IV. TRADE POLICIES BY SECTOR

(1) INTRODUCTION

1. Canada has a quite diversified economy, with services as the main sector. Most services are regulated at both federal and sub-federal levels; only banks are under exclusive federal jurisdiction. Despite the fragmented regulatory framework, the Canadian financial system remained remarkably stabile amid the global credit turmoil; some of the extraordinary financing facilities put in place in response to the crisis were not drawn upon. Amendments introduced to the federal regime on financial services include the creation of a bridge bank framework; the extension of the option of federal incorporation to cooperative credit institutions and marine insurance providers; and the raising of the equity thresholds that trigger "widely held" and "publicly held" requirements.

2. The federal regime on insurance services has been clarified to apply to business operations that insurers carry out in Canada; while insurers are free also to insure risks from an overseas head office or branch, the assets they are required to hold in Canada can only cover liabilities related to their Canadian business. As of 1 January 2010, foreign insurers of marine risks require prior authorization from the Office of the Superintendent of Financial Institutions to "insure in Canada".

3. At the sub-federal level, insurers may be subject to licensing requirements or be excluded from some types of insurance that are subject to a public monopoly, even if they are not "insuring in Canada". Several categories of insurance are compulsory at the federal level, including certain types of marine, mortgage, aviation, nuclear, environmental and surety insurance; numerous types of insurance are also compulsory at the provincial/territorial level (e.g. automobile, surety). Requirements in this regard vary by jurisdiction.

4. In the telecommunications sector, Canada has eliminated foreign investment restrictions on satellite carriers and has initiated consultations on its remaining FDI restrictions on facilities-based telecom carriers intended to foster more competition. The Government has also set aside radio spectrum for new market entrants to stimulate competition in the market for mobile telephone services. Canada's broadcasting regime remains unchanged with regard to the existing foreign investment restrictions, and the quota system for Canadian broadcasting content. Canada Post's exclusive privileges has been reduced by opening outbound international mail to competition.

5. In air transport, all Canadian airlines, including Air Canada, are privately owned. A maximum foreign ownership threshold in Canadian airlines of 25% remains in place, although as a result of legislative amendments this may be raised to 49%. Only Canadian airlines may provide domestic services. Under its 2006 Blue Sky Policy, the Federal Government is pursing new air services agreements and expanding existing ones; the most comprehensive agreement was signed with the European Union in 2009. Most of the Canada's largest airports are government owned but managed under concession agreements by private not for profit, non-share capital institutions; regional airports are largely owned and managed by municipalities or territorial governments.

6. Since the last Review of Canada, the Government has taken steps to strengthen the competitiveness of maritime transport, notably through investments in port infrastructure and by removing a 25% tariff on imported vessels. However, restrictive cabotage rules remain in place; this impedes the efficiency of the Canadian maritime industry.

7. Since its last TPR, Canada has introduced a new agricultural policy framework (Growing Forward), a major component of which is a suite of new or modified "business risk management" measures (AgriStability, AgriInvest, AgriInsurance, and AgriRecovery) aimed at partially compensating producers for revenue or income losses arising from low commodity prices, increased

production cost, reduced production, or natural disasters. The supply management systems for dairy and poultry products and the Canadian Wheat Board's "single desk" selling system remain unchanged. Overall, Canadian producers have become less dependent on government support as a source of revenue; however, this reflects mainly higher world market prices for agricultural commodities. Most Canadian assistance to agricultural producers has been provided in the form of market price support for supply-managed commodities through tariff protection (including tariff quotas) and other measures. New restrictions and requirements affecting imports of cheese have given rise to trade concerns by some WTO Members. The Federal Government is committed to modernizing Canada’s outdated system of fisheries management.

8. Canada has streamlined the federal regulatory process for large natural resource projects by creating the Major Projects Management Office and the Northern Project Management Office. The Federal Government has launched a number of new or successor programmes in support of renewable energies. Measures include price and tax incentives, minimum renewable fuel content rules, and support for research and development. Some provincial governments also support the generation of renewable energy, including Ontario, whose Feed-in Tariff (FIT) programme for renewable energy includes local-content requirements. This matter is the subject of WTO dispute settlement procedures.

9. The Canadian manufacturing sector continued to decline during the review period, reflecting, amongst other factors, the long-term structural transformation towards a more services-oriented economy but also enhanced global competition, the appreciation of the Canadian dollar, and the impact of the global financial and economic crisis. The Government has adopted a range of measures to improve the manufacturing sector's productivity growth and competitiveness, including tariff and tax reductions, other stimulus measures, industry-specific incentives for R&D (for example, for the automotive and aerospace industries), and improvements to the business environment through the streamlining of regulation and reducing the administrative burden. Canada has launched a major unilateral initiative to eliminate the applied MFN tariffs on manufacturing inputs, machinery, and equipment aimed at improving the sector's productivity growth and competitiveness.

(2) AGRICULTURE AND FISHERIES

10. The agriculture and agri-food sector plays an important role in the Canadian economy. Primary agriculture contributed 1.7% of GDP and 1.8% of employment, while the agriculture and agri-food sector contributed 8.2% of GDP and 12.6% of employment in 2009.[1] The food, beverage and tobacco processing industry has overtaken the automotive industry as Canada's largest manufacturing subsector.[2] Canada is a net-exporter of agriculture and agri-food products and one of the leading exporters of wheat, coarse grains, oilseeds (and related products), pork, beef, and live cattle.[3] In 2009, it was the fourth-largest exporter and sixth-largest importer of agricultural products, counting the EU as one.[4]

[1] The agriculture and agri-food sector encompasses primary agriculture; farm input and service supplier industries; food, beverage and tobacco processing; wholesale, distribution and retail food industries; and food service (AAFC online information, "Overview of the Canadian Agriculture and Agri-Food System 2011". Viewed at: http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1295963199087&lang=eng).

[2] Statistics Canada (2010), p. 302.

[3] WTO document G/AG/N/CAN/76, 2 March 2009.

[4] WTO (2010), International Trade Statistics 2010. Viewed at: http://www.wto.org/english/res_e/statis_e/its2010_e/its2010_e.pdf, Table II.15, p. 51.

(i) Border measures

11. Canada's applied MFN tariffs on agricultural products (WTO definition) averaged 22.5% in 2010, almost unchanged compared to 2006 (Table III.1).[5] Tariff protection remains highest for dairy products (averaging 237.3%), followed by animals and animal products (averaging 52.8%) (Table AIII.1). The peak AVE remains at 532.2% (HS 350211 – dried egg albumin).

12. There has been little change to Canada's tariff quota regime for agricultural products. Most of the 21 tariff quotas subject to WTO commitments are for supply-managed products (i.e. dairy products; chicken, turkey, eggs and related products; and broiler hatching eggs and chicks).[6]

13. A new tariff quota for milk protein concentrates was established in September 2009 as a result of the modification of Canada's concessions under Article XXVIII of the GATT (Chapter III(2)(iv)).[7] Milk protein substances with a milk protein content of less than 85% by weight are subject to a reduced in-quota tariff of 3% (6% at the time of Canada's previous review); and a tariff quota regime has been introduced for milk protein substances with a milk protein content of 85% or more with an in-quota tariff of zero.

14. About 41% of the applied MFN in-quota tariffs for agricultural products (totalling 152 tariff lines) are non-*ad valorem*. The *ad valorem* equivalents range from 0.3% to 8.6% (for products where import data were available to calculate the AVEs) (Table AIV.1).

15. All imports within tariff quotas are subject to an applicable tariff that varies depending on the origin of the imports. The applicable tariff may be the MFN rate or a preferential rate, as in the case of imports originating from the United States, Mexico, Australia, New Zealand, Chile, Israel, and most developing country suppliers under Canada's General Preferential Tariff (GPT). Canada does not place any restrictions on the extent to which WTO tariff quotas may be filled by preferential (in-quota) imports. For a subset of products subject to WTO tariff-quota commitments (mainly chicken, turkey, eggs and related products, broiler hatching eggs, and chicks), Canada established under bilateral agreements with the United States (including the Canada-U.S. FTA, subsequently incorporated into the NAFTA), tariff quotas with in-quota volumes defined as a share of domestic production, rather than in absolute terms as is the case under Canada's WTO commitments.[8] Therefore, the levels of in-quota volumes under preferential agreements vary from year to year, and may be lower or higher than the levels in Canada's WTO commitments. In these cases, the Minister of International Trade will generally set in-quota volumes (which can be filled with both preferential and non-preferential imports) at the level that is highest. For example, in the case of chicken and broiler hatching eggs and chicks, Canada’s preferential commitments exceed those made in the WTO.

[5] No additional duties were levied under the special safeguard (SSG) provisions in 2007-08 (WTO document G/AG/N/CAN/76, 2 March 2009).

[6] In addition, Canada maintains a tariff quota of 2,970 tonnes of frozen pork from the European Union as a temporary retaliatory measure in the dispute settlement case concerning Canadian beef produced from cattle using growth hormones (European Union Surtax Order). WTO document G/LIC/N/3/CAN/8, 16 October 2009.

[7] This follows a Canadian Federal Court of Appeal ruling that found that milk protein concentrates of over 85% should be placed in Chapter 35, which had previously been classified in Chapter 4 of Canada's tariff schedule. The classification change meant that imports of milk protein concentrates of over 85% would be subject to an MFN tariff of 6.5% rather than a tariff quota with an out-of-quota tariff of 270%.

[8] WTO document G/LIC/N/3/CAN/8, 16 October 2009.

16. Administration methods for the individual WTO tariff quotas remain largely unchanged (Table AIV.1).[9] The allocation method for the tariff quota for milk protein concentrates was established 17 February 2010. Most tariff quotas were 100% filled or nearly filled in 2008 and 2009. A number of tariff quotas had fill rates in excess of 100%, reflecting preferential arrangements. The main exceptions were wheat and barley, beef and veal, margarine, and "other dairy". The fill rates of the tariff quotas for wheat and barley have traditionally been low, reflecting the competitiveness of domestic producers.

(ii) Domestic programmes

17. Since its last TPR, Canada has adopted a new agricultural policy framework. The Growing Forward Framework Agreement, which entered into force on 1 April 2008, provides the basis for federal-provincial-territorial (FPT) measures for the period 2008/09 to 2012/13. It replaces the Framework Agreement on Agricultural and Agri-Food Policy for the Twenty-First Century (APF Agreement), which covered 2002/03-2007/08. Canadian agricultural policy is under joint federal and provincial/territorial responsibility, with cost-shared activities generally shared at a ratio of 60:40.

18. The Growing Forward policy framework is aimed at promoting (i) a competitive and innovative agriculture sector; (ii) an agriculture sector that contributes to the society's priorities (i.e. food safety, food security, environmentally responsible agriculture), and (iii) minimizing risk incidents and managing business risk. It identifies initiatives that are cost-shared, such as business risk management measures, and provides guidance on measures that are under exclusive federal or provincial responsibility.

(a) Business risk management measures

19. At the core of the Growing Forward policy framework is a set of new or modified "business risk management" measures: the AgriStability, AgriInvest, AgriInsurance, and AgriRecovery programmes (Table AIV.2). These national programmes, launched for the 2007 programme year, are intended to provide support to agricultural producers experiencing income or production losses caused by low commodity prices, increased production costs, reduced production, or natural disasters.[10]

20. AgriStability provides payments to compensate for margin (i.e. whole-farm income) declines. It replaces similar measures under the expired Canadian Agricultural Income Stabilization (CAIS).[11] Payments are triggered when producers' "production margins" drop more than 15% below their historical "reference margins". The production margin is calculated by subtracting allowable expenses (those related directly to the production of agricultural commodities, including feed costs, fertilizer, and pesticides) from allowable revenues in a year. The reference margin is the average production margin of the previous five years, excluding the highest and lowest values (i.e. the Olympic average). Market trends over time are reflected in reference margins, allowing market signals to be transmitted into production and business decisions. The fee for participating in AgriStability is Can$3.80 per Can$1,000 of reference margin.

[9] The representative period for the allocation of the beef and veal tariff quota (Table AIV.1) has been amended each year in order to minimize disruption in the Canadian beef industry as a result of the BSE case in Alberta in May 2003. See *Canada Gazette* Vol. 143, No. 24 – November 25, 2009, "Order Amending the Allocation Method Order (Beef and Veal)". Viewed at: http://gazette.gc.ca/rp-pr/p2/2009/2009-11-25/html/sor-dors299-eng.html.

[10] Article 19 of the GF Framework Agreement.

[11] See WTO (2007).

21. Margin declines below the reference margin ranging from 15% to 30% are compensated by 70% (stabilization component); declines greater than 30% but less than 100% are compensated by 80% (disaster component). Total maximum compensation is 66.5% of the decline. Margin declines greater than 100% (i.e. allowable expenses are greater than allowable revenue) are compensated by 60%, provided production margins were positive in at least three of the previous five years. Negative margin coverage was introduced under AgriStability to assist otherwise productive and viable operations facing significant short-term profitability challenges to continue receiving assistance under the programme. Supply managed commodities are eligible under the disaster component and hence are covered only when the whole-farm margin falls by more than 30%. The maximum annual payment under both AgriStability components is Can$3 million per farm. The OECD observes that uncertainty about the level of payments and payment delays of up two years undermine the usefulness of AgriStability as a risk management tool.[12] The authorities note that most payments are made within a few months of a claim and participants also have access to advance payments under certain conditions. Participation ranged from a high of 147,195 farm applications in 2003 to a low of 106,107 applications in 2008. AgriStability expenditures increased substantially in 2009/10, mainly due to droughts and excess moisture in the Canadian Prairies.

22. Québec and Ontario maintain provincial programmes that complement AgriStability. Québec's *Programme d'assurance stabilisation des revenues agricoles* (ASRA) provides price insurance to producers of eligible products.[13] Two thirds of the insurance premiums under ASRA are covered by the Québec government. ASRA payments are triggered by market prices that are lower than a reference price (based on estimated cost of production on specialized farms); these payments are commodity-specific.[14] ASRA's price-based support often provides additional support beyond AgriStability and is in many situations considered more generous.[15] ASRA payments amounted to Can$582.5 million in 2009 (excluding insurance premiums). Ontario's Risk Management Program (RMP), a commodity-specific support programme similar to ASRA, which covers grains and oilseeds, was initially introduced as a three-year pilot programme for the 2007 crop year. Producers pay 30% of the cost of programme premiums.

23. AgriInvest provides government assistance to encourage producer savings. Funds can be used to address small margin declines not covered by AgriStability, or to make investments in the operation.[16] Producers may deposit funds into an AgriInvest account of up 1.5% of allowable net sales from the previous year, and receive a matching contribution from governments. Allowable net sales include revenues from most primary agricultural commodities except those covered under supply management. The maximum government contribution per participant is Can$22,500. Programme participation was 141,784 in 2007 and 107,932 in 2008.

24. AgriInsurance is a continuation of the Production Insurance programme. It provides insurance against production losses due to the weather, pests or diseases. Insurance is crop-specific and most commercial crops are eligible. The federal government contributes to AgriInsurance contracts offered to producers by provincial/territorial governments or through public corporations. Payments under AgriInsurance are included as income under AgriStability, ensuring that producers are not paid twice for the same loss. The Federal Government also has re-insurance arrangements

[12] OECD (2011), p. 24.
[13] Agriculture, Pêcheries et Alimentation Québec online information. Viewed at: http://www.mapaq.gouv.qc.ca/fr/productions/politiquejeunessevolet1/repertoireprogrammes/programmessoutienaccespropriete/asra/Pages/asra.aspx.
[14] See WTO document G/AG/N/CAN/82, 12 November 2010, p. 11.
[15] OECD (2011), p. 33.
[16] AgriInvest replaces the coverage for margin declines of less than 15% (tier 1), previously covered by the CAIS program (see WTO, 2007).

with Alberta, Manitoba, New Brunswick, Nova Scotia, and Saskatchewan. Government expenditures for reinsurance premiums are part of the AgriInsurance expenditures (Table AIV.2).

25. AgriRecovery is a new framework programme to enable federal, provincial, and territorial (FPT) governments to provide financial assistance to producers in the event of natural disasters. Its coverage seeks to fill gaps in other business management risk and disaster relief programmes. Government assistance is *ad hoc* and depends on potential payments from existing programmes and on the specific disaster, based on criteria set out in the framework. As of 31 December 2010, AgriRecovery had been used in 23 disaster incidents.[17]

(b) Price and other guarantee programmes

26. Most Canadian assistance to agricultural producers has been delivered in the form of market price support for supply-managed commodities (milk, poultry meat, eggs, and related products) (Table IV.1). Market price support includes all policy measures that raise the domestic price relative to the border price of the commodity concerned, including border measures, such as tariffs and tariff quotas, and export subsidies. Supply management comprises (i) control over imports of products and several by-products; (ii) stable producer prices; and (iii) production management (quotas).[18] Supply-managed commodities are governed by their own FPT agreements, the national marketing plans. The Government remains committed to the supply management system.[19] Under the GF Framework Agreement, supply management has been explicitly recognized as a business risk management programme.[20]

27. Canada maintains several guarantee programmes under the Agricultural Marketing Programs Act (AMPA), including the Advance Payments Program and the Price Pooling Program (PPP). Under the Price Pooling Program, the Federal Government enters into an agreement with a marketing agency, such as producer or processor associations, and provides a "price guarantee that protects marketing agencies and producers against unanticipated declines in the market price of their products."[21] This measure is aimed at facilitating the cooperative marketing of agricultural products. The price guarantee is fixed at a certain percentage of the expected wholesale price of the product concerned.[22] The price guarantee may be used by the marketing agency as security in obtaining credit from lending institutions, and allows the agency to improve the producers' cash flow through an initial payment for products delivered. If the realized wholesale price is less than the guarantee value (the initial payment plus the eligible costs), the programme allows for a payment for the shortfall (i.e. product-specific subsidy) by the Government of Canada. In 2010, five PPP agreements were in place, representing approximately 18,000 producers, with a total guarantee amount of approximately Can$55.2 million. According to the authorities, no government expenditures have been incurred under the PPP since 1997.

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[17] AAFC online information. Viewed at: http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1200689505769&lang=eng.

[18] Growing Forward Framework Agreement, Section 19.2.

[19] Canada Governor General (2010).

[20] Growing Forward Framework Agreement, Section 19.2.

[21] AAFC online information. Viewed at: http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1289934791790&lang=eng.

[22] This includes eligible storing, processing, carrying, and selling costs of the marketing agency.

