

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. Canada's trade regime, which has undergone only minor changes since Canada's last review in 2003, is largely liberal and transparent, with a few exceptions. Canada applies at least MFN tariff treatment to all WTO Members. The simple average applied MFN tariff declined slightly, from 6.8% in 2002 to 6.5% in 2006. Around 53% of all tariff items entered Canada duty free in 2006. This same year, the average applied tariff on agricultural products (WTO definition) was 22.4%, compared with 3.8% on other products. Supply-managed agricultural products, which cover dairy products, chicken, turkey, eggs, and broiler hatching eggs, receive the highest tariff protection (Chapter IV(2)). There is tariff escalation between semi-processed and fully processed products. Under remission orders, tariff reductions are granted on specific goods used for certain purposes.

2. Canada grants tariff preferences unilaterally, and in the context of free-trade agreements with Chile, Costa Rica, Israel, and Mexico and the United States; Canada also grants preferences to Australia and New Zealand on a handful of products. Canada grants duty-free and quota-free treatment on virtually all imports from least-developed countries except Myanmar. As for many other WTO Members, Canada's participation in preferential trade agreements and negotiations raises concerns about resources being distracted away from the multilateral trading system. The preferential rules of origin that Canada applies vary between agreements; as the Canadian authorities noted, this reflects the specific interests and sensitivities of the parties to each agreement.

3. Internal taxes are applied equally to imported and domestic products except for wine produced from Canadian-grown grapes, which is exempt from federal excise duties, and for initial production volumes of beer made by domestic brewers, which are subject to lower excise duties than imported beer. Canada maintains tax and duty relief schemes for exported goods.

4. Canada's quantitative import restrictions and licensing requirements are mostly in place for non-economic reasons. Licences are required to import agricultural products at the in-quota tariff rate, and imports of natural gas are subject to authorization. Canada also prohibits the importation of used motor vehicles; exceptions include used motor vehicles from the United States, provided they meet Canadian safety standards.

5. There has been a sharp reduction in the use of contingency measures during the period under review. Canada had 48 anti-dumping (AD) measures in force at the end of June 2006, compared with 91 measures in 2003; 54% of AD duties affected primary steel products. Canada also had five countervailing (CV) measures in force, two of which affected primary steel products. Canada initiated two global safeguard investigations over the period January 2003-June 2006, and one China-specific safeguard inquiry. None of these investigations resulted in safeguard measures being imposed.

6. Under Canada's federal regime the Federal Government as well as provincial and territorial governments have the authority to promulgate technical regulations and sanitary and phytosanitary measures. Canada notified numerous regulations and measures to the WTO during the period under review, including one technical regulation at the provincial/territorial level. Canada is examining alternatives to facilitate notification of appropriate sub-national technical regulations in a timely manner.

7. At the end of 2006, Canada imposed export duties on Canadian-manufactured tobacco products, and effective 12 October, on softwood lumber destined to the United States. The latter was the result of an agreement reached between Canada and the United States, which entered into force in

October 2006, over a long-standing dispute relating to Canada's exports of softwood lumber. Controls may be placed on exports to particular countries listed in Canada's Area Control List. In mid 2006, Myanmar and Belarus were the only countries in the list, as Angola was removed from it in 2003.

8. Export Development Canada (EDC), a crown corporation, is Canada's export credit agency and provides export finance and insurance in Canada. In 2005, the business volume supported by EDC programmes reached just over Can\$57 billion. In 2002, a WTO panel concluded that, although the programme as such was found to be compliant, certain EDC financing transactions constituted a prohibited export subsidy. After Canada indicated that it did not consider that it was required to take any further steps to comply with the DSB's recommendation for completed transactions, Brazil was authorized to retaliate against Canada.

9. Canada is ranked highly for ease of doing business, and its government continues to undertake initiatives to make the business environment more efficient and transparent. Federal corporation tax was reduced to 21% in 2004 (from 28% in 2000), and tax reductions targeted at small businesses were also introduced.

10. The Canadian Government provides information on government assistance to business through the Tax Expenditures and Evaluations Report. As tax expenditures reflect benefits available on a selective basis to businesses (and individuals), the Report adds transparency and accountability. In 2006, the Government estimated tax expenditures at some Can\$17 billion. A variety of tax credits are also offered by provincial governments.

11. The value of federal government procurement in Canada was around Can\$19 billion in 2004, a substantial increase from previous years due mainly to higher defence spending. Canada is a party to the WTO Agreement on Government Procurement, although this excludes procurement at the sub-federal level, which in 2003-04 amounted to nearly Can\$9 billion.

12. Canada's state-trading enterprises have not changed during the review period. They include the Canadian Wheat Board, the Canadian Dairy Commission, the Freshwater Fish Marketing Corporation, the ten provincial and territorial liquor boards and the Ontario Bean Marketing Board.

13. With respect to intellectual property, changes were made to the Patents Act in 2005 to implement the 30 August decision on TRIPS and public health. In addition, the Patented Medicines (Notice of Compliance) Regulations and the data protection provisions in the Food and Drug Regulations were amended in October 2006 to provide new and innovative drugs with a guaranteed minimum period of market exclusivity of eight years and to address concerns regarding the timing of generic drugs' market entry once the relevant patents expire. The Trademarks Act was also amended, in 2004, to provide for the phased elimination of the use of European wine and spirit names on Canadian labels.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Procedures

14. The main laws governing customs procedures in Canada are the Canada Border Services Agency Act¹ and Customs Act.² All importers of commercial goods are required to register with the Canada Revenue Agency for a business number, which includes import/export account (RM account). The business number must be inscribed on relevant customs documentation. All Canadian importers

¹ Canada Border Services Agency Act. Viewed at: <http://laws.justice.gc.ca/en/C-1.4/index.html>.

² Customs Act. Viewed at: <http://laws.justice.gc.ca/en/C-52.b/index.html>.

of fresh fruit and vegetables must be licensed by the Canadian Food Inspection Agency. The Licensing and Arbitration Regulations specify certain exemptions to this requirement.

15. The Canada Border Services Agency (CBSA), created in December 2003³, is in charge of customs operations; it falls under the portfolio of the Minister of Public Safety and Emergency Preparedness Canada.⁴ Carriers must report shipments using an approved cargo control document or electronic data interchange (EDI).⁵ Under the Customs Act, the CBSA has the authority to examine shipments randomly to verify compliance. All requests for release of commercial shipments are reviewed. Approximately 2% of shipments are physically examined: the frequency of examinations depends on the importer's compliance record, as well as the type of goods being imported. Goods examined more systematically include food products that may carry disease, hazardous products or waste, chemicals or biological products, and supply-managed goods (to ensure compliance with tariff quotas, see Chapter IV(2)).

16. Recent reforms to facilitate imports include implementation of the Customs Self-Assessment (CSA). The CSA involves a streamlined accounting and payment process for all imported goods by pre-approved importers. It also offers an expedited clearance option under which shipments entering Canada by pre-approved importers, carriers and drivers are cleared immediately at the border, upon identification of the importer. According to the authorities, there has been growing participation in the CSA programme; in November 2006, CSA importations accounted for 20% of Canadian trade (by value for duty). Road, rail, and air carriers participate in the programme and two transnational marine carriers have applied to join.

17. As reported in the Secretariat Report for Canada's previous Review, various risk-management techniques are being used to process traders who are not approved under the CSA and to target shipments of higher and unknown risk; include information-sharing initiatives and greater use of technology.⁶

18. Options to speed up release processing times of commercial goods at Customs include the Prearrival Review System (PARS) and the Frequent Importer Release System (FIRST).⁷ According to the authorities, on average, 47% of all imports are released under the PARS option and 2% are released under the FIRST. PARS allows importers to submit the required import documentation a maximum of thirty days but not later than one hour before the goods arrive in Canada, enabling the authorities to have the release recommendations ready when the shipment arrives. Shipments are released within minutes unless an examination is required.

19. Expedited customs procedures for goods traded between the United States and Canada are also available through the Free and Secure Trade Program (FAST), a joint initiative between the CBSA and the U.S. Customs and Border Protection. This allows Canadian and U.S. importers to clear their

³ Customs was previously the responsibility of the Canada Customs and Revenue Agency.

⁴ CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/agency/who-qui-e.html>.

⁵ In most cases this consists of: two copies of the cargo control document (CCD); two copies of the invoice; two copies of a completed Form B3, Canada Customs Coding Form; any import permits, health certificates or forms that other federal governments require; and a Form A, Certificate of Origin when necessary. Paper copies of the documents can be presented, or the information can be transmitted by EDI if authorized (CBSA, undated b).

⁶ WTO document WT/TPR/S/112/Rev.1, 19 March 2003.

⁷ For further information on the PARS and FIRST programmes, see Memorandum D17-1-5, Importing Commercial Goods. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d17-1-5/d17-1-5-e.pdf#search='Memorandum%20D1715'>.

goods, in one of 19 FAST sites before they arrive at the border. Importers, carriers, and registered drivers must be pre-approved under the Partners in Protection Scheme (PIP).⁸

20. New initiatives to ensure greater security with respect to the movement of commercial goods by air and sea include the Advance Commercial Information (ACI) programme. Air and marine carriers are required to transmit, through EDI, data related to the cargo and mode of transportation to the CBSA within established timeframes prior to arrival in Canada.⁹ According to the authorities, this allows the CBSA to identify threats to Canada's health, safety, and security. An extension of the ACI programme is the Container Security Initiative (CSI), a U.S. initiative.¹⁰ Under the CSI Canada may deploy CBSA officers to foreign seaports to pre-screen and examine containers before they are shipped to Canada. As at end 2006 no Canadian officers were currently deployed under the CSI programme in foreign countries (however, Canadian officers were deployed to the United States as part of a separate initiative, the Joint Targeting Initiative). Canada signed a CSI Partnership Arrangement with the United States in October 2005.¹¹

21. Monetary penalties for infractions of the Customs Act, Customs Tariff and licensing agreements are applied through the Administrative Monetary Penalty System (AMPS) under the authority of the Customs Act. The AMPS became fully operational in October 2002.¹² Penalties are levied in proportion to the type, frequency, and severity of the infraction. Since October 2002, over 50,000 penalties have been levied, totalling over Can\$36 million. The main types of importer infractions found were: failure to pay duties; failure to provide true, correct, and accurate information; failure of a CSA importer to meet accounting time limits; and failure to provide a permit or information before release. The main types of carrier infractions were: failure to transport passengers and crew to Customs; goods moved, delivered or exported without permission; and goods removed from a sufferance warehouse or customs office prior to release.

22. Importers may ask for a review of CBSA decisions relating to tariff classification, origin or value for duty of imported goods. Between 1 April 2003 and 31 March 2006 there were 10,577 requests for a re-determination of the tariff classification, origin or value of duty, of which 5,099 were allowed in full and 1,603 in part. Decisions resulting from the review may be appealed to the Canadian International Trade Tribunal.¹³ The CITT's decision may be appealed to the Federal Court of Appeal.

(ii) Rules of origin

23. 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 section (iv)). Goods are deemed to originate in a country that is a beneficiary of the MFN Tariff if not less than 50% of the cost of production of the goods is incurred by the industry of one or

⁸ CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/general/enforcement/partners/menu-e.html>.

⁹ For timeframes for marine transport see Customs Notice N-542 and N-565 viewed at: http://www.cbsa-asfc.gc.ca/import/advance/marmode_menu-e.html. For timeframes for air transport see Customs Notice 630 viewed at: http://www.cbsa-asfc.gc.ca/import/advance/airmode_menu-e.html.

¹⁰ U.S. Customs and Border Protection online information. Viewed at: http://www.cbp.gov/xp/cgov/border_security/international_activities/csi/csi_in_brief.xml.

¹¹ CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/newsroom/release-communique/2005/1020washington-e.html>.

¹² Memorandum D22-1-1, Administrative Monetary Penalty System. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d22-1-1>.

¹³ CBSA (undated b).

more countries that are beneficiaries of the MFN Tariff, or by the industry of Canada.¹⁴ No certificate of origin, however, is required. In addition, a separate rule that exists for marking purposes applies to a limited number of imported goods.¹⁵

24. Canada maintains preferential rules of origin under free-trade agreements and unilateral tariff concessions. Under Canada's free trade agreements with the United States and Mexico (NAFTA), Chile (CCFTA), Israel (CIFTA), and Costa Rica (CCRFTA), origin is based on a shift in tariff classification. In some cases, a regional value content requirement may apply in addition or as an alternate to a change in tariff classification. Certain goods attract specific rules of origin.¹⁶

25. Over the period under review progress has been made to liberalize the NAFTA rules of origin on certain goods.¹⁷

26. For beneficiaries of the General Preferential Tariff (GPT), the Least-Developed Country Tariff (LDCT) and the Commonwealth Caribbean Countries Tariff (CARIBCAN), origin for goods that incorporate non-originating materials is based upon a certain percentage of the ex-factory price of the goods originating in beneficiary countries or Canada. Under the GPT and CARIBCAN, at least 60% of the ex-factory price of the goods must have been incurred in one or more GPT or CARIBCAN beneficiary country or Canada. Except for certain textiles and apparel, under the LDCT, at least 40% of the ex-factory price of the goods must have been incurred in one or more LDCT beneficiary country or Canada; the 40% may include up to 20% of the ex-factory price of the goods from other GPT countries. Certain textiles and apparel, which were previously ineligible for the benefits of the LDCT, may now receive duty-free tariff treatment under Canada's Market Access Initiative for Least Developed Countries.¹⁸

27. Rules of origin for the Australia and New Zealand tariff treatments are similar to Canada's MFN rules of origin.¹⁹ Goods are deemed to originate in Australia if not less than 50% of the cost of production is incurred by the industry of Australia or Canada and the goods were finished in Australia in the form in which they are imported into Canada. The same formula applies to New Zealand.

¹⁴ CBSA Memorandum D11-4-3 on Rules of Origin Respecting the Most-Favoured-Nation Tariff. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d11-4-3/d11-4-3-e.pdf#search='Memorandum%20D1143%20Rules%20of%20Origin'>.

¹⁵ CBSA Memorandum D11-3-1, Marking of Imported Goods.

¹⁶ CCFTA, Annex D-01; CCRFTA, Annex IV.1; CIFTA, Annex 3.1; and NAFTA Annex 401.

¹⁷ These have included: certain alcoholic beverages, petroleum/topped crude, esters of glycerol, pearl jewellery, headphones with microphones, chassis fitted with engines, and photocopiers (January 2003); teas, spices, carrageenan, seasonings, precious metals, speed drive controllers and their printed assemblies, household appliances, loudspeakers, thermostats, parts for various machinery and equipment, and toys (January 2005); certain "short supply" textile goods (July 2005 (Canada and United States only)); and cocoa preparations, cranberry juice, ores, slag and ash, leather, cork, certain textile products, feathers, glass and glassware, copper and other metals, televisions, and automatic regulating or controlling instruments (July 2006). See also Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.dfait-maeci.gc.ca/nafta-alena/tech-rect-en.asp>.

¹⁸ Memorandum D11-4-4, September 4, 2003. Viewed at: <http://cbsa-asfc.gc.ca/E/pub/cm/d11-4-4/d11-4-4-e.html>.

¹⁹ Memorandum D11-4-6, February 17 2005. Viewed at: <http://www.cbsa.gc.ca/E/pub/cm/d11-4-6/d11-4-6-e.pdf#search='D1146'>.

(iii) Customs valuation

28. Canada's customs valuation rules are contained in Part III of the Customs Act²⁰, as well as the Valuation for Duty Regulations, and other Canada Customs D-13 memoranda.²¹ The President of the CBSA is responsible for issuing rules relating to the determination of customs value.

29. Canada applies tariffs based on the transaction value of the goods if the goods are sold for export to Canada to a purchaser in Canada and the price paid or payable for the goods can be determined, as well as other stipulated conditions.²² Section 48(5) of the Customs Act lists the items to be included or excluded in the price of the goods. Where the transaction method cannot be used (in approximately 5% of imports), other methods of determining the value of goods reflect the hierarchy set out in the WTO Customs Valuation Agreement.²³ The order of application of the deductive and computed methods may be reversed on the basis of a written request by the importer.

30. Interpretations of the value for duty for certain imports, or specific valuation issues are provided by the authorities.²⁴ The value for duty of goods imported into Canada must be in Canadian currency; foreign currency values are multiplied by the exchange rate in effect on the date the goods began their direct and uninterrupted journey to Canada.²⁵ Exchange rates are primarily based upon the latest exchange rate provided to the Minister by the Bank of Canada.²⁶

31. Importers must declare a value for duty for all goods imported into Canada. Designated customs officers determine the customs value of imported goods, generally through a risk-based, post-importation verification of importer's books and records; they may also make re-determinations within four years. Customs officers must notify importers of their decisions and the rationale for them. Importers may request a re-determination of the customs value within 90 days, although this time limit may be extended under certain circumstances. Decisions by the President of the CBSA may be appealed to the Canadian International Trade Tribunal (CITT) within 90 days. CITT decisions may be appealed to the Federal Court of Appeal and, beyond that, the Supreme Court of Canada.

²⁰ Department of Justice Canada online information. Viewed at: <http://laws.justice.gc.ca/en/C-52.6/232434.html>.

²¹ D13 Memoranda on valuation policy. Viewed at: <http://www.cbsa-asfc.gc.ca/import/valuation/policy-e.html>.

²² Memorandum 13-4-1, April 2001 outlines the "transaction method of valuation" in section 48 of the Customs Act. Memorandum D13-4-2, April 2001 provides an interpretation of the meaning and application of "sold for export to Canada", and Memorandum D13-4-3 explains the types of payments to be included as part of the price paid or payable for the purpose of determining a transaction value under the Customs Act.

²³ Information on valuation methods is set out in Memorandum D13-3-1, Methods of Determining Value for Duty. See also CBSA (undated c).

²⁴ Including for: used goods; used automobiles, motor vehicles and other vessels; goods sold in Canada while entered temporarily for convention and exhibitions; certain information-based products; printed or lithographed matter or paper; promotional material and computer software; and imports to be used in the assembly, construction or fabrication of a facility or a machine sold on an installed contract basis. See CBSA online information for issue-specific interpretations. Viewed at: <http://www.cbsa-asfc.gc.ca/import/valuation/issue-e.html>.

²⁵ Customs Notice N-557, March 2004. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/cn557/cn557-e.pdf>.

²⁶ Memorandum D13-2-3, Exchange Rate for Calculation of Value for Duty Under the Customs Act. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d13-2-3/d13-2-3-e.pdf>.

(iv) Tariffs

32. Canada levies customs duties on the f.o.b. value of imports at the point of direct shipment to Canada.²⁷

33. The Customs Tariff was enacted in December 1997 and entered into force in January 1998. It is based on the Harmonized Commodity Description and Coding System (HS). The Canada Border Services Agency issues regular consolidated versions of the Customs Tariff incorporating previous amendments.²⁸ The 2006 Customs Tariff reflects the 2002 amendments to the HS. It comprises 8,455 tariff lines at the HS 8-digit level (Chapters 1-97).

34. Canada's Customs Tariff contains provisions that automatically round down *ad valorem* MFN and preferential tariffs to the closest half percentage point (except for certain motor vehicles and chassis), and eliminate all tariff rates of less than 2%, both on an annual basis.²⁹

(a) Applied MFN tariff rates³⁰

35. Import duties accounted for 1.5% of total federal government revenue in 2005/06.³¹

36. Canada applies at least MFN tariff treatment to all WTO Members. Among non-members the Democratic People's Republic of Korea and Libya do not receive MFN tariff treatment; both are subject to the General Tariff, levied at 35% on all goods except those subject to MFN rates exceeding 35%, in which case the MFN rate is applied.³² MFN tariff treatment was extended to East Timor in April 2006.³³

37. The simple average applied MFN tariff declined from 6.8% in 2002 to 6.5% in 2006 (Table AIII.1). The average applied tariff for agricultural products (WTO definition) in 2006 was 22.4% (up from 21.7% in 2002); and the average for non-agricultural products was 3.8% (down from 4.2% in 2002). This decline was driven by tariff reductions on 1,123 products following the implementation of WTO commitments, which resulted in a reduction of applied rates in tandem with bound rates. In 2006, duty-free lines represented 52.7% of all tariff lines (Table III.1).

38. The share of non-*ad valorem* tariff lines is virtually the same as in 2002 (Table III.1). On average, non-*ad valorem* duties afford significantly higher protection than *ad valorem* ones: in 2006, the simple average of *ad valorem* equivalents of non-*ad valorem* tariff rates was 72.1%, compared with 3.8% for *ad valorem* rates. About 96% of non-*ad valorem* tariff rates apply to agricultural products (WTO definition).

²⁷ Section 48(5), Customs Act.

²⁸ Viewed at: http://www.cbsa.gc.ca/general/publications/customs_tariff-e.html.

²⁹ Section 30(7) et seq., Customs Tariff.

³⁰ The analysis in this sub-section is based on the 2006 Customs Tariff, as provided by Canada to the WTO's Integrated Data Base (IDB). It includes *ad valorem* equivalents of non-*ad valorem* tariff rates, estimated by the Secretariat on the basis of unit values for 2005. The data used to estimate unit values was obtained from Canada's submission to the IDB. *Ad valorem* equivalents could not be estimated for 23 tariff lines. These were not included in the calculation of tariff averages, standard deviations or ranges. For another 20 tariff lines subject to non-*ad valorem* rates, *ad valorem* equivalents were estimated using the *ad valorem* component of the duty. For products subject to tariff quotas, the analysis is based on out-of-quota rates unless stated otherwise.

³¹ Department of Finance (2006b).

³² The General Tariff is applied on imports from countries that are not on the List of Countries and Applicable Tariff Treatments, a schedule of the Customs Tariff (see Section 29, Customs Tariff).

³³ *Canada Gazette* 140(8), 19 April 2006.

39. In 2006, some 1.6% of tariff lines had MFN rates exceeding 20%, 6.5% had rates exceeding 15%, 13.5% exceeding 10%, 35.6% exceeding 5%, and 47.1% exceeding 0%. The products subject to the highest *ad valorem* or *ad valorem* equivalent rates were dried egg albumin (532.3%), prepared meals of fowl (377.8%), and fats derived from milk (313.5%). Milk and cream were subject to rates amounting to 292.5%.

40. Tariff quotas cover around 2% of tariff lines; all tariff quotas correspond to agricultural products (Chapter IV(2)(ii)).

Table III.1
Structure of the tariff schedule, 2002 and 2006
(Per cent)

	2002	2006
Total number of tariff lines ^a	8,364	8,455
Non- <i>ad valorem</i> tariffs (% of all tariff lines)	3.9	3.8
Non- <i>ad valorem</i> with no AVEs (% of all tariff lines)	0.5	0.5
Tariff quotas (% of all tariff lines)	2.2	2.1
Duty-free tariff lines (% of all tariff lines)	49.0	52.7
Dutiable lines tariff average rate (%)	13.3	13.7
Domestic tariff "peaks" (% of all tariff lines) ^b	1.6	1.8
International tariff "peaks" (% of all tariff lines) ^c	9.9	6.5
Bound tariff lines (% of all tariff lines)	99.7	99.7

a Including 23 lines for which it was not possible to estimate *ad valorem* equivalents.

b Domestic tariff peaks are defined as those exceeding three times the overall average applied rate.

c International tariff peaks are defined as those exceeding 15%.

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

41. There is no consistent pattern of tariff escalation: the average applied rate for semi-processed products is lower than for raw materials and the average for fully-processed products is higher than the average for raw materials and semi-processed products (Table AIII.1).

