing, carriage by air, by rail, by water, by land and by pipeline."

<sup>25</sup> Under the Investment Canada Act, an indirect acquisition is a transaction that involves the acquisition of the shares of a company incorporated outside Canada that owns subsidiaries in Canada.

<sup>26</sup> Industry Canada online information. Viewed at: [http://strategis.ic.gc.ca/epic/internet/inica-lic.nsf/en/h\\_lk00015e.html](http://strategis.ic.gc.ca/epic/internet/inica-lic.nsf/en/h_lk00015e.html).

<sup>27</sup> Canadian Heritage online information. Viewed at: [http://www.canadianheritage.gc.ca/progs/ac-ca/progs/eiic-csir/notif\\_e.cfm](http://www.canadianheritage.gc.ca/progs/ac-ca/progs/eiic-csir/notif_e.cfm).

<sup>28</sup> Section 15, Investment Canada Act.

<sup>29</sup> Section 16(1), Investment Canada Act.

<sup>30</sup> Section 21(1).

<sup>31</sup> Section 20.

and "the degree and significance" of participation by Canadians in the business resulting from the investment.

27. Several statutes and policy guidelines limit foreign ownership in specific sectors, including energy, broadcasting, film, transport, and telecommunications (Table II.1).

**Table II.1**  
**Selected foreign ownership restrictions by sector, 2006**

Sector	Level of government (legal base)	Limitation
Fishing	Federal (Fisheries Act)	Only Canadians or Canadian-controlled corporations are permitted to obtain fishing licences. Canadian fish-processing companies that have more than 49% foreign ownership are not permitted to hold commercial fishing licences.
Mining	Federal (Non Resident Ownership Policy in the Uranium Mining Sector)	Foreign ownership of a uranium mining property is limited to 49%; it may be higher if the property is controlled by Canadians (this restriction applies at the production stage, and not at the exploration and development stages).
Air transport	Federal (Canada Transportation Act)	Foreign ownership of an airline is limited to 25%.
Book publishing and distribution	Federal (Investment Canada Act and supplementary policy guidelines)	Foreign investment in new businesses is limited to Canadian-controlled joint ventures. Foreign acquisition of existing Canadian-controlled businesses is allowed only if: (a) the business is in clear financial distress; and (b) Canadians have had full and fair opportunity to purchase.
Periodical publishing	Federal (Investment Canada Act and supplementary policy guidelines)	Foreign acquisitions of Canadian-owned and Canadian-controlled periodical publishing businesses are not permitted. Foreign investments in the periodical publishing sector, including investments to establish or, directly or indirectly, acquire foreign businesses to produce and sell periodicals in Canada and to access the Canadian advertising services market are allowed if a commitment to the production of majority Canadian editorial content is taken.
Broadcasting	Federal (Broadcasting Act, Direction to the CRTC (Ineligibility of Non-Canadians))	Foreign ownership of a broadcasting programming and distribution undertaking is limited to 20% of voting shares (maximum 33.3% in the case of a parent corporation).
Film distribution	Federal (Investment Canada Act and supplementary policy guidelines)	Foreign acquisition of a Canadian-controlled distributor is not allowed. Foreign investment in new distribution businesses is permissible only for importation and distribution of proprietary products (the importer owns world rights or is a major investor). Direct or indirect acquisition of foreign distribution businesses in Canada by foreign-owned companies is permissible only if the investor undertakes to reinvest a portion of its Canadian earnings "in accordance with national and cultural policies".
Telecommunications	Federal (Telecommunications Act)	Foreign ownership of Canadian common carriers is limited to 20% direct, and 33 <sup>1</sup> / <sub>3</sub> % indirect (46.7% combined direct and indirect). There are no restrictions on foreign ownership of non-voting shares.

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

28. Several provinces and the Yukon regulate the ownership of land by foreigners, primarily with respect to non-urban agricultural and recreational land.<sup>32</sup> According to the Canadian authorities, exemptions to provincial regulations on foreign ownership of land are routine. Provincial and federal governments may impose limitations on foreign participation in privatization. Under the Canada Business Corporations Act, "constraints" may be placed on the issue, transfer, and ownership of shares in federally incorporated corporations to allow such corporations to meet Canadian ownership requirements in sectors where these requirements are a condition to operate or to receive benefits.<sup>33</sup> Some federal and provincial measures relating to energy may also affect foreign investment (Chapter IV(3)).

