IV. TRADE POLICIES BY SECTOR

(1) OVERVIEW

1. Canada is a highly competitive producer of many agricultural commodities, and among the world's largest exporters of agri-food products. As measured by the OECD, overall government support has increased since Canada's last Review in 2003, mainly due to increased ad hoc payments linked to sanitary and weather problems. However, support remains below the OECD average, and is less trade distorting than in most other OECD countries. Moreover, the Agricultural Policy Framework, introduced in 2003 to position Canada as the world leader in food safety and quality, innovation, and environmentally responsible agriculture production, is being redeveloped to make it more responsive and to provide a foundation for profitability throughout the sector.

2. Canada provides significant assistance to supply-managed products (which cover dairy products, chicken, turkey, eggs, and broiler hatching eggs), including through the use of high out-of-quota tariffs (frequently exceeding 200%). In-quota volumes are, in some cases, small, reserved to certain countries, or available to preferential partners at reduced tariff rates.

3. In some provinces, agricultural producer boards regulate the marketing of certain agricultural products, including by setting prices. The Canadian Wheat Board (CWB), a state-trading enterprise, has a monopoly on sales for export and for domestic human consumption of wheat and barley produced in Western Canada. A task force established by the Minister of Agriculture and Agri-Food and Minister for the CWB recommended a staged elimination of the CWB's monopoly. During the review period, Canada adopted legislative amendments to comply with a WTO panel decision on the WTO compatibility of two measures affecting grain imports. Canada also reached a mutually agreed solution with two WTO Members in disputes relating to Canada's export subsidies for dairy products.

4. Canada is a major producer and exporter of minerals and energy. Mining and energy have attracted substantial investment during the period under review, in large part due to increased commodity prices. The industry, both at the mining and processing levels has benefited from fiscal incentives offered both by federal and provincial governments. In several provinces and territories, tax incentives are available only for processing minerals originating in mines located within the respective province or territory. Mining in Canada is subject to government approval, which in some cases may be linked to the use of local labour, goods, and services. Foreign investment restrictions remain in uranium mining. Provincial governments play a predominant role in the electricity sector. In most provinces, provincial crown corporations provide most of the generation, transmission, and distribution of energy, while in some, retail and wholesale competition has been introduced.

5. Ontario and Quebec are the main centres of manufacturing activity in Canada. Both the Federal Government and some provinces have continued to provide or have introduced strategies or incentives to assist certain sectors over the review period. These include assistance to the aircraft, textiles, shipbuilding, and automotive sectors. However, the manufacturing sector has continued to lose importance in terms of its relative contribution to value added and employment, as resources have been attracted into primary activities and the services sector.

6. There have been no major regulatory changes to Canada's telecommunication, broadcasting, financial or transportation services. In telecommunications, a government-appointed panel of experts recommended regulatory reform be undertaken to better respond to the changing technological environment, with an increasing role for market forces. Facilities-based common carriers providing telecommunications services in Canada must be Canadian-owned and controlled. Canadian

broadcasting legislation limits foreign content in a number of areas to ensure Canadians have minimum levels of access to Canadian cultural content.

7. Canada's financial sector is well developed and diversified, and has performed well. The banking sector is open to foreign competition, but ownership restrictions apply on domestic and foreign banks. Insurance companies must be licensed in each province where they do business, which may complicate market access for foreign suppliers.

8. In maritime transport, cabotage remains reserved for Canadian-flag ships, although access to foreign ships is allowed when suitable Canadian-registered ships are not available. In the air transport sector, competition has increased with the growth of low-cost airlines. However, foreign-owned airlines may not provide cabotage services and foreign ownership of Canadian airlines is limited to 25% of voting shares supplemented by a flexible de-facto control examination. The Competition Bureau is of the view that the Government should reconsider these airline policies.

9. Virtually all professions are regulated at the provincial/territorial level and increasing efforts are being made to facilitate the mobility of professions among provinces and territories. While citizenship and residency requirements continue to apply in some cases, some barriers have been removed.

(2) AGRICULTURE

(i) Introduction

10. Canada's agri-food sector, which encompasses unprocessed, semi-and fully processed farm products, and certain services to agriculture, accounted for 8.1% of GDP in 2004. Canada is among the world's largest exporters of agri-food products. In 2005, total agri-food exports were Can$26.2 billion.[1] The main exports consist of grains and oilseeds, with 20.3% of total agri-food exports; the second largest category was red meats, with 18%. Imports of agri-food products were Can$21.1 billion in 2005. The main import categories were fruits and vegetables, which represented 28.1% of the total, followed by beverages (12.5% of total agri-food imports), and grains and oilseeds (10.7% of total agri-food imports).

11. The Federal Government and provincial governments share jurisdiction over agriculture. In June 2002, the federal, provincial, and territorial governments signed the Framework Agreement on Agricultural and Agri-Food Policy for the Twenty-First Century (known as the Agricultural Policy Framework) to enhance the profitability of the agri-food sector.[2] Programmes and services under the Agricultural Policy Framework are grouped into one of the following categories: business risk management (encompassing farm income support programmes), food safety and food quality, science and innovation, environment, and renewal (i.e., advisory and skills development services). The implementation of the Agricultural Policy Framework in each province and territory is governed by bilateral agreements with the Federal Government. Most of these agreements expire in 2008. The Federal Government allocated Can$5.2 billion over five years to implement the Agricultural Policy Framework. As at early 2007, Agriculture and Agri-Food Canada was holding consultations with stakeholders on future policies necessary to "transform the Framework to make it more responsive and provide an enduring foundation for profitability throughout the value chain".[3]

[1] Agriculture and Agri-Food Canada (2006a). These data differ from the data presented in Chapter I due to differences in classification.

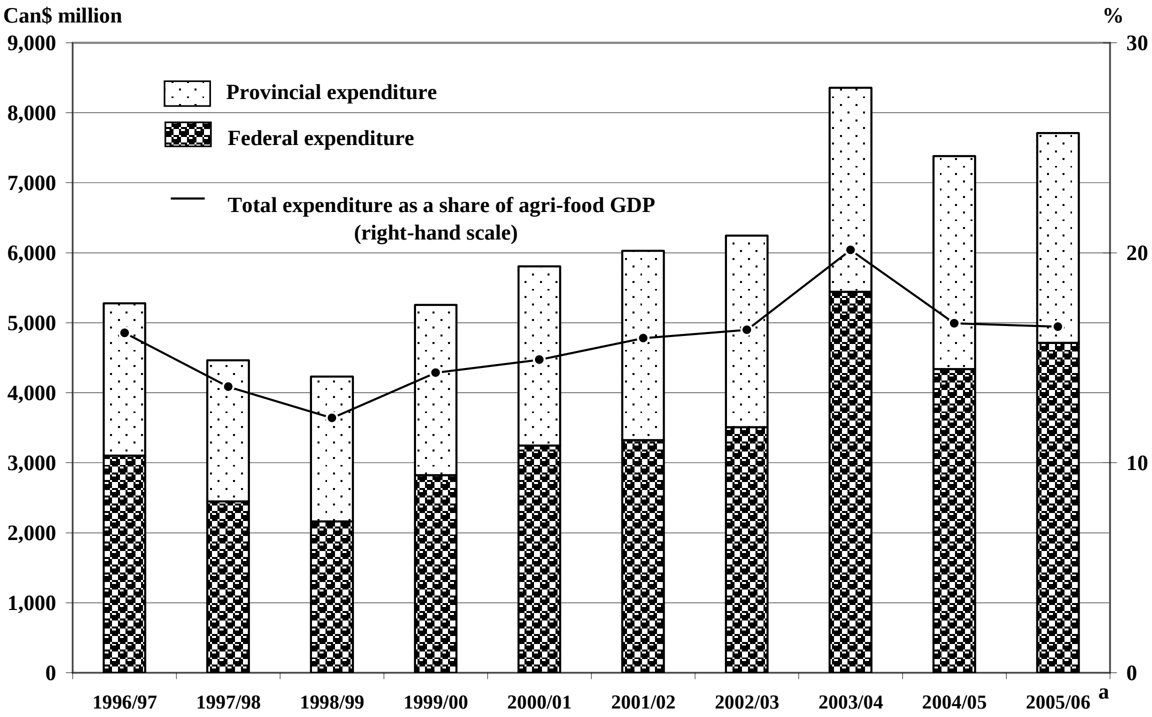
[2] Article 2.2.1., Agricultural Policy Framework.

[3] Agriculture and Agri-Food Canada (2006d).

12. Federal and provincial government expenditure in support of the agri-food sector amounted to Can$7.4 billion in 2004/05, up from Can$6 billion in 2001/02 (Chart IV.1).[4] These data reflect expenditure of federal departments such as Agriculture and Agri-Food Canada, Health Canada, and Transport Canada and provincial ministries. They include expenditure resulting from the operation of agricultural programmes, capital expenditure, and expenditure under the programmes themselves. Programme expenditure accounted for 71% of total government expenditure in support of agri-food in 2004/05.

Chart IV.1

Government expenditure in support of agri-food, 1996-06



a Estimate.

Source: **WTO Secretariat, based on data in Agriculture and Agri-Food Canada (2006),** ***Farm Income, Financial Conditions and Government Assistance Data Book*****, April. Viewed at: http://www.agr.gc.ca/.**

13. Federal government expenditure in support of agri-food amounted to Can$4.3 billion in 2004/05, 18% more than the average for the previous five years. In 2003/04, expenditure reached Can$5.4 billion, the highest level in 12 years; the sharp increase in 2003/04 largely reflects the Government's response to drought and to the discovery of BSE in Canada, which resulted in the temporary loss of several export markets.[5] Provincial government expenditures in support of agri-food amounted to Can$3 billion in 2004/05, 14% more than the average for the previous five years. Agriculture and Agri-Food Canada projects government support to agri-food to remain high in 2005/06, as governments continue to "support the farm sector in its efforts to recover from recent crises and to cope with unfavourable market conditions".[6] Preliminary estimates predict federal and provincial government support for 2005/06 to reach Can$7.7 billion.

[4] Agriculture and Agri-Food Canada (2006b).
[5] Agriculture and Agri-Food Canada (2006b).
[6] Agriculture and Agri-Food Canada (2006b).

14. The OECD Producer Support Estimate (PSE) is a broader measure of support that includes government payments to producers and price support. The PSE for Canada was Can$7.4 billion in 2004[7]; as a share of gross farm receipts, was 21%, compared with 16% in 2001. The average for all OECD countries was 30% during 2003-05. The OECD projects that Canada's PSE will remain unchanged in 2005. The most heavily supported commodities, as measured by the average share of the PSEs in gross receipts for 2002-04, are milk (58%), beef and veal (21%), and wheat (17%).[8] The share in the PSE of payments based on historical entitlements or farm income, which the OECD considers less production and trade distorting than market price support or output and input payments, is one of the highest among OECD countries. This points to Canada's substantial progress in reforming its agricultural policies. However, the OECD has noted that the level of support in Canada has trended upward in the last decade.[9] The authorities indicate that this is due to increased ad hoc payments linked to sanitary and weather problems.

(ii) Border and related measures

15. The average MFN applied tariff for agriculture (WTO definition) was 22.4% in 2006.[10] This is close to six times the protection afforded to non-agricultural products (Chapter III(2)(iv)).

16. As part of its WTO commitments, Canada maintains 21 tariff quotas, mostly on imports of goods subject to the supply management system (i.e. dairy products, poultry, and eggs) (Table AIV.1). The simple average out-of-quota MFN tariff in 2006 was 129.1%; the in-quota average was 3.1%. For a handful of products, Canada specified in-quota and out-of-quota rates of duty but no quota volumes in its Uruguay Round schedule of commitments. The Canadian authorities note that the products affected sometimes enter Canada at the in-quota rate, for example when temporary domestic shortages occur, or when the imported products are destined for re-export.[11] Canada's latest WTO notification on tariff quotas covers 2002-05.[12]

17. Five of Canada's 21 tariff quotas include reserved access at the in-quota rate in favour of Australia, the European Union and New Zealand. In addition, the entire quota for fluid milk is reserved for personal cross-border purchases, in practice from the United States. The United States expressed concern in the WTO Committee on Agriculture about the extent to which the tariff quota for fluid milk provides "real market access", given the lack of data on personal cross-border milk purchases.[13]

18. In general, Canada does not grant preferential access under free-trade agreements to out-of-quota imports of products subject to WTO tariff quota commitments. Exceptions include wheat and barley from Chile, Costa Rica, Mexico, and the United States; margarine from Chile, Costa Rica, and Mexico; and beef from Chile, Mexico, and the United States. All of these products can be imported duty-free in unlimited quantities under the respective agreement.

19. For several products subject to WTO tariff quota commitments, rather than establishing additional tariff quotas, Canada grants preferential access under free trade agreements to the same in-quota volumes specified in its WTO tariff quota commitments. In these cases, in-quota imports may

[7] OECD (2006a).
[8] OECD (2005a).
[9] OECD (2005a).
[10] This includes the *ad valorem* equivalents of non-*ad valorem* rates. For products subject to tariff quotas, only out-of-quota tariff rates were used to calculate the average.
[11] WTO (2003).
[12] WTO document G/AG/N/CAN/63, 20 October 2006.
[13] WTO document G/AG/R/46, 11 July 2006.

be sourced from preferential partners at rates of duty lower than the corresponding WTO in-quota rates, or from other WTO Members at the in-quota rates established in Canada's WTO Schedule of Commitments.

20. For a subset of products subject to WTO tariff quota commitments (mainly chicken, turkey, eggs and egg products, broiler hatching eggs, and chicks), Canada's preferential trade agreements establish tariff quotas with in-quota volumes defined as a share of domestic production in a base year, rather than in absolute terms as is the case under Canada's WTO commitments. Therefore, the levels of in-quota volumes under preferential agreements vary from year to year, and may be lower or higher than the levels in Canada's WTO commitments. In these cases, the Minister of International Trade will generally set in-quota volumes (which can be filled with both preferential and non-preferential imports) at the level that is highest. According to the Canadian authorities, this has resulted in a de facto expansion of the in-quota volumes specified in Canada's WTO commitments for chicken and broiler hatching eggs and chicks since 1995, as the in-quota volume under preferential agreements has exceeded the level in Canada's WTO commitments.

21. Most tariff quotas were filled during 2005. The main exceptions were for wheat, barley, and to a lesser extent, beef and veal, and margarine. The fill rates of the quotas for concentrated/condensed milk and cream and "other dairy" have been falling since 2003. The authorities indicate that these low fill rates are due to low demand for these products in Canada, and that the low fill rates for wheat and barley reflect the competitiveness of domestic producers.

22. There have been no major changes in tariff-quota administration since Canada's last Review. The Minister of International Trade is responsible for allocating the quotas.[14] Tariff quotas are administered in a variety of methods, including first-come, first-served; historical import performance; and market share. Access conditions are specified in several Allocation Method Orders issued under the Export and Import Permits Act. Some tariff quotas, including for dry whey are allocated only to downstream processors; hatching eggs and chicks are allocated to federally registered hatcheries on the basis of market share; and the entire tariff quota for butter is allocated to the Canadian Dairy Commission (see section (iii) below).

23. A permit system is used to administer access to tariff quotas.[15] In general, permits are issued by Foreign Affairs and International Trade Canada to applicants that meet the requirements and pay the applicable fee.

24. Canada has reserved the right to apply additional tariffs on over-quota imports of products subject to tariff quotas, either if their import prices drop below a trigger price or if quantities exceed a given threshold, in accordance with the special safeguard provisions of the WTO Agreement on Agriculture. In March 2006, Canada notified the WTO that it had not applied any special safeguards between 2003 and 2005.[16]

25. Imports of fruit and vegetables must meet the requirements for quality, labelling, packaging, and health and safety defined in the Fresh Fruit and Vegetable Regulations. Imported apples, onions, and potatoes must be accompanied by an inspection certificate issued by the Canadian Food Inspection Agency (CFIA) stating that they meet these requirements. Canada also accepts certificates

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[14] Section 6.2(2), Export and Import Permits Act.

[15] See Canada's latest response to the Questionnaire on Import Licensing Procedures, contained in WTO document G/LIC/N/3/CAN/4, 18 January 2002.

[16] WTO documents G/AG/N/CAN/59, 2 March 2006, and G/AG/N/CAN/51, 31 October 2003. For products subject to tariff quotas administered on a marketing year basis (wheat and wheat products, barley and barley products, butter, cream, and dry whey) the latest notification covers the period until July 2005.

issued by the U.S. Department of Agriculture for apples, onions, and potatoes from the United States, and by the New Zealand Ministry of Agriculture and Forestry for apples from New Zealand. An inspection certificate issued by the CFIA is also necessary for interprovincial sales of apples, potatoes, and blueberries from certain producing provinces. Products that do not meet the quality, labelling, and packaging requirements may be imported (or shipped interprovincially) provided that there is a domestic shortage, and an exemption is obtained from the CFIA.[17] The CFIA has published guidelines for requesting such exemptions.[18]

26. The Licensing and Arbitration Regulations, which establish rules for dealers marketing fresh produce, prohibit sales on consignment of imported fresh fruit and vegetables; interprovincial sales on consignment are also prohibited. Members of the Dispute Resolution Corporation (DRC) are exempt from these prohibitions. Approximately 80% of produce dealers in Canada are members of the DRC.

