

## **II. TRADE AND INVESTMENT REGIME**

### **(1) GENERAL FRAMEWORK**

1. Canada's framework for trade and investment policy is based on shared competence between the federal government and Canada's ten provinces. The scope of federal and provincial legislative powers is defined in Part VI of the Constitution Act, 1867, as amended. Parliament has exclusive jurisdiction over issues such as the regulation of trade and commerce; intellectual property rights; and criminal law. Provinces have legislative authority in areas such as provincial taxation, non-renewable natural resources, forestry resources and electrical energy. Agriculture and immigration are recognized as being under shared federal and provincial jurisdiction, with federal legislation prevailing (Table AII.1).

2. Differences in trade and investment policies and practices between the federal and provincial governments as well as across provinces, led to an Agreement on Internal Trade (AIT), which has been in effect since 1995.<sup>1</sup> Its objective is to "reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investment within Canada, and to establish an open, efficient and stable domestic market".<sup>2</sup> It includes all provinces and territories, with the exception of Nunavut, which has observer status. It incorporates a dispute settlement mechanism accessible to governments, individuals, and the private sector. Since Canada's previous review, there have been five protocols of amendment to the AIT (Box II.1). In addition, a number of provinces have negotiated, in various configurations, arrangements that aim for more ambitious outcomes in certain areas such as public procurement, labour mobility and the recognition of qualifications.

3. The power to negotiate and ratify treaties rests solely with the federal executive. Following a commitment by the Prime Minister in 2006 to give Parliament a more important role in the conclusion of international agreements, the Minister of Foreign Affairs has, since 2008, been required to table all treaties before the House of Commons.<sup>3</sup> There is a 21-day period from the date of tabling before the Government may take any action towards ratification of these treaties. Once tabled, the House of Commons may decide whether to consider them, for instance through initiating a debate or voting on a motion. The Government is not bound by proposed changes to the text of a treaty nor to its rejection by Parliament. Treaties are made effective domestically through adjustments in legislation, regulations or policy. Should federal legislation be deemed not to be in conformity with treaty obligations, the Government will introduce the necessary legislation in Parliament where it may be adopted or refused. The authorities indicate that if the Parliament of Canada refuses to adopt legislation necessary to implement a treaty, the Government will not proceed with its ratification. Provinces and territories have exclusive authority to implement Canada's international treaty obligations in areas that fall within their jurisdiction.

4. Overall responsibility for the conduct and formulation of international trade policy lies with the Minister of International Trade, supported by Foreign Affairs and International Trade Canada (DFAIT). Cabinet approval is required for proposed trade policy initiatives. In the policy-making process, various formal and informal consultation mechanisms are in place between the federal government and provinces and territories. Federal, provincial, and territorial trade ministers meet annually, complemented by annual meetings of deputy ministers. There are also regular meetings of federal, provincial and territorial trade policy officials (known as the C-Trade process). Provinces and

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<sup>1</sup> Progress report on achievements since the AIT entered into effect (until January 2011). Viewed at: <http://www.ait-aci.ca/index-en/progress.htm>.

<sup>2</sup> Article 100, Agreement on Internal Trade.

<sup>3</sup> Governor-General's Speech from the Throne, 4 April 2006. Viewed at: <http://www.pm.gc.ca/eng/media.asp?id=1087>.

territories may be involved in the negotiation of trade agreements in areas wholly or partially under their jurisdiction. Parliamentarians are involved through committee hearings and studies on international trade issues. DFAIT consults with the Federation of Canadian Municipalities on trade issues through a joint working group. It also consults broadly with other stakeholders through expert advisory groups; a public outreach programme; and a web-based consultative process. DFAIT uses the *Canada Gazette* as a means of informing and soliciting views on its initiatives. Provincial authorities also consult stakeholders.

**Box II.1: Agreement on internal trade: key features**

Guiding principles	<ul style="list-style-type: none"> <li>- Non-discrimination and right of entry and exit for persons, goods, services and investments</li> <li>- ensuring policies and practices do not create obstacles to trade</li> <li>- ensuring non-trade objectives which deviate from the above have a minimal adverse effect</li> <li>- reconciliation as basis for eliminating trade barriers caused by differences in standards and regulations</li> <li>- transparency</li> </ul>
Priority sectors	Government procurement; environmental protection; consumer-related measures and standards; labour mobility; investment; agricultural and food goods; alcoholic beverages; communications; transport; natural resource processing; and, energy
Protocols of amendment since 2007 (key changes)	<p>Protocol 7 (2007): Dispute resolution procedures and government procurement. Amendments streamline consultation provisions and allow for a dispute resolution panel under the AIT to be reconvened to determine whether the response of a non-compliant government is consistent with a panel's recommendations. Certain government procurement provisions are clarified</p> <p>Protocol 8 (2009): Government procurement disciplines, dispute resolution procedures and investment: changes clarify and streamline the process for procurement complaints against the provinces, and provide for greater transparency. Changes also permit the appointment of a panellist should a party fail to do so, as a means of ensuring that disputes can proceed under the AIT dispute resolution process. Changes also clarify the types of investment incentives to be avoided</p> <p>Protocol 9 (2009): Labour mobility: Amendments provide for a worker certified for an occupation by a regulatory authority of one party to be recognized as qualified to practice that occupation by others. Exceptions need to be identified and justified</p> <p>Protocol 10 (2009): Amendments provide for greater enforcement of AIT panel decisions for government-to-government disputes, including the introduction of monetary penalties for continued failure to bring a measure into compliance with the AIT: an appellate panel process; and new qualifications for panel roster members</p> <p>Protocol 11 (2010): Revised chapter on agriculture and food goods. These revisions expand the scope of non-discriminatory provisions to cover all the technical regulations (for example dealing with terminology, symbols, packaging, marking or labelling requirements), standards, sanitary measures, or conformity assessment procedures applied to agriculture or agri-foods, except those required to maintain the supply management systems</p>
Dispute settlement	Since 1995, there have been 51 disputes under the following chapters: labour mobility (26); agricultural and food goods (10); procurement (5); natural resources processing (4); alcoholic beverages (3); investment (1); consumer-related measures and standards (1); and environmental protection (1). Of these, 9 disputes have proceeded beyond consultations to the panel hearing stage