29. In October 2002, Canada notified under the WTO Agreement on Trade-Related Investment Measures the websites containing publications produced by the federal, provincial, and territorial governments "in which TRIMs may be found".<sup>34</sup>

30. Under the GATS, Canada made extensive commitments regarding the supply of services through commercial presence. Additionally, Canada is a party to the OECD Code of Liberalization of Capital Movements and the OECD National Treatment Instrument.<sup>35</sup>

31. There are 22 bilateral investment agreements in force between Canada and other countries (Table II.2). The majority are based on the investment chapter of the NAFTA and share the following features: a broad definition of covered investments; national and MFN treatment obligations with regard to the pre- and post-establishment phases; standards of treatment and protection; rules concerning expropriation and compensation payable; free transfer of funds; and dispute settlement between investors and the host State through international arbitration. An agreement with Peru has been signed and, according to the authorities, is expected to be ratified soon. Agreements with El Salvador and South Africa were signed but were never ratified. Canada is negotiating investment agreements with China and India.

**Table II.2**  
**Bilateral investment agreements, 2006**

Agreements based on OECD model			
Country	Entry into force	Country	Entry into force
Poland	22.11.1990	Russia	27.06.1991
Argentina	29.04.1993	Hungary	21.11.1993
Czech Republic	09.03.1992	Slovakia	09.03.1992
Agreements based on NAFTA			
Ukraine	24.07.1995	Latvia	27.07.1995
Philippines	13.11.1996	Trinidad and Tobago	08.07.1996
Barbados	17.01.1997	Ecuador	06.06.1997
Venezuela	28.01.1998	Panama	13.02.1998
Egypt	03.11.1997	Thailand	24.09.1998
Armenia	29.03.1999	Uruguay	02.06.1999
Lebanon	19.06.1999	Costa Rica	29.09.1999
Croatia	30.01.2001	Romania	11.02.1997

Source: DFAIT online information, "Listing of Canada's existing FIPAs". Viewed at: [http://www.international.gc.ca/tna-nac/fipa\\_list-en.asp](http://www.international.gc.ca/tna-nac/fipa_list-en.asp).

<sup>32</sup> See, for example, Foreign Ownership of Land Regulations.

<sup>33</sup> Section 174(1).

<sup>34</sup> WTO document G/TRIMS/N/2/Rev.9/Add.10, 11 October 2002.

<sup>35</sup> The Code of Liberalization contains legally binding obligations regarding the liberalization of specified capital movements, including foreign direct investment, subject to certain exceptions and country-specific reservations. The National Treatment Instrument contains a legally non-binding commitment to accord national treatment to foreign-owned or controlled firms in the post-establishment phase.

32. The NAFTA and the free-trade agreement with Chile contain separate chapters on foreign investment. The free-trade agreements with Costa Rica and Israel do not cover investment.

33. Canada is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which entered into force in Canada in 1986. It is not a member of the International Centre for the Settlement of Investment Disputes (ICSID). The Canadian authorities indicate that Canada is making efforts to join ICSID.

## **(5) INTERNATIONAL RELATIONS**

### **(i) World Trade Organization**

34. Canada is an original Member of the WTO. Canada participated in the post-Uruguay Round negotiations on telecommunications and financial services; its commitments in these areas were annexed to the Fourth and Fifth Protocols to the GATS.<sup>36</sup> Canada is a party to the Agreement on Government Procurement and a participant in the Information Technology Agreement.

35. Canada implemented the WTO Agreement through the World Trade Organization Agreement Implementation Act, which entered into force on 1 January 1995. This Act "approves" the WTO Agreement without giving it the force of law in Canada.<sup>37</sup> The Act prohibits private parties from bringing actions against federal or provincial bodies to enforce rights and obligations under the WTO Agreement.<sup>38</sup> The World Trade Organization Agreement Implementation Act amended 23 federal statutes to bring them into conformity with the WTO Agreement.<sup>39</sup> Following the adoption of the Act, the Governor-in-Council promulgated additional regulations implementing further aspects of the WTO Agreement.

36. Canada has met most of its WTO notification obligations between 2003 and September 2006. Exceptions include notifications on state-trading enterprises, rules of origin, import licensing, and government procurement (Table AII.2).