(b) WTO bindings

42. Canada has bound all but 22 tariff lines in Chapters 1-97.³⁴ The unbound lines cover mineral oils and fuels and electrical energy (9 lines under HS 27); cruise ships, tankers, tugs, and drilling and platform ships (12 lines under HS 89); and postage stamps (HS 9704.0000). The average bound tariff rate is 8.2%. The applied MFN tariff rate on warships (HS 8906.1000) is 25%, ten percentage points above the bound tariff rate.

43. All tariff lines reached their final bound MFN tariff rate, in accordance with Canada's Uruguay Round commitments, by January 2004. Products subject to final bound MFN tariff reductions in January 2004 included textiles and clothing, footwear, chemicals, plastics, paper and paperboard articles, and iron and steel products.

44. Canada has submitted to the WTO a list of tariff items affected by the 2002 changes to the HS. Canada is covered by the collective General Council waiver suspending the application of GATT binding disciplines to allow WTO Members to implement the HS 2002 changes domestically pending

³⁴ In addition, three lines are partially bound (HS 2710.1999, HS 2710.9199, and HS2710.9999).

the incorporation of these changes into their schedules of concessions.³⁵ This waiver expires in December 2006.

(c) Preferential tariffs

45. Tariff preferences may be granted by Canada either unilaterally or in the context of preferential trade agreements.

Unilateral tariff preferences

46. Canada grants unilateral preferential tariff treatment under the General Preferential Tariff (GPT), the Least-Developed Country Tariff (LDCT), and the Commonwealth Caribbean Country Tariff (CARIBCAN). The GPT provides tariff preferences for most developing countries. Mongolia became a GPT beneficiary in June 2003, and Oman in May 2006.³⁶ Upon the accession to the EC of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia in May 2004, Canada withdrew GPT benefits for these countries.³⁷ Dairy products, poultry, eggs, refined sugar, and most textiles, clothing, and footwear are not eligible for preferential tariff treatment. Around 67% of tariff lines benefit from duty-free treatment under the GPT (Table AIII.2). The simple average tariff under the GPT was 5.2% in 2006, roughly the same as in 2002. The GPT has been extended until June 2014.³⁸

47. The LDCT provides duty-free access for imports from the least developed countries, as defined by the United Nations, except Myanmar. Following the expansion of the LDCT in January 2003, close to 99% of tariff lines are eligible for duty-free treatment (Table AIII.2).³⁹ The remaining 1% is subject to average tariffs of around 224% and covers out-of-quota tariffs on dairy, poultry, and egg products, which have been excluded from preferential treatment under the LDCT (see also Chapter IV(2)(ii)). The simple average tariff under the LDCT was 2.5% in 2006, down from 4.1% in 2002. The LDCT has been extended until June 2014.⁴⁰

48. There have been no major changes affecting the level or coverage of tariff preferences under the CARIBCAN. This programme provides tariff reductions to Caribbean countries and territories.⁴¹ In 2006, the average tariff on imports from CARIBCAN beneficiaries was 4.3%. Some 87% of tariff lines were duty free.

Free-trade agreements and other arrangements

49. Canada grants preferential tariff treatment for eligible goods under agreements with Australia, Chile, Costa Rica, Israel, New Zealand, and to Mexico and the United States under the NAFTA (Table AIII.2 and Chapter II(5)(ii)).

³⁵ WTO documents WT/L/469, 17 May 2002; WT/L/511, 20 January 2003; WT/L/562, 13 February 2004; WT/L/598, 14 December 2004; and WT/L/638, 6 December 2005.

³⁶ Canada Customs and Revenue Agency, Customs Notice N-537, 22 September 2003, and Canada Border Services Agency, Tariff Notice TN-15, 15 June 2006.

³⁷ Canada Border Services Agency, Customs Notice N-569, 28 April 2004.

³⁸ Bill C-21, An Act to Amend the Customs Tariff, 29 April 2004.

³⁹ 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.

⁴⁰ Bill C-21, An Act to Amend the Customs Tariff, 29 April 2004.

⁴¹ Beneficiaries are Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Bermuda, Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and the British Virgin Islands.

50. Under the Canada-Chile free-trade agreement, tariffs have been eliminated on all goods imported from Chile, except some 98 lines covering mostly poultry and dairy products. These products are subject to a simple average tariff of close to 220%. In 2006, the simple average tariff applied to imports from Chile was 2.5%.

51. Under the Canada-Costa Rica free-trade agreement, the simple average tariff applied to imports from Costa Rica has decreased from 4.2% in 2002 to 3.5% in 2006. Some 1,210 tariff lines on imports from Costa Rica were still subject to tariffs at end 2006. In addition to poultry and dairy products, these included beverages, textiles, clothing, and footwear. The simple average tariff rate applied on dutiable products was 24.5%.

52. Tariffs on imports from Israel averaged 3.1% in 2006. Tariffs remain on 594 lines, including poultry and dairy products, fish, fruit and vegetables, grains, beverages, and tobacco. The simple average tariff applied on dutiable products was 44.6%. In November 2003, Canada and Israel implemented additional agricultural tariff concessions under the agreement.

53. Under NAFTA, tariffs on imports from the United States have been eliminated, except for around 98 tariff lines, which are subject to tariffs amounting to 222.5% on average. These tariffs reflect mainly high out-of-quota tariffs on poultry and dairy products. Imports of 98.3% of all lines from Mexico were duty-free in 2006, up from 93.8% in 2002. The average tariff on the 140 lines subject to tariffs was 155.7%. The products concerned are largely the same as for the United States.

54. Under the Canada-Australia Trade Agreement and the Trade and Economic Co-operation Agreement with New Zealand, the simple average tariff on imports was 6.1% in 2006. This is marginally lower than the average MFN tariff rate because subsequent reductions in MFN tariff rates have eroded preferences under both agreements.

(d) Tariff remissions

55. Under the Customs Tariff the Governor-in-Council may issue Remission Orders granting tariff reductions on imported goods used for certain purposes or pursuant to certain conditions, while maintaining the general applicability of tariffs (Chapter IV(4)).⁴² Nine new Remission Orders for customs duties were issued between mid 2002 and mid 2006.

56. Additionally, Canada maintains a Duty Deferral Program (section (3)(vi)). As part of this programme, imports can be stored in a customs bonded warehouse without paying customs duties and taxes, normally for up to four years.⁴³ Duties are payable once the goods enter the domestic market. A limited number of activities can be performed in a bonded warehouse, including reassembly, marking, labelling, packing, grading, diluting, and displaying. There were approximately 400 bonded warehouses in Canada in mid 2006; half were privately operated and half publicly operated.

(v) Other charges affecting imports

(a) The GST/HST and provincial sales taxes

57. The goods and services tax (GST), levied under the Excise Tax Act⁴⁴, is Canada's largest indirect tax by revenue, generating nearly Can\$30 billion in FY 2004/05 (up from Can\$25 billion in

⁴² Section 115, Customs Tariff.

⁴³ See Canada Border Services Agency online information, "Importing in a bonded warehouse". Viewed at: http://www.cbsa.gc.ca/import/duty_deferral/tab9-e.html.

⁴⁴ Excise Tax Act. Viewed at: <http://laws.justice.gc.ca/en/E-15/index.html>.

FY 2001/02), and amounting to around 15% of total federal budgetary revenue. It applies to most goods and services at a rate of 6%, following a one percentage point reduction effective 1 July 2006.⁴⁵ Some products are exempt from the GST.⁴⁶ In Nova Scotia, New Brunswick, and Newfoundland the GST has been consolidated with the provincial sales tax. This harmonized sales tax (HST), of 14%, applies to supplies made in or imported into a participating province.

58. The GST/HST is payable on the duty-paid value of imported goods plus any other duties and taxes imposed under the Customs Tariff, the Special Import Measures Act, the Excise Tax Act, Excise Act 2001 or under any other law relating to Customs. The application of the GST/HST does not discriminate between domestic and foreign suppliers.

59. Sales taxes are levied by six provinces that do not apply HST; Alberta and Nunavut do not have a sales tax. The rates of sales taxes in each province are represented in Table III.2. In a number of cases, refunds and/or exemptions to the sales tax apply to specific goods and services. In addition, some cases, higher sales taxes apply to certain goods. For example Ontario applies higher sales tax rates to alcoholic beverages (10% and 12%), and British Colombia applies higher rates to alcohol (10%) and passenger vehicles over Can\$55,000 (8%-10%). In general, the basis of the provincial sales tax is the customs-duty-paid value of imported products. Quebec and Prince Edward Island apply provincial sales taxes to the GST-inclusive value.

Table III.2
Provincial sales taxes, November 2006

Province/territory	Rate generally applicable to imports	Source
Alberta	No sales tax	
British Colombia	7%	http://www.rev.gov.bc.ca/ctb/publications/brochures/SmallBusinessGuide.pdf
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.fin.gov.nt.ca/taxrates.shtml
Nova Scotia	8%	HST
Nunavut	No sales tax	
Ontario	8%	http://www.trd.fin.gov.on.ca/userfiles/HTML/cma_3_4381_1.html
Prince Edward Island	10%	http://www.gov.pe.ca/pt/taxandland/index.php3?number=76948&lang=E
Quebec	7.5%	http://www.revenu.gouv.qc.ca/eng/travailleur_autonome/oblig-fiscales/tvq-tps/info.asp
Saskatchewan	5%	http://www.gov.sk.ca/finance/revenue/pst/bulletins/pstnotice.pdf
Yukon	No sales tax	

Source: Government of Canada.

(b) Excise taxes and duties

60. Federal excise duties on beer are imposed as production levies on domestic and imported products under the Excise Act.⁴⁷ Beer made by domestic brewers is eligible for lower, tiered excise

⁴⁵ Canada Revenue Agency online information. Viewed at: <http://www.cra-arc.gc.ca/agency/budget2006/gstratega-e.html>.

⁴⁶ Some examples include: long-term residential rents; purchases of previously-owned homes; most health and dental services; childcare services; most education services; municipal transit services; and most financial services, including loans, mortgages and insurance.

⁴⁷ Excise Act. Viewed at: <http://laws.justice.gc.ca/en/E-14/51156.html>.

duty rates⁴⁸; imported beer is not eligible for these lower excise duty rates. Excise duty rates for beer, wine, spirits, and tobacco were most recently changed as a result of the federal budget of 12 May 2006.⁴⁹

61. Excise duties on non-exempt wine range from Can\$0.0205 per litre to Can\$0.62 per litre depending on the alcohol content level: 100% Canadian wine (including cider, wine coolers, fruit wines and sake) packaged on or after 1 July 2006 is exempt from excise duties. Evidence must be provided when claiming the exemption that the wine is wholly composed of Canadian-grown agricultural products.⁵⁰

62. Federal excise duties on spirits and tobacco are imposed as production levies under the Excise Act, 2001.⁵¹ A special duty of Can\$0.12 per litre of absolute ethyl alcohol is also payable on imported spirits delivered to or imported by a licensed user.

63. As outlined in the Secretariat Report for Canada's previous review, the Excise Act 2001, was the outcome of a government review of the legislative and administrative framework for the federal taxation of alcohol and tobacco products initiated in 1993. Key features of the Act included 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.

64. Excise duties, 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; heavy automobiles; automotive air conditioners; and insurance premiums. The excise tax on jewellery products was eliminated in May 2006⁵²; and the excise taxes on tobacco products and wine respectively were repealed and replaced by an excise duty in June 2003.⁵³

65. All provinces and territories also impose taxes on specific products, generally on fuel and tobacco; different tax rates are applicable for each province.

(vi) Quantitative restrictions and licensing

66. Canada's licensing requirements and quantitative import restrictions are mostly in place for non-economic reasons (Table III.3, and section (2)(ix)). Canada's latest reply to the WTO questionnaire on import licensing procedures was submitted in October 2006.⁵⁴ The authorities indicate that the following products are subject to quantitative restrictions not previously notified to the WTO: true hemp under HS 5302; white phosphorous matches (HS 9897.0000); used mattresses (HS 9897.0000); and hate propaganda and obscene materials (HS 9899.0000). Rough diamond imports into Canada must be accompanied by a Kimberley Process Certificate validated by a foreign government that is also participating in the Kimberley Process regime.

⁴⁸ Excise Duty Notice EDBN8, July 2006. Viewed at: <http://www.cra-arc.gc.ca/E/pub/em/edbn8/edbn8-e.pdf>.

⁴⁹ Excise Duty Notice May 2006. Viewed at: <http://www.cra-arc.gc.ca/E/pub/em/edn9/edn9-e.pdf>.

⁵⁰ Excise Duty Notice EDN11 May 2006. Viewed at: <http://www.cra-arc.gc.ca/E/pub/em/edn11/edn11-e.pdf>; and Excise Duty Notice EDN15 June 2006. Viewed at: <http://www.cra-arc.gc.ca/E/pub/em/edn15/edn15-e.pdf>.

⁵¹ Excise Act, 2001. Viewed at: <http://laws.justice.gc.ca/en/E-14.1/index.html>.

⁵² CCRA Notice ET/SL-060. Viewed at: <http://www.cra-arc.gc.ca/E/pub/et/etsl60/etsl60-e.pdf>.

⁵³ CCRA Notice ET/SL-0049. Viewed at: <http://www.cra-arc.gc.ca/E/pub/et/etsl49/etsl49-e.pdf>; and CCRA Notice ET/SL-0048. Viewed at: <http://www.cra-arc.gc.ca/E/pub/et/etsl48/etsl48-e.pdf>.

⁵⁴ WTO document G/LIC/N/3/CAN/5, 26 October 2006.

67. Licences are required to import agricultural products at the in-quota tariff rate (Chapter IV(2)(ii)).

Table III.3

Products subject to import licensing requirements for non-economic reasons, 2006

Products	Licensing intended to restrict the quantity of imports?	Legal basis	Purpose (as stated by the Canadian authorities)
Controlled drugs (e.g. amphetamine, methamphetamine, and barbituric acids), narcotics, and restricted drugs (used only for research, not commercial sale) and precursor chemicals	Yes	Controlled Drugs and Substances Act	To minimize diversion while imports do not exceed domestic medical, scientific, or industrial needs; to ensure compliance with international commitments
Explosives, including blasting explosives, detonators, propellants, sporting and industrial cartridges, fireworks, and pyrotechnic devices	No	Explosives Act	To ensure safety of imported explosives
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)	No	Nuclear Safety and Control Act	To ensure that products subject to licensing are destined for authorized persons or organizations and that their use will not pose undue risk to health, safety, security, and the environment; to implement international obligations
Carbon steel products, 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; and specialty steel products, defined as stainless flat-rolled products (sheet, strip and plate), stainless steel bar, stainless steel pipe and tube, stainless steel wire and wire product, alloy tool steel, mold steel, and high speed steel	No	Export and Import Permits Act	To monitor the volume and the origin of carbon and specialty steel products
Plant pests, plants and plant products	No	Plant Protection Act	To protect against the introduction of plant pests
Non-U.S. origin: animals (except pet dogs and domesticated cats, some rodents, reptiles other than turtles and their eggs, and amphibians), semen (except canine), embryos, veterinary biologics derived through biotechnology, and certain animal products and by-products depending on the species and country of origin; and U.S. origin: semen (except equine and canine), embryos, veterinary biologics, psittacine birds other than pet birds, turtles, tortoises, skunks, foxes, raccoons, some ruminants, swine, honeybees, dogs (commercial shipments), and certain animal products and by-products dependant on species	No	Health of Animals Act	To protect against the introduction of diseases
Food of animal and plant origin	No	Food and Drugs Act and other statutes administered by the CFIA	To ensure that the imported food meets Canadian standards for safety, quality, and labelling
Specimens of species and their by-products listed in Schedules I and II under the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act	Yes	Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act	To allow importation in endangered species and their by-products in internationally agreed circumstances; for species in Schedule II, to ensure that there are sufficient safeguards and security to prevent escapes to the wild

Table III.3 (cont'd)

Products	Licensing intended to restrict the quantity of imports?	Legal basis	Purpose (as stated by the Canadian authorities)
Natural health products	No	Food and Drugs Regulations and Natural Health Products Regulations	To ensure that imported substances meet Canadian standards for safety, efficiency, and quality

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

68. Imports of natural gas are subject to authorization⁵⁵: the National Energy Board assesses import applications. Authorizations are granted on the basis of a case-by-case assessment of the impact on the Canadian gas industry, consumer cost, distribution, and other factors.⁵⁶ For large volume and long-term imports, authorization is granted through a licence. The licence application process involves a public hearing and takes a minimum of four months; approval of the Governor-in-Council is also required.

69. Tariff item HS 9897.0000 of the Customs Tariff prohibits the importation of used or second-hand motor vehicles. Exceptions include used or second-hand motor vehicles that are 15 years or older, and those imported from the United States, provided they meet Canadian safety standards.⁵⁷

70. The licensing scheme used to implement quantitative restrictions on imports of textiles and clothing was abolished following the elimination in 2005 of remaining quantitative restrictions as a result of the implementation of the WTO Agreement on Textiles and Clothing.⁵⁸

(vii) Contingency measures

(a) Anti-dumping and countervailing measures

71. The Special Import Measures Act (SIMA) is Canada's main legal instrument governing the use of anti-dumping and countervailing measures, together with the Special Import Measures Regulations and related directives.⁵⁹ The President of the Canada Border Services Agency (CBSA) and the Canadian International Trade Tribunal (CITT) are charged with the administration of the SIMA.⁶⁰ The responsibility of the CBSA is to evaluate complaints filed by a Canadian industry and, when warranted, to initiate investigations to determine whether imports are dumped or subsidized. The CITT is mandated to make preliminary and final determinations whether the dumped or subsidized imports have caused, or threaten to cause, injury to the Canadian industry. The CBSA may levy provisional duties on imports from the date of its preliminary determination. The CITT estimates that anti-dumping and countervailing duty actions have affected only a small fraction (less than 0.5%) of Canada's merchandise imports since 1994.

⁵⁵ National Energy Board Act, section 116; and the National Energy Board Part VI (Oil and Gas) Regulations, section 5.

⁵⁶ WTO document G/LIC/N/3/CAN/5, 26 October 2006.

⁵⁷ See also Canada Border and Services Agency, Memorandum D9-1-11, Importation of Used or Second-Hand Motor Vehicles, 2 July 1998.

⁵⁸ *Canada Gazette* 139(7), 6 April 2005.

⁵⁹ See SIMA, as well as SIMA Regulations and Directives. Viewed at: <http://www.cbsa-asfc.gc.ca/sima/act-regs-e.html>.

⁶⁰ CBSA Anti-Dumping and Countervailing Program, Trade Program Directorate. Viewed at: <http://www.cbsa-asfc.gc.ca/sima/menu-e.html>.

72. Decisions by the CITT may be subject to judicial review by the Federal Court of Appeal. Final decisions of the CBSA may be subject to judicial review by the Federal Court of Appeal while other CBSA decisions may be subject to judicial review by the Federal Court. From January 2003 to November 2006, five CITT cases were challenged in the Federal Court of Appeal. Over the same period, three CBSA decisions were challenged in the Federal Court of Appeal and six in the Federal Court. With respect to goods from the United States and Mexico judicial review by a bi-national panel under NAFTA may be requested.

73. Most complaints are brought by or on behalf of Canadian industry, however, in limited circumstances the President of the CBSA may launch own-initiative investigations. In certain circumstances, the CITT may advise the President of the CBSA to start an investigation. During the period under review, all investigations initiated were the result of complaints filed by Canadian industry.

74. Up to 60 days after a preliminary determination, foreign exporters or governments can offer undertakings aimed at eliminating the dumping/subsidizing or injury to the Canadian industry. 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 CBSA interprets as those accounting normally for 85% of the volume of dumped or subsidized imports into Canada.⁶¹

75. Canada operates a prospective anti-dumping enforcement system in which exporters are informed of the normal values for the products 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.

76. Anti-dumping and countervailing investigations may be initiated simultaneously, and products may be the subject to both AD duties and CV measures at the same time. At end June 2006, these items included steel fasteners from China (finding on 7 January 2005); laminate flooring from China (finding on 16 June, 2005); hot-rolled carbon steel sheet from India (finding on 17 August 2001); refined sugar from the EC (CV duties) and from Denmark, the Netherlands, and the United Kingdom (AD duties) (findings on 6 November 1995, 3 November, 2000 and 2 November, 2005).

77. Since 1 January 2003, goods from Chile have been exempt from the application of anti-dumping laws.⁶² Chile has no such exemption for CV measures.

78. At end June 2006, 48 Canadian anti-dumping measures plus one price undertaking (on cigarette tubes from France) remained in force.⁶³ This is a large decrease relative to the 91 measures in place at the time of Canada's previous Review (in 2003) and 85 measures at the time of its 2000 Review. Some 24 countries or customs territories are affected by these measures; suppliers from China (12 actions), the EC (6 actions), and the United States (4 actions) are the subject of most actions. Some 30 duties cover steel products.

⁶¹ CBSA Memorandum D14-1-9, on Information Pertaining to the Acceptance, Enforcement, and Renewal of Undertakings in Dumping and Subsidy Investigations. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d14-1-9/README.html>.

⁶² Regulations Exempting Goods of Chile from the Application of Anti-dumping Measures. Viewed at: <http://laws.justice.gc.ca/en/s-15/SOR-97-326/text.html>. Includes: investigations, reviews, enquiries, duties and/or measures.

⁶³ WTO document G/ADP/N/145/CAN, 1 September 2006.

79. Over the period 1 January 2002 to 30 June 2006, there were 36 anti-dumping investigation initiations, of which nearly half concerned products of the steel industry. Provisional duties were applied in 30 of the investigations. In 18 of these cases, no final measures were applied (in four cases there was an insignificant margin of dumping; four cases were terminated due to negligible volumes of dumped imports; in eight cases, no injury was found; and in one case there was no dumping (Table III.4).

80. Anti-dumping orders and findings expire after five years unless reviewed and continued by the CBSA and the CITT before this deadline. If the CITT decides to conduct a review⁶⁴, the CBSA must determine whether there is a likelihood of continued or resumed dumping and the CITT is charged with determining injury or threat thereof to domestic industry. In the period July 2002 to August 2006, the CBSA (and previously the CCRA) and the CITT initiated and completed 18 expiry reviews: 12 findings or orders, affecting 21 countries were rescinded, many of which related to steel products.⁶⁵ As at end June 2006, 21 anti-dumping definitive duties had been in place for longer than five years.

Table III.4
Anti-dumping investigation initiations, 1 January 2002 to 30 June 2006

Country/ customs territory	Product	Initiation date	Provisional measures date, dumping margin	Definitive duty, date, dumping margin	No final measures	Trade volume	Dumped imports/ domestic consumpt.
Austria	Laminate flooring	04.10.04	16.02.05, 4.7%		17.05.05 ^a	..	CF
Belgium	Laminate flooring	04.10.04	16.02.05, 6.6%		17.05.05 ^a	..	CF
Bulgaria	Hot-rolled carbon steel plate	13.06.03	11.09.03, 74.6%	09.01.04, 74.6%		CF	CF
China	Copper pipe fittings	08.06.06				1,805,712 kg.	
	Steel fasteners	28.04.04	10.09.04, 0.06%-94%	07.01.05 0.04%-187% ^c	07.01.05 ^b	39,241,532 kg.	2%
	Laminate flooring	04.10.04	16.02.05, 26.6%	16.06.05, 0.0%- 17.0%		..	CF
	Fuel tanks (steel)	19.12.03	03.05.04, 0.3%- 83.4%		31.08.04 ^d	CF	CF
	Barbecues	13.04.04	27.08.04, 0.0%- 87.4%		19.11.04 ^a	380,105 units	15.2%
	Wood Venetian blinds and slats	21.11.03	19.02.04, 120%	18.06.04, 28%, 120%	18.06.04 ^d blinds
	Steel: Pipe nipples Couples Pipe fittings	18.12.02	18.03.03, 1%-333%	16.07.03, 4%- 158%		CF	CF
Chinese Taipei	Xanthates	21.06.02	04.11.02, 3%-49%	04.03.03, 44.7%		429,690 kg.	11%
	Steel fasteners	28.04.04	10.09.04, 0.01%- 118%	07.01.05, 0.04%-260% ^c		132,664,862 kg.	46%

Table III.4 (cont'd)

⁶⁴ The CITT may review its findings on its own initiative or at the request of the Minister of Finance, the President of the CBSA or any other person or of any government. The Minister of Finance may also ask the Tribunal to review a finding in the light of a recommendation by the WTO DSB.