Table IV.1
Evolution of support and protection, 2006-09
(Can$ million)

	2006	2007	2008	2009
Price support: milk	2,946	2,550	1,817	3,367
Price support: poultry meat	249	293	493	447
Price support: eggs	179	7	-6	110
Price support: other commodities	1,175	910	693	1,213
Producer Support Estimate (PSE)[a]	7,757	7,696	5,839	8,896
Total Support Estimate (TSE)[b]	10,048	10,619	8,685	11,500
Total value of agricultural production at farmgate	32,547	37,021	42,109	40,279
PSE (as a percentage of gross farm receipts)	22	19	13	20
Single Commodity Transfers (SCT) (as a percentage of PSE)[c]	64	58	66	71
Nominal Protection Coefficient (NPC)[d]	1.16	1.11	1.08	1.15

a PSE: total annual monetary transfers to farmers individually (not agriculture generally) from: market price support mainly through border measures but also food aid, export subsidies (calculated by the price gap between domestic and border price); payments to farmers; and tax/fee reductions (revenue forgone).
b TSE: total transfers from consumers and taxpayers to agriculture.
c SCT: sum of transfers to producers granted to a single commodity.
d NPC: nominal protection coefficient. Ratio between the average price received by producers and the border price (average producer price includes payments based on current output, e.g. deficiency payments).

Source: OECD (2010), *Agricultural Policies in OECD Countries: At a Glance*, Paris; and OECD PSE/CSE database. Viewed at: http://www.oecd.org/dataoecd/31/28/45560733.xls?contentId=45560734.

28. The Advance Payments Program is a product-specific loan guarantee programme under which the Federal Government, *inter alia*, guarantees cash advances of up to Can$400,000 provided by participating producer organizations to producers, based on the value of the eligible product (including livestock).[23] Loans are interest-free up to Can$100,000 and repayable within 18 months. In the 2009-10 production period, the Government guaranteed Can$1.9 billion in advances. Amendments to the AMPA were made in February 2008 to provide for emergency advances in cases of severe economic hardship; advances were made to hog and cattle producers for the 2008-09 production period.[24] During the review period, the Canadian hog industry also received assistance through two *ad hoc* measures (Hog Loan Loss Reserve Programme and the Hog Farm Transition Programme), (see Table AIV.2).

29. The Canadian Agricultural Loans Act (CALA) programme of June 2009 (Table AIV.2) is a loan guarantee programme with expanded eligibility to start-up farmers, agricultural co-operatives and for inter-generational farm transfers. The maximum loan amount has been increased from Can$250,000 to Can$500,000, with up to Can$500,000 for land and buildings and Can$350,000 for any other purpose. Up 1 November 2010, 3,400 loans totalling Can$183.3 million had been registered under the CALA.

30. Under the Agricultural Products Marketing Act (APMA), the Federal Government may grant provincial entities, including boards and agencies, authority to "regulate the marketing of [any] agricultural product in interprovincial and export trade".[25] A provincial entity that is granted this power, under an APMA delegation order, enacts regulations or other instruments specifying how that power is exercised. In some cases, these powers include the authority to set production quotas and

[23] Agricultural Marketing Programs Act, Part I.
[24] Order in Council issued on February 29, 2008. Due to economic hardship facing the cattle and hog industries, a "Stay of Default" was announced on January 23, 2009, which extended the repayment deadline to 30 September 2010. A second "Stay of Default", announced on 6 August 2010, further extended the repayment deadline for cattle producers to 31 March 2012 and for hog producers to 31 March 2013.
[25] Section 2(1).

prices.[26] The APMA also grants provincial entities the power to set levies on the interprovincial movement or export of agricultural goods.[27] Provincial boards and agencies have enacted marketing regulations on storage and transportation; grading and quality; revenue pooling; maintenance of books, records, and marketing information; registration of farms; licensing of producers, wholesalers, processors, and truckers; and price setting. Under the APMA 82 delegation orders have been granted in 9 provinces (January 2010) covering a wide range of products, including mushrooms, potatoes, wheat, apples, asparagus, beans, berries, flue-cured tobacco, grapes, onions, soya beans, pork, maple syrup, pulses, flax, and supply-managed products. Table AIV.3 gives an overview of commodities that are subject to price pooling or single-desk selling.

(c) Other measures

31. Canada maintains other measures in support of its agriculture and agri-food sector. Agriculture and Agri-Food Canada lists 142 programmes (as of January 2011). Measures range from the Abattoir Competitiveness Program to the Yukon Wildlife Damage Compensation Programme.[28] Canada's last annual notification on domestic support is for 2005.[29]

32. Since its last TPR, Canada has implemented a number of transitional or *ad hoc* measures (Table AIV.2).

(iii) Export measures

33. Canada has export subsidy reduction commitments for 11 product groups, including grains, oilseeds and related products, dairy products, and incorporated products.[30] For the marketing years 2007/08-2008/09, Canada notified "producer financed subsidies" for four product categories (skimmed milk powder, cheese, other milk products, and incorporated products) (section (v)(b)) below).[31]

34. The federal AgriMarketing programme provides matching funding to activities to enhance the marketing capacity and competitiveness of the Canadian agriculture, agri-food, fish and seafood subsectors.[32] The Canada Brand International programme was introduced in 2006, while a domestic Canada Brand programme has been launched under the GF Framework. Activities include buyer and consumer research; gathering market intelligence; developing marketing tools for use by industry; presentation of Canada's agriculture and food "brand" at trade shows, and promotional campaigns.

(iv) Evolution of support and protection

35. Overall, the market orientation of Canada's agriculture sector has improved since its last Review. The percentage PSE of the OECD declined to 17% in 2007-09, from 22% in 2004-06 and 36% in 1986-88, which indicates that agricultural producers have become less reliant on government

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[26] See, for example: Marketing of Agricultural Products Act of Alberta; Natural Products Marketing (British Columbia) Act; Farm Products Marketing Act of Manitoba; Natural Products Act of New Brunswick; Farm Products Marketing Act of Ontario; and *Loi sur la mise en marché des produits agricoles, alimentaires et de la pêche*.

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

[28] AAFC online information "Programmes and Services A-Z". Viewed at: http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1204214137015&lang=eng.

[29] WTO document G/AG/N/CAN/82, 12 November 2010.

[30] Canada Schedule V, Part IV, Section II.

[31] WTO documents G/AG/N/CAN/78, 16 July 2009, and G/AG/N/CAN/80, 25 May 2010.

[32] AAFC online information. Viewed at: http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1239048540113&lang=eng.

support over the long term. A sharp rebound in the level of support in 2009, to 20%, meant that 20% of gross farm receipts were derived from support policies (80% from the market without support). The total PSE in 2009 also reached its highest level since 1986-88 (Table IV.1). This is mainly because Canada continues to provide price-related support to supply-managed commodities, which leads to rising support when world market prices decline and vice versa. Canada's nominal protection coefficient (NPC), which measures the degree to which the agricultural markets are insulated from world markets through government policies, was about 1.11 in 2007-09, meaning that Canadian agricultural producers received average prices about 11% higher than world market prices.[33]

36. As indicated by the OECD measurement of support, earlier progress away from commodity-specific support has reversed, mainly due to higher market price support for milk in 2009. Canadian commodity-specific support (SCT) accounted for 65% of the total PSE in 2007-09, up from 57% in 2004-06 (Table IV.1).

37. Total federal and provincial government expenditures (including tax revenue forgone) to the agriculture and agri-food sector reached Can$7.3 billion in 2009/10 (Table IV.2). Programme payments (i.e. income support and stabilization; *ad hoc* and cost reduction measures; crop/production insurance; and financial assistance) accounted for almost two thirds of that total. The OECD notes that Canada's recent reforms to risk-management programmes have focused on improving delivery rather than reducing the level of support.[34] Provincial tax expenditures in the form of tax exemptions and refunds are also a significant form of assistance. Government support to the sector varies across provinces. Producers in Québec, Nova Scotia, and Newfoundland and Labrador have received the highest level of financial assistance relative to the size of their provincial agriculture and agri-food GDP.[35]

Table IV.2
Federal and provincial government support in the agriculture and agri-food sector
(Can$'000)

Group category	Fiscal year		
	2007/08	2008/09	2009/10
Operating expenditures	2,322,432	2,309,383	2,437,956
Capital expenditures	137,203	166,958	183,088
Programme payments	5,291,753	4,911,232	4,719,914
Income support and stabilization	2,343,034	2,046,974	1,704,719
Ad hoc and cost reduction	545,535	400,643	78,989
Crop insurance/production insurance	614,692	858,914	813,263
Financial assistance	135,400	98,148	346,754
Storage and freight assistance	2,189	8,070	2,502
Social and labour	21,097	29,498	30,413
Research	247,440	130,973	164,826
Food inspection	166,856	110,157	104,174

Table IV.2 (cont'd)

[33] The average producer price includes payments based on current output, e.g. deficiency payments.
[34] OECD (2010a).
[35] AAFC online information, "Overview of the Canadian Agriculture and Agri-Food System (2008)". Viewed at: http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1228246364385&lang=eng#a3.

Group category	**Fiscal year**		
	2007/08	**2008/09**	**2009/10**
International development and food aid	432,435	618,528	939,379
Marketing and trade	120,810	80,223	116,088
Rural and regional development	157,082	151,811	123,732
Environment	252,793	160,638	92,849
Education	144,403	137,047	134,597
Extension	107,986	79,607	67,628
Tax expenditures	387,284	379,393	394,050
Recoveries	-467,643	-484,729	-444,191
Total	7,671,030	7,282,237	7,290,817

Note: Operating and capital expenditure includes general administration and management, policy, information, and statistical services. Programme payments include income support and stabilization, *ad hoc* and cost reduction, production insurance, and financing assistance programmes.

Source: Canadian authorities.

(v) Selected commodities

(a) Wheat and barley

38. Canada is a highly export-oriented producer of wheat (including durum), and to a lesser extent of barley.[36] Applied MFN tariffs for grains averaged 14.2% in 2010, with a maximum of 94.5% (Table AIII.1). While government assistance to wheat and barley has generally been limited, the Single Commodity Transfers (SCT) for wheat and barley increased substantially in 2009, reflecting mainly an increase in AgriInsurance payments (Table IV.3).

Table IV.3
Indicators for selected agricultural commodities, 2006-09
(Can$ million)

Commodity		**2006**	**2007**	**2008**	**2009**
Wheat (including durum)	Imports ('000 tons)	26	23	26	117
	Exports ('000 tons)	19,427	15,857	18,606	18,481
	SCT	33	55	69	229
	% SCT	1	1	1	5
Barley	Imports ('000 tons)	44	58	42	42
	Exports ('000 tons)	2,008	3,911	2,398	2,149
	SCT	44	60	36	91
	% SCT	3	2	2	10
Dairy products	Exports	262	283	255	230
	Imports	520	622	679	573
	SCT milk	2,946	2,550	1,817	3,367
	% SCT milk	59	47	33	60

Note: SCT: Sum of transfers to producers granted to a single commodity. The % SCT is expressed a share of gross farm receipts for the specific commodity. Trade data are for split years starting with 2006/07.

Source: Canadian Dairy Information Centre. Viewed at: http://www.dairyinfo.gc.ca/index_e.php?s1=dff-fcil; OECD PSE/CSE database. Viewed at: http://www.oecd.org/dataoecd/31/28/45560733.xls?contentId=45560734; Canada Grains and Oilseeds Outlook. Viewed at: http://www.agr.gc.ca/pol/mad-dam/index_e.php?s1=pubs&s2=go-co; and authorities.

[36] About two thirds of wheat production (including durum), and about one-fifth of barley production were exported in 2008/09. See AAFC online information, "Canada Grains and Oilseeds Outlook" (7 July 2010). Viewed at: http://www.agr.gc.ca/pol/mad-dam/index_e.php?s1=pubs&s2=go-co&s3=php&page=go-co_2010-07-08.

39. No changes were been made to the Canadian Wheat Board's (CWB) mandatory single desk regime during the review period.[37] The CWB, a producer-controlled marketing organization[38], operates a monopoly (single desk) in inter-provincial and export sales of wheat and barley produced in Manitoba, Saskatchewan, Alberta, and the Peace River area of British Columbia. Exporters not operating on behalf of the CWB must apply for and obtain an export licence for each shipment. The CWB has no exclusive or special rights or privileges for imports of wheat and barley (and related products), which are traded privately; the CWB is not engaged in imports nor tariff-quota administration of these products.

40. The CWB applies price pooling on the returns from sales of wheat and barley over the crop year. It claims that it thereby realizes price premiums for farmers and is able to sell grain at higher prices than global competitors.[39] In 2000, the CWB introduced Producer Pricing Options (PPOs) to give producers alternatives to the system of initial, adjustment, and final payments, which had been the sole pricing structure available to grain marketed by the CWB. Crop coverage, pricing periods, and pricing calculations vary for each PPO. However, the PPOs do not operate in isolation from CWB pool marketing of grain. The CWB markets all farmers' wheat from the designated area, regardless of whether it is priced through a PPO or receives an average price through the pools. Farmers may also export wheat and barley through the CWB's producer direct sale (PDS) programme under which an individual can buy back wheat from the pool and market it with a licence from the CWB.[40]

41. In 2008, the Canadian Government sought legislative changes (unsuccessfully) to repeal the CWB's single desk monopoly for the marketing of barley.[41] Nonetheless, the Government remains committed to allowing producers to choose whether they wish to market through the CWB or directly to other buyers and "is working with Canadian grain farmers to promote marketing freedom to address evolving needs of the sector".[42]

42. The Government provides guarantees to the CWB for initial payments made to farmers at the time grain is delivered (receipts above the initial price are returned to farmers as adjustments and final payments). Pool deficits are underwritten by the Government; the last time a pool deficit occurred was in 2002/04 (Can$85 million). The Government also provides guarantees for the CWB's borrowings and its export credit programmes (i.e. the Credit Grain Sales Program and the Agri-Food Credit Facility).[43]

(b) Dairy products

43. Milk receives the highest level of commodity-specific support among the major commodities produced in Canada.[44] The producer SCT for milk reached about Can$3.4 billion in 2009 because of a significant drop in world market prices for agricultural products. Transfers accounted for about

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[37] See also Canada's notification on state-trading enterprises in WTO document G/STR/N/12/CAN, 6 August 2010.

[38] The CWB has a special governance structure, providing for a 15-member board of directors representing, *inter alia*, the farmers. The CWB is not a Crown corporation (WTO document G/STR/N/12/CAN, 6 August 2010, p. 11).

[39] CWB online information. Viewed at: http://www.cwb.ca/public/en/about/snapshot/.

[40] WTO document G/STR/N/12/CAN, 6 August 2010, p. 9.

[41] Bill C-46: An Act to Amend the Canadian Wheat Board Act and Chapter 17 of the Statutes of Canada, 1998.

[42] Budget 2010, p. 99.

[43] Export credit sales through the Agri-Food Credit Facility were Can$148.2 million in 2007-08, Can$88.8 million in 2008-09, and Can$88.6 million in 2009-10.

[44] OECD (2010).

33% to 60% of the producer revenues from milk in 2007-09; this indicates a low level of market orientation, which is likely to have an adverse effect on the international competitiveness of the dairy industry (Table IV.3). Export orientation in the Canadian dairy industry has been the lowest amongst the food, beverage and tobacco processing industries.[45]

44. In order to support the incomes of Canadian dairy farmers, the dairy regime is underpinned by a combination of tariff quotas, prohibitive out-of-quota tariffs, support prices (butter and skimmed milk powder), production quotas (milk), and export subsidies. The applied MFN tariffs on dairy products, which averaged 237.3% in 2010, are the highest among all major product groups (Table AIII.1). The cost of support for dairy farmers is borne by consumers of milk and other dairy products; there were no budgetary outlays for milk in 2007-09, according to the OECD.[46]

45. The Canadian Dairy Commission (CDC), a Crown corporation, has responsibilities with respect to the implementation and administration of the supply management system for dairy products, mainly establishing support prices for butter and skim milk powder, and managing the market sharing quota for industrial milk at the national level. It also has STE privileges in the implementation of Canada's tariff-quota commitment for butter (Table AIV.1).[47] Import permits for the butter tariff quota have been allocated exclusively to the CDC with the requirement that these imports be directed to processors and further processors. With the exception of a few products in some provinces (e.g. fluid milk in the Atlantic Provinces), the majority of dairy products are traded freely between provinces, according to the authorities.

46. The market-sharing quota (MSQ) is the national production target for industrial milk distributed among the provinces according to the National Milk Marketing Plan. Approximately 60% of Canadian milk production has been for industrial dairy processing and 40% for the production of fluid milk. The annual MSQ is based, *inter alia*, on the estimated demand for butterfat adjusted for surplus butterfat from fluid milk processing. As a result of targeting the expected demand for butterfat, some of the (solids non-fat) surpluses are exported – with export subsidies – as skim milk powder, cheese, other milk products, and incorporated products.[48]

47. The marketing of fluid milk (i.e. table milk and cream) is regulated at the provincial level by producers through provincial milk marketing boards. Provincial boards issue a total quota to producers which covers the demand for fluid and industrial milk; production quotas are tradable within provinces. Processors' demand for the manufacture of fluid product (i.e. milk and cream) is met in priority in each province.

48. Support prices at which the CDC buys and sells butter and skim milk powder, i.e. minimum prices, are established annually. The CDC takes into account the results of an annual cost-of-production survey at farm level, stakeholder views, an evaluation of the processors' margin, economic indicators (e.g. the consumer price index), as well as its experience and knowledge of the industry.[49]

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[45] AAFC online information, "Overview of the Canadian Agriculture and Agri-Food System". Viewed at: http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1228246364385&lang=eng#a3.

[46] OECD PSE/CSE database. Viewed at: http://www.oecd.org/dataoecd/31/28/45560733.xls?contentId=45560734.

[47] WTO document G/STR/N/12/CAN, 6 August 2010.

[48] As defined in Annex I to Section II of Part IV of Canada's Schedule V, Canada's export subsidy budgetary outlay commitment on incorporated products is to skim milk powder, butter, cheese, and other milk products as ingredients incorporated into processed products, not included elsewhere in Annex I to Section II of Part IV of Canada's Schedule V (WTO document G/AG/R/55, 15 September 2009).

[49] CDC online information, "Support Prices". Viewed at: http://www.cdc-ccl.gc.ca/CDC/index-eng.php?id=3809.

The support prices are currently Can$7,192/t for butter and Can$6,272/t for SMP, considerably higher than world market prices.[50]

49. All raw milk production is purchased from dairy farmers by provincial milk marketing boards; revenues are pooled within regional milk pools (the P5 and the Western Milk pool[51]) and returned to farmers. The price pooling schemes of the provincial monopoly marketing boards allow them to apply price differentiation and cross-subsidize dairy products or sales to certain markets. They set the milk price according to a classification scheme, whereby processors are charged for raw milk components (butterfat, protein, and other solids) used in each product.[52] The support prices are used as a reference by the provincial milk marketing boards and regional milk pools to establish the price in each province/pool for milk sold to domestic processors. Concerns have been raised in the WTO Committee on Agriculture about a new measure to offer reduced prices under milk class 4(m) to stimulate demand for milk protein concentrates by Canadian dairy processors and further processors, and thereby undercutting demand for imports of milk proteins.[53] Class 4(m) milk is for components used to process milk products for the surplus removal of milk or milk components, other than exports covered by WTO export subsidy commitments.[54] In response, Canada noted that there is no evidence that the modifications to Class 4(m) had any significant impact on the overall imports of milk proteins.

