

### III. TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) INTRODUCTION

1. Despite the global economic and financial crisis, Canada has taken steps to further liberalize its trade and investment regimes. As a result of its 2009 and 2010 budgets, tariff rates on 1,374 lines (manufacturing inputs, and machinery and equipment) have been reduced to zero. Consequently, Canada's simple average applied MFN tariff decreased from 6.5% in 2006 to 5.4% in 2010.

2. Agriculture remains the most protected sector, with an average applied MFN tariff rate of 22.5% (2.5% on non-agricultural products), based on WTO definition. Under ISIC (Revision 2), applied MFN tariff rates average 7.1% in agriculture (including livestock, forestry and fisheries), 5.4% in manufacturing, and 0.2% in mining and quarrying. The imposition of non-*ad valorem* tariffs, mainly on agricultural products (the *ad valorem* equivalents could not be calculated for 171 tariff lines, due to absence of imports of the concerned items), means that the overall average rate, in particular the level of tariff protection for agricultural products, has likely been underestimated. Moreover, while the ongoing reduction of tariffs on manufacturing inputs to zero is likely to further decrease the overall level of average protection, it is also likely to enhance positive tariff escalation, and thereby increase effective protection of certain industries.

3. As at the time of Canada's previous review, the main indirect taxes are the federal and provincial sales taxes and excise taxes and duties. For most provinces, the federal (GST) and provincial sales taxes have been harmonized; Ontario and British Columbia implemented the Harmonized Sales Tax (HST) in 2010. During the review period, the GST has been reduced by one percentage point (to 5%). The GST/HST is applied on a national treatment basis. However, at the federal level, the excise duty rates on certain domestically brewed beer are lower than on imported beer, and 100% Canadian wine is exempt. Alcoholic beverages produced in Québec benefit from lower provincial excise tax rates under certain conditions.

4. There have been no major changes to Canada's legal and institutional framework for trade remedies since its last Review. Canada has used both anti-dumping and countervailing measures; definitive duties were imposed in ten and six cases, respectively. Between mid-2006 and mid-2010, the number of measures in place for longer than 5 years increased from 22 to 29. No safeguards have been imposed.

5. Canada requires advance reporting of both imports and exports within established timeframes. By the end of 2013, all imports must be reported electronically. Programmes are in place to facilitate trade, particularly with the United States and Mexico. Amendments to the Customs Act have given greater authority to CBSA officers to examine goods within designated Customs Controlled Areas in order to prevent contraband. Import licences are required for, *inter alia*, the administration of tariff quotas or to protect human health and safety. The Canadian food safety system, including its food safety legislation and procedures, is being modernized within the framework of the Food and Consumer Safety Action Plan. Canada is also considering extending the scope of SPS-related licensing requirements for importers to a wide range of food products and ingredients. The Cabinet Directive on Streamlining Regulation of April 2007 introduces a life-cycle approach to regulatory management, which applies to, *inter alia*, the development and implementation of technical regulations and SPS measures, as well as to their evaluation and review. A number of specific trade concerns have been raised by WTO Members concerning, *inter alia*, Canada's revised legislation on tobacco products containing certain flavourings and additives.

6. Canada's export control regime, essentially unchanged (apart from technical amendments), is in place for health, safety, security, or environmental reasons, and often pursuant to international agreements. Canada imposes export duties on manufactured tobacco products and on softwood lumber destined for the United States under the 2006 Softwood Lumber Agreement between the two countries.

7. Official support to Canadian businesses is available in various configurations, with public funds being allocated and administered both at the federal and sub-federal levels. Most initiatives tend to promote entrepreneurship, innovation, and regional development. In addition, there are a number of programmes that focus on social and cultural priorities or specific industries. In some cases, federal and/or provincial support may be contingent upon local-content requirements, or be targeted at Canadian-controlled corporations. At end 2010, Canadian entrepreneurs could qualify for financial assistance under 441 programmes, of which 112 also support export-oriented projects. Under the Business Credit Availability Program, a component of Canada's response to the global financial crisis, access to financing for Canadian businesses has been improved through new resources and flexibilities to Export Development Canada (EDC) and the Business Development Bank of Canada (BDC), both Crown corporations wholly owned by the Government.

8. During the review period, Canada modified several provisions of its main competition law; relevant immunity and leniency programmes were also fleshed out. However, the legislative amendments did not take into account long standing recommendations regarding sector-wide investigations and the scope of private litigation rights. In addition, Canada's competition regime continues to be undermined by numerous exemptions, particularly in connection to regulated conduct.

9. The federal and provincial governments have full or partial ownership interests in companies active in a range of industries. Wholly-owned enterprises, known as Crown corporations, may be expressly conferred with certain privileges and immunities. Crown corporations are exempted from the competition law if they are not in actual or potential competition with private companies in Canada. Moreover, certain Crown corporations are exempted from federal and/or provincial taxes and charges, regardless of the nature (commercial or non-commercial) of their activities.

10. Procurement in Canada is undertaken both at the federal and provincial levels. Canada is a signatory to the WTO Government Procurement Agreement. Until recently, provincial procurement was not included as part of Canada's international commitments (both the GPA and FTAs). As a result of a bilateral agreement between the United States and Canada, provincial procurement opportunities are open to U.S. suppliers.

11. While there have been no major changes to Canada's intellectual property statutes during the review period, related legislation and regulations have been modified to enhance legal certainty and strengthening deterrence. The price review process for patented medicines has also been fine-tuned.

## **(2) MEASURES DIRECTLY AFFECTING IMPORTS**

### **(i) Procedures**

12. The Canada Border Services Agency (CBSA) is responsible for providing integrated border services.<sup>1</sup> Its mandate is governed by the Canada Border Services Agency Act and the Customs Act.<sup>2</sup>

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<sup>1</sup> The CBSA is under the portfolio of the Minister of Public Safety. See also CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/menu-eng.html>.

Importers of commercial goods must be registered with the Canada Revenue Agency.<sup>3</sup> Canada does not have any laws or regulations relating to preshipment inspection.<sup>4</sup>

13. The most significant change to customs procedures during the period under review was the initiation of the third phase of the Advance Commercial Information (ACI) programme, through amendments to the Customs Act in 2009.<sup>5</sup> The objective of the ACI programme is to allow the CBSA to undertake risk assessments in advance of the arrival of imports into Canada as well as to facilitate trade. Under the first two phases of the ACI, air and marine carriers were required to submit cargo and conveyance information electronically before arrival.<sup>6</sup> Under the third phase, known as eManifest, all carriers, freight forwarders, and importers will be required to submit trade information in electronic form in advance of their shipments arriving in Canada. Implementation of eManifest will take place over a transition period until end 2013.<sup>7</sup> Once fully implemented pre-arrival information for goods must have been received by the CBSA within the timeframes set out in Table III.1. CBSA import documentation requirements remain the same as at the time of Canada's previous review.<sup>8</sup>

**Table III.1**  
**Timeframes for submission of pre-arrival information by mode**

	Marine	Air	Rail	Highway
<b>Carriers:</b> electronic cargo, conveyance and crew/passenger information	Cargo: 24 hours prior to loading or arrival depending on type and origin of goods Crew/conveyance: 24 or 96 hours prior to arrival	4 hours prior to arrival or at time of departure	2 hours prior to arrival	1 hour prior to arrival
<b>Freight forwarders:</b> secondary information	24 hours prior to loading or arrival depending on type and origin of goods	4 hours prior to arrival or at time of departure	2 hours prior to arrival	1 hour prior to arrival
<b>Importers:</b> advance electronic trade data	24 hours prior to loading or arrival depending on type and origin of goods	4 hours prior to arrival or at time of departure	2 hours prior to arrival	1 hour prior to arrival

Source: Information provided by the Canadian authorities.

<sup>2</sup> Customs Act. Viewed at: <http://laws-lois.justice.gc.ca/PDF/Statute/C/C-52.6.pdf>; and Canada Border Services Agency Act. Viewed at: <http://laws.justice.gc.ca/en/c-1.4/>.

<sup>3</sup> All importers of commercial goods are required to register with the Canada Revenue Agency for a business number, which includes an import/export account (RM account). The business number must be inscribed on relevant customs documentation.

<sup>4</sup> Canada has made a notification to the WTO to this effect (WTO document G/PSI/N/1/Add.3, 12 July 1996).

<sup>5</sup> These changes are included in Bill S-2 An Act to Amend the Customs Act, which received Royal Assent on 11 June 2009. For a summary of these changes see: <http://www.cbsa-asfc.gc.ca/media/facts-faits/070-eng.html>; and for more information on eManifest, see: <http://www.cbsa-asfc.gc.ca/prog/manif/menu-eng.html>.

<sup>6</sup> Under Phase 1 (implemented in 2004), marine carriers are required to transmit marine cargo data electronically to the CBSA 24 hours prior to loading cargo at a foreign port. Under Phase 2 (implemented in 2006), all air carriers and freight forwarders, where applicable, were required to transmit conveyance, cargo and supplementary cargo data electronically to the CBSA four hours prior to arrival in Canada. In addition, the ACI expanded marine requirements to include shipments loaded in the United States (CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/prog/aci-ipecc/menu-eng.html>).

<sup>7</sup> For further detail on the timeframe for implementation of eManifest, see: <http://www.cbsa-asfc.gc.ca/prog/manif/implementation-eng.html#a1>.

<sup>8</sup> In most cases this consists of: two copies of the cargo control document (CCD); two copies of the invoice; two copies of a completed Canada Customs Coding Form; any import permits, health certificates or forms that other Federal Government departments require; and a Certificate of Origin or Statement of Origin when necessary.

14. The authorities confirmed that their risk management model has not changed: all requests for release of commercial shipments are reviewed and the frequency of examinations depends on the importer's compliance record, as well as the type of goods being imported. Goods examined more systematically include food products that may carry disease, hazardous products or waste, chemicals or biological products, and supply-managed goods, to ensure compliance with tariff quotas. Around 2% of shipments are physically examined.

15. Amendments to the Customs Act in 2009 now enable CBSA officers to question and search persons as well as examine goods within designated Customs Controlled Areas (CCAs) in order to counteract smuggling.<sup>9</sup> The authorities note that new CCA Regulations (which would specify how the CCA obligations and powers contained in the Customs Act will be administered) are currently waiting approval (January 2011). Once approved, CCA implementation will begin at the Lester B Pearson International Airport, Pierre Elliott Trudeau International Airport, and Vancouver International Airport.

16. A number of programmes are in place to facilitate trade and enhance security. (Table III.2). The Frequent Importer Release System (FIRST), in operation at the time of Canada's last Review, was terminated in 2008, and the Container Security Initiative will be discontinued in 2011/12. The authorities noted that a pilot project, Partners in Compliance (PIC), has been launched to help businesses comply with the CBSA's trade programmes (tariff classification, origin, and value), and the CBSA is in the process of developing a trusted trader strategy.

**Table III.2**  
**CBSA trade facilitation and border security programmes**

Programme	Description
Pearrival Review System (PARS)	Importers may submit import documentation a maximum of 30 days prior to the goods' arrival in Canada. Shipments are released within minutes unless an examination is required. 72% of commercial imports are released under this option
Customs Self Assessment (CSA)	Expedited customs clearance and streamlined accounting and payment process for imported commercial goods by pre-approved importers from the United States, and since 2009, from Mexico. In 2010, CSA import accounted for 18% of commercial imports.
Free and Secure Trade Program (FAST)	Joint initiative of CBSA and US Customs and Border Protection. It is offered to importers, carriers, and registered drivers who have been approved under the Canadian CSA and PIP programmes. Participants may use Canada's FAST lanes located at four specific highway ports of entry.
Partners in Protection (PIP)	Creates partnerships between the CBSA and private companies to help secure the supply chain and enhance border security. The CBSA reviews the partner's security measures and provides guidance to address potential gaps. Participants must undergo a risk assessment and demonstrate they meet programme requirements before being approved.

Source: CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/menu-eng.html>.

17. Monetary penalties for infractions of the Customs Act, Customs Tariff, and licensing agreements are applied through the Administrative Monetary Penalty System (AMPS) under the authority of the Customs Act.<sup>10</sup> Penalties are levied in proportion to the type, frequency, and severity of the infraction. From July 2007 to June 2010 there were just under 65,000 contraventions by

<sup>9</sup> For a summary of the changes included in this Act, see: [http://www2.parl.gc.ca/Sites/LOP/LegislativeSummaries/Bills\\_ls.asp?lang=E&ls=s2&source=library\\_prb&Parl=40&Ses=2#removal](http://www2.parl.gc.ca/Sites/LOP/LegislativeSummaries/Bills_ls.asp?lang=E&ls=s2&source=library_prb&Parl=40&Ses=2#removal).

<sup>10</sup> Some changes have been made to the AMPS regime as a result of a review. These include changes to the penalty amounts, but not to the way penalties are assessed. See CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/cn-ad/cn10-002-eng.html>; and <http://www.cbsa-asfc.gc.ca/publications/cn-ad/cn10-020-eng.html>.

importers and carriers, representing a net penalty amount of just over Can\$25 million. The main contraventions by importers related to failures to pay duties as a result of a required correction in valuation and a failure to correct tariff classification within the 90-day requirement. The main carrier infraction was failure to report goods.

18. Importers may ask for a review of CBSA decisions relating to tariff classification, origin or value for duty of imported goods. Between 2007/08 and 2009/10 there were 7,318 requests for a re-determination of the tariff classification, origin or value of duty. Most requests related to tariff classification (70%), followed by origin (19%), and then valuation (11%). With respect to outcomes of redress requests, 40% of requests were allowed in full, a further 8% were allowed in part, and the remaining 52% were rejected.<sup>11</sup> Decisions resulting from the review may be appealed to the Canadian International Trade Tribunal; the CITT's decision may be appealed to the Federal Court of Appeal.

19. Importers may ask the CBSA for advance rulings on classification, valuation, and origin. Requests must be made not less than 120 days before the proposed date of importation. Advance rulings provided by the CBSA are binding.<sup>12</sup>

## (ii) Rules of origin

20. Canada maintains both preferential and non-preferential rules of origin; there have been no changes since Canada's previous Review. MFN (non-preferential) rules of origin are in place to, *inter alia*, distinguish MFN imports from those under the General Tariff (see section (iv)). Goods are deemed to originate in a country that is a beneficiary of the MFN Tariff if not less than 50% of the cost of production of the goods is incurred by the industry of one or more countries that are beneficiaries of the MFN Tariff, or by the industry of Canada.<sup>13</sup>

21. Canada maintains preferential rules of origin under free-trade agreements and unilateral tariff concessions (see Chapter II). To benefit from the tariff concessions, the importer must supply to the Canadian authorities, upon request, certification that the rules of origin have been met. Depending on the particular agreement or tariff concession, certification may be in the form of a certificate of origin, a statement on an invoice, or any other format agreed to by the signatory parties. None of these certificates or statements needs to be stamped or signed by a designated authority in the country benefiting from the preference.

22. Under free-trade agreements, origin is largely based on a shift in tariff classification. Additional provisions in some of the agreements include regional value content requirements; diagonal and bilateral cumulation; *de minimis* provisions; short supply rules for fibre, yarn and fabric; specific process requirements; and value, volume or weight tests. The rules of origin requirements are described in more detail in documents submitted to the Committee on Regional Trade Agreements.<sup>14</sup>

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<sup>11</sup> At the time of Canada's previous Review there were 10,577 requests for a re-determination of tariff classification, origin or value of duty; 48% were allowed in full and 15% in part.

<sup>12</sup> Customs Act Article 43.1 and Memorandum D11-11-3, April 2010, Advance Rulings for Tariff Classification. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-11-3-eng.pdf>.

<sup>13</sup> Memorandum D11-4-3, May 2008, Rules of Origin Respecting the Most Favoured Nation Tariff. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-3-eng.pdf>.

<sup>14</sup> See the WTO Secretariat Summary Fact Sheets and Factual Presentations for each of the FTAs as well as country communications to the Committee on Regional Trade Agreements. These are available under Canada's country profile on the Regional Trade Agreements Database. Viewed at: <http://rtais.wto.org>.

23. Under the General Preferential Tariff (GPT), the Least-Developed Country Tariff (LDCT) and the Commonwealth Caribbean Countries Tariff (CARIBCAN), origin for goods that incorporate non-originating materials is based upon a certain percentage of the ex-factory price of the goods originating in beneficiary countries or Canada: these percentages are lower for LDCT countries.<sup>15</sup> In 2010, regulations were issued under the Customs Tariff exempting Haiti from the direct shipment requirements under the GPT and LDCT, given the situation arising from the 2010 earthquake. Haitian-origin goods may instead be shipped from a port in the Dominican Republic.<sup>16</sup>

24. Under the tariff treatment agreements with Australia and New Zealand, rules of origin are similar to Canada's MFN rules of origin. Goods are deemed to originate in Australia if not less than 50% of the cost of production is incurred by the industry of Australia or Canada and the goods were finished in Australia in the form in which they are imported into Canada. The same formula applies to New Zealand.<sup>17</sup>

### **(iii) Customs valuation**

25. Canada's customs valuation rules are contained in Part III of the Customs Act, as well as the Valuation for Duty Regulations, and other Canada Customs D-13 memoranda.<sup>18</sup> There have been no substantial changes to the Act or Regulations since Canada's previous review.<sup>19</sup>

26. Importers must declare a value for all goods imported into Canada. Canada applies tariffs based on the transaction value of the goods, and where this method cannot be used, other methods are resorted to based on the hierarchy set out in the WTO Customs Valuation Agreement. The CBSA has provided interpretations of the value for certain imports.<sup>20</sup> Exchange rates are primarily based upon the latest exchange rate provided by the Bank of Canada.

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

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<sup>15</sup> As outlined in Canada's previous Review, under the GPT and CARIBCAN, at least 60% of the ex-factory price of the goods must have been incurred in one or more GPT or CARIBCAN beneficiary country or Canada. Except for certain textiles and apparel, under the LDCT, at least 40% of the ex-factory price of the goods must have been incurred in one or more LDCT beneficiary country or Canada; the 40% may include up to 20% of the ex-factory price of the goods from other GPT countries.

<sup>16</sup> Haiti Deemed Direct Shipment (General Preferential Tariff and Least Developed Country Tariff) Regulations, SOR/2010-58 (2010). Viewed at: <http://canadagazette.gc.ca/rp-pr/p2/2010/2010-03-31/html/sor-dors58-eng.html>.

<sup>17</sup> Memorandum D11-4-6, Rules of Origin for the New Zealand and Australia Tariff Treatments (February 2005). Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-6-eng.pdf>.

<sup>18</sup> Valuation for Duty Regulations and D-13 memoranda. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d13-eng.html>.

<sup>19</sup> Some technical and housekeeping items were included in the 2009 amendments to the Customs Act, but no substantial changes.

<sup>20</sup> Including used goods; used automobiles, motor vehicles and other vessels; goods sold in Canada while entered temporarily for convention and exhibitions; certain information-based products; printed or lithographed matter or paper; promotional material and computer software; and imports to be used in the assembly, construction or fabrication of a facility or a machine sold on an installed contract basis (CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d13-eng.html>).

90 days. CITT decisions may be appealed to the Federal Court of Appeal and, beyond that, the Supreme Court of Canada. The authorities indicated that the most court challenges on customs valuation issues have concerned royalties and license fees (Article 8.1(c)), and the determination of which sale, in a series of sales, represents the sale for export (Article 1).

**(iv) Tariffs**

28. Canada levies customs duties on the f.o.b. value of imports at the point of direct shipment to its customs territory.<sup>21</sup> Its last Customs Tariff Act entered into force in January 1998, and there have been several amendments: consolidated versions of the Customs Tariff are issued regularly by the Canada Border Services Agency (CBSA).<sup>22</sup> Parliament has general authority to set tariff rates. In this regard, budget implementation acts in 2008, 2009 and 2010 contained amendments to the Customs Tariff. Amendments to the Customs Tariff to reduce the rates of duty on goods used in the production of other goods or the provision of services may also be made through orders issued by the Governor General in Council, based on the recommendation of the Minister of Finance.<sup>23</sup> Since 2007 there have been five such orders.

29. Canada applies at least MFN tariff treatment to all WTO Members. The Democratic People's Republic of Korea does not receive MFN tariff treatment: it is subject to the General Tariff, which is levied at 35% on all goods except those subject to MFN rates exceeding 35%, in which case the MFN rate is applied. MFN tariff treatment was extended to Libya in January 2009, which had previously been subject to the General Tariff.<sup>24</sup>

**(a) Applied MFN tariff rates**

30. Canada's 2010 applied MFN Customs Tariff is based on the 2007 version of the Harmonized Commodity Description and Coding System (HS2007), and comprises 8,192 tariff lines at the HS 8-digit level. Over the review period there has been substantial unilateral liberalization of tariffs on manufactured goods: first, incrementally through Orders eliminating tariffs on certain specific manufacturing inputs<sup>25</sup>; then, as a result of the 2009 Budget and resulting implementation Act, MFN duty rates were reduced to zero on 214 tariff lines relating to machinery and equipment.<sup>26</sup> Thereafter, liberalization stemming from the 2010 Budget affected an additional 1,541 tariff lines relating to manufacturing inputs and machinery and equipment: 1,160 of these were reduced to zero in March 2010, and the remaining 381 are to be fully liberalized by January 2015.<sup>27</sup> This tariff

<sup>21</sup> Customs Act, Section 48(5).

<sup>22</sup> For the consolidated version of the Customs Tariff for 2010, see: <http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2010/01-99/tblmod-eng.html>.

<sup>23</sup> Customs Tariff, Section 82.

<sup>24</sup> Order Amending the Schedule to the Customs Tariff (extension of Most-Favoured-Nation Tariff to Libya). Order in Council P.C. 2009-129, SOR/2009-24. Viewed at: <http://www.gazette.gc.ca/rp-pr/p2/2009/2009-02-18/html/sor-dors24-eng.html>.

<sup>25</sup> See the respective orders amending the Schedule to the Customs Tariff: Order 2007-1, viewed at: <http://www.gazette.gc.ca/archives/p2/2007/2007-04-18/html/sor-dors65-eng.html>; Order 2007-2, viewed at: <http://www.gazette.gc.ca/archives/p2/2007/2007-12-26/html/sor-dors300-eng.html>; Order 2008-1, viewed at: <http://www.gazette.gc.ca/rp-pr/p2/2008/2008-05-28/html/sor-dors150-eng.html>; Order 2008-2, viewed at: <http://www.gazette.gc.ca/rp-pr/p2/2008/2008-12-24/html/sor-dors321-eng.html>; Order 2009-1, viewed at: <http://www.gazette.gc.ca/rp-pr/p2/2009/2009-06-10/html/sor-dors153-eng.html>.

<sup>26</sup> Bill C-10, Part 3. Viewed at: [http://www2.parl.gc.ca/content/hoc/Bills/402/Government/C-10/C-10\\_4/C-10\\_4.pdf](http://www2.parl.gc.ca/content/hoc/Bills/402/Government/C-10/C-10_4/C-10_4.pdf).

<sup>27</sup> Bill C-9: An Act to implement certain provisions of the budget tabled in Parliament on March 4 2010 and other measures. Viewed at: <http://www2.parl.gc.ca/content/hoc/Bills/403/Government/>

liberalization has also affected other tariff treatments where applicable (see below). As emphasized by the authorities these measures have created a tariff-free zone for manufacturing inputs and machinery and equipment. The stated primary aim of this initiative is to enhance the competitiveness and productivity of Canadian manufacturers, but Canada has highlighted that it also constitutes concrete actions to open global markets.<sup>28</sup>

31. Tariff changes to certain alcoholic beverages took place during WTO consultations between the European Union and Canada.<sup>29</sup> Tariffs have been eliminated on certain active ingredients and intermediates used in the manufacture of pharmaceuticals in Canada under the WTO's Pharmaceutical Understanding.<sup>30</sup> The length of time for which temporarily imported containers may remain in Canada without attracting customs duties as well as other charges has been extended.

32. In addition, the tariff treatment of milk protein substances has been modified (Chapter IV(2)).

33. The tariff consists of 96.6% of *ad valorem* lines, including duty-free lines (Table III.3). Of the 3.4% (or 282) non-*ad valorem* lines, 87 carry specific tariffs; 43 compound tariffs; 143 mixed/alternate rates; and 9 have other types of tariff. As noted in Canada's previous Review, almost all non-*ad valorem* lines correspond to agricultural products (WTO definition).

34. Tariff quotas, which relate to agricultural products, cover 2.2% of tariff lines<sup>31</sup> (Table III.3).

35. For analytical purposes, the *ad valorem* equivalents (AVEs) of non-*ad valorem* tariffs have been calculated for 111 lines where import price data was available.<sup>32</sup> However, it was not possible to estimate the *ad valorem* equivalents of 171 tariff lines due to the absence of imports (see Table AIII.7). In addition, for some non-*ad valorem* tariffs with *ad valorem* components, only the *ad valorem* components (which represent minimum rates) have been taken into consideration. This, together with the exclusion of products for which no AVEs could be calculated, is likely to underestimate the calculated tariff averages hereunder.

36. Subject to these limitations, Canada's simple average applied MFN tariff was 5.4% in 2010, down from 6.5% in 2006. The coefficient of variation of 4.7 indicates high tariff dispersion, from zero-532.2%: some 68.6% of tariff lines are duty free (up from 52.7% at the time of its last review); and most dutiable tariff lines fall within the 5-10% range, with 2% of the total exceeding 20% (Chart III.1). Agriculture is the most tariff protected: the average applied tariff for agricultural products (WTO definition) in 2010 was 22.5%, similar to at the time of Canada's previous review (22.4%); and the average for non-agricultural products was 2.5% (down from 3.8% in 2006). Using the ISIC definition, the simple average applied MFN tariffs were 7.1% for agriculture including livestock, forestry and fisheries; 0.2% for mining; and 5.4% for manufacturing (Table AIII.1).

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<sup>28</sup> WTO document G/MA/W/101, 19 April 2010.

<sup>29</sup> Order Amending the Schedule to the Customs Tariff (Wine and Beer). Viewed at: <http://www.gazette.gc.ca/rp-pr/p2/2008/2008-12-24/html/sor-dors313-eng.html>.

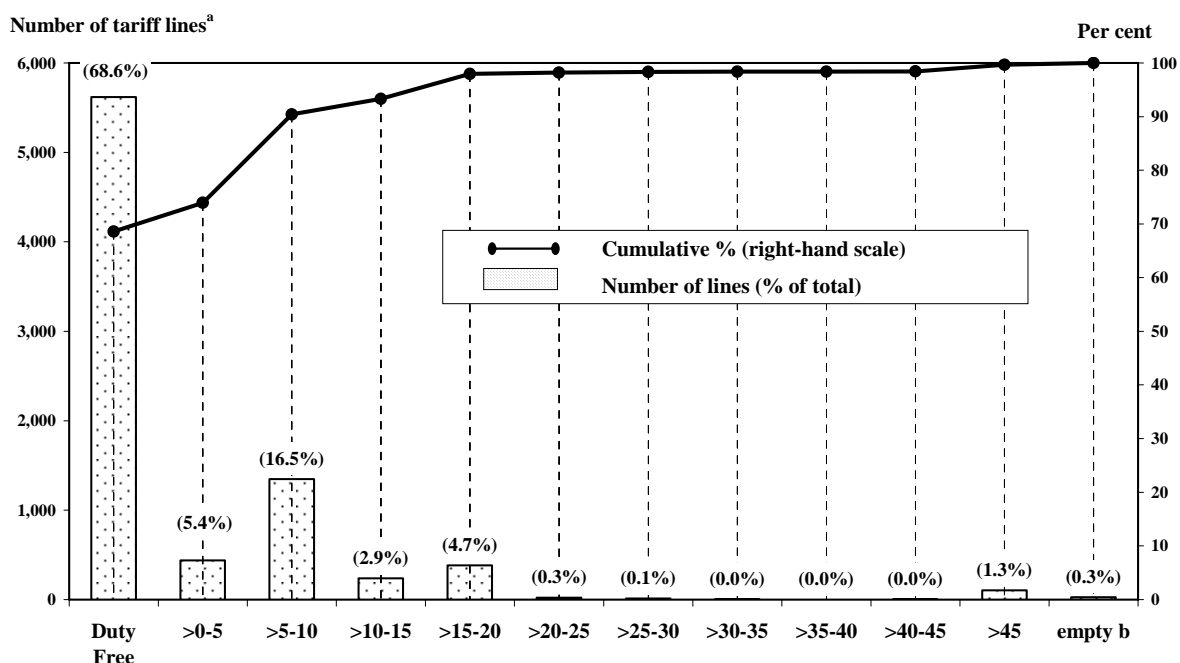
<sup>30</sup> Order Amending the Schedule to the Customs Tariff (Pharmaceutical Understanding). Viewed at: <http://www.gazette.gc.ca/archives/p2/2007/2007-06-27/html/sor-dors141-eng.html>.

<sup>31</sup> The WTO standard methodology for analysing a tariff that contains tariff quotas is to consider only the out-of-quota rates.

<sup>32</sup> *Ad valorem* equivalents of non-*ad valorem* duties were calculated using import price data.



**Chart III.1**  
**Frequency distribution of MFN tariff rates, 2010**



**a** The total number of lines is 8,192.

**b** There are 6 lines with no rates and 20 lines with specific rates where AVEs could not be calculated.

*Source:* WTO Secretariat calculations, based on data provided by the Canadian authorities.