⁶⁵ CBSA online information on expiry reviews. Viewed at: <http://www.cbsa-asfc.gc.ca/sima/expiry-e.html>. Findings and orders that were rescinded related to: certain prepared baby foods; preformed fibreglass pipe insulation with a vapour barrier; certain carbon steel plate; certain hot-rolled steel sheets; certain corrosion-resistant steel sheet products; certain cold-rolled steel sheet products; concrete reinforcing bar; women's boots; carbon steel welded pipe; certain hot-rolled steel plate; certain dishwashers and dryers; and garlic. Guidelines on the CBSA's role in expiry reviews viewed at: <http://www.cbsa-asfc.gc.ca/sima/expiryguide-e.html>; and the CITT's Expiry Review Guideline viewed at: http://www.citt-tcce.gc.ca/doc/english/Publicat/dump_e.pdf.

Country/ customs territory	Product	Initiation date	Provisional measures date, dumping margin	Definitive duty, date, dumping margin	No final measures	Trade volume	Dumped imports/ domestic consumpt.
	Fuel tanks (steel)	19.12.03	03.05.04, 83.4%		31.08.04 ^d	CF	CF
	Stainless steel wire	21.11.03			02.04.04 ^b	73,631 kg.	CF
Czech Republic	Hot-rolled carbon steel plate	13.06.03	11.09.03, 74.6%	09.01.04, 74.6%		CF	CF
France	Laminate flooring	04.10.04	16.02.05, 7.5%	16.06.05, 7.0%		..	CF
Germany	Laminate flooring	04.10.04	16.02.05, 0.0% -8.7%		17.05.05 ^a	..	CF
Hong Kong, China	Waterproof footwear	26.04.02	09.09.02, 42%-187%		07.01.03 ^b	CF	CF
India	Stainless steel wire	21.11.03			02.04.04 ^c		
Korea, Republic of	Copper pipe fittings	08.06.06				959,310 kg.	
	Stainless steel wire	21.11.03	02.04.04, 108%	30.07.04 ^c		163,893 kg.	CF
	Hollow structural steel	21.05.03	19.08.03, 44%	23.12.03, 89%		CF	CF
Luxembourg	Laminate flooring	04.10.04			16.02.05 ^b	..	
Macao, China	Waterproof footwear	26.04.02	09.09.02, 26%-187%		07.01.03 ^d	CF	CF
Mexico	Wood Venetian blinds and slats	21.11.03	19.02.04, 120%	18.06.04, 1%-120%	18.06.04 (blinds) ^d
Poland	Laminate flooring	04.10.04	16.02.05, 4.0%		17.05.05 ^e	..	0.0%
Romania	Hot-rolled carbon steel plate	13.06.03	11.09.03, 40.9%-74.6%	09.01.04, 39.3%-74.6%		CF	CF
South Africa	Hollow structural steel	21.05.03	19.08.03, 0.5-41.8%	23.12.03, 9.5-88.7%		CF	CF
Switzerland	Stainless steel wire	21.11.03	02.04.04, 108%	30.07.04 ^c		133,400 kg.	CF
Turkey	Hollow structural steel	21.05.03	19.08.03, 0.4%-43.7%	23.12.03, 0.9-43.3%		CF	CF
United States	Grain corn	16.09.05	15.12.05 US\$0.58 per bushel		18.04.06 ^d	92.1 (million bushels)	20%
	Cross-linked polyethylene tubing	03.03.06	01.06.06, 213%			109,121 kg.	CF
	Copper pipe fittings	08.06.06				2,207,095 kg.	
	Stainless steel wire	21.11.03	02.04.04, 0.1%-149%	30.07.04 ^c		2,079,893 kg.	CF
	Pizza products	02.01.04	17.05.04, 0.3%-199.5%		18.08.04 ^d	CF	CF
Viet Nam	Waterproof footwear	26.04.02	09.09.02, 72%-187%		07.01.03 ^d	CF	CF

.. Not available.

a No final measures: insignificant margin of dumping.

b No final measures: negligible volume.

c No final measures: certain goods excluded.

d No final measures: no injury.

e No final measures: no dumping.

CF Confidential.

Source: WTO documents: G/ADP/N/145/CAN, 1 September 2006; G/ADP/N/139/CAN, 9 March 2006; G/ADP/N/132/CAN, 12 August 2005; G/ADP/N/126/CAN, 25 February 2005; G/ADP/N/119/CAN, 13 August 2004; G/ADP/N/112/CAN, 27 January 2004; G/ADP/N/105/CAN, 18 August 2003; G/ADP/N/98/CAN, 18 February 2003; and, G/ADP/N/92/CAN, 25 July 2002.

81. The Tribunal may at any time review its findings of injury or orders. It may do this on its own initiative or at the request of the Minister of Finance, the CBSA or any person or government. As noted by the CITT, interim reviews may be warranted where there is a reasonable indication that new facts have arisen or there has been a change in the circumstances that led to the finding or order, or in circumstances where there are facts that, although in existence, were not put into evidence during the previous review or enquiry and were not discoverable by the exercise of reasonable

diligence at that time.⁶⁶ Between March 2002 and March 2006, the CITT concluded 11 interim reviews. In two cases the findings/orders were rescinded, in six cases they were continued with amendments, and in three cases they were continued without amendment.⁶⁷

82. Between March 2002 and March 2006, the CITT received two requests for a public interest enquiry following its findings in a case relating to stainless steel wire from Korea, Switzerland, and the United States. In March 2005, the Tribunal reported to the Minister of Finance its opinion that it was not in the public interest to continue imposing an anti-dumping duty at a rate of up to 181% on belting wire and wireline from the United States (but not from Korea and Switzerland), and it recommended that the rate be reduced to 35%.⁶⁸ The Government subsequently reduced the anti-dumping duty rate to 35% on all imports of belting wire and wireline subject to the CITT's anti-dumping order (Korea, Switzerland, and the United States).⁶⁹

83. Since 2003, Canada has been involved in three anti-dumping dispute settlement cases in the WTO, each time as a complainant.⁷⁰

84. Between July 2002 and end-July 2006, Canada initiated seven countervailing investigations. In three cases, provisional duties were levied, but no final measures. These related to grain corn from the United States, where no injury was found; barbeques from China, and steel fasteners from Chinese Taipei, where there were insignificant amounts of subsidy. Final duties were applied in three cases: steel fasteners (with certain goods excluded) from China, laminate flooring from China, and stainless steel wire (with certain goods excluded) from India.

85. By end-June 2006, five countervailing duty orders were in place, compared with ten at the time of Canada's previous review in 2003, and six at the time of the 2000 review (Table III.5).

Table III.5
Countervailing duty measures in force, 30 June 2006

Country	Product	Date of finding
China	Steel fasteners	07.01.05
	Laminate flooring	16.06.05
European Communities	Refined sugar	06.11.95 (03.11.00) (02.11.05)
India	Hot-rolled carbon steel sheet	17.08.01
	Stainless steel wire	30.07.04

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

Source: WTO document G/SCM/N/144/CAN, 4 September 2006.

86. Since 2003, Canada had been involved in three dispute settlement cases relating to countervailing measures in the WTO, each time as a complainant.⁷¹

⁶⁶ CITT (2006).

⁶⁷ Details of interim review cases are summarized in the CITT Annual Reports. Viewed at: http://www.citt-tcce.gc.ca/publicat/index_e.asp#13.

⁶⁸ CITT Annual Report (2006).

⁶⁹ Stainless Steel Round Wire Products Anti-dumping Duty Remission Order, SOR/2005-392 November 28, 2005, *Canada Gazette*, Vol. 139, No. 25. December 14, 2005.

⁷⁰ DS234, United States – Continued Dumping and Subsidy Offset Act of 2000; DS264, United States – Final Dumping Determination on Softwood Lumber from Canada; and DS277, United States – Investigation of the International Trade Commission in Softwood Lumber from Canada.

⁷¹ DS257, United States – Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada; DS277, United States – Investigation of the International Trade Commission in

(b) Safeguards

87. Canada notified its laws, regulations, and administrative procedures relating to safeguards to the WTO Secretariat in August 2004.⁷² Safeguard remedies may be imposed in the form of surtaxes under the Customs Tariff Act and quantitative restrictions under the Export and Import Permits Act. The Canadian International Trade Tribunal Act implements the safeguards 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. Goods may be subject to AD/CVD and safeguard measures simultaneously.

88. Safeguard investigations are conducted by the CITT under the Canadian International Trade Tribunal Act. Safeguard enquiries by the CITT may be initiated as a result of complaints by domestic producers or by the Government of Canada. The CITT inquiry report may contain recommendations for the Government's consideration. CITT safeguard enquiry reports must be tabled in Parliament only when the Government has directed the CITT to address a specific issue as part of its enquiry. Decisions by the CITT on injury in the context of safeguard measures are subject to judicial review by the Federal Court of Appeal.

89. In global safeguard enquiries, the CITT considers the effects of imports from all sources on domestic producers. If the CITT makes a determination of serious injury or threat thereof, it must also determine if imports from countries with which Canada has a bilateral free-trade agreement (except Costa Rica) are "substantial" and "contribute importantly" to the serious injury.⁷³ If this is not the case, then imports from that country must be excluded from global safeguards measures applied. The authorities indicate that while there are no specific legislative provisions to implement Article 9 of the Agreement on Safeguards, in the two global safeguard enquiries undertaken by Canada since the WTO was established, the CITT made recommendations that took into account Canada's obligations under Article 9.⁷⁴

90. In September 2002, the Canadian International Tribunal Act was amended to implement the safeguard provisions of the Protocol on Accession of China to the WTO and sets out the CITT's policies and procedures for safeguard enquiries with respect to market disruption (including extension of market disruption) and actions affecting Chinese imports into the market of another WTO Member which cause or threaten to cause a significant diversion of trade into the domestic market of Canada.⁷⁵ These bilateral safeguard provisions will be available until 11 December 2013.⁷⁶

91. Canada has initiated three global safeguard investigations since the establishment of the WTO of which two were during the period under review. In addition, one China-specific investigation was undertaken by the CITT concerning imports of barbeques from China. The Government decided not to impose safeguard actions in the investigation related to imports of bicycles as well as the China-specific investigation on imports of barbeques, despite findings of injury by the CITT (see

Softwood Lumber from Canada (concerned injury allegedly caused by both dumped and subsidized imports); DS311, United States – Reviews of Countervailing Duty on Softwood Lumber from Canada.

⁷² WTO document G/SG/N/1/CAN/3, 10 August 2004.

⁷³ The terms "substantial" and "contribute importantly" are defined in Article 802 of the NAFTA; Article 4.6 of CIFTA; and Article F-02 of the CCFTA.

⁷⁴ See for example paragraphs 247 to 251 and Appendix V of the CITT report on bicycles and bicycle frames. Viewed at: <http://www.citt-tcce.gc.ca/safeguar/global/finalrep/g2e001-e.asp>.

⁷⁵ CITT (2003), *inter alia* provides a definition of market disruption and how market disruption is determined by the CITT; procedures for market disruption extension enquiries; as well as the purpose of trade diversion inquiries and how determinations are made by the CITT.

⁷⁶ CITT (2003), describes the basic procedures the Tribunal will follow.

Table III.6). According to the authorities, the Canadian Government, after considering all of the information determined that temporary protective tariffs would not provide a competitive long-term solution in these cases.⁷⁷

Table III.6
Safeguard investigations, 2003-06

Enquiry (year initiated)	Source of complaint	Tribunal findings and recommendations	Action taken
Global enquiries			
Bicycle and bicycle frames; and finished painted bicycle frames (2005)	Canadian Bicycle Manufacturers Association	The CITT found a sharp and significant increase in imports of bicycles was a principal cause of serious injury to domestic producers, and recommended that a surtax set at 30% in the first year of application be applied to imports of bicycles with certain characteristics, followed by 25% in the second and 20% in the third. It recommended that certain products be excluded as should imports from Canada's free-trade partners and certain developing countries. The CITT did not find that imports of finished painted bicycle frames threatened serious injury to domestic producers.	None ^a
Unmanufactured bright Virginia flue-cured tobacco (2005)	Ontario Flue- Cured Tobacco Growers Marketing Board	The CITT found that there was a significant increase in the subject imports from 2001 to 2005, which was causing or threatening to cause serious injury to domestic producers. However, in February 2006, the Ontario Flue-Cured Tobacco Growers Marketing Board notified the Tribunal that its members no longer wished to participate in the enquiry and would not submit evidence to support their complaint.	Investigation terminated (February 2006) ^b
Safeguards inquiries – imports from China			
Barbeques (2005)	Onward Manufacturing Company Limited	The CITT determined that imports of barbeques from China were a significant cause of market disruption to domestic producers. It recommended that the Government impose a surtax of 15% for a period of three years on imports of barbeques from China.	None ^c

a Notified in WTO document G/SG/N/9/CAN/3, 7 June 2006.

b Notified in WTO document G/SG/N/9/CAN/2, 23 February 2006 and G/SG/N/9/CAN/2/Corr.1, 6 March 2006.

c Notified in WTO document G/SG/N/16/CAN/1/Suppl.1, 7 June 2006.

Source: WTO Secretariat.

92. As at end-2006 Canada had not been involved in any WTO dispute settlement cases related to safeguards either as complainant or respondent, nor had it imposed special safeguards, as allowed under the WTO Agreement on Agriculture for imports of products for which tariff quotas are administered.⁷⁸ Canada has never imposed transitional safeguards on imports of textiles and clothing under Article 6 of the WTO Agreement on Textiles and Clothing.

(viii) Technical regulations, conformity assessment, and standards

93. Under Canada's federal regime, the federal, provincial, and territorial governments have the authority to promulgate technical regulations (and sanitary and phytosanitary standards). The Federal Government is responsible for the implementation of international trade obligations. The Statutory Instruments Act, the Statutory Instruments Regulations, Cabinet policy, and the Government of Canada Regulatory Policy govern the development and adoption of federal regulations, which include

⁷⁷ Department of Finance Canada, News Release May 29, 2006.

⁷⁸ For latest WTO notification, covering the calendar years 2003-05, see WTO document G/AG/N/CAN/59, 2 March 2006.

technical regulations adopted by federal authorities. The Treasury Board Secretariat is developing a new Government Directive on Regulating.⁷⁹

94. The Treasury Board Secretariat oversees the management and coordination of federal policy on technical and other regulations. The Regulatory Affairs Secretariat at the Treasury Board Secretariat ensures that regulations proposed by federal departments comply with the Regulatory Policy. The Treasury Board, a Cabinet committee, grants final approval to federal regulations.

95. Foreign Affairs and International Trade Canada (DFAIT) is responsible for implementation of the TBT Agreement.⁸⁰ Canada last updated its notification on the implementation and administration of the TBT Agreement in September 2002.⁸¹ DFAIT contracts with the Standards Council of Canada (SCC) for the operation of Canada's enquiry point and notification authority. The SCC, a federal Crown corporation, is the focal point for standardization in Canada.

96. The SCC monitors the *Canada Gazette*, the official newspaper of the Government of Canada, to identify relevant technical regulations and conformity assessment procedures for WTO notification.⁸² It relies on provincial gazettes for technical regulations and conformity assessment procedures adopted by provincial governments. The Canadian authorities note that, in general, provincial regulations are not notified to the WTO because they do not have an international impact. They also state that the issue of sub-national notifications is under review, and that they are making significant efforts to raise provinces' awareness of the importance of increased regulatory transparency. In this context, the SCC is working with provincial regulators to explore approaches that would facilitate the sub-national notification process, especially since many provinces publish adopted regulations in their gazettes, rather than draft regulations.

97. Canada made 119 notifications of technical regulations to the WTO between July 2002 and mid-August 2006.⁸³ Around 52% of the notifications were from Health Canada, 22% from Transport Canada, 13% from Environment Canada, 8% from Industry Canada, and 6% from other authorities. Only one notification was of a technical regulation adopted for urgent problems.⁸⁴ The vast majority of technical regulations notified were aimed at protecting human health, human safety, or the environment.

98. Canada also made 37 notifications of conformity assessment procedures during the period (2 in 2002, 9 in 2003, 12 in 2004, 11 in 2005, and 3 in 2006).⁸⁵ Around half of the notifications were from Industry Canada, and the other half from Health Canada, Transport Canada, Environment Canada, Natural Resources Canada, and the Canadian Nuclear Safety Commission. Canada also notified one mutual recognition agreement, which covers certificates issued by Australia of good manufacturing practices for medicines.⁸⁶

⁷⁹ The draft directive was viewed at: <http://www.regulation.gc.ca>. The Canadian authorities indicate that further guidance documents for regulators have been produced by Industry Canada and the Standards Council of Canada. See Industry Canada (2004) and Standards Council of Canada (2006b).

⁸⁰ WTO document G/TBT/2/Add.6/Rev.1, 9 September 2002.

⁸¹ WTO document G/TBT/2/Add.6/Rev.1, 9 September 2002.

⁸² WTO document G/TBT/2/Add.6, 4 June 1996.

⁸³ Excluding notifications contained in documents with the symbols "Add" and/or "Corr". WTO documents G/TBT/N/CAN/42-170. The annual distribution of notifications was: 10 in 2002, 25 in 2003, 28 in 2004, 39 in 2005, and 17 in 2006.

⁸⁴ WTO document G/TBT/N/CAN/78, 17 October 2003.

⁸⁵ The majority of these measures were also notified as technical regulations.

⁸⁶ WTO document G/TBT/10.7/N/48, 10 January 2006.

99. Canada has notified one draft technical regulation proposed by a provincial/territorial authority (the Ontario Ministry of the Environment) since mid 2002.⁸⁷

100. Between July 2002 and August 2006, no trade concerns were raised in the TBT Committee regarding technical regulations or standards adopted by Canada.

101. Various federal and provincial authorities develop regulations, including technical regulations, as part of their mandate. Federal authorities must carry out "timely and thorough" consultations with interested parties "as early as possible" when developing regulations.⁸⁸ The extent of the consultations should be proportional to each regulation's impact. Federal authorities must publish draft technical regulations that affect trade in Part I of the *Canada Gazette* and provide an opportunity for comment.⁸⁹ This stage is referred to as "pre-publication". Upon request by a federal authority, the Treasury Board may waive the pre-publication requirement, or shorten the comment period.

102. For technical regulations that affect trade, the comment period should be at least 75 days, except in "urgent circumstances".⁹⁰ The Canadian authorities note that it would be highly unusual for a technical regulation with international trade implications to be exempt from the 75-day notice period. They also indicate that "urgent circumstances" would be defined in accordance with the TBT Agreement.

103. Draft regulations must be accompanied by a "regulatory impact analysis statement" describing their anticipated benefits and costs, the results of the consultations with stakeholders carried out by the sponsoring authority, and the regulations' monitoring and enforcement instruments.⁹¹ This statement must be revised to reflect the comments received during pre-publication. The Treasury Board grants final approval to the regulation, after taking into account the results of the pre-publication stage. Upon approval by the Treasury Board, the Governor General signs the regulation, and the Registrar of Statutory Instruments registers it. Regulations normally enter into force immediately after registration, but can only be enforced once published in Part II of the *Canada Gazette*, which must occur within 23 days of registration.⁹²

104. Under the Regulatory Policy, federal authorities must use available international standards, guidelines, and recommendations "where those standards achieve the regulatory objective" sought by Canada. Regulatory requirements must be specified in terms of performance rather than design or descriptive characteristics "where possible". Federal authorities must give "positive consideration" to requests for the recognition of foreign technical regulations, to the extent that such regulations fulfil the objectives of Canadian technical regulations.⁹³ The authorities indicate that there is no system for collecting data on foreign technical regulations recognized by Canada, but they are exploring approaches toward setting up such a system.

105. Canada does not maintain a catalogue of technical regulations. However, the *Canada Gazette* contains a consolidated index of federal statutory instruments, including technical regulations, adopted since January 1955.⁹⁴ In addition, the SCC maintains an on-line searchable database (known

⁸⁷ WTO document G/TBT/N/CAN/137, 21 July 2005.

⁸⁸ Appendix B, Government of Canada Regulatory Policy, November 1999.

⁸⁹ Appendix A, Government of Canada Regulatory Policy, November 1999.

⁹⁰ Appendix A, Government of Canada Regulatory Policy, November 1999.

⁹¹ Treasury Board of Canada Secretariat (2004).

⁹² Sections 9-11, Statutory Instruments Act.

⁹³ Appendix A, Government of Canada Regulatory Policy, November 1999.

⁹⁴ *Canada Gazette*. Viewed at: <http://canadagazette.gc.ca>.

as RegWatch) of all standards incorporated into Canadian federal regulations.⁹⁵ There is no catalogue of technical regulations adopted by the provinces.

106. Some provinces and territories have additional technical regulations for certain products, including margarine, bottled water, and maple syrup.⁹⁶

107. The elimination of technical regulations involves the same process as their adoption. The authorities indicate that they are developing a regulatory review framework that would examine regulations that no longer serve their purpose.

108. The 2002 Speech from the Throne introduced Smart Regulation, a regulatory reform initiative.⁹⁷ In this context, the Government set up an External Advisory Committee on Smart Regulation in May 2003 which, among other things, recommended: the inclusion of international regulatory cooperation "as a distinct component of Canadian foreign policy"; the creation of a more "seamless" regulatory environment across federal, provincial, and territorial authorities; better coordination among federal regulatory authorities; the development of a government-wide approach to risk management; and the development of a new federal regulatory policy.⁹⁸ The Committee also noted that the absence of cooperation between federal and provincial regulatory authorities, and between provincial regulatory authorities, results in "significant costs" to the Canadian economy.⁹⁹ According to the authorities, various efforts are under way to address this situation: for example, parties to the Agreement on Internal Trade are negotiating principles for regulations and standards that affect inter-provincial trade.

109. The process for the development and adoption of mandatory conformity assessment procedures is the same as for technical regulations (see above). Federal authorities may reference in federal regulations ISO/IEC standards adopted at the national level, and rely on SCC-accredited bodies for conformity assessment. Mandatory conformity assessment may also be carried out directly by federal and provincial authorities.

110. The SCC is Canada's national accreditation body. It accredits standards development organizations, testing and calibration laboratories, certification bodies, quality and environmental registration organizations, inspection bodies, personnel certification bodies, and auditor course providers and certifiers. In doing so, the SCC follows policies and procedures that are the same as international standards, or are based on such standards.¹⁰⁰

111. As a general rule, type approval is used for low-risk products, whereas individual testing and certification is used for higher risk products, for example medical devices. Voluntary conformity assessment is carried out by SCC-accredited bodies, which are mostly private entities. The conformity assessment activities of the SCC relate primarily to third-party assessment. The

⁹⁵ SCC online information. Viewed at: http://www.scc.ca/en/news_events/subscriptions/regwatch.html.

⁹⁶ CFIA online information, "Guide to Importing Food Products Commercially". Viewed at: <http://www.inspection.gc.ca/english/fssa/imp/guide1e.shtml>.