50. No administered prices are set for milk for the production of confectionery products (milk class 5(c)), or of cheese and other dairy products used as ingredients for further processing in domestic and export markets (milk classes 5(a) and (b)). Prices for milk classes 5(a)-(c) (Special Milk Class Permit Program) depend on end use and reflect U.S. and/or world prices. The Canadian dairy industry has implemented export class 5(d) through which all subsidized exports must be channelled. The subsidy provided is the difference between the milk components price derived from the domestic support price and the milk component prices applicable on the export permit (5(d) permit). Once the maximum amount allowed under WTO export subsidy commitments (in volume or value terms) for each dairy products group (butter, skim milk powder, other and incorporated products) has been reached, no more export permits are issued. The subsidies have been notified by Canada in terms of producer-financed subsidies.[55]

51. Canada, especially Canadian consumers, would likely benefit from the liberalization of its dairy markets.[56] This could also provide relief to some competitiveness issues, such as those that have been apparent in the cheese market. For example, (i) the tariff quota for cheese has consistently been filled at 100% in recent years, whilst the out-of-quota tariffs are at 245.5 % or higher (Table AIV.1); (ii) the WTO limits on budgetary outlays for subsidized exports of cheese and other dairy products have been virtually exhausted in recent years[57]; (iii) Canada has taken steps to modify its concession for certain milk protein concentrates used primarily in cheese milk extension, to replace a tariff-only

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[50] University of Wisconsin Dairy Marketing and Risk Management Program online information. Viewed at: http://future.aae.wisc.edu/tab/prices.html#30.

[51] The P5 milk pool is a revenue-sharing agreement among dairy producers in Ontario, Québec, New Brunswick, Nova Scotia, and Prince Edward Island. The Western Milk Pool comprises the four western provinces.

[52] CDC online information, "Harmonized Milk Classification System". Viewed at: http://www.cdc-ccl.gc.ca/CDC/index-eng.php?id=3811.

[53] WTO document G/AG/W/80, 11 January 2011.

[54] Dairy Farmer of Canada online information. Viewed at: http://www.milk.org/Corporate/Processors/Milk_Class_Table.aspx.

[55] WTO document G/AG/N/CAN/80, 25 May 2010.

[56] Jarret and Kobayakawa (2008).

[57] WTO documents G/AG/N/CAN/78, 15 July 2009 and G/AG/N/CAN/80, 25 May 2010.

regime by a tariff quota regime; (iv) concerns have been raised in the Committee on Technical Barriers to Trade and the Committee on Agriculture about the potential trade-restrictiveness of the new compositional standards for cheese[58] (Chapter III(2)(viii)).

52. Concerns have also been raised by WTO Members about an ice-cream initiative by Dairy Farmers of Canada.[59] According to the authorities, the Ice Cream Promotion Initiative is a private and confidential contractual agreement between the Dairy Farmers of Canada, a non-governmental organization, and individual ice-cream processors. The CDC plays no part in determining the terms and conditions of the Ice Cream Promotion Initiative. The Commission calculates the pooling returns and sharing of promotion costs on behalf of producers, but producers decide independently on the use of their revenues.

(vi) Fisheries

53. Canada's fish and seafood industry is highly export oriented, with exports of about 80% of production.

54. The current Fisheries Act is one of the oldest Canadian statutes still in use; it has not been modernized significantly since it entered into force in 1868. The Canadian Government is committed to introducing "new legislation to reform Canada’s outdated system of fisheries management" in line with the 2005-2010 Strategic Plan of Fisheries and Oceans Canada (DFO).[60] The authorities consider renewal of the Fisheries Act important as the current Act does not provide direction to the Minister and officials on how to use the statute's broad discretionary powers. To strengthen accountability to Parliament and the public, the pending Fisheries Act, 2007[61] sets out mandatory principles that must be followed when making Ministerial and administrative decisions including sustainable development, ecosystem, and precautionary approaches, the use of scientific information, and respect for Aboriginal treaty and constitutional rights. Under the new Act, licences would be issued as per licensing regulations; appeals of licensing decisions would be subject to review by the Canada Fisheries Tribunal, not the Minister. The new Act would not place limits on the duration of licences (currently nine years without cabinet approval) to provide stability for the industry and allow for more long-term planning. Currently, the Minister of Fisheries has discretionary powers to limit foreign companies' access to fishing licences (Table AII.2).

55. Several management measures are in place to regulate the fishery, including licence restrictions, total allowable catches (TACs), and other control efforts, such as number of traps. These measures are contained in integrated fisheries management plans (IFMPs) and conservation harvesting plans for each species. Access to commercial fisheries is through a licensing regime; most fisheries are limited entry. Management measures vary among fisheries, but for the most part include gear limitations, seasonal closures, fishing area restrictions, and vessel size restrictions.[62]

[58] WTO documents G/AG/R/57, 20 January 2010 and G/TBT/GEN/74/Rev.5, 8 June 2010, p. 22.

[59] WTO documents G/TBT/M/51, 1 October 2010 and G/AG/R/57, 20 January 2010.

[60] Canada Governor General (2010).

[61] Bill C-32: An Act Respecting the Sustainable Development of Canada's Seacoast and Inland Fisheries. Viewed at: http://www2.parl.gc.ca/Sites/LOP/LegislativeSummaries/Bills_ls.asp?Language=E&Parl=39&Ses=2&lang=E&ls=c32&source=library_prb#commentary.

[62] Fisheries and Oceans Canada online information, "Integrated Fisheries Management Plans". Viewed at: http://www.dfo-mpo.gc.ca/fm-gp/peches-fisheries/ifmp-gmp/index-eng.htm.

Import and other measures

56. Canada's applied MFN tariffs on fish and fishery products average 1.4%, ranging from zero to 11% (Table AIII.1). All importers of fish and fish products require a licence from the Canadian Food Inspection Agency under the Fish Inspection Act and its regulations.[63] Additional SPS-related requirements exist for imports from certain countries.[64] Annual licence fees are Can$500, or Can$5,000 for licences with CFIA Quality Management Program for Importers. Canada has recently introduced new regulations for aquatic animal health and related licensing procedures for live aquatic animals, including specific regulated fish species, molluscs, and crustaceans (Chapter III(2)(ix)). All imports of fish and fish products are subject to inspection based on history of compliance and product risks. Importation of live freshwater mitten crab and puffer fish is prohibited.

57. Canada has allocated Can$7.2 million for 2010/11-2011/12 to fund the new Catch Certification Scheme of Fisheries and Oceans Canada, aimed at meeting new EU requirements to provide catch certificates attesting that marine fish and seafood products are harvested legally.[65] Over 11,000 certificates were issued in 2010.

58. The Canadian Freshwater Fish Marketing Corporation (FFMC), a state-trading enterprise, enjoys exclusive rights in inter-provincial and export trade of the main commercial fish species and related products from the freshwater commercial fisheries of Alberta, Saskatchewan, Manitoba (parts of) Ontario, and the Northwest Territories (pursuant to the Fish Marketing Act and federal-provincial agreements).[66] The objectives of the Corporation are, *inter alia*, to market freshwater fish and fish products sourced in agreement areas in an orderly manner; to increase returns to fishermen; and to promote international markets for, and increase inter-provincial and export trade in, freshwater fish and fish products. The FFMC is required by law to operate on a self-sustaining basis. According to the authorities, the corporation has no exclusive rights or privileges on imports.

59. The Federal Government maintains five fisheries programmes: the Aboriginal Fisheries Strategy Allocation Transfer Programme; Fisheries Access Programme; Atlantic Integrated Commercial Fisheries Initiative; Pacific Integrated Commercial Fisheries Initiatives; and the Ice Compensation Programme.[67] The Aboriginal Fisheries Strategy Allocation Transfer Programme is a voluntary commercial fishing licence and quota retirement programme that transfers the equivalent commercial fishing capacity to Aboriginal Organizations in the form of "communal commercial fishing licences". Government expenditures amounted to Can$9.65 million in 2007/08. The Fisheries Access Programme has similar objectives. The assistance covers, *inter alia*, the retirement and transfer to Aboriginal groups of commercial licences, vessels, and gear (Table III.16).

(3) MINING AND ENERGY

60. Mining and energy play a major role in the Canadian economy in terms of their contribution to GDP, employment, and trade and investment (Table IV.4).

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[63] WTO document G/LIC/N/3/CAN/9, 18 October 2010.

[64] Canadian Regulatory Requirements for Fish Import Licence Holders (Basic Importers). Viewed at: http://www.inspection.gc.ca/english/fssa/fispoi/import/pol/base.shtml.

[65] Minister of Finance (2010), p. 97.

[66] WTO document G/STR/N/12/CAN, 6 August 2010.

[67] WTO document G/SCM/N/186/CAN, 9 September 2009.

Table IV.4
Selected indicators of the mining and energy industries, 2008-09
(Can$ billion)

	Minerals[a]		Energy	
	2008	2009	2008	2009
Gross Domestic Product	40.1	31.9	84.7	80.2
In % of Canadian total	3.3	2.7	6.9	6.7
Direct employment ('000)	351	307	276	257
In % of Canadian total	2.4	2.1	1.9	1.8
New capital investments	11.3	9.8	81.4	62.2
In % of Canadian total	3.3	3.2	23.3	20.1
Total exports	95.1	66.4	128.4	77.9
In % of Canadian total	19.7	18.5	26.6	21.6
Imports	69.3	55.2	52.9	34.0
In % of Canadian total	16.0	15.1	12.2	9.3
Balance of trade	+25.8	+11.2	+75.5	+43.9

a Minerals include uranium and coal mining.

Note: All dollar amounts shown are in current Canadian dollars, except GDP, which is shown in 2002 constant dollars.

Source: Natural Resources Canada (2010), *Important Facts on Canada's Natural Resources.*

(i) Institutional and legal framework

61. The institutional and legal framework for the mining and energy sectors remains largely unchanged since the last TPR of Canada. Under the Constitution, provinces have ownership over the natural resources (including electricity) that lie within their boundaries and thus regulatory oversight rests primarily within the jurisdiction of the provinces, including with respect to exploration, local distribution, storage, and royalty regimes. The federal government has jurisdiction over imports and exports; international and inter-provincial pipelines and electric power lines; uranium and nuclear power (including mining/production, transportation, and distribution); ownership of mineral and energy resources in territories north of the 60th parallel, on federal crown lands, and offshore[68]; administration of onshore mineral and energy resources in the Northwest Territories and Nunavut; administration of all offshore mineral and energy resources outside of offshore Nova Scotia, and Newfoundland and Labrador; shared administration for oil and gas offshore Nova Scotia, and Newfoundland and Labrador; and for works declared to be for the general benefit of Canada, such as science and technology. Agreement has yet to be reached on an Energy Trade Enhancement Agreement that would be compatible but separate from the Agreement on Internal Trade (Chapter II(i)).

62. The Federal Government's policy objectives for the minerals and metals sectors (excluding uranium) remain as set out in the 1996 Minerals and Metals Policy, which is aimed at sustainable development.[69] Natural Resources Canada (NRCan) is the federal ministry mandated to ensure the development and use of Canada's natural resources, and the competitiveness of its natural resources products. The agency is also responsible for implementing Canada's international commitments under the Kimberly Process (Table III.9 and Chapter III(3)(iii)). Canada produces over 60 minerals and metals: it is the world's largest producer of potash, and the second-largest uranium and nickel producer; it ranks among the top five producers of aluminium (based on imported ore), cadmium, cobalt, diamonds, sulphur, molybdenum, platinum group metals, salt, titanium concentrate, tungsten, and zinc. Major mineral exports are gold, nickel, copper, potash, and diamonds.

[68] The Great Lakes are an exception, where offshore resources are under Ontario's jurisdiction.
[69] Natural Resources Canada online information. Viewed at: http://www.nrcan-rncan.gc.ca/mms-smm/poli-poli/htm/mmp-pmm/con-con-eng.htm.

63. A new agency, the Major Projects Management Office, established in 2007 functions, *inter alia*, as a single window into the federal regulatory and approval system for all stakeholders, to improve accountability, transparency, timeliness, and predictability of the federal regulatory system for major resource projects.[70] The regulatory regime for natural resource projects in northern areas is overseen by Indian and Northern Affairs Canada (INAC). The Government has allocated Can$11 million for streamlining INAC's regulatory process, aimed at improving the investment regime.[71]

64. The Canadian Government is committed to market principles in the energy and mining sectors, with limited government interventions to achieve policy objectives it believes the market will not meet on its own (e.g. encouragement of energy efficiency, cleaner energy, health and safety, and science and technology). Both sectors are open to foreign investment, subject to the horizontal rules in the Investment Canada Act (Chapter II(2)). Under the Non Resident Ownership Policy in the Uranium Mining Sector, foreign ownership of uranium mining property is limited to 49% but the Canadian Government is committed to ensure that "unnecessary" regulation does not stifle foreign investment.[72] This Policy is therefore currently under review.

65. State-owned enterprises (i.e. Crown corporations) are prevalent in the provincial electricity markets. Some provinces maintain price controls on fuel (section (3)(iii)).

66. Canada's taxation regimes for mining and energy have changed since 2007, as a result of changes to federal corporate income taxation, and reforms of several provincial royalty regimes. The federal corporate tax rate for income from mineral, gas, and oil production, which was higher than in other sectors during 2001-06, has been aligned with the general corporate tax rate (16.5% for 2011 and 15% for 2012 and future years).[73] The Federal Government announced in the 2007 Budget that accelerated capital cost allowance for oil sands projects would be phased out over 2011-15. For the mining industry, the overall effect of the federal and provincial changes has been a decrease in taxation. Québec has announced a reform and a gradual increase in its mining duties from 12% to 16% by 2012 using a "mine-by-mine" approach. A number of preferential federal tax provisions remain in place for the mining, gas, and oil industries, premised on industry characteristics such as exploration risk, fluctuating prices, high capital-intensity, and long lead times between initial investment and production.[74]

67. A distinct feature of the Canadian tax regime is the flow-through share mechanism intended to assist junior corporations in the oil and gas, mining, and renewable energy industries to raise money for eligible exploration, development, and project start-up expenses. By issuing flow-through shares, a company can renounce, or 'flow through', certain (unclaimed) expenses to the purchasers of such shares. These expenses are deemed to be incurred by the investor and not the corporation and reduce income subject to tax in the hands of the investor (which can be an individual or another corporation).

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[70] A major resource project is defined as a large resource project that is subject to a comprehensive study, a panel review or a large or complex multi-jurisdictional screening, as defined under the Canadian Environmental Assessment Act. (Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects). Viewed at: http://www.mpmo-bggp.gc.ca/documents/directive-eng.php#b.

[71] Minister of Finance (2010).

[72] Canada Governor General (2010).

[73] For an overview of federal and provincial mining tax regimes, see NRCan online information, "Tables on the Structure and Rates of Main Taxes". Viewed at: http://www.nrcan-rncan.gc.ca/mms-smm/busi-indu/mtr-rdm/ tsr-tsp-eng.htm.

[74] NRCan online information, "Mining-specific tax provisions". Viewed at: http://www.nrcan-rncan.gc.ca/mms-smm/busi-indu/mtr-rdm/mst-rps-eng.htm.

68. The Mineral Exploration Tax Credit (METC) is a 15% tax credit for individual investors in flow-through shares issued by mineral exploration companies that supplements the regular flow-through deductions. The tax credit aims to help junior mining companies raise new equity. The programme applies only to preliminary mineral exploration activities conducted on the surface or above surface in locations away from existing mine sites (greenfield exploration); it does not apply to oil and gas, coal, bituminous sands or oil shale. A report by the mines ministries indicates that this tax incentive scheme was a contributing factor in maintaining investor interest in exploration during the global financial crisis. The temporary METC was extended in the 2010 federal budget until 31 March 2011.[75] Budgetary expenditures for the one-year extension of the METC were estimated at Can$65 million over 2010/11 and 2011/12.[76]

(ii) Natural gas

69. Canada is the world's third largest producer of natural gas after Russia and the United States.[77] Over half of Canada's production is exported to the United States. Exports of natural gas, including propane, butane and ethane, require authorization in the form of a short term export order from the National Energy Board (ethylene and propylene are exempt). There are two forms of export authorizations: short term orders which are usually issued within two working days and are valid for a period of up to two years; and long term licences which are valid for up to 25 years. According to the authorities, the issuance of export orders is mainly for monitoring purposes.

70. Despite being a net exporter of natural gas, Canadian imports of natural gas are growing, particularly into Southern Ontario. Canada also started importing liquefied natural gas (LNG) in 2009.[78] Import licences are required from the National Energy Board (NEB) for natural gas in either gaseous or liquid state (imports of propane, butane, ethane, ethylene and propylene are exempt).[79] The purpose of import licensing is to ensure that imports are in the public interest, "having regard to the equitable distribution of gas in Canada".[80] Import licences are granted by the NEB on a case-by-case basis for a maximum of 25 years, taking into account the impact on the Canadian gas industry, consumers, distribution, and other factors. The licence application process involves a public hearing and takes a minimum of four months; approval of the Governor-in-Council is also required. Licences are free of charge and are transferable subject to approval by the NEB and the Governor-in-Council (Chapter III(2)(vi)).[81] Import orders are used in the case of long-term small volume in-transit shipments between countries (typically between Canada and the U.S.) or short-term imports (less than two years). Orders are issued free of charge within two working days. The authorities note that as a federal regulator, the NEB is responsible for regulating flows of natural gas across both provincial and national borders and in order to serve the public interest, it must monitor energy flows into, and out of, Canada; import licensing is one tool for collecting data and information.

71. According to the authorities, none of the federal/provincial/territorial governments has a stake in companies involved in the exploration, production or processing of natural gas in Canada. Producer

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75 NRCan online information, "Mineral Exploration Tax Credit". Viewed at: http://www.nrcan.gc.ca/mms-smm/busi-indu/met-qfi-eng.htm.

76 Minister of Finance (2010).

77 NRCan online information, "Important Facts on Canada's Natural Resources 2009". Viewed at: http://www.nrcan-rncan.gc.ca/stat/index-eng.php.

78 WTO document G/LIC/N/3/CAN/9, 18 October 2010.

79 NEB Part VI (Oil and Gas) Regulations [SOR/91-7] and the NEB Export and Import Reporting Regulations [SOR/95-563]. Viewed at: http://laws.justice.gc.ca/ PDF/Regulation/S/SOR-95-563.pdf; and http://laws.justice.gc.ca/PDF/Regulation/S/ SOR-96-244.pdf.