27. In July 2003, a WTO panel was established to examine the WTO compatibility of the Canadian Wheat Board's activities and of a number of measures affecting grain imports into Canada (see also section (v) below). The panel report was issued in April 2004.[19] Regarding measures affecting grain imports, the panel found that the requirement on elevator operators to obtain authorization from the Canadian Grain Commission to receive foreign grain or to mix it with domestic grain, and the statutory cap on revenue earned by railway companies from the transport of Western Canadian grain were inconsistent with Canada's WTO national treatment obligations. Canada amended the Canada Grain Act and the Canada Transport Act in May 2005.[20] As a result, the railway revenue cap was extended to imported grain, and the authorization requirements relating to the treatment of foreign grain in elevators were abolished. A new regulation requiring elevator operators to report to the Canadian Grain Commission the origin of all grain in their elevators entered into force in August 2005.[21]

(iii) Domestic programmes

28. Canada's latest WTO notification on domestic support covers 2001.[22] According to this notification, the Current Total Aggregate Measurement of Support (AMS) was Can$2.8 billion. This is well below Canada's applicable WTO ceiling of Can$4.3 billion, but some three times the amounts notified for 1999 and 2000 (Can$939 million and Can$848 million, respectively).[23] According to Canada, the AMS increase between 2000 and 2001 was due to higher expenditures under provincial programmes and under crop insurance following a drought in Western Canada. Around Can$1.7 billion of domestic support provided in 2001 was classified as "green box", and was not subject to reduction commitments in the WTO.

29. In the context of Canada's notification, Members posed questions on the increase in non-product-specific AMS, and the exclusion of some production of butter and skim milk powder destined for further processing in the calculation of price support.[24] Issues raised in the context of Canada's notification on domestic support for 2000 included the functions of the Prairie Farm Rehabilitation

[17] Section 2.2(2), Fresh Fruit and Vegetable Regulations.
[18] CFIA (2002).
[19] WTO document WT/DS276/R, 6 April 2004.
[20] Bill C-40, 19 May 2005.
[21] Canada Grain Regulations, Section 6.1 and Form 14 of Schedule 4; see also WTO document WT/DS276/20/Add.3, 19 August 2005.
[22] WTO document G/AG/N/CAN/60, 18 April 2006.
[23] WTO documents G/AG/N/CAN/49, 22 November 2002, and G/AG/N/CAN/53, 13 May 2005.
[24] WTO document G/AG/R/46, 11 July 2006.

Administration, the factors underlying increases in support for soybeans and pork, the establishment of producer prices for poultry and egg, and the prices of butter and skim milk powder produced with certain classes of milk.[25]

30. Price support is one of the main instruments to implement the supply management system, which is in place for dairy, poultry, and eggs. Every two months the Canadian Milk Supply Management Committee (CMSMC) sets an industrial milk production target for Canada, known as Market Sharing Quota. The CMSMC is responsible for dairy policy and supervising the implementation of the National Milk Marketing Plan, a federal-provincial agreement that governs milk supply management. The CMSMC applies the terms of the National Milk Marketing Plan to establish the provincial shares of the Market Sharing Quota. Each province allocates its share of the Market Sharing Quota to producers according to its own policies.

31. Provincial marketing boards and agencies set the price at which they purchase milk from producers and sell it to domestic processors; prices are set in accordance with the end use. These prices are generally based on annual support prices for butter and skim milk powder established by the Canadian Dairy Commission (CDC), a federal public corporation established in 1966. Provincial marketing boards and agencies do not set the prices of milk for the production of confectionery products (Class 5(c)), or of cheese and other dairy products used as ingredients for further processing in domestic and export markets (Classes 5(a) and (b)); according to Canada, prices for milk classes 5(a)-(c) reflect U.S. and/or world prices.[26] The CMSMC sets the price of milk for export within Canada's WTO commitments on export subsidies (Class 5(d)). A new harmonized milk classification system was adopted in February 2005.[27]

32. In 2004, New Zealand sought clarification in the WTO Committee on Agriculture on various aspects of Canada's dairy policies. Canada was asked about a proposal to reduce CDC stocks of skim milk powder by selling them at a significant discount to domestic processors of milk protein concentrate.[28] It was also asked about the price of a class of milk introduced in 2005 for the manufacture of rennet casein and milk protein concentrate (Class 4(a)1 milk), and its effects on trade.[29] Canada provided details on both issues.

33. Prices for poultry are negotiated between provincial poultry producer boards and processors based on a cost of production formula. For eggs, each provincial egg board sets the price that grading stations pay to producers.

34. There are two main income support programmes under the Agricultural Policy Framework; the Canadian Agricultural Income Stabilization (CAIS) programme, and Production Insurance. The costs of both programmes are shared between the federal and provincial governments. Additionally, Canada supports agri-food through government guarantees and exceptional payments.

35. The CAIS programme was launched in December 2003. It is an income stabilization and disaster assistance programme that replaced the Net Income Stabilization Account and the Canadian Farm Income Program. Payments under the CAIS programme are triggered when producers' "production margins" drop below their "reference margins". The production margin is calculated by subtracting allowable expenses (those related directly to the production of agricultural commodities, including feed costs, fertilizer, and pesticides) from allowable income in a year. The reference margin

[25] WTO document G/AG/R/43, 2 September 2005.
[26] WTO document G/AG/R/43, 2 September 2005.
[27] Canadian Dairy Commission (2005).
[28] WTO document G/AG/R/41, 17 February 2005.
[29] WTO documents G/AG/R/42, 25 May 2005, and G/AG/R/43, 2 September 2005.

is the average production margin of the previous five years, excluding the highest and lowest values. The calculation method for the base (reference) margin for eligibility ensures that long-term market trends are incorporated into production decisions. The authorities indicate that the calculation method also provides a stable and predictable basis of support.

36. Under CAIS, producers may choose minimum, medium, or maximum coverage. Under minimum coverage, the producer's production margin would be returned to 70% of the reference margin; under medium coverage, it would be returned to 85% of the reference margin; and under maximum coverage, to 100%. A CAIS participation fee, introduced in 2006, depends on the level of coverage selected. The fee is 0.45% of the reference margin for maximum coverage; 0.3825% for medium coverage, and 0.315% for minimum coverage. Prior to 2006, CAIS participants had to set aside in a special account a share of their reference margins (22% for participants with maximum coverage). CAIS participants are also subject to a Can$55 administrative fee.

37. Federal and provincial government payments under the CAIS programme are determined following a tier system. If the production margin is negative, CAIS pays producers Can$0.60 for every Can$1 needed to restore their production margin to zero (tier 4). Producers are therefore responsible for 40% of the loss. If the production margin in a year is 70% of the reference margin or less, but positive, the Government pays Can$0.80 for every Can$1 needed to restore the production margin to 70% of the reference margin (tier 3), with producers responsible for 20% of the loss. If the production margin is 85% of the reference margin or less, but more than 70%, the Government pays Can$0.70 for every Can$1 needed to restore the production margin to 85% of the reference margin (tier 2), with producers responsible for 30% of the loss. For smaller declines in the production margin, the Government pays Can$0.50 for every Can$1 needed to restore the production margin to 100% of the reference margin (tier 1), with producers responsible for 50% of the loss. Total payments under CAIS are capped at the lower of 70% of the total loss or Can$3 million per producer. Producers of supply-managed commodities are eligible for CAIS payments provided that their production margins fall by more than 30%.

38. Payments under the CAIS programme amounted to around Can$3.6 billion for the period between January 2003 and November 2006. Around 57% of farms in Canada participated in the CAIS programme in 2004, the latest year for which data are available.[30] The Federal Government announced Can$900 million to implement retroactively changes to the method of calculating inventory values under the CAIS programme.[31] The federal and provincial Governments are taking steps towards replacing the CAIS programme with separate catastrophic disaster assistance and income stabilization schemes.[32]

39. Production Insurance was introduced in April 2003 to replace the Crop Insurance Program. Under Production Insurance, producers can insure against production losses caused by natural hazards. The insurance is delivered by provincial public corporations or agriculture departments. Premiums are partly subsidized, with the Federal Government covering about 60% of the Government share of premiums and administrative costs. The Federal Government also has reinsurance arrangements with five provinces (Alberta, Manitoba, New Brunswick, Nova Scotia, and

[30] Nimpagaritse (2006).

[31] Agriculture and Agri-Food Canada online information, "Minister Strahl Announces Can$950 Million for Farmers", 18 May 2006. Viewed at: http://www.agr.gc.ca/cb/index_e.php?s1=n&s2=2006&page=n60518b.

[32] Agriculture and Agri-Food Canada online information, "Minister's Column: Canada's New Government Reaffirms Commitment to Replace CAIS" (undated). Viewed at: http://www.agr.gc.ca/cb/min/pr-im_e.php?s1=col-chro&s2=2006&page=c0830.

Saskatchewan).[33] The Federal Government provides reinsurance to the provincial Production Insurance funds. Government expenditure under Production Insurance was Can$498 million in crop year 2005/06, Can$544 million in crop year 2004/05, and Can$595 million in crop year 2003/04.

40. Canada also maintains several government guarantee programmes. Under the Agricultural Marketing Programs Act (AMPA), and the Advance Payments Program (APP), the Federal Government guarantees cash advances provided by participating producer organizations to their producers.[34] The Federal Government also pays the interest on a portion of such cash advances. As a result of amendments to the AMPA in June 2006, the amount covered by the APP guarantee was raised to Can$400,000 per producer, and the interest-free advance to Can$100,000.[35] In addition, the Spring Credit Advance Program (SCAP) was consolidated with the APP. Total payments amounted to Can$22.7 million under the APP between 2003/04 and 2005/06 under the APP; and to Can$11.7 million under the SCAP. Other programmes providing government guarantees include the Price Pooling Program and the Farm Improvement and Marketing Cooperatives Loans Act (FIMCLA) programme, which was scheduled to expire in March 2006 but has been extended pending consultations with stakeholders.[36] Between 2003/04 and 2005/06 total payments under the FIMCLA programme amounted to Can$4.8 million; no payments were made under the Price Pooling Program.

41. Exceptional payments complement ongoing programme payments. The Transitional Industry Support Program (TISP) provided Can$680 million to producers of cattle and other ruminants in 2004 following the discovery of BSE in Canada.[37] This amount was delivered as a direct per head payment based on cattle and other ruminant inventory in December 2003. An additional Can$250 million was provided under the TISP as general payments based on historical revenue to producers of most commodities. In March 2005, Agriculture and Agri-Food Canada announced close to Can$1 billion in assistance, mostly to producers of grains, oilseeds, cattle, and ruminants.[38] This would be delivered through the Farm Income Payment Program as direct payments (Can$155 million) and general payments (Can$841 million). As at November 2006, producers of grains and oilseeds had received around Can$744 million through the Grains and Oilseeds Payment Program (GOPP). GOPP payments are based on net eligible sales during the period 2000-04. A total of Can$755 million is available under GOPP.

42. Under the Agricultural Products Marketing Act (APMA), the Federal Government may grant provincial entities, including boards and agencies, authority to "regulate the marketing of [any] agricultural product in interprovincial and export trade".[39] This authority is granted through a federal Order upon request by the province. It allows provincial entities to apply to interprovincial and export trade the powers they have with respect to the regulation of marketing activities within a province. In some cases, these powers include the authority to set production quotas and prices.[40] The APMA also

[33] Agriculture and Agri-Food Canada online information, "Production Insurance", July 2006. Viewed at: http://www.agr.gc.ca/index_e.php?s1=prod&page=pi-ap.

[34] Part I, Agricultural Marketing Programs Act.

[35] An Act to amend the Agricultural Marketing Programs Act, 22 June 2006.

[36] The Price Pooling Program was authorized by the Agricultural Marketing Programs Act; the Farm Improvement and Marketing Cooperative Loans Program was authorized by the Farm Improvement and Marketing Cooperatives Loans Act. Agriculture and Agri-Food Canada online information, "Update: FIMCLA Consultations", July 2006. Viewed at: http://www.agr.gc.ca/nmp/fimcla/index.html.

[37] OECD (2005a).

[38] Agriculture and Agri-Food Canada online information, "Government of Canada Announces $1 billion for Canadian Farmers to Ease Cash-Flow Pressures, Set Stage For Transforming Industry", 29 March 2005. Viewed at: http://www.agr.gc.ca/cb/index_e.php?s1=n&s2=2005&page=n50329a.

[39] Section 2(1).

[40] See, for example: Marketing of Agricultural Products Act of Alberta; Natural Products Marketing (British Columbia) Act; Farm Products Marketing Act of Manitoba; Natural Products Act of New Brunswick;

grants provincial entities the power to set levies on the interprovincial movement or export of agricultural goods.[41]

43. A provincial entity that is granted power to regulate the marketing of agricultural products in interprovincial and export trade under an APMA delegation order, enacts regulations or other instruments specifying how that power is exercised. Provincial boards and agencies have enacted marketing regulations with respect to: storage and transportation; grading and quality; revenue pooling; maintenance of books, records, and marketing information; registration of farms; licensing of producers, wholesalers, processors, and truckers; and price setting. There are 81 delegation orders in nine provinces under the APMA (October 2006), covering a wide range of products, including mushrooms, potatoes, wheat, apples, asparagus, beans, berries, flue-cured tobacco, grapes, onions, soya beans, pork, maple syrup, pulses, flax, and supply managed products.

(iv) Export subsidies

44. Canada scheduled export subsidy reduction commitments under the WTO Agreement on Agriculture for 11 product groups comprising cereals, oilseeds, dairy products, and vegetables. The final bound ceiling since 2000 on export subsidy outlays for these commodities is Can$422 million per year. Canada's latest WTO notification on export subsidies covers 2004/05.[42] Total outlays for export subsidies in 2004/05 amounted to Can$93.9 million, roughly 9% more than one year earlier. The commodities that received export subsidies included butter, skim milk powder, cheese, and other milk products.

45. In May 2003, Canada, New Zealand, and the United States informed the WTO that they had reached mutually agreed solutions in the disputes concerning Canada's measures affecting exports of dairy products.[43] In this context, Canada confirmed that nine provinces had eliminated their commercial export milk (CEM) programmes, and that the federal CEM programme would be eliminated by August 2003.

46. Canada deregulated milk for export processing (other than milk class 5(d)) by introducing the CEM category in 2000. Under contracts concluded in advance of production, Canadian producers could sell unlimited quantities of CEM to domestic processors for export processing, on terms and conditions freely negotiated between producers and processors.[44] The WTO found that the CEM scheme and the continued operation of Special Milk Class 5(d) (see above) constituted export subsidies in excess of scheduled quantity commitments.

(v) State-trading enterprises

47. Canada's two main state-trading enterprises in the agriculture sector are the Canadian Wheat Board (CWB) and the Canadian Dairy Commission (CDC).

48. The CWB was established under the Canadian Wheat Board Act of 1935. It acts on behalf of about 69,000 producers of wheat and barley in Western Canada and exports around 16.5 million

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Farm Products Marketing Act of Ontario; and *Loi sur la mise en marché des produits agricoles, alimentaires et de la pêche*.

[41] Section 2(2), Agricultural Products Marketing Act.

[42] WTO document G/AG/N/CAN/62, 2 May 2006.

[43] WTO documents WT/DS113/33, 15 May 2003, and WT/DS103/33, 15 May 2003. For an overview of these disputes see WTO (2003).

[44] WTO (2003).

tonnes of wheat and barley to some 70 countries every year.[45] The CWB has about 20% of the world market share in wheat, 65% in durum wheat, 30% in malting barley, and 15% in feed barley.[46]

49. In September 2006, the Minister of Agriculture and Agri-Food announced the creation of a task force to recommend options "on the way forward in implementing marketing choice for western wheat and barley".[47] The task force issued its report in October 2006. The task force recommended a four-phase transition from a CWB with monopoly powers to "an environment where farmers may sell their wheat or barley to any buyer, including a transformed Wheat Board (CWB II)".[48]

50. The CWB has the exclusive right to sell wheat and barley produced in Western Canada for export and for domestic human consumption.[49] According to Canada's latest notification on state-trading enterprises, the CWB sells wheat and barley for export according to commercial considerations such as price, quality, availability, marketability, and transportation. The volume of grain exported by the CWB is "primarily" a function of supply, less domestic use and inventory adjustments, but the CWB may defer sales "if market conditions warrant".[50] The Canadian Wheat Board Act authorizes the CWB to "fix ... quotas of each kind of grain, or any grade or quality thereof, that may be delivered by producers to elevators or railway cars ...".[51] The Canadian authorities indicate that, in practice, the CWB establishes delivery contracts with farmers in order to coordinate the delivery of CWB grain into the handling system in light of market conditions. Also the CWB does not establish production quotas, but sometimes limits the amount of grain to be accepted for delivery, as this is dependent on sales.