⁹⁷ Privy Council Office online information, "Speech from the Throne to Open the Second Session of the 37th Parliament of Canada". Viewed at: http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=sftddt&doc=sftddt2002_e.htm [4 September 2006].

⁹⁸ External Advisory Committee on Smart Regulation (2004).

⁹⁹ External Advisory Committee on Smart Regulation (2004).

¹⁰⁰ Standards Council of Canada (2006a).

authorities note that Canada relies on a wide variety of strategies to ensure compliance with technical regulations.¹⁰¹

112. There are 31 SCC-accredited product also certification bodies, of which 12 are in Canada and 19 in the United States. There are also 7 accredited inspection bodies (5 in Canada and 2 in the United States), and 364 accredited laboratories (351 in Canada, 1 in Peru, and 12 in the United States).¹⁰²

113. Canada has negotiated several bilateral and multilateral mutual recognition agreements on conformity assessment (Table AIII.3). International product certification schemes are used with respect to electrical equipment; three certification bodies in Canada are members of the IEC System for Conformity Testing and Certification of Electrical Equipment. Suppliers' declaration of conformity is used in electromagnetic compatibility and telecommunication terminal attachment equipment.¹⁰³

114. Four organizations are accredited by SCC to develop (voluntary) standards: the Canadian General Standards Board, the Canadian Standards Association, Underwriters' Laboratories of Canada, and the Bureau de normalisation du Québec. These organizations administer the technical committees that define the content of standards (and voluntary conformity assessment procedures). The SCC is responsible for reviewing standards submitted by standards development organizations, and following the completion of any recommended revisions, approving them as National Standards of Canada. These standards should be consistent with or should incorporate "appropriate" international standards and "pertinent" national standards, and must be made available for public review during their development.¹⁰⁴ SCC-accredited standards development organizations must allow at least 60 days for public review of a draft standard. Around two thirds of the 921 National Standards of Canada approved by the SCC between fiscal years 2002/03 and 2005/06 were the same as or based on international standards. Each of the SCC-accredited standards development organizations issue notices of public review for draft standards, and notices of adopted standards.¹⁰⁵ The SCC maintains an e-mail notification service (known as Standards Alert) on changes to Canadian (and international) standards.¹⁰⁶

115. The SCC adopted Annex 3 of the TBT Agreement in 1999.¹⁰⁷ The work programmes of the SCC-accredited standards development organizations on whose behalf the SCC notified its acceptance of the Code are available from each organization.¹⁰⁸ The Canadian authorities indicated that Annex 3 of the TBT Agreement has been incorporated into the Canadian Procedural Documents (CAN-Ps) that are applied by the SCC when accrediting standards development organizations.

¹⁰¹ See, for example, Standards Council of Canada (undated).

¹⁰² SCC online information, "Directory of Accredited Product and Service Certification Bodies". Viewed at: http://www.scc.ca/en/programs/product_cert/accredited_clients.shtml [23 August 2006].

¹⁰³ WTO document G/TBT/W/210, 20 June 2003.

¹⁰⁴ Standards Council of Canada (1992).

¹⁰⁵ These notices are available on SCC online information. Viewed at: http://www.scc.ca/en/news_events/public-review/index.shtml.

¹⁰⁶ SCC online information. Viewed at: http://www.scc.ca/en/news_events/subscriptions/standards_alert.shtml.

¹⁰⁷ WTO document G/TBT/CS/N/110/Rev.1, 27 October 1999.

¹⁰⁸ ISO/IEC (2006).

(ix) Sanitary and phytosanitary measures

116. Health Canada is responsible for establishing standards and policies governing the safety and nutritional quality of all food sold in Canada. Specifically, Health Canada engages in research, food-safety risk assessment, pre-market review and evaluation of all issues related to food safety and nutrition, and regulation and registration of pest control products and veterinary drugs used in food-producing animals. Health Canada is also responsible for assessing the effectiveness of the food-safety-related activities of the Canadian Food Inspection Agency (CFIA). The CFIA is responsible for enforcing the food safety and nutritional quality standards and policies set by Health Canada, and all federally mandated food inspection, compliance, and quarantine services. The CFIA also sets and enforces regulations on animal health and plant protection.

117. The main federal legislation covering food safety is the Food and Drugs Act. The Act is supplemented by the Food and Drug Regulations. Other federal legislation may reference the Food and Drugs Act and stipulate additional requirements. Examples include the Pest Control Products Act, Canada Agriculture Products Act, Meat Inspection Act, Fish Inspection Act, Seeds Act, Fertilizer Act, and Feeds Act. The Health of Animals Act and the Plant Protection Act with their associated regulations are the main statutes governing animal and plant health issues.

118. Canada's enquiry point and national notification authority under the SPS Agreement is the SCC (section (viii)).¹⁰⁹ Canada made numerous notifications of SPS measures to the WTO between July 2002 and mid-August 2006 (Table III.7); it did not notify any SPS measures adopted by sub-federal authorities. According to the Canadian authorities, this is because such measures have not exceeded federal measures. In this context, the authorities note that the federal, provincial, and territorial governments discuss SPS measures and share information on a broad range of animal and plant health and food safety issues through various committees, for example the Federal-Provincial-Territorial Regulatory Assistant Deputy Ministers' Committee and the Federal-Provincial-Territorial Agri-Food Inspection Committee. In addition, the authorities note that there are various sector-specific working groups, including the National Liaison Group on Dairy, comprising representatives of the federal, provincial, and territorial governments, industry, and academia.

119. Around 23% of the SPS measures notified by Canada since July 2002 are Notices of Interim Marketing Authorizations (NIMAs). These are enabling instruments that allow producers or manufacturers to sell foods that are not in compliance with certain provisions of the Food and Drug Regulations while the Regulations are being amended.¹¹⁰ According to the Canadian authorities, NIMAs are issued only when the scientific evaluation concludes that consumption of the food will not be harmful to consumers. NIMAs are used only when expanding the use of food additives; veterinary drugs; agricultural chemicals; and vitamins, mineral nutrients, and amino acids that are already listed in the Food and Drug Regulations. NIMAs appear in the Government Notices section of Part I of the *Canada Gazette* and are effective on the date of publication.

120. Chinese Taipei has raised concerns in the SPS Committee regarding an SPS measure adopted by Canada. The measure consisted of import restrictions on growing media; Chinese Taipei was concerned by the application of this measure to enoki mushrooms.¹¹¹ The authorities indicate that (at end 2006), Canada and Chinese Taipei are working to resolve this issue.

¹⁰⁹ WTO documents G/SPS/ENQ/19, 25 January 2006, and G/SPS/NNA/8, 20 December 2004.

¹¹⁰ Interim Marketing Authorization (IMA), Schedule 923. Viewed at: http://www.hc-sc.gc.ca/fn-an/legislation/ima-amp/interim_market_authorization-autorisation_mise_marche_e.html.

¹¹¹ WTO document G/SPS/GEN/204/Rev.6/Add.1, 19 May 2006.

Table III.7
WTO notifications of SPS measures, July 2002 to mid-August 2006

	2002	2003	2004	2005	2006
Total notifications ^a	18	38	47	26	21
Of which:					
Emergency measures	1	6	6	7	4
International standards ^b	2	6	7	4	1
Agencies responsible (as % of total):					
Health Canada ^c	86	61	80	50	71
CFIA	11	39	18	48	29
Other	3	0	2	2	0
Objectives (as % of total):					
Food safety	83	63	78	54	71
Plant protection	17	34	15	35	24
Animal protection	0	3	5	10	5
Other	0	0	2	2	0

a Excluding notifications in documents with the symbols Add and/or Corr.

b Identical to or based on international standards.

c Including the Pest Management Regulatory Agency.

Source: WTO Secretariat.

121. Canada is a member of the Codex Alimentarius Commission and the World Organisation for Animal Health (OIE), and a contracting party to the International Plant Protection Convention (IPPC). The Canadian authorities indicate that, consistent with the Government of Canada Regulatory Policy and Canada's obligations under the SPS Agreement, federal regulatory authorities must use available international standards, guidelines, and recommendations where those standards achieve the regulatory objective sought by Canada.

122. The CFIA often concludes product-specific arrangements on food safety and animal and plant health issues with foreign governments, including memoranda of understanding and protocols. An exhaustive list of these agreements was not available.

123. The CFIA maintains a searchable database of the import requirements for animals, plants, and their products.¹¹² SPS-related import permits are required for some products; they specify the conditions under which the product can be imported into Canada. Import conditions may include treatment at origin, testing, inspection, quarantine, and/or certification.

124. SPS requirements applied to imports are established on the basis of the disease or pest risks associated with these imports. According to the authorities, SPS import requirements that entail a full risk assessment are most commonly those related to animal and plant health. As a general rule, the authorities conduct a risk assessment prior to first-time imports of an animal, plant, or animal or plant product from a particular country.

125. The CFIA is the lead agency for risk assessments for animal health and plant protection. It requests a risk assessment from Health Canada when food safety issues are involved for which Health Canada has not established guidelines, policies, or standards. The frameworks used by the CFIA and Health Canada to address risks are available to the public.¹¹³ According to the Canadian authorities, both frameworks are consistent with approaches developed by the Codex Alimentarius Commission,

¹¹² CFIA online information, "Automated Import Reference System (AIRS)". Viewed at: <http://airs-sari.inspection.gc.ca/airs/airs-sari.asp>.

¹¹³ CFIA (undated a) and Health Canada (2000).

the OIE, and the IPPC. Occasionally, provinces conduct their own plant health risk assessments to determine the need to implement provincial requirements, but generally they rely on federal risk assessments. CFIA representatives may visit the exporting country as part of the risk assessment.

126. The CFIA has developed a process to determine the priority assigned to import requests that require a risk assessment. Priority is determined on the basis of estimates of the imported product's immediate impact on health. For imports not likely to have any immediate health impact, the CFIA examines other "relevant" factors to determine priority, including "the impact on proponent and opponent industries", "economic and social impacts on the general public", "trade impacts", and "urgency".¹¹⁴

127. Evaluations of requests to import animals and animal products that entail a risk assessment may take up to a year to process¹¹⁵; relevant statutes do not define a time limit. Factors determining the time needed to evaluate an import request include the availability of risk assessments for product-country combinations presenting the same risk as the requested import, and the quality of information available. The CFIA informs the person making the import request whether a full risk assessment is required, normally within three weeks of receiving the request. The requester bears some of the cost of the risk assessment. The Canadian authorities do not maintain data on the cost of risk assessments.

128. The CFIA maintains lists of countries free of OIE List A diseases.¹¹⁶ These lists are generally established on the basis of country assessments conducted by the CFIA. The authorities indicate that Canada takes into account the OIE lists of countries recognized free of foot-and-mouth disease, rinderpest, BSE, and contagious bovine pleuropneumonia, but reserves the right to conduct its own science-based risk assessments on a case-by-case basis for all diseases. Although the CFIA normally evaluates disease risks on a country-wide basis, it has occasionally recognized certain regions within countries as "disease free".¹¹⁷ The CFIA also publishes a list of animal health hazards associated with particular species or commodities.¹¹⁸ According to the Canadian authorities, Lists A and B of the OIE are the principal lists of diseases for conducting hazard identification for imports of animals and animal products; other criteria for identifying hazards are used on a case-by-case basis.

129. The CFIA maintains lists of plant and plant material from certain countries that must not be imported into Canada, and of regulated pests.¹¹⁹ The Canadian authorities indicate that the List of Prohibited Plants and Plant Materials from Countries Other than the Continental United States is in line with IPPC pest risk analysis guidelines, and that the List of Pests Regulated by Canada follows the relevant IPPC standard.¹²⁰

130. Based on the results of risk assessment, the CFIA may allow imports, subject to certain SPS requirements. For animals and animal products, these requirements are often included in import

¹¹⁴ CFIA (undated a).

¹¹⁵ CFIA (2006).

¹¹⁶ CFIA online information, "Country Freedom Recognition Tables". Viewed at: <http://www.inspection.gc.ca/english/anima/heasan/disemala/recotab/listae.shtml>.

¹¹⁷ WTO document G/SPS/GEN/613, 16 December 2005.

¹¹⁸ CFIA online information, "Animal Health Hazards Associated with Imported Animals". Viewed at: <http://www.inspection.gc.ca/english/sci/ahra/rianfrwk/appe.shtml>.

¹¹⁹ CFIA online information, "Prohibited Plants and Plant Materials from Countries Other than the Continental United States". Viewed at: <http://www.inspection.gc.ca/english/plaveg/oper/prohibintere.shtml>; and "Pests Regulated by Canada". Viewed at: <http://www.inspection.gc.ca/english/plaveg/protect/listpespare.shtml>.

¹²⁰ IPPC Secretariat, "Guidelines on lists of regulated pests" (ISPM No. 19), April 2003.

protocols; for plants and plant products the CFIA normally issues D-memos.¹²¹ In response to urgent situations of health protection, for example chemical contamination of food products, Health Canada may develop guidelines to aid in the interpretation of the Food and Drugs Act.

131. Other SPS requirements are contained in regulations. In this case, their development and adoption is subject to the requirements, including on public notice, contained in the Regulatory Policy (see section (viii)). Temporary or permanent ad hoc advisory bodies (e.g. the Canadian Plant Protection Advisory Committee) might be established to consult with stakeholders on proposed SPS regulations.

132. Canada does not have a formal mechanism for a party to challenge SPS requirements. The authorities indicate that interested parties can submit comments to responsible agencies through their websites. These agencies also hold regular meetings and consultations with industry and stakeholder associations. Moreover, Health Canada has established food safety and management committees to review concerns identified with existing regulations and make recommendations on possible revisions.

133. Meat imports are subject to a special approval system managed by the CFIA.¹²² Upon request, the CFIA reviews all pertinent statutes on a country's meat inspection system. If these are deemed equivalent, the CFIA carries out on-site audits of individual meat establishments. Establishments approved by the CFIA must submit samples, formulations, and labels of meat products for registration before they can export to Canada. The CFIA conducts periodic audits of approved establishments. The CFIA has approved meat inspection systems from 38 countries or territories.¹²³ Canada requires all shipments of imported meat to be inspected at the border.

134. The Canadian authorities indicate that before agricultural products of biotechnology are approved for sale in Canada, they undergo a process that assesses potential environmental, human health, or animal health risks. The CFIA regulates novel agricultural products (e.g. plants, livestock feeds, fertilizers and supplements, and veterinary biologics), including those derived through biotechnology, through a regulatory process that stipulates what data must be submitted by developers who are seeking approval of their products, and how CFIA scientists must examine the data. Health Canada regulates novel foods, including foods derived from genetically modified organisms, through a mandatory pre-market notification requirement, as stipulated in the Food and Drug Regulations. Specific criteria for evaluating the safety of foods derived through genetic modification are laid down in Health Canada's Guidelines for the Safety Assessment of Novel Foods Derived from Plants and Microorganisms. According to the authorities, the Guidelines are based on internationally established scientific principles, and are consistent with the risk analysis principles and safety assessment guidelines developed by the Codex Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology.

135. Health Canada reviews, evaluates, and monitors the safety, efficacy, and quality of veterinary drugs, sets standards, and promotes their prudent use. The authorities note that veterinary drugs are

¹²¹ CFIA online information, "Plant Protection Policy Directives". Viewed at: <http://www.inspection.gc.ca/english/plaveg/protect/dir/directe.shtml>.

¹²² CFIA (undated b).

¹²³ Argentina, Australia, Austria, Belgium, Brazil, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Poland, Portugal, Puerto Rico, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, the United Kingdom, Uruguay, and the United States. CFIA online information, "Meat Hygiene Directives for 2006". Viewed at: <http://www.inspection.gc.ca/english/anim/meavia/mmopmmhv/direct/directe.shtml>.

authorized for sale in Canada only after a review process finds that the product, when used according to label instructions, does not pose undue health risks to humans eating food products from treated animals. Health Canada has approved six hormonal growth promoters for use in beef cattle. The authorities indicate that this decision is supported by the evaluations and recommendations of the Joint FAO/WHO Expert Committee on Food Additives and the standards established by the Codex Committee on Residues of Veterinary Drugs in Foods.

136. The CFIA is responsible for all federally mandated food, and animal and plant health inspection services, except for initial import inspections at the border, which are carried out by Canada Border Services Agency. The CFIA charges fees for its services in accordance with the Canadian Food Inspection Agency Fees Notice. The extent of import inspection depends on the outcome of the risk assessment performed by the CFIA. In support of its enforcement functions, the CFIA manages several laboratories.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

137. Under the Customs Act, goods exported from Canada must be reported to the Government of Canada. The three main objectives of export reporting are to: control the export of strategic, dangerous goods, and other controlled and regulated goods; collect accurate information on Canadian exports; and control the outbound movement of goods in transit through Canada.¹²⁴

138. Goods exported to the United States for consumption do not have to be reported on an export declaration.¹²⁵ However, if the goods exported to the United States are controlled, regulated or prohibited (i.e. restricted) by other government departments or agencies, the appropriate permit must be presented to the Canada Border Services Agency.

139. Exports of non-restricted goods valued at Can\$2,000 or more to destinations other than the United States must be reported on an export declaration. Regardless of their value, restricted goods to non-U.S. destinations must be reported by presenting both an export declaration and the appropriate permit to the CBSA. Conveyances (e.g. vehicles, motorcycles, boats) that are permanently exported to destinations other than the United States must be reported by submitting an export declaration, plus information on the Vehicle Identification Number (VIN), Hull Identification Number (HIN) or serial number of the vehicle. There are some exceptions to export reporting.¹²⁶

140. A business number is required to complete an export declaration. Exporters of commercial goods, including non-resident exporters, must apply to the Canada Revenue Agency for both a business number and an import/export account (RM account), which must be activated for exports. Export declarations may be submitted in any of four ways: the Canadian Automated Export

¹²⁴ For more information on exporting from Canada see D20-1-0. Viewed at <http://www.cbsa-asfc.gc.ca/E/pub/cm/d20-1-0/README.html>; CBSA (undated a); D20-1-1. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d20-1-1/README.html>; and D20-1-1. Viewed at: [Interim Export Reporting http://www.cbsa-asfc.gc.ca/E/pub/cm/d20-1-1-interim/README.html](http://www.cbsa-asfc.gc.ca/E/pub/cm/d20-1-1-interim/README.html).

¹²⁵ Export declarations are not required for goods exported to the United States, Puerto Rico or the United States Virgin Islands, with the exception of exports of trains. Canada receives export information on goods destined for the United States directly from United States import data, under a bilateral agreement between the two countries. Goods in transit through the United States to another country are subject to the same requirements as if they were travelling directly to the other country.

¹²⁶ For a detailed list of exceptions to exporter reporting, see section 6 of D20-1-0. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d20-1-0/README.html>; Memorandum D20-1-1, paragraphs 30-32. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d20-1-1/d20-1-1-e.pdf#search='Memorandum%20D2011>.

Declaration (CAED); G7 Electronic Data Interchange (EDI) Export Reporting; form B13A, Export Declaration; or a Summary Report.¹²⁷ The exporter is ultimately responsible for ensuring that the goods are reported. Exporters are required to keep accurate records in Canada for six years.

141. Export declarations, permits and any other required documentation must be submitted within specific timeframes as per the Reporting of Exported Goods Regulations. These timeframes vary depending on the mode of transport used to export the goods from Canada. Export reports for live animals, perishable goods, bulk goods, homogenous goods or time-sensitive goods, which are not controlled, regulated or prohibited, do not follow the mode-specific reporting time frames and may be made immediately before export.

142. Carriers and customs service providers are also subject to export reporting requirements.¹²⁸ As per the Customs Act, CBSA officers may inspect export goods reported to the Government of Canada.

143. If export-reporting requirements are not met, exporters and/or carriers may be subject to penalties under the Administrative Monetary Penalty System (AMPS). Penalty amounts range from Can\$100 to Can\$25,000 depending on the seriousness of the infraction and the number of times it has been committed.¹²⁹

(ii) Export taxes, charges, and levies

144. Export duties are imposed on Canadian-manufactured tobacco products and, as of 12 October 2006, on softwood lumber destined for the United States. Export duties may be imposed under the Export Act on certain ores, but no such taxes were levied as of mid 2006.¹³⁰

145. As outlined in the Secretariat Report for Canada's previous review, under the Excise Act 2001, exports of Canadian-produced cigarettes, tobacco sticks, and other manufactured tobacco to all destinations 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\$0.178 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 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 purpose of the export tax scheme is to reduce the incentive to smuggle Canadian-produced tobacco products back into Canada from export markets.¹³¹

146. On 12 September 2006, Canada and the United States signed an agreement with respect to exports of Canadian softwood lumber. This followed a long-running trade dispute regarding U.S. anti-dumping and countervailing duties on imports of Canadian softwood lumber, which had been the

¹²⁷ The hard copy method is Form B13A; the two available options for electronic reporting are the Canadian Automated Export Declaration and the G7 Electronic Data Interchange Export Reporting. The Summary Reporting Program is reserved for exporters of low-risk goods who export on a regular basis and who have met specific CBSA requirements.

¹²⁸ CBSA Memorandum D20-1-0, Reporting of Exported Goods Regulations, paragraphs 9-14. See also D3-1-8 Cargo-Export Movement at <http://www.cbsa-asfc.gc.ca/formspubs/menu-e.html>.

¹²⁹ Details of export-related penalties may be viewed at: http://www.cbsa-asfc.gc.ca/export/amps_export_mpd-e.pdf.

¹³⁰ Export Act. Viewed at: <http://laws.justice.gc.ca/en/E-18/55273.html>.

¹³¹ Press release of 5 April 2001, "Government Announces Comprehensive Strategy to Discourage Smoking". Viewed at: <http://www.fin.gc.ca/news01/01-039e.html>.

subject of challenges in the U.S. courts, under the WTO's Dispute Settlement Understanding, and under NAFTA Chapter 19. The Agreement entered into force on 12 October 2006, with amendments to provisions relating to the termination of certain litigation and the refund of duty deposits. As part of this agreement, the United States revoked the anti-dumping and countervailing duty orders, and refunded over 80% of the duty deposits collected since 2002. Canadian softwood lumber exporters will pay an export charge when the agreed reference price of lumber is at or below US\$355 per thousand board feet. The Canadian regions covered by the agreement (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Quebec) may choose between two regimes: either an export charge that varies with price; or a lower export charge plus volume restraint, where both the rate and the volume restraint vary with the price. The export charge revenues will be collected by the Canadian Government and returned to the provinces based on the origin of the softwood. The funds may not flow back to the industries from which they were collected. Some exemptions and exclusions apply.¹³²

147. Under the NAFTA and Canada's FTAs with Chile (CCFTA), Costa Rica (CCRFTA) and Israel (CIFTA), Canada has undertaken not to maintain any duty, tax or other charge on goods exported to the territory of the party(s) unless such levies are adopted or maintained on such goods for domestic consumption.¹³³ Under the CIFTA, however, Canada has scheduled certain exceptions to this provision, *inter alia*, relating to controls on the exports of logs and unprocessed fish (under certain provincial statutes).

(iii) Export prohibitions, restrictions, and licensing

148. Most Canadian export controls are in place under the Export and Import Permits Act, administered by the Export and Import Control Bureau. Other export controls fall under the respective responsibilities of the Canadian Wheat Board; Health Canada; Agriculture Canada; Canadian Heritage; Superintendent of Financial Institutions; Natural Resources Canada; and Environment Canada.