80 WTO document G/LIC/N/3/CAN/9, 18 October 2010.

81 WTO document G/LIC/N/3/CAN/9, 18 October 2010.

prices for natural gas have been deregulated since 1985. Canadian gas prices are determined by the larger North American market with price differentials reflecting the cost of moving natural gas from surplus to deficit regions.[82] Customers can buy natural gas from a local distribution company at the prevailing or spot commodity price plus a regulated transportation and distribution charge; or they may enter a long-term contract with a natural gas broker or marketer at a fixed commodity price plus the same regulated transportation and distribution charge.

72. Canada's pipeline system (gas and oil) for inter-provincial and international trade is under federal jurisdiction. The transmission system is regulated by the NEB, to ensure that open and non-discriminatory access exists for all shippers.[83] Transmission tolls and tariffs (inter-provincial/international) and any expansions of the pipeline network require approval from the regulator. All pipelines within Canada are privately owned and operated with the exception of the natural gas transmission systems in Saskatchewan and one transmission line between Saskatchewan and Manitoba, which are owned and operated by subsidiaries of the provincial Crown corporation Sask Energy.

(iii) Oil

73. Canada is the sixth largest oil producer in the world with the third-largest proven oil reserves after Saudi Arabia and the Bolivarian Republic of Venezuela. Canada’s oil reserves are dominated by the oil sands (about 97%). Canada has a dual crude oil market. About two thirds of Canadian oil production is exported from Western Canada, almost entirely to U.S. refineries, which are closer to Western Canadian production.[84] Refineries in Canada's Eastern provinces rely mainly on imports of crude oil, principally from Algeria, the Kingdom of Saudi Arabia, Angola, Nigeria, the Bolivarian Republic of Venezuela, Norway, and the United Kingdom. Canadian oil imports are not regulated through a licensing regime.

74. A short-term order is required for exports of crude oil and refined petroleum products of one year or less (two years or less for heavy oil).[85] The National Energy Board Act and Regulations also provide for long-term export licences for oil and petroleum products of up to 25 years in duration. Exporters have opted to use the simplified export order process for crude oil and petroleum products even on a quasi long-term basis due to the expeditious approval (two working days) and renewal process and the unlimited nature of the quantities that can be exported under this type of authorization.

75. The Government of Canada sold its equity in Petro-Canada in 2004. It retains a 8.5% stake in the Hibernia offshore oil field, through the Canada Hibernia Holding Corporation, a subsidiary of the Canada Development Investment Corporation (a Crown corporation).

76. Fuel is subject to federal Goods and Services Tax or Harmonized Sales Tax, and provincial fuel taxes (Table III.8); federal excise taxes on petroleum products also apply (Chapter III(2)(v)).

[82] International Energy Agency (2009), p. 148.

[83] Canada has not made any GATS commitments with respect to pipeline transport.

[84] In 2009, 99% of Canadian crude oil exports were sent to the U.S. market, and the remainder were shipped to the Asian market. Private-sector projects, such as the Northern Gateway pipeline project with a new terminal in Kitimat, B.C., may eventually lead to geographic diversification of Canada's exports of crude oil and gas to Asia and other markets (Enbridge Northern Gateway pipelines online information. Viewed at: http://www.northerngateway.ca/project-info/northern-gateway-at-a-glance).

[85] National Energy Board Act Part VI (Oil and Gas) Regulations (SOR/96-244).

77. The provinces have the jurisdiction to regulate petroleum product prices. Retail prices for fuel are regulated in some provinces, including Prince Edward Island, Newfoundland and Labrador, Nova Scotia, New Brunswick, and Québec. In Québec, fuel retail dealers have legal recourse against competitor dealers selling below the minimum price level set by the Québec Energy Board (Régie de l'Énergie). In Nova Scotia, the Utility and Review Board fixes the wholesale price for petroleum products, a maximum retail price, and minimum and maximum retail markups.

78. Provisions in the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, and the Canada-Newfoundland Atlantic Accord Implementation Act require a benefits plan as part of the approval process for a petroleum project. A benefits plan requires, *inter alia*, that first consideration be given for training and employment of local residents in the respective provinces, and to goods manufactured in and services provided from within the respective provinces, as long as these are competitive in terms of market price, quality, and delivery.

(iv) Electricity

79. Canada is a net-exporter of electricity to the United States within the integrated North American electricity grid. The federal government has jurisdiction over matters of inter-provincial power lines designated by the Governor-in-Council, and international trade (including construction and operation of international power lines, and export authorizations). Electricity exports require permits from the National Energy Board (NEB). Approval depends on a number of factors, including the effects of exports on adjacent provinces, the environment, and fair market access for Canadians.[86] Imports of electricity do not require authorization.

80. The Canadian transmission network extends over 160,000 km. It is characterized by north-south backbones, in part due to the location of most major demand centres near the Canada-U.S. border and major hydroelectric energy projects in the northern regions of British Columbia, Manitoba, Ontario, and Québec. Canadian utilities must provide reciprocal non-discriminatory open transmission access to be able to sell electricity directly to customers in the United States. Many Canadian transmission providers have filed Open Access Transmission Tariffs (OATTs) with the United States Federal Energy Regulatory Commission (FERC) in response to Order 888. The OATT defines the rates, terms and conditions associated with network transmission services.[87] Transmission service providers in three provinces have not filed open access tariffs with the FERC: Ontario, Alberta, and Newfoundland and Labrador.[88] The FERC has ruled that the Ontario system provides transmission access equivalent to that in an OATT. Alberta has a wholesale market that is open to competition, while Newfoundland and Labrador does not sell electricity directly to the United States.

81. Electricity generation and internal transmission is under the jurisdiction of the provinces/territories, and each province/territory has its own regulator. In most provinces and the Yukon, Crown corporations, owned by the provincial governments, provide most energy generation, transmission, and distribution (Table AIV.4). The provinces have various legal frameworks for independent power producers (IPPs) or they may enter into power purchase agreements with IPPs.

82. Electricity prices vary from province to province, depending, *inter alia*, on type of electricity generation, cost of transmission and local distribution, and whether prices are market-based or

[86] NEB online information. Viewed at: http://www.neb-one.gc.ca/clf-nsi/rthnb/whwrndrgvrnnc/rrspnsblt-eng.html.

[87] The Tariff and the Schedules of fees are posted on the website of the Independent System Operator (ISO) or of the Open Access Same-Time Information System (OASIS).

[88] The Yukon does not have OATT's or equivalent access systems as its electrical grid is currently interrupted. It supplies only Yukon customers.

regulated. Overall, Canada's retail electricity prices are among the lowest of the International Energy Agency members (28 advanced economies).[89] With the exception of Alberta and Ontario, prices are regulated by a quasi-judicial board or commission. In Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, retail electricity tariffs are regulated on a cost-of-service basis.[90] In Alberta, wholesale and retail markets are deregulated and prices are market-determined, although households and smaller commercial consumers have the option of subscribing to a regulated tariff. Alberta introduced reforms in 2010 to encourage competition at the retail level. Ontario has been moving towards regulated or contracted prices for energy; eligible renewable energy projects in Ontario benefit from regulated feed-in tariffs (see section (vi) below)). Nova Scotia deregulated its wholesale electricity markets in 2007, allowing municipal power companies to choose their suppliers (Table AIV.4).

83. The development, production and use of nuclear energy is regulated by the Canadian Nuclear Safety Commission (CNSC) under the Nuclear Safety and Control Act, to protect health, safety, security and the environment, and to implement Canada's international commitments on the peaceful use of nuclear energy. The operation of nuclear facilities, including nuclear power plants, is regulated by the CNSC through a licensing system. Canada's existing nuclear power plants (CANDU reactors) have been developed by Atomic Energy of Canada Ltd. The Canadian Government is committed to a restructuring of Atomic Energy of Canada (a federal Crown corporation) as part as of its plan to better position the Canadian nuclear industry to capitalize on new market opportunities.[91]

(v) Renewable energy

84. Canada is the world's second largest producer of hydroelectric energy, which accounts for almost 62% of its total electricity generation (592.3 GWh in 2009).[92] Wind energy and solar photovoltaic energy are the fastest growing sources of energy, albeit from a small base, driven by federal and provincial government policies.

85. In 2007, the Federal Government launched the ecoEnergy initiative and allocated close to Can$4 billion for the period 2007-11 to support the development of a sustainable energy system and honour Canada's commitment to reduce total greenhouse gas emissions (by 17% by 2020 from 2005 levels). Canada's assistance for renewable energy encompasses financial and tax incentives, regulatory subsidies, and support for R&D (Table AIV.5).[93] All of the federal ecoEnergy programmes are open to participation by foreign enterprises established in Canada.

(a) Biofuels

86. Under the ecoEnergy for Biofuels initiative (part of the Government's Renewable Fuels Strategy[94]) production of biofuels is subsidized. Concurrently with the implementation of price incentives, the excise tax exemption for ethanol and biodiesel was eliminated on 1 April 2008. The

[89] International Energy Agency (2009), p. 35.

[90] Cost-of-service is defined as the process of regulation whereby the regulator sets rates at a level that covers operating costs and provides a reasonable rate of return on the investment (rate-of-return regulation).

[91] Canada Governor General (2010).

[92] Information provided by the Canadian authorities.

[93] Several federal initiatives to assist the development of renewable energy have expired since 2007 (including the Wind Power Production Initiative, the Renewable Energy Deployment Initiative, the Market Incentive Program for Distributors of Emerging Renewable Electricity Sources, and Purchases of Electricity from Renewable Resources Programme). See WTO (2007) Chapter IV, paragraph 63. These programmes have been replaced by ecoEnergy programmes.

[94] Government of Canada online information. Viewed at: http://ecoaction.gc.ca/ecoenergy-ecoenergie/renewablefuels-carburantsrenouvelables-eng.cfm.

financial incentives for biofuel production are underpinned by a regulatory environment that encourages investment in renewable fuels (regulatory subsidies). Pursuant to the Renewable Fuels Regulations under the Canadian Environmental Protection Act, fuel producers and importers are required to comply as from 15 December 2010 with a renewable fuel content of 5% of average annual gasoline production or imports. For diesel and heating oil, a 2% renewable content may be introduced in 2011, subject to technical feasibility.[95] The federal fuel content requirements are estimated to create additional demand for ethanol and biodiesel of 2.2 billion litres and 0.6 billion litres, respectively.[96] In Ontario, fuel suppliers have been required to meet a 5% annual average ethanol content in gasoline since January 2007. Fuel supplies in Manitoba have been subject to an 8.5% ethanol content requirement in gasoline since 2008 and a 2% biodiesel content requirement in diesel fuel since 1 November 2009.

(b) Other renewable energy

87. The Federal Government is supporting electricity generation from renewable sources with some Can$1.5 billion during 1 April 2007 to 31 March 2011 through the ecoEnergy for Renewable Power Programme (Table AIV.5).

88. Most provincial governments also support the generation of renewable energy. In 2009, Ontario adopted the Green Energy and Green Economy Act (GEA) and the related Feed-in Tariff (FIT) programme. The FIT programme offers renewable energy producers that develop new projects a fixed-price under a long-term contract for energy generated by these projects (bioenergy, solar, water, and wind). Projects must be located in Ontario.[97] The feed-in tariffs are contractually guaranteed for 20 years (40 years for hydro-electricity projects) without quantitative limits on energy production (except for eligible hydro-power projects, which cannot exceed 50 MW, and solar PV, which cannot exceed 10 MW). Feed-in tariffs range from Can$0.103 per kWh for landfill gas projects larger than 10 MW to Can$0.802 per kWh to smaller rooftop solar PV projects of 10 kW or under[98]; prices are intended to cover project costs and allow for a reasonable return on investment. Connection costs to the distribution or provincial transmission system are generally borne by the applicant. Ontario's FIT programme is the most comprehensive feed-in tariff programme in North America (Table AIV.5).[99] The "feed-in premium" under the ecoENERGY for Renewable Power programme is a top-up incentive that complements existing programmes or measures; its repayable contribution clause sets a maximum price of Can$0.13 kWh, after which the incentive stops. Since most projects under Ontario’s feed-in tariff programme benefit from rates over Can$0.13 kWh, these projects are not eligible for the federal incentive. According to the authorities, there are no budgetary expenditures related to the FIT programme as electricity costs are recovered from electricity ratepayers (i.e. through electricity bills).

89. Solar and wind projects must meet local-content requirements, i.e. minimum content levels of Ontario-made equipment and/or Ontario labour. The minimum local content is determined by the milestone date by which the project reaches commercial operation. For larger generation projects (over 10 kW), the 2011 requirements are 25% for wind projects, and 60% for solar projects (over 10kW but less than 10,000 kW; the percentage for wind projects will increase to 50% as from

[95] Government of Canada online information. Viewed at: http://www.ecoaction.gc.ca/news-nouvelles/20100901-1-eng.cfm.

[96] International Energy Agency (2009), p. 94.

[97] Viewed at: http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b150ra.pdf.

[98] A 10% tariff reduction applies for production during off-peak periods. There are additional price incentives for aboriginal and community-based projects.

[99] Ontario Power Authority posts updates on the progress of the FIT programme every two weeks at: http://fit.powerauthority.on.ca/Page.asp?PageID=749&ContentID=&SiteNodeID=1144&BL_ExpandID=273.

1 January 2012.[100] For smaller solar projects (up to 10 kW) the local content requirement is 60%. Japan has requested WTO dispute settlement consultations with Canada on this matter.[101]

90. In Québec, Hydro Québec has been using minimum regional-content requirements in its 1,000 MW and 2,000 MW wind energy requests for proposals (RFP) since 2004. For example, in its first RFP for 1,000 MW of wind energy, Hydro Québec requested minimum regional content of 40% for deliveries beginning 1 December 2006, 50% for deliveries starting 1 December 2007, and 60% for deliveries commencing between 2008 and 2012. In addition to setting specific percentages for local content, Hydro Québec has required that the costs be incurred in the regional county municipality of Matane and in Gaspésie-Iles-de-la-Madeleine.[102] In 2010, the Nova Scotia government released its Renewable Electricity Plan and established renewable electricity regulations that will require Nova Scotia to establish a community feed-in-tariff (COMFiT) for small distribution connected projects.

(4) MANUFACTURING

(i) Overview

91. The decline of the Canadian manufacturing sector continued during the review period (Table I.1). The sector's share in GDP decreased from 14.9% in 2007 to 12.1% in 2010, and its employment share decreased from 12.1% to 10.2%.[103] The downturn reflects, amongst other factors, the long-term structural transformation towards a more services-oriented Canadian economy but also enhanced global competition, the appreciation of the Canadian dollar, which has adversely affected Canadian exporters particularly in the manufacturing sector, and the impact of the global financial crisis, which led to a sharp drop in manufacturing sales (a decrease of 11.1% from 2007 to 2010). The Canadian Government has adopted a range of measures in its long-term economic plan (Advantage Canada) with the objective of improving manufacturing productivity growth and competitiveness (which has been lagging behind the United States).[104] Amongst these measures are tariff and tax reductions, other stimulus measures, industry-specific incentives for R&D (e.g. for the automotive and aerospace industries), and improvements of the business environment through streamlining of regulation and reducing the administrative burden (Chapter II(1).[105]

92. Since its last TPR, Canada has launched a major unilateral initiative to permanently eliminate the applied MFN tariffs on manufacturing inputs, machinery, and equipment (Chapter III(2)(iv)).[106] In the 2010 Budget, 1,374 tariffs in the range of 2% to 15.5% were reduced to zero; the remaining 381 tariffs in that range will be eliminated by 1 January 2015 at the latest (Chart IV.1). It should be noted, however, that some of the imports covered by the initiative previously benefited from tariff remissions; for these products the effect of the trade liberalizing measure is more apparent than real (section (iv) below). According to the authorities, the tariff elimination initiative liberalizes over

[100] Ontario Power Authority, "Feed-in tariff program". Viewed at: http://fit.powerauthority.on.ca/Storage/102/11160_FIT_Program_Overview_August_new_price_version_1.3.1_final_for_posting-oct_27.pdf.

[101] WTO document WT/DS412/1, 16 September 2010.

[102] Hydro Québec online information. Viewed at: http://www.hydroquebec.com/distribution/en/marchequebecois/parc_eoliens.html.

[103] Statistics Canada (various editions).

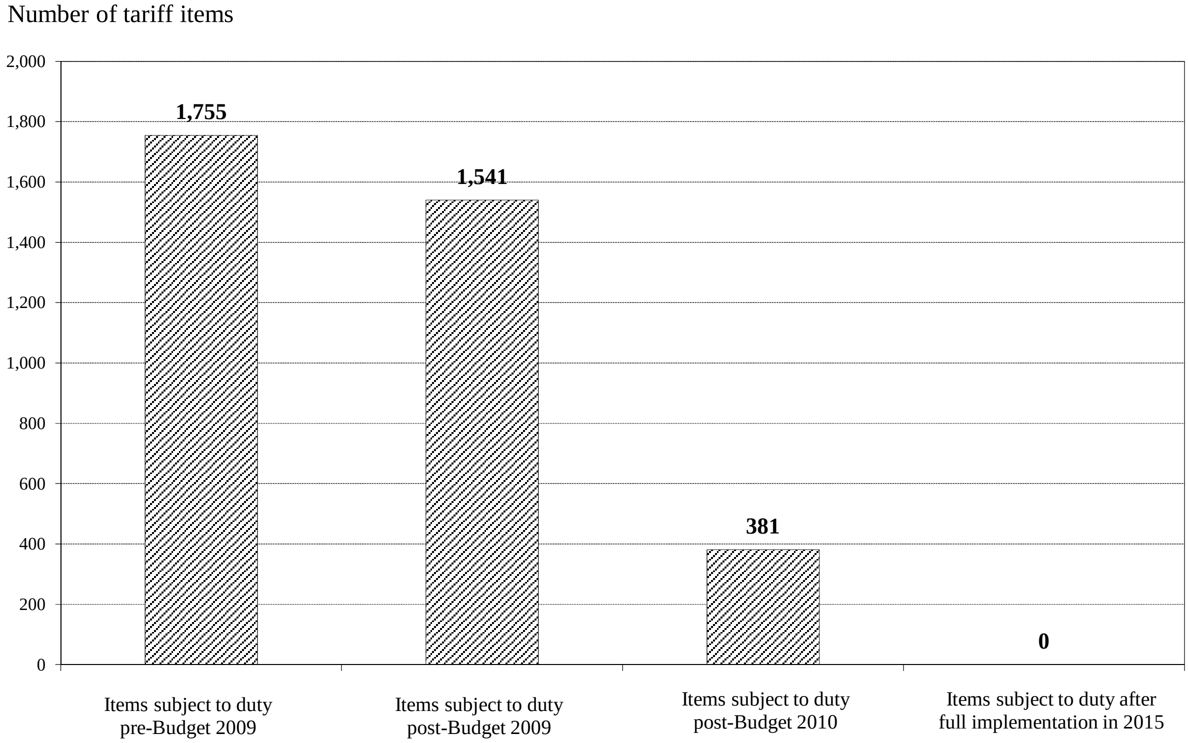
[104] Mulrain (2008).