51. The proceeds received by the CWB from grain sales are deposited into one of four "pool" accounts maintained for each grain category (wheat, durum wheat, feed barley, and designated barley). Pooling ensures that each producer receives the same payment for grain of a certain quality delivered to the CWB, regardless of when sales by individual producers take place during the year. Under the pooling system, producers receive an initial payment at the time of delivery to a grain elevator, based on average prices estimated by the CWB. The initial payment, which usually amounts to 65% of the CWB estimated average price, is guaranteed by the Federal Government. Therefore, there could be direct financial transfers from the Government when the pool accounts register a deficit. The last time this occurred was in 2002/03, when the wheat pool incurred a deficit amounting to Can$85 million.[52] The Government also guarantees the CWB's borrowings.

52. The CWB has two export credit programmes, the Credit Grain Sales Program (CGSP) and the Agri-Food Credit Facility (ACF). The CGSP is available to buyers that can provide a sovereign guarantee of repayment, and the ACF is available to private buyers. Under the CGSP, the Federal Government guarantees repayment to the CWB of the principal and interest of credits granted. The CGSP has not been used since 2001/02. Under the ACF, the Federal Government guarantees a declining percentage of the credit receivables based on the repayment period, with the CWB assuming

[45] CWB online information, "CWB General Brochure". Viewed at: http://www.cwb.ca/public/en/publications/index.jsp.

[46] CWB online information, "About Us: Myths and Facts – Frequently Asked Questions". Viewed at: http://www.cwb.ca/public/en/about/myths_facts/faqs.jsp.

[47] Agriculture and Agri-Food Canada online information, "Minister Strahl Announces Task Force on Implementing Marketing Choice for Wheat and Barley", 19 September 2006. Viewed at: http://www.agr.gc.ca/cb/index_e.php?s1=n&s2=2006&page=n60919c.

[48] Agriculture and Agri-Food Canada (2006c).

[49] Canadian Wheat Board Act, Sections 5, 7(1), 24, 32, and 45.

[50] WTO document G/STR/N/4/CAN, 5 November 2002.

[51] Canada Wheat Board Act, Section 28.

[52] Alberta Agriculture, Food and Rural Development (2006).

the risk that is not guaranteed. Credit sales under the ACF amounted to between 3% and 4% of total sales during 2002/03 and 2003/04. On behalf of the Government of Canada, the CWB administers the cash advance programmes for wheat, durum, and barley producers in Western Canada (section (iii) above). Cash advances under these programmes totalled Can$650 million in 2004/05 and Can$706 million in 2003/04.

53. In March 2003, a WTO panel was established to examine the WTO compatibility of a number of measures affecting trade in grains, including the CWB's export regime. The panel report was issued in April 2004.[53] The United States appealed several of the panel's findings. In August 2004, the WTO Appellate Body issued its report.[54] The Appellate Body upheld the panel's finding that the CWB "export regime" resulted in sales that were neither inconsistent with the non-discrimination principle in the GATT 1994, nor contrary to commercial considerations.

54. The CDC has the power to "purchase any dairy product and package, process, store, ship, insure, import, export or sell or otherwise dispose of any dairy product purchased by it".[55] The CDC chairs the CMSMC, which sets the target for industrial milk production in Canada (section (iii) above).

(3) MINING AND ENERGY

(i) Introduction

55. Canada has an abundant mineral and energy base and is a major exporter of minerals, metals and energy; the United States is its predominant export market. In 2005, the value of Canadian exports of ores and other minerals was US$7.3 billion, around double the value of exports in 2002 (US$3.7 billion).[56] Canada produces over 60 minerals and metals. It is the world's largest producer of uranium and potash, and a major producer of aluminium, cadmium, chrysotile asbestos, cobalt, copper, gold, gypsum, magnesium, molybdenum, nickel, platinum group metals, salt, titanium concentrate, and zinc.[57] One of Canada's newest mining industries is diamonds; according to Natural Resources Canada, by 2004, Canada ranked as the world's third largest diamond producer by value.[58]

56. In 2005, Canada produced an estimated 2.5 million barrels of crude oil a day[59], of which some 65% were exported.[60] In the same year, over 98% of Canada's crude exports, at a value of US$35 billion, were destined for the U.S. market.[61] Western Canada, particularly Alberta, is the source of most petroleum production. Proven reserves of crude oil are among the world's largest; they are estimated at nearly 178 billion barrels (in 2005), the major source being oil sands (174 billion barrels). Canada is also a large importer of crude oil, principally from Norway, Algeria,

[53] WTO document WT/DS276/R, 6 April 2004.
[54] WTO document WT/DS276/AB/R, 30 August 2004.
[55] Section 9(1), Canadian Dairy Commission Act.
[56] Comtrade data.
[57] For detailed information on individual minerals, see Natural Resources Canada Mineral and Metal Commodity Reviews. Viewed at: http://www.nrcan.gc.ca/mms/cmy/com_e.html.
[58] Natural Resources Canada online information. Viewed at: http://www.nrcan-rncan.gc.ca./mms/diam/index_e.htm.
[59] Canadian Association of Petroleum Producers online information. Viewed at: http://www.capp.ca/raw.asp?x=1&dt=NTV&e=PDF&dn=103586.
[60] Statistics Canada (2006a).
[61] Comtrade.

the United Kingdom, and the United States (in 2005). The value of imports in 2005 was around US$23.5 billion.[62]

57. Between 1996 and 2004, Can$24 billion in new oil sands investment projects in Alberta had been approved, and an additional Can$62 billion in investments were under study.[63] According to the Canadian Association of Petroleum Producers, foreign interests held close to 50% of Canada's petroleum production in 2005.

58. The Government of Canada sold its remaining 19% shares in Petro-Canada in 2004, concluding a privatization process set in train in the early 1990s. The gross proceeds of the sale totalled Can$3.2 billion, constituting the largest equity offering in Canadian history.[64] Foreign ownership in Petro-Canada is no longer subject to a 25% limit of voting shares as this was dropped in 2001, however, individual ownership restrictions apply to both residents and non-residents.[65]

59. Together with a consortium of private sector companies, the Government of Canada retains an 8.5% interest in the Hibernia offshore oil field, through the Canada Hibernia Holding Corporation, a subsidiary of the Canada Development Investment Corporation, a crown corporation. SOQUEM Inc., a wholly owned subsidiary of la Société Générale de Financement du Québec, undertakes exploration, development, and mining activities throughout the province of Quebec.

60. Canada is the world's third largest producer of natural gas.[66] All of Canada's exports of natural gas, some 63% of its marketable production valued at just over US$32 billion, are to the United States.[67] In 2005, Canada's imports of natural gas, all of which came from the United States, amounted to US$3.2 billion.[68] Canadian gas prices are determined in the larger North American market.[69]

61. According to the authorities, neither the Federal Government nor any provincial/territorial government has a stake in any company involved in the exploration, production or processing of natural gas in Canada. All pipelines within Canada are privately owned and operated with the exception of the natural gas transmission system within Saskatchewan, which is owned and operated by the crown corporation TransGas Limited.[70] Sixteen utilities companies have a regulated monopoly over the distribution of gas; all are privately owned except for two crown corporations, SaskEnergy in Sasktachewan and Manitoba Hydro.[71] Gas prices have been deregulated since 1985.[72]

62. In 2004, electricity generation in Canada was 576 net terawatt-hours: 58% of electricity generated was from hydro power, 17% from coal, 15% from nuclear, and 10% from oil, gas and other

[62] Comtrade.
[63] IEA (2004).
[64] Department of Finance online information. Viewed at: http://www.fin.gc.ca/news04/data/04-056_1e.html.
[65] No individual or related group of individuals is permitted to own more than 20% of the outstanding shares in Petro-Canada.
[66] Government of Canada online information. Viewed at: http://www.investincanada.gc.ca/director.aspx?tabid=946.
[67] Natural Resources Canada online information. Viewed at: http://www.nrcan.gc.ca/statistics/energy/default.html.
[68] Comtrade.
[69] IEA (2004), p. 8. Viewed at: http://www.iea.org/textbase/nppdf/free/2004/canada.pdf#search='energy%20policies%20iea%20countries%20canada%202004'.
[70] IEA (2004), p. 95.
[71] IEA (2004), p. 98.
[72] IEA (2004), p. 102.

sources. All exports of electricity, valued at some US$2,618.3 million[73], were to the United States in 2005; in value terms they were over two and a half-times the value of electricity imports, all from the United States. Challenges faced by the electricity industry include enhancing the reliability of electricity supply between the United States and Canada given the strong links between the two markets, and in the wake of the August 2003 grid failure; as well as developing a Canadian domestic electricity market.[74]

63. Since 2003, the Canadian government has continued to fund the development of renewable fuels, including through funding provided by Sustainable Development Technology Canada[75], the Wind Power Production Initiative (Can$1,180 million over 20 years, from 2001)[76], the Renewable Power Production Incentive (Can$886 million over 15 years, from 2005)[77], the Ethanol Expansion Program (Can$100 million over 3 years, from 2003)[78], and the Canadian Transportation Fuel Cell Alliance (Can$33 million).[79] The Federal Government has also contributed funding (Can$1.1 million) towards the construction of a hydrogen highway to be built between Vancouver and Whistler, British Colombia, which is projected to be completed by 2010.[80]

(ii) Institutional and legal framework

64. The provinces own and manage the natural resources within their jurisdiction, and are empowered to regulate exploration for non-renewable resources as well as development, conservation and management of natural resources and sites and facilities for electricity generation. Although the Yukon does not own resources like provinces, it nevertheless manages and delivers programmes in the same way as provinces. Provinces may also raise taxes, provided these do not discriminate between production exported to another part of Canada and production that remains within the province.[81] Some comprehensive land claim agreements and settlements assign both surface and mineral rights to certain Inuit and First Nation organizations or corporations.

65. The Federal Government's most recent policy objectives for the minerals and metals the sector (excluding uranium) are in the 1996 Minerals and Metals Policy.[82] The Federal Government is responsible for the national policy framework, which includes international trade and transport. It also regulates all aspects of uranium production, transportation and distribution. It has responsibility for trans-boundary environmental impacts as well as polices of national interest, which include: economic development; energy security; and federal energy science and technology.[83] The Federal

[73] Comtrade.
[74] IEA (2004), p. 257.
[75] Sustainable Development Technology Canada online information. Viewed at: http://www.sdtc.ca.
[76] Natural Resources Canada online information. Viewed at: http://www.canren.gc.ca/programs/index.asp?CaId=107&PgId=622. Can$260 million over 15 years was assigned to the WPI by the 2001 budget and this was supplemented by Can$920 million over 15 years in the 2005 budget.
[77] Natural Resources Canada online information. Viewed at: http://news.gc.ca/cfmx/view/en/index.jsp?articleid=167949.
[78] Office of Energy Efficiency online information. Viewed at: http://oee.nrcan.gc.ca/transportation/fuels/ethanol/eep.cfm?attr=8.
[79] Natural Resources Canada online information. Viewed at: http://www.nrcan.gc.ca/es/etb/ctfca/index_e.html.
[80] Natural Resources Canada online information. Viewed at: http://www.nrcan-rncan.gc.ca/media/newsreleases/2004/200413_e.htm.
[81] The Canadian Constitution, Article 92A and the Sixth Schedule.
[82] Natural Resource Canada online information. Viewed at: http://www.nrcan.gc.ca/mms/policy/policy_e.htm.
[83] Natural Resources Canada online information. Viewed at: http://www.nrcan-rncan.gc.ca/media/archives/newsreleases/2003/200363a_e.htm.

Government (through Indian and Northern Affairs Canada, INAC) is responsible for the management of land use, water and mineral resources and the administration of mining lands in the Northwest Territories and Nunavut. The Government collects all mineral royalties generated on Crown land. INAC's mineral administration and resource management responsibilities were devolved to the Yukon in 2003.

66. Natural Resources Canada is the Federal Ministry mandated to ensure the responsible development and use of Canada's natural resources. Nuclear power is regulated by the independent Canadian Nuclear Safety Commission.[84] Natural Resources Canada is responsible for the Export and Import of Rough Diamonds Act, which is the legal instrument for implementing the Kimberly Process in Canada (Chapter III(2)(vi) and (Chapter III(3)(iii)).

67. The National Energy Board (NEB), an independent federal agency, regulates: the construction, operation, and maintenance of interprovincial and international pipelines; pipeline traffic, tolls, and tariffs under its jurisdiction; the construction and operation of international and designated interprovincial power lines; the export and import of natural gas; the export of oil and electricity; and frontier oil and gas activities. The NEB may grant long-term export licences for up to 25 years for oil and gas and 30 years for electricity only after due consideration has been given to meeting the long-term requirements of Canadians.[85] The function of long-term export licensing is to ensure a level playing field between Canadian and foreign consumers with regard to consumption of Canada's oil resources, rather than being a conservation mechanism.[86] The NEB may also regulate export prices for oil and gas, and may exempt NAFTA countries and Costa Rica and Chile from such export prices.[87] According to the authorities, this authority has rarely been used and requires action by the Federal Government.

68. Cooperation between federal, provincial and territorial governments on energy issues takes place formally through the Council of Energy Ministers and on mining, minerals and metals issues through the Mines' Ministers Conference. Both bodies meet annually. Agreement has yet to be reached on the energy chapter of the Agreement on Internal Trade, which is the responsibility of trade ministers.

69. Foreign investment in the mining and energy sectors is governed by the horizontal rules in the Investment Canada Act. Under the Non Resident Ownership Policy in the Uranium Mining Sector, foreign ownership of a uranium mining property is limited to 49% (Chapter II).

70. Under the Canada Oil and Gas Operations Act, applications for authorization to perform activities related to oil and gas in certain geographic areas defined in the Act must be accompanied by "a plan ... for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services" related to the oil and gas project.[88]

71. Provisions are contained in the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, and the Canada-Newfoundland Atlantic Accord Implementation Act, whereby first consideration must be given to services provided, and goods manufactured within the respective provinces, as long as such goods and services are competitive in terms of fair market price, quality,

[84] Nuclear Safety Commission online information. Viewed at: http://www.cnsc-ccsn.gc.ca.
[85] National Energy Board Act, Part VI. Viewed at: http://laws.justice.gc.ca/en/N-7/text.html.
[86] IEA (2004), p. 88.
[87] National Energy Board Act, Part IV. Viewed at: http://laws.justice.gc.ca/en/N-7/text.html.
[88] Canada Oil and Gas Operations Act (Section 5(2)). Viewed at: http://laws.justice.gc.ca/en/O-7/text.html.

and delivery. According to the authorities, in Newfoundland and Labrador, consideration is given to employment and the purchase of local goods and services, in the approval process for petroleum projects. In Nova Scotia, petroleum exploration right-holders in acquiring goods and services relating to the exercise of their rights are required to make all reasonable attempts to use local labour, goods, and services.[89] In addition, the federal and most provincial/territorial governments have implemented tax incentives to support manufacturing and processing that may be of benefit to companies operating in the mining and energy sectors. These tend to take the form of either corporate income tax credits on manufacturing and processing profits, or tax credits for investments related to manufacturing and processing. In most provinces and territories, tax incentives are available only for processing minerals originating in mines located within the respective province or territory.[90]

72. The federal and the provincial/territorial governments collect corporate income taxes from the resource sector (Chapter III). In addition, provincial/territorial governments collect taxes and royalties. In 2004, provinces and territories raised Can$12.5 billion in royalties.[91]

73. The Federal Government, through the Investment Tax Credit for Exploration introduced in 2000, and certain provinces (British Colombia, Manitoba, Ontario, and Saskatchewan) provide tax incentives to promote mineral exploration (excluding hydrocarbons and coal), which, according to industry sources, appear to have made a positive contribution to a strong level of exploration activity since 2000.[92] The Investment Tax Credit for Exploration expired at the end of December 2005, but was reintroduced for 11 months effective May 2006.

74. Electricity generation and internal transportation falls within the jurisdiction of the provinces and Yukon. In most provinces and Yukon, crown corporations, owned by the provincial governments, provide most energy generation, transmission, and distribution. Electricity prices are also regulated at the provincial level and, according to the IEA, Canada's retail electricity prices are among the lowest among its member countries.[93] In some provinces, competition is being introduced. By 2003, retail competition had been introduced in Alberta and Ontario, and wholesale competition had been introduced in Alberta, British Colombia, Manitoba, Ontario, Saskatchewan, and Quebec.[94]

75. Over the period under review, investment incentives were provided by the Government of Alberta with respect to oil sands development.

76. In May 2004, the Government of Canada introduced a trial five-year moratorium on duties imposed on the temporary importation of mobile offshore drilling units.[95]

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[89] Petroleum Resources Regulations of Nova Scotia, Sections 20 & 21. Viewed at: http://www.gov.ns.ca/JUST/regulations/regs/pr6193.htm.

[90] Natural Resources Canada. Viewed at: http://www.nrcan.gc.ca/miningtax/fen_1.htm.

[91] The authorities note that while offshore oil and gas is constitutionally under federal jurisdiction, royalty payments are transferred to Newfoundland and Nova Scotia.

[92] Mines Ministers' Conference 2006, "Taxation Issues for the Mining Industry", August 2006. Viewed at: http://www.nrcan.gc.ca/miningtax/2006_igwg_report_on_tax_e.pdf.

[93] IEA (2004), p. 137.

[94] IEA (2004) Table 20; and information provided by the Canadian authorities.

[95] Natural Resources Canada Press Release of May 4, 2004. Viewed at: http://www.nrcan-rncan.gc.ca/media/newsreleases/2004/200421_e.htm.