149. Section 3 of the Export and Import Permits Act, the Export Control List (ECL), (Table III.8) contains articles controlled for any of the following purposes: to ensure that any action taken to promote and encourage the further processing in Canada of a natural resource that is produced in Canada is not rendered ineffective by reason of the unrestricted exportation of that natural resource (included in Group 5 ECL); to limit or keep under surveillance the export of any raw or processed good that is produced in Canada in circumstances of surplus supply and depressed prices and that is not an agricultural product (included in Group 5 ECL); to implement an intergovernmental arrangement or commitment; to ensure that there is an adequate supply and distribution of the article in Canada for defence or other needs; or 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.¹³⁴

150. The vast majority of controlled exports are controlled pursuant to international agreements that Canada has signed. Amendments were made to the ECL in 2003 and 2006, largely to implement Canada's commitments under various international agreements. In addition, in 2003, some goods

¹³² Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.dfait-maeci.gc.ca/trade/eicb/softwood/SLA-main-en.asp>.

¹³³ NAFTA, Article 314 and Annex 314; CCFTA, Article C-12; CCRFTA Article III.10 and Annex III.10; and CIFTA, Article 4.7 and Annex 4.1.

¹³⁴ Foreign Affairs and International Trade Canada online information. Viewed at: <http://laws.justice.gc.ca/en/E-19/237065.html>.

were added to Group 5 of the ECL.¹³⁵ In 2006, key amendments included the removal of Group 8, which included chemicals for the production of illicit drugs, since Health Canada had assumed full export control on the items included in this Group as of January 2004. In addition, softwood lumber products where the province of first manufacture was Ontario, Quebec, British Columbia or Alberta (Item 5104)¹³⁶, were removed to reflect the expiry of the 1996-2001 Canada-U.S. Softwood Lumber Agreement.¹³⁷

Table III.8
Export control list, 2006

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 related to 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, planks, 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 and U.S. Foreign Trade Zones); U.S. origin goods (all non-U.S. destinations); goods in transit; prohibited weapons; nuclear fusion reactors; anti-personnel mines; strategic goods; goods for certain uses
Group 6 - Missile Technology Control Regime List	Items that are used or could be used in the proliferation of systems capable of delivering chemical, biological or nuclear weapons
Group 7 – Chemical and Biological Weapons Non-Proliferation List	Chemicals, precursors, biological agents, and related, including dual use equipment

Source: Department of Foreign Affairs and International Trade 2005, *A Guide to Canada's Export Controls*. Viewed at: <http://www.dfait-maeci.gc.ca/eicb/military/documents/exportcontrols-en.pdf>.

151. An export permit is required before an item included in the ECL (Table III.8) may be exported, except (in most cases) for exports to the United States.¹³⁸ Exporters may apply for export permits and certificates online through the Export Controls On-Line (EXCOL) tracking system, which replaced an earlier permit tracking system in 2006.¹³⁹ Nominal fees are charged for export permits, and different validity periods apply.¹⁴⁰ In addition to export permit requirements under the Export and

¹³⁵ Including blinding laser weapons, nuclear fusion reactors, anti-personnel mines, other strategic goods and goods for certain uses. The most recent amendment is Order amending the Export Control List, SOR/2003-196, 20 September 2006. Viewed at: <http://canadagazette.gc.ca/partII/2006/20060920/html/sor196-e.html>. The respective international agreements include: Wassenaar Arrangement; Inter-American Convention Against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials; Nuclear Suppliers' Group; Missile Technology Control Regime; Australia Group.

¹³⁶ As specified in the ECL the "province of first manufacture" means the province where the mill at which a softwood lumber product was first manufactured into such a product is situated.

¹³⁷ Item 5105, softwood lumber products, remains in force and will be amended to reflect the scope of the 2006 Canada-U.S. Softwood Lumber Agreement; it will be renumbered 5104.

¹³⁸ Atomic material and equipment, automatic firearms, logs, softwood lumber, pulpwood, roe herring and red cedar bolts and blocks are among the goods requiring permits for export to the United States (Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.dfait-maeci.gc.ca/eicb/military/epe-en.asp>).

¹³⁹ Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.dfait-maeci.gc.ca/trade/eicb/EXCOL/intro-en.asp>.

¹⁴⁰ Foreign Affairs and International Trade Canada online information. Viewed at: <http://laws.justice.gc.ca/en/E-19/SOR-97-204/100299.html>. Fees are laid out in the Export and Import Permits

Import Permits Act, individuals wishing to export most items listed in Group 2, and all items listed in Group 6 and described under Export Control List item 5504 must be registered with the Controlled Goods Program of Public Works and Government Services Canada.¹⁴¹ In addition to Export and Import Permits Act controls, exporters of items in Groups 3 and 4 (nuclear and nuclear-related) items must comply with export obligations under the Nuclear Safety and Control Act.¹⁴²

152. Under the Export and Import Permits Act, controls may be placed on exports to particular countries listed on the Area Control List. As of the end of 2006, Myanmar and Belarus were the only countries on the Area Control List, with Belarus being added to the list in December 2006 (Angola was removed from it in 2003). 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 on certain countries. Automatic firearms may be exported only to countries with which Canada has intergovernmental defence, research, development, and production arrangements, which are listed on the Automatic Firearms Country Control List (AFCCCL).¹⁴³ Canada also prohibits the sale of military goods to Pakistan via a policy ban.¹⁴⁴ The sale of military goods is also prohibited in accordance with United Nations Security Council Resolutions, implemented in Canada by various regulations under the United Nations Act; as at end 2006, these prohibitions covered the Republic of the Congo and the Democratic Republic of North Korea.¹⁴⁵

153. Export restrictions for environmental purposes are generally maintained pursuant to multilateral environmental agreements (MEAs), or to national environmental and resource conservation programmes. In addition, exports of certain substances are controlled under the Canadian Environmental Protection Act (CEPA). The affected substances are included in the Export Control List, a schedule of CEPA.¹⁴⁶ Canada's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are implemented under Canada's Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act.¹⁴⁷ Provinces and territories also have in place export controls for certain wild animals and plants.¹⁴⁸

154. Canada's obligations with respect to the transboundary movement of hazardous wastes and recyclables is implemented through the Export and Import of Hazardous Wastes and Hazardous

Act of 19 May 1995 (SOR/95.245). Viewed at: <http://laws.justice.gc.ca/en/E-19/SOR-05-245/text.html>. Financial administration rules are set out in Notice No. 138, 16 May 2003. Viewed at: <http://www.dfait-maeci.gc.ca/eicb/notices/ser138-en.asp>.

¹⁴¹ Foreign Affairs and International Trade Canada online information. Viewed at: <http://laws.justice.gc.ca/en/E-19/SOR-97-204/100299.html>.

¹⁴² Canadian Nuclear Safety Commission online information. Viewed at: http://www.nuclearsafety.gc.ca/eng/regulatory_information/regulations/index.cfm.

¹⁴³ AFCCCL online information. Viewed at: <http://laws.justice.gc.ca/en/E-19/SOR-91-575/text.html>. The countries on the list are: Australia; Belgium; Botswana; Denmark; Finland; France; Germany; Greece; Italy; Latvia; Netherlands; New Zealand; Norway; Poland; Portugal; Saudi Arabia; Spain; Sweden; United Kingdom and United States.

¹⁴⁴ Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.dfait-maeci.gc.ca/eicb/military/IndiaDisclaim-en.asp>.

¹⁴⁵ Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>.

¹⁴⁶ Environment Canada online information. Viewed at: http://www.ec.gc.ca/CEPARRegistry/subs_list/Export.cfm.

¹⁴⁷ Canadian CITES Control List. Viewed at: <http://www.cites.ec.gc.ca/listedecontrrole/index.cfm?lang=e&fuseaction=cList.swOptions>.

¹⁴⁸ See Memorandum D19-13-1, June 15, 2001. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d19-13-1/d19-13-1-e.html>.

Recyclable Material Regulations (the Export and Import Regulations), under the CEPA.¹⁴⁹ These regulations entered into force in 2005, replacing the former Export and Import of Hazardous Waste Regulations (EIHW). Under the Controlled Drugs and Substances Act¹⁵⁰, implementing regulations require permits for the export of certain controlled substances and precursor chemicals, by licensed dealers.¹⁵¹ Export permits are issued by the Office of Controlled Substances. Canada participates in the Kimberly Process Certification Scheme for international trade in rough diamonds.¹⁵²

155. Under the Cultural Property Export and Import Act, and implementing regulation¹⁵³, permits are required for exports listed under the Canadian Cultural Property Export Control List.

(iv) Export finance, insurance, and guarantees

156. Export Development Canada (EDC) is Canada's official export credit agency. EDC, a Crown Corporation under the responsibility of the Minister of International Trade, is governed by the Export Development Act.¹⁵⁴ EDC's mandate is to support and develop, directly or indirectly, Canada's export trade and Canadian capacity to engage in that trade and to respond to international business opportunities.¹⁵⁵ It offers various finance, insurance and guarantee programmes related to export transactions (Table III.9).

157. EDC finances its activities through fees for services, charging interest on loans, and borrowing in the commercial market under a government guarantee. In addition, EDC may make a request to the Minister of Finance to borrow money out of the Consolidated Revenue Fund. EDC does not pay income or corporate taxes, does not normally pay dividends, and benefits from a sovereign credit rating. Business volume supported by EDC programmes increased from nearly Can\$51 billion in 2002 to just over Can\$57 billion in 2005.¹⁵⁶

158. In 2005, 6,828 Canadian companies were assisted by EDC; around 90% of EDC's customers were small and medium-sized businesses. The main sectors of exposure for EDC's commercial loan and insurance portfolios are listed in Table III.10. Total EDC exposure by geographic market has remained relatively unchanged since 2003. In 2005, North America and the Caribbean accounted for 68%; Europe, 9%; Asia/Pacific, 8%; Middle East/Africa, 8% and South America/Central America, 7%.¹⁵⁷

¹⁴⁹ The obligations include the Basel Convention, the OECD Decision of Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations, and the Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Wastes. See also Environment Canada online information. Viewed at: http://www.ec.gc.ca/tmb/eng/tmbregs_e.html.

¹⁵⁰ Controlled Drugs and Substances Act. Viewed at: <http://laws.justice.gc.ca/en/C-38.8/index.html>.

¹⁵¹ These implementing regulations include: Benzodiazepines and other targeted substances regulations; Industrial hemp regulations; narcotic control regulations; and precursor control regulations. Viewed at: <http://laws.justice.gc.ca/en/C-38.8/index.html>.

¹⁵² Natural Resources Canada online information. Viewed at: http://mmsd1.mms.nrcan.gc.ca/kimberleyprocess/note_e.asp.

¹⁵³ Cultural Property Export Regulations. Viewed at: <http://pch.gc.ca/progs/mcp-bcm/regs-e.cfm>; Canadian Cultural Property Export Control List. Viewed at: <http://www.pch.gc.ca/progs/mcp-bcm/list-e.cfm>.

¹⁵⁴ Export Development Act. Viewed at: <http://laws.justice.gc.ca/en/E-20/57033.html>.

¹⁵⁵ EDC (2005).

¹⁵⁶ EDC (2005).

¹⁵⁷ EDC (2005).

Table III.9
EDC finance, insurance, and guarantee programmes, 2006

Products	Features
Insurance	
Accounts Receivable Insurance	Protects policyholders against commercial credit risk such as non-payment by their buyers, whether due to insolvency, default, repudiation of goods or termination of contracts, as well as against political risks such as difficulty in converting or transferring currency, cancellation of export or import permits, and war-related risks. Coverage is available for companies of all sizes and some products have been streamlined to meet the needs of small and medium-sized enterprises
Export Protect	Provides online single-transaction insurance coverage on a foreign buyer
Documentary Credits Insurance	Protects banks in Canada confirming or negotiating irrevocable letters of credit (ILCs) issued by foreign banks to exporters of Canadian goods and services. The policy provides insurance against the risk that the foreign bank may fail to pay the insured bank for payments due to the exporter under the ILC. This enables the exporter to look to a bank in Canada for payment rather than the buyer's bank abroad
Contract Frustration Insurance	Tailored coverage used for one-off goods, services, and project contracts
Political Risk Insurance	Protects Canadian companies with investments in foreign countries and/or lenders that finance investments pursued by Canadian companies abroad. Traditional policies cover investors or lenders against currency conversion and/or transfer difficulties, expropriation by the host government, and political violence. Availability of political risk insurance can also allow companies to leverage additional financing for projects. The political risk insurance programme includes the non-honouring of a sovereign payment obligation to a lender; the non-payment to an investor of an arbitral award against a sovereign entity; and coverage of the rights associated with mobile assets. In addition, EDC has made a number of changes to the programme to accommodate small business transactions
Financing	
Line of credit	Enables exporters to conclude sales via pre-arranged financing facilities set up between EDC and foreign banks or corporations. That is, EDC may lend to a foreign bank for on-lending to buyers of Canadian exports, or EDC can establish a line with a major foreign corporation that is purchasing from one or more Canadian exporters
Loan	Loans between EDC and a buyer/borrower can be arranged for any export transaction. Two basic types of loans are available: (i) Buyer Credit involves a financing arrangement between EDC and the buyer (or a separate borrower on behalf of the buyer) to finance Canadian exports generally related to a specific export contract. (ii) Supplier Credit transactions are structured to provide the exporter (supplier) with the ability to provide its buyer with extended payment terms. EDC can provide pre-shipment financing to exporters, in conjunction with their bank, to finance costs directly related to an export contract. EDC may also provide financing to Canadian companies to support their export business or their foreign investments
Project finance	Provides limited recourse financing to fund the construction of industrial and infrastructure projects across various sectors in support of Canadian exports to, or Canadian sponsor investments in, such projects. EDC also arranges project finance transactions in cooperation with other lenders
Guarantee	Provides a guarantee to a financial institution to cover loans to foreign borrowers for the purchase of Canadian exports, or to exporters to provide financing to support their export business or their foreign investments
Equity and other forms of related investments	Provides equity and/or other forms of related investments (including fund investments) in support of next generation Canadian exporters and to facilitate globalization of existing Canadian companies
Bonding	
Performance Security Guarantee	Provides a bank with coverage against any calls pursuant to the guarantee issued on an exporter's behalf
Performance Security Insurance	Protects exporters from wrongful calls made on their bank letters of guarantee
Foreign Exchange Facility Guarantee	Provides a second demand guarantee to the financial institution (FI) for the collateral provided to the FI with respect to the exporter's forward contracts facility, in the event that the exporter does not close the forward contract on the "settlement date"
Financial Security Guarantee	Provides the bank with a second demand guarantee to secure exporters' obligations in respect of suppliers and offshore working capital facilities
Surety Risk Sharing	When an exporter, with existing but limited surety lines, is required to post surety bonds instead of bank letters of guarantee, EDC offers surety capacity in the form of Surety Re-Insurance to licensed sureties to increase capacity to facilitate the issuance of such bonds
Surety Fronting Services	Available to exporters when financial profiles or volume of business does not meet normal surety underwriting guidelines. Surety bonds are thus issued by licensed sureties with the full support of EDC. This allows smaller exporters to access a surety market that is not typically available to them

Source: Export Development Canada.

Table III.10
Main areas of EDC exposure: commercial loan and insurance portfolios, 2002-05
(Per cent)

	2002	2003	2004	2005
Commercial loans				
Aerospace	33	34	33	33
Surface transportation	21	21	35	35
Energy (equipment)	13	14	13	13
Short-term insurance				
Forestry	29	35	33	28
Base and semi-manufactured goods	30	23	19	22
Advanced technology (and manufacturing)	21	9	23	9

Source: EDC.

159. EDC maintains two accounts, the Corporate Account and the Canada Account. The Corporate Account may compete with private-sector financing or may provide services that are not generally available from the private sector such as insurance and guarantee services to small and medium-sized enterprises (SMEs). EDC reports quarterly on its aggregate insurance and financing services transactions (excluding the Canada Account).¹⁵⁸ It also reports certain individual information on transactions related to its signed financing support.

160. The Canada Account has been used to support transactions that the Federal Government deems to be in the "national interest" but that EDC cannot support under the Corporate Account for reasons of capacity and risk. 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; and the importance of the market to Canada. Each Canada Account transaction requires ministerial authorization, and those exceeding Can\$50 million or of a sensitive nature require Cabinet approval. There were 11 export transactions under the Canada Account between October 2001 and end-November 2006. Among the most significant in value terms were with respect to the sale of Bombardier aircraft to the United States.¹⁵⁹

161. Canada's support to the regional aircraft industry through the EDC has been the subject of two disputes under the WTO's Dispute Settlement Understanding, with Brazil as complainant.¹⁶⁰

162. The second trade dispute, in 2001, related to claims by Brazil that 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 of the United States. Among the Panel's findings were that five of the 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. At the Dispute Settlement Body meeting of 22 May 2002, Canada indicated that it did not consider that it was required to take any further steps to comply with the DSB's recommendations in respect of aircraft delivered prior to 20 May 2002, but that Canada was open to working with Brazil on a forward-looking resolution of the dispute while honouring its commitments in respect of existing contracts in the matter of undelivered aircraft.¹⁶¹ In the context of this Review, the authorities noted

¹⁵⁸ It reports aggregations of its business volume by: Canadian industry sector; country or region in which business was concluded; Canadian region of exporter; and type of EDC support provided. For more information on EDC's disclosure policy see <http://www.edc.ca/english/disclosure.htm>.

¹⁵⁹ EDC online information. Viewed at: http://www.edc.ca/english/disclosure_9239.htm.

¹⁶⁰ See WTO (2003).

¹⁶¹ WTO document WT/DSB/M/124, 13 June 2002.

that Canada had not changed the terms of contracts it had assumed before the DSB adopted its recommendations, but that going forward it was governmental policy that all Canada Account transactions should be consistent with Canada's international obligations. Following arbitration, in March 2003 Brazil was granted authorization by the DSB to suspend the application of obligations (under Article VI:6(a) of GATT 1994 and under the Agreement on Import Licensing Procedures, and of tariff concessions and related obligations under GATT 1994) covering trade in a total amount of US\$247,797,000.¹⁶² No retaliation has been imposed by Brazil to date (mid 2006).

163. Further to a comprehensive strategic review of EDC and its activities, two working groups were established to examine the strategic issues around the short-term credit insurance programme and bank guarantees. The review found that EDC could more actively encourage bank participation in the trade finance area and changes to EDC's bank guarantee programme were implemented. With respect to the short-term insurance programme, based on this review, EDC concluded an agreement with COFACE in 2005 to provide complementary support to customers for their domestic and foreign accounts receivable business.¹⁶³ EDC also works with other private insurers to help them expand their role in meeting the accounts receivable insurance needs of Canadian companies.

164. Export guarantees are also provided by the Canadian Commercial Corporation (CCC), a crown corporation. CCC's main role is to allow Canadian companies direct access to U.S. defence and aerospace markets under the Canada-U.S. Defence Production Sharing Arrangement (DPSA): this represents around 67% of CCC's contract billings.¹⁶⁴ Although the CCC specializes in sales to foreign governments and international institutions, it also helps Canadian exporters win sales in private-sector markets. In this regard, the CCC provides foreign buyers a government-backed guarantee of contract performance, through its International Prime Contractor Service.¹⁶⁵ Up until FY 2005/06, CCC also provided export credits through its Progress Payment Programme. This programme was discontinued in FY 2005/06 to avoid duplication with the services offered by EDC.

165. Initiatives to provide export finance, insurance, and guarantees have also been taken at the provincial level. Thus, Investissement Québec Small and Medium Business Financial Program provides loans and loan guarantees (covering up to 80% of the net loss) for a range of export-related projects as well as export credits. The Business New Brunswick Trade Assistance Programs and Services (TAPS) provides financing to assist in the development of new export markets.¹⁶⁶ The Government of British Columbia is a shareholder in Northstar Trade Finance Inc., which provides loans of between Can\$100,000 and Can\$5 million to finance export sales.¹⁶⁷ The Enterprise Cape Breton Corporation promotes and assists the development of regional industry through repayable contributions and other forms of investment to projects which support economic growth in its mandate area. Conditions attached include that these projects must provide employment outside the coal-producing sector and broaden the base of the local economy. In the case of food processing, conditions attached include, that the market for the output of this project must be import substitution or export orientated.¹⁶⁸ Nexttrade Finance, established by the Saskatchewan Trade and Export

¹⁶² WTO document WT/DSB/M/145, 7 May 2003.

¹⁶³ The Coface Group is a private sector company providing trade risk management services. Online information viewed at: <http://www.coface.com>.

¹⁶⁴ CCC (2006), *Annual Report 2005-06*.

¹⁶⁵ CCC online information. Viewed at: http://www.ccc.ca/eng/abo_aboutCCC_CCCGuarantee.cfm.

¹⁶⁶ Business New Brunswick online information viewed at: <http://www.gnb.ca/0398/menu/abo/fa/TAPS/index-e.asp>.

¹⁶⁷ Northstar Trade Finance Inc. online information. Viewed at: <http://www.northstar.ca/index.php>.

¹⁶⁸ Enterprise Cape Breton Corporation online information. Viewed at: <http://www.ecbc.ca/e/aboutecbc.asp>.

Partnership provides pre- and post-shipping financing of up to US\$150,000 to qualifying Saskatchewan exporters.¹⁶⁹

(v) Export promotion and marketing assistance

166. There are a range of programmes and activities to promote exports and provide marketing assistance in Canada, at the federal and provincial levels. Some assist companies to get "export" ready, and others, such as the Canadian Trade Commissioner Service (see below) build on these efforts to assist them, when ready to export, to access business opportunities abroad.

167. A network of government departments and agencies, (formerly known as Team Canada Inc.), have cooperated to provide a single point of access to government services (federal, provincial, and municipal) through Export Source.ca, its on-line resource for export information. Foreign Affairs and International Trade Canada's (DFAIT) International Business Opportunities Centre provides sourcing services, matches export opportunities provided by Canada's trade commissioners working in Canada's posts abroad (see below); and disseminates business leads daily via an online database, the Virtual Trade Commissioner, to registered Canadian companies across industrial sectors.¹⁷⁰ Export Development Canada's representatives abroad are also active in identifying and developing business opportunities for Canadian companies.

168. DFAIT reaches Canadian companies through the Trade Commissioner Service with twelve regional offices within Canada (and 100 staff), as well as through the trade programme located in over 140 Canadian Embassies and High Commissions abroad. The Trade Commissioner Service (TCS) is a worldwide network of more than 800 professionals in international business development. Its purpose is to deliver services integral to helping Canadian clients make better business decisions in order to achieve their goals abroad.¹⁷¹

169. At the regional level, TCS offices work with the regional development agencies, cooperating on export service delivery to their clients. The Atlantic Canada Opportunities Agency undertakes activities to strengthen and assist the international marketing efforts of enterprises, particularly SMEs, and attract foreign direct investment. Support for its trade strategy is provided through the agency's Atlantic Trade and Investment Partnership; International Business Development Program; and Business Development Program.¹⁷²

170. The Business Development Bank of Canada, in collaboration with the TCS regional offices also provides consulting advice on operational efficiency; marketing strategy; market research; and export planning and assessing growth potential.¹⁷³

171. Western Economic Diversification Canada provides export advisory services to SMEs in Western Canada, through the Western Canada Business Service Network; strategically supports selected trade and investment missions together with federal and provincial partners; undertakes trade and investment research of specific interest to western Canada; and is involved in advocacy activities.

¹⁶⁹ Nextrade online information. Viewed at: <http://www.nextrade.ca>.

¹⁷⁰ Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.e-leads.ca/cancompanies/default-e.asp>.

¹⁷¹ Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.infoexport.gc.ca/regions/menu-en.html>.

¹⁷² The Canada/Atlantic Provinces Agreement on International Business Development. Viewed at: <http://www.acoa-apec.ca/e/ibda/agreement/agreement.shtml>.