[105] Department of Finance Canada (2006).

[106] WTO document G/MA/W/101, 19 April 2010; Government of Canada, "Budget 2010", pp. 88-90.

Can$5 billion of imports and results in customs duty savings by importers of some Can$388 million.[107]

Chart IV.1
Tariff relief on machinery, equipment, and industrial inputs



Source: Canadian authorities.

93. On the one hand, the Canadian tariff elimination initiative provides opportunities for manufacturers to improve their productivity and competitiveness through lower-priced imports of inputs, machinery, and equipment. On the other hand, the initiative probably provides higher effective protection for certain industries producing final processed products (where tariffs remain unchanged). The initiative is likely to favour some industries over others.

94. Canada's applied MFN tariffs in the manufacturing sector averaged 5.4% in 2010 (down from 6.5% in 2006), ranging from zero to 532.2% (ISIC Rev.2 classification) (Table III.1). The most tariff-protected industries include the food, beverage, and tobacco processing industries; chemicals, petroleum, coal, rubber, and plastics; shipbuilding; railways and tramways; sporting goods; and apparel (Table AIV.6).

95. According to the authorities, there are no Crown corporations operating in the manufacturing sector. As part of the restructuring support (bailout) for Chrysler and General Motors (GM) during the global financial crisis, the governments of Canada and Ontario received ownership stakes in the new parent companies and retain a 2% equity stake in Chrysler and a 9% equity stake in the new GM

[107] Minister of Finance (2010), p. 89.

following GM's November 2010 initial public offering. Manufacturing in Canada is concentrated in Ontario and Québec, which account for about 70% of total manufacturing sales.[108]

(ii) Automotive industry

96. The automotive industry is Canada's largest manufacturing sector after the food, beverage, and tobacco manufacturing industries in 2009, and Canada's leading manufacturing export industry (Table IV.5).[109] As Canada exports over 95% of automotive products to the United States, the appreciation of the Canadian dollar has pushed auto companies to relocate to lower-cost countries, leading to the continuing decline of exports since 2005 (Table A1.1 and A1.2). Vehicle imports originate mainly in the United States, followed by Japan, Mexico, Germany, and Korea.[110] Applied MFN tariffs for motor vehicles averaged 3.5% in 2010 ranging from zero to 9.5% (ISIC Rev.2 classification) (Table AIV.6).

Table IV.5
Selected indicators of the automotive industry, 2007-09
(Can$ billion)

	2007	2008	2009
GDP	25.8	19.8	14.7
Imports	76.7	68.2	53.6
Exports	67.4	51.5	37.1
Employment ('000)	152.6	137.5	109.1

Source: Statistics Canada.

97. Chrysler and General Motors are Canada's leading automobile manufacturers; others include Toyota, Ford, and Honda. While the automotive industry is concentrated in Ontario, there are about 750 parts manufacturers across Canada. The Canadian and U.S automotive markets have become increasingly integrated in terms of the trading regime (NAFTA), regulation, and supply chains; for example, vehicle components may cross the Canada-U.S. borders 6-7 times in the assembly process.[111]

98. In 2009, as part of the federal government's support of the auto industry, financial restructuring assistance was provided to both GM and Chrysler to prevent the disorderly collapse of these companies, which would have had potentially negative effects across the auto sector. In exchange for their support, governments received ownership stakes in the new parent companies that emerged after the restructuring (Table IV.6).[112]

99. In 2009, the federal government provided Can$700 million to Export Development Canada's Accounts Receivable Insurance (ARI) to expand to insurance needs of Canadian auto parts suppliers (Table III.13). The ARI is delivered on commercial terms. Under the Canadian Secured Credit Facility, the Canadian Government has committed to purchase up to Can$12 billion of newly issued term asset-backed securities backed by loans and leases on vehicles and equipment, and dealer floor plan loans through the Business Development Banks.[113] The programme, announced in the 2009

[108] Statistics Canada (2010), p. 302.
[109] The automotive industry comprises manufacturing of cars, light and heavy trucks, buses and recreational vehicles.
[110] Foreign Affairs and International Trade Canada (2010).
[111] Government of Canada (2009a).
[112] WTO document WT/TPR/OV/12, 18 November 2009.
[113] WTO document WT/TPR/OV/12, 18 November 2009.

Budget, ended on 31 March 2010, and five transactions were completed in auto and equipment asset-backed securities totalling Can$3.65 billion.

Table IV.6
Assistance for the automobile industry, as at 21 February 2010

Firm	Form of support	Value of support	Observations
Chrysler	Loans to Chrysler in support of restructuring	Up to Can$3.775 billion	Upon exit from bankruptcy, support provided by the governments of Canada and Ontario was converted into a loan and a 2% equity share in new Chrysler. Can$2.9 billion of the Can$3.8 billion has been advanced to Chrysler.
	Warranty Commitment Program	--	A federal initiative to guarantee customer warranties on new vehicles purchased from Chrysler during the restructuring period. The Warranty Commitment Program was concluded in September 2009. No funds were drawn.
General Motors	Loans to GM in support of restructuring	US$9.5 billion	Upon exit from bankruptcy, support provided by the governments of Canada and Ontario was converted into a US$1.3 billion loan (fully repaid in April 2010), US$403 million in preferred stock, and 11.7% of common equity in new GM (following GM's November 2010 initial public offering, Canada and Ontario retain a 9% equity stake in the new GM).
	Warranty Commitment Program	--	A federal initiative to guarantee customer warranties on new vehicles purchased from General Motors of Canada Limited (GMCL) during the restructuring period. The Warranty Commitment Program was concluded in September 2009. No funds were drawn.

Source: Canadian authorities.

100. Canada has implemented a number of incentive programmes aimed at stimulating R&D in the automotive industry. The Automotive Innovation Fund (AIF), launched in 2008 by the Federal Government, provides for Can$250 million over five years to support private-sector R&D projects to develop and build innovative, greener, and more fuel-efficient vehicles.[114] Funding in the form of repayable contributions is subject to an investment threshold of at least Can$75 million over five years. Eligible projects undertaken by companies incorporated in Canada include vehicle or power train assembly operations with significant automotive innovation and R&D.

101. The Automotive Partnership Canada programme is aimed at collaborative public-private sector R&D projects in three strategic areas: improving the automobile's environmental performance and impact; the cognitive car; and next generation manufacturing.[115] The programme, launched by the Federal Government in April 2009, provides Can$145 million over five years. This programme supports university and/or government researchers in Canada in their collaborative R&D projects with industrial partners; the projects must be driven by industry needs and involve active industrial participation. Foreign firms may be eligible to participate, provided they have a Canada-based industrial partner that plays a major role in the project and exploits the research results for the economic benefit of Canada.

102. An environmental programme designed to reduce air pollution by providing rewards to Canadians who retire their older, more polluting vehicles, was launched in January 2009 and ended in March 2011. The Federal Government allocated Can$92 million to this programme. As of January

[114] Industry Canada, Automotive Innovation Fund. Viewed at: http://www.ic.gc.ca/eic/site/auto-auto.nsf/eng/am02257.html.

[115] Government of Canada, Canadian Automotive Partnership. Viewed at: http://www.apc-pac.ca/Index_eng.asp.

2011, over 120,000 vehicles had been retired, resulting in a reduction of 4,300 tonnes of smog-forming emissions.

103. Canada Motor Vehicle Safety Standards are developed by Transport Canada under the authority of the Motor Vehicle Safety Act. Since its last TPR, Canada has further harmonized or aligned a number of its vehicle safety standards (i.e. technical regulations) with U.S. regulatory requirements.[116] Since 2007, it has also aligned itself with seven UN/ECE regulations. The authorities note, however, that many of the other UN/ECE regulations are not suitable for Canada since they are not performance-based or not as strict as Canadian safety requirements. Canada supports the international harmonization of standards through the development of (performance-based) UN/ECE Global Technical Regulations.

104. Canadian vehicle safety regulation is stringent. According to the authorities, vehicles sold at retail level in countries other than Canada and the United States do not comply with the Canada Motor Vehicle Safety Act and cannot be imported into Canada, since they cannot be modified to comply with Canadian safety standards. Vehicles retailed in the United States may be eligible for importation because they fall under the NAFTA provisions and, as they are manufactured to near identical safety standards, can be modified to meet Canadian requirements. Under NAFTA, import requirements for vehicles sold at the retail level in Mexico are to be phased in between 1 January 2009 and 1 January 2019. Imports of second-hand or used cars are prohibited with certain exceptions for imports from the United States (Chapter III(2)(vi)). In Québec, a ministerial order prohibiting the use of right-hand drive vehicles on roads entered into effect on 24 April 2010.[117]

(iii) Aircraft

105. Canada's aerospace industry is the fifth largest in the world with sales of Can$22.2 billion in 2009 (down from Can$23.8 billion in 2008), 78% of which were export sales. Employment totalled about 79,000 in 2009.[118] The industry has nonetheless suffered a significant decline of its global market share for aircraft, aerospace systems, and components.[119]

106. The industry-led Future Major Platforms Initiative, provided recommendations to the Government to increase Canada's participation in the global supply chains of upcoming major commercial aircraft programme[120] Another industry initiative is the Green Aviation Research and Development Network (GARDN), a business-led network of centres of excellence (BL-NCE) with an initial budget of approximately Can$23 million for 2009-13, to promote aerospace technologies for the protection of the environment.[121]

107. Applied MFN tariffs for aircraft manufacture averaged 0.5% in 2010, ranging from zero to 11% (ISIC Rev.2 classification) (Table AIV.6). To strengthen the international competitiveness of the Canadian aerospace industry, the Government has launched a number of industry-specific

[116] In 2007-10, 25 technical regulations on car safety were aligned with those of the United States.

[117] Société de l'assurance automobile Québec online information. Viewed at: http://www.saaq.gouv.qc.ca/en/accident_prevention/righthand_drive/index.php.

[118] Aerospace Industries Association of Canada (2010).

[119] National Research Council online information. Viewed at: http://www.nrc-cnrc.gc.ca/obj/nrc-cnrc/doc/sectors-secteurs/aero_e.pdf.

[120] Aerospace Industries Association of Canada (2008).

[121] GARDN online information. Viewed at: http://www.gardn.org/. Accessibility and financial management/reporting criteria are governed by rules and agreements established between the individual Business-led Network of Centres of Excellence (BL-NCE) and the BL-NCE Secretariat. For additional information see: http://www.nce-rce.gc.ca/NCESecretariatPrograms-ProgrammesSecretariatRCE/BLNCE-RCEE/Guides-Guides_eng.asp.

initiatives. Under the Strategic Aerospace and Defence Initiative (SADI) the Federal Government allocated Can$1.1 billion over five years (2007-12) for repayable contributions to support strategic industrial research and pre-competitive development in the aerospace, defence, space, and security industries. Eligible recipients must be incorporated in Canada.

108. In 2008, the Federal Government reaffirmed its commitment to provide repayable contributions of up to Can$350 million to support Bombardier Aerospace's R&D costs of developing its CSeries commercial aircraft (in the narrow-body 100-149 seat segment of the market).[122] In addition, the Government of Québec committed to provide repayable contributions of up to Can$117 million to support CSeries R&D costs. Canada is a participant to the revised OECD Aircraft Sector Understanding (ASU), which took effect on 1 February 2011 and disciplines the provision of export credits by governments for civil aircraft and other aircraft related parts and services.[123] The Government of Québec assists the aeronautical industry within the framework of the Québec Industrial Aeronautical Development Strategy, including through financial assistance (loans, support to finance sales, share capital).[124]

(iv) Textiles and clothing

109. The Canadian textiles and apparel industries continued to decline in economic importance during the review period (Table IV.7). Their combined GDP was Can$2.7 billion in 2009 (down by 40.8% from 2006), involving considerable job losses and reflecting the industries' diminished competitiveness on the domestic and export markets. Apparel manufacturing, which is relatively labour-intensive, has continued to relocate abroad, while the textiles industry has been adversely affected by declining exports to, and increased competition from overseas producers in its main export market, the United States. Canada is a net-importer of textiles and clothing, with increasing levels of import penetration.

Table IV.7
Selected indicators of the textiles and apparel industries, 2007-10
(Can$ million)

	Apparel				Textiles			
	2007	**2008**	**2009**	**2010**	**2007**	**2008**	**2009**	**2010**
Imports	7,391.7	7,912.9	7,801.2	7,758.2	4,959.3	4,756.0	4,238.1	4,467.0
Exports	1,200.4	896.5	690.3	679.3	2,423.5	2,025.6	1,821.4	1,873.4
Share of manufacturing GDP (%)	1.1	0.9	0.8	..	1.1	1.0	1.0	..
Share of manufacturing employment (%)	2.3	2.0	1.8	..	1.6	1.4	1.4	..

.. Not available.

Source: Statistics Canada.

110. Canada's unilateral tariff elimination initiative covers applied MFN tariffs on textiles that qualify as manufacturing inputs. Duties on 464 tariff lines have been or will be eliminated under this initiative. In 2010, applied MFN tariffs for textiles averaged 4.5%, ranging from 0-18%, while applied MFN tariffs for apparel averaged 14.3%, with a range of 0-18% (ISIC Rev.2 classification) (Table AIV.6).

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[122] Industry Canada online information. Viewed at: http://www.ic.gc.ca/eic/site/ic1.nsf/eng/02290.html.

[123] OECD online information, "Aircraft Sector Understandings". Viewed at: http://www.oecd.org/document/38/0,3746,en_2649_34169_47031526_1_1_1_37431,00.html.

[124] WTO (2007); and Government of Québec online information. Viewed at: http://www.mdeie.gouv.qc.ca/index.php?id=3712#innovation.

111. Duty remission programmes for textiles and apparel, which allow eligible companies to import certain products on a duty-free basis, have been a feature of Canada's industrial development policy for some time (Chapter III(2)(iv)(d)). Six textile and apparel remission orders have been in place under the responsibility of the Department of Finance (covering men's and boys' tailored collar shirts; outerwear apparel; women's blouses, shirts and co-ordinates; greige outerwear fabrics; finished outerwear fabrics; and shirting fabrics). The six remission orders are scheduled to expire on 31 December 2012, before full implementation of the tariff elimination exercise on 1 January 2015. On 18 November 2010, an additional remission order, the Designer Remission Order, was extended until 31 December 2014.[125] The Canadian tariff elimination initiative, upon full implementation, will simplify Canada's tariff structure and reduce the administrative burden of complying with rules of origin under preferential trade agreements. Under NAFTA and Canada's FTAs with Chile and Costa Rica, specified quota amounts (the tariff preference level) of clothing and textiles products may be imported duty-free among partners (Chapter III(2)(vi)).[126]

112. In May 2008, Canada launched an outward processing initiative for textiles and apparel. Under this programme, customs duties payable on apparel imported into Canada from developing countries are remitted, either totally or partially, if the goods incorporate Canadian textiles.[127] This is intended to help Canada's ailing textiles industry to gain new market opportunities by providing an incentive for apparel manufacturers in developing countries to use Canadian textiles. Budgetary costs in terms of customs duties forgone are estimated at Can$5 million for the initial years.

113. The Canadian Apparel and Textiles Industries Program (CATIP) and its sub-component, the Canadian Textiles Program (CANtex), which helped the apparel and textiles industries with funding to adjust to the impact of trade liberalization, expired on 31 March 2010.[128] According to the authorities, no industry-specific financial incentives are currently provided by the Federal Government to the Canadian textiles and apparel industries.

(v) Shipbuilding

114. Canada's shipbuilding industry comprises over 150 establishments with about 30 shipyards in the Atlantic provinces, Québec, Ontario, and British Columbia. The industry has suffered declining demand, exacerbated by the global financial crisis. The shipbuilding market in Canada has been in the range of Can$500-600 million annually.[129] In addition to its importance for national security, the industry provides regional economic development in many areas that are economically depressed. Exports of shipbuilding and repair ranged from Can$58 million to Can$132.7 million during 2005-09.

115. Canada's shipbuilding policy is set out in the Shipbuilding and Industrial Marine Policy Framework of 2001.[130] The main instruments of Canadian shipbuilding policy, to help sustain the shipbuilding industry, have been a duty on the importation of large ships (eliminated on 1 January 2010), accelerated capital cost allowance, the Structured Financing Facility (SFF), and a Buy Canada policy for federal procurement.

[125] Order Amending the Designer Remission Order, 2001 Order (SOR/2010-263). Viewed at: http://www.canadagazette.gc.ca/rp-pr/p2/2010/2010-12-08/html/sor-dors263-eng.html.

[126] WTO document G/LIC/N/3/CAN/8, 16 October 2009.

[127] Canada Border Services, Memorandum D8-2-6. Viewed at: http://www.cbsa.gc.ca/publications/dm-md/d8/d8-2-6-eng.html.

[128] The CATIP and CANtex programmes were described in 2007 TPR of Canada.

[129] These estimates do not include boatbuilding. Shipyards are also involved in other manufacturing activities, which are not reflected in the sales figures.

[130] Government of Canada (2001).

116. Canada's tariffs on 11 tariff lines under HS 89 are not bound in Canada's schedule (Chapter III(2)(iv)(b)). Tariff protection for the shipbuilding sector (shipbuilding and repairing) is among the highest industrial tariffs. Applied MFN tariffs averaged 12.9% in 2010, with a range from zero to 25% (ISIC Rev.2 classification) (Table AIV.6). In October 2010, the Canadian Government announced the waiving of the 25% import tariff on general cargo vessels and tankers, as well as ferries longer than 129 meters, to encourage replacement of older vessels and strengthen the competitiveness of the Canadian shipping industry.

117. The Structured Financing Facility (SFF), which offers financial assistance to buyers and lessees of Canadian-built ships is scheduled to expire in March 2013.[131] The objective of the Structured Financing Facility (SFF) is "to help ensure that shipyard capability exists for federal marine procurement and maintenance requirements in keeping with the Buy Canada procurement policy."[132]

118. The Shipbuilding and Industrial Marine Policy framework refers to the Buy Canada policy and states that "the Federal Government will continue to procure, repair and refit vessels in Canada subject to operational requirements and the continued existence of a competitive domestic marketplace."[133] In June 2010, the Government announced its National Shipbuilding Procurement Strategy (NSPS) for the Canadian navy and coast guard.[134] Through the NSPS the Government of Canada is to establish a strategic relationship with two Canadian shipyards, selected through an open competition, and designate them as sources of supply for the Navy and Coast Guard’s large ships. The value of these two work packages is estimated to be over Can$30 billion over the next 30 years. Smaller ship construction will be set aside for competitive procurement from shipyards other than the two selected to build the large ships.