(4) MANUFACTURING

77. The share of manufacturing in GDP was 16.5% in 2005, down from 17.5% in 2002.[96] In the same year, the manufacturing sector contributed 13.7% to total employment (14.9% in 2002)[97], continuing a gradual decline that began in 2000.[98] In terms of the value of shipments, just over half of Canada's total manufacturing is located in Ontario, and nearly a quarter is centred in Quebec[99], however, the highest growth in manufacturing shipments in 2004 and 2005 was in Alberta and Saskatchewan, as a result of gains in resource-based industries.[100] Exports of manufactured goods have been affected by a strengthened Canadian dollar.[101]

78. In 2005, exports by the manufacturing sector totalled US$206 billion. The main exports were automotive products, chemicals, and semi-manufactured products. During the same year imports of manufactured goods reached US$248 billion. Intra-industry trade is considerable, the major imports are automotive products, chemicals, office machines and telecommunications equipment, and other non-electrical machinery.

79. The average MFN tariff for the manufacturing sector (ISIC) is 6.5%, which corresponds also to the overall average tariff (see Table AIII.1).[102] As outlined in Chapter III(2)(vii), manufacturing industries have also received border protection through anti-dumping and countervailing measures, many of which have been applied with respect to imports of steel.[103] As at mid 2006, four safeguard investigations conducted between 2002 and 2005 concerning certain steel products, bicycles, and barbeques had not resulted in the application of any safeguard measures.

80. During the period under review, the federal and provincial governments have continued to implement or have introduced strategies or incentives to support certain manufacturing industries (see below). In addition a number of provinces/territories offer manufacturing-related tax credits (Table AIII.5).

(i) Aircraft

81. The Canadian aerospace and defence sector, which includes aircraft construction, is highly export-orientated; 84% of the sector's revenues were from exports in 2004. The value of aircraft production in Canada was Can$6.8 billion in 2005. The sector has benefited from a number of federal government initiatives including: the Scientific Research and Experimental Development Program; Technology Partnerships Canada (which expires on 31 December 2006) (Chapter III(4)(ii)); industry infrastructure development; sales financing through the Regional Aircraft Credit Facility[104] (which

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[96] Statistics Canada online information, "Gross domestic product at basic prices by industry". Viewed at: http://www. statcan.ca.

[97] Statistics Canada online information, Employment by Industry. Viewed at: http://www.statcan.ca.

[98] Statistics Canada online information, CANSIM table 282-0094, viewed at: http://www.statcan.ca.

[99] Statistics Canada online information, "Manufacturing shipments, by subsector, by province and territory". Viewed at: http://www.statcan.ca.

[100] Statistics Canada (2006b).

[101] Statistics Canada (2005a).

[102] WTO Secretariat calculations.

[103] For manufactured products subject to anti-dumping measures (as at 30 June 2006) see WTO document G/ADP/N/145/CAN, 1 September 2006.

[104] As reported by the authorities, the Regional Aircraft Credit Facility (RACF) was established to provide financing assistance, lease or loan guarantees, for the sale of Canadian-built fixed-wing commercial aircraft to Canadian air carriers.

expires in March 2008) and Export Development Canada; and access to U.S. Department of Defence procurement through the Defence Production/Defence Sharing Arrangements.[105]

82. In April 2005, the Federal Government and industry launched the Canadian Aerospace Partnership (CAP) to enhance the global competitiveness of Canada's aerospace industry, and subsequently endorsed a National Aerospace Defence Strategic Framework, which presents a 20-year vision to guide future government policy and programme decisions as well as to present a basis for collaboration among stakeholders.[106] The new Government, which took office in February 2006, is considering all options for the way forward.

83. In 2006, the Government of Quebec launched The Quebec Aeronautical Development Strategy, which outlines the Government's measures to assist the Quebec aeronautical industry. Assistance is focused in five key areas, to support: prime contractors and equipment manufacturers; the development of Quebec small and medium-sized enterprises; the maintenance of a pool of qualified workers; innovation and productivity; and a strengthened partnership with the Federal Government. Forms of support, *inter alia*, include financial assistance (including loans, support to finance sales, share capital); foreign trade missions and participation in major air shows; support for educational institutions, and promotion of the foreign researcher and expert visa programme; and fiscal measures to support pre-competitive research.[107]

(ii) Textiles and clothing

84. In 2005, textiles and clothing contributed Can$4.8 billion to GDP, down from Can$6 billion in 2002; the decline was larger in clothing than in textiles.[108] In 2005, Quebec accounted for just over half of Canada's total textiles and clothing shipments, and Ontario accounted for just under one third. Employment in the textile industry, the more capital-intensive side of the industry, has been relatively stable, however, there have been considerable job losses in the more labour-intensive clothing sector, with employment falling from 94,000 in 2002 to 71,000 in 2004.[109]

85. The bulk of Canadian exports of clothing are to the United States[110], and in this connection, the NAFTA allows specified quota amounts (the tariff preference level) of non-originating clothing and textiles products to be traded among partners duty free. Utilization rates of tariff preferences level to the United States have been decreasing during the review period in all categories (Table IV.1). As at the time of Canada's previous review, the quotas have hardly been used for exports to Mexico.

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[105] Industry Canada online information. Viewed at: http://strategis.ic.gc.ca/epic/internet/inad-ad.nsf/vwapj/aerospace-e-PDF.pdf/$file/aerospace-e-PDF.pdf.

[106] Industry Canada online information. Viewed at: http://strategis.ic.gc.ca/epic/internet/inad-ad.nsf/en/ad03860e.html.

[107] Développement Économique Innovation et Exportation Québec online information. Viewed at: http://www.mdeie.gouv.qc.ca/page/web/portail/en/ministere/service.prt?svcid=PAGE_GENERIQUE_CATEGORIES56&iddoc=75193.

[108] Statistics Canada online information, "Gross Domestic Product by Industry". Viewed at: http://www.statcan.ca/cgi-bin/downpub/listpub.cgi?catno=15-001-XIE2006008.

[109] Statistics Canada (2005b).

[110] Bloskie (2005).

Table IV.1
Utilization rates of the NAFTA tariff preference level for exports to the United States, 2002-05
(Per cent)

Product description	2002	2003	2004	2005
Wool apparel	100	100	98	91
Wool suits MB	49	53	50	51
Cotton or man-made apparel	87	82	80	64
From imported fabric	..	60	56	38
From imported yarn	..	39	40	37
Cotton or man-made fibre fabrics and made-up goods	86	77	63	50
Woven fabrics	100	100	99	78
Knit fabrics	40	33	18	14
Quilts and other goods of sub heading 9404.90	..	0	0	0
Cotton or man-made fibre spun yarns	26	25	26	22

.. Not available.

Source: Foreign Affairs and International Trade Canada (http://www.dfait-maeci.gc.ca/eicb/textile/textiles-en.asp).

86. Since 2003, new Federal Government initiatives have been developed to provide support to the Canadian textiles and clothing industry to be more internationally competitive and to adjust to the impact of trade liberalization resulting from the elimination of tariffs on imports from LDCs in 2003[111], final bound reductions in 2004 (Chapter III(2)(iv)(b)), and the removal of quotas under the final phase of the ATC in December 2004.

87. The Canadian Apparel and Textiles Industries Program (CATIP), which began operations in January 2003 with funding of Can$33 million, targeted projects designed to help apparel and textile companies and their industry associations to: apply new technologies to improve productivity; strengthen marketing strategies; identify high-potential niche markets; develop e-business capabilities; and diversify products. All of the funding was disbursed, to over 400 projects, and the programme has been brought to a close.

88. In 2004, the Government initiated a new three-year programme, the Textile Production Efficiency Component (CANtex) with initial funding of Can$26.7 million. This was supplemented by additional funding of Can$50 million in December 2004, and extended until 2010. In September 2006, however, funding was cut by Can$24.9 million as a result of a government spending review. The programme has two components: the "productivity component" assists companies in improving their production efficiencies; and the "transformative component" is for manufacturing companies diversifying from lower into higher value-added textile products targeted at growth niche markets.[112]

89. A number of tariff remission schemes pertaining to imports of textiles and clothing are in operation; many were renewed during the review period (Chapter III(2)(iv)).[113]

90. Stemming from the 2005-06 Budget, the Government of Quebec, made adjustments to an existing design tax credit (of 15% or up to 30% for small and medium-sized enterprises (SMEs) for wages or fees paid to in-house or consultant fashion designers, employed by corporations producing at

[111] According to Statistics Canada, Bangladesh is the only LDC that engages in substantial textiles and clothing trade with Canada. Imports from Bangladesh amounted to Can$165.2 million in 2000, and had increased to Can$480 million by 2004 (Statistics Canada 2005b).

[112] Industry Canada online information. Viewed at: http://strategis.ic.gc.ca/epic/internet/inctp-ptc.nsf/en/Home.

[113] Canada Gazette online information. Viewed at: http://canadagazette.gc.ca/partII/2005/20050112/html/sor09-e.html; and Canada Border Services Agency online information. Viewed at: http://www.cbsa-asfc.gc.ca/menu/D8-e.html.

least 20% of their manufacturing in Quebec. The scope of the tax credit was adjusted to broaden the scope of eligible corporations as well as to recognize the work of patternmakers and assistant designers in the clothing and textiles sector.[114]

(iii) Shipbuilding

91. Cruise ships, tankers, tugs, and drilling and platform ships (12 lines under HS 89) are some of a handful of manufactured goods that are not bound in Canada's tariff schedule (Chapter III(2)(iv)). At the time of Canada's trade policy review in 2000, the authorities noted that this was the only instrument to protect the small Canadian shipbuilding industry.[115] Applied tariffs in the shipbuilding sector, range from zero up to 25%.

92. In 2001, the Federal Government announced a new policy framework for the shipbuilding and industrial marine sector, focused on enhancing the sector's opportunities as well as its growth and innovation, supplementing existing policy measures.[116] This stemmed from earlier concerns expressed by the Canadian ship-building community to the Federal Government regarding a lack of investment and innovation, business practices that were detrimental to productivity, a lack of financial support, and the limits of the federal procurement budget. The shipbuilding industry experienced a significant decline in both value added and employment during the 1990s.[117]

93. One of the of the main elements of the policy framework for the shipbuilding and industrial marine sector has been the Structured Financing Facility (SFF), which offered financial assistance to buyers and lessees of Canadian built ships. Financial support through the programme had three components: (i) non-repayable contributions of up to 15% of the purchase price of a new Canadian-built vessel; (ii) government credit insurance for part of the loan or lease to acquire Canadian-built vessels; and (iii) non-repayable contributions towards private loan or lease insurance within certain limits.[118] Total support under the three components could not exceed 15% of the purchase price. Since 2002, over thirty projects have been funded or funding is under way, with contributions to individual projects ranging from Can$41,636 to Can$11,103,450.[119] The programme is scheduled to expire in 2007.[120]

94. The Government of Quebec offers a refundable tax credit for the construction of vessels as well as a reduction of tax on capital on the acquisition of vessels made entirely in Quebec.[121]

[114] Additional Information on the Budgetary Measures (2005-2006), April 21, 2005 (page 47). Viewed at: http://www.budget.finances.gouv.qc.ca/budget/2005-2006/en/pdf/AdditionalInfoMeasures.pdf. The design tax credit also applies to industrial design activities.

[115] WTO document WT/TPR/M/78, 5 February 2001.

[116] As noted by the Minister of Industry, these policy measures included: a 25% tariff for several classes of vessels, accelerated tax write-offs for owner-operators; and a Buy Canada policy for competitive federal procurements. Viewed at: http://strategis.ic.gc.ca/epic/internet/insim-cnmi.nsf/en/uv00038e.html.

[117] Industry Canada online information. Viewed at: http://strategis.ic.gc.ca/epic/internet/insim-cnmi.nsf/en/uv00038e.html.

[118] Industry Canada online information. Viewed at: http://strategis.ic.gc.ca/epic/internet/insim-cnmi.nsf/en/uv00003e.html.

[119] Industry Canada online information. Viewed at: http://strategis.ic.gc.ca/epic/internet/insim-cnmi.nsf/en/uv00033e.html.

[120] WTO document G/SCM/N/123/CAN, 1 August 2005.

[121] MDEIE Québec online information. Viewed at: http://www.mdeie.gouv.qc.ca/page/web/portail/en/nav/programmes.html?&iddoc=44888.

(iv) Automotive industry

95. The automotive industry (including parts and equipment) is Canada's largest manufacturing activity, contributing Can$22 billion to GDP in 2005, and representing 12.4% of manufacturing GDP (Can$20 billion, or 11.8% of manufacturing GDP, in 2002).[122] Exports to the United States account for 97.7% of the industry's exports.[123] Large investments announced by some major companies have generated a positive outlook for the industry.[124]

96. In 2001, following WTO dispute settlement proceedings launched by the European Union and Japan, the Auto Pact agreement between the United States and Canada was dismantled.[125] The Auto Pact had been in place since 1965, and had created a single North American manufacturing market. The Pact had eliminated tariffs between the two countries on cars, trucks, buses, tyres, and automotive parts, and included the use of certain local-content measures.[126]

97. The authorities indicate that vehicles sold at the retail level in countries other than Canada and the United States do not comply with the Canada Motor Vehicle Safety Act, cannot be altered to comply, and therefore cannot be imported into Canada. Vehicles sold at the retail level in the United States may be eligible for importation because they fall under the NAFTA provisions (Annex 300-A) and are manufactured to near identical safety standards (and can be modified to meet Canadian requirements). Under NAFTA, imports of vehicles sold at the retail level in Mexico are to be phased in between 1 January 2009 and 1 January 2019.[127] Such used vehicles permanently imported into Canada will have to conform, or be made to conform, to all applicable Canadian safety standards.

98. In 2004, the auto industry accounted for close to 47% of Ontario's international merchandise exports.[128] In April 2004, the Government of Ontario, launched an Automotive Investment Strategy, in partnership with industry; funding totalling Can$500 million was targeted at advanced-skills training for workers, improved environmental and energy technologies, public infrastructure, and investments in research and innovation.[129]

(5) TELECOMMUNICATION AND BROADCASTING SERVICES

(i) Introduction

99. Since Canada's previous Review, there have been no major regulatory changes to its telecommunication or broadcasting services. According to a panel of experts appointed by the Minister of Industry, while Canada's telecommunications policy and regulatory framework have been

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[122] The two main activities (NAICS definition) in value terms have been: motor vehicle manufacturing (Can$7.677 billion in 2002, and Can$8.750 billion in 2005); and motor vehicle parts manufacturing (Can$9.818 billion in 2002 and Can$10.396 billion in 2005).

[123] Industry Canada (2005).

[124] Statistics Canada (2006b).

[125] For a summary of the dispute, see: WTO online information. Viewed at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds142_e.htm.

[126] For background on the Auto Pact, see: Government of Canada online information. Viewed at: http://canadianeconomy.gc.ca/english/economy/1965 canada_us_auto_pact.html.

[127] CBSA Memorandum D-9-1-11. Viewed at: http://www.cbsa-asfc.gc.ca/E/pub/cm/d9-1-11/d9-1-11-e.html.

[128] Ministry of Finance Ontario online information. Viewed at: http://www.fin.gov.on.ca/english/budget/bud04/pdf/papers_all.pdf.

[129] Government of Ontario online information. Viewed at: http://www.premier.gov.on. ca/news/Product.asp?ProductID=401.

effective in promoting competition and achieving social objectives, regulatory reform is needed in order to better respond to the changing technological environment.[130] As an initial response to the Panel's recommendations, the Government of Canada has issued a policy direction to the regulator to rely on market forces to the maximum extent feasible.[131]

100. Total telecommunication services revenues (excluding broadcasting) were Can$34.5 billion in 2005, an increase of 3.5% over the previous year; most of this increase is due to the revenue growth of broadband internet and wireless services. Wireless services are the largest sector in the Canadian telecommunications market, representing 32% of the industry's revenues in 2005. In the majority of the subsectors there are one or two large incumbents operating.[132] The level of competition in the industry has increased steadily. The incumbent's revenue market share (excluding out-of-territory operations where they are reported as "competitive carriers") was at 65% for 2005, down from 70% in 2003. Competitors' 2005 revenue market shares were 19% for facility-based competitors, 11% for ILEC out-of-territory operations, and 5% for resellers.

101. At end of 2004, 96% of households in Canada had wireline telephone services. The average annual growth rate of wireless telecommunication services subscribers was 12% over the period 2001-05; the total number of subscribers reached approximately 17.0 million in 2005, a penetration rate of 52 per 100 inhabitants.[133] In 2005, 89% of households were located within areas served by cable broadcasting distribution undertakings (BDUs) capable of providing both broadband and broadcasting services. However, from June 2003 to June 2006, Canada fell from second to ninth place in terms of broadband penetration rates among OECD countries.[134]

(ii) Institutional and legal framework

102. Canada's commitments on telecommunication services attached to the Fourth Protocol of the GATS cover most services.[135] Canada's list of specific commitments excludes services regulated under the Broadcasting Act[136], which include telecom services supplied for transmission of programmes to direct reception by the public (i.e. direct to home (DTH) and direct broadcast satellite (DBS) television services). Canada bound its existing foreign ownership restrictions in telecommunications (see below); it committed to remove traffic routing restrictions for all international and satellite services, aimed *inter alia*, at preventing Canadian traffic from being routed via the United States.[137] There are no restrictions to enhanced or value-added services.