¹⁷³ Business Development Bank of Canada online information. Viewed at: <http://www.bdc.ca>.

172. Canada Economic Development for Québec Regions (CED-Q), in partnership with the Government of Québec, assists SMEs by, among other things, helping them to expand business opportunities through expert advice, seminars, trade missions, networking, and referrals. FedNor, a regional development organization within Industry Canada, works with not-for-profit, business-oriented community organizations through its International Business Centre, to assist Northern Ontario SMEs to develop export skills and enhance international business opportunities.

173. Provincial governments, often in partnership with the private sector and their federal counterparts, have been active in providing marketing and other assistance to exporters and potential investors. To avoid duplication and overlap of the services provided at the federal, regional and provincial levels, Regional Trade Networks (RTNs) were created, which include representatives from government departments such as DFAIT, Industry Canada, Agriculture and Agri-Food, regional development agencies (ACOA, WD, Développement Économique Canada, and FedNor), the provinces, and some national associations. The Export Source.ca website provides links to the services offered by RTN members, including the full range of provincial export assistance initiative and programmes.¹⁷⁴

(vi) Other measures affecting exports

174. Exported goods (other than excisable goods), services (with some exceptions)¹⁷⁵, and intellectual property are zero-rated under the GST/HST (see section (2)(v))¹⁷⁶, and under the provincial sales taxes.

175. Under the Export Distribution Centre Program, eligible persons may obtain a certificate from the Minister of National Revenue allowing them to import or acquire domestically produced goods on a GST/HST-free basis.¹⁷⁷ As outlined by the Canada Revenue Agency, the benefits to businesses that export substantially all their output is that the tax does not have to be paid at the time of acquisition or importation of the goods and later claimed back as an input tax credit.¹⁷⁸

176. Relief from payment of the GST/HST for imported goods that will eventually be exported is also available to processing service companies¹⁷⁹ through the Exporters of Processing Services (EOPS) Program. In addition, the Export Trading House Program allows authorized businesses

¹⁷⁴ For more information on services provided at the provincial level see: <http://exportsource.ca/gol/exportsource/site.nsf/en/es01956.html>.

¹⁷⁵ Exceptions from the general provision for zero-rated status include: a service supplied to non-resident person if the service is rendered to an individual while that individual is in Canada; an advisory, consulting, or professional service; a postal service; a service performed in respect of real property located in Canada; a service performed in respect of goods that are located in Canada when the service is performed; a transportation service; and a telecommunication service. However, there may be circumstances under which these services are also zero-rated.

¹⁷⁶ Canada Revenue Agency (2006a).

¹⁷⁷ Eligibility criteria include that: the person will not engage in the substantial alteration of the property in the year; either the person's percentage value added attributable to non-basic services in respect of customers' goods for the year will not exceed 10% or the person's percentage total value added in respect of customers' goods for the year will not exceed 20%; and the person's export revenue percentage for the year will be at least 90%.

¹⁷⁸ Canada Revenue Agency online information. Viewed at: <http://www.cra-arc.gc.ca/E/pub/gm/b-088/b-088-e.html>.

¹⁷⁹ Manufacturing service companies are businesses that perform manufacturing services, such as assembly, manufacture, alteration etc. on goods or materials that they do not own, for which they charge a fee. Canada Border Services Agency online information. Viewed at: http://cbsa-asfc.gc.ca/import/duty_deferral/tab7-e.html.

engaged exclusively in the export of goods to acquire goods for export on a GST/HST-free basis. The authorities indicate that a range of other relief measures address specific import-export scenarios.

177. The Duty Deferral Program offers businesses many of the same duty and tax incentives as those found in free-trade zones around the world. Two of the programme's options are the Duties Relief Program and the Duty Drawback Program. Under the drawback option, businesses that have paid the duty and taxes on imported goods that are subsequently exported may request a refund of those duties and taxes. Duties may only be refunded after the goods have been exported. Under the Duty Relief Program, goods destined for export may be imported duty free, even if these goods undergo a wide range of processing and manufacturing activities while in Canada.¹⁸⁰ The GST portion may qualify for relief under a GST program, Exporters of Processing Systems (EOPS) (Chapter III(3)(vi)).

178. Under the drawback and relief programmes, duties relieved or deferred include: customs duties; anti-dumping and countervailing duties; and excise taxes (other than the GST). Excise taxes are not relieved on certain designated goods as defined in the Customs Act (e.g. gasoline). Under both programmes, to benefit from duty relief or deferral, goods must be exported from Canada within four years of the date of release of the goods.¹⁸¹ Imported goods may be exported either in the same condition, or after having been used, consumed or expended in the processing of other goods.

179. NAFTA obligations limit firms' use of the two programmes when exporting to Mexico or the United States. Relief of customs duties is only allowed in an amount equal to the lesser of (i) the amount of customs duties owed on the goods when imported into Canada and (ii) the amount of customs duties owed on the end-products when exported to Mexico or the United States.¹⁸²

180. Certain remission programmes, including the Canadian Goods Abroad programme, allow for the partial or full relief of payment of duties of goods exported for repair, additions, or work done abroad that are then returned to Canada, provided certain conditions are met.¹⁸³

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Legal framework for business

181. Forms of legal business structure in Canada include the corporation, sole proprietorship, partnership, and cooperative. Joint ventures, branch offices, and subsidiaries are variations on these basic business structures. Foreign firms may carry out activities in Canada through a branch or incorporate in Canada as a subsidiary. Branch offices of foreign companies must comply with the Investment Canada Act and provincial registration and licensing requirements. Branch offices or subsidiaries of foreign corporations must comply with the relevant incorporating statute and provincial registration and licensing requirements.

182. Entities may incorporate as corporations federally, or in one of the provincial and/or territorial jurisdictions. The Canada Business Corporations Act (CBCA) is the overarching federal statute for the incorporation of business corporations. Incorporation under this Act confers the right to carry on business anywhere in Canada. All types of businesses may incorporate under the CBCA with the

¹⁸⁰ Memorandum D7-4-1. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d7-4-1/d7-4-1-e.pdf>.

¹⁸¹ Imported spirits used to manufacture distilled spirits must be exported within five years.

¹⁸² The following are exceptions to this rule: goods exported in the same condition as imported; NAFTA originating imports; certain specified products (e.g. citrus products between Canada and the United States).

¹⁸³ Memorandum D8-2-1. Viewed at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d8-2-1/d8-2-1-e.html>.

exception of banking, insurance, trust and loan businesses (Chapter IV(6)(ii) and (iii)). Federal, not-for-profit corporations are incorporated under the Canada Corporations Act. Federally incorporated companies may also be required to register in the provinces or territories in which they undertake business.

183. Under the CBCA, entities may file for federal incorporation online.¹⁸⁴ Online filing fees are Can\$200; regular fees (for non-online filing) are set at Can\$250. Canada operates a same-day service for processing incorporation certificates.

184. CBCA companies must have a registered office within Canada. At least 25% of the directors of a corporation must be resident Canadians and if the corporation has less than four directors, then at least one must be a resident Canadian.¹⁸⁵ Corporations in sectors subject to ownership restrictions (including airlines and telecommunications) and in certain other sectors (uranium mining, book publishing and distribution, book sale, film and video distribution) must have a majority of resident Canadian directors.¹⁸⁶

185. Entities may also incorporate federally as cooperatives under the Canada Cooperatives Act and must be organized and operate on a cooperative basis according to Section 7 of the Act.¹⁸⁷ The citizenship and residency requirements for directors of cooperatives are the same as for directors of corporations.

186. In 2006, Canada ranked fourth overall out of the 155 economies analysed in the World Bank's ease of doing business index. It scored particularly high ratings for starting and closing a business and protecting investors.¹⁸⁸

187. The Canadian Government has undertaken a number of initiatives to make the business environment more efficient and transparent. Examples include: the development of a Government Directive on Regulating, to clarify how the government regulates; and the launch of the Paperwork Burden Reduction Initiative, to reduce the costs of paperwork and regulatory compliance for small businesses. The Government is also expanding an online service, BizPal, to provide customized listings of the permits, licences, and fees required at all layers of government to start and grow a business.¹⁸⁹

188. Businesses are subject to taxation by federal, provincial and territorial governments. The administration of federal and some provincial and territorial tax programmes is the responsibility of the Canada Revenue Agency (CRA).¹⁹⁰ The tax mix and burden varies across provinces, reflecting the differences in tax rates across provinces and the Atlantic Investment Tax Credit. The Atlantic

¹⁸⁴ Corporations Canada online information. Viewed at: http://corporationscanada.ic.gc.ca/cgi-bin/sc_mrksv/corpdtr/corpFiling/register.cgi?lang=e.

¹⁸⁵ Canada Business Corporations Act, Subsection 105(3).

¹⁸⁶ Canada Business Corporations Act, Subsection 105(3.1).

¹⁸⁷ The features of cooperatives include: open membership; one member, one vote; no proxy voting for members; limited interest on member loans; limited dividends on membership shares; to the extent feasible, members provide capital; distribution of surplus funds to develop the business, improve common services, and provide reserves (to pay interest on member loans, to pay dividends on membership shares and investment shares, for community welfare, or for distribution among members as a patronage return); and cooperative education.

¹⁸⁸ World Bank online information. Viewed at: <http://www.doingbusiness.org/EconomyRankings/Default.aspx>.

¹⁸⁹ BizPal online information. Viewed at: <http://www.BizPal.ca>.

¹⁹⁰ Quebec, Ontario and Alberta administer their own corporate income tax systems. All other provinces and territories legislate their corporate income tax provisions, but the CRA administers them.

Investment Tax Credit (ACTIC) applies only to qualified assets acquired for use in the Atlantic Provinces, the Gaspé region in Quebec, and their associated offshore areas. The credit is 10% of the capital cost of new machinery and equipment and buildings in manufacturing and processing, mining, oil and gas, logging, farming and fishing activities. Credits that exceed federal tax payable can be carried back to reduce the federal tax in the previous three years or forward up to 20 years. The ACTIC is partially refundable for small Canadian-controlled private corporations. The ACTIC is the only regional tax credit provided by the Federal Government. Small businesses benefit from lower tax rates both at the federal and provincial levels.

189. Over the period under review, corporate tax reductions have been implemented at the federal level.¹⁹¹ The general corporate income tax rate was reduced to 21% from 28% in 2000, and the rate will drop to 18.5% by 2011. In addition, the federal capital tax was eliminated in 2006 and the corporate surtax will be eliminated for all corporations in 2008. Tax reductions have been provided to small businesses, which will benefit from a reduction in the small business rate, to 11% from 12%, by 2009, and from an increase in the income threshold upon which the small business rate applies, to Can\$400,000 from Can\$300,000, by 2007. Firms incorporated in Canada, or with central management and control in Canada, are liable for tax on their worldwide income. In FY 2005/06, corporate income tax revenues accounted for 14.3% of total federal government revenues.

190. Foreign branch offices are subject to a branch tax of 25%, unless this rate is reduced by a tax treaty.

191. According to the authorities, the weighted average provincial corporation tax was 12.2% in 2006.

192. Additional taxes incurred by businesses include: capital taxes in some provinces¹⁹²; payroll taxes; property taxes on industrial and commercial properties (as well as excise taxes and sales taxes (section III(2)(v)). Various tax credits are offered at both the federal and provincial levels (section III(4)(ii)).

(ii) Incentives and other assistance to business

(a) Introduction

193. As reported by the authorities, the main focus of the Government of Canada's efforts to stimulate economic activity and the competitiveness of the Canadian economy is through tax measures and through supporting innovation, particularly given relatively weak levels of private sector research and development. Canada maintains a number of assistance programmes that include: tax incentives; assistance targeted at research and development; support for regional development; repayable and non-repayable financial contributions; as well as sector-specific programmes in shipbuilding, textiles (Chapter IV(4)), defence, fisheries, and energy. Other programmes support cultural priorities related to promoting language, literature, film, TV, new media, and music. Various programmes are also operated by provincial governments, and some are cost-shared with the Federal Government. This section focuses on non-agri-food sectors (for agri-food, see Chapter IV(2)).

¹⁹¹ Department of Finance online information. Viewed at: <http://www.fin.gc.ca/budget00/pdf/taxe.pdf>.

¹⁹² Federal capital taxes were abolished as of 1 January 2006. Of the six provinces that imposed capital taxes as at mid 2006, four had announced their phase out: New Brunswick, Nova Scotia, and Saskatchewan by 2010, and Ontario by 2012. Quebec is reducing its capital tax and Manitoba plans to do so if balanced budget requirements are met (OECD, 2006) Economic Survey of Canada (excerpt on Chapter II, Business Taxation). Viewed at: <http://www.oecd.org/dataoecd/29/21/36960925.pdf>.

194. Information on subsidy programmes is also provided in Canada's notifications under the Agreement on Subsidies and Countervailing Measures (SCM); the most recent largely covers FY 2002/03 and FY 2003/04.¹⁹³ The notification lists around 50 programmes providing subsidies, all at the federal level (Table III.11). No province or territory has indicated to the federal government that it has subsidies subject to the notification requirements of the SCM Agreement.

195. The European Communities and United States have requested clarification from Canada on certain aspects of its subsidies programmes, including the ship-building, fisheries and aquaculture, aircraft, and film industries, as well as programmes providing research and development, adjustment assistance regional assistance as well as provincial subsidy programmes.¹⁹⁴ Canada has provided answers to these questions.¹⁹⁵

Table III.11
Programmes notified to the WTO, FY 2003/04^a

Type	Number of programmes	Forms of support	Total (Can\$ million)
Industrial	33	Grants and non-repayable contributions, loans and non-repayable contributions, advisory assistance and technical advice; loan guarantees credit insurance; equity financing; share capital; business and information programmes and services	141.4
Cultural	5	Loans, subsidized mail rates; grant	93.6
Fisheries	4	Adjustment assistance; retirement of commercial licences, vessels and gear and issuing of new licences to aboriginal groups; construction of new vessels; training	46.7

a Excludes subsidy programmes to agriculture, discussed in Chapter IV(2).

Source: WTO document G/SCM/N/123/CAN, 1 August 2005.

196. With respect to adjustment assistance, the General Adjustment Assistance Regulations¹⁹⁶ are on the books but, according to the authorities, they have not been in use for a number of years. Specific adjustment programmes that were operational over the period under review for communities facing particular economic difficulties resulting from industry closures and other external factors have expired.¹⁹⁷ Under Section 14 of the Department of Industry Act (1995), the Minister of Industry may develop and implement programmes to provide special assistance to industries or categories of persons, *inter alia*, to restructure, adjust or rationalize. According to the authorities, no such assistance is provided.

197. An additional source of information on government assistance to business is the Tax Expenditures and Evaluations Report, prepared by the Department of Finance. The Report provides estimates of the revenue consequences of tax expenditures (exemptions, deductions, rate reductions, rebates, deferrals, credits and carry-overs).¹⁹⁸ As tax expenditures reflect benefits available on a

¹⁹³ WTO document G/SCM/N/123/CAN, 1 August 2005.

¹⁹⁴ WTO documents G/SMC/Q2/CAN/20, 24 January 2006; G/SCM/Q2/CAN/22, 26 April 2006; and G/SCM/Q2/CAN/22/Corr.1, 15 May 2006.

¹⁹⁵ WTO documents G/SCM/Q2/CAN/21, 15 March 2006, and G/SCM/Q2/CAN/23, 12 September 2006.

¹⁹⁶ Department of Justice online information. Viewed at: <http://laws.justice.gc.ca/en/I-9.2/C.R.C.-c.971/92052.html>.

¹⁹⁷ These programmes can be found in WTO document G/SCM/N/123/CAN, 1 August 2005.

¹⁹⁸ Tax expenditures are described as forgone tax revenues due to special exemptions, deductions, rate reductions, rebates, credits, and deferrals that reduce the amount of tax that would otherwise be payable.

selective basis to businesses (and individuals), the report adds transparency and accountability (see section (b)).¹⁹⁹

198. Over the period under review, Canada has continued to participate actively in WTO negotiations to clarify and improve disciplines on subsidies and countervailing measures.²⁰⁰ The Canadian authorities indicate that, with respect to the issue of fisheries subsidies specifically referred to in the Doha Ministerial Declaration, Canada is supporting the development of improved and focussed disciplines that are transparent, workable, and enforceable. Canada makes a non-negligible contribution to global fishery subsidies.²⁰¹

(b) Federal measures and programmes

199. The Federal Government provides a number of tax credits and deductions from Corporate Income Tax (see Table III.12). In the 2006 Budget, the Government also introduced a tax credit of up to Can\$2,000 for employers who hire apprentices, as part of a package of measures designed support a more skilled and educated workforce.²⁰²

200. One of the Federal Government's major research and development programmes has been Technology Partnerships Canada (TPC), a technology investment fund that invests in private sector companies. As reported upon in Canada's previous Review, the TPC was the subject of a WTO dispute settlement case in 1999 where it was found that the TPC provided subsidies to the Canadian regional aircraft industry that were contingent upon exportation. As a result, Canada made adjustments. In September 2005, it was announced that the existing TPC R&D programme would be phased out, with the exception of funding for the aerospace and defence sectors, which would continue until the terms and conditions of the programme expired on 31 December 2006. As at November 2006, Industry Canada was reviewing its options with respect to any new R&D programme. A potential replacement, the Transformative Technologies Program, was shelved as part of that review.

201. The Federal Government also operates a tax incentive scheme, the Scientific Research and Experimental Development (SR&ED) programme to encourage Canadian businesses to conduct research and development in Canada that will lead to new, improved, or technologically advanced products or processes. According to the Canada Revenue Agency, this programme is the largest single source of federal government support for industrial research and development.²⁰³

202. Other federal government assistance programmes targeted at research, technology, and innovation are listed by research area in Table AIII.4.

¹⁹⁹ Department of Finance (2005a).

²⁰⁰ WTO documents: TN/RL/GEN/112/Rev.1, 17 May 2006; TN/RL/GEN/95, 19 January 2006; TN/RL/GEN/86, 17 November 2005; TN/RL/GEN/85, 17 November 2005; TN/RL/GEN/73, 17 October 2005; TN/RL/GEN/61, 15 September 2005; TN/RL/GEN/111, 21 April 2006; TN/RL/GEN/48, 30 June 2005; TN/RL/GEN/37, 23 March 2005; TN/RL/GEN/26, 1 December 2004; TN/RL/GEN/21, 19 October 2004; TN/RL/GEN/14, 15 September 2004; TN/RL/GEN/6, 14 July 2004; TN/RL/GEN/7, 14 July 2004; TN/RL/GEN/3, 14 July 2004; TN/RL/W/112, 6 June 2003.

²⁰¹ WTO (2006).

²⁰² Department of Finance (2006c).

²⁰³ Canada Revenue Agency online information. Viewed at: <http://www.cra-arc.gc.ca/taxcredit/sred/menu-e.html>.

Table III.12
Tax credits and deductions from corporate income tax, 2001 and 2006

Programme ^a	Estimated expenditure (2001) (Can\$ million)	Projected expenditure (2006) ^b (Can\$ million)
Partial inclusion of capital gains	4,095	2,240
Low tax rate for small businesses	3,185	3,185
Scientific research and experimental development investment tax credit	2,321	2,610
Manufacturing and processing allowance	1,380	- ^c
Exemptions for non-resident corporations	1230	1311
Atlantic investment tax credit	343	339
Resource sector credits and exemptions (other than the corporate mineral exploration tax credit)	278	45
Canadian film or video production tax credit	175	225
Film or video production services tax credit	80	135
Low tax rate for credit unions	75	72
Expensing of advertising costs	63	40
Accelerated rate reduction for small businesses	50	- ^c
Deduction of allowable small business investment losses	28	24
Corporate mineral exploration tax credit	- ^d	55
Other measures	11,451	7,469

a Excludes charities, gifts and contributions; federal-provincial financing arrangements, and farming.

b Projected expenditures are provisional and may be subject to change.

c These tax expenditures were eliminated on 1 January 2004, when the general corporate income tax rate was reduced to 21%.

d This tax credit was introduced in the 2003 budget and applies to 2003 and subsequent tax years. It was phased in at 5% in 2003, 7% in 2004, and 10% in subsequent years.

Source: Department of Finance Canada, *Tax Expenditures and Evaluations 2005*. Viewed at: http://www.fin.gc.ca/toce/2005/taxexp05_e.html.

203. A number of federal programmes provide assistance for regional economic growth, diversification and development.²⁰⁴ The authorities note that assistance to small and medium-sized enterprises is the predominant feature of this programming.

204. Various federal programmes to assist businesses in Atlantic Canada (New Brunswick; Newfoundland and Labrador; Nova Scotia; and Prince Edward Island) fall under the legislative framework of the Atlantic Canada Opportunities Agency Act (ACOA). These include: the ACOA Business Development Program; the Community Futures Program for the Atlantic Provinces; and a Cooperation Program (terminated in 2006), which included expenditures under a cost-shared federal-provincial agreement. Other programmes for the Atlantic region include the Atlantic Innovation Fund (extended in 2005 for a further five-year period); the Strategic Community Investment Fund (terminated in 2005, but for which expenditures will be made into 2007); and the Innovative Communities Fund (a five-year programme that commenced in 2005). Spending under the Business Development Program includes assistance for the development of entrepreneurship, business skills, and trade and investment objectives. Funding under these programmes equalled Can\$297 million in FY 2005/06 (excluding Can\$29 million on the Infrastructure Canada Program).

205. Programmes to provide assistance to Western Canada (British Columbia, Alberta, Saskatchewan, and Manitoba), fall under the legislative framework of the Western Economic Diversification Act and include: the Western Diversification Program; the Western Economic Partnership Agreements, which are cost-shared between federal and provincial governments; the Service Delivery Network Program; and the Community Futures Program for Western Canada. No government approvals commitments were made under the Innovation and Community Investment

²⁰⁴ WTO document G/SCM/N/123/CAN, 1 August 2005.

Program after 2005. In FY 2005/06, funding under these programmes amounted to nearly Can\$108 million.

206. Federal assistance to Ontario includes the Northern Ontario Development Program²⁰⁵, the Eastern Ontario Development Program²⁰⁶ and the Ontario Community Futures Programme, which serves rural and Northern Ontario²⁰⁷; all are administered by IC-FedNor. Programmes to assist businesses in Quebec include: the Innovation, Development, Entrepreneurship and Access Program for SMEs (IDEA-SME)²⁰⁸; and the Quebec Community Futures Programme.²⁰⁹

207. The Regional Strategic Innovation Program, which, *inter alia*, had provided repayable contributions to SMEs across Canada was concluded in 2006. Expenditures in FY 2003-04 were Can\$94.7 million.

(c) Provincial assistance schemes

208. As noted, provinces also extend financial and other assistance to business in support of employment, economic development, investment, and other objectives.

209. Most provinces offer tax incentives to businesses that may take the form of tax credits, tax exemptions or tax holidays, in areas such as the film and TV industry, to generate employment or stimulate investment, manufacturing capacity, mineral exploration or to assist SMEs. In addition a number of provinces and territories (e.g. Alberta, Manitoba, New Brunswick, Nunavut, Yukon) offer fuel tax exemptions or rebates for certain commercial activities (Table AIII.5). Most provinces also provide funding for research and development.²¹⁰

(iii) Government procurement

210. Canada last notified annual statistics under Article XIX:5 of the WTO Agreement on Government Procurement in October 1998.²¹¹

211. In 2004, the latest year for which data are available, the estimated annual value of contract awards by federal government departments and agencies was Can\$19 billion²¹², a 50% increase over the 2001-03 time period. The increase is attributable mainly to increased procurement by the Department of National Defence. Over FY 2003-04, total procurement by Canadian provinces and territories was estimated at Can\$9 billion.²¹³ Data were not available on procurement by

²⁰⁵ Northern Ontario Development Program online information. Viewed at: http://www.fednor.ic.gc.ca/epic/internet/infednor-fednor.nsf/en/h_fn02348e.html.