Source: AIT online information. Viewed at: [http://www.ait-aci.ca/index\\_en.htm](http://www.ait-aci.ca/index_en.htm).

5. The objective of Canada's strategic long-term economic plan (Advantage Canada) is to build a stronger and more competitive economy. It is based on four core principles: focusing government; creating new opportunities and choices for people; investing in sustainable growth; and freeing businesses to grow and succeed. Key targets are to create competitive tax, fiscal, entrepreneurial, knowledge, and infrastructure advantages.<sup>4</sup>

6. The Federal Government's trade and investment policy objectives are set out in its Global Commerce Strategy (GCS)(2007), which builds on the Government's overarching objectives set out in Advantage Canada.<sup>5</sup> In the GCS the Government has identified priority markets: the Americas (Brazil, Latin America and the Caribbean, Mexico, and the United States); the Asia Pacific region

<sup>4</sup> Department of Finance Canada (2006), *Advantage Canada: Building a Strong Economy for Canadians*. Viewed at: <http://www.fin.gc.ca/ec2006/plan/pltoc-eng.asp>.

<sup>5</sup> Government of Canada (2009) GCS-en.pdf; and Department of Finance Canada (2006).

(ASEAN, Australia and New Zealand, China, India, Japan, and Korea); and in Europe and the Middle East (Europe, Russia, and the Gulf Cooperation Council). On the trade front, the Government's efforts are focused on expanding Canadian access to global markets and networks through the DDA negotiations; stronger commercial linkages within NAFTA; bilateral free-trade agreements and foreign investment promotion and protection agreements (below); air services agreements (Chapter IV(7)(i)); and innovation and science and technology (S&T) cooperation arrangements.

7. An important reform effort over the review period has been the 2007 Cabinet Directive on Streamlining Regulation (CDSR).<sup>6</sup> This applies to all federal departments, agencies and Crown Corporations with regulatory authority, as well as to the Governor in Council and ministerial regulations. It aims to ensure that the Federal Government's regulatory activities result in the greatest overall benefit to Canadians. When regulating, the Federal Government is committed to protecting and advancing the public interest; promoting a fair and competitive market economy; making decisions based on evidence; creating accessible, understandable, responsive, efficient, and effective regulation in a timely, coherent manner with minimal duplication. Emphasis is placed on using international standards to the greatest extent possible. The new approach introduces a lifecycle approach to the development of new regulations (Table II.1).

**Table II.1**  
**CDSR lifecycle approach to regulatory development, 2007**

Regulatory steps	Departmental responsibilities
Regulatory process requirements	Assess regulatory proposals to see where approval processes can be streamlined and where resources are to be focused
Regulatory consultation	Consult with interested and affected parties during the regulatory process. In addition, proposals must be published in the <i>Canada Gazette</i> , Part I, with a comment period of 30 days (75 days for new and changed technical regulations that may affect international trade).
Identifying and assessing public policy issues	Assess public policy issues, including potential risks, and demonstrate that government intervention is needed (including assessment of causes and impact of the public policy issue, review of evidence-based assessments and scientific evidence). For significant proposals, departments are encouraged to seek independent review of risk assessments.
Setting public policy objectives	When it is determined that government intervention is required, set public policy objectives that outline tangible outcomes for Canadians.
Selecting designing and assessing regulatory responses	Assess effectiveness and appropriateness of regulatory and non-regulatory instruments: selecting the appropriate mix of government instruments, using internationally accepted best practices where possible; assess legal implications; comply with international obligations; coordinate and cooperate within government, with provinces and internationally, to maximize effectiveness of regulations and to minimize duplication; analyse benefits and costs of regulation; recommend options.
Planning for implementation, compliance and enforcement	Put in place processes to implement regulatory programmes and manage human and financial resources as well as developing and implementing compliance and enforcement strategies.
Measuring, evaluating and reviewing regulation	Ensure that regulation continually meets its initial policy objectives and renew regulatory frameworks on an ongoing basis.
Planning and reporting to Canadians	Development of regulatory plans and priorities for the upcoming year(s) and report on these as well as performance and regulatory review.