103. Canada's revised conditional offer on services proposes to remove remaining restrictions to market access on basic telecoms services under the cross-border mode of supply.[138]

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[130] Telecommunications Policy Review Panel online information. Viewed at: http://www. telecomreview.ca/epic/internet/intprp-gecrt.nsf/en/ Home.

[131] Industry Canada online information. Viewed at: http://www.ic.gc.ca/cmb/welcomeic.nsf.

[132] CRTC (2006).

[133] CRTC (2006).

[134] Industry Canada (2006) and OECD (2005c).

[135] WTO document, GATS/SC/16/Suppl.3, 11 April 1997.

[136] The Broadcasting Act defines broadcasting as any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programme made solely for performance or display in a public place. The *Broadcasting Act* also states that the CRTC shall regulate and supervise all aspects of the Canadian broadcasting system.

[137] WTO document WT/TPR/S/112/Rev.1, 19 March 2003, Chapter IV(5).

[138] WTO document TN/S/O/CAN/Rev.1, 22 May 2005.

(a) Telecommunications

104. Industry Canada is responsible for telecommunications policy and for spectrum policy and management. It also has responsibility for the licensing of international submarine cables, as well as for the licensing for use of spectrum under the Radiocommunication Act.

105. The Canadian Radio-television and Telecommunications Commission (CRTC) is an independent, regulating public authority with quasi-judicial powers.[139] The Telecommunications Act (1993) gives the CRTC regulatory and enforcement powers in the telecom sector~~s~~. The CRTC is also responsible, in collaboration with the Competition Bureau, for ensuring major suppliers do not engage in anti-competitive practices; in a merger assessment, both entities play a role, with the CRTC focusing, among other things, on foreign ownership requirements.

106. The CRTC Interconnection Steering Committee (CISC) assists in the development of interconnection standards and arrangements, and of guidelines for CRTC's other regulatory activities. The CISC consists of a number of working groups composed of representatives from the CRTC, from industry and the general public.

107. All telecom facilities-based common carriers must be Canadian-owned and controlled, and incorporated under federal or provincial laws.[140] Canada's current regulatory regime on foreign ownership is identical to its GATS commitments. It limits foreign direct investment in facilities-based service providers to a combined maximum of 46.7% of voting shares, based on 20% direct ownership, and 26.7% indirect ownership.[141] In addition, not less than 80% of the members of the board of directors must be Canadian. These provisions do not apply to the ownership and operation of: international submarine cables, mobile and fixed satellite systems; and resellers of telecommunication services, where 100% foreign investment is allowed.[142] In the context of Canada's previous Review, several WTO Members asked about prospects for liberalizing these limitations on foreign ownership and control.[143] According to the authorities, Canada is examining the potential benefits and implications of increasing foreign investment in the Canadian telecom industry. However, no decision to amend the existing regime has been made (as at end 2006).

108. Resellers and facilities-based providers of local and long-distance telecommunication services only need to register with the CRTC, while a licence is required for international service providers. In order to provide local telephone service a company needs to register with the CRTC as a competitive local exchange carrier (CLEC).

109. Spectrum licences for wireless operations are granted by Industry Canada, which has favoured the use of auctions subject to the payment of one-time fees.[144] Industry Canada determines the terms and conditions of the licence, and it may consider the use of policy provisions such as spectrum aggregation limits to foster competition. Licences for international submarine cables, satellites, and satellite earth stations are also granted by Industry Canada.

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[139] Canadian Radio-television and Telecommunications Commission Act. Viewed at: http://laws. Table 20, justice.gc.ca/en/c-22/227307.html.

[140] Telecommunications Act (1993) and Canadian Telecommunications Common Carrier Ownership Regulations (1994). Viewed at: http://laws.justice.gc.ca/en/t-3.4/sor-94-667/179048.html.

[141] The 26.7% indirect ownership is the result of a 33.3% stake in a holding company that holds the remaining 80% of the operating company.

[142] Telecommunications Act (1993) and Canadian Telecommunications Common Carrier Ownership Regulations (1994).

[143] WTO document WT/TPR/M/112/Add.1, 16 June 2003.

[144] There is no obligation for Industry Canada to use the auction mechanism.

110. Licences for the provision of basic international telecommunications services (BITS) are granted by the CRTC. In 2005, the CRTC introduced changes to the BITS licences, such as a new streamlined application form, longer terms (ten instead of five years), and the elimination of most filing requirements designed to detect anti-competitive conduct. Unless an anti-competitive conduct affects the Canadian market, the CRTC does not regulate international settlement arrangements.[145]

111. The CRTC requires the incumbent local exchange carriers (ILECs) to provide competitors with unbundled access to essential facilities – including access to local loops – under mandated pricing. The CRTC also requires ILECs to provide interconnection to competitive carriers.[146] In order to ensure non-discriminatory terms and conditions, ILECs are also required to file tariffs with the CRTC for interconnection and for other services where the ILEC is dominant. CRTC mandates the equal sharing of costs for the establishment of interconnecting trunks in each pre-determined interconnecting region, and adopts a "bill-and-keep" approach to compensation of calls termination.[147] Fixed to mobile termination rates are not imposed nor published.[148]

112. The CRTC encourages market participants to make use of alternative methods for resolving interconnection disputes, including bilateral negotiations, third-party mediation or staff-assisted dispute resolution.[149] A more formal dispute mechanism, available through the CRTC, provides for the CRTC to issue a decision or determine that a further public process is required. The CRTC established an expedited process for dispute resolution for telecommunications in 2004[150], and for broadcasting in 2005.

113. Canada has signed international agreements with Argentina and Mexico that provide for coordination in the provision of satellite services[151], as well as terrestrial radiocommunications agreements and arrangements with Denmark, France, and the United States on the coordination and use of radio frequencies.[152]

114. Voice over Internet Protocol (VoIP) services are regulated by the CRTC only when they are provided and used as a local telephone service. In order to prevent ILECs' abuse of market power, the CRTC requires ILECs to file tariffs for VoIP services that are dependant upon access to the service provider's own network. The ILECs are also restrained from promoting the service to former customers in accordance with all existing regulatory requirements. However, VoIP services that are available for use with any high-speed Internet connection, as well as services provided by CLECs and resellers, are not subject to economic regulation. Computer-to-computer (peer-to-peer) VoIP services are not subject to regulation.

115. Local number portability (LNP) has been implemented in Canada's major centres, and ILECs are required to provide LNP in smaller centres upon request by the CLECs.[153] In 2005, the CRTC

[145] Telecom Decision CRTC 98-17, 1998.

[146] Telecom Decision CRTC 97-8, 1997.

[147] Under the bill-and-keep mechanism, originating carriers do not have to compensate terminating carriers for the costs of completing calls. The CRTC also allows for mutual compensation, where appropriate.

[148] Telecom Decision CRTC 97-8, 1997; Telecom Decision CRTC 2004-96, 2004; and Telecom Decision CRTC 2006-35, 2006.

[149] Online information. Viewed at: http://www.tbs-sct.gc.ca/rma/dpr1/04-05/CRTC-CRTC/CRTC-CRTCd4503_e.asp.

[150] Online information. Viewed at: http://www.crtc.gc.ca/archive/ENG/Circulars/2004/ct2004-2.htm.

[151] Online information. Viewed at: http://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/en/h_sf06101e.html.

[152] Online information Viewed at: http://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/en/h_sf01361e.html.

[153] Telecom Decision CRTC 97-08, 1997.

issued a decision requiring all Canadian wireless telephone companies to implement wireless number portability in most of Canada by 14 March 2007.[154] The wireless number portability plans have also included inter-modal (wireless-to-wireline and wireline-to-wireless) portability. Carrier pre-selection for long-distance and international calls has also been implemented.[155]

(b) Broadcasting

116. Under various statutes, broadcasting licences may not be granted to companies that are not Canadian owned and controlled according to the same share and board restrictions applied to telecommunication companies (see above), and incorporated under Canada's federal and provincial laws as well as other measures.[156] Under current rules, foreign ownership of broadcasting programming undertakings (BPUs) and broadcasting distribution undertakings (BDUs) is limited in Canada to 20% of an operating company and 33.3% of a holding company. This means that in the broadcasting, cable or DTH business, combined direct (20%) and indirect (26.7%[157]) ownership can reach 46.7%. For regulatory purposes, internet service providers (ISPs) are considered telecommunication companies.

117. Pursuant to the Broadcasting Act, the CRTC established a system to regulate the amount of Canadian content broadcast in Canada. Among other measures, the CRTC requires that private television stations and networks and ethnic TV stations achieve a yearly Canadian content level of 60% overall measured during the day, and 50% measured during the evening broadcast period. The Canadian Broadcasting Corporation (CBC) must ensure that at least 60% of its overall schedule, measured during the day, is Canadian. Requirements for pay-tv, specialty and pay-per-view services vary and are set out in licensing conditions.

118. The CRTC also requires that all radio stations ensure 35% of their popular musical selections are Canadian each week. French-language radio stations must ensure that at least 65% of the popular vocal music selections they broadcast each week are in French. Satellite subscription radio undertakings must, if certain subscription thresholds have been met, distribute a minimum of ten original Canadian-produced channels or contribute a minimum of 6% of gross revenues to the development of Canadian talent. Also, these undertakings must distribute a minimum of four French-language original Canadian-produced channels. A minimum of 85% of the musical selections broadcast on all Canadian-produced channels must be Canadian, and a minimum of 65% of all popular vocal musical selections broadcast on each French-language channel must be French-language selections.[158]

119. The Government of Canada has revised its satellite-use policy to accommodate broadcasting services to the Canadian public. As of September 2005, Canadian "digital broadcasting subscription radio services", in exceptional circumstances, where no Canadian satellite facilities are available to accommodate specialized delivery of a digital subscription radio service, may use foreign satellites to transmit their services to Canadian homes to provide specialized Canadian programming services. Additionally, Canadian programming services may use foreign satellites to distribute their signal to terrestrial distribution service headends. However, programming undertakings must use Canadian satellites to distribute their signals directly to homes via a Canadian DTH service. Foreign

[154] Telecom Decision CRTC 05-72, 2005.
[155] Telecom Decision CRTC 92-12, 1992.
[156] Broadcasting Act, Radiocommunication Act, Radiocommunication Regulations, and Direction to the CRTC (Ineligibility of Non-Canadians).
[157] Obtained by multiplying 33.3% and 80%.
[158] CRTC decisions 2006-37 and 2006-38.

programming services, in order to be distributed, must be approved by the CRTC and "listed" on the list of Eligible Satellite Services.

120. CRTC rules determine that broadcasting distribution undertakings, such as cable companies and DTH satellite services, must give priority to the carriage of Canadian television signals.[159]

(6) FINANCIAL SERVICES

(i) Introduction

121. Although the number of banks operating in Canada remained virtually unchanged during the review period, the composition of the banking sector changed slightly (Table IV.2). While the number of domestic banks increased from 16 to 21 between March 2003 and March 2006, the number of subsidiaries of foreign banks fell from 32 to 26. There were three more foreign bank branches in March 2006 than three years earlier. All domestic banks were privately owned.

Table IV.2
Financial institutions operating in Canada, 2003 and 2006[a]

	2003[b]		2006[b]	
	Number of institutions	Assets[c] (Can$ million)	Number of institutions	Assets[c] (Can$ million)
Banks				
Domestic	16	1,645,618	21	1,905,673
Foreign subsidiaries	32	85,425	26	109,446
Foreign branches	21	25,916	24	37,078
Trust and loan companies				
Bank-owned	30	197,912	30	203,298
Other	34	9,720	38	16,829
Cooperative credit associations[d]	7	11,983	7	14,931
Life insurance companies				
Canadian-incorporated	42	325,091	45	361,997
Foreign branches	55	27,986	53	18,429
Fraternal benefit societies				
Canadian-incorporated	13	6,201	12	5,838
Foreign branches	10	1,035	9	1,523
Property and casualty insurance companies				
Canadian-incorporated	89	48,068	93	65,825[e]
Foreign branches	102	21,163	96	24,838[e]
Pension plans	1,205	90,656	1,304	116,576

a Covers only federally regulated companies, including institutions in the process of liquidation or termination and institutions limited to servicing existing business.
b March.
c Total assets of the industries regulated by OSFI are not the simple sum of the figures above. The figures for entities that report on a consolidated basis include subsidiaries whose assets may also be included in a different category.
d Covers only the national and six of the provincial credit union associations, which are trade associations and central finance facilities for credit unions. These cooperative credit associations only offer services to the credit union system, and not to the public.
e December 2005.

Source: WTO Secretariat, based on OSFI (various years) *Annual Reports*.

122. Total banking sector assets were around Can$2.24 trillion in September 2006. The six largest banks (all of them domestic banks) accounted for 93% of total banking assets as at end-2005, roughly

159 Canadian Radio-television and Telecommunications Commission, online information. Viewed at: http://www.crtc.gc.ca/eng/INFO_SHT/b311.htm.

the same share as reported in Canada's last Review. Banks represent the largest portion of financial sector assets, with 56% of the total held in Canada in 2005.

123. The Canadian authorities consider that high aggregate bank capital and credit quality provide banks with a comfortable financial buffer.[160] They see some limited credit risks from a combination of high energy prices, exchange rate appreciation, and competition from Asia, which place significant financial stress on sectors accounting for approximately 12% of corporate debt.

124. The life and health insurance subsector, including federally and provincially regulated companies, comprised 105 companies in November 2006, down from 120 in 2000. Of the 99 companies that were federally registered, 53 were branches of foreign companies. The three largest companies accounted for 63% of the domestic market in 2004.

125. There were some 215 private property and casualty insurance companies in November 2006. Of these, 187 were registered federally, including 95 branches of foreign companies. The five largest companies accounted for around 35% of property and casualty net premiums written in Canada in 2004.

126. Canada's banks and life and health insurers are significant participants in foreign markets. Approximately 30% of 2005 bank earnings were generated outside Canada, and around 54% of the life and health insurance subsector's 2004 premium income was from foreign sources.

127. The federal and the provincial governments share jurisdiction over financial services. While banking falls exclusively under federal jurisdiction, credit unions, mutual funds, and securities firms are regulated largely by the provinces. Insurance and trust and loan companies are regulated at both the federal and provincial levels.

128. The Department of Finance develops regulations governing banks and other federally regulated financial institutions. The Office of the Superintendent of Financial Institutions (OSFI) supervises federally regulated financial institutions and provides input for the development of federal regulations. Three provinces (New Brunswick, Ontario, and Manitoba) rely on OSFI for the prudential supervision of provincially chartered insurance companies on their behalf. Under these agreements, OSFI supervises provincially chartered life insurance companies and provincially chartered property and casualty insurance companies. Provincial authorities regulate the market conduct of all insurance companies operating in their jurisdiction.

129. Canada's main federal financial legislation includes the Bank Act, the Trust and Loan Companies Act, the Insurance Companies Act, and the Cooperative Credit Associations Act. Canada's financial legislation is subject to review every five years. New financial legislation was adopted as a result of the 2001 review.[161] In the context of the most recent review, legislation was introduced to Parliament in November 2006.[162]

(ii) Banking services

130. Canada's GATS market access and national treatment commitments are undertaken in accordance with the Understanding on Commitments on Financial Services.[163] In the context of the post-Uruguay Round negotiations on financial services, Canada revised the commitments it had made

[160] International Monetary Fund (2006) and Bank of Canada (2006a).
[161] WTO (2003).
[162] See Department of Finance Canada (2006a).
[163] WTO document GATS/SC/16/Suppl.4/Rev.1, 6 June 2000.

in 1995 by allowing foreign banks to branch directly into Canada, and by eliminating a requirement for foreign bank subsidiaries to obtain Ministerial approval to open more than one branch in Canada. Canada has tabled a revised offer on services in the context of the Doha negotiations.[164] It has also co-sponsored a paper on financial services liberalization and coordinated a plurilateral request on financial services. The revised offer largely reflects the legislative and regulatory framework applied to the banking sector as at mid 2006.

131. There have been no major legislative changes affecting market access in the banking sector since Canada's last Review. In the context of the 2006 review of financial legislation, the Government proposes to eliminate the requirement for the Minister of Finance to approve the entry of "near banks". Near banks are foreign entities that provide banking-type services such as consumer loans, but are not regulated as, or like, banks in their home jurisdiction.[165] The authorities indicate that, in addition, the legislative review has identified several technical changes that will streamline the foreign bank entry framework, for example by allowing foreign banks to: invest in mutual fund management entities and in closed-end funds; hold temporary investments in non-permitted entities; and to engage directly in specialized financing entities.

132. IMF staff have expressed concern about the lack of progress in addressing regulatory issues related to bank mergers.[166] The authorities also note that bank mergers are not a priority for the Government. The OECD has noted that uncertainty about the criteria that the Minister of Finance might apply in approving a bank merger makes it difficult for possible mergers to be explored.[167] It also points out that restrictions on bank ownership might be hampering bank efficiency gains and market expansion (see below). The Canadian authorities indicate that Canada's size-based ownership regime does not distinguish between foreign and domestic investors, and that its purpose is to enhance the safety and soundness of the largest financial institutions, where concerns regarding the impact of failure on depositors, policyholders, and the wider economy are greatest, while also providing the flexibility to encourage market entry.