37. In aggregate, the tariff depicts mixed escalation: the average applied rate for semi-processed products is lower than for raw materials and the average for fully-processed products is higher than the average for raw materials and semi-processed products (Table AIII.1). In specific industries, however, positive tariff escalation is prevalent, meaning that there are high rates of effective protection. This, for example, is the case of food and beverages; textiles and apparel; and, chemicals and plastics (Chart III.2).

**Table III.3**  
**Structure of applied MFN tariff in Canada, 2006 and 2010**  
(%)

	2006	2010
1. Bound lines (incl. partially bound)	99.7	99.5
2. Duty free tariff lines (% of all tariff lines)	52.7	68.6
3. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	3.8	3.4
4. Tariff quotas (% of all tariff lines)	2.1	2.2
5. Non- <i>ad valorem</i> with no AVEs (% of all tariff lines)	0.5	2.1
6. Simple average tariff rate	6.5	5.4
Agricultural products (WTO definition)	22.4	22.5
Non-agricultural products (WTO definition) <sup>a</sup>	3.8	2.5
Agriculture, hunting, forestry and fishing (ISIC 1)	7.4	7.1
Mining and quarrying (ISIC 2)	0.7	0.2
Manufacturing (ISIC 3)	6.5	5.4
7. Domestic tariff "peaks" (% of all tariff lines) <sup>b</sup>	1.8	5.7
8. International tariff "peaks" (% of all tariff lines) <sup>c</sup>	6.5	6.4
9. Overall standard deviation of applied rates	25.3	25.7
10. "Nuisance" applied rates (% of all tariff lines) <sup>d</sup>	1.0	0.6

a Excluding petroleum.

b Domestic tariff peaks are defined as rates exceeding three times the overall average applied rate (indicator 6).

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

d Nuisance rates are those greater than zero, but less than or equal to 2%.

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

#### (b) WTO bindings

38. Canada has bound all but 24 tariff lines in Chapters 1-97.<sup>33</sup> The unbound lines cover mineral oils and fuels and electrical energy (12 lines under the HS chapter 27); cruise ships, tankers, tugs, and drilling and platform ships (11 lines under the HS chapter 89); and postage stamps (HS 9704.000). The average bound tariff rate is 7.8%, compared to an average applied MFN rate of 5.4%.

39. Due to the differences in nomenclature between Canada's bound rates (still in HS 2002) and applied rates (HS 2007), certain tariff rates cannot easily be compared.<sup>34</sup> On apple juice, Canada's applied rate is mixed/alternate with an estimated AVE of 9.9%, while the bound rate is *ad valorem* (8.5%).<sup>35</sup> For five tariff lines, the bound rate is slightly lower than the applied rate, which would appear to be due to the rounding up of decimal points in the latter (Table III.4).<sup>36</sup> For one additional tariff line, the MFN rate is *ad valorem* while the bound rate is mixed, and the AVE of the non-*ad valorem* component of this line could not be calculated.<sup>37</sup> The inconsistency between the bound and applied rate on warships, highlighted in Canada's previous Review, has been eliminated. Canada's bound tariff has since been certified.

<sup>33</sup> In addition, two lines are partially bound: 2710.1910 and 2710.9910.

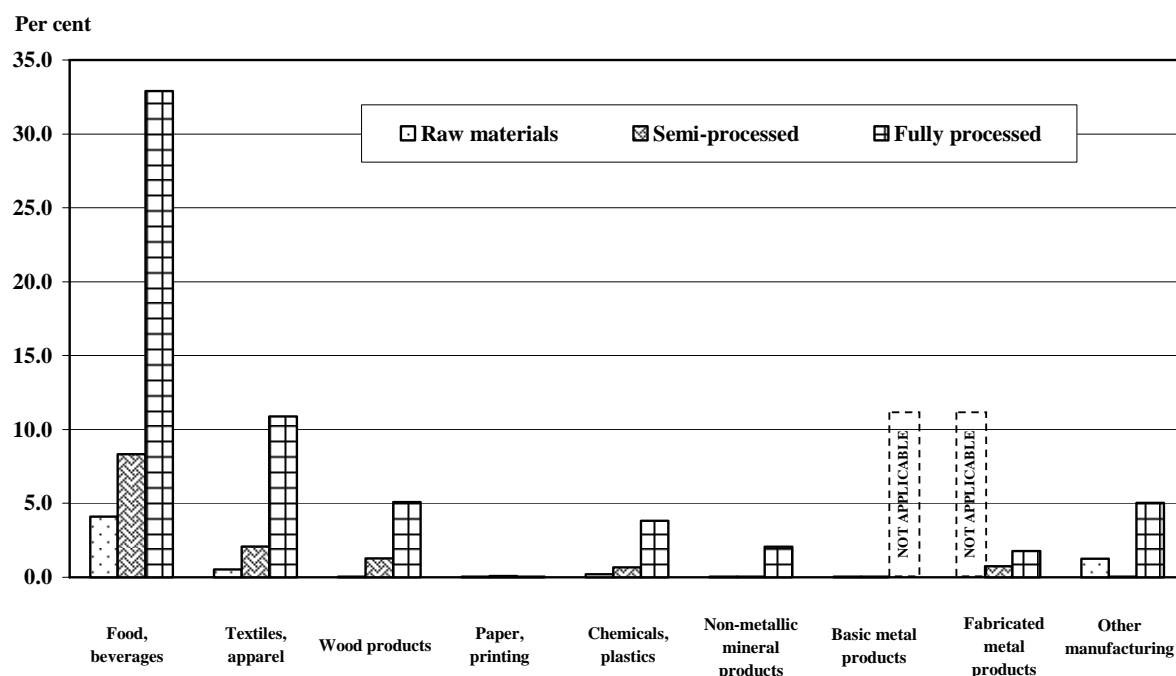
<sup>34</sup> Some 69.4% of Canada's MFN tariff was strictly comparable with its bound tariff.

<sup>35</sup> Tariff line: 2009.7110.

<sup>36</sup> Tariff lines: 0207.2512; 0408.1920; 0408.9920; 5302.1920; and 1602.3214.

<sup>37</sup> Tariff line: 16023991.

**Chart III.2**  
**Tariff escalation by ISIC 2-digit industry, 2010**



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

**Table III.4**  
**Tariff lines where applied rates exceed bound rates, 2010**

MFN HS code	Description	MFN		Bound	
		Rate	AVE	Rate	AVE
0207.2512	Canner pack, of turkeys, (OOQT)	154.5% but not less than \$2.11/kg	211.0	154.7% but not < 210.7¢/kg	210.7
0408.1920	Other egg yolks, (OOQT)	\$1.52/kg	53.7	151.7¢/kg	53.6
0408.9920	Other eggs, (OOQT)	\$1.52/kg	44.8	151.7¢/kg	44.7
1602.3214	Other prepared meals, (OOQT)	253% but not less than \$10.54/kg	295.12	253.2%, but not < 1,053.8¢/kg	
2009.7110	Reconstituted apple juice	9.35 c/l but not less than 8.5%	9.9	8.5%	
3502.1920	Other egg albumin, (OOQT)	\$1.52/kg	168.9	151.7¢/kg	168.6

Note: OOQT refers to Out of quota tariff.

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

(c) Preferential tariffs

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

41. Since Canada's previous Review, new FTAs have entered into force with European Free Trade Association members (Iceland, Norway, Switzerland, and Liechtenstein) and Peru (Chapter II).

While the simple average MFN tariff rate is 5.4%, simple average rates for Canada's preferential tariff partners range from 2.6% (Mexico and the United States) to 5.2% (Australia and New Zealand) (Tables AIII.2 and AIII.3).<sup>38</sup> There has been no further tariff liberalization under any of Canada's agreements, except for MFN tariff reductions implemented on manufacturing inputs (see above); these mainly affected the New Zealand and Australia tariff treatments.

42. Under the Canada-Peru FTA, the vast majority of tariffs were reduced to zero upon implementation, and most remaining tariffs are to be reduced to zero by 2015; However, 110 tariff lines, including supply-managed products, i.e. dairy, poultry and eggs have been excluded by Canada from tariff elimination. Refined sugar products are subject to preferential tariff quotas. The final average tariff on the 110 dutiable lines is 228.7%.<sup>39</sup>

43. Under the Canada-EFTA FTA, all customs duties on non-agricultural products were abolished upon entry into force, except for tariffs on ships, boats and floating structures (to be phased out over 10 or 15 years) and some fish and marine products. There is a positive list of processed agricultural products for which tariffs have been reduced or eliminated. Liberalization of basic agricultural products are the subject of individual agriculture agreements between Canada and the respective EFTA members (with Switzerland and Liechtenstein taken together).<sup>40</sup>

44. Unilateral tariff preferences are granted under the General Preferential Tariff (GPT); the Commonwealth Caribbean Country Tariff (CARIBCAN); and the Least-Developed Country Tariff (LDCT).<sup>41</sup> The GPT and LDCT have been extended until June 2014, and the CARIBCAN until 2011.

45. Resulting from the tariff reductions on manufacturing inputs (see above), tariffs have been reduced to zero on a number of GPT tariff lines. GPT entitlement was withdrawn from Belarus in 2007.<sup>42</sup> In 2010, the simple average tariff was 4.6% under the GPT, 4.0% under CARIBCAN, and 2.6% under the LDCT (Table AIII.4).

(d) Tariff remissions

46. Section 115 of the Customs Tariff grants the Governor in Council (on the basis of a recommendation by the Minister of Finance or the Minister of Public Safety and Emergency Preparedness) the authority to grant customs duty remissions, through the issuance of orders. The authorities indicated that the intention of this provision is to allow the Government to respond quickly and selectively in providing remedies in particular situations where the application of general laws and regulations is having unintended and undesirable consequences. Tariff remissions are generally proposed in situations where it is not appropriate to provide relief by statutory tariff amendments or other Order in Council authority under the Customs Tariff.

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<sup>38</sup> For further details on Canada's FTA's in force at the time of Canada's previous Review, see: WTO document WT/TPR/S/179/Rev.1, 4 June 2007.

<sup>39</sup> WTO document WT/REG270/1, 19 July 2010; and DFAIT online information. Viewed at: [http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/fs-market\\_access-access\\_marche-en.pdf](http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/fs-market_access-access_marche-en.pdf).

<sup>40</sup> WTO document WT/REG271/1, 25 June 2010.

<sup>41</sup> For a list of countries benefiting from unilateral preferences, see CBSA online information. Viewed at: <http://cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2011/01-99/countries-pays-eng.pdf>.

<sup>42</sup> CBSA online information. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/cn-ad/cn07-021-eng.html>.

47. The authorities noted that tariff remission applications are handled on a case-by-case basis. The CBSA takes the lead on cases where administrative circumstances form the basis of the remission request, such as administrative error; and the Department of Finance takes the lead on remission requests involving tariff policy. Applications are made to the International Trade Policy Division. In 2009/10, the total value of tariff remissions granted under Section 115 of the Customs Tariff was Can\$89 million.<sup>43</sup> Eight new tariff remission orders have been issued since 2007 (Table III.5)

**Table III.5**  
**Tariff remissions, 2007-10**

Import remission granted/extended/amended	Regulation
Floating production platform for the Deep Panuke Offshore Gas Development Project off the Nova Scotia coast	SOR/2007-299 (2007)
A ferry by British Columbia Ferry Services Inc	SOR/2007-151 (2007)
Apparel from a GPT beneficiary country containing Canadian textiles (full or partial remission)	SOR/2008-138 (2008)
Certain peaches and cherries imported by Kraft Canada Inc.	SOR/2008-236 (2008)
Extension for a further 5 year period (until 2014) for mobile offshore drilling units (over the period 2004-14) for exploration, delineation or development activities	SOR/2009-129 (2009)
All cargo vessels and tankers as well as ferries of a length of 129 metres or more (previously remissions for these vessels were granted on a case-by-case basis)	SOR/2010-202 (2010))
Two tankers by Algoma Central Corporation and four ferries by British Columbia Ferry Services	SOR/2010-203 (2010)
<b>Amended</b>	
Tailored collar shirts; outerwear apparel; and, blouses, shirts and coordinates	SOR/2008-256 (2008)

*Source:* Information provided by the Canadian authorities. Viewed at: <http://www.gazette.gc.ca>; and Department of Finance Canada online information. Viewed at: [http://www.fin.gc.ca/n10/data/10-089\\_1-eng.asp](http://www.fin.gc.ca/n10/data/10-089_1-eng.asp).

48. Remissions may also be granted in the "public interest" under authority of Section 23 of the Financial Administration Act. According to the authorities, this has rarely been used since direct remission authority for customs, anti-dumping and countervailing duties was introduced into the Customs Tariff in 1988.

#### (v) Other duties and charges affecting imports

##### (a) The GST/HST and provincial sales taxes

49. The Goods and Services Tax (GST), levied under the Excise Tax Act, is Canada's largest indirect tax by revenue.<sup>44</sup> It generated Can\$27 billion in 2009/10, representing 66% of total indirect tax revenue, and 12% of total federal budgetary revenue.<sup>45</sup> It applies to most goods and services at a rate of 5% (down from 6%, effective January 2008).

50. In Ontario, Nova Scotia, New Brunswick, British Columbia, and Newfoundland and Labrador, the provincial sales tax has been harmonized with the GST (Ontario and British Columbia

<sup>43</sup> Government of Canada online information. Viewed at: <http://www.tpsgc-pwgsc.gc.ca/recgen/pdf/51-eng.pdf> (2010).

<sup>44</sup> Excise Tax Act. Viewed at: <http://laws.justice.gc.ca/PDF/Statute/E/E-15.pdf>.

<sup>45</sup> Department of Finance Canada Fiscal Reference Tables, October 2010. Viewed at: <http://www.fin.gc.ca/ftr-trf/2010/ftr-trf-10-eng.pdf>.

harmonized it with the GST on 1 July 2010). The resulting Harmonized Sales Tax (HST) comprises the 5% GST, plus a provincial component, the rate of which varies according to the province (Table III.6). The GST/HST is payable on the tariff-inclusive value of imported goods and most other duties and taxes imposed on goods. It is collected by the Canada Revenue Agency and Canada Border Services Agency, and the Federal Government distributes the provincial component back to the respective provinces. Agreements between the Federal Government and the provinces of Ontario, Nova Scotia, and British Columbia provide these provinces with the flexibility to designate a limited number of point-of-sale rebates of their provincial component of the HST. The application of the GST/HST does not discriminate between domestic and foreign suppliers. Effective from July 2010, Nova Scotia increased its component of the HST by 2 percentage points.

**Table III.6**  
**GST/HST and Provincial Sales Tax Rates, January 2011**

Province/territory	GST rate	Provincial component of HST	Provincial Sales Tax	Total
Alberta	5%	n.a.	none	5%
British Columbia	5%	7%	n.a.	12%
Manitoba	5%	n.a.	7%	12%
New Brunswick	5%	8%	n.a.	13%
Newfoundland and Labrador	5%	8%	n.a.	13%
Northwest Territories	5%	n.a.	none	5%
Nova Scotia	5%	10%	n.a.	15%
Nunavut	5%	n.a.	none	5%
Ontario	5%	8%	n.a.	13%
Prince Edward Island	5%	n.a.	10%	15%
Québec	5%	n.a.	8.5%	13.925% <sup>a</sup>
Saskatchewan	5%	n.a.	5%	10%
Yukon	5%	n.a.	none	5%

n.a. Not applicable.

a In this case the PST applies to the federal tax inclusive value.

Source: Canada Revenue Agency online information. Viewed at: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/rts-eng.html>.

51. A provincial sales tax is levied by Manitoba and Saskatchewan, calculated on the selling price before the GST is applied; and by Québec and Prince Edward Island, calculated on the selling price including the GST. These provinces do not apply the HST. The province of Alberta does not levy a sales tax, nor do the Northwest Territories, Yukon, or Nunavut. Different exemption regimes apply under each of the provincial sales tax regimes, some for social policy reasons, and others to encourage commercial activities such as farming, aquaculture, manufacturing, and mining.<sup>46</sup>

(b) Excise taxes and duties

52. Federal excise duties on beer are imposed as production levies on domestic and imported products under the Excise Act.<sup>47</sup> Beer made by domestic brewers is eligible for reduced, tiered excise

<sup>46</sup> For a list of exemptions to the Prince Edward Island Revenue Tax, see [http://www.gov.pe.ca/photos/original/pt\\_rtn113.pdf](http://www.gov.pe.ca/photos/original/pt_rtn113.pdf); for the Manitoba Retail Sales Act see: <http://web2.gov.mb.ca/laws/statutes/ccsm/r130e.php>; and for the Saskatchewan Provincial Sales Tax Act (Article 8(1)), see: <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/P34-1.pdf>.

<sup>47</sup> Excise Act. Viewed at: <http://laws.justice.gc.ca/eng/E-14/index.html>.

duty<sup>48</sup>; imported beer is not eligible. The regular rates range from Can\$2.591 to Can\$31.22 per hectolitre, depending on the alcohol content.

53. Federal excise duties on wine are imposed under the Excise Act 2001. The rates range from Can\$0.0205 to Can\$0.62 per litre depending on the alcohol content. Wine made from 100% Canadian-grown agricultural or planted products (including cider, wine coolers, fruit wines, and sake) packaged on or after 1 July 2006 is exempt from excise duties. Evidence of 100% Canadian composition must be provided when claiming the exemption.<sup>49</sup>

54. Federal excise duties on tobacco and spirits are also imposed under the Excise Tax Act 2001 (Table III.7); in addition, special duties are levied on imported manufactured tobacco delivered unstamped to a duty free shop, travellers tobacco, and tobacco products manufactured in Canada and exported, as well as on imported spirits delivered to or imported by a licensed user.

55. Federal excise duties are complemented by federal excise taxes imposed under the Excise Tax Act as sales levies. The following goods carry federal excise taxes: petroleum products (rates range from Can\$0.04 to Can\$0.11 per litre)<sup>50</sup>; fuel-inefficient vehicles (from Can\$1,000 to Can\$4,000 depending on fuel consumption rates); and automotive air conditioners (Can\$100).<sup>51</sup>

**Table III.7**  
**Products subject to excise duties under the Excise Act, 2001**

Product	Tax rate
Cigarettes	Can\$0.374875 to Can\$0.425 for each five cigarettes or fraction of any five cigarettes (packaged)
Tobacco sticks	Can\$0.074975 to Can\$ 0.085 per stick
Cigars	Can\$18.50 per 1,000 cigars plus the greater of \$0.067 per cigar or 67% of the sales price for cigars manufactured in Canada or the duty paid value of imported cigars
Raw leaf tobacco	Can\$1.572 per kg
Other manufactured tobacco	Can\$2.49915 to Can\$2.8925 per 50 grams or fractions of 50 grams (packaged)
Spirits	Can\$11.696 per litre of absolute ethyl alcohol contained in the spirits; Can\$0.295 per litre for spirits containing not more than 7% absolute ethyl alcohol by volume
Wine	Can\$0.0205 per litre for wine containing not more than 1.2% of absolute ethyl alcohol by volume; Can\$0.295 per litre for wine containing more than 1.2% of absolute ethyl alcohol by volume but not more than 7%; and Can\$0.62 per litre for wine containing more than 7% of absolute ethyl alcohol by volume

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

### (c) Provincial taxes

56. All provinces levy tobacco and fuel taxes (Table III.8). In addition, Saskatchewan and Québec levy taxes on alcoholic beverages. Québec and Prince Edward Island levy duties on new tyres and British Columbia levies duties (under its Carbon Tax) on tyres and peat. All these duties are consumption taxes and are applied equally to imports and domestic production, with the exception of the alcohol tax imposed by Québec. Alcoholic beverages produced in Québec benefit from lower

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

<sup>49</sup> Excise Duty Notice EDN11 May 2006. Viewed at: <http://www.cra-arc.gc.ca/E/pub/em/edn11/edn11-e.pdf>; and Excise Duty Notice EDN15 June 2006. Viewed at: <http://www.cra-arc.gc.ca/E/pub/em/edn15/edn15-e.pdf>.

<sup>50</sup> With respect to fuels, an excise tax exemption for renewable fuels was eliminated effective in April 2008 (CRA online information. Viewed at: <http://www.cra-arc.gc.ca/E/pub/et/etsl70/etsl70-e.pdf>).

<sup>51</sup> CRA online information. Viewed at: <http://www.cra-arc.gc.ca/E/pub/et/currate/currate-e.pdf>.

rates under certain conditions. Various commercial operators benefit from fuel tax exemptions or rebates, including manufacturers, miners, farmers, fishermen, and persons involved in forestry.

**Table III.8**  
**Selected provincial tax rates, January 2011**

Province	Tax	Tax rate(s)	Source
Alberta	Tobacco tax	Can\$0.20 cents per cigarette or tobacco stick; cigars: 103% of taxable price (minimum Can\$0.20 cents per cigar, and maximum Can\$6.27 per cigar); Can\$0.30 cents per gram of other tobacco	<a href="http://www.qp.alberta.ca/documents/Acts/T04.pdf">http://www.qp.alberta.ca/documents/Acts/T04.pdf</a>
	Fuel tax	Rates per litre: aviation gas and jet fuel, Can\$1.05 cents; gasoline, Can\$0.09 cents; diesel, Can\$0.09 cents; ethanol and biodiesel, Can\$0.09 cents; liquid petroleum gas, Can\$6.05 cents; locomotive fuel, Can\$1.04 cents; and bunker fuel, kerosene, methanol, and condensate, Can\$0.09 cents	<a href="http://www.qp.alberta.ca/574.cfm?page=F28P1.cfm&amp;leg_type=Acts&amp;isbncln=9780779752515">http://www.qp.alberta.ca/574.cfm?page=F28P1.cfm&amp;leg_type=Acts&amp;isbncln=9780779752515</a>
British Columbia	Tobacco tax	Cigars: 77% of taxable price (maximum \$6.00 per cigar); Can\$18.5 cents per cigarette, tobacco or gram of loose tobacco	<a href="http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96452_01">http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96452_01</a>
	Carbon tax	Liquid fuels, between Can\$2.18 cents to Can\$6.30 cents per litre; gaseous fuel, between Can\$1.96 cents, and Can\$3.52 cents per litre, and between Can\$3.22 and Can\$3.80 cents per cubic metre; solid fuels, Can\$35.54 to Can\$49.74 per tonne; petroleum coke, Can\$7.34 cents per litre. Combustibles – i.e. tyres and peat, Can\$20.44 to Can\$47.82 per tonne.	<a href="http://www.sbr.gov.bc.ca/msbr/budget/consumer_taxes.htm">http://www.sbr.gov.bc.ca/msbr/budget/consumer_taxes.htm</a>
	Motor fuel tax	..	
Manitoba	Tobacco tax	Cigarettes, Can\$20.05 cents or Can\$41 per carton; cigars, 75% of retail selling price with a maximum of Can\$5 per cigar; raw leaf tobacco, Can\$0.18 cents per gram; fine cut tobacco and other tobacco products, Can\$19.05 cents per gram	<a href="http://www.gov.mb.ca/finance/taxation/taxes/tobacco.html">http://www.gov.mb.ca/finance/taxation/taxes/tobacco.html</a>
	Motive fuel tax	Rates per litre: clear diesel, Can\$11.05 cents; railway diesel, 6.3 cents; commercial heating oil, 1.9 cents; bunker fuel, Can\$1.07 cents	<a href="http://www.gov.mb.ca/finance/taxation/taxes/motivefuel.html">http://www.gov.mb.ca/finance/taxation/taxes/motivefuel.html</a>
	Gasoline tax	Rates per litre: clear gasoline and clear gasoil, Can\$11.05cents; aircraft fuel, Can\$3.02 cent; propane for vehicles, heating and purchased in cylinders, Can\$0.03 cents	<a href="http://www.gov.mb.ca/finance/taxation/taxes/gasoline.html">http://www.gov.mb.ca/finance/taxation/taxes/gasoline.html</a>
New Brunswick	Tobacco tax	Can\$11.75 cents per cigarette; Can\$9.45 cents per tobacco stick; Can\$8.45 cents per gram of other types of tobacco; and, for cigars: 50% of retail selling price	<a href="http://www.gnb.ca/0162/tax/tobaccort.htm#what">http://www.gnb.ca/0162/tax/tobaccort.htm#what</a>
	Gasoline and motive fuel tax	Rates per litre: gasoline, Can\$10.07 cents; motive fuel, Can\$16.09 cents; propane, Can\$6.07 cents; aviation fuel, Can\$2.05 cents; locomotive fuel, Can\$4.03 cents	<a href="http://www.gnb.ca/0162/tax/fuel/introg&amp;mfe.asp#the taxes.">http://www.gnb.ca/0162/tax/fuel/introg&amp;mfe.asp#the taxes.</a>
Newfoundland	Tobacco tax	Can\$0.19 cents per cigarette; Can\$0.32 cents per gram of fine cut tobacco; 125% of purchase price of cigars	<a href="http://www.gov.nf.ca/fin/tobacco.html">http://www.gov.nf.ca/fin/tobacco.html</a>

**Table III.8 (cont'd)**



Province	Tax	Tax rate(s)	Source
Nova Scotia	Gasoline tax	Prices per litre: gasoline, Can\$16.05 cents; auto propane, Can\$0.07 cents; marine fuel, Can\$3.05 cents; aviation fuel, Can\$0.07 cents	<a href="http://www.gov.nf.ca/fin/gastax.html">http://www.gov.nf.ca/fin/gastax.html</a>
	Tobacco tax	Can\$21.52 cents per cigarette; fine cut tobacco, Can\$0.20 cents per gram; pre-proportioned tobacco sticks, Can\$21.52 cents per stick; other forms of tobacco, Can\$12.52 cents per gram. 56% of selling price for cigars	<a href="http://www.gov.ns.ca/snsmr/access/business/tax-commission/tobacco-tax.asp#faq14335">http://www.gov.ns.ca/snsmr/access/business/tax-commission/tobacco-tax.asp#faq14335</a>
	Fuel tax	Rates per litre: gasoline, Can\$15.5 cents; diesel oil, Can\$15.4 cents; propane, Can\$7.00 cents; marine fuel, Can\$1.1 cents; aviation fuel, Can\$2.5 cents	<a href="http://www.gov.ns.ca/snsmr/access/business/tax-commission/fuel-tax.asp#faq14256">http://www.gov.ns.ca/snsmr/access/business/tax-commission/fuel-tax.asp#faq14256</a>
Ontario	Tobacco tax	Can\$11.01 cents per cigarette; Can\$11.01 cents per gram of tobacco, other than cigarettes and cigars; 56.6% of the taxable price of cigars	<a href="http://www.e-laws.gov.on.ca/html/statutes/elaws_statutes_90t10_e.htm#BK2">http://www.e-laws.gov.on.ca/html/statutes/elaws_statutes_90t10_e.htm#BK2</a>
	Fuel tax	Can\$14.03 cents per litre; Can\$4.05 cents per litre for railway equipment	<a href="http://www.rev.gov.on.ca/en/tax/ft/rates.html">http://www.rev.gov.on.ca/en/tax/ft/rates.html</a>
	Gasoline tax	Rates per litre: unleaded gasoline, Can\$14.07 cents; leaded gasoline, Can\$17.07 cents; aviation fuel, Can\$2.07 cents; and propane, Can\$4.03 cents	<a href="http://www.rev.gov.on.ca/en/tax/gt/rates.html">http://www.rev.gov.on.ca/en/tax/gt/rates.html</a>
Prince Edward Island	Tobacco tax	Can\$22.45 cents per cigarette; 71.6% of retail price of cigars; Can\$22.45 cents per tobacco stick; Can\$16.01 cents per gram of other tobacco	<a href="http://www.taxandland.pe.ca/index.php3?number=78504&amp;lang=E">http://www.taxandland.pe.ca/index.php3?number=78504&amp;lang=E</a>
	Gasoline tax	Rates per litre: gasoline, Can\$15.08 cents; diesel oil, Can\$20.02 cents; aviation fuel, Can\$0.07 cents	<a href="http://www.taxandland.pe.ca/index.php3?number=78502&amp;lang=E">http://www.taxandland.pe.ca/index.php3?number=78502&amp;lang=E</a>
	Environment tax	Can\$4 on every pneumatic tyre sold for the first time in the province	<a href="http://www.taxandland.pe.ca/index.php3?number=73909&amp;lang=E">http://www.taxandland.pe.ca/index.php3?number=73909&amp;lang=E</a>
Québec	Tobacco tax	Can\$10.06 cents per cigarette; Can\$10.06 cents per gram of loose/leaf tobacco; Can\$16.31 cents per gram for other tobacco; 80% of the taxable price of each cigar	<a href="http://www.revenu.gouv.qc.ca/en/entreprise/taxes/tabac">http://www.revenu.gouv.qc.ca/en/entreprise/taxes/tabac</a>
	Fuel tax	Taxes vary according to fuel type and also the region in which it was purchased as well as the date of purchase	<a href="http://www.revenu.gouv.qc.ca/documents/en/formulaires/ca/CA-1-V(2010-05).pdf">http://www.revenu.gouv.qc.ca/documents/en/formulaires/ca/CA-1-V(2010-05).pdf</a>
	Alcoholic beverages tax	Rates per litre: home consumption: beer, Can\$0.40 cents; other alcoholic beverages, 89 cents. Consumption at an establishment: beer, Can\$0.65 cents; other alcoholic beverages, Can\$1.97. Under certain conditions the specific tax is reduced for beer and other alcoholic beverages produced in Québec <sup>a</sup>	<a href="http://www.revenu.gouv.qc.ca/en/entreprise/taxes/boisson">http://www.revenu.gouv.qc.ca/en/entreprise/taxes/boisson</a>
	Tax on tyres	Can\$3 per tyre on all new tyres sold at retail, and new tyres on road vehicles sold at retail or leased long term	<a href="http://www.revenu.gouv.qc.ca/en/entreprise/taxes/droit">http://www.revenu.gouv.qc.ca/en/entreprise/taxes/droit</a>
Saskatchewan	Tobacco tax	Individual cigarettes and tobacco sticks, Can\$0.21 cents or Can\$42 for a carton of 200; other tobacco, Can\$0.21 cents per gram; cigars, 100% of taxable value (minimum tax of Can\$0.35 cents per cigar and maximum of Can\$5 per cigar)	<a href="http://finance.gov.sk.ca/revenue/tob/bulletins/TT-2%20Tax%20Rate%20Changes.pdf">http://finance.gov.sk.ca/revenue/tob/bulletins/TT-2%20Tax%20Rate%20Changes.pdf</a>

Table III.8 (cont'd)

Province	Tax	Tax rate(s)	Source
	Fuel tax	Rates per litre: clear gasoline, Can\$0.15 cents; propane, Can\$0.09 cents; clear diesel fuel, Can\$0.15 cents; railway fuel, Can\$0.15 cents; aviation turbo, Can\$1.05 cents; and aviation gas, Can\$1.05 cents	<a href="http://www.finance.gov.sk.ca/taxes/ft">http://www.finance.gov.sk.ca/taxes/ft</a>
	Liquor tax	10% on the total selling price of beer, wine and spirits	<a href="http://www.finance.gov.sk.ca/taxes/lct">http://www.finance.gov.sk.ca/taxes/lct</a>

.. Not available.

a The reduction for beer applies if the total volume of beer sold worldwide by the brewer in the calendar year preceding the year in question does not exceed 30 million litres. The reduction for other alcoholic beverages applies if the total volume of alcoholic beverages produced and sold worldwide by the producer in the calendar year preceding the year in question does not exceed 500,000 litres.