Source: Treasury Board of Canada Secretariat (2007), *Cabinet Directive on Streamlining Regulation*. Viewed at: <http://www.tbs-sct.gc.ca/ri-qr/directive/directive01-eng.asp>.

<sup>6</sup> For the text of the CDSR see Treasury Board of Canada Secretariat online information. Viewed at: <http://www.tbs-sct.gc.ca/ri-qr/directive/directive00-eng.asp>. The 2007 Directive replaces the Government of Canada Regulatory Policy (1999).

8. When regulations are developed there are requirements to: clearly identify issues and assess risks, choose the right instruments (which may be instruments other than regulations<sup>7</sup>), and undertake cost-benefit analysis for medium and high impact regulations. A three-tiered approach to regulation has been developed based upon whether risk is low, medium or high. For high impact regulations, a Performance Measurement and Evaluation Plan (PMEP) must be completed, to ensure that regulatory activities continue to meet their initial policy objectives.<sup>8</sup> Once regulations are in force, their performance must be measured, reported, and reviewed.

9. The Federal Government has invested resources in building up the capacity of government officials to implement the directive, including through the issuance of guidelines and tools; creating a Centre of Regulatory Expertise (CORE), as well as developing Regulatory Cooperation Plans (RCPs) for the seven government departments that account for the largest volumes of regulations (Health Canada; Environment Canada; Canadian Food Inspection Agency; Fisheries and Oceans Canada; Transport Canada; Citizenship and Immigration Canada; and, Industry Canada).<sup>9</sup>

10. The authorities note that, while the CDSR contains provisions requiring departments and agencies to limit cumulative administrative burden, it does not focus on the elimination of regulations. However, Canada's 2010 Federal Budget proposes measures to address this through the announcement of a Red Tape Reduction Commission, which will involve Parliamentarians and representatives from the private sector to review federal regulations in areas where reform is most needed to reduce the burden of compliance, especially on small businesses, while safeguarding health and safety. The Commission will be asked to provide specific recommendations.

## **(2) INVESTMENT REGIME**

11. There have been no changes to the permissible forms of legal business structure in Canada since its last review: these remain the corporation, sole proprietorship, partnership, and cooperative. Variations on these basic business structures include joint ventures, branch office, and subsidiaries. Foreign firms may carry out activities in Canada through a branch or incorporate in Canada as a subsidiary. Branch offices of foreign companies must comply with the Investment Canada Act and provincial registration and licensing requirements. Branch offices and subsidiaries of foreign corporations must comply with the relevant incorporating statute and provincial registration and licensing requirements.

12. Entities may incorporate as corporations, federally under the Canada Business Corporations Act (CBCA) or in one of the provincial and/or territorial jurisdictions. Incorporation under the CBCA confers the right to carry on business anywhere in Canada. All types of businesses may incorporate under the CBCA with the exception of banking, insurance, trust and loan companies (Chapter IV(6)). Under the CBCA, corporations must have a registered office within Canada, and at least 25% of the directors must be resident Canadians. If the corporation has less than four directors, then at least one must be a resident Canadian. Corporations that, by act of parliament or regulation, are individually subject to minimum Canadian ownership requirements must have a majority of resident Canadian

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<sup>7</sup> Instruments could range from coercive to voluntary, for example, laws, legal agreements or contracts, MOUs, codes, standards, voluntary initiatives, information, consultation, letters of intent, or fiscal instruments.

<sup>8</sup> Regulations that are expected to generate costs or benefits valued at more than Can\$100 million in present value or more than Can\$10 million annually based on a minimum 10-year forecast and 8% discount rate.

<sup>9</sup> For the guidelines and tools issued by the Treasury Board Secretariat, see <http://www.regulation.gc.ca>.

directors (Table AII.2). Canada operates a same-day on-line service for processing incorporation certificates, at a fee of Can\$200.<sup>10</sup> Fees for non-online processing remain Can\$250.

13. Under the Canada Cooperatives Act, at least 25% of the directors of cooperatives must be resident Canadians.

14. As set out in the Global Commerce Strategy (section (1) above), the Government's objective on the investment side, is to boost Canada's share of global investment and innovation. Component activities include an investment champions programme, which involves outreach by Canadian business leaders to prospective investors; new investment promotion tools and outreach activities; investor aftercare services; and a number of new global value chain initiatives. Other programmes include helping Canadian companies to participate in global innovation networks and expanding Canada's Trade Commissioner Service.