37. In the context of the Doha Development Agenda, Canada has made numerous contributions or proposals in a wide range of areas, including trade facilitation, agriculture, market access for non-agricultural goods, services, subsidies, anti-dumping and countervailing duties, and intellectual property. Additionally, Canada has made proposals related to the WTO dispute settlement mechanism. These proposals cover issues like transparency, the panel selection process, and the treatment of confidential information.<sup>40</sup> Canada sponsored some 70 documents catalogued under document series "TN" (trade negotiations) in the WTO Documents Online database between January 2003 and October 2006.

38. Since the inception of the WTO, Canada has been respondent in 14 disputes, and complainant in 27. It has also joined consultations and participated as a third party in 61 cases. Altogether, Canada has participated in about 30% of all WTO disputes.

39. Since January 2003, Canada has been involved as respondent in six cases (Table AII.3). Two new panels were established as a result of complaints against Canada during the review period. As

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<sup>36</sup> WTO documents GATS/SC/16/Suppl.3, 11 April 1997, and Suppl.4/Rev.1, 6 June 2000.

<sup>37</sup> Section 8.

<sup>38</sup> Section 6.

<sup>39</sup> Steger (1997).

<sup>40</sup> See, for example, WTO document TN/DS/W/41, 24 January 2003.



complainant, Canada has been involved in eight cases during the review period, six of which were against the United States.

**(ii) Preferential trade agreements and other arrangements**

**(a) Free-trade agreements**

40. The NAFTA provisions covering trade in goods were notified to the GATT in February 1993; those covering trade in services were notified to the WTO in March 1995.<sup>41</sup> The NAFTA entered into force on 1 January 1994.<sup>42</sup> Under the NAFTA, remaining tariffs on imports from Mexico were eliminated by January 2003. As a result, and subject to origin requirements, all imports from Mexico and the United States enter Canada duty free, with the exception of certain supply-managed dairy, poultry, and egg tariff lines, which Canada excluded from tariff liberalization under NAFTA. Since 2003, Canada and its NAFTA partners have implemented several changes to the product-specific rules of origin contained in Annex 401 of the NAFTA (Chapter III(2)(ii)). The purpose of these changes is to make it easier for manufacturers to qualify for duty-free treatment.

41. A number of anti-dumping and countervailing duty measures were subject to disputes under Chapter 19 of the NAFTA, which provides for bi-national panel reviews of anti-dumping and countervailing duty final determinations and underlying legislation. In October 2006, one Canadian determination was being reviewed under Chapter 19, while 11 determinations by the United States were under review as a result of requests by the Canadian Government or Canadian producers.<sup>43</sup>

42. Trade in softwood lumber has been the main source of friction between Canada and the United States as regards products, particularly since the expiry of the 1996 U.S.-Canada Softwood Lumber Agreement in 2001. In an effort to end the WTO and NAFTA disputes that followed, Canada and the United States signed a new agreement on softwood lumber in September 2006. Under the new agreement, Canada must apply restrictions on exports of Canadian softwood lumber to the United States when lumber prices fall below a certain level (Chapter III(3)(ii)). In addition, the United States revoked anti-dumping and countervailing duty orders on Canadian softwood lumber, and refunded a share of the duty deposits collected since 2002 to Canadian exporters. Canada and the United States also agreed to terminate certain softwood lumber litigation in the WTO, the NAFTA, and U.S. courts.

43. Disputes relating to the investment provisions of NAFTA Chapter 11 are settled through an investor-state arbitration process. Three new investment disputes have been initiated against the Government of Canada since 2003. The first concerns certain measures taken by the Government of Ontario that have allegedly interfered with the export of dairy products of two Canadian companies owned by U.S. investors.<sup>44</sup> In the second dispute, a U.S. forestry company alleges that certain measures related to log exports from British Columbia contravene the investment provisions of the NAFTA.<sup>45</sup> The third dispute concerns a U.S. investor who alleges that measures taken by the Government of Ontario prevented an Ontario company it controls from developing an abandoned mine as a landfill site.<sup>46</sup>

<sup>41</sup> GATT document L/7176, 1 February 1993, and WTO document S/C/N/4, 1 March 1995.

<sup>42</sup> North American Free Trade Agreement Implementation Act, 23 June 1993.