²⁰⁶ Eastern Ontario Development Program online information. Viewed at: http://www.fednor.ic.gc.ca/epic/internet/infednor-fednor.nsf/en/h_fn02359e.html.

²⁰⁷ Community Futures online information. Viewed at: http://www.fednor.ic.gc.ca/epic/internet/infednor-fednor.nsf/en/h_fn01468e.html or <http://www.ontcfdc.com>.

²⁰⁸ IDEA-SME online information. Viewed at: http://www.ded-ced.gc.ca/asp/programmes/Services/prg_idee_PME.asp?LANG=EN#1.

²⁰⁹ The Quebec Community Futures Programme online information. Viewed at: <http://www.reseau-sadc.qc.ca/en/index.php>.

²¹⁰ Industry Canada online information. Viewed at: http://strategis.ic.gc.ca/epic/internet/inrti-rti.nsf/en/h_te02391e.html.

²¹¹ WTO document GPA/21/Add.1, 16 October 1998.

²¹² Treasury Board of Canada Secretariat (2005).

²¹³ Marcan online information. Viewed at: http://www.marcan.net/english/main_procedure.htm, plus additional estimates provided by Canada for provinces/territories not yet reporting.

municipalities, municipal organizations, publicly funded academic institutions, and health and social services entities (MASH entities).

212. There have been few changes to Canada's overall institutional and legal framework on government procurement at the federal level during the review period. The Treasury Board Contracting Policy was amended in 2005 to include a list of ten mandatory commodity groups for which all federal government departments and agencies must use standing offers of Public Works and Government Services Canada (PWGSC) to acquire these products at established prices.²¹⁴ The authorities note that standing offers allow the federal government to leverage its buying power to get the best possible prices. Savings over a five-year period are estimated at Can\$1.1 billion.

213. According to the authorities, standing offers are put in place using open competition, in most cases in accordance with the requirements of the WTO Agreement on Government Procurement, NAFTA Chapter 10, and the Agreement on Internal Trade. Procurement notices and detailed bid documents are posted on MERX, the Government Electronic Tendering System. The length of time that a standing offer is in place is established at the time of the competition and varies in accordance with the nature of the commodity and the conditions in the marketplace; the authorities indicate that it would generally be 2-3 years or less. The supplier that wins a competition for a standing offer agrees to provide the commodity at the price or prices they have bid, under the conditions set out in the bid documents, for the term of the standing offer, when called upon by any of the federal government departments and agencies.

214. In April 2006, the Government introduced a Federal Accountability Act and Action Plan, which would lead, *inter alia*, to the creation of a Procurement Auditor.²¹⁵ It is anticipated that the mandate of the Procurement Auditor would be to review the Government's procurement process to ensure fairness and transparency and make recommendations for improvements. It would also review vendor's complaints and manage an alternative dispute resolution process for contract disputes that do not fall within the jurisdiction of the Canadian International Trade Tribunal.

(a) Institutional and legal framework

215. The Financial Administration Act is the key statute that underpins all contracting activities and associated financial arrangements and obligations. The main rules on government procurement in Canada are set out in the Government Contract Regulations (GCRs) and the Treasury Board's Contracting Policy.²¹⁶ PWGSC publishes the Supply Manual²¹⁷ and the Standard Acquisition Clauses and Conditions Manual²¹⁸, which are based on the FAA and other laws, regulations, and policies that may have an impact on procurement, and provide guidance for both procurement officers and suppliers.

²¹⁴ These groups included: information processing and related telecom services; professional, administrative and management support services; ground effect vehicles, motor vehicles, trailers and equipment (including firmware), software, supplies and support equipment; furniture; office machines, text processing systems and visible recording equipment; office supplies and devices; clothing, accessories and insignia; fuels, lubricants, oils and waxes

²¹⁵ Federal Accountability Act and Action Plan online information. Viewed at: http://www.faa-lfi.gc.ca/fs-fi_e.asp.

²¹⁶ Treasury Board online information. Viewed at: http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/contracting/contractingpol_e.asp.

²¹⁷ PWGSC online information. Viewed at: <http://www.pwgsc.gc.ca/acquisitions/text/sm/sm-e.html>.

²¹⁸ PWGSC online information. Viewed at: <http://sacc.pwgsc.gc.ca/sacc/index-e.jsp>.

216. The Treasury Board Contracts Directive sets out the basic contracting limits for ministers and special authorities, above which Treasury Board approval is required (Table AIII.6).

217. As outlined in the Contracting Policy, the objective of government procurement is to acquire goods and services and to carry out construction in a manner that enhances access, competition, and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and Canadian people. It also specifies that procurement should be carried out, *inter alia*, to encourage competition and to support long-term industrial and regional development and other appropriate national objectives, including aboriginal economic development as well as complying with the Government's obligations under relevant national and international agreements.

218. The Minister of Public Works and Government Services has exclusive authority to buy goods for other departments and agencies and to delegate this authority to other Ministers.²¹⁹ Public Works and Government Services Canada is the Government's principal purchasing arm. Departments and agencies must use PWGSC for procurement of goods, although authority to acquire low-dollar-value items, of up to Can\$5,000 (Can\$25,000 in some cases) has been delegated to departments. Ministers are authorized to purchase services and construction up to the thresholds outlined in Table AIII.6. Procurement through the PWGSC of services and construction is optional. In March 2004, the Government announced a new policy on the mandatory publication of contracts over Can\$10,000.²²⁰

219. For procurements not subject to NAFTA Chapter 10 or 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, it 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.

220. Canada has been a party to the WTO Agreement on Government Procurement (GPA) since 1 January 1996.²²¹ Canada grants national treatment to foreign suppliers in respect of procurement covered by the GPA and NAFTA Chapter 10. Government procurement in Canada is also affected by provisions in the Agreement on Internal Trade (Table III.13). A procurement chapter in the FTA between Canada and Chile has been signed but it had not yet entered into force as at November 2006. The Canada-Korea Telecommunications Equipment Procurement Agreement (CKTEA) was terminated on 1 September, 2005 due to the privatization of Korea's covered entity, Korea Telecom. In addition, Canada has signed industrial security memoranda of understanding with 12 countries, which permit private-sector industries in the signatory countries to participate in each other's sensitive government contracts and projects.²²²

²¹⁹ The basis of this authority is The Department of Public Works and Government Services Act. Viewed at: <http://laws.justice.gc.ca/en/p-38.2/text.html>.

²²⁰ Treasury Board online information. Viewed at: http://www.tbs-sct.gc.ca/pd-dp/index_e.asp.

²²¹ Canada notified the Committee on Government of its national legislation to implement the GPA in March 1997. WTO document GPA/13, 27 March 1997.

²²² These countries are: Australia; France; Germany; Italy; Israel; Netherlands; New Zealand; Norway; United Kingdom; United States; Sweden, and Switzerland.

Table III.13
Agreements covering government procurement

Agreement	Coverage, exclusions, and selected features	Thresholds
AIT (Chapter 5)	Equal market access opportunity to procurement of "Canadian" suppliers (meaning those that have a place of business in Canada, as defined under Article 518 of the AIT) Covers 97 federal government departments and agencies, 10 provincial governments and two territories (excludes Nunavut) Also covers MASH entities (except in Yukon) Covers 38 of the 43 federal crown corporations Does not apply to procurement related to cultural industries or aboriginal culture For procurement not subject to the GPA or NAFTA: tenders may be limited to Canadian goods or suppliers; also a preference (up to 10%) for Canadian value added may be required Provinces may have their own procurement agencies, thresholds and policies under the general framework of the AIT (Annex 502.3 for entities of a commercial or industrial nature or that have been granted exclusive rights (Crown Annex); Annex 502.4 for the MASH sector ^a)	Federal departments and Agencies Goods: Can\$25,000 Services and construction: Can\$100,000 Federal Crown Corporations Goods and services: Can\$500,000 Construction: Can\$5,000,000 MASH entities Goods and services: Can\$100,000 Construction: Can\$250,000
NAFTA (Chapter 10)	Equal market access opportunity to procurement subject to thresholds and exclusions Covers 100 Federal government departments and agencies and 11 of the 43 crown corporations Excludes procurement by provinces and territories A number of specific goods and services are excluded (similar to GPA below)	Federal departments and agencies Goods: Can\$32,400 (Canada-United States); Can\$84,000 (Canada-Mexico) Services: Can\$84,000 Construction: Can\$10,900,000 Crown Corporations Goods and Services: Can\$420,000 Construction: Can\$13,400,000
WTO GPA	Applies only to federal procurement and does not include sub-federal procurement, MASH entities or crown corporations In addition to general exceptions, a number of specific goods and services are excluded ^b Canada also extends the benefits of the GPA to least developed countries	Goods and services: SDR 130,000 (Can\$245,000) ^c Construction contracts: SDR 5,000,000 Can\$9,400,000 ^c

a MASH entities include: municipalities, academic institutions, social service agencies and hospitals. Not all of the provisions of the AIT apply to MASH entities (permissible discrimination is treated in part F.2 of Annex 502.4 of the AIT). Provisions of the Annex may also not apply to procurements under certain circumstances (Parts I and L of Annex 502.4) or for economic development purposes under exceptional circumstances (Part K of Annex 502.4).

b 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 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.

c Threshold values in national currency for 2006-07 as notified by the Canadian authorities to the WTO (WTO document GPA/W/295/Add.3).

Source: WTO Secretariat; and the Canadian authorities.

(b) Bidding process

221. As specified in the Government Contracts Regulations (Section 5), the contracting authority must solicit bids before any contract is entered into, although certain exceptions are permitted.

222. Competitive contracting can take one of three forms: (i) open tendering using electronic bidding, whereby notices are posted on the Government's electronic tendering service (GETS, which operates under the name MERX); (ii) traditional bidding, which in most cases involves either inviting bidders directly to submit bids or advertising in newspapers or trade publications; and (iii) through an

advance contract award notice (ACAN). ACANs are used when it is considered possible that only one supplier can perform the work. Electronic tendering is used where required under trade agreements and encouraged for all requirements through higher delegation levels (see Table AIII.6). Traditional competitive process may be used when consistent with trade agreements and where market conditions would make it more effective than electronic tendering.

223. Sole sourcing or non-competitive contracting may be used: in the event of 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 projects; a competition is not in the public interest; or only one supplier is capable of performing the work. The authorities note that Canada's international commitments may mean that these factors cannot be used in a given procurement.

224. In 2004, the total value of contracts awarded below Can\$25,000 was around Can\$1.3 billion; the value of non-competitive awards was around Can\$1.4 billion and the value of competitive awards was around Can\$16.3 billion. For the contracts awarded through competitive methods, contracts with a total value of around Can\$7.5 billion were awarded through electronic bidding, around Can\$5.9 billion through traditional bidding, and around Can\$710 million through ACANs.²²³

225. There are a number of programmes to assist suppliers in accessing federal procurement opportunities, for example, Business Access Canada.²²⁴ Other programmes assist businesses in particular regions of Canada, such as the Atlantic Canada Opportunities Agency and Western Economic Diversification.²²⁵ In Western Canada, Western Economic Diversification Canada works with government and business partners to seek opportunities for western companies arising from government procurement opportunities. Set-aside programmes exist for Aboriginal Business.

(c) Dispute resolution

226. Complaints involving alleged federal government breaches of the AIT, the GPA, and the NAFTA may be brought to the Canadian International Trade Tribunal (CITT) by potential suppliers. When a complaint is found to be valid, the CITT determination may contain recommendations such as re-tendering, re-evaluation or providing compensation. The CITT may also award reasonable costs to the winning party to cover expenses for participation in the proceedings, or to a complainant for bid preparation; in this regard new guidelines were issued for complaints filed after 31 January, 2004.²²⁶ The review process generally takes 90 days, with an express option of 45 days. The CITT reviews only complaints involving procurement by the federal government, not by provinces or the MASH sector.

227. Over the fiscal years 2003 to 2006, the CITT received on average 68 new complaints a year; according to the authorities, there are typically two or three complaints per year from foreign suppliers (Table III.14). Most determinations with respect to the validity of a complaint are related to breaches of the AIT, followed by the NAFTA then the GPA.

228. With the exception of bid challenges, the PWGSC Contract Claims Resolution Board (CCRB) acts as an appeal/review agency for all procurement-related disputes and extra-cost claims arising

²²³ Treasury Board of Canada Secretariat (2005).

²²⁴ Business Access Canada online information. Viewed at: <http://www.contractsCanada.gc.ca/en/partne-e.htm>.

²²⁵ Western Economic Diversification Canada online information. Viewed at: <http://www.wd.gc.ca>.

²²⁶ CITT online information. Viewed at: http://www.citt-tcce.gc.ca/publicat/index_e.asp#4.

from goods and services contracts, construction, and architectural and engineering services contracts. The CCRB administers the Contracts Settlement Board (CSB) and the Contract Disputes Advisory Board (CDAB). The 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. The CDAB is an independent review board that provides non-binding advisory arbitration for contract-related disputes that are referred to the Minister. This process is intended primarily for construction, and architectural and engineering consultant services. In addition to recourse to courts in matters of contract law, suppliers, whether Canadian or foreign have recourse to the Federal Court of Canada for judicial review of the administrative fairness of any contracting actions.

Table III.14
CITT procurement review activities (fiscal years 2003-06)

	2003/04	2004/05	2005/06
Number of complaints			
Carried over from previous fiscal year	15	11	8
Received in fiscal year	83	62	58
Remanded	3	1	1
Total	101	74	67
Cases resolved			
Withdrawn or resolved by the parties	8	6	4
Abandoned while filing	n.a.	3	2
Subtotal	8	9	6
Inquiries not initiated			
Lack of jurisdiction	7	2	3
Late or improper filing	14	16	14
No valid basis/no reasonable indication of a breach/premature	27	20	20
Subtotal	48	38	37
Inquiry results			
Dismissed	3	n.a.	3
Complaint not valid	14	6	4
Complaint valid or valid in part	15	10	10
Remand decisions	2	3	n.a.
Subtotal	34	19	17
Outstanding at end of fiscal year	11	8	7

n.a. Not applicable.

Source: CITT Annual Report. Viewed at: http://www.citt-tcce.gc.ca/publicat/index_e.asp#4.

229. Procurement at the sub-federal level, is ruled by provincial or other sub-federal government laws and procurement regulations. Under Annex 2 of its GPA commitments, Canada initially offered to cover entities in all ten provinces on the basis of commitments obtained from provincial governments; the initial provincial entities list was to be specified on or before 15 April 1994 and the final list within 18 months after the conclusion of the Government Procurement Agreement.²²⁷ Since then Canada has taken the position that 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 businesses 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.²²⁸

230. Under the general framework of the AIT, provinces may have their own procurement agencies and thresholds, as well as their own procurement policies. For procurement within the scope of the AIT, the provinces grant similar access conditions to procurement from the rest of Canada, but

²²⁷ WTO document WT/Let/330, 1 March 2000.

²²⁸ WTO document WT/GPA/51, 18 June 2001.

do not extend this automatically to procurement from foreign suppliers. 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.²²⁹

(iv) State-trading, state-owned companies, and privatization

(a) State-trading enterprises

231. Canada's state-trading enterprises (STEs) were notified to the WTO Working Party on State Trading Enterprises in 2002. They include: the Canadian Wheat Board (CWB), the Canadian Dairy Commission (CDC), the Freshwater Fish Marketing Corporation, the ten provincial liquor boards, and the Ontario Bean Producers Marketing Board (Table III.15).²³⁰ The activities of the CWB and CDC are described in Chapter IV.

Table III.15
Key features of state-trading enterprises

STE and applicable legislation	Key features
Freshwater Fish Marketing Corporation (FFMC)	The FFMC has the exclusive right to market and sell (both inter-provincial and export trade) fish caught in the waters of the agreement areas (north-western Ontario, Alberta, Saskatchewan and Manitoba). It has no role with respect to imports and competes with private traders of fish sourced from non-agreement areas or from imports. The FFMC is required to operate on a self-sustaining basis.
Liquor boards	Under the Importation of Intoxicating Liquors Act (IILA) ^a 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. The IILA has been scheduled as a quantitative restriction maintained as an exception to the free-trade provisions of NAFTA, and the Chile and Costa Rica FTAs. The Alberta Gaming and Liquor Commission does not make commercial decisions on the product selections for alcoholic beverages which are imported, nor on the quantities of those products.
Importation of Intoxicating Liquors Act (IILA), 1928	As reported in Canada's last review ^b , 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.
Ontario Bean Producers Marketing Board	The Board purchases the entire crop of white pea beans produced in Ontario. It then offers the products to privately owned and operated licensed dealers who then sell domestically or on export markets depending on the prevailing market circumstances. The Board has the exclusive authority to market Ontario white pea beans. The Government of Canada has a role in providing payment guarantees. The Board has no role in imports and does not have a monopoly on the export of white pea beans from Canada.

a Department of Justice online information. Viewed at: <http://laws.justice.gc.ca/en/I-3/247874.html>.

b WTO document WT/TPR/S/112/Rev.1, 19 March 2003.

Source: WTO document G/STR/N/4/CAN, 5 November 2002.

(b) State-owned enterprises

232. As reported by the OECD, Canada has around 100 state-owned enterprises; the total asset value of these enterprises was over US\$50 billion (PPP) in 2003, calculated as being relative to over 5% of GDP.²³¹

²²⁹ For more details on procurement by provincial governments see WTO document WT/TPR/S/112/Rev.1, 19 March 2003, Chapter III(4)(v).

²³⁰ WTO document G/STR/N/4/CAN, 5 November 2002.

²³¹ OECD (2005c).

233. State-owned enterprises in Canada include 44 parent crown corporations and three deemed parent subsidiaries, which are all wholly owned by the crown (Table AIII.7). No information was available on sub-federal state-owned enterprises. Crown corporations operate in various areas of the Canadian economy and fall under the responsibility of different ministries. The largest crown corporations are: Canada Mortgage and Housing Corporation; Farm Credit Canada; Business Development Bank of Canada; and Export Development Canada. These four corporations held nearly 90% of the total assets of all crown corporations in 2003/04. Most Crown corporations are self-financing; however, 25 corporations receive financial transfers from the federal government.²³² Some crown corporations are conferred with "agency status" which means that they enjoy the constitutional immunities, privileges, and prerogatives enjoyed by the Crown, which includes immunity from federal and provincial taxation.

234. The Federal Government also has a stake in two enterprises that are also partially owned by other levels of government.²³³ Following the full privatization of Petro-Canada in September 2004, when the Government divested the remaining 18.5% of its shares, the Canadian Government no longer has a share in any enterprise together with private-sector parties.

235. The Financial Administration Act (FAA) requires the President of the Treasury Board to make an annual report to Parliament on both Crown corporations and the other corporate interests of Canada.²³⁴ Crown corporations, falling under the FAA's provisions are also obliged to undertake self-examinations every five years.

(v) Competition policy and regulatory issues

236. There have been no major changes to Canada's legal and institutional framework for competition and regulation issues since its last Review. Canada has continued to pursue cooperation instruments with third countries and participates actively in international competition fora.

237. The OECD has reported extensively on Canada's competition regime.²³⁵ As noted in the OECD's 2002 report, competition enforcement in Canada improved significantly with the 1986 Competition Act. At this time a more flexible process was introduced for addressing civil offences through application to the Competition Tribunal. However, the report pointed out that enforcement of Canada's Competition Act remains a challenge in the area of horizontal agreements, as the statute's qualifying terms, "unduly" and "unreasonably" make proof complex. Attention had also been drawn by the OECD to merger decisions in the areas of airlines, banking, and bookstores, and the perceived political priority attached to advancing "national champion" interests.

238. Subsequently, the OECD's Economic and Development Review Committee and Competition Committee reviewed Canada's competition law and institutions during 2004. The Competition Committee review follows up on the 2002 Regulatory Review of Canada. The new reports evaluate

²³² Of these 25 crown corporations, six accounted for nearly 80% of total funding in 2003/04: Canada Mortgage and Housing Corporation (the largest recipient); the Canadian Broadcasting Corporation; the Canadian Air Transport Security Authority; VIA Rail Canada Inc.; the Canada Post Corporation; and Atomic Energy of Canada Limited.

²³³ These are: North Portage Development Corporation; and Lower Churchill Development Corporation Limited, Treasury Board of Canada Secretariat (2004). *Annual report to Parliament- Crown Corporations and Other Corporate Interests of Canada*. Viewed at: http://www.tbs-sct.gc.ca/report/CROWN/04/cc-se-04_e.as.

²³⁴ For more information on Crown Corporation Policies and Guidelines see http://www.tbs-sct.gc.ca/ccpi-pise/polgui_e.asp; and Reports to Parliament at: http://www.tbs-sct.gc.ca/ccpi-pise/parl_e.asp.

²³⁵ Over the period under review, OECD reports have included: OECD Working Paper No. 421, ECO/WKP(2005)8, 30 March 2005; and OECD (2002), (2004a), (2004b), (2004c), and (2005).

how the Competition Bureau has implemented the policy recommendations from the 2002 review and makes additional recommendations on how to improve competition law in Canada. These additional recommendations included: enhancing the Commissioner's decision-making independence; improving the Bureau's resources; providing broader rights of private action to enforce the Competition Act; clarifying the anti-cartel provisions in the substantive law; providing stronger civil sanctions against abuse of dominance and other civil reviewable conduct; clarifying the efficiencies defence in merger cases; and authorizing asset freeze orders and restitution in deceptive advertising cases.

(a) Institutional and legal framework

239. The Commissioner of Competition heads the Competition Bureau and is responsible for administering and enforcing the Competition Act, which is the main law governing competition issues in Canada.²³⁶ The Competition Bureau falls under the ambit of Industry Canada for administrative matters²³⁷, however for enforcement matters, the Commissioner is independent. The Commissioner also has the statutory right to intervene before federal regulatory boards and tribunals, and before provincial regulatory boards and tribunals upon invitation or with the consent of the board in question.²³⁸ The Act does not allow for the use of formal investigative powers for own-initiative studies to assess the state of competition in particular sectors. Enquiries may be launched to investigate businesses or individuals on the basis of an assessment that, among other things, they are likely to have contravened the Act or are about to.

240. With respect to promoting compliance with the civil provisions in the Competition Act²³⁹, the Commissioner of Competition may engage in discussions to obtain voluntary compliance or may file an application for an order to remedy a situation. For restrictive trade practices and mergers, the Commissioner applies to the Competition Tribunal to obtain injunctive relief. The Tribunal cannot impose financial remedies or damages. For deceptive marketing practices, the Commissioner can also apply to a Federal Court or a superior court of a province to obtain remedies. These may include an injunctive order, a corrective notice, and an administrative monetary penalty. The most serious criminal matters are referred by the Competition Bureau to the Attorney General of Canada, and penalties include fines and prison sentences.²⁴⁰

241. As mentioned in the Secretariat report for Canada's previous Review, the Act to amend the Competition Act and the Competition Tribunal Act introduced substantive changes to Canadian competition law, most notably the introduction of a right for private parties to access the Competition Tribunal in certain matters involving refusal to supply, exclusive dealing, tied selling, and market restriction.²⁴¹

²³⁶ In addition to administering and enforcing the Competition Act, the Commissioner of Competition is responsible (formally since 1999), for the administration and enforcement of the Consumer Packaging and Labelling Act (except as it relates to food), the Textile Labelling Act, and the Precious Metals Marking Act.

²³⁷ Competition Bureau online information (including links to competition legislation). Viewed at: <http://www.competitionbureau.gc.ca>.