15. In the context of this Review, the authorities noted that the Government's emphasis is on attracting new (green and brown field) investment. However, new businesses account for only around one-fifth of foreign direct investment into the country, a trend that has remained largely constant since the mid 1980s.<sup>11</sup>

**(i) Investment Canada Act**

16. The Investment Canada Act (1985, as amended) and its implementing regulations govern the establishment of new businesses in Canada, and acquisition of control of existing business by non-Canadians. The purpose of the Act is to "provide for the review of significant investments in Canada by non-Canadians in a manner that encourages investment, economic growth and employment opportunities in Canada and to provide for the review of investments in Canada by non-Canadians that could be injurious to national security".<sup>12</sup> The Minister of Industry, through Industry Canada, is responsible for administering the provisions of the Act as they relate to foreign investments in all sectors except for cultural businesses, which is the responsibility of the Minister of Canadian Heritage, and administered through Canadian Heritage.<sup>13</sup>

17. A review of the Investment Canada Act (and the Competition Act) was initiated in 2007, with the establishment of a Competition Policy Review Panel. The Panel issued recommendations in 2008, which included: amending the Investment Canada Act to reduce barriers to foreign investment by increasing review thresholds; introducing a national security test; reversing the onus on government to show that an investment is contrary to the national interest before disallowing a transaction; increasing transparency and predictability; and preserving a distinct approach for the cultural sector while setting in train a review of Canada's cultural policies. It also recommended liberalizing investment restrictions in air transport, uranium mining, and telecommunications and broadcasting, and removing the *de facto* ban on mergers in the financial services sector (Table AII.2)<sup>14</sup>

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<sup>10</sup> Industry Canada online information. Viewed at: <http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/home>.

<sup>11</sup> Over the 12 months from October 2009 to September 2010, the ratio of acquisitions to new business was 78:22; the ratio for 1985 to 2010 was 77:23.

<sup>12</sup> Investment Canada Act, Section 2.

<sup>13</sup> The term "cultural business" covers publication, distribution, and sale of books, magazines, periodicals, newspapers and music; and production, distribution, sales, and exhibition of film, video recordings, and audio and video music recordings (Investment Canada Act, Section 14.1(5)).

<sup>14</sup> Industry Canada online information. Viewed at: <http://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/home>.

18. As a consequence of the Competition Policy Review Panel's recommendations, the Investment Canada Act was amended in 2009. The amendment included a number of changes to the net benefit review process (see below): raising the general review threshold that applies to investors from WTO Members (except for investments in cultural businesses) to Can\$1 billion over a four-year period; changing the basis of this review threshold from the book value of gross assets to the enterprise value; eliminating the Can\$5 million sector-specific review threshold for transportation services, financial services, and uranium production; and requiring the Minister to justify decisions to disallow an investment.<sup>15</sup> These amendments entered into force in March 2009, except for amendments to raise the review threshold and change the basis for review to enterprise value, which will come into force once regulations setting out the method for calculating enterprise value are finalized.

19. The 2009 amendments introduced a national security review process through a new Part IV.1 on "Investments Injurious to National Security". This amendment allows for the review of investments on national security grounds if the Minister of Industry, after consultation with the Minister of Public Safety and Emergency Preparedness, considers that the investment could be injurious to national security and the Governor in Council, on recommendation of the Minister of Industry, makes an order for review.<sup>16</sup> The concept of national security is not defined. The time-periods for the review process are set out in the National Security Review of Investments Regulations.<sup>17</sup> At the end of the review process the Minister, after consultations with the Minister of Public Safety and Emergency Preparedness, must submit a report to the Governor in Council. On the basis of this report, the Governor in Council may require investors not to implement the investment; to accept terms and conditions relating to the implantation of the investment; to provide written undertakings; or to divest themselves of control of the Canadian business or their investment in the entity.

20. Under the Investment Canada Act, all foreign direct investment that is not subject to review (see below) must be notified no later than 30 days after the investment takes place to Canadian Heritage or Industry Canada.<sup>18</sup> Between 2006 and 2010, Industry Canada received an average of 573 notifications annually, and Canadian Heritage received an annual average of 20.

21. Foreign investment in existing businesses in Canada, above certain thresholds, is subject to review, which involves the application of a net benefit test. Until the increased Can\$1 billion threshold enters into effect (see above), the threshold for investors from WTO Members is determined annually according to a set formula and becomes effective on 1 January each year. A summary of the review requirements set out in the Act and its implementing regulations are summarized in Table II.2. According to the Competition Policy Review Panel, reviews often involve foreign investors providing specific undertakings to address the net benefit criteria, although they are rarely made public for reasons of commercial confidentiality.

22. Industry Canada reviewed and approved on average 33 acquisitions per year between 2006 and 2010; one proposal was denied.<sup>19</sup> Canadian Heritage reviewed an average of eight during the

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<sup>15</sup> Industry Canada online information. Viewed at: <http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk51018.html>.

<sup>16</sup> This includes new investments, direct acquisitions, and indirect acquisitions.

<sup>17</sup> National Security Review of Investments Regulations. Viewed at: <http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk50937.html>.

<sup>18</sup> This includes foreign investment to establish a new business or to acquire control of an existing one.

<sup>19</sup> In 2008, the Minister of Industry rejected the proposed Can\$1.3 billion acquisition of the information systems and geospatial businesses of MacDonald, Dettwiler and Associates Ltd. (MDA) by U.S.-based Alliant Techsystems Inc. (ATK).

same period, and denied one. Since the enactment of the Investment Canada Act only 4 proposals have been rejected, all of which were in cultural industries. On 3 November 2010, the Minister of Industry sent a notice to BHP Billiton of Australia indicating that "he was not satisfied" that its proposed transaction to take over Potash Corporation of Saskatchewan Inc. was likely to be of net benefit to Canada. According to the Act, BHP Billiton had 30 days (from the date of the notice) to make any additional representations and submit any additional undertakings. The authorities note that in November 2010, BHP Billiton announced that it had withdrawn its application for review. The review process was terminated and since there was no longer a transaction to review under the Act, there was no final decision to be made by the Minister. Over the period 2006-10, the average completion time for a review by Industry Canada was 56 days. Decisions issued by Canadian Heritage took an average of 63 days.