<sup>43</sup> NAFTA Secretariat online information, "Status Report: NAFTA & FTA Dispute Settlement Proceedings". Viewed at: [http://www.nafta-sec-alena.org/DefaultSite/index\\_e.aspx?DetailID=9](http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=9).

<sup>44</sup> GL Farms LLC and Carl Adams v. The Government of Canada, 5 June 2006.

<sup>45</sup> Merrill & Ring Forestry LLP v. The Government of Canada, 25 September 2006.

<sup>46</sup> V.G. Gallo v. The Government of Canada, 12 October 2006.

44. Another dispute, which began in 2000, remains pending.<sup>47</sup> The dispute focuses on allegations that Canada Post engages in anti-competitive practices, and on the alleged favourable treatment provided by Canada Border Services Agency to Canada Post's courier services. Regarding the allegations of anti-competitive practices by Canada Post, the arbitration tribunal held in its interim award on jurisdiction that anti-competitive conduct, by itself, did not fall within the scope of the tribunal's jurisdiction under NAFTA Chapter 11.

45. One NAFTA Chapter 11 dispute, concerning Canada's ban on the export of certain wastes, was concluded in December 2002.<sup>48</sup> A tribunal had ruled in November 2000 that the measure breached Canada's obligations under Chapter 11. Canada filed an application with the Federal Court of Canada in February 2001 seeking review of the tribunal's decision. The Federal Court dismissed Canada's application in January 2004.

46. The provisions of the Canada-Chile Free Trade Agreement covering goods were notified to the WTO in August 1997; those covering services were notified in November 1997.<sup>49</sup> The agreement entered into force in July 1997.<sup>50</sup> Remaining tariffs on Canada's imports from Chile were eliminated by January 2003, except for certain supply-managed dairy, poultry, and egg tariff lines, which are not subject to tariff reduction commitments under the agreement (Chapter III(2)(iv)). The agreement contains a bilateral exemption from the use of anti-dumping measures.<sup>51</sup> It also contains an exemption from the application of global safeguard measures, unless imports from the other party account for a substantial share of total imports and contribute importantly to the serious injury caused by the imported goods.<sup>52</sup> The agreement's provisions on services and investment are modelled on the NAFTA. In November 2006, Canada and Chile signed an agreement to add a chapter on government procurement. There have been no disputes under the agreement (November 2006).

47. The Canada-Costa Rica Free Trade Agreement was notified to the WTO in January 2003.<sup>53</sup> It entered into force in November 2002.<sup>54</sup> Canada will eliminate all tariffs on imports from Costa Rica by January 2011, except on beef and certain supply-managed dairy, poultry, and egg tariff lines, which are not subject to tariff reduction commitments under the agreement (Chapter III(2)(iv)). The parties retain the right to apply anti-dumping duties on bilateral imports and to apply global safeguard measures on imports from each other. The provisions on global safeguards mirror those in the Canada-Chile Free Trade Agreement. The agreement does not contain disciplines on services, investment, or government procurement. There have been no disputes under the agreement.

48. The Canada-Israel Free Trade Agreement entered into force and was notified to the WTO in January 1997.<sup>55</sup> The agreement eliminated all tariffs on industrial goods and reduced or eliminated those on certain agricultural goods (Chapter III(2)(iv)). The agreement contains disciplines on government procurement; it does not cover services or investment. Canada and Israel began implementing additional tariff concessions in agriculture in November 2003. Products on which Canada eliminated tariffs include fresh cut roses and various vegetables and juices. There have been no disputes under the agreement. Although, in practice, the CIFTA covers the territory where Israel's

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<sup>47</sup> United Parcel Service of America, Inc. ("UPS") v. Government of Canada, 19 April 2000.

<sup>48</sup> S.D. Myers Inc. v. Government of Canada, 30 October 1998.

<sup>49</sup> WTO documents WT/REG38/N/1, 26 August 1997, and S/C/N/65, 13 November 1997.

<sup>50</sup> Canada-Chile Free Trade Agreement Implementation Act, 25 April 1997.

<sup>51</sup> Article M-01.

<sup>52</sup> Article F-02.

<sup>53</sup> WTO document WT/REG147/N/1, 17 January 2003.

<sup>54</sup> Canada-Costa Rica Free Trade Agreement Implementation Act, 18 December 2001.