119. The Government of Québec offers a refundable tax credit for the construction of vessels and a reduction of tax on capital on the acquisition of vessels made in Québec.[135]

(5) TELECOMMUNICATIONS, BROADCASTING, AND POSTAL SERVICES

(i) Telecommunications

120. Telecom revenues (excluding broadcasting) increased to Can$41 billion in 2009, up from Can$34.5 billion in 2005, driven by increases in wireless business.[136] Canada's main incumbent telecom operators in terms of revenues are BCE Inc. (operating as Bell), Rogers, and TELUS Corporation. The Canadian Government has expressed concern about investment and productivity levels in its ICT industries, which have been lower than those of competitors, notably the United States.[137]

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[131] For details on the SFF see WTO (2007).

[132] Industry Canada online information, "Structured Financing Facility". Viewed at: http://www.ic.gc.ca/eic/site/sim-cnmi.nsf/vwapj/SFF-MFS_eng.pdf/$file/SFF-MFS_eng.pdf.

[133] Government of Canada (2001).

[134] Canada News Centre online information. Viewed at: http://news.gc.ca/web/article-eng.do?m=/index&nid=537299.

[135] Government of Québec online information. Viewed at: http://preprod.mdeie.gouv.qc.ca/index.php?id=4119&MP=4093-377 and http://preprod.mdeie.gouv.qc.ca/index.php?id=4120&MP=4093-377.

[136] Canadian Radio-television and Telecommunications Commission (2010), p. 15.

[137] Industry Canada online information. Viewed at: http://www.ic.gc.ca/eic/site/ic1.nsf/eng/06098.html.

(a) Institutional framework

121. Industry Canada is responsible for telecommunications policy, spectrum policy, management and licensing under the Radiocommunication Act. The Canadian Radio-television and Telecommunications Commission (CRTC), an independent public authority, is mandated to regulate the telecoms industry in accordance with the Telecommunications Act (1993). The CRTC is also responsible, in collaboration with the Competition Bureau, for ensuring that telecom operators do not engage in anti-competitive practices.

122. The CRTC is guided in its regulatory activities by the "Policy Direction" of December 2006.[138] The directive is aimed at reducing the regulatory burden by relying on market forces to the maximum extent feasible, and introduces a policy test (criteria) for developing new regulatory measures to ensure efficient and effective regulation. One of the criteria is, for example, that measures with an economic rationale should neither deter competitive entry nor promote inefficient entry into the market. The CRTC has the authority to refrain from economic regulation (forbearance) where there is "sufficient competition to protect the interests of users".[139] Forbearance on tariff regulation is exercised on: mobile services; long distance and international telephone services; most fixed local telephone services; retail internet services; data services; terminal equipment; satellite services; and services provided by non-dominant carriers. On the basis of revenues in 2009, 71% of local telephone services were forborne and 91% of telecoms services overall.[140]

123. According to the authorities, there are no tax or financial incentives provided to telecom operators other than those available to corporations generally. Saskatchewan Telecommunications Holding Corporation (SaskTel) is the only provincial government-owned telecom company (Crown corporation). SaskTel is regulated by the CRTC on a non-discriminatory basis in a telecoms market open to competition.

(b) Foreign investment restrictions

124. According to Canada's GATS commitments, 100% foreign investment has been allowed for international submarine cables, resellers of telecom services, and fixed satellites and mobile satellite systems, with the condition that a mobile satellite system "may be used by a Canadian service provider to provide services in Canada".[141] More than 75 foreign satellites have been approved by Industry Canada to provide services to, from or within Canada. In July 2010, Canada lifted restrictions on foreign ownership of Canadian satellite carriers, allowing the Canadian industry to gain access to foreign capital markets to finance its growth.[142] This policy removes the competitive disadvantage *vis-à-vis* the industry's main foreign competitors.[143] Foreign investment in satellite

[138] Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives, SOR/2006-355. Viewed at: http://canadagazette.gc.ca/archives/p2/2006/2006-12-27/html/sor-dors 355-eng.html.

[139] Telecommunications Act, Section 34. Viewed at: http://laws.justice.gc.ca/eng/T-3.4/page-2.html# anchorbo-ga:l_III-gb:s_34.

[140] Canadian Radio-television and Telecommunications Commission (2010), Table 5.1.6.

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

[142] In line with commitments made in the 2010 Speech from the Throne, the changes to the foreign ownership restrictions on satellite services were included in the 2010 Federal Budget omnibus legislation, passed by the Canadian Parliament on 12 July 2010. Section 2184 of Bill C-9 (Jobs and Economic Growth Act) amended the Subsection 16(5) of the Telecommunications Act to allow foreign ownership of satellite operators. Viewed at: http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4649148&Language=e&Mode =1& File=812.

[143] The Canadian satellite services industry includes Telesat, the fourth-largest fixed satellite services operator in the world.

carriers remains subject to laws of general application, including the Investment Canada Act (Chapter II(2(i)).

125. Canada's remaining foreign equity restrictions apply to terrestrial facilities-based operators, which must be Canadian-owned and controlled, and incorporated under federal or provincial laws.[144] Foreign direct investment in these operators is capped at 46.7% of voting shares, based on 20% direct ownership and 33.3% indirect ownership.[145] In addition, the carrier may not be controlled by non-Canadians and not less than 80% of the members of the board of directors must be Canadian. In July 2010, the CRTC established a new framework for ownership and control reviews. The CRTC has the discretion to undertake a bilateral review or a public proceeding.[146]

126. In 2010, Industry Canada held a public consultation on three options for further opening the telecoms industry to foreign investment.[147] Under the first option, among other things, the maximum percentage of direct foreign ownership would be increased from 20% to 49% of the voting shares. Under the second option, start-up telecom providers and small companies would be exempted from the foreign ownership restrictions. Under the third option, all foreign ownership restrictions on telecom service providers would be removed. No decision has been made.

(c) Radio spectrum policy and roaming

127. Canada has two mobile wireless operators with national licences. Licences are issued with regional service areas. For operators in the Cellular, PCS (Personal Communications Service) and AWS (Advanced Wireless Services) bands, mandatory roaming provisions apply. National and international roaming rates are not regulated, but if negotiations fail, commercial terms for roaming agreements may be subject to binding arbitration.

128. Three mobile network operators dominate the Canadian market for wireless services (Rogers Wireless Communications, BCE, and TELUS). Their combined market share in terms of revenues was 95.7% in 2007.[148] A Canadian Telecommunications Policy Review Panel noted in 2006: "The smaller number of mobile providers in Canada – and the fact that all three national wireless service providers are also owned by large telecommunications service providers that also provide wireline services – may mean that there is less competition in the Canadian wireless market than in the U.S. market, which consequently has resulted in higher prices, less innovation, lower uptake and lower rates of usage."[149] Canada's penetration rate of mobile phone subscriptions (71% in 2009) is relatively low for its stage of development.[150]

129. To stimulate competition in the wireless market, in Canada's AWS spectrum auction held in 2008, spectrum was set aside for new entrants. Industry Canada considered that "in the absence of

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[144] Telecommunications Act (1993). Viewed at: http://laws.justice.gc.ca/eng/T-3.4/page-2.html#anchorbo-ga:l_II-gb:s_16; and Canadian Telecommunications Common Carrier Ownership Regulations (1994).

[145] The limit on the voting shares for a holding company is 33.3%. The 26.7% indirect ownership is the result of a 33.3% stake in a holding company that holds the remaining 80% of the operating company. The foreign ownership restrictions were introduced in 1987 in the context of the Canada's FTA negotiations with the United States.

[146] Telecom Regulatory Policy CRTC 2009-428 – Canadian ownership and control review policy. Viewed at: http://www.crtc.gc.ca/eng/archive/2009/2009-428.htm.

[147] Industry Canada online information, "Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform". Viewed at: http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09919.html.

[148] OECD (2009a), p. 41.

[149] Industry Canada (2007).

[150] Canadian Radio-television and Telecommunications Commission (2010), p. 166.

these measures, there exists a potential that reliance on market forces alone may serve to unduly restrict market entry, which could reduce innovation to the detriment of the industry's advancement and, ultimately, to wireless users across Canada."[151] The AWS licence conditions for the incumbent wireless carriers include mandatory roaming and tower sharing with the market entrants. To date four new facilities-based operators have launched wireless services since the AWS action.

(d) Licensing

130. The telecom licensing regime remains unchanged. Facilities-based operators of local and long-distance fixed services are only required to register with the CRTC. Local telephone operators must register as a competitive local exchange carrier (CLEC). Resale of fixed-line capacity is permitted, provided resellers are registered with the regulator and comply with consumer protection provisions. There are no registration or licence fees.

131. When Canada's licensing regime for the provision of basic international telecommunications services (BITS) was introduced, it was mainly to ensure that foreign monopolies cannot use their dominance in the domestic market to gain an unfair competitive advantage in Canada, and to minimize barriers to entry for new service providers by addressing potential cases of anti-competitive conduct.[152] Licences are subject to conditions on anti-competitive behaviour, participation in Canada's universal services regime, and others, and are valid for up to ten years. In 2008, the rationale for the BITS licensing regime was reviewed in light of the "Policy Direction" but the regime has been reconfirmed.[153] Unless anti-competitive conduct affects the Canadian market, the CRTC does not regulate international settlement arrangements.[154] Class A licences are for facilities-based operators, and Class B licences are for non-facilities-based operators, including resellers. The CRTC is considering merging the two classes of licences since they are subject to the same conditions.

132. Wireless carriers require licences under the Radiocommunication Act for the use of radio spectrum and must comply with ownership and control eligibility requirements under the Telecommunications Act as well the Radiocommunication Regulations to provide services to the public. The licence term for PCS and cellular mobile broadband spectrum has been extended up to 20 years. Mobile virtual network operators must register with CRTC and comply with consumer protection provisions. There are currently approximately 55 mobile licensees, some of which are small regional operators and some have not yet deployed service.

133. Industry Canada authorizes Canadian satellite carriers by issuing a licence on a first-come first-served basis when there is enough satellite spectrum to accommodate demand or under a "comparative review process" when there is competing demand for the spectrum. Canadian satellite licensees are required to comply with spectrum policy, and technical and regulatory requirements, and must pay annual licence fees. Foreign satellites are not subject to licensing but an approval process to ensure compliance with Canadian spectrum policies and interference-free operations.

[151] Industry Canada (2007).
[152] WTO document WT/TPR/M/179/Add.1, 22 June 2007.
[153] Review of the basic international telecommunications services licensing regime, Telecom Decisions CRTC 2008-70. Viewed at: http://www.crtc.gc.ca/eng/archive/2008/ dt2008-70.htm.
[154] Telecom Decision CRTC 98-17, 1998.

(e) Interconnection

134. The CRTC requires incumbent local exchange carriers (ILECs) to provide competitors with unbundled access to essential services, including access to local loops[155] ILECs are the companies that provided telecom services as a monopoly (within regional services areas) prior to the introduction of competition. The CRTC also requires ILECs to provide interconnection to competitive carriers. In order to ensure non-discriminatory terms and conditions, ILECs must seek CRTC approval for tariffs for interconnection agreements and all exchange of traffic with fixed and mobile competitors, and for other services such as local telephone service in remote areas and wholesale services provided to competitors where the ILEC is dominant. Interconnection rates of operators other than local exchange carriers are not subject to regulatory approval.

135. Since the last Review of Canada, the local telephone market has been further deregulated. In 2007, CRTC's Forbearance Order of 2006 was changed, to refrain from tariff regulation of ILECs in circumstances where a facilities-based competitive market exists.[156] Price deregulation is based on incumbents' applications for local forbearance and meeting the relevant criteria, which have been adjusted essentially from a market share test to an infrastructure test. Where a competitive market infrastructure does not exist, the CRTC retains regulatory oversight, including through price-cap regulation. CRTC estimates that services subject to price cap regulation at retail level account for almost Can$7 billion in annual revenues for the large ILECs with over 65% derived from the local residential voice market.[157]

136. For competitive local telephone service providers, the CRTC mandates the equal sharing of costs for the establishment of interconnecting trunks in each pre-determined interconnecting region, and has adopted a "bill-and-keep" approach to compensation of calls termination, with mandated pricing where traffic flows are not balanced between carriers.

(f) Other

137. There have been cases of some large incumbent operators reducing the bandwidth for the (wholesale) ADSL services they are required to make available to competitors. Such practices (i.e. bandwidth throttling) have raised concerns over network neutrality in Canada. To address these concerns the CRTC requires that operators make any traffic management practices transparent and "competitively neutral".[158] In its latest "speed-matching" decision, CRTC decided that ILECs and cable operators must make their internet access services available to competing ISPs at speeds that match those offered to their own retail customers. In return for their investments, ILECs are permitted to charge competitors an additional 10% mark-up over their costs for the use of their wholesale internet services higher-speed options.[159]

138. Universal services obligations are in place in the Northern and remote areas of Canada. The subsidization of residential telephone users in these high-cost areas amounted to Can$182 million in

[155] Revised regulatory framework for wholesale services and definition of essential service, Telecom Decision CRTC 2008-17. Viewed at: http://www.crtc.gc.ca/eng/archive/2008/ dt2008-17.htm.

[156] Order Varying Telecom Decision CRTC 2006-15 P.C. 2007- 0532. Viewed at: http://www.gazette.gc.ca/archives/p2/2007/2007-04-18/html/sor-dors71-eng.html.

[157] Price cap framework for large incumbent local exchange carrier, Telecom Decision CRTC 2007-27. Viewed at: http://www.crtc.gc.ca/eng/archive/2007/dt2007-27.htm.

[158] Telecom Regulatory Policy 2009-657 – Review of the Internet traffic management practices of Internet service providers. Viewed at: http://www.crtc.gc.ca/eng/archive/ 2009/2009-657.htm.

[159] Telecom Regulatory Policy CRTC 2010-632, Wholesale high-speed access services proceeding. Viewed at: http://www.crtc.gc.ca/eng/archive/2010/2010-632.htm.

2009.[160] As part of Canada's Economic Action Plan, the Federal Government has allocated Can$225 million to extend broadband internet access to under-served households in Canada. Most federal assistance is provided under the Broadband Canada: Connecting Rural Canadians programme, whereby the roll-out of broadband networks is tendered and successful applicants receive subsidies of up 50% of their one-time costs.[161]

139. Number portability can play an important role in enhancing competition. Wireless number portability (fixed-to-mobile and vice versa, and mobile-to-mobile) has been available in Canada since March 2007. Portability applies only within the local exchange area.

140. Industry Canada provides information on its website on mutual recognition agreements for telecom equipment and conformity assessment.[162]

(ii) Broadcasting

141. Canada's broadcasting regime remains unchanged with regard to foreign investment restrictions, and the quota system for Canadian broadcasting content. While foreign ownership restrictions for Canadian satellite carriers have been fully liberalized, there has been no change regarding Canada's satellite use policy requiring that direct-to-home (DTH) satellite broadcasting distribution services use Canadian satellites.[163]

142. Canadian broadcasting policy is set out in the Broadcasting Act. It provides, *inter alia*, that the Canadian broadcasting system shall be effectively owned and controlled by Canadians, and programming is to be predominantly and distinctively Canadian.[164]

143. The foreign ownership restrictions that apply to terrestrial facilities-based telecom carriers (see above) also apply to broadcasting programming undertakings (BPUs)[165] and broadcasting distribution undertakings (BDUs). Most major Canadian communications companies are regulated under both the Telecommunications Act and the Broadcasting Act since they are integrated companies. Broadcasting licences are issued by the CRTC. Under the Broadcasting Act, broadcasting licence fees are established by the CRTC regulations made with the approval of the Treasury Board. Part I licence fees cover the costs of the CRTC's broadcasting operations and Part II licence fees are regulatory charges, imposed for a broadcaster's privilege to hold a licence. According to the authorities, these fees recover part of the Government's annual investment in the Canadian broadcasting system.

144. Pursuant to the Broadcasting Act, the CRTC has established a system to regulate Canadian broadcasting content. New Canadian-content rules for conventional television broadcasters will be introduced on 1 September 2011: the current 60% of the broadcast year will be reduced to not less than 55%, while the level of not less than 50% of Canadian content between 6pm and midnight is

[160] Canadian Radio-television Telecommunications Commission (2010), p. 11.

[161] Industry Canada online information. Viewed at: http://www.ic.gc.ca/eic/site/ic1.nsf/eng/06045.html.

[162] Industry Canada online information; for Telecommunications Equipment Regulatory Process, see http://www.ic.gc.ca/eic/site/mra-arm.nsf/eng/h_nj00055.html; MRAs and procedures for conformity assessment, see http://www.ic.gc.ca/eic/site/mra-arm.nsf/eng/Home; and MRAs for Telecommunications Equipment, see http://www.ic.gc.ca/eic/site/mra-arm.nsf/eng/h_nj00050.html.

[163] Industry Canada online information, "RP-SAT - Satellite-Use Policy to accommodate Broadcasting Services to the Canadian Public". Viewed at: http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08453.html.

[164] Broadcasting Act. Viewed at: http://laws.justice.gc.ca/ eng/B-9.01/index.html.

[165] A "broadcasting undertaking" includes a distribution undertaking, a programming undertaking, and a network (Broadcasting Act).

maintained.[166] Requirements for pay-tv, specialty, and pay-per-view services vary and are set out in the licensing conditions. The CRTC has developed a set of criteria to define and codify a "Canadian" programme. In general, the CRTC certifies a Canadian television program based on its Canadian creative contributors; at least one of the director or screenwriter positions and at least one of the two lead performers should be Canadian.[167]

145. The CRTC also requires that all conventional AM and FM radio stations ensure 35% of their popular musical selections are Canadian each week. To qualify as Canadian content, music must fulfil criteria regarding music, artist, production, and lyrics (the MAPL system).[168] French-language radio stations must ensure that at least 65% of the popular vocal music selections they broadcast each week are in French. Satellite subscription radio undertakings must, if certain subscription thresholds have been met, distribute a minimum of ten original Canadian-produced channels or contribute a minimum of 6% of gross revenues to the development of Canadian talent. Also, these undertakings must distribute a minimum of four French-language original Canadian-produced channels. A minimum of 85% of the musical selections broadcast on Canadian-produced satellite radio channels must be Canadian, and a minimum of 65% of all popular vocal musical selections broadcast on each French-language radio channel must be French-language selections. There are no Canadian content restrictions on non-Canadian satellite radio channels.[169]

146. Under Canada's satellite-use policy, Canadian direct-to-home (DTH) satellite broadcasting distribution services must use Canadian satellite facilities.[170] An exception exists for Canadian digital broadcasting subscription radio services, where no Canadian satellite facilities are available. Foreign programming services must be authorized by the CRTC for distribution by broadcasting distribution undertakings and listed as eligible satellite services.[171]

(iii) Postal services

147. Canada Post is a Crown corporation with the exclusive privilege of collecting, transmitting, and delivering letters up to 500g to addresses within Canada.[172] Under the Canada Post Corporation Act, Canada Post may regulate, with the approval of the Governor in Council, rates of postage and other matters related to the efficient operation of its business.[173] The Act also gives the Corporation the ability to provide unregulated bulk rates.[174] Canada Post is authorized to operate outside its monopoly services area but is not permitted to cross-subsidize its competitive services from its monopoly revenues. In 2008, the Government of Canada established an independent advisory panel to offer analysis, recommendations, and advice that would ensure Canada Post's long-term capacity to achieve and retain financial self-sustainability and maintain universal postal service. The Panel's recommendations, submitted in December 2008, included that the postal market should not be

[166] Broadcasting Regulatory Policy 2010-167 - A group-based approach to the licensing of private television services. Viewed at: http://www.crtc.gc.ca/eng/archive/2010/2010-167.htm.