**Table II.2**  
**Investment Canada Act: Summary of review requirements**

<b>Procedures:</b>
Foreign investments are subject to review if they fall over certain value thresholds (below). Reviews are undertaken by the Minister of Industry or by the Minister of Canadian Heritage. An investment which is renewable can only be implemented if the Minister is "satisfied" that it is likely to be of net benefit to Canada. Investors must send a completed application form to the respective Minister. If the Minister does not notify the investor about the outcome of the review within 45 days of receiving it, the investment is deemed approved. The Minister may extend this period for additional 30 days and if so, must notify the investor in advance. Further extensions are permitted with the mutual consent of both the Minister and the investor.
<b>General thresholds:</b>
<p><i>WTO Members:</i> Direct acquisitions: Can\$299 million (2010); Can\$312 million (2009); Can\$295 million (2008); and Can\$281 million (2007). Indirect transactions (transactions involving acquisition of shares of the parent company outside of Canada that owns subsidiaries in Canada): Not reviewable, but subject to notification requirements.</p> <p><i>Non-WTO Members:</i> Direct acquisitions: Can\$5 million (or Can\$ 299 million if the existing business is controlled by a WTO-Member investor) Indirect transactions: Can\$50 million (unless assets acquired are 50% or more of the total global assets of the business, in which case the threshold is Can\$5million).</p>
<b>Sector-specific thresholds for cultural business</b>
<p><i>WTO and non-WTO Members:</i> Direct acquisitions: Can\$5 million Indirect acquisitions: Can\$50 million</p>
<b>Net benefit criteria:</b>
(a) the effect on the level of economic activity in Canada; on employment; on resource processing; on the utilization of parts and services produced in Canada; and on exports from Canada; (b) the degree and significance of participation of Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada; (c) the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada; (d) the effect of the investment on competition within any industry in Canada; (e) the compatibility of the investment with national industrial, economic and cultural policies, taking into account policy objectives enunciated by the federal government or by any provincial legislature likely to be significantly affected by the investment; (f) the contribution of the investment to Canada's ability to compete in world markets

*Source:* Industry Canada online information. Viewed at: <http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/home>; Department of Canadian Heritage online information. Viewed at: <http://www.pch.gc.ca/pc-ch/org/sectr/ac-ca/eiic-csir/index-eng.cfm>.

23. Notifiable investments in certain cultural businesses may be reviewed if the Governor-in-Council considers that a review would be in the "public interest" and, on recommendation of the Minister of Canadian Heritage, issues an Order-in-Council to that effect. The investor concerned must be informed that a review will take place within 21 days of the notification. The cultural businesses subject to this provision are listed in Schedule IV of the Investment Canada

Regulations.<sup>20</sup> According to the authorities, 12 reviews have been undertaken over the past 5 years, all of which were approved.

**(ii) Foreign investment limitations by sector**

24. Guidelines issued under the Investment Canada Act as well as other federal statutes contain foreign direct investment limitations in fishing, mining, air transport, book publishing and distribution, periodical publishing, broadcasting, film distribution, and telecommunications (Table AII.2). The only change to these statutes since Canada's previous review was the removal of foreign ownership restrictions on Canadian satellite carriers in July 2010. Public consultations are ongoing regarding possible policies on the remaining foreign equity restrictions in telecommunications (Chapter IV(5)(i)).<sup>21</sup> A Review of the Revised Foreign Investment Policy in Book Publishing was launched in July 2010 and is still underway.<sup>22</sup>

**(iii) Investment promotion**

25. The Federal Government body charged with investment attraction and promotion activities is the Invest in Canada Bureau, under the remit of DFAIT. It is mandated to promote and attract greenfield investments and expansions of existing foreign-owned businesses in Canada. The Bureau launched the Investment Promotion and Attraction Program in 2006 in response to an increasingly competitive global environment for foreign direct investment, changing economic realities, and the perceived need for a much more proactive and targeted approach to attracting investment. Increased funding from the Federal Government over a five-year period beginning 2008-09 has been made available to the Invest in Canada Bureau to develop and deliver initiatives related to its Investment Champions Program and enhance investment attraction.

**(iv) International agreements containing investment provisions**

26. Canada is party to a number of agreements to protect Canadian investors abroad. OECD codes cover investments made in other developed countries.<sup>23</sup> Most of Canada's foreign investment promotion and protection agreements (FIPAs) are based on the model of the investment chapter of the North American Free Trade Agreement (NAFTA).<sup>24</sup> As of September 2010, Canada had 24 FIPAs in force. One of the objectives of the Global Commerce Strategy (see above) is to double the number of concluded FIPAs within five years. To this end Canada has concluded or signed FIPAs with five countries, and renegotiated several existing ones. There are investment chapters in a number of the preferential trade agreements that Canada has signed. Additionally, over the period under review, Canada has signed new MOUs on investment with Chile; Chinese Taipei; and Hong Kong, China (Table II.3).