<sup>55</sup> Canada-Israel Free Trade Agreement Implementation Act, 18 December 1996; and WTO document WT/REG31/N/1, 23 January 1997.

customs laws apply (including the West Bank and Gaza), in February 1999 Canada and the Palestine Liberation Organization on behalf of the Palestinian Authority signed the Joint Canadian-Palestinian Framework on Economic Cooperation and Trade, designed to improve market access and customs procedures on a reciprocal basis. The framework mirrors the CIFTA.

49. Canada has bilateral trade agreements with Australia and New Zealand. The Canada-Australia Trade Agreement entered into force in 1960 and was amended last in 1973. The Trade and Economic Co-operation Agreement with New Zealand has been in force since 1982. Preferential treatment under both agreements is very limited, as preferences have been eroded by subsequent unilateral and multilateral liberalization (Chapter III(2)(iv)).

(b) Unilateral tariff preferences

50. Canada grants unilateral preferential tariff treatment under the Commonwealth Caribbean Country Tariff (CARIBCAN) (Chapter III(2)(iv)). In mid-2006, Canada requested an extension of the waiver granted by the WTO General Council for the implementation of CARIBCAN.<sup>56</sup> The current waiver expires in December 2006.<sup>57</sup> Unilateral preferential tariff treatment is also granted under the General Preferential Tariff (GPT) and the Least-Developed Country Tariff (LDCT) (Chapter III(2)(iv)). In January 2003, duty-free treatment under the LDCT was expanded to virtually all products, subject to origin requirements.<sup>58</sup> Both schemes have been extended until 2014.<sup>59</sup>

(c) Other initiatives

51. Canada and Korea launched negotiations towards a free-trade agreement in July 2005. The negotiations cover tariff elimination and reduction, trade facilitation, non-tariff measures, services, investment, competition, government procurement, and intellectual property rights. An eighth round of negotiations was held in Seoul in November 2006.

52. Canada and the members of the European Free Trade Association (EFTA, comprising Iceland, Liechtenstein, Norway, and Switzerland) re-started formal negotiations toward a free-trade agreement in November 2006; efforts to conclude an agreement have been ongoing since 1998. The Canadian authorities indicated that any resulting agreement between Canada and EFTA will focus on tariff elimination and is not expected to include substantial new obligations in services, investment, and intellectual property.

53. Canada and the EU agreed on a framework for a Trade and Investment Enhancement Agreement (TIEA) in March 2004. The framework defines the scope of negotiations towards a future TIEA in regulatory cooperation, services, government procurement, trade facilitation, investment, competition, e-commerce, sustainable development, intellectual property rights, science and technology cooperation, small and medium-size enterprises, civil society consultations, and dispute settlement.<sup>60</sup> Three rounds of negotiations have taken place since May 2005; Canada and the EU have decided to pause the negotiations until the results of the Doha Development Agenda are known.

<sup>56</sup> WTO document G/C/W/555, 4 July 2007.

<sup>57</sup> WTO document WT/L/185, 18 October 1996.

<sup>58</sup> Canada Border Services Agency, Customs Notice CN-361, Order Amending the Schedule to the Customs Tariff (Least-developed Country Tariff) and Regulations Amending the General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations.

<sup>59</sup> Bill C-21, An Act to Amend the Customs Tariff, 29 April 2004.

<sup>60</sup> DFAIT online information, "Regional and Bilateral Initiatives: Canada-European Union Trade and Investment Enhancement Agreement". Viewed at: <http://www.international.gc.ca/tna-nac/EU-en.asp>.

54. Canada-EU relations are also framed by the 1976 Framework Agreement for Commercial and Economic Co-operation, the 1996 Joint Political Declaration on Canada-EU Relations, and the 2004 Canada-EU Partnership Agenda, which set goals for broadening Canada-EU relations in trade, economic, and foreign policy issues. A Joint Cooperation Committee and a Trade and Investment Sub-Committee consider bilateral trade, economic, and social issues.

55. Canada and Japan completed an Economic Framework in November 2005.<sup>61</sup> The framework aims to reinforce existing bilateral economic ties and address emerging trade issues. To this end, it identifies fifteen "priority areas of cooperation". Discussions under the framework have resulted in a cooperation agreement on anti-competitive activities, an enhanced customs cooperation arrangement, a memorandum of understanding on bilateral investment promotion cooperation, an agreement on social security, and an informal framework document on food safety cooperation. Other issues being considered in the context of the framework include double taxation and air transport. The framework also contains the terms of reference of a joint study to examine the benefits and costs of further bilateral trade and investment promotion and liberalization.