Note: The authorities indicated that information on these provincial taxes are not available at the federal level.

Source: Various Canadian websites.

## (vi) Import controls and licensing

57. Import licences (permits) are required for agricultural products subject to tariff quotas to benefit from the applicable in-quota rate of duty. Various allocation methods are used (Table AIV.1). For some first-come-first-served tariff quotas, general import licences are issued until the tariff quotas are filled; other tariff quotas require specific import licences for each consignment.<sup>52</sup> Tariff quota products are included in the Import Control List established under the Export and Import Permits Act, and the Import Permit Regulations.<sup>53</sup> Import licences are issued by DFAIT (Trade Controls and Technical Barriers Bureau) for a fee of Can\$15 to Can\$31, depending on the value of the product.<sup>54</sup> Canada's import licensing regime for tariff quotas that are subject to WTO commitments has remained largely unchanged since its last TPR, with the exception of a new tariff quota and related licensing procedures for milk protein substances, established as the result of negotiations under Article XXVIII of the GATT (Chapter IV(2)).

58. Import licensing requirements remain in place for selected textiles and clothing products, on the Import Control List. These requirements are in connection with the implementation of Tariff Preference Level (TPL) provisions under NAFTA, and Canada's FTAs with Chile and Costa Rica (Chapter IV(4)(iv)). TPLs are preferential tariff quotas for non-originating textiles and clothing (i.e. textiles and clothing manufactured in an FTA country that do not meet the FTA rules of origin). To benefit from these TPLs, import licences are required and are granted on a first-come-first-served basis; the fees are Can\$10-26.<sup>55</sup> Some of the preferences for textiles imports are likely to be affected by Canada's unilateral tariff elimination initiative (Chapter IV(4)(i)).

59. Import licences are required for steel and steel products as listed on the Import Control List, in order to monitor their volume and origin (Table III.9).

<sup>52</sup> Canadian Food Inspection Agency (CFIA) online information, "Guide to Importing Food Commercially". Viewed at: <http://www.inspection.gc.ca/english/fssa/imp/guide1e.shtml>.

<sup>53</sup> Import Control List. Viewed at: <http://laws.justice.gc.ca/en/ShowTdm/cr/C.R.C.-c.604///en>.

<sup>54</sup> WTO document G/LIC/N/3/CAN/8, 16 October 2009, p. 17.

<sup>55</sup> WTO document G/LIC/N/3/CAN/8, 16 October 2009.

60. Imports of natural gas remain subject to authorization through a licence or order (Chapter IV(3)(ii)).<sup>56</sup> According to the authorities, the import licensing procedures are for regulatory and emergency purposes only, not to restrict the quantity or value of imports.

61. Canada maintains SPS-related licensing requirements for importers of fish, and import permit requirements for animals and plants (Table III.9 and section (ix)). Import requirements for these products remain largely unchanged since the last Review. For cheese, importer licensing procedures entered into force in December 2008, which are administered by the Canadian Food Inspection Agency. A dairy product import fee continues to apply to cover the cost of monitoring and inspection of consignments (Can\$44 to Can\$110, plus a variable fee).<sup>57</sup>

62. For imports of food products and ingredients that are regulated solely under the Food and Drugs Act (see Table III.9), (the so-called non-federally-registered sector), consultations are ongoing for a new regulatory initiative that proposes licensing of importers. The licensing requirements would apply to all importers of products such as alcoholic and non-alcoholic beverages, bakery products, fats and oils, infant formula, coffee and tea, cereals and related products, spices and seasonings, juices, and confectionary. The purpose of this proposed initiative is to: strengthen the accountability of importers for the safety of the food products they import; better identify and engage regulated parties importing food products and ingredients; and facilitate and enhance verification of compliance with Canadian requirements, thereby reducing the risk of unsafe products entering the Canadian marketplace.<sup>58</sup> This initiative is part of Canada's Food and Consumer Safety Action Plan (section (ix) below).

63. Furthermore, Canada maintains import controls under a number of statutes and regulations to implement its other (non-WTO) international obligations and commitments. Apart from technical amendments, permit procedures remain substantially unchanged.

64. Used or second-hand vehicles remain prohibited from importation into Canada (tariff item HS 9897.00.00 of the Customs Tariff).<sup>59</sup> Exceptions include used or second-hand motor vehicles that are 15 years or older, and those imported from the United States, provided they meet Canadian safety standards (Chapter IV(4)(ii)).<sup>60</sup>

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<sup>56</sup> WTO document G/LIC/N/3/CAN/9, 18 October 2010.

<sup>57</sup> WTO document G/LIC/N/3/CAN/9, 18 October 2010.

<sup>58</sup> WTO document G/SPS/N/CAN/464, 2 September 2010.

<sup>59</sup> Memorandum D9-1-11, Importation of Used or Second-Hand Motor Vehicles, 2 July 1998. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-11-doc-eng.html>.

<sup>60</sup> Other prohibited import items are listed in HS 9897.00.00, 9898.00.00 and 9899.00.00, Customs Tariff – Schedule. Viewed at: <http://www.cbsa.gc.ca/trade-commerce/tariff-tarif/2011/01-99/ch98-t2011-eng.pdf>.

**Table III.9**  
**Products subject to import licensing requirements, 2011**

Products	Legal basis	Stated purpose
Food of animal and plant origin	Food and Drugs Act and other statutes	To ensure that the imported food meets Canadian standards for safety, quality, and labelling
Regulated animals, animal products and by-products, germplasm  <i>Non-U.S. origin:</i> Animals, semen, embryos, veterinary biologics derived through biotechnology, and certain animal products and by-products depending on the species and country of origin  <i>U.S. origin:</i> some semen and embryos, veterinary biologics, psittacine birds other than pet birds, turtles, tortoises, skunks, foxes, raccoons, ruminants (other than cattle for immediate slaughter), swine (depending on the end-use of the animal), honey bee queens, dogs (commercial shipments of dogs less than 8 months of age), and certain animal products and by-products dependant on species	Health of Animals Act and regulations	To protect against the introduction of diseases or spread within Canada
Plant pests, plants and plant products	Plant Protection Act	To protect against the introduction and spread of pests injurious to plants in Canada
Cheese	Canadian Agricultural Products Act and Dairy Product Regulations	To ensure that imported cheese meets Canadian standards for safety, quality, composition, packaging, and labelling
Fresh fruit and vegetables	Canada Agricultural Products Act, Licensing and Arbitration Regulations, and Fresh Fruit and Vegetable Regulations	To ensure that imported products meet Canadian standards for safety, quality, packaging, and labelling
Fish and fish products (for human consumption)	Fish Inspection Act	To provide reasonable assurance that imported products, for commercial purposes as food for human consumption, meet Canadian standards for safety, quality, composition, packaging, and labelling
Unregistered pest-control products for the purpose of manufacturing, own use or research	Pest Control Products Act and regulations	To ensure that the importation of the unregistered pest-control product is used for the specific purpose and to ensure that it does not pose any unacceptable health or environmental risks
Controlled drugs (e.g. amphetamine), narcotics, restricted drugs (used only for research) and precursor chemicals	Controlled Drugs and Substances Act	To minimize diversion to illicit markets, while ensuring that imports do not exceed domestic medical, scientific, or industrial needs; to ensure compliance with international commitments
Explosives	Explosives Act	To ensure safety of imported explosives
Chemicals controlled under the Chemical Weapons Convention, Munitions Items (weapons, ammunition and war supplies)	Export and Import Permits Act	To restrict their importation and/or implement an intergovernmental arrangement or commitment

Table III.9 (cont'd)

Products	Legal basis	Stated purpose
Nuclear equipment and information, radio-active devices, and nuclear substances	Nuclear Safety and Control Act	To ensure that products subject to licensing are destined for authorized persons or organizations and that their use will not pose undue risk to health, safety, security, and the environment; to implement international obligations
Carbon steel products and specialty steel products	Export and Import Permits Act	To monitor the volume and the origin of carbon and specialty steel products
Species regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (specimens of species and their by-products listed in Schedules I and II under the WAPPRIITA)	Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)	To allow importation of certain species and their by-products in internationally agreed circumstances; for species in Schedule II, to ensure that there are sufficient safeguards and security to prevent escapes to the wild
Natural health products	Food and Drugs Act; Natural Health Products Regulations; Natural Health Products (Unprocessed Product License Applications) Regulations	To ensure that imported natural health products meet Canadian requirements for safety, efficacy, and quality
Rough diamonds	Export and Import of Rough Diamond Act	To ensure that imports have been handled in a manner that meets the minimum requirements of the Kimberley Process
Textile and clothing products	Export and Import Permits Act	To implement Tariff Preference Levels under FTAs with the United States, Mexico, Chile, and Costa Rica
Natural gas	National Energy Board Act	To ensure that long-term imports of natural gas are in the public interest, having regard to the equitable distribution of gas in Canada
Agricultural products	Export and Import Permits Act	To implement WTO tariff quota commitments (Table AIV.1)

Source: WTO documents G/LIC/N/3/CAN/8, 16 October 2009, and G/LIC/N/3/CAN/9, 18 October 2010.

### (vii) Contingency measures

65. There have been no major changes to Canada's legal and institutional framework for trade remedies since its last Review.<sup>61</sup> Most amendments to relevant legislation and regulations implement bilateral emergency action provisions in Canada's recently concluded free-trade agreements with Colombia, the European Free Trade Association, and Peru (Chapter II(4)).<sup>62</sup> No general exemptions from the application of trade remedy laws have been granted under these agreements.<sup>63</sup> Canada has also modified its Special Import Measures Regulations to take account of Viet Nam's accession to the WTO in January 2007; the amendment gives effect to Canada's right to use greater discretion in the

<sup>61</sup> WTO document WT/TPR/S/179/Rev.1, 04 June 2007.

<sup>62</sup> Under the three agreements, tariff increases that depart from the respective phase-out schedules may only be implemented, within specified time frames, after an inquiry by the Canadian International Trade Tribunal has determined that increased imports are a principal cause or a threat of serious injury.

<sup>63</sup> In global safeguard investigations, the Canadian International Trade Tribunal must determine whether imports from Peru represent a "substantial cause" (as defined in Article 707 of the Canada-Peru FTA) of the serious injury. If this is not the case, imports from Peru may be excluded from the respective global safeguard measures applied.

imposition of anti-dumping measures on imports from Viet Nam, for which the price or cost of production in a specific sector is not determined by market economy conditions.<sup>64</sup>

66. Canada employs a bifurcated trade remedies system: investigations to determine whether imports are dumped or subsidized (and the relevant margin of dumping or amount of subsidy) are conducted by the Canada Border Services Agency (CBSA); the Canadian International Trade Tribunal (CITT) is mandated to make preliminary and final determinations whether the allegedly dumped or subsidized imports have caused, or threaten to cause, injury to the Canadian industry. Canada's trade remedies legislation does not preclude the simultaneous imposition of anti-dumping, countervailing, and safeguard measures on the same product. Separate dumping, subsidizing and safeguard investigations would be required, which may be initiated and conducted concurrently. To date, Canada has applied in parallel only anti-dumping and countervailing measures; it has not imposed any safeguard measures since the establishment of the WTO. During the review period, Canada has not initiated any safeguard investigations and has not been involved in any WTO dispute settlement cases related to safeguards; it has been implicated, as a defendant, in one dispute settlement case relating to provisional anti-dumping and countervailing measures.<sup>65</sup>

67. Between March 2006 and mid-2010, the CBSA initiated 18 anti-dumping and 7 countervailing investigations; all of the latter were conducted in conjunction with anti-dumping enquiries. No injury was found in one countervailing and seven anti-dumping proceedings (Tables III.10 and III.11).

**Table III.10**  
**Initiated anti-dumping investigations, 1 July 2006 to 30 June 2010**

Country/customs territory	Initiation	Product	Provisional measures		Definitive duty		Termination	Trade data
			Date	Margin <sup>a</sup>	Date	Margin <sup>a</sup>		
United States	03.03.06	Cross-linked polyethylene tubing	01.06.06	213%			29.09.06, No injury	109,121 kg
China	08.06.06	Copper pipe fittings	20.10.06	39%; 116%	19.02.07	0-37%; 242%		2,724,44 lbs
Korea, Rep. of	08.06.06	Copper pipe fittings	20.10.06	103%; 188%	19.02.07	1.9-37%; 242%		2,580,083 lbs
United States	08.06.06	Copper pipe fittings	20.10.06	0-265%	19.02.07	0-242%		3,538,932 lbs
Brazil	30.08.06	Copper rod	28.11.06	4.1%; 16.7%			28.03.07, No injury	24.8% of domestic consumption
Russian Federation	30.08.06	Copper rod	28.11.06	18.4%			28.03.07, No injury	14.7% of domestic consumption
France	22.11.06	Adult incontinence briefs	20.02.07	16.2%			20.06.07, No injury	4.7% of all imports of like goods
China	13.08.07	Seamless carbon or alloy steel oil and gas well casings	09.11.07	9-68%	10.03.08	37-91%		22% of domestic consumption

**Table III.10 (cont'd)**

<sup>64</sup> *Canada Gazette*: Vol. 141, No. 17, 22 August 2007. Viewed at: <http://www.gazette.gc.ca/archives/p2/2007/2007-08-22/pdf/g2-14117.pdf>.

<sup>65</sup> DS338, 22 March 2006 Canada - Provisional Anti-Dumping and Countervailing Duties on Grain Corn from the United States. The Canadian International Trade Tribunal found no injury in this case and the provisional measures were removed in April 2006. Further to this finding, the United States withdrew its request for consultations.

Country/customs territory	Initiation	Product	Provisional measures		Definitive duty		Termination	Trade data
			Date	Margin <sup>a</sup>	Date	Margin <sup>a</sup>		
China	23.01.08	Carbon steel welded pipe	22.04.08	84-163%	20.08.08	97-179%		43% of domestic consumption
China	15.05.08	Thermoelectric coolers and warmers	13.08.08	18.4-37.4%	11.12.08	16.7-37%		85% of domestic consumption
China	18.08.08	Aluminium extrusions	17.11.08	0-43%; 102%	17.03.09	0-42.4%; 101%		43% of all imports of like goods
China	27.02.09	Waterproof footwear	28.05.09	7.8-33.4%; 52.3%			25.09.09, No injury	61.8% of total imports
Viet Nam	27.02.09	Waterproof footwear	28.05.09	5.2-27.4%; 49%			25.09.09, No injury	19.9% of total imports
China	27.04.09	Mattress innerspring units	27.07.09	0-27.2%; 177.4%	24.11.09	0-7.8%; 147.4%		38.2% of total imports
Ukraine	06.07.09	Steel plate	05.10.09	14.7%; 20.2%	02.02.10	15%; 21.3%		6.3% of total imports
China	24.08.09	Oil country tubular goods	23.11.09	33.94-110.69%; 167%	23.03.10	13.85-106.43%; 166.9% (casing and tubing)	23.03.10, No injury	60.5% of total imports
United States	08.10.09	Polyisocyanurate thermal insulation board	06.01.10	6.4-23.6%; 215%			06.05.10, No injury	99% of total imports
Netherlands	22.03.10	Greenhouse bell peppers	21.06.10	n.a.; 95%				26.9% of total imports

n.a. Not applicable.

a Where applicable, the rate for third party exporters of subject goods is separated by a semi-colon.

Source: WTO documents: G/ADP/N/202/CAN, 22 September 2010; G/ADP/N/195/CAN, 16 March 2010; G/ADP/N/188/CAN, 18 September 2009; G/ADP/N/180/CAN, 06 March 2009; G/ADP/N/173/CAN, 22 September 2008; G/ADP/N/166/CAN, 11 March 2008; G/ADP/N/158/CAN, 14 September 2007; and G/ADP/N/153/CAN, 14 March 2007.

68. At end-June 2010, Canada had 36 definitive anti-dumping duties in force, down from 48 at the time of its 2006 Review and the peak of 91 measures at the time of its 2003 Review.<sup>66</sup> There were also nine definitive countervailing duties in place, up from five in 2006. During the review period, Canada resorted more frequently to anti-dumping than to countervailing measures; definitive duties were imposed in ten and six cases, respectively. Imports of goods from China (19 measures), the EU (8 measures) and the United States (5 measures) remain most affected by anti-dumping and countervailing measures in force.<sup>67</sup> As at the time of Canada's previous review, nearly half of the contingency measures in effect concerned products of the steel industry.

69. Notwithstanding the declining overall count, the number of measures that had been in place for longer than 5 years increased from 22 to 29 between mid-2006 and mid-2010.<sup>68</sup> During that period, the CITT adjudicated on the possible continuation of 30 anti-dumping and 3 countervailing definitive duties that were approaching their expiry date. As a result of the sunset reviews, 18 anti-dumping measures (of which 4 were amended) and 2 countervailing measures (of which 1 was

<sup>66</sup> WTO document G/ADP/N/202/CAN, 22 September 2010.

<sup>67</sup> The EU total reflects its expanded membership as of 2007 (Bulgaria and Romania are subject to one measure each). However, this has not altered the overall ranking.

<sup>68</sup> Of the 22 measures that had been in place for longer than 5 years as of 30 June 2006, 21 were anti-dumping duties and 1 was a countervailing duty. Between then and 30 June 2010, 10 of these anti-dumping duties were rescinded or expired, whereas 15 additional anti-dumping duties and 2 countervailing duties passed the 5-year mark.

amended) were continued. The CITT also concluded four interim reviews in response to requests for the exemption of specific products from the measures in place. In two cases the findings were continued with amendments; in the other two, they were continued without amendment.<sup>69</sup>

**Table III.11**  
**Initiated countervailing investigations, 1 July 2006 to 30 June 2010**

Country/customs territory	Initiation	Product	Provisional measures		Definitive duty		Termination	Subsidized imports as % of domestic consumption
			Date	Duty	Date	Determination <sup>a</sup>		
China	08.06.06	Copper pipe fittings	20.10.06	17% or 68%	19.02.07	0 or 17.73 RMB/kg	28.03.07, No injury	CF <sup>b</sup>
Brazil	30.08.06	Copper rod	28.11.06	3.5%				26.2%
China	13.08.07	Seamless carbon or alloy steel oil and gas well casings	09.11.07	6-10%	10.03.08	2-38%		22%
China	23.01.08	Carbon steel welded pipe	22.04.08	0-12%	20.08.08	1,130-5,280 RMB/tonne		43%
China	15.05.08	Thermoelectric coolers and warmers	13.08.08	0.76-100%	11.12.08	0.8-14.1%		85%
China	18.08.08	Aluminium extrusions	17.11.08	0-17%	17.03.09	2.59-15.84 RMB/kg		..
China	24.08.09	Oil country tubular goods	23.11.09	0.33-2.47%; 15%	23.03.10	85.14-4,070.00 RMB/tonne; 4070.00 RMB/tonne (casing and tubing)	23.03.10 No injury (coupling stock)	CF <sup>b</sup>

.. Not available.

a Range of individual subsidies or definite duty rates.

b Information not provided for reasons of confidentiality.

*Source:* WTO documents: G/SCM/N/212/CAN, 22 September 2010; G/SCM/N/203/CAN, 17 March 2010; G/SCM/N/195/CAN, 18 September 2009; G/SCM/N/185/CAN, 06 March 2009; G/SCM/N/178/CAN, 23 September 2008; G/SCM/N/170/CAN, 13 March 2008; G/SCM/N/162/CAN, 10 September 2007; and G/SCM/N/153/CAN, 13 March 2007.

### (viii) Technical regulations, conformity assessment, and standards

70. In the Canadian system of government, the federal, provincial, and territorial governments have the authority to promulgate technical regulations (and sanitary and phytosanitary measures); each has its own regulatory process. At the federal level, the development and adoption of technical regulations are governed by the Statutory Instruments Act, the Statutory Instruments Regulations, various Cabinet policies, and the Cabinet Directive on Streamlining Regulation (Chapter II(1)). The new Cabinet Directive entered into force on 1 April 2007.<sup>70</sup>

71. Under the Cabinet Directive on Streamlining Regulation, federal authorities must use available international standards, guidelines, and recommendations "provided they achieve the intended regulatory objective and offer an equivalent level of assurance of conformity with domestic technical regulations and standards" sought by Canada. Regulatory requirements must be specified in

<sup>69</sup> Details of interim review cases are summarized in the CITT's Annual Reports. Viewed at: [http://www.citt-tcce.gc.ca/publicat/index1\\_e.asp](http://www.citt-tcce.gc.ca/publicat/index1_e.asp).

<sup>70</sup> The Cabinet Directive has been notified to the TBT Committee in WTO document G/TBT/2/Add.6/Rev.2, 4 July 2007.



terms of performance rather than design or descriptive characteristics "where possible". Federal authorities must give positive consideration to requests for recognition of foreign technical regulations, to the extent that these fulfil the objectives of Canadian technical regulations.<sup>71</sup> The authorities indicate that there is no system for collecting data on foreign technical regulations recognized by Canada, but they are exploring ways to set up such a system. The Treasury Board of Canada Secretariat (TBS), which supports the Treasury Board Cabinet committee, oversees the management and coordination of federal policy on technical and other regulations. The Regulatory Affairs Sector within TBS is responsible for ensuring that the analysis provided by departments and agencies on policy and regulatory proposals is consistent with the commitments and directions set out in the Cabinet Directive.

72. Various federal and provincial authorities develop regulations, including technical regulations, as part of their mandate. Federal authorities must carry out "open, meaningful, and balanced" consultations with interested parties at all stages of the regulatory process when developing regulations.<sup>72</sup> The extent of the consultations should be proportional to each regulation's impact. Federal authorities must publish draft technical regulations that affect trade in Part I of the *Canada Gazette* and provide an opportunity for comment.<sup>73</sup> This stage is referred to as "pre-publication". For technical regulations that affect international trade, the comment period should be at least 75 days, except in urgent circumstances. The Canadian authorities note that it would be unusual for a technical regulation with international trade implications to be exempt from the 75-day notice period. They also indicate that urgent circumstances would be defined in accordance with the TBT Agreement. Draft regulations must be accompanied by a regulatory impact analysis statement (RIAS) describing their anticipated benefits and costs, and the results of consultations with stakeholders.

73. The Governor in Council (GIC), on recommendation of the Treasury Board, grants final approval of a regulation, after taking into account the results of the pre-publication stage. Upon approval, the Governor General signs the order that makes the regulation, and the Registrar of Statutory Instruments registers it. Regulations may enter into force immediately after registration or as set out in the regulation. Under the Statutory Instruments Act, regulations must be published in Part II of the *Canada Gazette* within 23 days of registration.<sup>74</sup> The elimination of technical regulations involves the same process as their adoption.

74. Canada does not maintain a catalogue of technical regulations. However, the *Canada Gazette* contains a *Consolidated Index of Federal Statutory Instruments*, including technical regulations.<sup>75</sup> In addition, the Standards Council of Canada (SCC) maintains an online searchable database (RegWatch) of all standards incorporated into Canadian federal regulations.<sup>76</sup>

75. The Government of Canada recognizes the SCC, a federal Crown corporation, as the national standardization body. The Council oversees the efforts of the National Standards System, which includes organizations and individuals involved in (voluntary) standards development. Federal departments and agencies are encouraged to use standardization tools and approaches offered by the National Standards System as the basis for regulations. Four organizations are accredited by the SCC

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<sup>71</sup> Appendix A, Cabinet Directive on Streamlining Regulation, April 2007.

<sup>72</sup> Appendix A, Cabinet Directive on Streamlining Regulation, April 2007.

<sup>73</sup> Appendix A, Cabinet Directive on Streamlining Regulation, April 2007.

<sup>74</sup> Sections 9-11, Statutory Instruments Act.

<sup>75</sup> *Canada Gazette*. Viewed at: <http://canadagazette.gc.ca>.

<sup>76</sup> SCC online information. Viewed at: [http://www.scc.ca/en/news\\_events/subscriptions/regwatch.html](http://www.scc.ca/en/news_events/subscriptions/regwatch.html).

to develop standards: the Canadian General Standards Board, the Canadian Standards Association, Underwriters' Laboratories of Canada, and the Bureau de normalisation du Québec.

76. The SCC is responsible for reviewing standards submitted by standards development organizations, and following the completion of any recommended revisions, approving them as National Standards of Canada. These standards should be consistent with or should incorporate "appropriate" international standards and "pertinent" national standards, and must be made available for public review during their development.<sup>77</sup> From fiscal year 2005/06 to 2009/10, 73.7% of the 754 National Standards of Canada approved by the SCC were adoptions of, or based on, international standards. The SCC-accredited standards development organizations issue notices of public review for draft standards, and notices of adopted standards.<sup>78</sup> The SCC maintains an e-mail notification service (Standards Alert) on changes to Canadian (and international) standards.<sup>79</sup>

77. Canada relies on a variety of tools to ensure compliance with technical regulations. They depend on a number of factors, including risks and the particular characteristics of the sector. Third-party conformity assessment is used in electrical safety, medical devices, and construction products. Canada uses suppliers' declaration of conformity for motor vehicles, electromagnetic compatibility, and some telecommunications products. In some sectors, such as pharmaceuticals, Canadian regulatory authorities are directly responsible for conformity assessment.

78. Conformity assessment procedures are normally specified in Canadian technical regulations. In sectors subject to third-party conformity assessment, most Canadian regulatory authorities rely on conformity assessment bodies accredited by the (SCC). The SCC's accreditation criteria are based on ISO/IEC standards and include additional requirements to fulfil the needs of Canadian regulatory authorities.<sup>80</sup>

79. The Standards Council of Canada is the national accreditation body. It accredits standards development organizations, testing and calibration laboratories, certification bodies, quality and environmental registration organizations, inspection bodies, personnel certification bodies, and auditor course providers and certifiers. There are 31 SCC-accredited certification bodies, and 14 accredited inspection bodies and a large number of accredited laboratories.<sup>81</sup>

80. Canada is party to a number of multilateral mutual recognition agreements (MRAs) on conformity assessment; it has negotiated a few bilateral MRAs to facilitate recognition of foreign conformity assessment procedures (Table AIII.5). For electrical equipment, international product certification schemes are generally used (e.g. IEC System for Conformity Testing and Certification of Electrical Equipment).

81. The SCC is Canada's enquiry point and notification authority. It monitors the *Canada Gazette* to identify relevant technical regulations and conformity assessment procedures for WTO notification. It relies on provincial gazettes for technical regulations and conformity assessment procedures adopted by provincial governments. Provinces and territories publish their statutes and

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<sup>77</sup> SCC (2006).

<sup>78</sup> SCC online information. Viewed at: [http://www.scc.ca/en/news\\_events/public-review/index.shtml](http://www.scc.ca/en/news_events/public-review/index.shtml).

<sup>79</sup> SCC online information. Viewed at: <http://www.scc.ca/en/programs-services/information-resources/standards-alert>.

<sup>80</sup> SCC (2009b); and Standards Council of Canada (2009a).