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<sup>20</sup> Investment Canada Regulations. Viewed at: <http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/ik51020.html>.

<sup>21</sup> Industry Canada online information. Viewed at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09919.html>.

<sup>22</sup> Canadian Heritage online information. Viewed at: <http://www.pch.gc.ca/eng/1272486502392/1272487307376>.

<sup>23</sup> The Code of Liberalization contains legally binding obligations regarding the liberalization of specified capital movements. The National Treatment Instrument contains a non-binding commitment to accord national treatment to foreign-owned or controlled firms in the post-establishment phase.

<sup>24</sup> Common features include a broad definition of covered investments; national and MFN treatment obligations with regard to pre- and post-establishment phases; standards of treatment and protection; rules concerning expropriation and compensation payable; free transfer of funds; and dispute settlement between investors and the host state through international arbitration.



27. Canada has 87 double taxation agreements in force (as of December 2010).<sup>25</sup> The authorities note that Canada's policy in this area is based on the OECD Model Tax Convention on Income and on Capital, modified to take into account the specificities of the Canadian tax system.

**Table II.3**  
**Canada's participation in investment-related agreements, 2010**

<p><b>Free trade agreements containing investment provisions:</b> NAFTA (Chapter 11); Chile; Peru; Colombia; Panama.</p> <p><b>Foreign investment promotion and protection agreements (BITS or FIPAs):</b> <i>In force (date of entry into force):</i> Poland (1990); Russia (1991); Czech Republic, Slovakia (1992); Argentina, Hungary (1993); Ukraine, Latvia (1995); Philippines, Trinidad and Tobago (1996); Barbados, Ecuador, Egypt, Romania (1997); Panama, Thailand, Venezuela (1998); Armenia, Uruguay, Lebanon, Costa Rica (1999); Croatia (2001); Peru (2007); Jordan (2009)</p> <p><i>Concluded or signed but not yet in force:</i> El Salvador (signed 1999); South Africa (signed 1995); Madagascar (Concluded 2008); Czech Republic, Latvia, Romania (all amended) (signed 2009); Slovak Republic (amended) (signed 2010); Bahrain (concluded 2010) Hungary (amended), Kuwait (concluded 2009)</p> <p><i>Under negotiation:</i> China; India; Indonesia; Mali; Mongolia; Poland (renegotiation); Tanzania; Tunisia; and, Viet Nam</p> <p><b>MOUs on investment:</b> Chile (2007); China (2006); Germany (2005); Hong Kong (2008); and Japan (2005)</p> <p><i>Cooperation agreements:</i> Canada-India cooperation agreement on energy, trade and investment (2009)</p> <p><b>OECD instruments:</b> OECD Code of Liberalization of Capital Movements; OCED National Treatment Instrument</p> <p><i>Membership of international arbitral conventions/bodies:</i> Canada is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (since 1986) and the World Bank's Multilateral Investment Guarantee Agency (MIGA). Canada is making efforts to join the International Centre for the Settlement of Investment Disputes (ICSID)</p>
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Source: DFAIT, and Invest in Canada.

### (3) PARTICIPATION IN THE WTO

28. Canada is an active participant in the WTO, both in the context of the regular work of the organization and the Doha Development Agenda (DDA) negotiations. It has taken on broad-ranging WTO commitments and is one of the more frequent users of the WTO's dispute settlement system (Table II.4). At the 2009 Ministerial Conference and in the context of this Review, the Government has highlighted the importance of trade to the Canadian economy, it has re-emphasized that it sees the WTO as the cornerstone of its trade policy, and expressed its commitment to bringing the DDA to a successful conclusion.<sup>26</sup>

<sup>25</sup> Double taxation agreements are in force with: Algeria; Argentina; Armenia; Australia; Austria; Azerbaijan; Bangladesh; Barbados; Belgium; Brazil; Bulgaria; Cameroon; Chile; China; Croatia; Cyprus; Czech Republic; Denmark; Dominican Republic; Ecuador; Egypt; Estonia; Finland; France; Gabon; Germany; Guyana; Hungary; Iceland; India; Indonesia; Ireland; Israel; Italy; Côte d'Ivoire; Jamaica; Japan; Jordan; Kazakhstan; Kenya; Korea; Kuwait; Kyrgyzstan; Latvia; Lithuania; Luxembourg; Malaysia; Malta; Mexico; Moldova; Mongolia; Morocco; Netherlands; New Zealand; Nigeria; Norway; Oman; Pakistan; Papua New Guinea; Peru; Philippines; Poland; Portugal; Romania; Russia; Senegal; Singapore; Slovak Republic; Slovenia; South Africa; Spain; Sri Lanka; Sweden; Switzerland; Tanzania; Thailand; Trinidad and Tobago; Tunisia; Ukraine; United Arab Emirates; United Kingdom; United States; Uzbekistan; Venezuela; Viet Nam; Zambia; and, Zimbabwe.