56. Canada is a member of the Asia Pacific Economic Co-operation (APEC) forum. Like other members, Canada has an action plan describing the measures it intends to adopt to achieve APEC's goal of "free and open trade and investment" by 2010 for developed economies.<sup>62</sup>

57. Formal negotiations towards a free-trade agreement between Canada and El Salvador, Guatemala, Honduras, and Nicaragua were launched in November 2001. The authorities indicate that these negotiations are well-advanced, and that efforts continue to conclude an agreement in the near future.

58. Canada and Singapore launched free-trade agreement negotiations in October 2001. No negotiations were held between October 2003 and November 2006, when Canada and Singapore agreed to resume formal negotiations with a view to concluding them by early 2007.

59. Canada supports the resumption of negotiations towards a Free Trade Area of the Americas, which have been stalled since February 2004.<sup>63</sup>

60. Canada has held exploratory discussion on possible free-trade negotiations with the Dominican Republic, Andean Community members, and CARICOM members.

### **(iii) Aid for trade**

61. Canada is an active participant in the WTO's work on aid for trade and the Enhanced Integrated Framework, and was a member of the Task Force on Aid for Trade.

62. As part of its development cooperation strategy, Canada seeks to help developing countries integrate into the global trading system by assisting in the implementation of trade agreements, and by

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<sup>61</sup> DFAIT online information, "Regional and Bilateral Initiatives: Introduction to the Canada-Japan Economic Framework and Joint Study". Viewed at: <http://www.international.gc.ca/tna-nac/RB/japan-intro-en.asp>.

<sup>62</sup> APEC online information, "APEC Electronic Individual Action Plan (e-IAP)". Viewed at: <http://www.apec-iap.org>.

<sup>63</sup> See, for example, DFAIT online information, "Free Trade Area of the Americas". Viewed at: <http://www.international.gc.ca/tna-nac/ftaa1-en.asp>.

helping "entrepreneurs, especially in rural areas, to supply goods and services to local, regional and international markets".<sup>64</sup>

63. The Policy on Private Sector Development of the Canadian International Development Agency (CIDA) identifies the following initiatives to increase the participation of developing countries in regional and international markets: capacity building in analysing, formulating, negotiating, and implementing trade policy; support for participation in regional trade bodies, the WTO, and international financial institutions; technical assistance for more secure trade, enhanced supply chain linkages, and local trade network development; and technical assistance in customs administration, phytosanitary regulations and labelling requirements, logistical and consumer taste issues, and quality control.<sup>65</sup>

64. Regarding funding for trade-related infrastructure, the Canadian authorities noted that CIDA's infrastructure programming depended primarily on recipient countries' needs, and was rarely seen from a purely trade perspective. They also indicated that trade-related infrastructure funding includes activities to create an enabling environment for infrastructure, and programming that facilitates the access to and the use of infrastructure and its services by target populations.

65. Canada's aid for trade support averaged US\$94.1 million per year between 2001 and 2004.<sup>66</sup> Support for trade policy and regulations averaged US\$30.9 million per year, and accounted for between 20% and 40% of total aid for trade in each year between 2001 and 2004. Support for trade development averaged US\$32.8 million per year, ranging between 26% and 46% of total aid for trade during the period. Support for trade-related infrastructure averaged US\$30.5 million; its share in total aid for trade was between 35% and 45% every year except in 2001, when it was 14%. Both the level and composition of aid for trade have been subject to fluctuations (Chart II.1).

66. The bulk of support for trade policy and regulations in 2003-04 consisted of support in the areas of sanitary and phytosanitary measures, regional trade agreements, and trade mainstreaming; support for trade development targeted mostly market analysis and development, business support services and institutions, and public private-sector networking. The top individual recipients of support for trade policy and regulations in 2003-04 were China and Guyana; for trade development, the top individual recipients were Bangladesh, Nigeria, and Mali.