[167] For a detailed description of the points system see CRTC online information, "Canadian program certification". Viewed at: http://www.crtc.gc.ca/eng/info_sht/tv11.htm; and "Guide to the Canadian Program Certification Application Process". Viewed at: http://www.crtc.gc.ca/canrec/ eng/guide1.htm#s2.

[168] CRTC online information, "The MAPL-system – Defining a Canadian song". Viewed at: http://www.crtc.gc.ca/eng/INFO_SHT/R1.htm.

[169] CRTC decisions 2006-37 and 2006-38.

[170] RP-SAT - Satellite-Use Policy to accommodate Broadcasting Services to the Canadian Public. Viewed at: http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08453.html.

[171] CRTC online information. Viewed at: http://www.crtc.gc.ca/eng/publications/satlist.htm

[172] Canada Post Corporation Act. Viewed at: http://www.laws.justice.gc.ca/ eng/C-10/page-2.html#anchorbo-ga:l_I-gb:s_14.

[173] Canada Post Corporation Act, Section 19.

[174] Canada Post Corporation Act, Section 21.

deregulated nor Canada Post's exclusive privilege reduced, except that outbound international mail should be opened to competition. In July 2010, Bill C-9 clarified that Canada Post's exclusive privilege does not include outbound international mail.[175]

148. Universal services include delivery to every home or business in Canada (about 15 million addresses). Canada Post is required to operate on a financially self-sustaining basis.[176] However, the Corporation receives payments for government mail and materials for the use of the blind, which are delivered free of charge.

149. Express services are not covered by Canada's Post exclusive privilege. The courier services market has been fully liberalized and there are no foreign ownership restrictions. Over 20,000 courier companies currently operate in the Canadian market.

(6) FINANCIAL SERVICES

(i) Overview

150. Financial intermediation and insurance services (NAICS heading 52) accounted for 6.83% of Canada's GDP in 2009, up from 6.36% in 2006.[177] Canada's financial system has shown remarkable stability amid the global credit turmoil and ensuing economic downturn worldwide. While the crisis had an adverse effect on liquidity, no major Canadian financial institution failed and none required public bailout. Canada has already phased out several initiatives under its Extraordinary Financing Framework, introduced in response to the credit crunch (Table IV.8); committed public funds are still available through certain Crown corporations, including for export finance purposes (Chapter III(3)(iv)).

Table IV.8
Canada's Extraordinary Financing Framework, 2008-10

Initiative	Start	Features	Status
Insured Mortgage Purchase Program	October 2008	Committed a total of Can$125 billion for the purchase of insured residential mortgage pools from Canadian financial institutions under a competitive reverse auction process.	Phased out on 31 March, 2010; Total federal funds used: Can$69.35 billion
Expanded capacity of federal financial Crown Corporations	March 2009	The Business Development Bank of Canada (BDC) received Can$350 million in capital for increased term financing and a new time-limited facility providing guarantees for lines of credit; its borrowing capacity was increased by Can$1.8 billion. The mandate of Export Development Canada (EDC) was provisionally expanded to include support and development of domestic trade and business opportunities. Both BDC's and EDC's authorized capital limits were increased from Can$1.5 billion to Can$3 billion. Statutory limits on EDC's contingent liabilities and its outstanding commitments under the Canada Account (Chapter III(3)(v)) were raised to Can$45billion and Can$20 billion, respectively.	Ongoing

Table IV.8 (cont'd)

[175] Canada Post Corporation Act, Section 15(3). Viewed at: http://www.laws.justice.gc.ca/eng/C-10/page-2.html#anchorbo-ga:l_I-gb:s_14.
[176] Canada Post Corporation Act, Section 5 (2) (b).
[177] Statcan online information. Viewed at: http://www.statcan.gc.ca/pub/15-001-x/2010008/t046-eng.htm.

Initiative	**Start**	**Features**	**Status**
Business Credit Availability Program	March 2009	EDC, BDC and private sector lenders collaborate to provide, at market rates, up to Can$5 billion in loans and other forms of credit support and enhancement to businesses. In April 2010, BDC formed a public-private Vehicle and Equipment Financing Partnership with Canadian owned and operated TAO Asset Management Inc.; with an initial allocation of Can$500 million it is expected to expand financing options for small and medium-sized finance and leasing companies, increasing the availability of credit at appropriate rates for dealers and users of vehicles and equipment.	Ongoing. At end-July 2010, financing support reached Can$8 billion (exceeding original target of at least Can$5 billion); more than 9,000 businesses were served
Municipal Infrastructure Lending Program	2009	A two-year programme to provide, through the Canada Mortgage and Housing Corporation, up to Can$2 billion in direct, low-cost loans for housing-related municipal infrastructure.	Ongoing. Total loans made under this initiative were Can$1 billion in December 2009
Short-term Loans to the Automotive Industry	December 2008	A federal-provincial loan facility with the Ontario government to make available Can$4 billion in short-term loans to Chrysler Canada Inc. and General Motors of Canada Ltd.	..
Canada Small Business Financing Program[a]	April 2009	Maximum loan limits raised from Can$250,000 to Can$500,000, of which no more than $350,000 can be used for leasehold improvements and purchasing or improving new or used equipment; reimbursement limit on an individual financial institution's allowable losses raised from 10% to 12%.	Ongoing
Canadian Secured Credit Facility	January 2009	Up to Can$12 billion managed by BDC for the purchase of term asset-backed securities backed by loans and leases on vehicles and equipment	Ended on 31 March, 2010; five transactions completed for a total of Can$3.65 billion
Canadian Lenders Assurance Facility	November 2008	The government provided insurance on the wholesale term borrowing of federally regulated deposit-taking institutions	Ended on 31 December, 2009; not drawn upon
Canadian Life Insurers Assurance Facility	November 2008	The government provided insurance on the wholesale term borrowing of federally regulated life insurers	Ended on 31 December, 2009; not drawn upon
Modernization of Bank of Canada instruments	January 2008	Modernized instruments of the Bank of Canada to support the stability of the financial system through the provision of extraordinary liquidity	Extraordinary liquidity provided by the Bank of Canada peaked at over Can$40 billion in December 2008
Extension of the Canada Mortgage Bonds Program[b]	August 2008	The Government expanded the Bond program to include a 10-year maturity	Ongoing. Over Can$10 billion in 10-year bonds issued

.. Not available.

a The Program is a risk-sharing facility, administered by Industry Canada, that makes it easier for small businesses (with gross annual revenues of Can$5 million or less) to get loans from financial institutions.

b Under the Canada Mortgage Bonds Program, introduced in 2001, the Canada Mortgage and Housing Corporation sells non-amortizing bonds to investors and uses the proceeds to purchase mortgages packaged in National Housing Act mortgage-backed securities.

Source: *Economic Action Plan*, Canada.

151. Canada's financial services sector is characterized by considerable integration, with conglomerates offering a variety of financial products that cut across the core activities of the four traditional pillars (banks, trust companies, insurers, and securities dealers). While banks and life and health insurance companies have been most active in establishing specialized subsidiaries for the purpose of diversifying their operations, cooperative credit institutions have also branched out into

non-traditional functions, such as full-service brokerage, mutual funds, commercial lending, and wealth management.[178] In general, chartered banks dominate the market (Table IV.9).

Table IV.9
Market share for selected operations in Canada, 2006 and 2010

	2006	2010	2006	2010	2006	2010	2006	2010
	Consumer credit		**Residential mortgages**		**Non-residential mortgages**		**Deposits**	
Chartered banks	65.2	75.6	58.8	50.2	28.4	32.2	75.5	78.1
Trust & mortgage loan companies	0.2	0.1	1.1	1.1.	2.1	3.2	1.4	1.6
Credit unions & caisses populaires	6.6	6.1	13.7	12.7	24.3	27.2	14.5	13.7
Life insurance companies	1.5	1.3	2.1	1.5	41.1	33.5	3.3	2.9
Other channels[a]	26.5	16.9	24.3	34.6	4.2	3.9	5.4	3.8
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

a Depending on the market segment, the "other channels" heading may include non-depositary credit intermediaries, special purpose corporations, National Housing Act mortgage-backed securities, Government-owned savings institutions, or money market mutual funds.

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

152. During the review period, Canada's federally regulated financial services industry saw significant entry and exit of foreign companies (Table IV.10). The number of foreign bank branches increased from 24 to 30 between March 2006 and March 2010, whereas foreign branches in the insurance subsector decreased by 18. On the whole, aggregate entry and exit figures for 2006-10 point to broad-based dynamism across virtually all forms of incorporation at the federal level.[179] Cooperative credit institutions constitute the vast majority of provincially regulated entities; although their number declined by 226 in 2006-10, due mainly to consolidation through mergers, their total assets increased considerably.

153. Among Canada's federally regulated deposit-taking institutions, some 90% of total banking assets are still concentrated in the six largest domestic banks, roughly the same share as reported in 2006 and in 2003; the remaining 10% are held by niche players that tend to focus on one or two credit products, such as mortgage lending or credit cards.[180] According to the authorities, in 2009 the six largest domestic banks accounted for about 81% of the assets held by all deposit-taking institutions in Canada, including trust and loan companies and cooperative credit institutions, down from 85% in 2006. A recent IMF study suggests that these banks' dominant position is largely attributable to their nationwide branch networks.[181] While provincially regulated cooperatives (see Box IV.1) are a strong competitor in terms of the variety of products and services offered, so far they had difficulty in attracting customers who would like access to branches in multiple provinces.[182]

[178] Department of Finance Canada (2005).

[179] Conversions of foreign branches into Canadian companies are also reflected in the entry and exit figures. At the federal level, foreign financial services providers are free to operate through branches and Canadian-incorporated entities; they may maintain both types of commercial presence in parallel, and convert their operations from one type into the other.

[180] The importance of managing risk (OSFI, 2010 and WTO, 2007).

[181] Ratnovski and Huang (2009). Viewed at: http://www.imf.org/external/pubs/cat/longres.cfm?sk=23040.0.

[182] Credit Union Central of Canada (2010).

Table IV.10
Financial institutions operating in Canada, 2006 and 2010

	2006		2010		2007-2010	
	Number of institutions[a]	Assets[b, c] (Can$ million)	Number of institutions[a]	Assets[b, c] (Can$ million)	Entry	Exit
			Federally regulated			
Banks						
Domestic	21	1,905,673	22	2,886,347	6	5
Foreign subsidiaries	26	109,446	25	152,409	3	4
Foreign branches	24	37,078	30	82,351	13	7
Trust and loan companies						
Bank-owned	30	203,298	30	238,418	5	5
Other	38	16,829	36	24,350	4	6
Cooperative credit associations[d]	7	14,931	6	19,648	0	1
Cooperative retail associations[e]	1	4,826	1	4,165	0	0
Life insurance companies						
Canadian-incorporated	45	361,997	45	487,665	7	7
Foreign branches	53	18,429	39	15,116	3	17
Fraternal benefit societies						
Canadian-incorporated	12	5,838	10	6,512	1	3
Foreign branches	9	1,523	7	1,860	0	2
Property & casualty insurance companies						
Canadian-incorporated	93	65,825	95	82,297	10	8
Foreign branches	96	24,838	92	29,882	16	20
Pension plans	1,304	116,576	1,398	122,560	173	79
			Provincially regulated[f]			
Cooperative credit institutions	1,113	189,884	887	252,561	..	..
Life insurance companies	25	33	24	41	..	..
Fraternal benefit societies	12	..	8	..	..	..
Property & casualty insurance companies	40	9,508	40	11,348	..	..

.. Not available.

a As at 31 March for federally regulated institutions and 31 December for provincially regulated ones.
b Total assets of the relevant subsectors are not the simple sum of the figures. The figures for entities that report on a consolidated basis include subsidiaries whose assets may also be included in a different category.
c As at 31 January or 31 March (depending on fiscal year-end) where available, otherwise 31 December.
d Covers only associations that serve as central finance facilities for cooperative credit institutions (credit unions and caisses populaires); these associations do not offer services directly to the public.
e Since 2001, federally incorporated retail associations may offer services directly to the public; they must be composed of at least 2 provincial cooperative associations or at least 10 cooperatives from more than one province.
f The available information does not allow a distinction between Canadian companies and foreign branches.

Note: Due to differences in reporting dates and data sources, the figures may not be comparable.

Source: WTO Secretariat, based on OSFI *Annual Reports* (various years), and information provided by the Canadian authorities.

154. In 2010, the Canadian insurance sector comprised 335 life, health, property, and casualty insurers, of which 64 were provincially regulated. There were 108 companies competing in the life and health subsector, down from 123 in 2006; among these, the three largest Canadian-owned companies accounted for 82% of net premiums written in Canada in 2009 (83% in 2006). In January 2010, Canada's property and casualty insurance industry comprised 227 companies (229 in 2006); approximately 50% of net premiums written were paid to foreign insurance companies and the six largest federally regulated insurers accounted for some 28% (31% in 2006).

Box IV.1: Canada's Credit unions and Caisses populaires

Canada has a strong base of cooperative financial institutions, with almost one third of Canadians belonging to a credit union or a *caisse populaire*. While there are no residency requirements in the credit union legislation, cooperatives are allowed to set their own membership requirements, which may vary considerably across institutions. Owned and governed by their members, cooperatives' primary commitment is to serve the financial needs of their respective memberships and communities.

Most *caisses populaires* (430 in Québec, 20 in Ontario, 25 in New Brunswick and 1 in Manitoba) are assembled under the Fédération des Caisses Desjardins du Québec (FCDQ), a support organization that supervises its member institutions and coordinates their activities under a single brand name. The consolidated Desjardins Group is the sixth largest deposit-taking institution in Canada with over Can$106 billion in deposits.

The majority of credit unions outside Québec are shareholders in one of 9 provincial centrals (1 central serves Ontario and British Columbia) whose main purpose is to provide liquidity support; provincial centrals also serve as trade associations and facilitate the settlement of payments within their networks. This structure is somewhat less centralized than that of the FCDQ; however, like in the FCDQ, individual credit unions maintain a separate identity and may compete for eligible members with other cooperatives operating in nearby areas. A national umbrella organization, the Credit Union Central of Canada (CUCC), brings together the 9 provincial centrals, but not the FCDQ. CUCC is responsible for overseeing liquidity maintenance across its network; it is federally regulated and entitled to liquidity support from the Government under the Cooperative Credit Associations Act.

Notwithstanding their generally smaller asset base, credit unions and *caisses populaires* successfully compete with banks in the non-residential mortgage market; they also have strong positions in residential mortgages and deposits (Table IV.9). While business credit is largely dominated by banks, financial cooperatives are very active in segments such as commercial loans of less than Can$250,000 and between Can$250,000, and Can$1,000,000. In 2007, their shares of these two segments were 24% and 23%, respectively.

Source: WTO Secretariat, based on Department of Finance Canada (2005), *The Canadian Financial Services Sector*; Department of Finance Canada (2003), *Canada's Credit Unions and Caisses Populaires*; and Government of Canada online information, "Key Small Business Financing Statistics", December 2009. Viewed at: http://www.sme-fdi.gc.ca/eic/site/sme_fdi-prf_pme.nsf/eng/h_ 01250.html.

(ii) Regulatory framework

155. Canada's GATS market access and national treatment commitments have not changed since its last Review. In the context of the Doha negotiations, Canada tabled a revised offer on services in 2005.[183]

156. The regulation and supervision of financial services are carried out under a system of shared responsibility. Exclusive federal jurisdiction over banking is stipulated in Canada's Constitution Act. Banks and bank branches must incorporate under federal legislation, and do not need any additional licences to establish and operate in a particular province; in general, banks may determine interest rates and service fees.[184] Cooperative credit institutions, mutual funds and securities firms, including those owned by banks, are currently regulated at the provincial level for prudential soundness and market conduct.[185] Although insurance and trust and loan companies may be incorporated either federally or provincially[186], in their operations they must also comply with applicable provincial legislation relating to, *inter alia*, licensing requirements, coverage provisions and premium rates of

[183] WTO document TN/S/O/CAN/Rev.1, 23 May 2005.

[184] Provincial consumer protection legislation, containing rules governing disclosure of the cost of credit, also applies to federally incorporated institutions. In addition, everybody in Canada is subject to the criminal interest rate provision of the Criminal Code (Section 347). In British Columbia, the cost of payday loans, inclusive of all fees and charges, may not exceed 23% of the loan principal (e.g., a maximum of Can$46 for a Can$200 loan); these loans cannot be contingent or included in agreements to purchase other goods and services (tied selling).

[185] Market conduct regulations generally bear upon disclosure requirements, business practices related to products and services, and a financial institution's dealings with its customers.

[186] Provincially incorporated entities may operate only within their home province.

insurance policies[187], and marketing and sales practices. All provinces except Québec accept the federal principles of prudential supervision, but reserve responsibility for the solvency of financial institutions incorporated in their respective jurisdictions.

157. The statutes that govern federally regulated financial institutions are subject to review every five years; the next is scheduled for 2012. In addition to amendments enacted in 2007[188], following the regular review, Canada updated its financial institutions legislation through the Budget Implementation Acts of in 2009 and 2010.[189] Recent measures include empowering the Minister of Finance to enter into any contract that promotes the stability or maintains the efficiency of Canada's financial system[190]; the creation of a bridge bank framework as a means of preserving the residual value of a failing deposit-taking institution[191]; and new credit card and mortgage insurance regulations with an emphasis on consumer protection. Moreover, since 2010 cooperative credit institutions (credit unions and *caisses populaires*) have the option to continue or incorporate as federal entities, a measure that would potentially foster the development of stronger domestic competitors in the financial services sector. The Federal Government also intends to establish a single securities regulator through a voluntary regime that would enable the existing 13 provincial and territorial authorities to opt in.