133. Although there is no limitation on cross-border supply or consumption abroad of banking services, foreign financial services providers must establish a commercial presence to solicit business in Canada.

134. There are no statutory restrictions on foreign ownership of banks. However, banks with equity of Can$5 billion or more (so-called large banks) must be "widely held", that is, not more than 20% of the bank's voting shares or 30% of its non-voting shares can be acquired by a single person, regardless of nationality.[168] Additionally, there is a prohibition against any single person (Canadian or foreign) acquiring control of a large bank. There are certain limited exceptions on the control prohibition, including for entities such as a widely held regulated bank-holding company or for a foreign bank that controls a Canadian bank subsidiary that has grown through the Can$5 billion threshold. The Guidelines Respecting Control in Fact (Bank Act) set out the policy objectives and factors that the Minister of Finance would consider in assessing whether an application to acquire more than 10% of the shares of a large bank contravenes the control prohibition. The Canadian authorities indicate that there have been no applications to acquire more than 10% of the shares of a large bank since 2002.

[164] WTO document TN/S/O/CAN/Rev.1, 23 May 2005.
[165] Department of Finance Canada (2006a).
[166] IMF (2006).
[167] OECD (2006b).
[168] Bank Act, Section 374(1).

135. Banks with equity of Can$1 billion or more, but less than Can$5 billion (medium banks) are allowed to be closely held. However, at least 35% of voting shares of a medium bank must be listed and posted for trading on a recognized exchange and be widely held.[169] The approval of the Minister of Finance is required for any single person (Canadian or foreign) to own more than 10% of the shares of a medium or small bank (i.e. equity of less than Can$1 billion).[170] In the context of the 2006 review of financial legislation, the Government proposes to increase the equity threshold for large banks to Can$8 billion, and for small banks to Can$2 billion.[171]

136. A foreign bank may establish and operate a subsidiary, a full-service branch, a lending branch, or a representative office in Canada. A foreign bank is allowed to operate concurrently a full-service and a lending branch. Although lending branches may lend in Canada, they are not permitted to take any deposits. Full-service branches may take deposits of Can$150,000 or more. Certain exceptions are contained in the Prescribed Deposits (Authorized Foreign Banks) Regulations. Deposits in full-service branches are not covered by deposit insurance (see below). There are no statutory restrictions on the number of banks (domestic or foreign) that can establish and operate in Canada. There are no restrictions on the number of offices that foreign bank subsidiaries or branches can open in Canada.

137. Subsidiaries of foreign banks are allowed to provide the same services as domestic banks. Banks may not offer auto-lease financing.[172] They cannot directly offer insurance services, except certain credit-related insurance, nor deal in securities.[173] Foreign bank branches are subject to the same restrictions.[174]

138. Canada allows widely held banks to organize under a holding company structure. Banks or bank holding companies may hold as subsidiaries other financial services firms (e.g., insurance companies and investment dealers), financial agents (e.g., portfolio management and payroll administration firms), ancillary services firms, and other firms specified in legislation, including information service firms and real property brokerage firms.[175]

139. To establish and operate in Canada, a domestic bank and a subsidiary of a foreign bank must obtain a letter patent of incorporation and an Order to Commence and Carry on Business.[176] Letters patent of incorporation are issued by the Minister of Finance upon recommendation of the Superintendent of Financial Institutions. Orders to Commence and Carry on Business are issued by the Superintendent. A single application is sufficient to obtain both documents; applications are administered by OSFI; the application fee for letters patent of incorporation is Can$32,000.[177]

140. Under the Bank Act, the Minister of Finance is entitled to take into account all relevant matters in determining whether to issue letters patent of incorporation.[178] The Bank Act contains an

[169] Bank Act, Section 385(1).
[170] Bank Act, Section 377.1.
[171] Department of Finance Canada (2006a).
[172] Bank Act, Section 417.
[173] Insurance Business (Banks and Bank Holding Companies) Regulations and Securities Dealing Restrictions (Banks) Regulations.
[174] Insurance Business (Authorized Foreign Banks) Regulations and Securities Dealing Restrictions (Authorized Foreign Banks) Regulations.
[175] Bank Act, Part IX.
[176] Bank Act, Section 22 and section 48(1).
[177] Regulations Amending the Charges for Services Provided by the Office of the Superintendent of Financial Institutions Regulations 2002.
[178] Bank Act, Section 27.

illustrative list of such relevant matters.[179] One of the items on the list is "the best interest of the financial system in Canada". The Superintendent issues Orders to Commence and Carry on Business if satisfied that the bank complies with all relevant requirements of the Bank Act.

141. OSFI has published the criteria that an applicant must meet to incorporate and operate a bank.[180] No distinction is made between domestic banks and subsidiaries of foreign banks, except that applications from foreign banks must include information on the extent to which the bank is subject to consolidated supervision and regulation in its home jurisdiction. Additionally, foreign banks must provide a statement by an official from their home jurisdiction indicating that they are in good standing, and that the home jurisdiction is aware of the bank's intention to establish a subsidiary in Canada. For applicants that are part of a corporate group, the Superintendent considers the extent to which the affiliates of the group are supervised by OSFI, agencies in other Basel Accord signatories, and agencies that have concluded an MOU on regulatory cooperation and supervision with OSFI. According to the Canadian authorities, Canada has 17 active MOUs with foreign regulatory authorities.[181] As part of the evaluation of an application, OSFI may conduct an on-site review.

142. Orders to Commence and Carry on Business remain in force indefinitely unless the Superintendent determines otherwise. Domestic banks and subsidiaries of foreign banks must publish a notice indicating their intention to apply for letters patent of incorporation. There is no statutory time limit for assessing applications. OSFI's initial assessment of an application takes an average of three months.[182] An additional two months are normally required to fulfil the public notification requirement. Banks do not need additional licences to establish and operate in particular provinces. There were 16 new bank entry applications between 2003 and October 2006; two of them were withdrawn.

143. Foreign bank branches must obtain an Order Permitting the Establishment of a Branch, which is issued by the Minister of Finance upon recommendation of the Superintendent.[183] In addition, they must obtain an Order to Commence and Carry on Business.[184] OSFI has published the criteria and information requirements that must be fulfilled to establish and operate a foreign bank branch.[185] Foreign bank branches applying for an Order Permitting the Establishment of a Branch are also subject to a public notice requirement. The application fee for an Order Permitting the Establishment of a Branch is Can$32,000.[186] Bank branches do not need additional licences to establish and operate in particular provinces. There were nine applications for the establishment of foreign bank branches between 2003 and October 2006; none was withdrawn.

[179] Bank Act, Section 27.
[180] OSFI (2004b).
[181] British Virgin Islands Financial Services Commission (banking), Cayman Islands Monetary Authority (banking), China Banking Regulatory Commission (banking), Financial System Superintendency of El Salvador (banking), France's Commission Bancaire (banking), Germany's BaFin (banking and insurance), Hong Kong Monetary Authority (banking), Hong Kong Insurance Authority (insurance), Mexico's National Banking and Securities Commission (banking), Superintendency of Banks of the Republic of Panama (banking), U.K. Financial Services Authority (banking and insurance), U.S. Federal Reserve Board Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation (banking), Illinois Department of Financial and Professional Regulation (banking and insurance), Massachusetts Department of Insurance (insurance), State of New York Banking Department (banking), State of North Carolina Office of the Commissioner of Banks (banking), and U.S. Office of the Thrift Supervision (banking and insurance).
[182] OSFI (2004b).
[183] Bank Act, Section 524(1).
[184] Bank Act, Section 534(1).
[185] OSFI (2002a).
[186] Regulations Amending the Charges for Services Provided by the Office of the Superintendent of Financial Institutions Regulations 2002.

144. To establish a full-service branch in Canada, a foreign bank must have a minimum of Can$5 billion in world-wide assets.[187] Foreign bank branches must maintain a capital equivalency deposit with an OSFI-approved financial institution. For full-service branches, the amount of the deposit is set at Can$5 million; it must be maintained at that level, or at 5% of the branch's Canadian liabilities, whichever is greater. For lending branches, the deposit is Can$100,000.[188] The Superintendent may require a foreign bank branch to maintain additional assets with an OSFI-approved financial institution if necessary to protect depositors and creditors. The minimum regulatory capital required to establish a domestic bank or a subsidiary of a foreign bank is Can$5 million.[189] At least half of the directors of a foreign bank subsidiary, and at least two-thirds of the directors of any other bank must reside in Canada at the time of each director's election or appointment.[190]

145. OSFI supervision is in accordance with its Supervisory Framework of 1999, supplemented by its Supervisory Framework Rating Assessment Criteria of 2002.[191] According to OSFI, Canadian banks are well advanced in their efforts to implement Basel II, but "ongoing work is required, particularly on qualifying for the more complex Advanced Internal Ratings-Based approach to calculating capital".[192] Banks may determine interest rates freely. Bank service fees are not subject to official controls.

146. The Canada Deposit Insurance Corporation (CDIC) insures eligible deposits at its member institutions. All banks taking deposits of less than Can$150,000 must be members of the Canada Deposit Insurance Corporation (CDIC). Banks taking only deposits of Can$150,000 or more may opt out of CDIC. Full-service branches of foreign banks are not eligible for CDIC membership. The maximum basic coverage available for eligible deposits held at a single member institution is Can$100,000 per depositor. Prior to 2005, the maximum coverage was Can$60,000. Membership fees vary depending on members' capital adequacy, net impaired assets, and other prudential factors.

147. OSFI has published a guideline identifying the policies and procedures that banks must put in place to comply with statutory requirements to combat money laundering and terrorist financing.[193] The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), a federal Government agency created in July 2000, collects, analyses, and assesses information related to money laundering and terrorist financing activities. FINTRAC also ensures that banks comply with the record-keeping, reporting, and customer identification requirements of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

(iii) Insurance services

148. Under Canada's GATS commitments, commercial presence is required to offer insurance, reinsurance, and retrocession services, except for marine insurance. A foreign company may incorporate as a separately capitalized subsidiary, or a branch; it may also acquire an existing Canadian enterprise, subject to notification and prior government review. A number of restrictions, including residency and nationality requirements relating to broking and agency services have also been listed in Canada's GATS Schedule. In general, Canada's revised services offer does not contain any new commitments in insurance.[194]

[187] OSFI (2002a).
[188] Bank Act, Section 534(3).
[189] Bank Act, Section 52(1).
[190] Bank Act, Section 159(2).
[191] OSFI (2002b).
[192] OSFI (2006).
[193] OSFI (2004a).
[194] WTO document TN/S/O/CAN/Rev.1, 23 May 2005.

149. There have been no major legislative changes affecting market access in the insurance sector since Canada's last Review. In the context of the 2006 review of financial legislation, the Government proposes to allow providers of marine insurance to register at the federal level, a possibility that is already available to providers of all other insurance services.[195]

150. Under the Insurance Companies Act, foreign incorporated insurance companies cannot insure risks in Canada unless the Superintendent issues an authorizing order.[196] The Insurance Companies Act lists the information that must accompany an application for an order[197]; the Superintendent is entitled to request additional information. The application process involves a public notice requirement. The foreign company must appoint a Canadian resident as its chief agent; it must appoint an actuary and an auditor, and must have vested in trust assets having a prescribed value. Under the Act, the Superintendent must publish in the *Canada Gazette* a quarterly list of foreign insurance companies authorized to carry on business in Canada.

151. Under Part I of the Excise Tax Act, an excise tax of 10% is applicable on premiums paid to non-established direct non-life insurers (except marine insurers) on risks within Canada, unless such insurance is deemed not to be available in Canada.

152. There are no statutory restrictions on foreign ownership of federally registered insurance companies. A person (Canadian or foreign) must obtain the approval of the Minister of Finance to acquire more than 10% of any class of shares of a federally regulated insurance company.[198] At least 35% of the voting shares of federally registered insurance companies with equity of Can$1 billion or more must be listed and posted for trading on an OSFI recognized exchange and be widely held. Mutual life insurance companies that had equity in excess of Can$5 billion prior to their conversion into life insurance companies with common shares (demutualization) in 1999-00 must be widely held. In addition, there is a prohibition against any single person (Canadian or foreign) acquiring control of such an insurance company, with some exceptions. The Guidelines Respecting Control in Fact (Insurance Companies Act) set out the policy objectives and factors that the Minister of Finance would consider in assessing whether an application to acquire more than 10% of the shares of a demutualized insurance company would contravene the control prohibition. Two companies are subject to these rules.

153. The requirement in Quebec's "Loi sur les assurances" obliging non-residents of Canada to obtain ministerial approval to acquire more than 30% of the voting shares of a Quebec chartered insurance company was repealed in December 2002.

154. Foreign companies may establish and operate in Canada through a subsidiary. There are no restrictions on the number of insurance companies that can establish in Canada, except in areas subject to a public monopoly, (i.e. motor vehicle insurance in British Columbia, Manitoba, and Saskatchewan, and in Quebec, motor vehicle insurance with respect to personal injury and death. Subsidiaries of foreign companies may offer the same services as domestic firms).

155. Foreign insurance firms may incorporate their Canadian subsidiary at the federal level or at the provincial level. To incorporate federally and start operations, domestic insurance companies and subsidiaries of foreign insurance companies must apply for letters patent of incorporation and an Order to Commence and Carry on Business in a process analogous to establishing a bank.[199] OSFI

[195] Department of Finance Canada (2006a).
[196] Section 573(1).
[197] Section 579(1).
[198] Insurance Companies Act, Section 407(1).
[199] Insurance Companies Act, Sections 22 and 52.

has published the criteria and information requirements that must be fulfilled to establish and operate an insurance company at the federal level.[200] The information requirements largely mirror the criteria and information requirements for banks. The application fee for letters patent of incorporation is Can$32,000.[201] The minimum capital requirement for federally incorporated insurance companies (domestic or foreign) is Can$5 million.[202] At least half of the directors of a foreign-owned insurance subsidiary must be Canadian residents; for domestic insurance companies, at least two thirds of the directors must reside in Canada.[203] There have been 14 applications for letters patent of incorporation since 2003, two of which were withdrawn.

156. Insurance companies must be licensed in each province where they do business. The Canadian authorities have indicated that the licensing requirements across provinces are very similar in practice, and that provincial efforts are under way to identify areas where harmonization can be promoted.[204]

157. Provinces maintain responsibility for regulation relating to the terms and conditions of insurance contracts, rates, and standards of competence and behaviour of insurance agents and brokers. The authorities indicated that all provinces except Quebec have adopted the Uniform Life Insurance Act, a model law governing insurance contracts and beneficiary rights in the life and health insurance sector; they also noted that Quebec's regulations in this area are very similar.

158. In general, only automobile insurance rates are subject to official controls.

(7) MARITIME TRANSPORT

159. In value terms, maritime cargo represented 12.5% of the value of Canada's total international trade in 2005; in volume terms, the share reached 39.7% (including trade with the United States). Excluding trade with the United States, maritime cargo represented 45.2% of the value of Canada's trade (exports and imports) in 2005, and 83.2% of the volume.[205]

160. By the end of 2005, the Canadian merchant fleet, defined as self-propelled vessels of at least 1,000 gross tons flying the Canadian flag, consisted of 184 ships and 2.4 million gross tons. The majority of this fleet serves the domestic (cabotage) market, while most of the Canadian-controlled international fleet operates under foreign flags and employs foreign officers and crews. According to the authorities 109 ships are controlled by Canadian shipping but registered under foreign flags. Dry bulk carriers, although declining in importance, constitute the central part of the Canadian merchant fleet; they accounted for 46% of tonnage and 33% of vessels in 2005.[206] In eastern Canada domestic cargo is dominated by crude oil shipments and petroleum products. In western Canada transport of forest products by tug and barge is the primary activity. Within the Great Lakes and the St. Lawrence region, water transport is related mainly to cargo movements of iron ore, coal, limestone, salt, grain, tanker products and other types of bulk.

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[200] OSFI (2004c).

[201] Regulations Amending the Charges for Services Provided by the Office of the Superintendent of Financial Institutions Regulations 2002.

[202] Insurance Companies Act, Section 57(1).

[203] Insurance Companies Act, Section 167(2).

[204] WTO document WT/TPR/M/112/Add.1, 16 June 2003.

[205] Transport Canada online information. Viewed at: http://www.tc.gc.ca/pol/en/Report/anre2005/add/taba22.htm.

[206] Transport Canada online information. Viewed at: http://www.tc.gc.ca/pol/en/Report/anre2005/8D_e.htm.