67. Africa was the top recipient of funding commitments for activities in support of trade-related infrastructure, accounting for almost half of the total commitments in this area from 2001 to 2004.<sup>67</sup> Asia was the second largest recipient, with 27% of the total, followed by Latin America and the Caribbean, with 17%. The least-developed countries as a group received 7% of total commitments for trade-related infrastructure. Commitments were directed mostly at the communications sector, followed by energy, and transport and storage.

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<sup>64</sup> CIDA (2005).

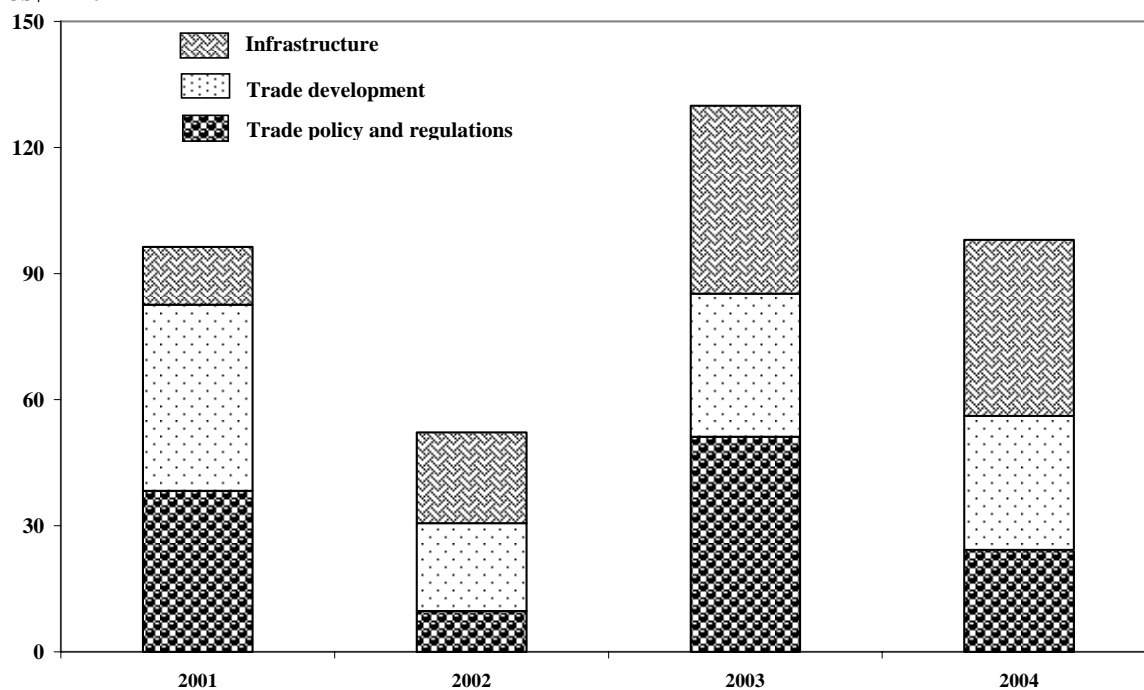
<sup>65</sup> CIDA (2003).

<sup>66</sup> Aid for trade data in this section comprise support under the "trade policy and regulations" and "trade development" categories of the WTO/OECD Trade Capacity Building Database, and support for trade-related infrastructure under the following "purpose codes" in the OECD Creditor Reporting System: "2.1 transport and storage", "2.2 communications", and "2.3 energy generation and supply". Data are provided on the basis of commitments, rather than expenditures. A commitment is a firm obligation expressed in writing and backed by the necessary funds, undertaken by an official donor to provide assistance for a specified purpose and under specified financial terms and conditions for the benefit of the recipient country.

<sup>67</sup> The shares for Africa, Asia, and Latin America and the Caribbean were calculated on the basis of aid for trade for individual countries and for each region as a group. The shares exclude aid for trade for Europe and "unallocated" aid for trade under the OECD Creditor Reporting System.

**Chart II.1**  
**Support for aid for trade, 2001-04**

US\$ million



Source: WTO Secretariat, based on WTO/OECD Trade Capacity Building Database and OECD Creditor Reporting System.  
Viewed at: <http://tcdbd.wto.org/> and [http://www1.oecd.org/scripts/cde/members/dcdauthenticate\\_crsTCE.asp](http://www1.oecd.org/scripts/cde/members/dcdauthenticate_crsTCE.asp).