<sup>26</sup> WTO document WT/MIN(09)/ST/130, 6 January 2010.

**Table II.4**  
**Summary profile of Canada's WTO participation**

<b>Accession:</b>	Original WTO Member: Implementation of the results of the Uruguay Round through the World Trade Organization Implementation Act (entry into force: 1 January 1995) and additional regulations promulgated by the Governor-in-Council.
<b>Plurilateral agreements:</b>	Party to Agreement on Government Procurement and Trade in Civil Aircraft. Participant in Information Technology Agreement and the Chemical Tariff Harmonization Agreement.
<b>Services protocols:</b>	Telecommunications (Fourth Protocol), Financial Services (Fifth Protocol).
<b>Dispute settlement:</b>	Complainant in 33 cases; Respondent in 16 cases; Third Party in 71 cases (1995-October 2010).

Source: WTO Secretariat.

29. During the period under review, Canada has submitted or co-sponsored 21 communications in various DDA negotiating groups, mainly to the Negotiating Groups on Market Access and Trade Facilitation, but also in the areas of rules, trade in services, and trade and environment.<sup>27</sup>

30. The subjects covered by the communications submitted to the Negotiating Group on Market Access over this period are: standards, technical regulations and conformity assessment procedures for automotive products; non-tariff barriers, market access (horizontal mechanism); sectoral negotiations - negotiating modalities on liberalization of trade in fish and fish products, forest products, chemicals, industry machinery, and gems and jewellery.<sup>28</sup> On trade facilitation, they relate to: advance rulings; border agency cooperation; customs cooperation; and separation of release from final determination and payment of customs duties, taxes, and fees. On rules, Canada has proposed a *de minimis* exemption for disciplines on fisheries subsidies. In the services negotiations, submissions relate to the scope of coverage of CPC 84 (Computer and Related Services) and services subsidies for a Working Party on GATS Rules information exchange exercise. In the Committee on Trade and Environment Special Session, Canada, together with New Zealand submitted a proposal on procedures for information exchange between the WTO and MEA Secretariats.

31. Since January 2007, Canada has initiated six dispute settlement cases as a complainant. These involve: seal products (two cases) (EU); meat (Korea); labelling requirements (COOL) (United States); financial services (China); and agricultural subsidies and domestic support (United States). One new case was brought against Canada (by Japan), relating to measures affecting the energy sector. As at October 2010, Canada was involved in 12 active cases, either as respondent or complainant (Table AII.3).

32. Canada has maintained a solid record on notifications (Table AII.4). However, notifications on agriculture and government procurement are lagging.<sup>29</sup> Canada has not notified "any new, or any changes to existing laws, regulations, or administrative guidelines, which significantly affect trade in services" during the review period.<sup>30</sup> In addition, Canada has not notified its preferential rules of

<sup>27</sup> This figure does not include the two communications, of which Canada is a co-sponsor, submitted to the Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights in July 2008. These relate to a 2005 proposal on geographical indications. They aggregate all sponsors, rather than incorporating any substantial changes to the text of the proposal.

<sup>28</sup> For the negotiating documents see WTO online information, at: [http://www.wto.org/english/thewto\\_e/countries\\_e/canada\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/canada_e.htm).

<sup>29</sup> Latest notifications: (i) agriculture: (a) imports under tariff quotas (marketing year 2008-2009 and calendar year 2009); (b) special safeguard (marketing year 2007-08 and the calendar years 2007 and 2008); (c) domestic support (DS:2 table: fiscal year 2005/06 and a programme running from May 2004 to March 2008. DS:1 table: 2005); (d) Possible negative effects of the reform programme on least-developed and net food-importing developing countries (2006-07); (ii) Government Procurement: statistics (2007).

<sup>30</sup> Article III:3 of the GATS.

origin for the FTAs reached with Peru and EFTA, nor the preferential access agreements with Australia and New Zealand.<sup>31</sup>

#### **(4) PREFERENTIAL TRADE RELATIONS**

##### **(a) Free trade agreements**

33. Canada has free trade agreements (FTA) with the United States and Mexico (through NAFTA), Chile, Costa Rica, and Israel. Agreements entered into force with Peru (2009) and the EFTA (2009) during the review period. All of these agreements have been formally considered by WTO Members. FTAs have been signed with Colombia in 2008; Jordan (2009) and Panama (2010), but these have not yet entered into force.<sup>32</sup>

34. The FTA between Canada and Peru covers goods and services, and *inter alia* has provisions on investment; competition policy, monopolies, and state enterprises; government procurement; and electronic commerce. Separate agreements on labour cooperation and the environment were signed and entered into force in parallel with the FTA.

35. Canada's FTA with EFTA covers trade in industrial products (including fish and other marine products), processed agricultural products and basic agricultural products through bilateral agreements. The agreement contains disciplines on competition, and the parties committed to review issues related to services, government procurement, and investment within three years of its entry into force.

36. Canada is continuing to pursue an ambitious agenda of free-trade negotiations, both within the hemisphere and outside. Negotiations are active with the Caribbean Community (CARICOM); the Dominican Republic; the Central America 4 (El Salvador, Guatemala, Honduras, and Nicaragua); India; South Korea; the European Union; Morocco, and Ukraine.