<sup>81</sup> SCC online information, "Directory of Accredited Product and Service Certification Bodies". Viewed at: <http://www.scc.ca/en/programs-services/product-certification/directory-of-accredited-clients> [17 November 2010].

regulations and make them available online. According to the authorities, the vast majority of provincial regulations, for example in the areas of building safety, electrical safety or elevating devices have no impact on international trade. Three draft technical regulations proposed by a provincial/territorial authorities were notified during the review period.<sup>82</sup>

82. Canada made 145 notifications to the TBT Committee (under Article 10.6 of the TBT Agreement) from 1 January 2007 to 15 November 2010.<sup>83</sup> The majority of technical regulations notified were aimed at protecting human health and safety, or the environment. Judging from the number of notifications, Health Canada has been Canada's leading regulator with respect to technical regulations that are deemed to have a trade impact, followed by Environment Canada, Transport Canada, the Canadian Food Inspection Agency, and Industry Canada (mainly telecommunications and radio communications).

(a) Specific trade concerns

83. In the period under review, a number of specific trade concerns were raised in the TBT Committee concerning Canadian measures.<sup>84</sup> The Bill C-32 amendment to the Tobacco Act, and new compositional requirements for cheese have attracted particular attention.

84. Some 30 Members, amongst them many developing countries, have expressed concern about Canada's "Cracking Down on Tobacco Marketing Aimed at Youth Act" (Bill C-32 amendment to the Tobacco Act), which became law on 8 October 2009. The Act is aimed at protecting youth from industry marketing practices that encourage smoking. To this end, the measure prohibits, *inter alia*, the manufacture and sale of cigarettes, little cigars and blunt wraps, containing certain additives, including flavourings, that are considered to make these products more appealing.<sup>85</sup> While Members have generally supported the Bill's objectives, some have argued that it is more trade restrictive than necessary to achieve its objective.

85. Several Members have expressed concern about technical barriers to trade resulting from the new compositional requirements for cheese, which entered into force in Canada on 14 December 2008 through revisions of the Food and Drug Regulations, and the Dairy Products Regulations.<sup>86</sup> Canada explained that the revised regulations harmonize the federal regulations with respect to the ingredients permitted in cheese making, and the compositional standards apply both to domestic and imported cheese. New licensing requirements for importers apply (Chapter III(2)). Members' concerns are, amongst others, that the amended standards are overly restrictive in terms of the thresholds imposed for the use of dairy ingredients; that the standards limit the use of protein sourced from dairy ingredients even though such ingredients are widely used and accepted in cheese production; that the Codex Alimentarius does not prescribe any limitations on their use; and that the new measures are trade-restrictive (Chapter IV(iii)(b)). According to Canada, the Government has taken into account

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<sup>82</sup> WTO documents G/TBT/N/CAN/194, 5 February 2007; G/TBT/N/CAN/241, 27 May 2008; and G/TBT/N/CAN/255, 24 December 2008.

<sup>83</sup> The total (145) includes WTO documents G/TBT/N/CAN/150/Rev.1 to G/TBT/N/CAN/234 but excludes documents with the symbols Add and/or Corr.

<sup>84</sup> WTO document G/TBT/GEN/74/Rev. 6, 19 October 2010.

<sup>85</sup> The additives banned include: those with flavouring properties including additives identified as flavouring agents by the Joint FAO/WHO Expert Committee on Food Additives and by the Flavor and Extract Manufacturers Association (FEMA) Expert Panel. However, certain flavouring substances included on these international lists are excluded from the Canadian legislation, such as citric acid, glycerol, and menthol. Other prohibited additives include caffeine, colouring agents, fruits and vegetables, and vitamins.

<sup>86</sup> WTO documents G/TBT/N/CAN/203, 29 June 2007, and Add.1, 3 December 2008.

international standards, other countries' regulations, and comments received during the WTO notification period; and all cheeses imported to date have been deemed to be in compliance with the revised standard.<sup>87</sup>

**(ix) Sanitary and phytosanitary measures**

86. Canada's main regulators for food safety, animal health, and plant health are Health Canada, and the Canadian Food Inspection Agency (CFIA). Health Canada is responsible for establishing standards and policies governing the safety and nutritional quality of all food sold in Canada. It also engages in research, food-safety risk assessment, pre-market review, and evaluation of all issues related to food safety and nutrition; approves and regulates pest control products and sets maximum residue limits (MRLs) for pesticides that may remain in or on food<sup>88</sup>; and approves and regulates veterinary drugs used in food-producing animals and sets their MRLs. The CFIA is responsible for enforcing the food safety and nutritional quality standards and policies set by Health Canada, and all federally mandated food inspection, compliance, and quarantine services; the CFIA is also responsible for governing animal and plant health.

87. The main federal statute for food safety is the Food and Drugs Act, supplemented by the Food and Drug Regulations. Other federal legislation may reference the Food and Drugs Act and stipulate additional requirements. Examples include the Pest Control Products Act, Canada Agriculture Products Act, Meat Inspection Act, Fish Inspection Act, Seeds Act, Fertilizer Act, and Feeds Act. The Health of Animals Act and the Plant Protection Act, with their associated regulations, are the main statutes governing animal and plant health issues (Table III.9).

88. While SPS-related import requirements are the domain of the Federal Government, provincial and territorial governments have jurisdiction for some food safety issues, including for food manufactured and sold within their borders. Provincial and municipal inspection programmes focus on food producers and manufacturers, the food service, and food retail industries within their jurisdiction. Some provinces and territories may have additional SPS requirements for certain commodities, such as dairy products, margarine, bottled water, and maple syrup.<sup>89</sup> On SPS matters, consultative bodies between the federal, provincial, and territorial (FPT) governments include the FPT Agriculture Regulatory Assistant Deputy Ministers' Committee, and the FPT Food Safety Committee.

89. Since its last TPR, Canada has faced SPS-related concerns such as avian influenza, the H1N1 pandemic, and a Listeriosis outbreak in ready-to-eat meat products. In the summer of 2008, illness caused by *Listeria monocytogenes* in ready-to-eat meat resulted in the death of 23 Canadians.<sup>90</sup>

90. In 2008, the Federal Government launched the Food and Consumer Safety Action Plan and allocated Can\$489.5 million for five years (2008/09–2012/13) aimed at modernizing and strengthening Canada's safety system for food, health and consumer products. One element of the action plan is Health Canada's Regulatory Modernization Strategy for Food and Nutrition, which has the objective, amongst others, of amending or replacing Canada's outdated health and safety

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<sup>87</sup> WTO document G/TBT/M/51, 1 October 2010.

<sup>88</sup> Pest Management Regulatory Agency of Health Canada.

<sup>89</sup> CFIA, "Guide to Importing Food Products Commercially". Viewed at: <http://www.inspection.gc.ca/english/fssa/imp/guide1e.shtml>.

<sup>90</sup> An independent investigator identified gaps in the Canadian food safety system and made 57 recommendations that were approved by the Government. See Government of Canada online information, "Listeriosis Investigative Review". Viewed at: [http://www.listeriosis-listeriose.investigation-enquete.gc.ca/index\\_e.php](http://www.listeriosis-listeriose.investigation-enquete.gc.ca/index_e.php).

legislation. In this regard, Health Canada noted that its "regulatory toolkit for food regulation is, in some instances, made up of tools, processes, and rules that were first established in the 1950s, 1960s, and 1970s".<sup>91</sup>

91. In May 2010, the Government created the position of Chief Food Safety Officer within the CFIA with the mandate of (i) driving the development and delivery of a horizontal management agenda for the food production continuum; (ii) assessing evolving international standards, global trends and best practices shaping food safety approaches; and (iii) stewarding the "one health" convergence of human, animal and ecosystem health.<sup>92</sup> The objective is to bring a more holistic approach to achieving the food safety objectives of the Canadian Food Inspection Agency.

92. The Cabinet Directive on Streamlining Regulation reinforces a number of regulatory principles under Canada's SPS regime (Chapter II(1)).<sup>93</sup> In particular, it requires federal regulatory authorities to: use relevant international standards, guidelines, and recommendations where those standards achieve the policy objective sought by Canada; apply cost-benefit analysis wherever possible, but especially for "high-impact" regulations; and to consult the provincial and territorial governments as required.

93. Proposed regulations are pre-published for consultation and comment before they are formally published. On a case-by-case basis, Health Canada is working with its regulatory partners to streamline the approval process for low-impact regulatory proposals concerning food additives. These proposals will be considered for a recommendation for exemption from Part I of the *Canada Gazette* in cases where Health Canada has consulted on the amendments in a web-based consultation. This web-based consultation is notified to the SPS Committee.

94. Canada's enquiry point and national notification authority under the SPS Agreement is the Standards Council of Canada (section (viii)). Canada has notified federal measures only to the SPS Committee (Table III.12), since the authorities are not aware of any SPS measures adopted by sub-federal authorities that have a trade impact. Most notifications concern maximum residue levels (MRLs) proposed for food safety reasons.

95. Notices of interim marketing authorizations (IMAs) are enabling instruments that allow producers or manufacturers to sell foods that are not in compliance with certain provisions of the Food and Drug Regulations while the regulations are being amended.<sup>94</sup> According to the authorities, IMAs are issued only when the scientific evaluation concludes that consumption of the food will not be harmful to consumers. IMAs are used only when extending the use of food additives, veterinary drugs, and agricultural chemicals that have already been approved, or in case of the addition of vitamins, mineral nutrients, or amino acids to food. IMAs appear in the Government Notices section of Part I of the *Canada Gazette* and are effective on the date of publication.

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<sup>91</sup> Health Canada online information. Viewed at: [http://www.hc-sc.gc.ca/fn-an/alt\\_formats/hpfb-dgpsa/pdf/consultation/rm\\_strat\\_mr-eng.pdf](http://www.hc-sc.gc.ca/fn-an/alt_formats/hpfb-dgpsa/pdf/consultation/rm_strat_mr-eng.pdf).

<sup>92</sup> This is in the context of the "One World One Health" Strategic Framework for Reducing Risks of Infectious Diseases at the Animal-Human-Ecosystems Interface, developed jointly by FAO, WHO, OIE, UNICEF, World Bank, and the UN System Influenza Coordination. CFIA online information. Viewed at: <http://www.inspection.gc.ca/english/fssa/cfsocsa/cfsocsae.shtml>.

<sup>93</sup> See section 4 and Appendix B of the Cabinet Directive.

<sup>94</sup> Interim Marketing Authorization (IMA), Schedule 923. Viewed at: [http://www.hc-sc.gc.ca/fn-an/legislation/ima-amp/interim\\_market\\_authorization-autorisation\\_mise\\_marche\\_e.html](http://www.hc-sc.gc.ca/fn-an/legislation/ima-amp/interim_market_authorization-autorisation_mise_marche_e.html).

**Table III.12**  
**SPS measures notified by Canada, 2007-10**

	No. of notifications to the SPS Committee	% of total
Total regular and emergency notifications <sup>a</sup>	215	100
Regular notifications	210	98
Emergency notifications	5	2
Objective of notifications		
Food safety	189	88
Animal health	5	2
Plant protection	10	5
Interim marketing authorizations	46	21
Maximum residue levels	128	60
Conformity with international standards	12	6
No conformity with international standards	41	19

a From 1 January 2007 to 15 November 2010: includes revised notifications but no addenda or corrigenda.

Source: WTO online SPS Information Management System.

(a) Import requirements

96. SPS requirements applied to imports are established on the basis of the disease or pest risks associated with these imports. As a general rule, the authorities conduct a risk assessment prior to first-time imports of an animal, plant, or animal or plant product from a particular country.<sup>95</sup> SPS import requirements that entail a full risk assessment are most commonly those related to animal and plant health. According to the authorities, risk assessments for imports of animals and animal products may take up to a year to process, depending on the availability of risk assessments for product-country combinations presenting the same risk as the requested import, and the quality of information available. The CFIA decides whether a full risk assessment is required, normally within three weeks of receiving the request. The applicant is charged a fee when the full risk assessment is initiated.

97. For import requests related to plants and animals that require a risk assessment, the CFIA takes into account a number of factors to determine the priority assigned to each request, including estimates of the imported product's immediate impact on plant, animal, and human health; level of exporter interest in exporting the particular product to Canada; level of importer interest in importing the product into Canada; economic and social impact on Canadians; and urgency.

98. Based on the results of risk assessment, the CFIA may allow imports, subject to certain SPS requirements. Import conditions may include treatment at origin, testing, inspection, quarantine, record keeping of use, distribution or disposal within Canada (varies by commodity) and/or certification. Imported cattle, sheep, and bison must be identified with an approved tag for traceability purposes (Health of Animals Regulations).

99. SPS-related import permits are required for some products; they specify the conditions under which the product can be imported into Canada (Table III.9). For animals and animal products, the

<sup>95</sup> A follow-up risk assessment may be required, for example, if Canadian import requirements have changed or the exporting country's disease status has changed.

requirements are often included in import protocols<sup>96</sup>; for plants and plant products the CFIA normally issues Plant Protection Policy Directives (D-memos).<sup>97</sup> In addition, the agency maintains an online database of the import requirements for animals, plants, and their products (Automated Import Reference System – AIRS).<sup>98</sup>

100. Import prohibitions on SPS grounds are based on the animal disease or pest status of the exporting country. Permits for animal imports may be refused when a country does not have a satisfactory disease diagnosis capability or disease control organization or equivalent veterinary infrastructure. The CFIA maintains lists of countries free of OIE-listed diseases, which are generally established on the basis of country assessments conducted by the CFIA.<sup>99</sup> Canada accepts the OIE classification for country BSE risk categorization, therefore the CFIA does not routinely carry out independent assessments of a country's BSE categorization. In addition, Canada takes into account the lists of countries recognized by the OIE as free of foot-and-mouth disease, rinderpest, and contagious bovine pleuropneumonia, but reserves the right to conduct its own risk assessments on a case-by-case basis for all diseases. Although the CFIA normally evaluates disease risks on a country-wide basis, it has occasionally recognized certain regions or zones within countries as disease free.<sup>100</sup> The CFIA also maintains a list of import prohibitions for certain plant and plant material (from countries other than the United States), which is aligned with IPPC pest risk analysis guidelines.<sup>101</sup>

101. Canada has introduced new regulations for aquatic animal health through amendments to the Health of Animals Regulations.<sup>102</sup> The breadth and volume of world trade in aquatic animals have increased significantly over the last decade or so, as a result of which aquatic animal populations are now at greater risk from diseases. To address this, the OIE developed an Aquatic Animal Health Code in 1995 to assure the sanitary safety of international trade in aquatic animals. To bring Canada into line with these international standards, the CFIA has developed an Aquatic Animal Health Program.<sup>103</sup> As part of the proposed regulatory changes, aquatic animal health permits are required in order to import live aquatic animals, including specific regulated fish species, molluscs, and crustaceans. These permits are similar to permits for other animal imports, and imports require a health certification from the country of origin to ensure compliance with Canadian aquatic animal health requirements.

102. Meat imports are subject to a special approval system based on equivalency, since Canadian legislation requires that imported meat products meet the same standards and requirements as if they

<sup>96</sup> CFIA online information. Viewed at: <http://www.inspection.gc.ca/english/anima/heasan/pol/pole.shtml#prod>.

<sup>97</sup> CFIA online information, "Plant Protection Policy Directives". Viewed at: <http://www.inspection.gc.ca/english/plaveg/protect/dir/directe.shtml>.

<sup>98</sup> CFIA online information, "Automated Import Reference System (AIRS)". Viewed at: <http://airs-sari.inspection.gc.ca/airs/airs-sari.asp>.

<sup>99</sup> CFIA online information, "Country Freedom Recognition Tables". Viewed at: <http://www.inspection.gc.ca/english/anima/disemala/recotab/listae.shtml>.

<sup>100</sup> CFIA online information, "Country Freedom Recognition Tables". Viewed at: <http://www.inspection.gc.ca/english/anima/disemala/recotab/listae.shtml>.

<sup>101</sup> CFIA online information, "Prohibited Plants and Plant Materials from Countries Other than the Continental United States". Viewed at: <http://www.inspection.gc.ca/english/plaveg/oper/prohibintere.shtml>; and "Pests Regulated by Canada". Viewed at: <http://www.inspection.gc.ca/english/plaveg/protect/listpespare.shtml>.

<sup>102</sup> WTO document G/SPS/N/CAN/415/Add.1, 18 January 2011.

<sup>103</sup> CFIA online information, "Canada's National Aquatic Animal Health Program". Viewed at: <http://www.inspection.gc.ca/english/anima/aqua/aquaproge.shtml>.

were produced in registered establishments in Canada (Meat and Meat Products Import Control Program).<sup>104</sup> Upon request, the CFIA reviews all pertinent statutes regarding a country's meat inspection system. If these are deemed equivalent, the agency carries out an on-site audit of the meat inspection system of the exporting country, including a sample of individual meat establishments. Establishments approved by the CFIA must submit recipes, formulations, and labels of meat products for registration before they can export to Canada. The CFIA conducts periodic audits of approved establishments. The agency has approved meat inspection systems from 40 countries and territories.<sup>105</sup> All shipments of imported meat must be inspected at the border.

103. Under the Novel Food Regulations, manufacturers and importers of genetically modified and other novel foods are required to notify Health Canada of their intention to market a novel product in Canada, before sale or advertisement for sale. Health Canada's safety assessment of a novel food includes evaluation of the process used to develop the food product; comparison of its characteristics to those of traditional food counterparts; its nutritional quality; the potential for new toxicants or anti-nutrients; and the potential allergenicity of any proteins that have been introduced into the food by genetic modification techniques.<sup>106</sup> Importers of fruits, vegetables, tubers, seed and grains, amongst others, that are derived from transgenic plants are subject to CFIA import requirements.<sup>107</sup> If the plant pest potential of a plant with novel traits has not yet been assessed by the CFIA, its import requires an import permit issued under the Plant Protection Regulations.

(b) Specific trade concerns

104. During the period under review, a number of specific trade concerns were raised at SPS Committee meetings regarding certain Canadian SPS measures. Some Members were concerned about negative trade effects and the scientific justification of Canada's plant protection policy for marine vessels that may carry Asian Gypsy Moth.<sup>108</sup> Canada noted that its new standard for Asian Gypsy Moth was based on new regional guidelines that were approved by the North American Plant Protection Organisation (NAPPO) in August 2009. The NAPPO measure had been introduced to protect North American forests and pre-empt the high costs of eradication. In 2009, egg masses of Asian Gypsy Moth had been found on ships from Asia. The standard entered into force in 2010 and will be phased in by March 2012.<sup>109</sup>

105. In March 2010, concerns were raised by Ecuador regarding Canada's proposed maximum residue level for 1-Methylcyclopropene in bananas. Ecuador noted that this product, used to prevent

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<sup>104</sup> CFIA online information. Viewed at: <http://www.inspection.gc.ca/english/fssa/meavia/man/ch10/10-2e.shtml>.

<sup>105</sup> Argentina, Australia, Austria, Belgium, Brazil, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Greenland, Hungary, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Poland, Portugal, Puerto Rico, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Thailand, United Kingdom, Uruguay, and United States. CFIA online information, "Meat Hygiene Directives for 2010". Viewed at: <http://www.inspection.gc.ca/english/fssa/meavia/man/ch10/coupay/coupaye.shtml>.

<sup>106</sup> Health Canada online information. Viewed at: <http://www.hc-sc.gc.ca/fn-an/contact/index-eng.php>.

<sup>107</sup> CFIA online information. Viewed at: <http://www.inspection.gc.ca/english/plaveg/protect/dir/d-96-13e.shtml>.

<sup>108</sup> WTO document G/SPS/N/CAN/281/Rev.1.

<sup>109</sup> WTO G/SPS/R/59, 23 August 2010.



premature ripening of fruit due to ethylene exposure, was not used by its exporters.<sup>110</sup> In response, Canada signalled that it would extend the comment period for the proposed MRL if requested.<sup>111</sup>

106. In August 2010, China expressed concerns regarding Canada's registration requirements for China's pet food export enterprises.<sup>112</sup> Canada responded that a new inspection plan contained an initial list of 60 facilities and Canada had started inspections on 19 facilities that already held valid import permits. Canada was prepared to send several teams to visit different facilities simultaneously, and would continue its technical dialogue with China.<sup>113</sup>

### (3) MEASURES DIRECTLY AFFECTING EXPORTS

#### (i) Procedures

107. There have been no substantial changes to export procedures in Canada since its last Review.<sup>114</sup> Exporters are responsible for reporting commercial exports over a value of Can\$2,000 to the CBSA within timeframes that vary according to the mode of transport used (Table III.13).<sup>115</sup> Exceptions to these timeframes are live animals, bulk goods, homogenous goods or time-sensitive goods, which may be reported immediately before they are exported, unless they are restricted. Additionally, certain authorized exporters may report exports on a monthly basis using the summary reporting method (below). There are a few exceptions to reporting requirements.<sup>116</sup> Exports of non-restricted goods to the United States do not need to be declared, since exchange of trade data between the two countries is covered by a bilateral agreement.<sup>117</sup>

**Table III.13**  
**Timeframes for reporting exports, 2011**

Mode of transport	Reporting requirements
Mail	Not less than two hours before the goods are delivered to the post office where the goods are mailed
Vessel	Not less than 48 hours before the goods are loaded onto the vessel
Aircraft	Not less than two hours before the goods are loaded on board the aircraft
Rail	Not less than two hours before the railcar on which the goods have been loaded is assembled to form part of a train for export;
Other	Immediately before the exportation of the goods

Source: The Reporting of Exported Goods Regulations. Viewed at: <http://laws.justice.gc.ca/eng/SOR-2005-23/index.html>.

<sup>110</sup> WTO document G/SPS/N/CAN/413 and Corr.1.

<sup>111</sup> WTO G/SPS/R/58, 11 June 2010.

<sup>112</sup> WTO G/SPS/R/59, 23 August 2010.

<sup>113</sup> WTO G/SPS/R/59, 23 August 2010.

<sup>114</sup> The main objectives of export reporting are to: control the export of strategic, dangerous goods, and other controlled and regulated goods; to collect accurate information on Canadian exports; and control the outbound movement of goods in transit through Canada.

<sup>115</sup> The legal basis for this requirement is the Customs Act (Section 95) and the Reporting of Exported Goods Regulations. Viewed at: <http://laws.justice.gc.ca/eng/C-52.6/index.html>.

<sup>116</sup> Exceptions to reporting requirements are set out in Article 6 of the Reporting of Exported Goods Regulations.

<sup>117</sup> Export declarations are not required for goods exported to the United States, Puerto Rico or the U.S. Virgin Islands, with the exception of exports of trains. Goods in transit through the United States to another country are subject to the same requirements as if they were travelling directly to the other country. If goods exported to the United States are restricted in Canada, the appropriate permit must be presented to the Canada Border Services Agency.

108. In order to make a declaration, exporters and customs brokers must obtain a business number and an import/export account from the Canada Revenue Agency. Exporters may report exports electronically or manually, although the authorities indicated that they are looking to phase out manual reporting. The Canadian Automated Export Declaration (CAED), the most frequently used reporting method, allows exporters to transmit declarations electronically using software that can be downloaded free of charge from the CBSA website. A second electronic method, the G7 Electronic Data Interchange (EDI) Export Reporting method, is generally used by major customs brokers. Hard copies of export declarations may be submitted using the B13A export declaration; this method is used in around 20% of cases. A Summary Reporting programme is available to exporters of low risk, bulk or homogenous goods who export on a regular basis and have met specific CBSA requirements. Exporters of restricted goods must, in addition to completing the export declaration, submit the required export permit. Carriers and customs services providers are also subject to export requirements.<sup>118</sup>

109. The authorities noted that physical examinations are undertaken using information obtained from advance declarations, although no data are currently collected. As at the time of Canada's previous Review, if export-reporting requirements are not met, then exporters and/or carriers may be subject to penalties under the Administrative Monetary Penalty System (AMPS). The maximum penalty for a single contravention is Can\$25,000. Disaggregated figures on contraventions by exporters are not available.<sup>119</sup>

## **(ii) Export taxes, charges and levies**

110. Export duties are imposed on Canadian-manufactured tobacco products and on softwood lumber destined for the United States. They may be imposed under the Export Act on certain ores, but no such taxes are currently levied (early 2011).

111. Special duties are imposed on all exports of manufactured tobacco products (cigarettes, tobacco sticks and other manufactured tobacco) primarily to prevent these products from being smuggled back into Canada, but also for health policy reasons.<sup>120</sup> The authorities noted that the taxes were put in place as a result of contraband activity in the 1990s. The tax is two-tiered: certain special duty rates apply on exports up to a threshold of 1.5% of a manufacturer's annual production, and others apply on exports above this threshold.<sup>121</sup> The special duty on exports up to the 1.5% threshold is refundable upon proof of payment of the applicable foreign taxes and duties. If the special duty exceeds the refund, then the difference may be reimbursed. Both the importer and manufacturer must apply for the refund within two years of the product being exported. No refund is provided for the special duty on exports over the 1.5% threshold. The authorities noted that since there is little demand for Canadian tobacco products outside of Canada, there is an implicit assumption (based on historical

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<sup>118</sup> Reporting procedures for carriers are set out in CBSA Memorandum D3-1-8 (2007). Viewed at: <http://www.cbsa.gc.ca/publications/dm-md/d3/d3-1-8-eng.html>. Further information on reporting requirements for exporters and customs services providers are in CBSA Memorandum D20-1-1 (2008). Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d20/d20-1-1-eng.pdf>.

<sup>119</sup> For more information on the AMPS, see CBSA Memorandum D22-2-2, June 2010. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d22/d22-1-1-eng.pdf>. This memorandum also contains a summary of the main changes to the AMPS effective from April 2010.

<sup>120</sup> The legislation governing this tax is the Excise Act 2001. Viewed at: <http://laws.justice.gc.ca/eng/E-14.1/20110203/section-.html>. Canadian manufactured tobacco includes: cigarettes, tobacco sticks, and manufactured tobacco other than cigarettes and tobacco sticks.

<sup>121</sup> For more details regarding the legislation governing this tax, see Excise Act, 2001, sections 50 and 56 and Schedule 3.

data) that contraband activity is taking place if more than 1.5% of a manufacturer's production is exported.

112. On 12 September 2006, Canada and the United States signed an agreement on exports of Canadian softwood lumber. This followed a long-running trade dispute regarding U.S. anti-dumping and countervailing duties on imports of Canadian softwood lumber, which had been the subject of challenges in the U.S. courts, under the WTO Dispute Settlement Understanding, and under NAFTA Chapter 19. The Agreement entered into force on 12 October 2006, with amendments to provisions relating to the termination of certain litigation and the refund of duty deposits. As part of this agreement, the United States revoked the anti-dumping and countervailing duty orders, and refunded the duty deposits collected since 2002. All of the duty deposits were refunded to the Canadian firms that had paid the duties, less US\$1 billion, which were subsequently provided to U.S. interests and to a binational industry council. Under the agreement, Canadian softwood lumber exporters pay an export charge when the agreed reference price of lumber is at or below US\$355 per thousand board feet. The Canadian regions covered by the agreement (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Québec) may choose between two regimes: an export charge that varies with price; or a lower export charge plus volume restraint, where both the rate and the volume restraint vary with the price. The export charge revenues are collected by the Canadian Government and returned to the provinces based on the origin of the softwood. The funds must not flow back to the industries from which they were collected.

### (iii) Export controls and licensing

113. Canada's export control regime remains essentially unchanged apart from technical amendments. The vast majority of export controls are maintained for health, safety, security, or environmental reasons and often pursuant to international agreements.

114. Goods on the Export Control List, established under the authority of the Export and Import Permits Act, require export permits, generally for all destinations except (in most cases) the United States.<sup>122</sup> Exporters may apply for export permits and certificates online through the Export Controls On-Line (EXCOL) tracking system.<sup>123</sup> Permits are issued by DFAIT (Export and Imports Controls Bureau). Applications to export most goods and technology on the Export Control List, including those destined to countries on the Area Control List, are free of charge. Nominal fees apply on applications to export of certain other specified goods, including certain controlled medical, forest, and agricultural products.<sup>124</sup> The Canada Border Services Agency and the Royal Canadian Mounted Police are responsible for the enforcement of export controls.

115. Most items on the Export Control List are "sensitive" goods or technology, including dual-use goods, the export of which is controlled to implement Canada's international obligations and commitments.<sup>125</sup> Canada is party to a number of multilateral export control regimes (including the

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<sup>122</sup> Exports to the United States that require a permit include atomic material and equipment, automatic firearms, logs, softwood lumber, pulpwood, roe herring and red cedar bolts, and blocks. See DFAIT (2011) p. 18.

<sup>123</sup> Foreign Affairs and International Trade Canada online information. Viewed at: [http://www.international.gc.ca/controls-controles/systems-systemes/excol-ceed/index.aspx?lang=eng&menu\\_id=73&menu=R](http://www.international.gc.ca/controls-controles/systems-systemes/excol-ceed/index.aspx?lang=eng&menu_id=73&menu=R).

<sup>124</sup> Fees are Can\$14 fee for each application to export medical, forest, agricultural, and food products on the Export Control List; and Can\$9 for softwood lumber products, (DFAIT, 2011).

<sup>125</sup> The ECL was last amended in April 2009, (see *Canada Gazette*, "Order Amending the Export Control List". Viewed at: <http://gazette.gc.ca/rp-pr/p2/2009/2009-05-13/html/sor-dors128-eng.html>).

Wassenaar Arrangement, the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Group). The Export Control List also covers re-exports of goods and technology of U.S. origin.