161. The Federal Government has exclusive competence for inter-provincial/territorial and international transport. Transport Canada is responsible for setting maritime transport policies, regulations, and standards, while implementation and enforcement is mainly in the hands of the Canadian Transportation Agency. In 2003, legislative and regulatory responsibilities relating to pleasure craft safety, marine navigation services, pollution prevention and response, and navigable waters were transferred from Fisheries and Oceans Canada to Transport Canada.[207]

162. During the period under review, Canada modified its maritime transport legislation to supplement the more significant changes implemented in earlier years. The Canada Shipping Act (CSA), the principal legislation governing the operation of Canadian flag vessels and of foreign vessels in waters under Canada's jurisdiction, was amended in 2001. The CSA received Royal Assent in November 2001 but the amended act will not enter into force until supporting regulation has been developed, which according to the authorities will be completed by early 2007.[208] The Marine Liability Act of 2001 consolidated in a single statute all marine liability regimes, including compensation for pollution damage.[209]

163. The Coasting Trade Act reserves certain commercial maritime activities to duty-paid, Canadian-registered ships in Canadian waters, including activities related to the exploration, exploitation, and transportation of non-living natural resources in the waters above the continental shelf. These activities include the transportation of goods or passengers by ship between points in the territory of Canada or above the continental shelf of Canada, and any other marine activity of a commercial nature in the territory of Canada and the waters above the continental shelf. Foreign ships may perform these activities where no Canadian registered duty-paid ship is available or suitable to carry out the activity and where the activity entails the carriage of passengers, an identical or similar marine service is not available. Canada does not have reservations for the transportation of government cargo.

164. To register a ship in Canada, the owner must be a Canadian citizen, permanent resident or a corporation incorporated under federal or provincial laws of Canada (regardless of the origin of capital). However, foreign corporations may also register a ship in Canada, if the ship is not already registered in another country, and if one of the following is acting with respect to all matters relating to the ship: (i) a subsidiary of the foreign corporation that is incorporated in Canada, (ii) an employee or director in Canada of a branch office of a corporation that is carrying business in Canada, or (iii) a ship management company incorporated under the federal or provincial laws of Canada.[210] Notwithstanding the above, the Minister of Transport may direct the registrar to refuse to register a vessel built outside Canada.[211] The authorities note that this provision was not used during the period under review.

165. A Canadian-registered ship must be operated by Canadian officers and a Canadian crew, hold Canadian certificates, and comply with Canadian safety standards. The pertinent regulations are the Crewing Regulations and the Marine Certification Regulations.

166. The 1987 Shipping Conference Exemption Act, which exempts certain conference practices from the provisions of the Competition Act, was amended in 2001 to inject greater competition into

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[207] Transport Canada online information. Viewed at: http://www.tc.gc.ca/aboutus/whatwedo.htm.

[208] Transport Canada online information. Viewed at: http://www.tc.gc.ca/mediaroom/backgrounders/b05-M005e.htm.

[209] Transport Canada online information. Viewed at: http://www.tc.gc.ca/acts-regulations/GENERAL/m/mla/act/mla. html.

[210] Canada Shipping Act, 2001, Part 2.

[211] Canada Shipping Act, 2001, Article 50.

liner shipping conference operations.[212] The new provisions allow individual conference lines to offer a rate of services different from those published as part of the conference tariff; shorten from 15 to 5 days the period to notify other members of its intention to take independent rate action; and give individual conference members the right to negotiate confidential services contracts.[213] There are no requirements for non-conference liner companies to be licensed or to file documents with the Government of Canada.

167. The Canada Marine Act (CMA) of 1998 permitted the transfer of the management and operation of 19 major ports to non-profit corporations (Canada Port Authorities) and the St. Lawrence Seaway to a not-for-profit corporation (St. Lawrence Seaway Management Corporation). Former Bill C-61, an Act to amend the Canada Marine Act and Other Acts, proposed to modify the port authorities' access to funding; however, the Bill died on the Order Paper in Parliament in late 2005. The authorities indicate that Transport Canada is continuing to assess potential amendments to the CMA, with the objective of Bill C-61 remaining valid.

168. At end November 2006, Transport Canada had transferred, deproclaimed[214], or terminated its interest at 466 of the 549 sites identified at the beginning of the Port Divestiture Program in 1996. As at that date, 83 ports remained under the responsibility of Transport Canada, with the Government intending additional divestitures to further increase the efficiency of the port system.[215] Canada has adopted the IMO's International Ship and Port Facilities Security Code and has put into operation two other initiatives to ensure greater security of maritime transport (Chapter III(2)(i)).[216]

169. There are three categories of ports: (i) Canada port authorities (CPAs), (ii) regional/local ports, and (iii) remote ports.[217] CPAs consist of publicly accountable boards of directors, nominated by user groups and various levels of government, that independently manage 19 ports considered critical to Canada's domestic and international trade. These ports continue to be owned by Transport Canada but are financially self-sufficient. CPAs may engage in lease contracts with third parties, including foreign firms, for the provision of services within the limits of the port. In 2005, for example, by acquiring Britain's P&O Group, Dubai Ports assumed, *inter alia*, a lease contract with the Vancouver Port Authority.[218]

170. A review of the Canada Transportation Act conducted in 2001 produced recommendations, including on maritime transport.[219]

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[212] Shipping Conferences Exemption Act 1987. Viewed at: http://www.tc.gc.ca/acts-regulations/GENERAL/s/scea/act/scea.html.

[213] WTO document S/CSS/W/106, 4 October 2001.

[214] To revoke the designation of a port as a public facility.

[215] Transport Canada online information. Viewed at: http://www.tc.gc.ca/mediaroom/releases/nat/2006/06-h093e.htm.

[216] DFAIT online information. Viewed at: http://www.international.gc.ca/internationalcrime/menu-en.asp.

[217] Regional and local ports are ports smaller than CPA ports, and serve regional economic and tourism needs; remote ports serve the transport needs of isolated communities. Transport Canada online information. Viewed at: http://www.tc.gc.ca/mediaroom/releases/nat/2006/06-h093e.htm.

[218] Vancouver Board of Trade online information. Viewed at: http://www.boardoftrade.com.

[219] As part of this review, the review panel issued, *inter alia*, the following recommendations concerning maritime transport: marine services to be commercialized when possible; the Government should commit to the elimination of the liner conference exemptions from competition law; the Government should pursue negotiations, at least with NAFTA partners, to eliminate cabotage restrictions; and borrowing limits in the letters patent of CPAs should be removed. Canada Transportation Act Review online information viewed at: http://www.reviewcta-examenltc.gc.ca/index.htm.

171. Canada participated in the post-Uruguay Round negotiations on maritime transport services where it made commitments on maritime auxiliary services and additional commitments on access to/use of port services and multi-modal transport services.[220] In its revised offer on services in the context of the DDA negotiations, Canada has conditionally offered to: add four new port services to its additional commitments (pilotage; navigation aids; shore-based operational services essential to ship operations, including communications, water, and electrical supplies; and anchorage, berth, and berthing services); make commitments with respect to international maritime transport; and to improve its commitments in maritime agency services.[221]

172. Under the NAFTA, Canada and Mexico agreed not to introduce more restrictive measures other than those already in place at the time of the signing of the agreement.[222] Canada has an agreement with China to strengthen cooperation in maritime transport.[223] Canada has not negotiated any other bilateral maritime agreements.

(8) AIR TRANSPORT

(i) Introduction

173. Aviation is Canada's third largest commercial transport sector, behind truck and rail transport. In 2005, it contributed 0.4% to GDP.[224] Total passenger traffic has increased steadily in recent years, rising from 54.4 million passengers in 2002 to 63.7 million in 2005 (45% domestic, 31% transborder, and 24% international).[225] In 2004, air cargo transport accounted for 0.4% of total cargo by volume and 5.7% by value of Canada's trade (imports and exports) with the United States. The value of cargo shipped by air for all other international destinations was 22.6% of all trade.[226]

174. Following the Government's divestiture of its assets in Air Canada in the 1980s, all Canadian airlines are privately owned. The Air Canada "family" remains Canada's largest airline business[227], however, its dominance, particularly over the scheduled domestic market (including transborder flights) has decreased since 2000, particularly due to the growing share of Westjet, Canada's second largest airline as well as other regional carriers (Table IV.3).

175. There has been restructuring within the airline industry over the period under review. In April 2003, Air Canada filed for bankruptcy protection and underwent a period of internal restructuring. It emerged from bankruptcy protection in September 2004. Jetsgo filed for bankruptcy in 2005, having failed to restructure its operations, and its airline's operator certificate was subsequently cancelled.[228] In 2001, allegations that Air Canada had engaged in anti-competitive practices against low cost carriers WestJet and CanJet in 2000 and 2001, led to a case being filed by

[220] WTO document S/L/34, 20 September 1996.

[221] WTO document TN/S/O/CAN/Rev.1, 22 May 2005.

[222] Transport Canada online information. Viewed at: http://www.transport-canada.org/pol/en/acf/tcg5/menu.htm.

[223] Canada Treaty Information online information. Viewed at: http://www.treaty-accord.gc.ca/ViewTreaty.asp?Treaty_ID=101585.

[224] Transport Canada (2005).

[225] Transport Canada (2005). Transborder passenger flights refer to flights between Canada and the United States.

[226] Transport Canada (2005), Addendum.

[227] Air Canada mainline has become a wholly owned subsidiary controlled by ACE Aviation Holdings Inc., a holding company with publicly traded shares. Several previously internal divisions of Air Canada (e.g. technical services, ground handling, cargo) and subsidiaries (e.g. Air Canada Jazz) have been spun off as limited partnerships created under Quebec law and are controlled by ACE.

[228] Transport Canada (2005).

the Competition Bureau with the Competition Tribunal. This litigation was terminated by the Bureau in 2004, because of the significant changes that had occurred in the industry since 2001 (see below).

Table IV.3
Domestic market share of the main Canadian airlines (offered seat kilometres), 2001-06
(Per cent)

Carrier	**December 2001**	**December 2002**	**December 2003**	**December 2004**	**December 2005**	**December 2006**
Air Canada family	78.3	67.2	59.9	52.4	60.5	60.6
Westjet	15.0	19.9	24.6	29.4	30.2	32.3
Jetsgo	0.0	2.3	6.0	8.6	0.0	0.0
Canjet	0.0	1.9	2.1	3.0	2.7	0.0
Other	6.7	8.7	7.4	6.6	6.6	7.1

Source: Transport Canada, (2002-05) *Transportation in Canada: Annual Reports,* 2002-2005 and preliminary 2006 data supplied by Transport Canada.

176. Canada has 26 principal airports, called national airport system (NAS) airports, which are considered essential to the national transportation infrastructure, as well as a large number of regional and local airports. NAS airports handle around 95% of Canada's scheduled air passenger and cargo traffic.

177. The Federal Government has retained ownership of 23 of the 26 NAS airports, however, it has transferred operational and management responsibility for 22 of them to not-for-profit Airport authorities under 60 year leases.[229] Airport authorities finance themselves through charges levied on passengers and aircraft operators as well as through debt.

(ii) Institutional and regulatory framework

178. Economic regulation of the air industry is carried out under the Canada Transportation Act (CTA) of 1996 and Canada's bilateral air agreements, both of which are administered by the Canadian Transportation Agency. The Canadian Transportation Agency has responsibility for granting, suspending, and revoking licences; reviewing prices and responding to complaints about unreasonable fares on routes on which there is no, or very limited, competition; and addressing complaints about conditions of carriage for domestic services.

179. Transport Canada regulates air transportation safety as well as the use of computer reservation systems (CRSS) for the marketing and sale of commercial air services. Regulations in the case of the latter were amended in 2004 to permit market forces to discipline previously regulated matters. For example, airlines are no longer required to participate in all CRSS operating in Canada, permitting them to decided how to distribute and sell their air services.[230]

180. The authorities note that there is no economic framework legislation for airports in Canada. Other than general legislation on safety and security, airport authorities are subject to the provisions of their lease, the corporate legislation under which they were incorporated[231], and the provisions of the Airport Transfer (Miscellaneous Matters) Act, which largely addresses matters related to the transfer of the airports. Operational matters are addressed by the Aeronautics Act and the Canadian Aviation regulations.

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[229] This stemmed from the 1994 National Airports Policy, which promoted commercialization of federally owned airports. Of the four remaining NAS airports, three territorial NAS airports are owned and operated by territorial governments, and Kelowna International Airport is operated by the City of Kelowna.

[230] Transport Canada (2004b).

[231] The majority of airports are incorporated under federal legislation. However, some are incorporated under provincial legislation.

181. In June 2006, the Minister of Transport introduced the "Canada Airports Act" Bill, which proposes to provide a disclosure and accountability framework[232], and a new corporate governance regime for Canada's airport authorities, as well as disclosure requirements for other large (above 300,000 passengers) or significant (territorial capital) airports. The Bill proposes a fee regime, including charging principles in line with international standards; consultation and disclosure requirements; an appeal process for the eight largest airports in Canada; and a more basic fee regime for other airports that would be subject to the Act. The Bill also proposes that the Federal Government would have authority to audit the business affairs of airport authorities and issue directions or orders regarding issues such as equitable access measures and allocation of slots to airlines. At end 2006, the Bill was awaiting second reading in the House of Commons.

182. The air transport market between Canada and other countries is governed by over 70 bilateral agreements and arrangements.[233] This includes three new agreements signed since 2003, with Algeria, Viet Nam, and Guyana. Over the same period, a number of existing agreements were further liberalized, including changes to Canada's 1995 agreement with the United States which were negotiated in November 2005. When this agreement comes into force, the provisions will bring the 1995 agreement into conformity with the U.S. Open Skies model, the most significant amendments involving unlimited 5th freedom rights for passenger and all cargo traffic and 7th freedom rights for stand-alone cargo services.[234] The authorities note that these provisions are consistent with Canada's new international air policy, the Blue Sky Policy (see below).

183. With respect to first and second freedoms, Canada applies the Chicago Convention, Article 5 for non-scheduled flights and a bilateral regime for scheduled flights, through which it applies the IASTA principles on a reciprocal basis. Canada withdrew from the International Air Services Transit Agreement (IASTA) in the 1980s and according to the authorities does not intend to rejoin at this time.

184. Under the CTA, only Canadians are eligible for a licence to provide domestic flights, and foreign ownership of Canadian airlines is limited to 25% of voting shares.[235] The Canadian Transportation Agency is afforded some flexibility in its examination of foreign investment as part of its determination of Canadian control. For example, a number of Canadian airlines have implemented a variable voting share structure that enables foreign equity investment in the air enterprise beyond the 25% limit, while ensuring that voting interests and control continue to rest with Canadians.[236] Approval by Industry Canada under the Investment Canada Act is required for the direct acquisition

[232] Bill C-20. Viewed at: http://www2.parl.gc.ca/content/hoc/Bills/391/Government/C-20/C-20_1/C-20_1.PDF.

[233] Canadian Transportation Agency online information. Viewed at: http://www.cta-otc.gc.ca/air-aerien/agreements/main_e.html. The listing on this website is not fully up to date.

[234] Transport Canada (2005). Other potential benefits of the amended agreement noted, include: greater access for Canadian passenger and cargo carriers to the U.S. market as a platform from which to serve third countries; increased pricing flexibility for Canadian and U.S. carriers; more options for Canadian airports to attract U.S. carriers; and lower prices for consumers. See also Transport Canada press release of November 11 2005 "Flying the Open Skies". Viewed at: http://www.tc.gc.ca/mediaroom/releases/nat/2005/05-h225e.htm.

[235] The CTA definition is: "Canadian citizen or a permanent resident, a government in Canada or an agent of such a government or an entity incorporated under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least 75%, or such lesser percentage as the Governor in Council may by regulation specify, of the voting interests are owned and controlled by Canadians".

[236] Variable voting shares are reserved for non-Canadian investors and carry one vote per share, unless the total number of variable voting shares exceeds 25% of all outstanding voting shares, or the total number of votes cast at a shareholders' meeting exceeds 25% – in this case, votes attached to each variable voting share would be decreased proportionately so that voting rights of non-Canadians are limited at all times to 25% of the total number of votes cast.

of any company with assets of over Can$5 million that provides transportation services, and for indirect acquisitions of companies with assets over Can$50 million (Chapter II(4)). The establishment of a new Canadian transportation business is subject to notification but not to review. There are no individual ownership restrictions on any Canadian airlines.

185. With respect to international routes, almost all of Canada's bilateral arrangements and agreements contain a provision that allows either party to deny services if the airline is not nationally owned and controlled. As a result of a multiple designation policy[237] introduced in 2002, Canadian carriers may apply to operate scheduled international air services to any international market. Previously, more than one carrier could only serve non-U.S. markets where one-way scheduled passenger trips exceeded 300,000 passengers per year.[238] The authorities indicate that, as a result, more Canadian carriers now provide services on international routes. In 2005, 25 U.S. airlines, and 43 foreign airlines provided service between Canada and various international destinations.[239]

186. Canada has concluded agreements or technical arrangements recognizing certification of providers doing repair, overhaul, and maintenance work on Canadian aircraft and components and/or manufacturing in: Austria; Brazil; the European Union[240]; France; Germany; Hong Kong, China; Israel; the Netherlands; Singapore; the United Kingdom; and the United States.

187. NavCanada, operates Canada's air navigation system as a private not-for-profit monopoly and funds itself through debt and charges levied on carriers.[241] As provided for in the Civil Air Navigation Services Commercialization Act these charges, *inter alia*, must not discriminate between domestic and international flights nor between Canadian or foreign air carriers, and must not be higher than necessary to meet the company's current and future financial requirements. NavCanada is under the control of its Board of Directors, which is appointed by the users, employee unions, and the Government. The Government's role is limited to safety regulator, and adjudicating appeals against NavCanada's user charges as set out in the Act.