37. Other initiatives under way are FTA exploratory discussions with Turkey, discussions on how to modernize the Canada-Costa Rica FTA and negotiations to enhance the FTA between Canada and Chile.<sup>33</sup> Negotiations to establish a Free Trade Area of the Americas have been dormant since 2004.

##### **(b) Unilateral tariff preferences**

38. Canada grants unilateral preferential tariff treatment under the Commonwealth Caribbean Country Tariff (CARIBCAN); the General Preferential Tariff (GPT) and the Least-Developed Country Tariff (LDCT) (Chapter III(2)(iv)).

#### **(5) AID FOR TRADE**

39. According to the authorities, Canada's aid for trade (AFT) programming efforts are guided by an overall approach that views trade and the multilateral trading system as a key tool for developing countries' efforts to enhance economic growth and development. It was noted that Canada's AFT is also guided by international undertakings, particularly those flowing from WTO Ministerial meetings

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<sup>31</sup> Trade Agreement Between the Government of Canada and the Government of the Commonwealth of Australia (CANATA, 1960), and the Trade and Economic Cooperation Agreement with New Zealand (1982).

<sup>32</sup> The Colombian FTA has been approved in Canada and will be implemented once it is approved in Colombia. The Jordan and Panama FTAs are in the Canadian Parliament for approval.

<sup>33</sup> For DFAIT online information on completed and ongoing negotiations, see: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=en#free>.

and G-8 and G-20 commitments. Canada remains an active participant in the WTO's work on aid for trade and is an alternate member of the Board of the Enhanced Integrated Framework.

40. Almost all of Canada's aid for trade funding is managed by the Canadian International Development Agency (CIDA), which is the key government agency responsible for administering Canada's official development assistance (ODA). Two key strategies guide the CIDA's approach to AFT: its Sustainable Economic Growth Strategy, and its Aid Effectiveness Agenda. Under the latter 80% of Canada's bilateral aid budget is focused on 20 countries/areas as well as thematic objectives (Box II.2).<sup>34</sup> Canada channels its AFT through multilateral institutions, bilateral assistance, and partnerships with civil society. Canada is also a proponent of mainstreaming gender equality into aid for trade.

**Box II.2: CIDA Aid Effectiveness Agenda**

**ODA thematic objectives**

Three pillars: increasing food security; securing the future of children and youth; stimulating sustainable economic growth  
Horizontal themes, cross-cutting each of the pillars: increasing environmental sustainability; promoting equality between men and women; and helping to strengthen governance institutions and practices

**CIDA countries of focus**

Americas: Bolivia; Member countries of the Caribbean Regional Program; Colombia; Haiti; Honduras; Peru

Asia: Afghanistan; Bangladesh; Indonesia; Pakistan; Viet Nam.

Eastern Europe: Ukraine

North Africa and Middle East: West Bank and Gaza

Sub-Saharan Africa: Ethiopia; Ghana; Mali; Mozambique; Senegal; Sudan; Tanzania

Source: CIDA online information. Viewed at: <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/FRA-825105226-KFT>.

41. Canada's aid-for-trade funding through the CIDA for FY2008/09 (the most recent date for which statistics were available) was Can\$513 million (up from Can\$465 million in FY2006/07). In FY2008/09, 75% of disbursements went towards building productive capacity (particularly in agriculture); 19% to economic infrastructure; and 6% to trade policy and regulations. Over half of bilateral AFT funding was allocated to CIDA's 20 countries/areas of focus, with the African continent being the largest recipient. Projects and programmes include: the Program for Building African Capacity to Trade, the Canada-Americas Trade Related Technical Assistance Program; State Customs Capacity Building in Ukraine; Enhancing Trade Capacity Building in the Middle East and North Africa; and support to the African Trade Policy Centre and the East African Community.

42. At the multilateral level, in support of its Strategy for Sustainable Economic Growth, CIDA allocated Can\$40 million over five years (2009/10-2013/14) to enhance countries' participation in the global economy. The support is to be focused on trade facilitation and agricultural standards, to be delivered through a variety of institutions. The authorities note that around one-quarter of this investment will be devoted to making substantive improvements to the lives of women traders, entrepreneurs, and small-scale farmers. The CIDA has also contributed Can\$19.2 million over five years (2009-14) to the Enhanced Integrated Framework for Trade Related Technical Assistance. It provides an annual contribution of Can\$950,000 to the International Trade Centre.

<sup>34</sup> CIDA online information. Viewed at: <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/NAD-9241625-RHC>; and <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/FRA-825105226-KFT>.

43. According to the authorities, CIDA's Partnerships with Canadians Branch (PWCB) works through the Global Citizens Program to involve Canadians in international development. It works through the Partners for Development Program to leverage Canadian development expertise by funding the proposals put forward by Canadian organizations to deliver development results on the ground and contribute to poverty reduction. PWCB also funds the International Lawyers Against Poverty.
44. Canada has recently made an additional contribution of US\$200 million to support the International Finance Corporation's Global Trade Liquidity Program.