116. The Export Control List includes a number of agricultural and forestry products, and miscellaneous items that require export permits, such as logs, pulpwood, and softwood lumber products (destined for the United States); peanut butter; roe herring; and sugar containing products, sugars, syrups, and molasses.<sup>126</sup> The Export and Import Permits Act authorizes such export controls: (i) to ensure that any action taken to promote the further processing in Canada of a natural resource produced in Canada is not rendered ineffective by reason of the unrestricted exportation of that natural resource; (ii) to limit or keep under surveillance the export of any raw or processed non-agricultural product of Canada in circumstances of surplus supply and depressed prices; (iii) to implement an intergovernmental arrangement or commitments (such as the Softwood Lumber Agreement with the United States); (iv) to ensure that there is an adequate supply and distribution of the product in Canada for defence or other needs (e.g. logs and pulpwood); or (v) to ensure the orderly export marketing of any goods that are subject to import restrictions maintained by other countries (e.g. peanut butter, sugar and related products).<sup>127</sup>

117. The export or transfer of any goods or technology to countries on the Area Control List is controlled and must be authorized by the Minister of Foreign Affairs. The countries currently inscribed on the Area Control List are Belarus, the Democratic People's Republic of Korea, and Myanmar.<sup>128</sup>

118. Export restrictions also apply to Myanmar under Canada's Special Economic Measures (Burma) Regulations<sup>129</sup>, and to Iran under Canada's Special Economic Measures (Iran) Regulations.<sup>130</sup> Virtually all exports to Myanmar are prohibited, while exports of specified goods to Iran are prohibited.<sup>131</sup> Canada also maintains export restrictions when required to do so by mandatory resolutions of the United Nations Security Council.<sup>132</sup>

119. Exports of nuclear substances, equipment and technology are licensed and controlled under the Nuclear Safety and Control Act, administered by the Canadian Nuclear Safety Commission (CNSC). Licensing application requirements and lists of controlled items are prescribed in the Nuclear Non-proliferation Import and Export Control Regulations (SOR/2000-210). The CNSC export licensing process enables Canada to take actions to assure that all applicable domestic policy

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<sup>126</sup> (DFAIT) (2007).

<sup>127</sup> Section 3 of the Export and Import Permits Act. Viewed at: <http://laws.justice.gc.ca/en/E-19/FullText.html>.

<sup>128</sup> *Canada Gazette*, "Order Amending the Area Control List". Viewed at: <http://gazette.gc.ca/rp-pr/p2/2010/2010-08-04/html/sor-dors162-eng.html>.

<sup>129</sup> *Canada Gazette*. Viewed at: <http://canadagazette.gc.ca/archives/p2/2007/2007-12-26/html/sor-dors285-eng.html>.

<sup>130</sup> *Canada Gazette*. Viewed at: <http://canadagazette.gc.ca/rp-pr/p2/2010/2010-08-04/html/sor-dors165-eng.html>.

<sup>131</sup> Canada also maintains arms embargoes pursuant to UN Security Council resolutions (Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.international.gc.ca/sanctions/index.aspx>). Exports of automatic firearms are permitted only to countries with which Canada has intergovernmental defence, research, development, and production arrangements, which are on the Automatic Firearms Country Control List (AFCCL). The list was extended during the Review period to include 11 NATO members (AFCCL online information. Viewed at: <http://laws.justice.gc.ca/en/E-19/SOR-91-575/text.html>).

<sup>132</sup> For the full list of countries subject to these sanctions, see Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.international.gc.ca/sanctions/index.aspx>.

and international obligations that Canada has entered into are met, including those related to the non-proliferation of nuclear weapons.

120. Export restrictions for environmental purposes are generally maintained pursuant to multilateral environmental agreements, or Canadian environmental and resource conservation programmes. Thus, exports of certain (polluting or toxic) substances are controlled under the Canadian Environmental Protection Act (CEPA), and affected substances are listed in CEPA's Export Control List.<sup>133</sup> Canada's international commitments with respect to the transboundary movement of hazardous wastes and recyclables are implemented through the Export and Import of Hazardous Wastes and Hazardous Recyclable Material Regulations (the Export and Import Regulations) under the CEPA.<sup>134</sup> Export permits in relation to the CEPA and its regulations are issued by Environment Canada. Under the Controlled Drugs and Substances Act (CDSA), permits are required for exports by licensed dealers of certain controlled drug and precursor chemicals (see also Table III.9).<sup>135</sup> Export permits related to the CDSA are issued by Health Canada.

121. Obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are implemented under Canada's Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act.<sup>136</sup> Export permits are issued by Environment Canada. Provinces and territories also have in place export controls for certain wild animals and plants.<sup>137</sup>

122. Certificates issued by Natural Resources Canada are required for exports of rough diamonds, as provided for by the Kimberly Process Certification Scheme.<sup>138</sup>

123. Under the Cultural Property Export and Import Act, and implementing regulations, export permits are required for items on the Canadian Cultural Property Export Control List.<sup>139</sup> While the Minister of Canadian Heritage has responsibility for administration of the Act and its regulations, export permits are issued by the Canada Border Services Agency.

124. Exports of crude oil, refined petroleum products, natural gas and natural liquid gas, and electricity are subject to authorization (export orders or export licences) issued by the National Energy Board (Chapter IV(3)).

**(iv) Export finance, insurance, and guarantees**

125. According to Canada Business (section (4)(i)), at end 2010, Canadian companies seeking to originate or boost export sales could qualify for financial support under 112 programmes that

<sup>133</sup> Environment Canada online information. Viewed at: [http://www.ec.gc.ca/CEPARRegistry/subs\\_list/Export.cfm](http://www.ec.gc.ca/CEPARRegistry/subs_list/Export.cfm).

<sup>134</sup> See also Environment Canada online information. Viewed at: <http://www.ec.gc.ca/gdd-mw/default.asp?lang=En&n=B9F17838-1>.

<sup>135</sup> Department of Justice Canada online information. Viewed at <http://laws-lois.justice.gc.ca/eng/C-38.8/index.html>.

<sup>136</sup> Canadian CITES Control List. Viewed at: <http://www.cites.ec.gc.ca/listedecontrrole/index.cfm?lang=e&fuseaction=cList.swOptions>.

<sup>137</sup> See Memorandum D19-13-1, 15 June 2001. Viewed at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-1-eng.html>.

<sup>138</sup> Memorandum D19-6-4 28, April 2009. Viewed at: <http://cbsa-asfc.gc.ca/publications/dm-md/d19/d19-6-4-eng.html>.

<sup>139</sup> Canadian Heritage online information. Viewed at: <http://www.pch.gc.ca/eng/1268673230268/1268675209581;%201269445120121>.

channelled public funds made available at various levels of government.<sup>140</sup> Eligibility for some of these programmes may be conditional on the company's province or territory of incorporation, its ownership characteristics, or the nature of its activities. The funds are administered by a wide range of entities, including federal and provincial Crown corporations, regional economic development agencies<sup>141</sup>, and provincial government departments. Under the Business Credit Availability Program (Chapter IV(6)), access to financing for Canadian businesses has been improved by providing new resources and flexibilities to Export Development Canada (EDC) and the Business Development Bank of Canada (BDC), both Crown corporations wholly owned by the Government of Canada.

126. Canada's export credit agency, EDC, operates under the responsibility of the Minister of International Trade.<sup>142</sup> Its core mandate is to support and develop, directly or indirectly, Canada's export trade and Canadian capacity to engage in that trade and to respond to international business opportunities. In addition to facilitating exporters' access to funding, EDC works closely with the Trade Commissioner Service (see below) on training programmes, as well as in identifying and developing overseas business opportunities for Canadian companies.<sup>143</sup> As part of Canada's response to the global crisis, EDC's mandate was temporarily expanded in March 2009 to include "support and development of domestic trade and business opportunities" for two years.<sup>144</sup> At the same time, statutory limits on EDC's paid-in capital, outstanding commitments under the Canada Account (see below), and contingent liabilities were increased (Chapter IV(6)). According to the Canadian authorities, these measures have allowed EDC to complement the activities of other financial institutions, particularly by providing tailored financing to mature businesses; they have also ensured that the Federal Government had the capacity to provide credit directly and meet the financing requirements of firms in strategic, hard-hit sectors of the economy.

127. In general, EDC's trade finance and risk mitigation services (Table III.14) address financing gaps where the private sector may not be able to fully respond to the needs of Canadian businesses.<sup>145</sup> Eligibility for support is conditional on, *inter alia*, the transaction's potential benefit to Canada. Besides the anticipated impact on Canada's GDP, the non-exhaustive list of factors taken into consideration in the assessment of Canadian benefit includes: research and development spending in Canada; purchases from Canadian suppliers; employment impact; potential for small and medium-sized business growth; possibility of increased access to global markets or integration in a key supply chain; market share maintenance or growth (particularly for new products or technologies); environmental impact; and dividends, royalties, or licensing fees.<sup>146</sup>

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<sup>140</sup> Data on funding commitments and amounts disbursed are not available. For details on eligibility criteria and scope of financial support see Canada Business online information. Viewed at: <http://www.canadabusiness.ca/eng/search/sof/>.

<sup>141</sup> Atlantic Canada Opportunities Agency, Canada Economic Development for Québec Regions, Federal Economic Development Agency for Southern Ontario, Canadian Northern Economic Development Agency and Western Economic Diversification Canada. Although not equal in legal status, the Federal Economic Development Initiative in Northern Ontario (part of Industry Canada) has similar functions.

<sup>142</sup> Export Development Act. Viewed at: <http://laws.justice.gc.ca/en/E-20/57033.html>.

<sup>143</sup> An integrated process for the referral of clients is in place between the two entities.

<sup>144</sup> This period has been extended for an additional year, until March 2012, to ensure that Canadian businesses will continue to have access to financing, should gaps re-emerge and not be filled by private-sector credit providers or other financial Crown corporations.

<sup>145</sup> In December 2009, the Government of Canada established an advisory panel on credit insurance with a view to ensuring that EDC's insurance activities remain complementary to the services offered by the private sector.

<sup>146</sup> EDC online information. Viewed at: [http://www.edc.ca/english/corporate\\_canadian\\_benefits.htm](http://www.edc.ca/english/corporate_canadian_benefits.htm).

**Table III.14**  
**EDC finance, insurance, and guarantee programmes, 2010**

Products	Features
<b>Insurance</b>	
Accounts Receivable Insurance	Protects policyholders for up to 90% of losses resulting from a wide range of commercial and political risks, such as: foreign buyer insolvency or default; payment delay caused by a blockage of funds or transfer difficulties; refusal of goods by foreign buyer (provided that the contract terms have been met); war or hostilities at destination or along the way; and cancellation or non-renewal of export or import permits. Optional coverage includes: protection against contract cancellation by buyer; insurance for letters of credit transactions on a country-by-country basis; invoicing in foreign currencies; and insurance for receivables generated by providing services
Single Buyer Insurance	Covers export sales to the same customer for a 180-day period. Insures up to 90% of a Canadian company's losses on shipments or services originating in Canada worth up to US\$250,000
Contract Frustration Insurance	Tailored coverage used for one-off goods, services, and project contracts. Protects up to 90% of costs incurred or receivables lost
Political Risk Insurance	Protects various forms of overseas business interests for up to 90% of losses due to non-payment/breach of contract or expropriation by the host government, currency conversion and/or transfer difficulties, and political violence
Performance Security Insurance	Insures up to 95% of losses due to a wrongful call by the insured's counterparty on a surety bond, an irrevocable letter of credit or letter of guarantee. Calls resulting from events beyond the insured's control are also covered
<b>Financing</b>	
Line of credit	Enables exporters to conclude sales via pre-arranged financing facilities set up between EDC and foreign banks or corporations. That is, EDC may lend to a foreign bank for on-lending to buyers of Canadian exports, or EDC can establish a line with a major foreign corporation that is repeatedly purchasing from one or more Canadian exporters
Loan	Loans between EDC and a buyer/borrower can be arranged for any export transaction. Two basic types of loans are available: (i) Buyer Credit involves a financing arrangement between EDC and the foreign buyer (or a separate borrower on behalf of the buyer) to finance Canadian exports generally related to a specific export contract; (ii) Supplier Credit transactions are structured to provide the exporter (supplier) with the ability to provide its buyer with extended payment terms. EDC can provide pre-shipment financing to exporters, in conjunction with their bank, to finance costs directly related to an export contract. EDC may also provide financing to Canadian companies to support their export business or their foreign investments
Project finance	Provides structuring expertise and direct financing of complex, large-scale global projects across a variety of sectors (main focus is on: energy; telecommunications and infrastructure; and mining, metals, and resources). EDC also arranges project finance transactions in cooperation with other lenders
Guarantee	Provides a guarantee to a financial institution to cover either: (i) loans to foreign borrowers for the purchase of Canadian exports, or (ii) credit/collateral arrangements with exporters in support of their export business or their foreign investments
Equity and other forms of related investments	Provides equity and/or other forms of related investments (including fund investments) in support of next generation Canadian exporters and to facilitate the globalization of existing Canadian companies
<b>Bonding</b>	
Performance Security Guarantee	Provides a bank with coverage against any calls pursuant to a guarantee issued on an exporter's behalf. Encourages abandonment of collateral requirements
Foreign Exchange Facility Guarantee	Provides financial institutions with a guarantee to replace the need for collateral at the conclusion of foreign exchange contracts that protect companies against currency fluctuations

**Table III.14 (cont'd)**

Products	Features
Financial Security Guarantee	Provides the bank with a second demand guarantee to secure exporters' obligations in respect of suppliers and offshore working capital facilities
Surety Bond Insurance	Provides 100% reinsurance or flexible risk-sharing arrangements to licensed surety companies to encourage them to offer bonding support to exporters
Surety Fronting Services	Available to exporters when financial profiles or volume of business does not meet normal surety underwriting guidelines. Surety bonds are thus issued by licensed sureties with the full support of EDC. This allows smaller exporters to access a surety market that is not typically available to them

Source: Export Development Canada.

128. EDC is financially self-sustaining and operates on commercial principles, charging interest on loans and premiums on its insurance products. In addition, it may borrow in the commercial market under a government guarantee or make a request to the Minister of Finance to borrow money from of the Consolidated Revenue Fund. EDC is exempt from income or corporate taxes. EDC's operations carried out through a market window typically fall within its Corporate Account; transactions that exceed EDC's risk appetite, but are deemed by the Minister of International Trade to be in the "national interest", are administered through the Canada Account on behalf of the Government of Canada.<sup>147</sup> National interest considerations include: economic benefits to Canada (such as employment generated or sustained); importance of the export market to Canada; and foreign policy implications, including Canada's bilateral relationship with the country in question.

129. Business volume under EDC's Corporate Account increased from Can\$66.1 billion in 2006 to Can\$82.8 billion in 2009 (Chart III.3); business under its Canada Account increased from Can\$3.6 billion to Can\$14.9 billion.<sup>148</sup> There were seven transactions under the Canada Account between October 2006 and December 2010; most significant, in value terms, was support provided to the automotive industry.<sup>149</sup> In 2009, EDC assisted 8,469 Canadian businesses, up from 6,805 in 2006<sup>150</sup>; under its temporary domestic mandate, EDC provided Can\$2.5 billion in support for 208 companies.

130. Canada's support to the aircraft industry through EDC was last challenged by Brazil in 2001 under the WTO Dispute Settlement Understanding.<sup>151</sup> In 2007, Canada worked with Brazil and other multilateral partners to establish the OECD Aircraft Sector Understanding (ASU); according to the Canadian authorities, since then, all EDC loans to the sector have been provided on ASU terms. A revised ASU entered into force on 1 February 2011; it unified the terms, conditions, and procedures under which export credit support is offered to large and regional aircraft. In August 2009, under the Canada Account, and conditional on an agreement being reached between EDC and Scandinavian Airlines (SAS), the Government of Canada made available "up to Can\$173 million in repayable loans to help Bombardier Inc. complete and deliver an order for up to eight of its Q400 and CRJ900 aircraft."<sup>152</sup>

<sup>147</sup> Each Canada Account transaction requires the authorization of the Minister for International Trade, with the concurrence of the Minister of Finance; those exceeding Can\$50 million or of a sensitive nature require Cabinet approval.

<sup>148</sup> Export Development Canada (2009).

<sup>149</sup> EDC online information. Viewed at: [http://www.edc.ca/english/disclosure\\_9239.htm](http://www.edc.ca/english/disclosure_9239.htm).

<sup>150</sup> Export Development Canada (2006).

<sup>151</sup> See WTO (2007). In 2007, Canada worked with Brazil and other multilateral partners to establish the current OECD Aircraft Sector Understanding (ASU); a revised ASU was agreed upon, in principle, in December 2010.

<sup>152</sup> Foreign Affairs and International Trade Canada online information. Viewed at:

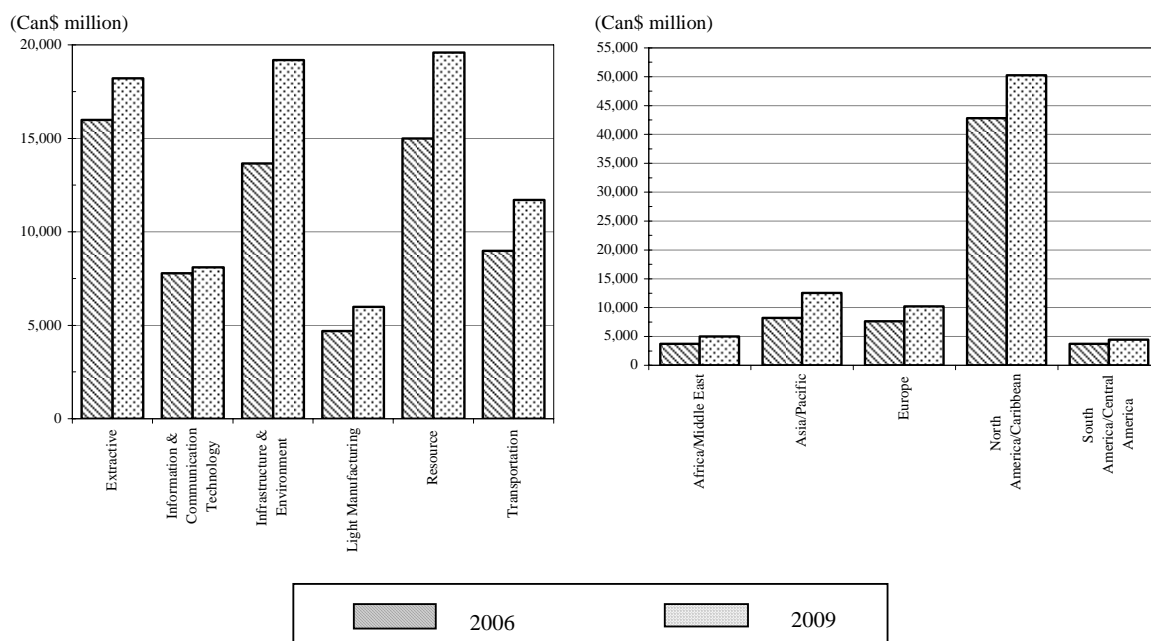


## Chart III.3

## Canada's business volumes by industry and geographic markets, 2006-09

Business volume by industry

Business volume by geographic market



Source: Export Development Canada (2006 and 2009), *Annual Report*.

131. Contract performance guarantees are provided by the Canadian Commercial Corporation (CCC), whose main mission is to enable Canadian exporters to access foreign public-sector markets through government-to-government contracting and procurement services. The CCC's activities are funded through parliamentary appropriations (Can\$15.5 million in 2010/11), as well as through fees for services rendered (Can\$12.4 million in 2010/11).<sup>153</sup> Its core business line remains the Canada-U.S. Defence Production Sharing Arrangement (DPSA), which accounted for 79% of the total value of its commercial trading transactions in 2009/10. While the CCC specializes in government-to-government arrangements, it also facilitates Canadian exporters' sales to overseas private-sector buyers. Acting as a prime contractor, the CCC provides a government-backed guarantee of contract performance, which eliminates the need to set up equivalent instruments with banks or other intermediaries.<sup>154</sup> By serving as an intermediary on accounts receivable, the CCC may also assume some of the accounts receivable risk, thus improving Canadian exporters' cash flow position.

132. In the framework of its business development activities (Chapter III(4)(i)), the Business Development Bank of Canada (BDC) also supports Canadian firms that wish to expand globally. At the end of 2010 it had 5,600 exporter clients that generated Can\$22.3 billion in export sales. Through loans and subordinate financing, BDC may provide working capital support (of up to Can\$100,000) for exploration of new international opportunities, as well as funding (in the range of Can\$250,000 to

[http://www.international.gc.ca/media\\_commerce/comm/news-communicues/2009/387446.aspx?lang=eng](http://www.international.gc.ca/media_commerce/comm/news-communicues/2009/387446.aspx?lang=eng).

<sup>153</sup> CCC (2010).

<sup>154</sup> CCC online information. Viewed at: [http://www.ccc.ca/eng/bus\\_relatedInfo\\_nextSteps\\_foreign\\_priv.cfm](http://www.ccc.ca/eng/bus_relatedInfo_nextSteps_foreign_priv.cfm).

Can\$2,000,000) aimed at enabling Canadian SMEs to establish a footprint in a foreign country.<sup>155</sup> In addition, BDC offers consulting services, including in the areas of global competitiveness assessment and international business development planning; these services are provided either directly or in partnership with the Forum for International Trade Training, a not-for-profit organization, and the Department of Foreign Affairs and International Trade.

**(v) Export promotion and marketing assistance**

133. Various Canadian export promotion initiatives are in place at the federal, regional, and provincial levels; at end 2010, there were more than 20 organizations and programmes offering international market expansion services. Through a collaborative arrangement, the Canada Business Network provides a single point of access to relevant information.<sup>156</sup> The range of trade advisory services available under export promotion programmes includes assistance in: preparing for international markets, assessing market potential, finding business contacts, and resolving market access issues. Canadian companies, particularly SMEs, may also be eligible for financial support (from Can\$5,000 to Can\$25,000) to hire international trade experts or qualified students under several programmes.<sup>157</sup>

134. The Department of Foreign Affairs and International Trade (DFAIT) hosts Canada's most extensive network of international trade professionals, the Trade Commissioner Service (TCS). The TCS collaborates with a range of partners to promote Canadian economic interests abroad by assisting Canadian companies to export, invest, and innovate.<sup>158</sup> While science and technology, and inward and outward investment are within the scope of its advisory services, export promotion constitutes its core line of operations (Chart III.4). An empirical study of Canadian exporters of manufactured goods, spanning 1999-2006, found that TCS assistance had a positive impact on its clients' performance, both in terms of export value and market diversification, relative to non-beneficiary firms.<sup>159</sup> Since Canada's last Review, the TCS network has expanded to over 150 overseas locations (up from 140) and 18 offices across Canada (up from 12); its online portal, the Virtual Trade Commissioner, provides registered Canadian companies with personalized access to over 1,000 trade professionals. TCS export promotion activities are funded through the DFAIT budget; funds are subject to "value for money" assessments on a five-year cycle.<sup>160</sup>

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<sup>155</sup> In fiscal years 2009 and 2010, BDC authorized 856 loans for a total of Can\$41.5 million. Information on earlier years, as well as on the number of export-related consulting contracts, was not made available.

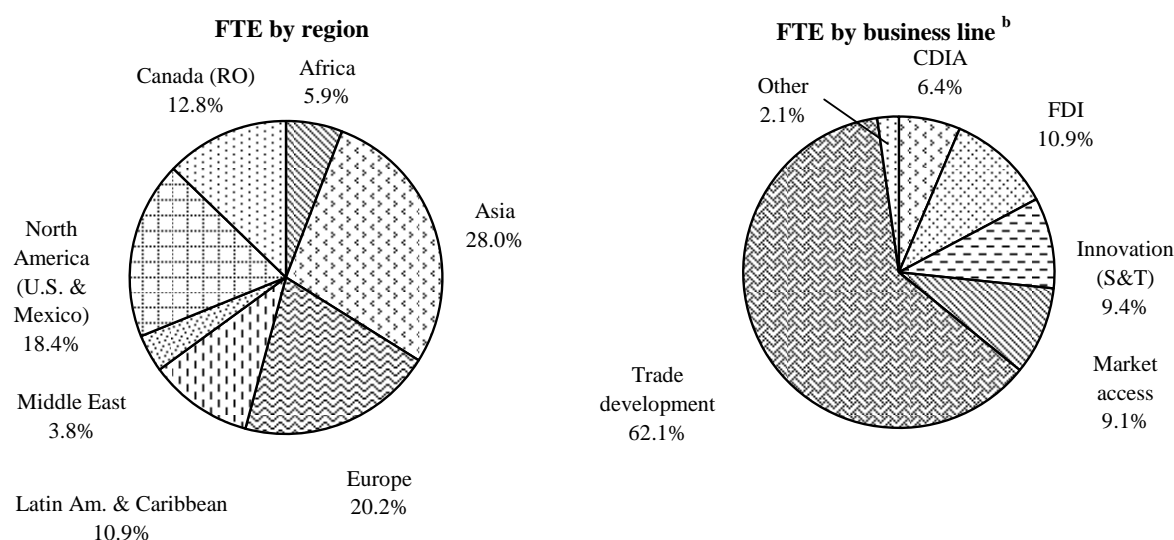
<sup>156</sup> Canada Business online information. Viewed at: <http://www.canadabusiness.ca/eng/guide/3111/>.

<sup>157</sup> Canada Business online information. Viewed at: <http://www.canadabusiness.ca/eng/105/165/923/>.

<sup>158</sup> Foreign Affairs and International Trade Canada online information. Viewed at: <http://www.tradecommissioner.gc.ca/eng/services-for-partners.jsp>.

<sup>159</sup> On average, the value of export sales by firms that received TCS assistance was 17.9% higher than that of comparable exporters; TCS assistance also had a positive impact on the average number of markets served or products sold by existing exporters. The study does not investigate the effectiveness of different forms of assistance; the authors note that the most frequently sought types of services were market prospect information and key contacts search; other services included local company information, face-to-face briefing, visit information, and troubleshooting (Van Biesebroeck et. al, 2010).

<sup>160</sup> During the review period, DFAIT outlays under the "international business development" business line were as follows: Can\$122.9 million (FY2006/07), Can\$103.5 million (FY2007/08), Can\$248.5 million (FY2008/09), and Can\$222.3 million (FY2009/2010). Expenditures under the Canada Account managed by EDC (see above), as well as funding for FDI attraction programmes and personnel-related costs, are not included in these figures (Departmental Performance Reports for Foreign Affairs and International Trade Canada. Viewed at: <http://www.tbs-sct.gc.ca/dpr-rmr/index-eng.asp>).

**Chart III.4****Full Time Equivalents (FTE)<sup>a</sup> by region and by business line, 2009/10**

- a Values are based on Canadian-based staff and locally engaged staff positions at missions abroad and regional offices (RO) funded by the Department of Foreign Affairs and International Trade, as well as by other Government Departments.
- b CDIA: Canadian direct investment abroad; FDI: foreign direct investment; S&T: Science and technology.

Source: Canadian Trade Commissioner Service.

135. Some TCS programmes offer firms and industry associations financial support in their international expansion efforts (Table III.15).<sup>161</sup> Since 2008, the Global Commerce Support Program amalgamates three antecedent funding programmes for Canadian national associations, communities, companies, and researchers; its pillars are: Global Opportunities for Associations, Invest Canada-Community Initiatives, and Going Global Innovation. The Global Opportunities for Associations pillar co-finances national associations undertaking new or expanded international business development activities for the benefit of an entire industry (including non-member firms)<sup>162</sup>; a TCS non-repayable contribution may cover up to 50% of eligible expenses, with a minimum of Can\$20,000 and a maximum of Can\$150,000 over a one-year period. The Invest Canada-Community Initiatives pillar provides matching funds of up to 50% of eligible expenses to Canadian communities and locally-based non-profit organizations in their efforts to attract, retain, and expand foreign direct investment; non-repayable contributions range from Can\$3,000 to Can\$300,000 for a one-year period.<sup>163</sup> The Going Global Innovation pillar provides Canadian researchers (from private companies, universities and non-government research centres) with matching funds of up to 75% of

<sup>161</sup> TCS online information. Viewed at: <http://www.tradecommissioner.gc.ca/eng/funding/home.jsp>.

<sup>162</sup> Since 1971, the DFAIT has been supporting smaller companies that are either new to exporting or are expanding to new markets through its Program for Export Market Development. The programme's direct-to-companies element, known as PEMD-Industry, was discontinued in 2004; the surviving facility for associations, PEMD-Associations has been renamed the Global Opportunities for Associations Program.

<sup>163</sup> The Invest Canada-Community Initiatives Program came into effect in December 2008; it replaced the Community Investment Support Program, which was established in 2004 to replace the Program for Export Market Development-Investment (operational from 1998 to 2004).

eligible expenses incurred in pursuing international collaborative R&D opportunities, with a minimum request of Can\$5,000 and a maximum of Can\$75,000.<sup>164</sup>

**Table III.15**  
**Amounts disbursed under TCS programmes, 2006/07-2009/10<sup>a</sup>**  
(Can\$ million)

	2006/07	2007/08	2008/09	2009/10
Global Opportunities for Associations (GOA)	3.786	3.371	1.908	1.448
Going Global Innovation (GGI)	0.344	0.298	0.507	0.79
Invest Canada-Community Initiatives (ICCI)	3.8	3.497	3.304	3.067
International Science and Technology Partnership Program (ISTPP)	4.25	4.685	4.7	3.765
DFAIT INC (Investment Cooperation Program) <sup>b</sup>	0	0	0	0.75
<b>Total</b>	<b>12.18</b>	<b>11.851</b>	<b>10.419</b>	<b>9.82</b>

a Amounts rounded to nearest thousand as at fiscal year end (31 March).

b Programme transferred from the Canadian International Development Agency to DFAIT in 2009/10.