188. In the wake of the 2001 terrorist attacks on the United States, Canada introduced an enhanced air travel security system. This is funded by charges levied on flight tickets.[242] The Federal Government also provides short-term indemnification (120 days renewable) for third-party war and terrorism liabilities for providers of essential aviation services in Canada.[243]

189. Airline-specific provisions exist within Canada's Competition Act, as a result of the merger of Air Canada and Canadian Airlines in 1999, and concerns about potential abuse of Air Canada's dominant market position. In 2003, an interim ruling in the case filed by the Competition Bureau concerning allegations that Air Canada had engaged in anti-competitive practices against low cost

[237] The 2002 multiple designations policy facilitates both the designation of all Canadian carriers wishing to operate scheduled services in international markets and the allocation of rights in cases where designations are limited and/or unused under bilateral agreements.

[238] Transport Canada online information. Viewed at: http://www.tc.gc.ca/mediaroom/releases/nat/2002/02_h051e.htm.

[239] Transport Canada (2005).

[240] The authorities are in the final stages of completing a new Canada/Europe Bilateral Aviation Safety agreement (November 2006).

[241] These include: air traffic services, community aerodrome radio services, aeronautical telecommunications, information services, and air traffic control.

[242] The charge is applicable to flights between the 89 airports in Canada at which the Canadian Air Transport Security Authority delivers the enhanced air travel security system. Effective 1 March 2005, the charge is further reduced to Can$4.95 for one-way domestic travel, Can$8.42 for transborder travel and Can$17 for other international air travel. See http://www.cra-arc.gc.ca/E/pub/et/ atscrates/README.html.

[243] Transport Canada (2004b).

carriers (see above) found that the company had "operated or increased capacity at fares that did not cover the avoidable costs of providing the service". This jurisprudence has provided clarification as to the kinds of conduct by a dominant carrier that could trigger enforcement action by the Bureau. Stemming from this litigation, the Commissioner of Competition set out in an open letter to the industry in 2004 the approach the Bureau would be taking in its future enforcement of the Competition Act with respect to the airline sector.[244]

190. At the request of the Transport Minister in 2004, the Standing Committee on Transportation was asked to review how Canada should modernize its approach to the economic regulation of air transport[245], and provided the Standing Committee with a guidance document to assist its deliberations. The guidance document outlined a number of issues for consideration, which included: reducing ownership and control limitations for Canadian air carriers; permitting cabotage; further liberalization with the United States; liberalization of charter policies; introducing domestic service ownership and control, and market integration issues into international negotiations; and whether to pursue a multilateral or a plurilateral approach to further air liberalization.[246]

191. Not connected to the review above, in November 2006, the Minister of Transport, Infrastructure and Communities announced a new international air policy (called Blue Sky). The new policy calls for a liberalized approach to Canada's bilateral air transportation negotiations. It proposes to pursue further liberalization of Canada's air transportation agreements and, as a primary objective, seek to negotiate Open Skies agreements when deemed in the country's overall interest. At the same time the Minister announced that the Federal Government had decided to expand the Cargo Transhipment Program to allow more airports to apply to be designated under it. The Foreign Carrier Access Program is under review (November 2006).[247]

192. Canada's air transport commitments under GATS are limited to aircraft repair and maintenance services, and computer reservation systems. Canada has not bound consumption abroad of repair and maintenance services, thus retaining the possibility of requiring carriers to use domestic repair providers and maintenance facilities.[248] All maintenance and repair operations on Canadian-registered aircraft must be performed by approved organizations.[249] Aircraft maintenance and repair services have been listed as MFN exemptions under Article II of the GATS. The sale and marketing of air transport services have also been listed as an MFN exemption, as these services can be included

[244] Competition Bureau news release, 23 September 2004. Viewed at: http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=247&lg=e.

[245] Speaking notes for Transport Minister Jean-C Lapierre at the Standing Committee on Transport, Ottawa, Ontario, 4 November 2004. Viewed at: http://www.tc.gc.ca/mediaroom/speeches/2004/2004-11-04.htm.

[246] Transport Canada (2004a). The Standing Committee on Transportation review was never concluded due to a change in government.

[247] Under the Foreign Carrier Access Program, a foreign government may apply for one of its carriers to operate a total of two weekly scheduled services from the foreign country to one or more points in Canada of its choice, other than Toronto, if it has no air transport agreement with Canada and if no Canadian carrier is interested in the foreign market in question. These provisions were intended to facilitate foreign carrier access to Canada where no air transport agreement was in place and to provide Canadian communities more direct and convenient routings by foreign carriers willing to offer such service.

[248] WTO document GATS/SC/16, 15 April 1994.

[249] The authorities note that "approved" means approved in accordance with either the Canadian Aviation Regulations, or the regulations of a foreign state that is a party to an agreement or technical arrangement with Canada. In the absence of an agreement/arrangement, such maintenance can be performed only by a foreign organization under contract to a Canadian organization, with the Canadian organization providing the necessary oversight to ensure compliance with the applicable regulations.

in bilateral agreements.[250] Canada has not made any further conditional offers on air transport services in its revised services offer submitted in May 2005.[251]

(9) PROFESSIONAL SERVICES

(i) Legal services

193. Legal services in Canada are provided by lawyers, notaries (in Quebec), and foreign legal consultants. In December 2005, the 11 provincial and 3 territorial law societies of Canada had approximately 98,000 member lawyers and notaries.[252]

194. The legal profession in Canada is self-regulating. Authority is delegated to provincial law societies by provincial legislation, on the basis that their mandate is to regulate their members in the public interest.[253] The Federation of Law Societies of Canada (FLSC) is an umbrella organization for these societies, but is not a regulatory body itself. The FLSC works on regulatory issues concerning legal services and to facilitate the consultations of the Canadian Government with the sector.[254] The Canadian Bar Association (CBA) also participates actively in consultations with the Canadian Government on issues relevant to international trade in legal services.[255]

195. To practice law in Canada requirements include admission to one of the law societies, each setting its own rules, ethical standards and codes of practice. In the provinces of Ontario (until May 2007) and Alberta, members of a law society are required to be permanent residents in Canada.[256] Lawyers from different provinces and territories may exercise mobility across provinces provided they meet the requirements of the legal profession's National Mobility Agreement or the Territorial Mobility Agreement. The National Mobility Agreement sets common principles to govern the temporary and permanent (transfer) mobility of lawyers among common law provinces (Quebec is the only non-common-law province). Nine provinces (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland, New Brunswick, and Prince Edward Island) have fully implemented the National Mobility Agreement; Quebec has signed but not yet implemented it (November 2006). The Territorial Mobility Agreements adopts the transfer provisions of the National Mobility Agreement; it was signed by the three territories and the provinces in November 2006; it lasts for five years.

196. Internationally trained individuals may have their legal credentials evaluated by the National Committee on Accreditation, a standing committee of the FLSC, or by the equivalent accreditation body of Quebec, for admission to one of the Canadian law societies. The Committee also evaluates qualifications from Quebec for the purpose of entry into the bars of the common law provinces.

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[250] WTO document GATS/EL/16, 15 April 1994.

[251] WTO document TN/S/O/CAN/Rev.1, 22 May 2005.

[252] Most of the references to provinces apply also to territories. The membership figures denote all members of law societies including those in private practice, government, education, and business, as well as inactive members. Lawyers may belong to more than one law society and, accordingly, there may be some duplication in the statistics (information from the Federation of Law Societies of Canada).

[253] In 11 provinces and territories the governing body that regulates lawyers is known as a law society. In Nova Scotia the regulator is called the Barristers' Society. The province of Quebec has two regulators: the *Barreau du Québec* regulates lawyers, and the *Chambre des notaires du Québec* regulates notaries.

[254] Federation of Law Societies of Canada online information. Viewed at: http://www.flsc.ca/en/committees/wto.asp.

[255] The CBA represents and provides a voice on behalf of the legal profession, and has approximately 37,000 members (CBA online information. Viewed at http:/www.cba.org/ CBA/about/main/).

[256] In Ontario there will be no requirement to be either a Canadian citizen or a permanent resident as of May 2007.

197. Foreign lawyers may be licensed as foreign legal consultants to provide legal advice only on the law they are permitted to practise in their home jurisdiction. Nine law societies have adopted rules governing the issuance of permits/licences for foreign legal consultants. The province of Quebec and the territories of Northwest, Yukon, and Nunavut have not yet adopted rules enabling foreign lawyers to act as foreign legal consultants. Local presence is not required in nine provinces; except Ontario, which imposes a residency requirement.

198. Under the GATS, Canada made commitments to bind regimes in existence as at December 1994 for legal services provided by foreign legal consultants in the provinces of British Columbia, Ontario and Saskatchewan.[257] When establishing in Canada, foreign legal consultants must take the form of a sole proprietorship or partnership. Canada did not undertake commitments regarding other legal services. As specified in its horizontal commitments, foreign legal consultants may enter Canada temporarily with a pre-arranged service contract and stay up to 90 days or the time necessary to complete the service contract, whichever is less. They must meet the minimum education requirements (baccalaureate degree) and obtain the appropriate provincial licence.[258]

199. In the NAFTA context, representatives of the legal professions of Canada, the United States, and Mexico signed an accord in June 1998 that would allow lawyers from any NAFTA country to act as a foreign legal consultant or form partnerships with lawyers or law firms of another member country. As at end 2006, this accord had not been implemented.[259]

200. International law firms are allowed to establish an office in any Canadian province or territory to provide foreign legal consultant services, provided that the lawyers have a permit to practice as foreign legal consultants. The province of Quebec and the territories of Northwest, Yukon and Nunavut have not yet adopted rules enabling foreign lawyers to act as foreign legal consultants.

(ii) Accounting services

201. There are three main professional accountancy titles in Canada: Chartered Accountant (CA), Certified Management Accountant (CMA), and Certified General Accountant (CGA). At end 2005, there were some 72,000 CAs, 37,000 CMAs, and 42,000 CGAs.[260] Each title is regulated and protected by provincial legislation under a provincial body, and is represented at the national level by its respective national professional body.[261] To provide accountancy services as a CA, CMA or CGA, it is necessary to be a member of, or licensed by, one of the registered professional bodies in the province where the practice is to take place.

202. In some provinces and territories certain accounting services (such as public accounting) are unregulated, while in others a licence is required. When regulated, each accounting service is organized in a specific manner at the provincial or territorial level, hence there are differences among provinces regarding which accounting professionals (CA/CMA/CGA) may undertake specific accountancy services.[262]

[257] WTO document GATS/SC/16, 15 April 1994.

[258] WTO document GATS/SC/16/Suppl.2, 28 July 1995.

[259] Online information. Viewed at: http://www.flsc.ca/en/committees/nafta.asp.

[260] Online information. Viewed at: http://www.cga-online.org; http://www.cica.ca; and http://www.cma-canada.org.

[261] The Canadian Institute of Chartered Accountants (CICA), the Society of Management Accountants of Canada (SMAC), and the Certified General Accountants Association of Canada (CGA Canada).

[262] Accounting services cover statutory audit, audit of mergers, public sector audit, insolvency service, accounting, tax advice, consulting, and others.

203. Under the GATS, Canada made commitments on accounting, auditing, and book-keeping services. Commercial presence must take the form of a sole existing proprietorship or partnership. Specifically on auditing services, Canada bound its commitments to provincial measures. For instance, accreditation of those who intend to provide auditing services across the border could be restricted by citizenship requirements in the provinces of Manitoba and Quebec or by permanent residency requirements in the provinces of Alberta and Ontario. In order to provide auditing services, a commercial presence requirement exists for some provinces under Canada's GATS commitments.[263] Commercial presence must take the form of a sole proprietorship or partnership, and in various provinces the office must be under the management of a resident.[264]

204. Most citizenship/residency requirements for the accreditation of auditors have been removed from provincial regulations.

205. A mutual recognition agreement (MRA) of CA qualifications was signed in 2002 by the accounting professions of Canada, Mexico, and United States. The three Governments issued a statement encouraging their respective competent authorities to implement the agreement in a manner consistent with NAFTA.[265] Additional MRAs for CA qualifications have been signed by CICA with professional accounting bodies in England and Wales; Scotland; Ireland; South Africa; New Zealand; Australia; Hong Kong, China; Belgium; France; Mexico; and the United States. CMA Canada has established MRAs with two professional accounting associations in the United Kingdom.[266] In December 2006, CGA-Canada signed a global MRA with the international accountancy body, the Association of Chartered Certified Accountants (ACCA). CGA-Canada has also signed Memoranda of Understanding with several professional accountancy bodies world-wide.

(iii) Architectural and engineering services

206. In 2004, the total operating revenues of architectural firms amounted to Can$1.9 billion; in 2006, there were 8,191 registered architects in Canada.[267] The total operating revenues of the engineering services industry amounted to approximately Can$12 billion in 2005, and there were approximately 165,000 registered engineers.

207. The professions of architect and engineer are individually regulated at the provincial/territorial level and a licence is required for the provision of either service. Licences are issued by the respective provincial association of architects and engineers, whose requirements vary between provinces/territories. A licence is valid only for that specific jurisdiction. However, in the engineering profession, a mobility agreement among provinces/territories, called the Inter-Association Mobility Agreement, allows engineers licensed in one jurisdiction in Canada to obtain a full licence in another jurisdiction. The provincial/territorial associations of architects have agreed to and executed a reciprocity agreement, which provides portability across Canada through standard credentials amongst the provinces.[268] The Committee of Canadian Architectural Councils (CCAC) and the Canadian

[263] In the provinces of Saskatchewan, Newfoundland, Nova Scotia, Manitoba, and Ontario.

[264] In the provinces of Saskatchewan, British Columbia, Ontario, Nova Scotia, Quebec, Prince Edward Island, Newfoundland, and Alberta.

[265] DFAIT online information. Viewed at: http://www.dfait-maeci.gc.ca/nafta-alena/statement-en.asp.

[266] The two U.K. professional accounting associations are: the Chartered Institute of Management Accountants and the Chartered Institute of Public Finance and Accountancy.

[267] Some of the 8,191 architects are registered in more than one jurisdiction so the actual number will be less: there are about 6,712 resident registered architects, and 1,479 non-resident architects (information provided by the Royal Architectural Institute of Canada (RAIC)).

[268] Information provided by the Royal Architectural Institute of Canada.

Council of Professional Engineers (CCPE) are the respective national bodies that coordinate the provincial/territorial associations on regulatory matters, including licensing.

208. Foreign architects wishing to obtain a licence must have their academic qualifications certified by the accrediting body, the Canadian Architectural Certification Board (CACB). Foreign architects may also apply for a temporary licence to practice in collaboration with a registered architect of the given province. Licences are for one specific project and must be renewed after one year. There are no residency requirements to obtain an architectural licence.

209. Foreign engineers wishing to obtain a licence must have their academic and experience qualifications assessed by the relevant provincial engineering association. Temporary licences are not linked to a specific project, but are for one-year and renewable, except in Quebec where the temporary licence is project-specific. To practice under a permanent licence, citizenship or permanent residency is required in Alberta, British Columbia, New Brunswick, Ontario, and Saskatchewan.[269]

210. Under its GATS commitments, Canada requires foreign architects to establish a commercial presence in the form of a sole proprietorship or partnership. Residency requirements are listed in Canada's GATS commitments for architects in four provinces for both cross-border supply and presence of natural persons.[270] Canada imposes no limitations on the legal form of establishment or ownership of an engineering firm by foreigners; residency, citizenship and/or commercial presence requirements affect market access in eight provinces.[271] Canada allows foreign architects and engineers to enter the country temporarily and stay up to 90 days or the time necessary to complete the contract, whichever is less.

211. Several mutual recognition agreements (MRAs), signed by the different regulatory bodies cover the architecture and engineering professions. An agreement under NAFTA exists for engineers.[272] The Canadian Council for Professional Engineers has also negotiated MRAs with professional engineering bodies in France (La Commission des Titres d'Ingénieur) and Hong Kong, China (Hong Kong Institute of Engineers).

212. For architects, a Canada-United States Inter-recognition Agreement signed between the Committee of Canadian Architectural Councils (CCAC) and the U.S. National Council of Architectural Registration Boards (NCARB) grants reciprocity to 55 jurisdictions in the United States and 11 jurisdictions in Canada. In October 2005, the CCAC also signed a Tri-National Mutual Recognition Agreement for International Practice with the United States and Mexico, which provides for the recognition of credentials between the three countries.[273]

[269] Accreditation of engineers in Saskatchewan only requires ordinary residency.

[270] Residency requirement in Nova Scotia, New Brunswick, and Newfoundland; and citizenship requirement in Quebec.

[271] Residency requirement in Alberta, British Columbia, Nova Scotia, New Brunswick, Newfoundland, and Ontario; citizenship requirement in Quebec; and requirement for a commercial presence in Manitoba. Additionally, Saskatchewan limits national treatment for engineers by a temporary residency requirement.

[272] This agreement has been ratified by Mexico, Texas (United States), and by all Canadian jurisdictions except Ontario and Quebec.

[273] In Canada, the agreement has been ratified by British Columbia, Alberta, Nova Scotia, Prince Edward Island, Newfoundland, and the Northwest Territories (November 2006).

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