²³⁸ A complete listing of the Competition Bureau's interventions are contained in their annual reports. Viewed at: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=184&lg=e>.

²³⁹ The civil provisions of the Competition Act include restrictive trade practices, such as abuse of dominant position, refusal to supply, exclusive dealing, and tied selling. There are also civil provisions that address deceptive marketing practices.

²⁴⁰ The criminal provisions of the Competition Act include: conspiracies that unduly lessen competition, bid rigging, price discrimination, predatory pricing, and price maintenance. There are also some criminal provisions to address false or misleading representations and deceptive marketing practices.

²⁴¹ WTO document WT/TPR/S/112/Rev.1, 19 March 2003. Subsection III(4)(i).

242. In 2003, the threshold for notification of mergers was increased from Can\$35 million to Can\$50 million.²⁴² Also in 2003, the Competition Bureau issued guidelines on merger enforcement as applied to banks²⁴³; in 2004, it introduced a revised version of its general merger enforcement guidelines.²⁴⁴

243. There have been two bills to amend the Competition Act during the period under review (C-19 and C-249); however both died upon dissolution of Parliament.

(b) Enforcement

244. The Competition Bureau reported a number of enforcement actions taken in 2003/04 and 2004/05, particularly with respect to deceptive marketing practices; fines were levied and prison sentences given to offenders. A number of cases were also resolved without the need for a full enquiry or judicial proceedings.

245. Merger activity also increased during 2004/05, following on from three previous consecutive years of decline. In FY 2005/06 the Competition Bureau undertook 283 examinations, 20 of which were ongoing at the year end. The size and scope of some of the mergers investigated over the period were notable, as was the complexity of the competition issues they raised, such as in the merger of the Canadian National Railway Company and British Columbia Rail Limited.²⁴⁵

246. The Commissioner of Competition's enforcement and advocacy priorities for 2006-07: fighting cartels, particularly domestic ones that hurt competition in Canada; combating mass marketing fraud; finding better ways to enforce the Competition Act in the electronic market place, especially when pursuing fraudulent and misleading health performance claims made through the Internet and SPAM; and abuse of dominance.²⁴⁶ According to the authorities, with respect to advocacy, the Commissioner will focus on: the health sector, including a study related to generic pharmaceuticals; the telecommunications sector; and the self-regulated professions. In addition, the Bureau is examining tools that could be used to develop legislation with a view to limiting government intervention through the least intrusive means possible.

(c) International cooperation

247. Canada considers international cooperation and enforcement of competition law as an important element in support of trade liberalization, and over the review period has strengthened and formalized its cooperation with competition agencies abroad. This has included the signing of information-sharing protocols, agreements with other countries and cooperation arrangements with agencies in other countries.²⁴⁷ The Competition Bureau participates in cooperation instruments on competition-related matters with ten trading partners.²⁴⁸

²⁴² Associated fees for merger notification filings and advance ruling certificate requests were increased from Can\$25,000 to Can\$50,000.

²⁴³ Competition Bureau Canada (2003).

²⁴⁴ Competition Bureau Canada (2004).

²⁴⁵ Competition Bureau Canada (2005).

²⁴⁶ Competition Bureau online information. Viewed at: <http://www.competitionbureau.gc.ca/internet/ndex.cfm?itemID=2201&lg=e>.

²⁴⁷ Between January 2003 and June 2006, agreements were signed with (years signed/of entry in force between parenthesis): Australia – Information sharing protocol (2004); and Japan – Cooperation Agreement (2005); the United Kingdom – Information sharing protocol (2004), and Cooperation Arrangement (2003); and the United States – Agreement on the application of positive comity principles to the enforcement of competition law (2004), Alberta Partnership Against Cross-Border Fraud (2003), Vancouver Strategic Alliance

248. Canada participates in both regional and multilateral fora on competition policy. These include: the APEC Workshop on Competition Policy; the OECD Committees on Competition and Consumer Policy; the Asia-Economic Cooperation Competition Policy and Deregulation Group; and the International Competition Network. Canada was also an active participant in the WTO Working Group on the Interaction Between Trade and Competition Policy before this work was placed on hold. The Competition Bureau is an active member of the International Consumer Protection and Enforcement Network (ICPEN).

(vi) Intellectual property rights

249. During the period under review there have been various legislative changes affecting the protection of intellectual property (IP), most significantly in the patents area. A number of ongoing reviews are, *inter alia*, considering amendments related to international conventions that Canada has signed. Canada's legislation was reviewed by the TRIPS Council between 1996 and 1998²⁴⁹, and Canada provided responses to the checklist of issues on enforcement in 1997.²⁵⁰

250. Canada updated its TRIPS contact point in 2004 (the Director of the Intellectual Property Information and Technology Trade Policy Division of International Trade Canada).²⁵¹ Canada has not been involved in any new IP-related dispute settlement cases in the WTO as complainant or respondent since 2002.

251. Foreigners have been active in filing applications for various forms of IP protection in Canada.²⁵²

252. Canada has continued to participate actively in the TRIPS Council. During the review period it has provided a written description of the operation of its IP system, with respect to the implementation of the 30 August Decision on TRIPS and Public Health²⁵³; and reported on its implementation of Article 66.2 of the TRIPS Agreement concerning technology transfer to least-developed countries²⁵⁴, as well as its technical cooperation activities.²⁵⁵ In addition, in the Council's Special Session it has, along with other WTO Members, put forward a Proposed Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits.²⁵⁶

to Combat Against Deceptive Marketing Practices (2004); Atlantic Partnership to Combat Cross-Border Fraud (2005); and Korea-Cooperation Arrangement (2006).

²⁴⁸ Australia, Costa Rica (through FTA provisions), Chile, European Union, Japan, Korea, Mexico, New Zealand, United Kingdom, and United States.

²⁴⁹ WTO documents: enforcement (IP/Q4/CAN/1/Rev.1, 12 December 1998) patents, layout-designs (topographies) of integrated circuits, protection of undisclosed information and control of anti-competitive practices in contractual licences (IP/Q3/CAN/1, 5 May 1998); trade marks, geographical indications and industrial designs (IP/Q2/CAN/1, 20 June 1997); and copyright and related rights (IP/Q/CAN/1/Add.1, 23 May 1997; IP/Q/CAN/1, 24 October 1996).

²⁵⁰ WTO document IP/N/6/CAN/1, 18 February 1997.

²⁵¹ WTO document IP/N/3/Rev.8/Add.1, 24 November 2004.

²⁵² Full statistical information on applications for IP protection both filed and granted by country of origin are available in the CIPO annual reports. Viewed at: http://strategis.gc.ca/sc_mrksv/cipo/corp/allreport-e.html.

²⁵³ WTO document IP/C/W/480/Add.7, 20 November 2006.

²⁵⁴ WTO document IP/C/W/476/Add.7, 10 November 2006.

²⁵⁵ WTO document IP/C/W/455/Add.3, 10 October 2005.

²⁵⁶ WTO document TN/IP/W10, 1 April 2005. Signatories of and co-sponsors to this document are: Argentina, Australia, Canada, Chile, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, New Zealand, Chinese Taipei and the United States. Paraguay, Costa Rica and Nicaragua signed on later.

(a) Institutional and legal framework

253. Canada's system of intellectual property rights is administered by The Canadian Intellectual Property Office (CIPO), which is a special operating agency of Industry Canada.²⁵⁷ The Plant Breeders' Rights Office, which falls under the Canadian Food Inspection Agency (CFIA), administers the Plant Breeders' Rights Act and Regulations, which provide legal protection to plant breeders for new plant varieties.²⁵⁸

254. Table III.16 provides summary information on Canada's IP legislation in force as well as the international agreements to which Canada is signatory.

Table III.16
National IPR legislation and international agreements

Legislation and term of protection	Scope and selected limitations	International agreements
Patents		
Patent Act 1985 (amended) Patent Rules 1996 (amended)	Coverage: new and useful invention or new and useful improvement of existing invention; Inventions are defined to include: art, process, machine, manufacture, composition of matter	Paris Convention for the Protection of Industrial Property; Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; Strasbourg Agreement Concerning the International Patent Classification; and Patent Cooperation Treaty (PCT); under the PCT, the CIPO began operations as an international search authority and an international preliminary examination authority in July 2004; Patent Law Treaty, signed but not yet ratified
Protection for up to 20 years after filing ^a	May not be granted for any mere scientific principle or theorem Higher life forms may not be patented ^b	
Patented medicines (Notices of Compliance Regulations)	Provide for effective patent enforcement over new and innovative drugs and the timely market entry of competing generic products	Obligations to provide effective patent enforcement measures under NAFTA/TRIPS
Data protection		
Data Protection provisions in the Food and Drug Regulations – 8 years of data protection	New pharmaceutical chemicals	
Pest Control Products Act	New agricultural chemicals	
Trademarks and geographical indications		
Trade-marks Act 1985 (amended) Trade-marks Regulations 1996 (amended)	Trade-marks include: a mark used by a person for the purpose of distinguishing or so as to distinguish wares or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others; a certification mark; a distinguishing guise; or a proposed trade-mark. Prohibited marks are listed in the Trade-marks Act (Articles 9-11); criteria for registrable trade marks in Articles 12-15	Paris Convention for the Protection of Industrial Property
Trade mark protection is for 15 years, renewable for further 15-year terms on payment of renewal fees ^c		
Term of protection for GIs for other goods is the same for trade marks	Act provides for protection of GIs for goods other than wines and spirits through certification marks (Article 23-25), which have the same scope of protection as trade marks, except that the owner cannot be involved in the manufacture, sale, leasing etc. of the goods indicated by the GI (Article 23)	

Table III.16 (cont'd)

²⁵⁷ CIPO online information. Viewed at: http://strategis.gc.ca/sc_mrksv/cipo/help/faq_cipo-e.html.

²⁵⁸ Canadian Food Inspection Agency online information. Viewed at: <http://www.inspection.gc.ca>.

Legislation and term of protection	Scope and selected limitations	International agreements
Copyright and related rights		
Copyright Act (1985) (amended) Copyright regulations 1997 (amended)	Applies to original literary, dramatic, musical, and artistic works; performer's performance; communication signals, and sound recordings	Berne Convention for the Protection of Literary and Artistic works; Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; and UNESCO Universal Copyright Convention
Protection is generally for the author's life plus 50 years (50 years from creation for some photographs and for non-dramatic, photography, cinematographic works); (50 years from creation for sound recordings and performances; the last author's death for works by more than one author)	Protection is provided to countries with whom Canada has a treaty or other agreement; exceptions to copyright infringement are outlined in Articles 29-32.2 of the Act. The <i>inter alia</i> , relate to fair dealing; educational institutions, libraries, archives and museums; computer programs; ephemeral recordings; and persons with perceptual difficulties	WIPO Copyright Treaty; WIPO Performances and Phonograms Treaty, and WIPO Film Register Treaty, signed but not yet ratified
	Levies are imposed on blank audio recording media sold in Canada (both domestically manufactured and imported); levies raised Can \$35 million in 2005.	
Industrial designs		
Industrial Design Act 1985 (amended) Industrial Designs Regulations 1999 (amended).	Applies to original industrial designs defined as features of shape, configuration, pattern or ornament, and any combination of those features that, in a finished article, appeal to and are judged solely by the eye	Paris Convention for the Protection of Industrial Property
Protection for up to 10 years, from the date of registration of the design	Protection is not extended to: features applied to a useful article that are dictated solely by a utilitarian function of the article; or any method or principle of manufacture or construction	
Integrated circuit topographies		
Integrated circuit topography Act 1990 (amended) Integrated circuit topography regulations 1993 (amended).	Protection is for the three-dimensional configuration of the materials that form integrated circuits, whether it has been embodied in an integrated circuit product or not. Topographies that define only part of the structure needed to perform an electronic function may be registered. Protection is extended to nationals of non-WTO Members on a reciprocal basis	None
Protection for up to 10 years, beginning on either the filing date or the date of first commercial exploitation, whichever is earlier. The term ends on 31 December of the tenth year	Exceptions to exclusive rights include: exhaustion of rights applying to integrated circuit products legitimately put on the market anywhere in the world with the authorization of the owner of the rights; unauthorized copying of a protected topography for the sole purpose of either analysis or evaluation, or of research or teaching with respect to topographies; and reverse engineering	

Table III.16 (cont'd)

Legislation and term of protection	Scope and selected limitations	International agreements
Plant breeders' rights		
Plant Breeders' Rights Act (1990) (amended) Plant Breeders' Rights Regulations (1991) (amended) Protection is up to 18 years effective from the date of issue of the rights certificate.	Allows for protection of new varieties of plants; varieties must be new, distinct, uniform and stable. All plant species, except algae, bacteria and fungi are eligible for protection. Applicants may only be citizens of, residents of, or have a resident office in Canada or a UPOV member state Restrictions to the holders' rights include: protected varieties may be used for breeding and developing new plant varieties; and farmers may save and use their own seed of protected varieties without infringing on the holder's rights (farmers' privilege)	1978 UPOV Convention; 1991 amendments signed but not yet ratified

- a Under section 46 of the Patent Act, patents filed prior to 1 October 1989 (so-called "Old Act patents") and still existent as of July 2001, benefit from a term of protection of either 20 years from filing or 17 years from grant, whichever is greater. There were approximately 138,000 such patents still in force in January 2001.
- b This was the subject of a Supreme Court ruling in December 2002, as reported in Canada's previous TPR.
- c Trade marks if not registered are still protected through Common Law if they have been used.

Source: CIPO, CIFA.

(b) Patents

255. Two Acts have been passed to amend the Patents Act during the period under review: Bill C-9 and Bill C-29. Both of these legislative amendments were notified to the WTO in June 2005.²⁵⁹

256. Bill C-9, the Jean Chrétien Pledge to Africa Act²⁶⁰, now known as Canada's Access to Medicines Regime (CAMR)²⁶¹, and subordinate regulation on the Use of Patented Products for International Humanitarian Purposes regulations²⁶², came into force in May 2005. The Act is intended to implement the 30 August 2003 decision of the WTO by providing the legislative framework to allow Canadian manufacturers, under certain conditions, to export pharmaceutical products produced under a compulsory licence to countries with insufficient or no pharmaceutical manufacturing capacity.

257. Section 1 of Bill C-29, an Act to amend the Patent Act²⁶³ places the Schedules to the Jean Chrétien Pledge to Africa inside the Patent Act, and provides for the equal participation of the Canadian Senate in assessing and recommending eligible candidates for an expert committee charged with advising the government on pharmaceutical products that should be eligible for export under this initiative. Section 1 of the Act entered into force in May 2005. A second section of the Act, which entered into force in February 2006, includes clarification of small entity provisions designed to

²⁵⁹ WTO document IP/N/1/CAN/1/Add.2, 10 June 2005.

²⁶⁰ Bill C-9, An Act to amend the Patent Act and the Food and Drugs Act. Viewed at: http://www.parl.gc.ca/PDF/37/3/parlbus/chambus/house/bills/government/C-9_4.PDF.

²⁶¹ CAMR information. Viewed at: <http://camr-rcam.hc-sc.gc.ca>.

²⁶² Regulation on the Use of Patented Products for International Humanitarian Purposes. Viewed at: <http://canadagazette.gc.ca/partII/2005/20050601/html/sor143-e.html>.

²⁶³ An Act to amend the Patent Act. Viewed at: http://www.parl.gc.ca/PDF/38/1/parlbus/chambus/house/bills/government/C-29_4.PDF.

provide relief to patent holders and applicants affected by the 2003 Federal Court of Appeal decision in the Dutch Industries case, and related provisions on information requirements and refunds.²⁶⁴

258. As outlined in the Secretariat report for its previous review, Canada is the only country that explicitly issues regulations on drug prices through its patent legislation. The Patent Act requires that maximum prices charged by manufacturers for patented medicines are regulated to ensure they are not excessive. Under the Patented Medicines Regulations, patentees are required to file price and sales information twice a year.²⁶⁵ All prices are reviewed regularly by the Patented Medicine Prices Review Board (PMPRB) to ensure they conform to PMPRB's Excessive Price Guidelines. If a price appears to be outside the Guidelines, the PMPRB may conduct an investigation. In 2006, the PMPRB launched a review of the Excessive Price Guidelines, involving formal consultations; in November 2006.²⁶⁶ In addition, the development of more specific time frames for the various stages of the price review process are under consideration in context of the PMPRB's Timelines Review project, was partially completed by November 2006. As noted by the PMPRB, the Patented Medicines Regulations need to be modernized in some areas to carry out its mandated responsibilities.²⁶⁷ According to the PMPRB, patented drugs account for nearly 70% of total drug sales in Canada.

259. In October 2006, the Patent Medicines (Notice of Compliance) Regulations (Table III.16) were amended to make it easier for generic drug companies to predict when they might enter the market with a lower cost version of an innovative, patented drug. According to the authorities, these amendments will accelerate the market entry of generic drugs once the relevant patents expire. Also in October 2006, amendments were made to the data protection provisions in the Food and Drug Regulations in order to provide new and innovative drugs with a guaranteed eight-year minimum period of market exclusivity. A further six months of protection is available for drugs that have been the subject of paediatric studies. The authorities note that the objective of these changes is to encourage research in the area and improve drug information available to paediatric health professionals.

(c) Trade marks

260. In September 2003, an agreement was signed between Canada and the EC on trade in wines and spirits. An order amending the relevant subsections of the Trade-Marks Act entered into force in April 2004.²⁶⁸ The agreement provides for the three-stage elimination of the use of European wines

²⁶⁴ See CIPO online information. Viewed at: http://strategis.gc.ca/sc_mrksv/cipo/patents/c-29_intro-e.html. To encourage small businesses (50 or fewer employees) to use the patent system, the fees paid by patent applicants and patentees vary according to the size of the entity. The 2003 Federal Court of Appeal decision might have left patent applicants and patent holders with no recourse to correct minor payment errors under this system, which would have possibly jeopardize the rights of patent applicants and patent holders.

²⁶⁵ This reporting requirement does not now apply to patented veterinary drugs. Following a trial period, the PMPRB agreed in 2003, to implement on a permanent basis a complaints-driven approach for the regulation of patented drug prices for veterinary use. Under this approach, the PMPRB only reviews the prices of new patented medicines; existing medicines are subject to review only when a substantiated complaint has been received.

²⁶⁶ The release of a Discussion Guide for the Consultations on the Board's Excessive Price Guidelines marked the beginning of formal consultations. This document provides information on the background to the review and its objectives. Viewed at: <http://www.pmprb-cepmb.gc.ca/english/documents/DisGuide-e.pdf>.

²⁶⁷ PMPRB (20049).

²⁶⁸ As outlined in Order Amending Subsections 11.18(3) and (4) of the Trade-marks Act (SOR/2004-85, 22 April 2004), the following names were removed from the list on date of entry into force of the Agreement: Bordeaux, Chianti, Claret, Madeira, Malaga, Marsala, Medoc, Médoc, Mosel and Moselle, as well as the spirit drink names Grappa and Ouzo. Tokay was deleted on Hungary's accession to the EU. The names

and spirits names on Canadian labels to allow European producers to apply for the protection of these names as geographical indications in Canada. According to the authorities, in return for the commitment to phase out generic names from the Trade-Marks Act, Canada obtained significant concessions that will allow easier access to the EC market for Canadian wines and spirits. Other benefits to Canada included stability in Canada's domestic marketing and distribution practices and better bilateral relations between Canada and the EC by addressing a long-standing area of contention.²⁶⁹

261. In February 2005, the CIPO requested feedback from the Canadian intellectual property profession on proposals for modernization of the Trade-Marks Act and Regulations, including Canada's possible future adherence to the Madrid Protocol and the Trademark Law Treaty.²⁷⁰ Currently, Canada is the only major industrialized country not party to the Madrid Protocol.

(d) Copyright

262. As reported in Canada's previous Review, the Government of Canada published a Framework for copyright reform in 2001 outlining the context and process for reform and setting out its intention to consider possible amendments that might be necessary to keep pace with technological developments.²⁷¹ There followed a consultation process and legislative proposals.

263. One outcome of this process was an amendment to the Copyright Act passed in December 2002. This prevents potential Internet-based retransmitters from using the compulsory licence for retransmission of broadcast programmes. It also confirms that cable and satellite retransmitters of broadcasting signals who currently benefit from compulsory licensing will continue to do so.²⁷²

264. Further proposals stemmed from the mandated review of the Copyright Act, which was initiated by a government report in October 2002.²⁷³ Following a parliamentary review of the report and a subsequent ministerial statement, a Bill to Amend the Copyright Act (Bill-C60) was introduced in June 2005, however this died on the order paper with the dissolution of Parliament.

(e) Industrial designs and topographies of integrated circuits

265. There have been no amendments to either the Industrial Design Act or the Integrated Circuit Topography Act (ICTA) during the period under review. A mandated review of the provisions and operation of the ICTA was undertaken, however, it was concluded that the Act provided the necessary framework for the semiconductor industry to grow and that amendments were not needed.²⁷⁴ There are 49 active registrations under the ICTA (November 2006).

Bourgogne, Burgundy, Rhin, Rine, Sauterne, and Sauternes will be deleted on 31 December 2008. Wine names Chablis, Champagne, Port, Porto and Sherry will be removed from the list on 31 December 2013.

²⁶⁹ Canada Gazette online information. Viewed at: <http://canadagazette.gc.ca/partII/2004/20040505/html/sor85-e.html>.

²⁷⁰ Strategis (2005).

²⁷¹ Strategis (2001).

²⁷² CIPO Press release, December 13, 2002. Viewed at: http://strategis.gc.ca/sc_mrksv/cipo/cp/bille/11-e.html.

²⁷³ Strategis (2002).

²⁷⁴ CIPO online information. Viewed at: <http://strategis.ic.gc.ca/epic/internet/inippd-dppi.nsf/en/ip00128e.html>.

(f) Plant breeders' rights

266. Consultations were held during the review period on amending the Plant Breeders' Rights Act to bring it into conformity with the 1991 version of the UPOV Convention and enable Canada to ratify it. These consultations concluded in March 2005 and as at November 2006, the PBR Advisory Committee was reviewing the results. A previous initiative, in 1999, to amend the Act, died on the order book. According to the authorities, renewed interest in pursuing reform in this area was generated by a positive outcome of the Ten Year Review of Canada's Plant Breeders' Rights Act in 2002.²⁷⁵

(g) Other issues

267. Provisions for IP-related compulsory licensing exist under the Patent Act, the Integrated Circuit Topography Act, and the Competition Act. Under the Patent Act, a compulsory licence may be granted in cases of abuse of exclusive rights. Only one such licence has been granted since 1996. Under the Act, the federal and provincial governments may apply for non-exclusive use of patented inventions, subject to certain conditions, while under the Integrated Circuit Topography Act both governments may obtain authorization for the public non-commercial use of a registered topography. 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. None of those provisions has been used to date.

268. The authorities note that goods manufactured in another jurisdiction by the same trade-mark owner as in Canada are not considered infringing goods simply because the goods have arrived in Canada and the trade-mark owner does not wish them to be distributed in Canada. Parallel importation, however, may be prevented through other mechanisms including contractual rights and different standards requirements. The situation with patents is similar to that of trade marks. Imports of books without the consent of the copyright holder is prohibited, although this provision is subject to certain exceptions.

269. Canadian customs services are not entitled to seize infringing imports ex-officio. Under both the Copyright Act and the Trademarks Act, customs officials are authorized to detain goods only subject to a court order by the holder of the intellectual property right.

²⁷⁵ CFIA Discussion Paper. Viewed at: <http://www.inspection.gc.ca/english/plaveg/pbrpov/updatmise.shtml>.