Source: Department of Foreign Affairs and International Trade (DFAIT), Canada.

136. Operational since 2005, the International Science and Technology Partnership Program funds up to 50% of the Canadian costs of bilateral joint research projects proposed by companies, universities, and other private-sector research and development institutes. It is intended to foster stronger science and technology relationships with Israel, India, China, and Brazil. Launched in 2010, the Investment Cooperation Program encourages Canadian private sector engagement in developing countries that contributes to economic development and poverty reduction. Activities eligible for non-refundable cost-share contributions include investment viability studies, technology adoption, and the design and implementation of socio-economic and environmentally beneficial practices.<sup>165</sup>

#### (vi) Other measures affecting exports

137. Non-excisable goods are zero-rated under the GST/HST (see section (2)(v)), as well as under provincial sales taxes, if delivered or made available to a purchaser outside Canada.<sup>166</sup> Similar zero-rating applies for supplies of services (with some exceptions)<sup>167</sup> where made to a non-resident and to intellectual property where the purchaser is a non-resident who is not registered for GST/HST purposes. Since March 2007, zero-rating also applies to supplies of intangible personal property (with some exceptions)<sup>168</sup> that may not be used in Canada.

<sup>164</sup> Going Global Innovation became operational in 2001 as a stand-alone programme; it was renewed in 2008 under the Global Commerce Support Program.

<sup>165</sup> The Investment Cooperation Program (ICP) was transferred to the DFAIT following a revision of the Industrial Cooperation Program, which had been administered by the Canadian International Development Agency from 1978 to 2009. ICP remains part of Canada's official development assistance (ODA) for developing countries.

<sup>166</sup> Canada Revenue Agency online information. Viewed at: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/txbl/mprtsxprts/menu-eng.html>.

<sup>167</sup> Exceptions from the general provision for zero-rated status of exports include: a service supplied to a non-resident individual while that individual is in Canada; an advisory, consulting, or professional service provided in connection with criminal, civil, or administrative litigation in Canada; a service performed in respect of real property located in Canada; a service performed in respect of goods situated in Canada when the service is performed; certain postal and transportation services. These services may be zero-rated under other general provisions for zero-rated status of supplies.

<sup>168</sup> Intangible personal property (IPP) is defined as rights that are enforceable by the courts, including

138. Under the Export Distribution Centre Program, export-oriented, non-manufacturing businesses may be authorized by the Canada Revenue Agency to acquire or import most inventory and parts, or import a customer's goods for processing, GST/HST-free.<sup>169</sup> Authorizations remain in effect for three years, unless revoked earlier, and may be renewed. Beneficiaries of this programme avoid having to pay the tax at the time of acquisition or importation and claim it back as a tax credit.<sup>170</sup> Registered Canadian businesses that are authorized by the Canada Revenue Agency to take part in the Exporters of Processing Services Program may be granted relief from payment of the GST/HST on imported goods owned by a non-resident entity when the goods are imported for processing in Canada and subsequently returned to the non-resident owner.<sup>171</sup> The processor must not be closely related to the non-resident owner or have an ownership interest in those goods or the resultant processed by-products. The goods must be exported from Canada within four years of the date they were reported and accounted for on importation. In addition, businesses engaged exclusively in export trading (export trading houses) may be authorized to acquire goods for export on a GST/HST-free basis. At least 90% of the total value of their purchases for resale in the following 12 months must be for export; the goods must not be consumed, used, processed, transformed or altered after being purchased and prior to being exported.<sup>172</sup> A range of other tax relief measures, at federal or provincial level, address specific import-export scenarios.

139. Through its Duty Deferral Program, the Canada Border Services Agency (CBSA) offers the possibility to defer, relieve, or refund the payment of most duties and taxes on imported goods that are ultimately exported, whether or not the goods are further manufactured in Canada.<sup>173</sup> Under the programme's drawback option, businesses may request a refund of duties and taxes paid on imports that were subsequently exported. Under the duty relief scenario, goods intended for export may be imported duty free, even if they undergo further processing.<sup>174</sup> Through the customs bonded

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contractual rights, options, and rights in relation to goods that are not in possession. Exceptions from the general provision for zero-rated status of exported IPP include: a supply made to an individual, unless the individual is outside Canada when the supply is made; a supply of IPP that relates to real property that is situated in Canada or to tangible personal property that is ordinarily situated in Canada; a supply of IPP that related to a supply of a service that is made in Canada and is not zero-rated as an export, a transportation service or a financial service; a supply of IPP that may only be used in Canada; or a supply of making a telecommunications facility that is IPP available for use in providing a telecommunication service. Canada Revenue Agency online information, GST/HST Info. sheet GI-034. Viewed at: <http://www.cra-arc.gc.ca/E/pub/gi/gi-034/gi-034-e.html>.

<sup>169</sup> Eligibility criteria include that: the person will not engage in the substantial alteration of property in the year; either the person's percentage value-added attributable to non-basic services in respect of customers' goods for the year will not exceed 10% or the person's percentage total value added in respect of customers' goods for the year will not exceed 20%; and the person's export revenue percentage for the year will be at least 90%.

<sup>170</sup> Canada Revenue Agency online information, GST/HST Technical Information Bulletin 3-088. Viewed at: <http://www.cra-arc.gc.ca/E/pub/gm/b-088/b-088-e.html>.

<sup>171</sup> Processing includes the alteration, assembly, manufacture, modification, production, packaging, or repackaging of the imported goods (Canada Revenue Agency 2010).

<sup>172</sup> Canada Revenue Agency online information. Viewed at: [http://www.cra-arc.gc.ca/E/pub/gm/4-5-2/4-5-2-e.html#P119\\_10138](http://www.cra-arc.gc.ca/E/pub/gm/4-5-2/4-5-2-e.html#P119_10138).

<sup>173</sup> Duties and taxes under the CBSA's administrative authority include: customs duties; anti-dumping and countervailing duties; and excise taxes (other than the GST/HST) and duties. Excise taxes are not relieved on certain designated goods as defined in the Customs Act (e.g. gasoline). While, in general, GST/HST relief is administered separately by the Canada Revenue Agency, it is automatically granted to imports stored at a customs bonded warehouse. CBSA online information. Viewed at: <http://cbsa-asfc.gc.ca/import/ddr-red/menu-eng.html>.

<sup>174</sup> The range of eligible processing activities comprises minor adjustments, repairs and full-fledged manufacturing. There is no requirement to separate domestic and export production; imported and domestic

warehouse option, imported goods may qualify for a deferral of duties and taxes until their commercial entry on the Canadian market.<sup>175</sup> While stored at the warehouse, the goods may undergo certain minor manipulations, including labelling, testing, packaging or repackaging, display, dilution, and normal servicing and maintenance.

140. The drawback, duty relief, and bonded warehouse options may be called upon interchangeably without paying duties; in general, a time limit of four years from the goods' date of importation applies.<sup>176</sup> In general, businesses do not have to post a bond to financially secure their liability.

141. Canada's NAFTA obligations place limits on the amount of customs duties and anti-dumping and countervailing duties refundable or deferrable when re-exporting non-NAFTA originating goods to Mexico or the United States. Relief of these duties is only allowed in an amount equal to the lesser of (i) the customs duties owed on the goods when imported into Canada and (ii) the customs duties owed on the end-products when exported to Mexico or the United States.<sup>177</sup>

142. Several remission programmes, including the Canadian Goods Abroad programme, enable goods to return to Canada with full or partial relief of the duties and taxes, including the GST/HST, after they have been exported for repair, alteration, or work done abroad, provided certain conditions are met.<sup>178</sup>

#### **(4) MEASURES AFFECTING PRODUCTION AND TRADE**

##### **(i) Incentives and other assistance to business**

143. Official support to Canadian businesses is available in various configurations, with public funds being allocated and administered both at the federal and sub-federal levels. Most initiatives tend to promote entrepreneurship, innovation, and regional development; a number of programmes also focus on social and cultural priorities or specific industries, including agri-food (Chapter IV(2)), shipbuilding, textiles, defence, fisheries, and energy. The range of support measures includes: tax incentives; grants, non-repayable and repayable financial contributions; advisory services; loan guarantees; credit insurance; and equity financing. In some cases, federal and/or provincial financial assistance may be provided at preferential terms to, or be exclusively targeted at, Canadian-controlled private corporations; public aid falls outside the scope of Canada's competition regime (section (4)(iv)).

144. Certain official support initiatives may be contingent upon local-content requirements. For instance, the feed-in tariff programme for renewable energy (Chapter IV(3)), established by the province of Ontario in 2009, has prompted Japan to formally request consultations with Canada under

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raw materials can be used interchangeably. Goods that are consumed or expended in a manufacturing process are also eligible under the programme.

<sup>175</sup> There are no citizenship or residency restrictions on the operator of the warehouse. An annual licensing fee applies; warehouse operators may also have to post security, based on the types of goods to be imported and their financial compliance profile. CBSA online information. Viewed at: <http://cbsa-asfc.gc.ca/import/ddr-red/tab8-eng.html>.

<sup>176</sup> Imported spirits used to manufacture distilled spirits must be exported within five years.

<sup>177</sup> Exceptions to this rule include goods exported in the same condition as imported and certain specific cases (e.g. orange or grapefruit concentrates between Canada and the United States). See Memorandum D7-4-3. Viewed at: <http://cbsa-asfc.gc.ca/publications/dm-md/d7/d7-4-3-eng.pdf>.

<sup>178</sup> Memorandum D8-2-1. Viewed at: <http://cbsa-asfc.gc.ca/publications/dm-md/d8/d8-2-1-eng.pdf>.

the WTO Dispute Settlement Understanding. Japan's concerns relate to the programme's local-content and price-support components. Likewise, wine that is wholly composed of Canadian-grown agricultural products is exempt from excise duties (section (2)(v)).

145. The primary point of access to centralized, up-to-date information on support initiatives is Canada Business, a website complemented by a network of service centres across Canada.<sup>179</sup> At the end of 2010, 441 financial assistance programmes were listed on the website, of which 112 would also support export-oriented projects (section (3)(iv)).<sup>180</sup> According to the Canadian authorities, most of these programmes target Canadian small and medium-sized enterprises.

146. Canada Business lists 23 active federal programmes, relevant to entrepreneurs, that have been notified to the WTO under the Agreement on Subsidies and Countervailing Measures; financial assistance that in Canada's view does not meet the Agreement's definition of a subsidy is typically not notified. The most recent submission lists around 50 subsidy programmes at the federal and provincial levels that were operational in 2006/07 and 2007/08 (Table III.16). Following the notification, Canada provided answers to requests for clarification by the European Union and the United States<sup>181</sup>; similar requests were made by Australia and Chinese Taipei.<sup>182</sup>

**Table III.16**  
Programmes notified to the WTO, 2006/07-07/08<sup>a</sup>

Type	No. of programmes	Forms of support	Amount disbursed (Can\$ million)
Industrial	40	Grants; repayable and non-repayable contributions; loans; loan guarantees; credit insurance; equity financing; business information and advisory services	2,866.26
Cultural	4	Loans; mailing cost support; grants	216.22
Fisheries <sup>b</sup>	8	Adjustment assistance; retirement of commercial licences, vessels and gear and issuing of new licences to aboriginal groups; construction of new vessels; training; income support; grants	94.27

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

b Including three provincial programmes (two in British Columbia and one in Manitoba).

Source: WTO document G/SCM/N/186/CAN, 9 September 2009.

147. A conjectural assessment of the fiscal cost of Federal Government assistance provided to business in the form of tax incentives is published annually by the Department of Finance in its Tax Expenditures and Evaluations Report.<sup>183</sup> The report presents estimates of forgone tax revenue (Table III.17), due to exemptions, deductions, rate reductions, rebates, deferrals, credits and carry-overs, on the basis of a broadly defined tax base benchmark.<sup>184</sup> Measures that took effect during the review period include an accelerated capital cost allowance for manufacturing and processing machinery and equipment, and an investment tax credit for child-care spaces. Canada also reduced

<sup>179</sup> Canada Business is a collaborative arrangement among federal departments and agencies, provincial and territorial governments, and not-for-profit entities (Canada Business online information. Viewed at: <http://www.canadabusiness.ca/eng/page/about/>).

<sup>180</sup> Canada Business online information. Viewed at: <http://www.canadabusiness.ca/eng/search/sof>.

<sup>181</sup> WTO documents G/SCM/Q2/CAN/38, 9 April 2010, and G/SCM/Q2/CAN/39, 31 March 2010.

<sup>182</sup> WTO documents G/SCM/Q2/CAN/37, 30 March 2010, and G/SCM/Q2/CAN/34, 3 February 2010.

<sup>183</sup> Department of Finance (2009).

<sup>184</sup> The Report highlights a number of caveats that should be taken into consideration in interpreting the estimates and projections.

the small business tax rate applied to Canadian-controlled private corporations, while increasing the amount of eligible small business income. Nevertheless, tax expenditure on that programme was projected to decline between 2006 and 2009, due to the concurrent reduction in the benchmark rate<sup>185</sup>, as well as to the economic downturn.

**Table III.17**  
**Selected tax credits and deductions from corporate income tax, 2006 and 2010**  
(Can\$ million)

Programme <sup>a</sup>	Estimated expenditure (2006)	Projected expenditure (2010) <sup>b</sup>
Canadian film or video production tax credit	190	220
Film or video production services tax credit	110	100
Partial inclusion of capital gains	5,854	3,020
Atlantic investment tax credit	171	297
Scientific research and experimental development investment tax credit <sup>c</sup>	2,815	3,470
Apprenticeship Job Creation Tax Credit	19	82
Deduction of allowable small business investment losses	10	11
Low tax rate for small businesses <sup>d</sup>	3,780	3,920
Exemptions from non-resident withholding tax	43,370	3,840
Corporate mineral exploration and development tax credit	Less than 2.5	24
Flow-through share deductions <sup>e</sup>	105	63
Low tax rate for credit unions	63	71
Exemption from branch tax for transportation, communications, and iron ore mining corporations	Less than 2.5	13
Loss offset provisions (other than farm and fishing)	6,933	7,685

a Excludes charities, gifts and contributions; federal-provincial financing arrangements; and farming. The cost of each tax expenditure is determined under the assumption that all other tax provisions remain unchanged. Since many tax expenditures interact with each other, the overall impact of several programmes cannot generally be calculated by adding up the corresponding estimates and projections.

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

c Canadian-controlled private corporations are eligible for an enhanced rate of 35% (as opposed to the general rate of 20%) and more favourable refundability rates.

d Granted only to private corporations that were Canadian-controlled throughout the tax year.

e Flow-through shares allow deductions for resource expenses renounced by eligible corporations.

Source: Department of Finance Canada, *Tax Expenditures and Evaluations 2010*. Viewed at: <http://www.fin.gc.ca/taxexp-depfisc/2010/taxexp10-eng.asp>.

148. Most provinces offer additional tax incentives to businesses in the form of credits, rebates, exemptions, or holidays (Table AIII.8). The range of socio-economic objectives targeted by these measures includes promoting research and development, supporting SMEs, generating employment, and stimulating investment, mineral exploration or the film and TV industry. A number of provinces and territories (e.g. Alberta, Manitoba, New Brunswick, Nunavut, Yukon) offer fuel tax exemptions or rebates for certain commercial activities.

149. Operating under the responsibility of the Minister of Industry, the Business Development Bank of Canada (BDC) promotes Canadian entrepreneurship through tailored financing, venture capital, and consulting services (Table III.18).<sup>186</sup> Although there are no formal restrictions on its eligible clients' industry focus or business development stage, BDC aims to support start-ups,

<sup>185</sup> The general corporate income tax rate was reduced gradually from 21% in 2006 to 18% in 2010; and to 16.5% in 2011; it is set to decrease further to 15% in January 2012.

<sup>186</sup> BDC online information. Viewed at: <http://www.bdc.ca/EN/about/Pages/default.aspx>.



innovators, fast-growth companies, manufacturers, and firms looking to expand overseas (Chapter III(3)(iv)). Its financing operations typically complement those of private-sector institutions; it supports creditworthy projects that, in general, cannot secure private funding due to the greater risk involved.<sup>187</sup>

**Table III.18**  
**Business Development Bank of Canada support, 2006-10**  
(Can\$ million, unless stated otherwise)<sup>a</sup>

	2006	2007	2008	2009	2010
Venture capital investments	140	151	130	137	85
Subordinate financing (BDC portion)	47.1	58.4	48.7	46.3	66.7
Loans outstanding	8,627	9,128	10,014	11,117	13,311
Loan acceptances <sup>b</sup>	2,462	2,692	2,907	2,832	4,343
Consulting mandates (number)	2,037	2,451	2,770	2,720	2,504

a As at 31 March.

b Acceptance is defined as the point at which the client has accepted the authorized financing terms and conditions that BDC has offered. Data prior to 2007 are based on BDC authorizations.

Source: Business Development Bank of Canada (2010), *Annual Report*. Viewed at: [http://www.bdc.ca/en/Documents/annualreport/BDC\\_AR\\_ENG\\_10\\_v16.pdf](http://www.bdc.ca/en/Documents/annualreport/BDC_AR_ENG_10_v16.pdf).

150. BDC's activities are funded by returns on its services and public funds injected by the Government of Canada, its sole shareholder, either in the form of paid-in capital or debt instruments.<sup>188</sup> BDC's authorized share capital<sup>189</sup> and borrowing capacity have been increased as part of Canada's response to the 2007 global financial crisis, the Extraordinary Financing Framework (Chapter IV.6).

## (ii) Government procurement

151. According to latest available statistics, the estimated annual value of contract awards by the Federal Government in 2009 was Can\$20.4 billion. Procurement by provinces and territories in 2007/08, totalled Can\$17.2 billion (Table III.19). Data were not available on procurement by municipalities, municipal organizations, publicly funded academic institutions, and health and social services entities (MASH entities), nor on procurement by Crown corporations.

### (a) Federal Government Procurement: legal, institutional and policy framework

152. The overall structure of Federal Government procurement remains the same as at the time of Canada's previous Review. The Treasury Board (a cabinet level Committee), supported by the Treasury Board Secretariat has responsibility for setting federal government procurement policy.

<sup>187</sup> BDC's allowance rate for credit losses (as a share of its loan portfolio) is at least five times greater than that of private-sector financial institutions, BDC, 2010.

<sup>188</sup> Since April 2008, BDC has borrowed from Her Majesty in Right of Canada, acting through the Minister of Finance. Prior to that, BDC used to issue debt instruments, which were secured by the Government of Canada.

<sup>189</sup> Through the issuance of additional common shares for a total amount of Can\$1.456 billion, BDC's authorized capital (paid-in-capital plus contributed surplus) increased from Can\$1.316 billion in March 2009 to Can\$2.772 billion in March 2010.

Table III.19  
Value of government procurement in Canada, 2004-10

Procurement by Federal Government departments and agencies		Procurement by provinces and territories	
Calendar year	Can\$ billion	Fiscal Year	Can\$ billion
2010	..	2009/10	..
2009	20.4	2008/09	..
2008	16.4	2007/08	17.2
2007	14.8	2006/07	14.5
2006	12.1	2005/06	11.5
2005	15.9	2004/05	10.8

.. Not available.

Source: Treasury Board of Canada Secretariat Purchasing Activity Reports. Viewed at: [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/con\\_data/siglist-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/con_data/siglist-eng.asp); and MARCAN online information. Viewed at: [http://www.marcan.net/index\\_en/procure.htm](http://www.marcan.net/index_en/procure.htm).

153. Public Works and Government Services Canada (PWGSC) is the Federal Government's principal purchasing arm for contracts for most large, complex acquisitions by federal government departments, as well as for most goods valued over Can\$25,000. Procurement by federal departments and agencies of goods below this threshold as well as services and construction through PWGSC is optional.<sup>190</sup>

154. Treasury Board approval is required for procurements over certain thresholds: these thresholds are higher for PWGSC than for procurements by other government departments.<sup>191</sup>

155. Federal government procurement is governed by a combination of legislation, regulations and policy (Table AIII.6). The main law is the Financial Administration Act (FAA), which gives the Treasury Board administrative policy authority and the authority to make regulations with respect to the conditions under which contracts may be entered into, and to set entry approval limits. As a result of amendments to the Act in 2006, it contains a legislative commitment to fairness, openness, and transparency in the bidding process.<sup>192</sup> The Treasury Board Contracting Policy brings together various procurement-related legislative requirements and gives broad guidance to Federal Government procurement officials; which are elaborated on in greater detail in the PWGSC supply manual.<sup>193</sup> The Government Contracts Regulations (GCRs), *inter alia*, set out bidding rules.<sup>194</sup> The

<sup>190</sup> According to the authorities PWGSC's authority is focused on goods for historical reasons: when PWGSC was created goods accounted for most of government purchases. Over time procurement of services has become more significant because of contracting out of work which would have previously been done internally. However, no consideration is being given to extending PWGSC's mandate to compulsorily cover services and construction.

<sup>191</sup> These thresholds are set out in the Treasury Board Contracts Directive, which is appended to the Treasury Board Contracting Policy (Appendix C). Viewed at: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494&section=text#appC>.

<sup>192</sup> FAA, Article 40.1. Additionally, Article 42(1) allows the Governor in Council to make regulations to include integrity provisions in contracts.

<sup>193</sup> Treasury Board Contracting Policy. Viewed at: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494&section=text>. PWGSC's Supply Manual governs only contracting carried out by PWGSC. However, the authorities note that many other departments reference the Supply Manual when undertaking procurement on their own behalf.

<sup>194</sup> Government Contracts Regulations. Viewed at: <http://laws-lois.justice.gc.ca/eng/SOR-87-402/20100930/page-0.html?rp2=HOME&rp3=SI&rp4=all&rp5=Government%20Contracts%20Regulations&rp9=cr&rp10=L&rp13=50>.

authorities note that amendments to the GCRs have been drafted to implement regulations allowing the incorporation of integrity provisions into procurement contracts. These are expected to enter into force in 2011.

156. Federal Crown corporations are not covered by the procurement regime applicable to federal departments (i.e. the Government Contract Regulations and Treasury Board Contracting Policy). They are at liberty to develop their own procurement policies, subject to any obligations under legislation and trade agreements.

157. The AIT contains provisions applicable to MASH sector procurement.<sup>195</sup> Although the procurement regime for the MASH sector in each province and territory varies, all MASH entities are required to post their tender notices on electronic tendering systems.

158. As at the time of Canada's previous review, the Federal Government's procurement objectives are to acquire goods and services and to carry out construction in a manner that enhances access, competition, and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and Canadian people.

159. The Federal Government policy allows for reviews of procurements over Can\$2 million (but which are not subject to international agreements), for potential benefits relating to: regional and industrial development, aboriginal economic development, the environment, and other socioeconomic activities. For the most part, procurement reviews are undertaken by an interdepartmental Procurement Review Committee.<sup>196</sup>

160. Since 2006, green procurement has become a specific policy objective, and Ministers and PWGSC are required to integrate environmental performance considerations into their procurement processes. This policy applies to all procurement. The authorities noted that if a potential benefit is found, the procuring entity would include in the bid documents the terms intended to achieve such a benefit.<sup>197</sup>

161. While it had been government policy and practice since 2004 for departments and agencies to disclose all contracts over Can\$10,000 on a quarterly basis, this practice has now been implemented in the Treasury Board Contracting Policy. These requirements are set out in separate Guidelines.<sup>198</sup> In addition, pursuant to the Financial Administration Act, the Governor in Council may make regulations fixing terms to be expressly set out in contracts, including terms requiring the public disclosure of basic information on contracts valued over Can\$10,000.

162. A Code of Conduct for Procurement was developed by PWGSC for their employees and vendors in September 2007. Its purpose is to ensure that public servants and suppliers are working from the same set of expectations, which outline acceptable conduct in PWGSC procurement.<sup>199</sup>

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<sup>195</sup> Annex 502.4 of the AIT sets out the procurement rules that apply to MASH entities.

<sup>196</sup> For more information on Canada's procurement review policy, see Treasury Board of Canada Secretariat online information. Viewed at: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12074&section=text>.

<sup>197</sup> PWGSC online information. Viewed at: <http://www.tpsgc-pwgsc.gc.ca/ecologisation-greening/achats-procurement/politique-policy-eng.html>.

<sup>198</sup> Guidelines on the Proactive Disclosure of Contracts. Viewed at: [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/ContPolNotices/2009/04-03-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/ContPolNotices/2009/04-03-eng.asp).

<sup>199</sup> PWGSC online information. Viewed at: <http://www.tpsgc-pwgsc.gc.ca/app-acq/cndct/contexte-context-eng.html>.

163. Canada is a signatory to the WTO Government Procurement Agreement (GPA). Since its previous Review, Canada has made progress in catching up on outstanding notifications under Article XIX:5 of the Agreement.<sup>200</sup> In 2007, the most recent year for which statistics are available, Can\$1.9 billion of contracts by Federal Government departments were awarded above GPA thresholds. This represents 13% of the total value of contracts awarded at the Federal Government level.

164. Canada is a party to four international trade agreements with Federal Government procurement obligations (including the government procurement chapter of the Canada-Chile Free Trade Agreement which entered into effect in September 2008 and the Canada-Peru Free Trade Agreement, which entered into effect in August 2009); a bilateral agreement with the United States, signed in February 2010 which is related to sub-Federal Government procurement; and one domestic trade agreement (the AIT) (Table III.20). Canada has signed industrial security memoranda of understanding with 12 countries, which permit private-sector industries in the signatory countries to participate in each other's sensitive government contracts and projects.<sup>201</sup> No new MOUs were signed over the review period. The authorities confirmed that there are no local-content requirements in any procurements covered by international commitments. They noted that currently 20 out of 22 comprehensive land claim agreements (CLCAs) contain measures, including procurement measures, to encourage the economic development of the Aboriginal groups represented by these agreements.<sup>202</sup> Local-content requirements may be found in procurement not subject to international trade agreements.

**Table III.20**  
**Agreements covering government procurement**

Agreement	Coverage, exclusions, and selected features	Thresholds
AIT (Chapter 5)	<p>Equal market access opportunity to procurement for "Canadian" suppliers (those that have a place of business in Canada, as defined under Article 518 of the AIT)</p> <p>Covers 97 Federal Government departments and agencies, 10 provincial governments and 2 territories (excludes Nunavut)</p> <p>Also covers MASH entities (except in Yukon)</p> <p>Covers 38 federal Crown corporations</p> <p>Does not apply to procurement related to cultural industries or aboriginal culture</p> <p>For procurement not subject to the GPA or NAFTA: tenders may be limited to Canadian goods or suppliers; also a preference (up to 10%) for Canadian value added may be required</p> <p>Provinces and territories may have their own procurement agencies, thresholds, and policies under the general framework of the AIT (Annex 502.3 for entities of a commercial or industrial nature or that have been granted exclusive rights (Crown Annex); Annex 502.4 for the MASH sector<sup>a</sup>)</p>	<p>Federal departments and agencies</p> <p>Goods: Can\$25,000</p> <p>Services and construction: Can\$100,000</p> <p>Federal Crown corporations</p> <p>Goods and services: Can\$500,000</p> <p>Construction: Can\$5,000,000</p> <p>MASH entities</p> <p>Goods and services: Can\$100,000</p> <p>Construction: Can\$250,000</p>

Table III.20 (cont'd)

<sup>200</sup> In 2009, notifications were made for each of the fiscal years from 1997 to 2007. See WTO documents GPA/22/Add.5 (for 1997); GPA/29/Add.5 (1998); GPA/40/Add.5 (1999); GPA/62/Add.5 (2000); GPA/70/Add.5 (2001); GPA/76/Add.6 (2002); GPA/80/Add.6 (2003); GPA/84/Add.5 (2004); GPA/88/Add.4 (2005); GPA/91/Add.3 (2006); and GPA/94/Add.3 (2007). All of these documents are dated 12 June 2009.

<sup>201</sup> These countries are: Australia; France; Germany; Italy; Israel; Netherlands; New Zealand; Norway; United Kingdom; United States; Sweden; and Switzerland.

<sup>202</sup> Monitoring and reporting requirements in respect of Crown procurement contracts subject to CLCAs were clarified in June 2008.

Agreement	Coverage, exclusions, and selected features	Thresholds
NAFTA (Chapter 10)	Equal market access opportunity to procurement subject to thresholds and exclusions Covers 78 Federal government departments and agencies and 10 federal Crown corporations Excludes procurement by provinces and territories A number of specific goods and services are excluded (similar to GPA below)	Federal departments and agencies Goods: Can\$27,300 (Canada-United States); Can\$76,600 (Canada-Mexico) Services: Can\$76,600 Construction: Can\$9,900,000  Crown Corporations Goods and Services: Can\$383,300 Construction: Can\$12,200,000
Canada-Chile FTA (CCFTA) (Chapter Kbis)	Applies only to federal procurement and does not include sub-federal procurement or MASH entities In addition to general exceptions, a number of specific goods and services are excluded	Federal departments and agencies Goods: Can\$76,600 Services: Can\$76,600 Construction: Can\$8.5 million  Crown corporations Goods: Can\$383,300 Services: Can\$383,300 Construction: Can\$12.2 million
Canada-Peru FTA (CPFTA) (Chapter 14)	Applies only to federal procurement and does not include sub-federal procurement or MASH entities In addition to general exceptions, a number of specific goods and services are excluded	Federal departments and agencies Goods: Can\$76,500 Services: Can\$76,500 Construction: SDR5,000,000 or Can\$8,500,000  Crown corporations Goods: Can\$383,300 Services: Can\$383,300 Construction: Can\$12.2 million
WTO GPA	Procurement commitments for sub-federal procurement are only available to the United States and are subject to the negotiation of a balance of concessions with other GPA parties. Commitments for Crown Corporations are subject to negotiation of a balance of concessions with other GPA parties. MASH entities are not covered. Services commitments are offered on the basis of reciprocal access  In addition to general exceptions, a number of specific goods and services are excluded <sup>b</sup>	Federal departments and agencies Goods and services: SDR 130,000 (Can\$221,300) <sup>c</sup> SDR 355,000 (Can\$604,500) Construction contracts: SDR 5,000,000 Can\$8,500,000 <sup>c</sup> Sub-federal departments and agencies Goods and services: SDR 355,000 (Can\$604,500) Construction contracts  SDR 5,000,000 (Can\$8,500,000) Crown corporations Goods and services SDR 355,000 (Can\$604,500) Construction contracts SDR 5,000,000 (Can\$8,500,000)

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

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

c Threshold values in national currency for 2010-11 as notified by the Canadian authorities to the WTO (WTO document GPA/W/309/Add.2, 21 December 2009).

Source: WTO Secretariat; Treasury Board Contracting Policy Notice 2009-03 – Free Trade Agreements: Update of Thresholds and New Free Trade Agreements. Viewed at: [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/ContPolNotices/2009/12-31-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/ContPolNotices/2009/12-31-eng.asp).

165. Under a bilateral agreement with the United States, Canada has opened up procurement by a range of entities in all ten provinces and two of the three territories (Northwest Territories and Yukon) to the United States under the GPA, in return for removal of the pre-existing United States' derogation against Canada in respect of U.S. procurement by state governments, as well as some additional procurement opportunities for Canadian suppliers. Key elements of this bilateral agreement are being implemented through the GPA. Although procurement at the provincial and territorial level in Canada has only been opened up to the United States, in its revised GPA offer, Canada has extended access to its sub-federal procurement opportunities to other GPA Parties, subject to the negotiation of mutually acceptable commitments.

166. Canada is a signatory to a number of conventions that contain procurement-related provisions: the United Nations Convention Against Corruption, the OECD Anti-Bribery Convention and the Inter-American Convention Against Corruption.

167. There are a number of programmes to help suppliers become aware of federal procurement opportunities, for example, "Buy and sell" (formerly Business Access Canada).<sup>203</sup> Other programmes assist businesses in particular regions of Canada, such as the Atlantic Canada Opportunities Agency and Western Economic Diversification.<sup>204</sup> In Western Canada, Western Economic Diversification Canada works with government and business partners to seek opportunities for western companies arising from government procurement not covered by international trade agreements. Set-aside programmes exist for Aboriginal Business.

(b) Bidding process

168. As specified in the Government Contracts Regulations (Section 5), the contracting authority must solicit bids before any contract is entered into, although sole sourcing is permitted in specified circumstances. Canada uses three bidding methods: electronic bidding, traditional bidding, and advance contract award notices (ACANs) (Table III.21).

169. In numerical terms procurements below Can\$25,000 accounted for 93% of contracts awarded in 2009 (some 300,000 contracts); however, in value terms their share was only 6%. While there is no obligation on the part of Federal Government departments and agencies to use competitive bidding for these lower-value contracts, many do. No figures were available on contracts awarded under Can\$25,000 using sole sourcing and competitive bidding.

170. In 2009, for contracts above Can\$25,000 procurement through non-competitive methods totalled Can\$3 billion, and through competitive methods totalled Can\$10.9 billion (or 15.6 billion if net amendments are taken into account). Of the competitive methods, electronic bidding is the most regularly used.

171. PWGSC maintains standing offers to acquire certain products and services at established prices, which Federal Government departments and agencies are obliged to use.<sup>205</sup> These goods and services are selected on the basis that they are purchased regularly by most government departments

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<sup>203</sup> Buy and Sell online information. Viewed at: <http://www.achatsetventes-buyandsell.gc.ca>.

<sup>204</sup> Western Economic Diversification Canada online information. Viewed at: <http://www.wd.gc.ca>.

<sup>205</sup> The commodity groups affected are: information processing and related telecom services; professional, administrative and management support services; ground effect vehicles, motor vehicles, trailers and equipment (including firmware); software, supplies and support equipment; furniture; office machines, text processing systems and visible recording equipment; office supplies and devices; clothing, accessories and insignia; fuels, lubricants, oils and waxes.

and agencies. The authorities note that the rationale behind standing offers is to streamline and reduce transaction costs and thereby achieve better value for money. Standing offers are normally put in place using open competition, particularly as in most cases they are subject to the requirements of one or more of Canada's domestic and international trade agreements. Procurement notices and detailed bid documents are posted on MERX. The duration of a standing offer is established at the time of the competition and varies by commodity and market conditions; it is generally 2-3 years or less. The winning supplier agrees to provide the commodity at the price or prices in their bid, under the conditions set out in the bid documents, for the term of the standing offer.

**Table III.21**  
**Federal government procurement bidding processes**

Contracting process	Instances when used	Contracts: number and value (2009)
Non-competitive contracts/sole sourcing	In the event of pressing emergency; when the estimated expenditure is less than Can\$25,000 for goods and services, or Can\$100,000 for architectural and engineering services and Canadian International Development Agency (CIDA) aid contracts; instances when a competition is not in the public interest; or in cases where only one supplier is capable of performing the work	Contracts below Can\$25,000: Number: 302,641 Value: Can\$1.2 billion  Other non-competitive contracts: Number: 4,317 Value: Can\$3 billion
<b>Bidding</b>		
Electronic bidding	Used for any transaction covered by NAFTA or the GPA as well as any other transactions (not covered by trade agreements) where departments invoke their electronic competitive entry authority. <sup>a</sup> Notices are posted on the Government's electronic tendering service (MERX).	Number: 8,134 Value: Can\$6.5 billion
Traditional bidding	May be used when a transaction is not covered by trade agreements. In most cases bidders are either directly invited to submit bids, or advertisements are placed in newspapers or trade publications. <sup>b</sup>	Number: 8,054 Value: Can\$2.5 billion
Advance Contract Award Notice (ACAN)	Used when it is considered that only one supplier can perform the work. ACAN's are published in order to give suppliers an opportunity to challenge the proposed tender award by providing a statement of their capabilities. ACANs are published on MERX by all departments.	Number: 1,305 Value: Can\$1.8 billion

a The Government's Contracting Policy sets out three levels of contract entry authority for services contracts permitting a department to enter into a contract (under the Ministers authority) without the need to obtain Treasury Board approval. The highest contract entry authority is provided when a contract is both competitive and advertised electronically.

b The authorities noted that contract entry limits are much lower for traditional competitive bidding than for electronic bidding as an incentive for departments to use electronic means.

Note: Values have been rounded up.

Source: Treasury Board of Canada (2009) *Purchasing Activity Report*. Viewed at: [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/con\\_data/par-09-rpa-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/con_data/par-09-rpa-eng.asp).

### (c) Dispute resolution

172. As noted in Canada's previous Review, legislative changes in 2006 provided for the creation of the position of Procurement Ombudsman, which was filled in May 2008.<sup>206</sup> The Ombudsman has the power to review the procurement practices of Federal Government departments to verify fairness

<sup>206</sup> The Federal Accountability Act (2006) introduced changes to the Department of Public Works and Government Services Act to provide for the appointment of the Procurement Ombudsman. This position was filled by a Procurement Ombudsman Designate in September 2007, who was then confirmed into the position in May 2008.

and transparency, and may make recommendations. The Ombudsman also has the authority to review supplier complaints with respect to transactions outside the jurisdiction of trade agreements.<sup>207</sup> The Ombudsman reports annually to the Minister of Public Works and Government Services Canada who is required to table the report before Parliament. In the most recent annual report, the Ombudsman drew attention to two main, long-standing problems: incomplete file documentation from the Government to explain decisions made and actions undertaken; and poor communication between the Government and the supplier community.<sup>208</sup>

173. Complaints involving alleged Federal Government breaches of the AIT, the GPA, NAFTA, CCFTA, or the CPFTA may be brought to the Canadian International Trade Tribunal (CITT) by potential suppliers. The CITT may also award reasonable costs to the winning party to cover expenses for participation in the proceedings, or to a complainant for bid preparation. The review process generally takes 90 days, with an express option of 45 days. The CITT reviews only complaints involving procurement by the Federal Government, not by provinces, territories or the MASH sector. In 2009/10, the CITT received 154 complaints, representing approximately 0.8% of the total number of contracts issued by PWGSC on behalf of all Federal Government departments and agencies over that period.<sup>209</sup> There are typically two or three complaints per year from foreign suppliers. Most determinations with respect to the validity of a complaint are related to breaches of the AIT, followed by NAFTA and the GPA.

174. In addition to recourse to courts in matters of contract law, suppliers, whether Canadian or foreign have recourse to the Federal Court of Canada for judicial review of the administrative fairness of any contracting actions. The Contract Claims Resolution Board, which acted as an appeal/review agency for procurement-related disputes no longer exists.

(d) Procurement by provinces and territories

175. Procurement at the sub-federal level, is governed by provincial, territorial or other sub-Federal Government laws and procurement regulations (Table AIII.6). Sub-federal procurement is excluded from all international treaties except for the GPA and, as mentioned, procurement at this level is open only to U.S. suppliers. For procurement within the scope of the AIT, the provinces and territories grant similar access conditions to procurement from the rest of Canada, but do not extend this automatically to procurement from foreign suppliers. Some provinces and territories grant provincial or regional preferences to procurement not within the scope of the AIT or other internal procurement agreements.

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<sup>207</sup> More specifically, the Ombudsman may investigate: (a) procurement that would be covered by the trade agreements but where the contract value was considered below the trade threshold levels i.e. contract awards for the acquisition of goods (under Can\$25,000) and services (under Can\$100,000) with respect to complaints about the procurement process up to contract award; and (b) contract administration (i.e. timelines, documentation requirements, payment terms), regardless of the contract's dollar value. For more information on procedures for making a complaint, see offer of the Procurement Ombudsman online information. Viewed at: <http://opo-boa.gc.ca/plainte-complaint-eng.html>.

<sup>208</sup> Office of the Procurement Ombudsman online information: Viewed at: <http://opo-boa.gc.ca/rapports-reports/2009-2010/message-eng.html>.

<sup>209</sup> CITT online information. Viewed at: [http://www.citt-tcce.gc.ca/publicat/ar2k\\_e.asp#P1096\\_54032](http://www.citt-tcce.gc.ca/publicat/ar2k_e.asp#P1096_54032).



## (iii) State-trading, state-owned companies, and privatization

## (a) State-trading enterprises

176. Canada's latest notification concerning state trading enterprises (STEs) covered the Canadian Dairy Commission (CDC), the Canadian Wheat Board (CWB), the Freshwater Fish Marketing Corporation, and 13 provincial and territorial liquor control authorities (Table III.22 and Chapter IV).<sup>210</sup>

Table III.22

Key features of notified state-trading enterprises

STE and applicable legislation	Key features
Freshwater Fish Marketing Corporation (FFMC)	The FFMC has the exclusive right to market and sell (both across provinces and abroad) the main commercial species of fish and fish products from the freshwater commercial fisheries of certain provinces and areas (north-western Ontario, Alberta, Saskatchewan, and Manitoba). It has no role with respect to imports, and competes with private traders of fish sourced from non-agreement areas or from imports. The FFMC is required to operate on a self-sustaining basis.
Liquor control authorities	Under the Importation of Intoxicating Liquors Act (IILA) <sup>a</sup> , Canada's provinces and territories have monopolies over the sale, importation <sup>b</sup> , sending, taking or transportation of intoxicating liquor (other than for sacramental or medicinal purposes; for manufacturing or commercial purposes not related to the use of liquor as a beverage; or if imported by licensed private traders for blending with or flavouring their products). Alcoholic beverages may be sold through stores operated by a liquor control authority and/or through authorized private retailers; distribution and warehousing services for importers are generally also provided by the liquor control authorities. The IILA has been scheduled as a quantitative restriction maintained as an exception to the free-trade provisions of NAFTA, and the Chile and Costa Rica FTAs.
Importation of Intoxicating Liquors Act (IILA), 1928	At the time of Canada's previous Review, eight provincial liquor jurisdictions applied a higher service charge to imported products, justified on the basis of higher carrying and operational costs. Updated information was not made available.

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

b The Alberta Gaming and Liquor Commission does not make commercial decisions regarding product selection or quantities of imported alcoholic beverages.

Source: WTO document G/STR/N/13/CAN, 6 August 2010.

## (b) State-owned enterprises

177. As at July 2010, state-owned enterprises in Canada included 48 parent "Crown corporations" wholly owned by the Government of Canada<sup>211</sup>, of which 3 were deemed parent subsidiaries<sup>212</sup>, and 1 was not yet fully operational (Table III.23).<sup>213</sup> No information was available with respect to the areas of activity of the respective federal Crown corporations, or any exclusive or monopoly rights that they may exercise. Some 28 federal Crown corporations have been expressly conferred with the full privileges and immunities of the Crown (agency status)<sup>214</sup>, including exemption from federal and

<sup>210</sup> WTO document G/STR/N/13/CAN, 6 August 2010. Since the 2001-02 crop year, Canada's notifications do not provide details on the Ontario Bean Producers' Marketing Board, as it no longer operates as the exclusive marketer of white beans produced in the province of Ontario.

<sup>211</sup> Information on provincial Crown corporations was not made available.

<sup>212</sup> Deemed parent subsidiaries are wholly owned by federal Crown corporations, but report directly to the Federal Government for the purposes of the Financial Administration Act. In 2010, federal Crown corporations had 95 wholly owned subsidiaries (without deemed parent status), as well as 11 other subsidiaries, associates, and legal partnerships.

<sup>213</sup> The Government of Canada also has a stake in 2 enterprises that are partially owned by other levels of government: Lower Churchill Development Corporation Limited (Natural Resources), and North Portage Development Corporation (Western Economic Diversification).

<sup>214</sup> The Bank of Canada and the Canada Mortgage and Housing Corporation are excluded from this

provincial taxes and charges. In addition, the commercial activities of Crown corporations may be exempt from Canada's competition law if they are not in actual or potential competition with those of the private sector (section 4)(iii)); no distinction of this kind applies to immunity from taxation.

**Table III.23**  
**Federal Crown corporations, 31 July 2010**

Ministry responsible	Crown corporation
Agriculture and Agri-food	Canadian Dairy Commission; Farm Credit Canada
Atlantic Canada Opportunities Agency	Enterprise Cape Breton Corporation
Canadian Heritage and Official Languages	Canada Council for the Arts; Canadian Broadcasting Corporation; Canadian Museum for Human Rights; Canadian Museum of Civilization; Canadian Museum of Nature; National Arts Centre Corporation; National Gallery of Canada; National Museum of Science and Technology; Telefilm Canada
Citizenship, Immigration and Multiculturalism	Canadian Race Relations Foundation
Environment	Corporation for the Mitigation of Mackenzie Gas Project Impacts <sup>a</sup>
Finance	Bank of Canada; Canada Deposit Insurance Corporation; Canada Development Investment Corporation; Canada Pension Plan Investment Board; PPP Canada Inc. <sup>b</sup>
Fisheries and Oceans	Freshwater Fish Marketing Corporation
Foreign affairs and International Trade	Canadian Commercial Corporation; Export Development Canada; International Development Research Centre
Human Resources and Skills Development	Canada Employment Insurance Financing Board; Canada Mortgage and Housing Corporation
Indian Affairs and Northern Development	First Nations Statistical Institute
Industry	Business Development Bank of Canada; Canadian Tourism Commission; Standards Council of Canada
Natural Resources	Atomic Energy of Canada Limited
Public Works and Government Services	Defence Construction (1951) Limited
Transport, Infrastructure and Communities	Atlantic Pilotage Authority; Blue Water Bridge Authority; Canada Lands Company Limited; Canada Post Corporation; Canadian Air Transport Security Authority; The Federal Bridge Corporation Limited; Great Lakes Pilotage Authority; Laurentian Pilotage Authority; Marine Atlantic Inc.; National Capital Commission; Old Port of Montréal Corporation Inc. <sup>b</sup> ; Pacific Pilotage Authority; Parc Downsview Park Inc. <sup>b</sup> ; Ridley Terminals Inc.; Royal Canadian Mint; VIA Rail Canada Inc
Treasury Board	Public Sector Pension Investment Board

a A newly established Crown corporation, not fully operational as at 31 July 2010.

b A wholly owned subsidiary of a Crown corporation that, pursuant to an Order in Council, reports as if it were a parent Crown corporation.

Source: Treasury Board of Canada Secretariat (2010), *Annual Report to Parliament – Crown Corporations and other Corporate Interests of Canada*. Viewed at: <http://www.tbs-sct.gc.ca/reports-rapports/cc-se/2010/cc-se00-eng.asp>.

178. Crown corporations vary in size and in their reliance on government funding. Total budgetary appropriations for federal Crown corporations stood at Can\$6.67 billion in 2009/10, up from Can\$5.01 billion in 2005/06. At the federal level, 26 of the 47 operational parent and deemed parent entities received financial transfers from the Government.<sup>215</sup> In 2010, some 97% of total assets

count because they are partial agents of the Crown; only some of their activities are carried out under this status.

<sup>215</sup> At the time of Canada's previous Review, the Canada Mortgage and Housing Corporation (Can\$2.613 billion) was the largest recipient of financial transfers, followed by the Canadian Broadcasting Corporation (Can\$1.143 billion). Approximately 88% of the total budgetary appropriations received by federal Crown corporations were allocated among seven entities.

recorded were concentrated in six Crown corporations: the Business Development Bank of Canada, the Canada Mortgage and Housing Corporation, Export Development Canada, Farm Credit Canada, the Canada Post Corporation, and the Canada Development Investment Corporation.<sup>216</sup> While data availability constraints preclude a consistent comparison over time, these corporations have traditionally been among the largest federal state-owned enterprises.

179. Provincial governments have full or partial ownership interests in companies active in a range of industries.<sup>217</sup> A number of wholly owned enterprises operate in subsectors such as broadcasting (Télé-Québec, the Knowledge Network)<sup>218</sup>, and financial intermediation and insurance (ATB Financial, Agriculture Financial Services Corporation, Manitoba Agricultural Services Corporation). Typically, state-owned enterprises are also the sole providers of certain types of insurance that are mandatory under applicable provincial laws: Société de l'assurance automobile du Québec (automobile-related personal injury or death insurance), Régie de l'assurance-maladie du Québec (health and medicine insurance), Manitoba Public Insurance Corporation (automobile-related property damage and personal injury insurance). Through an initial equity investment, the Government of British Columbia holds a 17.51% stake in Northstar Trade Finance Inc., an export finance company; it has not provided any additional funding.

#### (iv) Competition policy and price controls

##### (a) Institutional and legal framework

180. Competition law enforcement in Canada is handled by the Competition Bureau, headed by the Commissioner of Competition.<sup>219</sup> The Competition Bureau investigates alleged violations of the Competition Act and decides whether to bring them before the relevant administrative or judicial body.<sup>220</sup> Non-criminal matters are typically heard by the Competition Tribunal<sup>221</sup>; criminal matters are referred to the Attorney General of Canada and may be brought before a Federal Court or a superior court of a province.<sup>222</sup> In very limited circumstances, the Commissioner's decision on whether to commence and/or discontinue an inquiry under the Competition Act may be subject to judicial review before the Federal Court of Canada.<sup>223</sup> On appeal, higher instance decisions are generally based on the evidence originally used; new evidence may be admissible only if it meets

<sup>216</sup> Treasury Board of Canada Secretariat (2010).

<sup>217</sup> Information on sub-federal state-owned enterprises, including their areas of activity and any (*de facto* or *de jure*) monopoly or exclusive rights they may exercise, was not made available.

<sup>218</sup> These companies are partly funded by annual grants from the respective provincial governments.

<sup>219</sup> The Bureau is responsible for the administration and enforcement of the Competition Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act, and the Precious Metals Marking Act.

<sup>220</sup> If a Bureau inquiry, a court judgment or a Tribunal decision, provide the Governor in Council with satisfactory evidence that the prevention or lessening of competition in respect of any article is facilitated by the presence of customs duties, the Governor in Council may, by order, remove or reduce any such customs duties.

<sup>221</sup> The Competition Tribunal is composed of up to six judicial members appointed from among the judges of the Federal Court and up to eight lay members. Every application to the Competition Tribunal must be heard before no fewer than three or more than five members sitting together, comprising at least one judicial and one lay member.

<sup>222</sup> Matters that fall under the criminal provisions of the Competition Act include price-fixing, market allocation, output restriction, bid rigging, certain false or misleading representations and certain deceptive marketing practices.

<sup>223</sup> According to the authorities, Canadian jurisprudence has consistently held that these circumstances must involve the Commissioner having acted in bad faith, having failed to consider relevant facts, or having based the decision on irrelevant considerations.

certain conditions<sup>224</sup>, or if it is provided for a purpose other than to challenge a determination made at trial (e.g., challenging the validity of the trial process).

181. Since June 2002, private individuals and corporations have been able to seek leave to apply directly to the Competition Tribunal with respect to non-criminal matters involving refusal to deal, exclusive dealing, tied selling, and market restrictions<sup>225</sup>; since 2009, this has also been possible for matters involving resale price maintenance.<sup>226</sup> However, recourse to private litigation remains modest. Out of the 62 cases filed with the Competition Tribunal between January 2006 and December 2010 only 9 were requests for leave by private parties; 7 of them were dismissed and 1 was withdrawn. These statistics reveal that, to date, the Competition Bureau's workload has hardly been relieved by private litigation provisions in Canada's competition regime. Ideally, private parties could play a prominent role in the detection of anti-competitive behaviour; moreover, they, rather than the Commissioner of Competition, must assume the burden of proof if their applications are being heard by the Competition Tribunal.

182. While the relevant institutional framework remained unchanged throughout the review period, Canada modified several provisions of its Competition Act in 2009 (Table III.24).<sup>227</sup> According to the Canadian authorities, in addition to ensuring streamlined enforcement and greater deterrence, the adjustments were intended to better align Canada's legal requirements with those of its major trading partners, particularly the United States. The Competition Bureau also revised its Immunity Program in 2007 and finalized its Leniency Program in 2010 (see below).

183. The amendments implemented most, but not all, recommendations made by a Competition Policy Review Panel and the OECD.<sup>228</sup> OECD recommendations on amendments to the Competition Act that were not implemented at this stage sought to address the conditionality of formal sector-wide investigations on suspicions of unlawful behaviour<sup>229</sup>, as well as the limited scope of private litigation rights. Suggestions to expand the latter focused on ensuring private access to the Competition Tribunal for all civil provisions of the Competition Act, as well as on allowing private follow-on compensation lawsuits for established non-criminal offences.<sup>230</sup>

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<sup>224</sup> The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial; the evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the proceeding; the evidence must be credible in the sense that it is reasonably capable of belief, and the evidence must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result. (Supreme Court of Canada in *R. v. Palmer*, [1980] 1 S.C.R. 759 at page 775).

<sup>225</sup> Bill C-23: An Act to amend the Competition Act and the Competition Tribunal Act. Viewed at: [http://lois.justice.gc.ca/eng/2002\\_16/page-1.html](http://lois.justice.gc.ca/eng/2002_16/page-1.html).

<sup>226</sup> Bill C-10: (Budget Implementation Act 2009), Part 12. Viewed at: <http://www2.parl.gc.ca/ousePublications/Publication.aspx?DocId=3756934&Language=e&Mode=1>.

<sup>227</sup> Bill C-10 (Budget Implementation Act 2009), Part 12. Viewed at: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3756934&Language=e&Mode=1>.

<sup>228</sup> Government of Canada (2008), and OECD (2004). See also OECD document ECO/WKP(2005) 8. Viewed at: <http://www.oecd.org/officialdocuments/displaydocumentpdf&?cote=eco/wkp%282005%298&doclanguage=en3>.

<sup>229</sup> Canada's Competition Policy Review Panel also recommended giving an independent institution the authority to conduct industry-wide studies, including regulatory impact assessments, and advocate for pro-competitive improvements.

<sup>230</sup> In both cases, the recommendation does not apply to civil provisions concerning the merger review process.

**Table III.24**  
**Amendments to Canada's Competition Act, 2009**

Provision	Description
Conspiracy (anti-competitive agreements)	Introduction of a <i>per se</i> prohibition <sup>a</sup> of price-fixing, market allocation, and output restriction; any offence of this kind is subject to criminal prosecution (fines of up to Can\$25 million and/or imprisonment of up to 14 years, per offence). Civil review procedures, including assessment of any harm to competition, apply to all other forms of potentially anti-competitive agreements. An order prohibiting any person from doing anything under the agreement or dissolving the agreement may be issued.
Bid-rigging	Provision's scope was broadened to explicitly include the withdrawal of bids by agreement. Fines at the court's discretion; maximum term of imprisonment raised to 14 years (per offence).
Abuse of dominance	Introduction of administrative monetary penalties (up to Can\$10 million for first order and up to Can\$15 million for subsequent orders) for profits stemming from abuse of a dominant position. Previously, except for abuse in the domestic airline industry, the Competition Tribunal was generally limited to ordering firms to discontinue the abuse.
Deceptive marketing practices	Increased maximum penalties for criminal offences (false or misleading representations, deceptive telemarketing and deceptive notice of winning a prize): fine still at court's discretion; term of imprisonment raised from 5 to 14 years (per offence). Higher administrative monetary penalties for civil offences: up to Can\$750,000 for first order and Can\$1 million for subsequent order (individuals); up to Can\$10 million for first order and Can\$15 million for subsequent order (corporations). Vendors (other than mere resellers or distributors) who make false or misleading representations may be ordered to make restitution to purchasers; an interim injunction to freeze their assets may be issued by the court.
Merger review	Introduction of a two-stage merger review process: transactions are reviewed and cannot be closed for 30 days from the date of notification (1st stage); the Competition Bureau may, at its discretion, request supplementary information and must complete the review within 30 days after receiving a complete response (2nd stage). Mandatory pre-merger notification threshold raised from Can\$50 million to Can\$70 million and indexed to inflation. Limitation period (within which the Competition Bureau can challenge a completed merger) reduced from 3 years to 1 year.
Pricing	Repealed criminal provisions dealing with price discrimination, predatory pricing, geographic price discrimination and promotional allowances; these types of conduct will still be addressed, as civil offences, under abuse of dominance provisions. Decriminalization of resale price maintenance; a new civil provision applies to such practices if they have an adverse effect on competition.
Airline industry	All provisions dealing specifically with the airline industry are repealed.
Obstruction and non-compliance	Increased maximum fines and prison terms for obstruction of Competition Bureau investigations and failure to comply with orders and warrants.

a Agreements under the *per se* prohibition are deemed illegal without a need to show that they have had an adverse effect on competition in Canada.

Source: WTO Secretariat, based on information provided by the Canadian authorities.

184. Under the Competition Bureau's Immunity Program, implemented in September 2000 and revised in October 2007, the Director of Public Prosecutions of Canada (DPP) may grant immunity from prosecution to the party that is first to disclose an undetected criminal offence or to provide evidence before there are sufficient grounds for referral of the matter to the DPP.<sup>231</sup> In exchange for full cooperation with the investigation, the Competition Bureau may also recommend that the DPP consider some form of leniency for parties not eligible for immunity. A formal Leniency Program setting out the considerations to be taken into account in making such recommendations was finalized and made public in September 2010. A Memorandum of Understanding between the Commissioner of Competition and the DPP, signed in May 2010, is expected to further improve transparency between the Competition Bureau and the Public Prosecution Service of Canada.<sup>232</sup> The immunity and leniency initiatives have established an impressive track record and stand out among the Competition

<sup>231</sup> The Director of Public Prosecutions is the head of the Public Prosecution Service of Canada.

<sup>232</sup> Competition Bureau online information. Viewed at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03232.html>.

Bureau's most powerful means of detecting serious offences.<sup>233</sup> Over 2006-10, there were 41 cases involving the immunity and/or leniency programmes; penalties (including 28 fines for a total of Can\$74,114,000) were imposed in 15 of the 19 cases closed to date.

185. Notwithstanding the legislative and procedural fine-tuning, Canada's competition regime is still undermined by numerous exemptions, particularly in connection to regulated conduct.<sup>234</sup> The Competition Act does not apply to: Crown corporations whose commercial activities are not in actual or potential competition with other persons; agreements between underwriters in relation to the underwriting of a specific security; agreements and mergers involving federally regulated financial institutions (Section 49 (2)); mergers approved by the Minister of Transport; the portion of the Canada Transportation Act addressing rates, tariffs and services for railway transportation; Canada's obligations under an international air services agreement or convention; exemption orders granted under the Energy Supplies Emergency Act; contracts between farm products agencies and persons engaged in the production or marketing of a regulated farm product; and cartels that set rates and conditions of service in liner shipping (with certain exceptions). In addition, the Act's provisions on abuse of dominance and, in certain cases, conspiracy<sup>235</sup>, cannot prevent the exercise of rights pursuant to Canada's intellectual property legislation; the trade-restrictive use of such rights may be subject to special remedies (Chapter III(4)(vi)). Canada's competitive marketplace could be further enhanced by instruments, such as guidelines or memorandums of understanding, that clarify the working relationships between the Competition Bureau and the various industry regulators operating at federal and provincial levels.

186. Canada's competition regime follows the effects doctrine common to many jurisdictions; export-oriented concerted practices (including cartels) that have no effect on the Canadian market and do not reduce or limit the real value of subject exports are excluded from the application of the Competition Act. Canada's competition legislation also fails to address domestic market distortions that may arise from the provision of public aid or preferential tax treatment (section (4)(i)). In addition, the Competition Act stipulates exceptions for agreements and mergers likely to bring about efficiency gains that will offset any anti-competitive effects. With regard to mergers, Section 96.(2) stipulates two factors to be taken into consideration by the Competition Tribunal: a significant increase in the real value of exports; or a significant substitution of domestic products for imported ones. These factors are not explicitly stated in the case of potentially anti-competitive agreements.

187. Specific controls apply to the prices of certain products and services, such as patented medicines (section (4)(v)). Detailed information on price controls was not made available.

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<sup>233</sup> Competition Bureau online information. Viewed at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03248.html>.

<sup>234</sup> This situation has prompted some of Canada's trading partners to seek additional guarantees. For instance, the 2004 Canada-EU Wines and Spirits Agreement (Annex VIII) contains provisions on fair commercial treatment by provincial Liquor Boards in Canada (Agreement between the European Community and Canada on Trade in Wines and Spirit Drinks. Viewed at: <http://www.canadainternational.gc.ca/eu-ue/assets/pdfs/agreement-wines-vins-accord-eng.pdf>).

<sup>235</sup> Pursuant to the Copyright Act (Section 70.5(3)), agreements filed with the Canadian Copyright Board are exempt from the Competition Act's conspiracy (anti-competitive agreements) provisions "in respect of any royalties or related terms and conditions." Upon request from the Commissioner of Competition, the Board may examine an agreement and, having considered the Commissioner's and the parties' arguments, may alter the royalties and any related terms and conditions.

## (b) Enforcement

188. The number of complaints and requests received by the Competition Bureau fluctuated considerably over the review period (Table III.25); in general, most complaints related to false and misleading representations, and deceptive marketing practices. In 2009/10, the top five product or service categories by number of complaints were: directory listings; contests, sweepstakes and lotteries; electronics and digital products; health, medical, dental and optical products; and clothing and personal accessories. Merger examinations constituted a considerable share of the Competition Bureau's workload.

**Table III.25**  
**Competition Act enforcement, 31 March 2007-31 March 2010**

	2006/07	2007/08	2008/09	2009/10
Total complaints/requests, of which	31,827	17,632	22,523	18,027
Merger notification filings <sup>a</sup>	18	15	12	10
Advance ruling certificate requests <sup>b</sup>	250	294	195	190
Examinations and inquiries commenced of which	436	444	423	316
Mergers	300	337	242	218
Civil, criminal and deceptive marketing examinations	136	107	181	98
Proceedings <sup>c</sup> before the Competition Tribunal, of which	11	10	12	19
Private party requests for leave to make an application	3	0	5	0
Matters referred to the Attorney General of Canada	4	7	7	2
Matters before the Courts	10	14	10	8
Examinations and inquiries concluded, of which	448	471	450	342
Deceptive marketing practices	58	62	127	74
Restrictive trade practices	30	17	22	12
Criminal matters	36	39	47	23
Mergers, of which	301	337	245	221
Abandoned due to competition concerns	1	1	1	1
Cleared with remedies <sup>d</sup>	4	3	3	7
Advance Ruling Certificates	198	222	134	139
Advisory opinions (in all areas)	23	16	9	12
Total fines and administrative monetary penalties (Can\$ million) <sup>e</sup>	3.10	10.00	6.49	32.96
Number of sentences <sup>f</sup>	0	2 <sup>g</sup>	4	5
Appeals (against 1 <sup>st</sup> instance decisions) <sup>h</sup>	1	3 <sup>i</sup>	1	1
Decisions reversed/amended on appeal	1 <sup>j</sup>	2 <sup>k</sup>	1	1

a Excludes merger notification filings for which advance ruling certificates were also requested.

b Includes cases where a notification filing was made in conjunction with an advance ruling certificate request.

c Figures reported for the calendar, rather than the fiscal year; may include multiple proceedings in relation to the same case.

d Includes mergers for which a consent agreement was registered with the Competition Tribunal, and mergers for which a foreign remedy resolved Canadian competition concerns.

e Only for deceptive marketing practices and conspiracy cases.

f Excludes conditional sentences/sentences to be served in the community.

g Represents one case in which prison sentences were ordered for two individuals.

h Excludes appeals of sentences.

i These cases all related to the same matter; two of them were applications for judicial review of production orders.

j This decision sent the original Competition Tribunal decision back for re-determination.

k These decisions set aside production orders on judicial review.

Source: Competition Bureau Annual Reports. Viewed at: [http://www.competitionbureau.gc.ca/eic/site/cbbc.nsf/eng/h\\_00169.html](http://www.competitionbureau.gc.ca/eic/site/cbbc.nsf/eng/h_00169.html); and information provided by the Canadian authorities.

(c) International cooperation

189. During the review period, Canada has continued to strengthen and formalize its international cooperation efforts with a view to minimizing frictions arising from procedural or substantive differences between national competition regimes, and promoting cross-border enforcement coordination. Canada's cooperation instruments are either legally binding, state-to-state agreements or non-binding arrangements between the Commissioner of Competition and counterparts in other jurisdictions (Table III.26). While the former may be broader in scope than the latter, typical clauses include notification, consultation, positive comity, avoidance of conflicts, and confidentiality. In addition, Canada's free trade agreements (Chapter II(4)(a)) contain certain framework principles to ensure that its partners have a foundation for competition law.

**Table III.26**  
**Agreements/arrangements covering competition issues, December 2010**

Country	Cooperation Instrument	Counterpart	Entry into force
<b>Legally binding</b>			
Costa Rica	Canada-Costa Rica Free Trade Agreement, Chapter XI	Government	2001
European Union	Agreement Regarding the Application of Competition Laws	Government	1999
Japan	Agreement concerning Cooperation on Anticompetitive Activities	Government	2005
Mexico	Agreement Regarding the Application of Competition Laws	Government	2001
United States	Agreement on the application of positive comity principles to competition law enforcement	Government	2004
	Agreement Regarding the Application of Competition and Deceptive Marketing Practices Laws	Government	1995
<b>Non-binding</b>			
Australia and New Zealand	Cooperation Arrangement Regarding the Application of Competition and Consumer Laws	Australian Competition and Consumer Commission, New Zealand Commerce Commission	2000
Brazil	Cooperation Arrangement Regarding the Application of Competition Laws	Council for Economic Defense, Secretariat of Economic Law of the Ministry of Justice, and Secretariat for Economic Monitoring of the Ministry of Finance	2008
Chile	Memorandum of Understanding Regarding the Application of Competition Laws	Fiscal Nacional Economico	2001
Republic of Korea	Cooperation Arrangement Regarding the Application of Competition and Consumer Laws	Fair Trade Commission	2006
United Kingdom	Cooperation Arrangement Regarding the Application of Competition and Consumer Laws	Her Majesty's Secretary of State for Trade and Industry and the Office of Fair Trading	2003
United States	Cooperation Arrangement Regarding the Application of Deceptive Marketing Practices Laws	U.S. Postal Inspection Service	2008

Source: Canadian Competition Bureau.

190. Canada participates actively in international fora on competition policy, including the International Competition Network, the International Consumer Protection and Enforcement Network, and the OECD Competition Committee and Global Forum on Competition. Through its Competition Bureau, Canada also provides technical assistance and training to competition authorities in foreign jurisdictions. Between 2006 and 2010, the Competition Bureau shared its expertise with beneficiaries and counterparts from 11 countries.



**(v) Intellectual property rights**

191. During the review period, Canada has maintained its active involvement in the TRIPS Council, as well as its constructive engagement in the negotiations concerning the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits. In addition, it has regularly reported on its technical cooperation activities<sup>236</sup>, as well as those related to technology transfer to least developed countries<sup>237</sup>, and the 2003 General Council Decision on the TRIPS Agreement and Public Health.<sup>238</sup> There have been no dispute settlement cases involving Canada in relation to the TRIPS Agreement since 1999.

**(a) Institutional and legal framework**

192. There have been no institutional changes in the administration and processing of intellectual property in Canada since its previous Review.<sup>239</sup> Applications for protection of patents, trade-marks, copyright, industrial designs, and integrated circuit topographies are handled by the Canadian Intellectual Property Office (CIPO)<sup>240</sup>; legal protection for new plant varieties is the responsibility of the Plant Breeders' Rights Office.<sup>241</sup> While overall patent applications remained fairly stable at around 41,000 between 2006/07 and 2008/09, the number of patents granted increased from 1,687 to 1,824.<sup>242</sup> Over that period, Canadian residents' shares of both patent filings and grants decreased slightly to 12.6% (down from 12.9%) and 10% (down from 10.5%), respectively. In 2008/09, registrations of trade-marks and industrial designs were at 26,697 (up from 23,236 in 2006/07) and 5,659 (up from 3,841 in 2006/07), respectively. Having risen from 8,432 to 9,254 between 2006/07 and 2007/08, copyright registrations dropped to 8,273 the following year.

193. Canada's intellectual property statutes (Table III.27) confer on courts discretion in determining damages and imposing remedies, including the recovery of damages or profits.<sup>243</sup> For greater deterrence, the courts may award exemplary damages; they also have full discretionary power over the allocation of legal costs. Goods infringing intellectual property rights may be subject to forfeiture, destruction or definitive removal from channels of commerce; the Copyright Act also provides for seizure of allegedly infringing copies or plates before judgement. Criminal liability provisions for a range of specified offences are contained in the Patent Act and the Copyright Act; criminal penalties include fines (up to Can\$100,000 and Can\$1 million, respectively) and prison terms

<sup>236</sup> WTO documents IP/C/W/550/Add.6, 26 October 2010; IP/C/W/539/Add.5, 22 October 2009; IP/C/W/517/Add.5, 23 October 2008; and IP/C/W/496/Add.6, 7 December 2007.

<sup>237</sup> WTO documents IP/C/W/551/Add.6, 25 October 2010; IP/C/W/519/Add.5, 23 October 2008; and IP/C/W/497/Add.6, 3 December 2007.

<sup>238</sup> WTO documents IP/C/W/526, 23 October 2008, and IP/N/10/CAN/1, 8 October 2007.

<sup>239</sup> WTO document WT/TPR/S/179/Rev.1, 4 June 2007.

<sup>240</sup> CIPO online information. Viewed at: <http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/home>.

<sup>241</sup> In 2009, there were 1,894 plant variety protection certificates in force in Canada, up from 1,558 in 2006. In 2006-09, the Plant Breeders' Rights Office registered a decrease in both total filings (from 498 to 311) and certificates granted (from 304 to 264). Canadian residents' shares in total applications and certificates issued in 2009 were 23.5% and 13.3%, respectively (International Union for the Protection of New Varieties of Plants. Viewed at: [http://www.upov.int/export/sites/upov/en/documents/c/44/c\\_44\\_07.pdf](http://www.upov.int/export/sites/upov/en/documents/c/44/c_44_07.pdf)).

<sup>242</sup> At end February 2011, the CIPO annual report for 2009/10 had not yet been published; IPR-related statistics were only available up until March 2009.

<sup>243</sup> Under the Copyright Act, a court must order the recovery of both damages and profits from the infringement. The copyright owner may opt for an award of statutory damages (Can\$500 to Can\$20,000 per work infringed) instead of compensatory damages; in certain circumstances, the court may also set statutory damages below the prescribed lower threshold.

(up to one year and five years). In addition, Canada's Criminal Code stipulates criminal offences for trade-mark forgery and passing off, punishable by fines and up to two years of imprisonment. Changes were recently made to sanctions for infringement of Canada's copyright regime (see below).

**Table III.27**  
**National IPR legislation and international agreements**

Legislation and term of protection	Scope and selected limitations	International agreements
<b>Patents</b> Patent Act 1985 (amended) Patent Rules 1996 (amended)	Coverage: new and useful invention or new and useful improvement of existing invention; Inventions are defined to include: art, process, machine, manufacture, composition of matter	Paris Convention for the Protection of Industrial Property; Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; Strasbourg Agreement Concerning the International Patent Classification; and Patent Cooperation Treaty (PCT); under the PCT, CIPO began operations as an international search authority and an international preliminary examination authority in July 2004; Patent Law Treaty, signed but not yet ratified
Protection: up to 20 years from filing <sup>a</sup>	May not be granted for any mere scientific principle or theorem Higher life forms may not be patented <sup>b</sup>	
Patented medicines (Notices of Compliance Regulations)	Provide for effective patent enforcement over new and innovative drugs and the timely market entry of competing generic products	Obligations to provide effective patent enforcement measures under NAFTA/TRIPS
<b>Data protection</b> Data Protection provisions in the Food and Drug Regulations: 8 years of data protection; can be extended for an additional 6 months with the filing of results of a paediatric study	New pharmaceutical chemicals	
Pest Control Products Data Protection Regulations: 10 years exclusive-use protection (plus up to 5 additional years if minor uses are registered)	Exclusive-use protection for data supporting registration of a new product, which contains a new active ingredient; other data supporting the registration are assigned a 12-year compensable status (e.g. where a new use is registered following mutual registration)	Obligations to protect trade secrets under NAFTA and undisclosed information under WTO/TRIPS (including data supporting marketing approval of pharmaceutical and plant protection products).
<b>Trade marks and geographical indications</b> Trade-marks Act 1985 (amended) Trade-marks Regulations 1996 (amended)	Trade marks include: a mark used by a person for the purpose of distinguishing or so as to distinguish wares or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others; a certification mark; a distinguishing guise; or a proposed trade mark. Prohibited marks are listed in the Trade-marks Act (Articles 9-11); criteria for registrable trade marks in Articles 12-15	Paris Convention for the Protection of Industrial Property
Trade mark protection: 15 years, renewable for further 15-year terms on payment of renewal fees <sup>c</sup>		
Once registered, geographical indications for wines and spirits: indefinite protection.	The Trade-marks Act prohibits adoption and use, as a trade mark or otherwise, of protected GI's for wines and spirits which do not originate in the territory indicated by the GI. Exceptions relate to: personal names; comparative advertising; continued use prior to 1994; disuse or cessation of protection in originating country; customary names; certain listed wines and spirits and failure to take proceedings.	

Table III.27 (cont'd)

Legislation and term of protection	Scope and selected limitations	International agreements
Protection for GIs for other goods: same as for trade marks	The Act provides for protection of GIs for goods other than wines and spirits through certification marks (Article 23-25), which have the same scope of protection as trade marks, except that the owner cannot be involved in the manufacture, sale, leasing etc. of the goods indicated by the GI (Article 23)	
<b>Copyright and related rights</b>		
Copyright Act (1985) (amended)	Applies to original literary, dramatic, musical, and artistic works; performer's performance; communication signals, and sound recordings	Berne Convention for the Protection of Literary and Artistic works; Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; and UNESCO Universal Copyright Convention
Copyright regulations 1997 (amended)	Protection is provided to countries with whom Canada has a treaty or other agreement; exceptions to copyright infringement are outlined in Articles 29-32.2 of the Act. They relate, <i>inter alia</i> , to fair dealing; non-profit educational institutions, libraries, archives and museums; computer programs; ephemeral recordings; and persons with perceptual disabilities	WIPO Copyright Treaty; WIPO Performances and Phonograms Treaty, and WIPO Film Register Treaty, signed but not yet ratified
Protection: 50 years from the last author's death; 50 years for some photographs and for published non-dramatic cinematographic works; 50 years from creation for sound recordings and performances	Levies are imposed on blank audio recording media sold in Canada (both domestically manufactured and imported).	
<b>Industrial designs</b>		
Industrial Design Act 1985 (amended)	Applies to original industrial designs defined as features of shape, configuration, pattern or ornament, and any combination of those features that, in a finished article, appeal to and are judged solely by the eye	Paris Convention for the Protection of Industrial Property
Industrial Designs Regulations 1999 (amended)	Protection is not extended to: features applied to a useful article that are dictated solely by a utilitarian function of the article; or any method or principle of manufacture or construction	
Protection: up to 10 years, from the date of registration		
<b>Integrated circuit topographies</b>		
Integrated circuit topography Act 1990 (amended)	Protection is for the three-dimensional configuration of the materials that form integrated circuits, whether it has been embodied in an integrated circuit product or not. Topographies that define only part of the structure needed to perform an electronic function may be registered. Protection is extended to nationals of non-WTO Members on a reciprocal basis	None
Integrated circuit topography regulations 1993 (amended).		
Protection: up to 10 years, beginning on the filing date or the date of first commercial exploitation, whichever is earlier. The term ends on 31 December of the 10th year	Exceptions to exclusive rights include: exhaustion of rights applying to integrated circuit products legitimately put on the market anywhere in the world with the authorization of the owner of the rights; unauthorized copying of a protected topography for the sole purpose of either analysis or evaluation, or of research or teaching with respect to topographies; and reverse engineering	

Table III.27 (cont'd)

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

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

Source: CIPO, CIFA.

194. Provisions for compulsory licensing of intellectual property are set out in the Patent Act, the Integrated Circuit Topography Act, and the Competition Act. Apart from one case involving the exportation of medicines (see below), there has been no recourse to these provisions since 2006. Pursuant to the Patent Act, the abuse of exclusive rights<sup>244</sup> may, *inter alia*, trigger the granting of a compulsory licence; the federal and provincial governments may receive authorization for the non-exclusive use of patented inventions, predominantly to supply the domestic market.<sup>245</sup> Since May 2005, Canadian manufacturers may also be granted an authorization for the purpose of exporting pharmaceutical products to eligible importing countries to respond to their public health challenges.<sup>246</sup> One such authorization was issued in September 2007, resulting in two shipments of medicines to Rwanda.<sup>247</sup> Under the Integrated Circuit Topography Act, the federal and provincial governments may obtain authorization for the public non-commercial use of a registered topography. Canada's Competition Act stipulates that the Federal Court may, *inter alia*, direct the granting of licences under any patent, copyright or registered integrated circuit topography if the exclusive rights and privileges conferred thereby have been used to restrain trade.<sup>248</sup>

<sup>244</sup> An application alleging abuse of the exclusive rights conferred under a patent may not be filed within three years of the date of granting of that patent.

<sup>245</sup> In its application to the Commissioner of Patents, the Government must establish that prior efforts to obtain authority from the patentee to use the patented invention, on reasonable commercial terms and conditions, have been unsuccessful within a reasonable period.

<sup>246</sup> The Commissioner of Patents grants authorizations to manufacture and export a pharmaceutical product upon receipt of a complete application and a notification from the Minister of Health that the pharmaceutical product complies with the Food and Drugs Act (Patent Act, Sections 21.01-21.2. Viewed at: [http://laws.justice.gc.ca/eng/P-4/page-6.html#anchorbo-ga:s\\_21\\_01](http://laws.justice.gc.ca/eng/P-4/page-6.html#anchorbo-ga:s_21_01)).

<sup>247</sup> WTO document IP/N/10/CAN/1, 8 October 2007.

<sup>248</sup> Section 32 of the Competition Act specifies several ways in which exclusive rights and privileges (conferred by a patent, a trade mark, a copyright, or a registered integrated circuit topography) may be used to restrain trade. These include: limiting manufacturing, storage, transporting or dealing facilities; injuring trade or commerce; preventing or lessening the production, or unreasonably enhancing the price of a good; and preventing or lessening competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity. Besides granting a compulsory licence (in all cases except trade-

195. Canada's legislation contains several provisions regarding parallel importation.<sup>249</sup> Under the Copyright Act, importing into Canada a copy of a work (other than a book), lawfully made in a foreign jurisdiction, would constitute an infringement of copyright if the copy infringes copyright in Canada, or would infringe copyright if it had been made in Canada by the person who made the copy.<sup>250</sup> A special regime applies to the parallel importation of lawfully made book copies: the consent of the copyright owner in Canada is required for importation to take place in a market segment for which there is an exclusive distributor in Canada.<sup>251</sup> In general, the importation of genuine trade-marked goods into Canada cannot be restricted by the trade-mark owner or its Canadian licensee through an assertion of trade-mark rights. Exceptions may apply in certain circumstances, such as "the identity of the owner of the Canadian trade-mark" and where it can be shown that the mark used on the imported good is likely to cause consumer confusion as to source, due to appreciable differences between the goods distributed in Canada and the imported good. The situation with patents is similar to that of trade marks.

(b) Recent developments

196. There have been no amendments to the Industrial Design Act, the Integrated Circuit Topography Act, or the Plant Breeders' Rights Act during the review period. Canada's Trade-marks Act has also remained broadly the same, save for a couple of additions. In 2007, amendments to the Act secured protection for the Red Crystal emblem<sup>252</sup>, a symbol linked with the International Red Cross and Red Crescent organizations, as well as for the Olympic and Paralympic marks.<sup>253</sup> In 2010, CIPO consulted stakeholders on whether to amend Canada's Trade-marks Act with a view to aligning it more closely with the intent and principles of international treaties, such as the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol) and the Singapore Treaty on the Law of Trademarks (the Singapore Treaty). Canada is still assessing whether adherence to either treaty would be "of net benefit".

197. Pursuant to the 2004 Canada-EU Wines and Spirits Agreement, Canada is terminating generic classification of 22 EU wine names and 2 spirit names in 3 phases.<sup>254</sup> Following each phase's entry

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restrictive use of a trade mark), the Federal Court may declare void, in whole or in part, any agreement or licence; restrain any person from carrying out any of the provisions of an agreement or licence; expunge or amend the registration of a trade mark or an integrated circuit topography; or revoke a patent.

<sup>249</sup> Canadian customs services are not entitled to seize infringing imports ex-officio. Under the Copyright Act and the Trade-marks Act, customs officials are authorized to detain goods only subject to a court order secured by the holder of the intellectual property right.

<sup>250</sup> An infringement would occur only if the importation is made to: sell or rent out; distribute to such an extent as to affect prejudicially the owner of the copyright; or by way of trade distribute, expose or offer for sale or rental, or exhibit in public a copy of a work (including a sound recording, or a fixation of a performer's performance or of a communication signal).

<sup>251</sup> Exclusive distributors are deemed, for the purposes of entitlement to any remedies in relation to an infringement, to derive by licence an interest in the copyright in question. In order to benefit from the protection provided under the Act, exclusive distributors must meet certain performance requirements concerning pricing and delivery times; failure to meet the service standards for a given book would empower the retailer to purchase that title from any supplier (parallel importation of that title is permitted).

<sup>252</sup> Bill C-61: An Act to amend the Geneva Conventions Act, An Act to incorporate the Canadian Red Cross Society and the Trade-marks Act, 13 June 2007.

<sup>253</sup> Bill C-47: An Act respecting the protection of marks related to the Olympic Games and the Paralympic Games and protection against certain misleading business associations and making a related amendment to the Trade-marks Act, 14 June 2007.

<sup>254</sup> As outlined in Order Amending Subsections 11.18(3) and (4) of the Trade-marks Act (SOR/2004-85), use of the following names were removed from the list of terms deemed to be generic on 22 April 2004:

into force, European producers may request protection of the relevant names as geographical indications on the Canadian market. The second stage of the termination process, implemented at end-December 2008, reduced the number of wine names still benefiting from a transitional period to five.

198. Canada's patent rules were modified in October 2010 to enhance legal certainty and reduce the administrative burden for applicants.<sup>255</sup> As a result, an application can be completed upon submission of a statement that the applicant is the inventor's legal representative; proof of status is no longer required. The amendment also consolidated and clarified provisions relating to the establishment of a filing date, the confidentiality period, and the payment of maintenance fees.

199. Canada's Patent Act stipulates regulated price ceilings for patented medicines to ensure that manufacturers' prices are not excessive.<sup>256</sup> Under the Patented Medicines Regulations, patentees are required to file price and sales information with the Patented Medicine Prices Review Board (PMPRB) twice a year<sup>257</sup>; investigation triggers and assessment methodology are set out in the Board's Excessive Price Guidelines. If a price is deemed excessive, the PMPRB may order the patentee to reduce it and to offset up to twice the amount of any excess revenues derived from the sale of the patented medicine.<sup>258</sup>

200. A revision of the PMPRB's guidelines, which entered into effect in January 2010<sup>259</sup>, extended the scope of price reviews to provincial/territorial level; the calculation of excessive revenues is to be based on the average price across all relevant markets in Canada (i.e., pharmacy, hospital, and wholesaler within each province/territory).<sup>260</sup> In addition, the levels of therapeutic improvement employed in the selection of comparator medicines were raised from 3 to 4 (i.e., breakthrough, substantial, moderate, and slight/no improvement).<sup>261</sup> The revised guidelines also introduce a number of methodology clarifications, including with regard to comparison drugs' prices, comparators for patented generic medicines, highest international price comparison tests, and international therapeutic class comparison tests.

201. During the review period, Canada's copyright-related reform efforts focused on strengthening deterrence and enforcement. In June 2007, the Criminal Code was amended to outlaw the

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Bordeaux, Chianti, Claret, Madeira, Malaga, Marsala, Medoc, Médoc, Mosel and Moselle, as well as the spirit drink names Grappa and Ouzo. The name Tokay was added to this list upon Hungary's accession to the EU. The names Bourgogne, Burgundy, Rhin, Rine, Sauterne, and Sauternes were phased out on 31 December 2008. Wine names Chablis, Champagne, Port, Porto and Sherry will be removed from Canada's generic classification on 31 December 2013.

<sup>255</sup> *Canada Gazette* online information. Viewed at: <http://www.gazette.gc.ca/rp-pr/p2/2009/2009-12-09/html/sor-dors319-eng.html>.

<sup>256</sup> See WTO (2007).

<sup>257</sup> The reporting requirement does not apply to existing veterinary medicines, for which a complaints-driven approach has been in place since 2003. According to the PMPRB, sales of patented medicines in Canada increased to Can\$13.3 billion in 2009 (a year-on-year growth of 2.8%); their share in total drug sales was 62.4%, down from 64.7% in 2008.

<sup>258</sup> Excess revenues may be offset by reducing the price of the same or another patented medicine sold by the patentee in Canada; or by making a payment to Her Majesty in right of Canada.

<sup>259</sup> Patented Medicine Prices Review Board (2009).

<sup>260</sup> This amendment applies to new patented medicines at the time of their introduction; sub-markets are reviewed for existing patented drug products only if the investigation criteria are triggered.

<sup>261</sup> New secondary factors were also added; these may potentially move a product's level of therapeutic improvement up to moderate.

unauthorized recording of a cinematographic work or its soundtrack in cinemas.<sup>262</sup> Penalties for such offences include fines and prison sentences of up to two years (five years in case of commercial distribution of a copy). In March 2010, Canada's "proceeds of crime" regime was also modified to enable Canadian enforcement authorities to seize assets obtained through copyright infringement; such offences were previously excluded by regulation from the ambit of this regime.<sup>263</sup>

202. Following a nation-wide consultation, the Copyright Modernization Act (Bill C-32) was introduced in Parliament in June 2010, and referred to a Legislative Committee in November 2010.<sup>264</sup> The Bill aims to adapt Canada's copyright framework to the digital age by, *inter alia*, bringing it into line with international standards (WIPO Copyright Treaty and Performances and Phonograms Treaty), ensuring its technological neutrality, clarifying Internet service providers' liability, giving photographers the same rights as other creators, and facilitating access by the print-disabled.

203. Regulations amending the Pest Control Product Regulations with a view to providing a legally enforceable and fair process for pesticide data protection entered into force in June 2010. The regulations provide ten years of exclusive-use protection for data used to support the Canadian registration of a new pesticide, which contains a new active ingredient. Through the adding of minor uses, the exclusive use period may be extended by up to an additional five years. Data that support registration and amendments to registration, but which do not qualify for exclusive-use protection, receive a 12-year compensatory protection status. During the compensatory period, an applicant may use or rely on the data owner's data in exchange for adequate compensation.<sup>265</sup>

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<sup>262</sup> Bill C-59: An Act to amend the Criminal Code (unauthorized recording of a movie), 22 June 2007.

<sup>263</sup> Regulations Amending the Regulations Excluding Certain Indictable Offences from the Definition of "Designated Offence", 25 March 2010. Viewed at: <http://gazette.gc.ca/rp-pr/p2/2010/2010-04-14/html/sor-dors74-eng.html>.

<sup>264</sup> BILL C-32: An Act to amend the Copyright Act, 2 June 2010. Viewed at: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=4580265>.

<sup>265</sup> Regulations Amending the Pest Control Products Regulations. Viewed at: <http://canadagazette.gc.ca/rp-pr/p2/2010/2010-06-23/html/sor-dors119-eng.html>.