158. At the federal level, prudential regulation and supervision are carried out by the Office of the Superintendent of Financial Institutions (OSFI)[192], which also works with the Department of Finance on the development of federal policy. The Canada Deposit Insurance Corporation (CDIC) administers the federal system of deposit insurance and has powers to restructure troubled institutions. The Financial Consumer Agency of Canada (FCAC) works to ensure compliance with consumer-oriented provisions of the federal statutes, including through supervision of financial institutions. The Department of Finance, OSFI, CDIC, FCAC, and the Bank of Canada are all represented on the Financial Institutions Supervisory Committee and the Senior Advisory Committee, both of which meet regularly to coordinate actions and advise the Federal Government on financial sector issues.

159. Under Canada's federal financial institutions legislation, regulatory consent is required to carry out certain types of transactions, including incorporations, the establishment of commercial presence, mergers and other corporate restructurings, and ownership changes. The approval process is administered by OSFI; depending on the nature of the transaction, consent is granted either by the

[187] Outside Québec, provincial statutes governing life insurance policies are modelled on the Uniform Life Insurance Act adopted by the Canadian Council of Insurance Regulators. Provinces legislate premium rates for automobile insurance; there is no uniform classification of automobile insurance lines (OSFI, 2010).

[188] Bill C-37: An Act to amend the law governing financial institutions and to provide for related and consequential matters. Viewed at: http://www2.parl.gc.ca/HouseBills/billsgovernment.aspx?Parl=39&Ses=1& Language =E&Mode=1#C37.

[189] Bill C-10 (Budget Implementation Act 2009) and Bill C-9 (Budget Implementation Act 2010) Viewed at: http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3756934&Language=e&Mode =1 and http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4649148&Language=e&Mode=1.

[190] Indicative transactions include contracts to: purchase, acquire, hold, lend or sell or otherwise dispose of securities of an entity; create a charge on, or right or interest in, securities of an entity held by the Minister; make a loan to an entity; provide a line of credit to an entity; guarantee any debt, obligation or financial asset of an entity; or provide loan insurance or credit insurance for the benefit of an entity in respect of any debt, obligation or financial asset of the entity (Bill C-10 (Budget Implementation Act 2009)).

[191] The framework enables the Canada Deposit Insurance Corporation to take control of assets and liabilities of a non-viable institution, thereby preserving franchise value and providing time to find a more permanent resolution.

[192] Three provinces (New Brunswick, Ontario, and Manitoba) rely on OSFI for the prudential supervision of provincially chartered life and property and casualty insurers on their behalf. Nevertheless, these provinces retain full regulatory authority in their respective territories.

Minister of Finance, acting on OSFI's advice, or by the Superintendent of Financial Institutions (Table IV.11). Most Ministerial approvals relate to the acquisition of control or of a significant interest in a financial institution[193], transfer of business or reinsurance transactions, and applications for the incorporation of financial institutions or the authorization of Canadian branches of foreign financial institutions. In the assessment, the Minister of Finance must consider all matters relevant to the transaction, including the best interests of Canada's financial system. Typically, OSFI approvals concern: orders authorizing new entrants to carry on business in Canada[194]; certain substantial investments; transfer of assets in excess of 10%; non-cash consideration for shares; reinsurance by a related party; and redemption of shares/debentures. The IMF and the OECD have expressed concern about Canada's regulatory approval process, flagging uncertainty about the criteria applied in the assessment of mergers and other corporate restructurings.[195]

Table IV.11
Approvals granted for selected operations in Canada, 2009-10[a]

	2009	2010
Approvals by the Minister of Finance		
New entry	16	11
Incorporation	4	2
Continuation	4	1
Branch establishment	3	7
Financial Establishment in Canada	5	1
Change in ownership	131	136
Significant interest/control	94	125
Amalgamation	4	0
Substantial investment	3	3
Other	30	8
Approvals by the Superintendent of financial institutions		
New Orders to commence and carry on business	12	4
Modified Orders to commence and carry on business	46	64
Non-cash consideration for shares	25	21
Substantial investment	36	14
Transfer/acquire > 10% assets	26	26
Redemption of shares/debentures	29	34
Reinsured by related party	82	63
Reinsurance on an assumption basis	27	9
Other	121	140

a Information on earlier years, as well as on the number of applications, was not made available.

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

160. Publishing a notice of intention is a prerequisite for most transactions; OSFI estimates that complying with the publication requirement may take up to three months. There is no statutory time limit for assessing applications for incorporation of orders authorizing the carrying on of business activities in Canada; on average, the initial assessment of such requests takes three additional

[193] Significant interest is defined as beneficially owning, directly or indirectly, more than 10% of any class of shares of a federally regulated financial institution (Bank Act, Section 8(1) and Insurance Companies Act, Section 8(1)).

[194] A Ministerial letter patent of incorporation is among the prerequisites for the Superintendent's Order to Commence and Carry on Business. While the latter remains in force indefinitely, unless the Superintendent determines otherwise, it cannot be issued more than one year after the day on which the financial institution enters into existence. The application fee for an Order to Commence and Carry on Business is Can$32,000, regardless of the type of financial institution.

[195] OECD (2009a) and IMF (2006).

months.[196] In April 2005, OSFI adopted internal performance standards establishing time frames for the processing of at least a certain percentage (ranging from 80% to 90%) of complete applications, including Ministerial approvals (less than 90 calendar days) and non-deemed approvals (less than 60 calendar days).[197] During 2005-10, OSFI met or exceeded all of its established performance standards.

161. Incorporation requirements have not changed significantly since Canada's previous Review. (Table IV.12).

Table IV.12
Incorporation requirements under federal legislation, 2011

	Minimum capital (in Can$)	**Canada residence[a]**
Banks		
Domestic	5 million	A majority of directors[b]
Foreign subsidiaries	5 million	At least half of directors
Foreign branches		
- Full service	Worldwide assets: 5 billion Capital equivalency deposit: the greater of 5 million or 5% of Canadian liabilities	Principal officer
- Lending	Capital equivalency deposit: 100,000	Principal officer
Foreign representative office	None	Principal officer
Insurance companies		
Canadian-incorporated	5 million	A majority of directors[b]
Foreign branches	Depends on risk profile of foreign branch	Chief Agent

a The CEO of every bank or federal insurance company in Canada must be a Canadian resident.
b Until 2007, the requirement was formulated as "at least two-thirds" of the directors. Federally regulated banks and insurance companies must have at least seven directors.

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

162. OSFI has 33 active agreements on cooperation and information-sharing with host-country supervisory authorities that regulate significant foreign operations of Canadian banks and insurers. OSFI continues to negotiate such agreements as a means to improve coordination of supervisory work between home and host authorities.

(iii) Banking services

163. Commercial presence is required to carry on the business of banking and financial intermediation in Canada. Besides acquiring a domestic bank, the options for commercial presence include establishing subsidiaries, full-service or lending branches[198], and representative offices. There are no statutory restrictions on the number of banks (domestic or foreign) that may establish and operate in Canada or the number of offices that foreign bank subsidiaries or branches may open.

164. Foreign banks are allowed to provide the same services as Canadian banks, either directly (through a branch) or through a subsidiary. Lending branches may lend in Canada, but are not

[196] OSFI (2004).
[197] A statutory "deemed approval" regime applies to certain types of transactions; in those cases the Superintendent is required to make a decision within 30 days of receipt of a complete application. See OSFI online information. Viewed at: http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/guides/transaction/transop_e.html.
[198] A foreign bank may concurrently operate a full-service and a lending branch.

permitted to take deposits; full-service branches may accept deposits of Can$150,000 or more[199], which are not eligible for Canada's federal deposit insurance scheme.[200] Banks and other federally chartered deposit-taking institutions are not permitted to offer through their branches (including their websites) auto-lease financing, securities brokerage or insurance services, other than certain credit-related insurance. The OECD has flagged both the minimum deposit threshold for full-service branches and the prohibition on direct bank sales of non-authorized insurance products as barriers to fuller contestability in Canada's financial services sector.[201]

165. In 2007, Canada modified the equity thresholds used to define small, medium, and large banks under its size-based ownership regime, raising the relevant values from Can$1 billion to Can$2 billion and from Can$5 billion to Can$8 billion.[202] Large banks must still be "widely held", i.e. no more than 20% of the bank's voting shares or 30% of its non-voting shares may be acquired by a single person, regardless of nationality. The prohibition against any single person (Canadian or foreign) acquiring control of a large bank and the relevant exceptions also remain in force[203], subject to the new size threshold. Similarly, medium banks (equity of Can$2 billion or more, but less than Can$8 billion) remain subject to a public holding requirement; at least 35% of their voting shares must be listed and posted for trading on a recognized stock exchange and must not be beneficially owned or controlled by a major shareholder of the bank.

166. According to OSFI, Canadian banks are well positioned to implement the Basel III framework of higher capital and liquidity standards. The IMF also expects a smooth transition, given the already high requirements applied in Canada and the sound balance-sheet positions of Canadian banks.[204]

(iv) Insurance services

167. Commercial presence is required to carry on the business of insurance, reinsurance, and retrocession in Canada. Federally regulated insurers (both domestic and foreign) may offer both life insurance and property and casualty insurance, but must do so through separate entities or branches; separate licences for the two business lines are also required in some provinces.[205] A foreign company may incorporate a separately capitalized Canadian entity, establish a branch or acquire an existing Canadian enterprise, subject to standard regulatory approval procedures. Foreign insurers operating in Canada on a branch basis must appoint a Canadian resident as their chief agent; they must also appoint an actuary and an auditor, and must have trust assets of a prescribed value. There are no statutory restrictions on foreign ownership of federally registered insurance companies; no

[199] Certain exceptions, allowing deposits to be taken from sophisticated investors, are contained in the Prescribed Deposits (Authorized Foreign Banks) Regulations.

[200] All banks that accept retail deposits (i.e. deposits of less than Can$150,000) must be members of the Canada Deposit Insurance Corporation (CDIC). Institutions that only accept deposits of Can$150,000 or more may opt out of CDIC. Membership fees are determined on the basis of 13 quantitative and qualitative criteria, including members' capital adequacy, net impaired assets, and other prudential factors. The basic coverage available for eligible deposits held at a single member institution is Can$100,000 per depositor.

[201] OECD (2010b).

[202] Bill C-37, Part 1.

[203] For entities such as a widely held regulated bank-holding company or for a foreign bank that control a Canadian bank subsidiary that has grown through the Can$8 billion threshold.

[204] IMF online information, "Article IV Mission Concluding Statement". Viewed at: http://www.imf.org/ external/np/ms/2010/102710.htm.

[205] Insurers incorporated in Saskatchewan can offer either life insurance or property and casualty insurance, but not both.

ownership-based limitations are applied on the type of services that may be offered.[206] In general, the number of insurance companies that can establish in Canada is also unrestricted, except in areas subject to a public monopoly (i.e. basic motor-vehicle insurance in British Columbia, Manitoba, and Saskatchewan, and in Québec, motor-vehicle insurance with respect to personal injury and death).

168. Since 2007, Canadian providers of marine insurance have had the option to incorporate at the federal level; the federal model is similar to the regulatory framework applicable to property and casualty insurers.[207] A company chartered for the sole purpose of insuring marine risks would cease to exist one year after the date of its incorporation if, in OSFI's opinion, it has not actively engaged in insuring such risks during that period. As of 1 January 2010, foreign insurers are no longer allowed to "insure in Canada" marine risks without prior authorization from OSFI.

169. Canada's federal regulatory regime has been clarified to apply to aspects of the insurance process that foreign companies carry out in Canada, as opposed to the location of the risk being insured, which can be inside or outside of Canada.[208] Foreign insurers need OSFI's approval to "insure in Canada" risks within a given class of insurance, that is, to locate some of their insurance activities in Canada; they must also hold assets in Canada to cover the liabilities related to their Canadian business. While a foreign insurer no longer needs federal approval to insure Canadian risks from a head office or a branch outside Canada, its assets maintained under OSFI oversight would only be available to cover policyholders' claims for risks insured in Canada. As of 1 January 2010, all documents prepared by foreign insurers for risks insured in Canada must include a statement that the document was issued or made in the course of their insurance business in Canada.[209] According to OSFI, this model may better align the federal regime with many of the provincial and territorial regimes, which rely substantively on the meaning of carrying on business in the province or territory.[210]

170. According to federal guidelines, even if a foreign insurer is not "insuring in Canada" risks (and hence does not need federal approval), its activities may still be subject to licensing requirements at the sub-federal level; some provinces require a foreign insurer to obtain a licence merely to promote its products in, insure a person domiciled or resident in, or provide insurance coverage on a property situated in their territory.

171. A public holding requirement, analogous to that applied to medium banks (see above), applies to federally registered insurance companies; since 2007, the equity trigger for insurers has been raised from Can$1 billion to Can$2 billion. Insurance companies with equity of Can$1 billion or more must still publish annual statements on their contribution to the Canadian economy and society.

[206] Information on similar restrictions and limitations at the sub-federal level was not made available. Some provinces have residency requirements for majority shareholders of insurance companies seeking a licence to operate in their jurisdiction.

[207] Marine and property and casualty insurance companies may not engage in any financial leasing of personal property in Canada.

[208] OSFI has provided guidance on the elements it will consider in determining whether a foreign entity is insuring risk in Canada (Advisory 2007-01-R1. Viewed at: http://www.osfi-bsif.gc.ca/app/DocRepository/ /eng/guidelines/regulatory/Adv_insurance_riskr1_e.pdf).

[209] Where a broker or agent is acting on behalf of a foreign insurer, it is the foreign insurer's responsibility to ensure that the statement is included by the broker or agent in the document issued to the insured.

[210] OSFJ online information. "Questions and Answers: Implementation of Amendments to Part XIII of the Insurance Companies Act". Viewed at: http://www.osfi-bsif.gc.ca/app/DocRepository/1/eng/guidelines/ xiii/pXIII_instr_qa_e.pdf.

172. Several types of insurance are compulsory at the federal level, including certain types of marine, mortgage, aviation, nuclear, environmental, and surety insurance. According to the Canadian authorities, numerous types of insurance are also compulsory at the provincial/territorial level (e.g. automobile, surety, home warranty); requirements in this regard, including the regulation of rates, vary by jurisdiction.

173. Under Part I of the Excise Tax Act, an excise tax of 10% is levied on insurance premiums when insurance against a risk in Canada is placed with a non-authorized or with an authorized insurer[211], where that insurance is effected or renewed through a broker or agent outside Canada. The tax does not apply to any contract of life, personal accident, sickness or marine insurance, or insurance for certain nuclear risks; nor does it apply to any other contract of insurance that is not, in the opinion of the Commissioner of the Canada Revenue Agency, available in Canada.

(v) Securities

174. Each Canadian province and territory administers a unique set of securities regulations, some of which are nationally harmonized. Under the common "passport system", market participants are currently able to clear a prospectus, register as a dealer or adviser, or obtain certain discretionary exemptions from the regulator in their home jurisdiction, with applicability in all other jurisdictions, except Ontario. While the 13 securities regulatory authorities continue their joint work on harmonization under a council known as the Canadian Securities Administrators (CSA), they maintain local regulatory instruments, exemptions, and separate bodies for ruling on regulatory issues. Fees for participation in capital markets continue to be levied separately in each jurisdiction.

175. Provincial and territorial securities regulators also pursue international cooperation on an individual basis. Currently, the Autorité des marchés financiers in Québec and the Ontario Securities Commission are ordinary members of the International Organization of Securities Commissions, while the Alberta and British Columbia Securities Commissions are associate members. In addition, individual regulators participate in the work of the North American Securities Administrators Association (NASAA) and the Council of Securities Regulators of the Americas (COSRA).

176. The Government of Canada is working with the majority of provinces and territories to establish a single Canadian Securities Regulator. To that effect, a proposed Securities Act was released and referred to the Supreme Court of Canada by the Government in May 2010 to determine its constitutional validity.[212]

(7) Transport Services

(i) Air transport

177. Air transport has become Canada's second-largest commercial transport subsector, after truck transportation. In 2009, air transport contributed 0.4% to GDP[213]; 13% of Canada's trade (in value terms) was transported by air, with the most important goods (in value terms) being gold, aircraft, and medicine. An estimated 103.1 million passengers were enplaned and deplaned in 2009, a 5% decrease over the previous year; domestic and trans-border (between Canada and the U.S.) traffic was

[211] For the purposes of the Excise Tax Act, an authorized insurer is one who is authorized under the laws of Canada or any province, to transact that business of insurance.

[212] Government of Canada online information. Viewed at: http://www.fin.gc.ca/drleg-apl/csa-lvm-eng.asp.

[213] Statistics Canada, CANSIM Table 379-0027.

particularly affected.[214] The main locations of scheduled flight activity for cargo and passengers to and from Canada are set out in Table IV.13.

Table IV.13
Main areas of scheduled flight activity, 2009

	Domestic	Transborder	International
Passenger	Calgary, Toronto, Vancouver	Chicago, Los Angeles, New York City	France, Germany, U.K.
Cargo	Toronto, Vancouver, Winnipeg	Indianapolis, Memphis, Louisville	Germany, Hong Kong, U.K.

Source: Information provided by the authorities.

178. Transport Canada is responsible for transportation policy including economic, legislative and policy frameworks related to air transport. Economic regulation of the air industry is carried out under the Canada Transportation Act (CTA) of 1996 and Canada's bilateral air agreements. The most recent amendments to the Canada Transportation Act entered into effect in June 2007: these mainly relate to clarifying consumer complaints processes with the Canadian Transportation Agency and requiring more transparent disclosure of terms and conditions of carriage.[215] A proposed Canada Airports Act died on the order paper in 2007, when Parliament was prorogued, and has not been reintroduced.

179. The Canadian Transportation Agency (under Transport Canada) has responsibility for granting, suspending, and revoking licences for air services, and addressing complaints about conditions of carriage. It has the authority to regulate prices and conditions of carriage for international air transportation, and has a more limited regulatory role with respect to tariffs for domestic air services. NavCanada continues to operate Canada's air navigation system.[216] The Canadian Air Transport Security Authority (CATSA) is the only federal Crown corporation operating in the air transport sector: it is, *inter alia*, responsible for screening air travellers and their baggage.[217]

180. The airline-industry-specific provisions in Canada's Competition Act were removed in 2009 (Chapter III(4)(iii)).

(a) Airlines

181. All Canadian airlines are privately owned. Air Canada remains Canada's largest airline business. However, it has continued to lose dominance over the scheduled domestic market during the review period (Table IV.14).

Table IV.14
Domestic market share of the main Canadian airlines (offered seat kilometres), 2007-10

Carrier	2007	2008	2009	2010
Air Canada	59.9	57.1	56.3	56.1
Westjet	33.1	35.5	36.1	35.7
Porter Airlines	0.5	0.7	1.3	2.3
Other	6.5	6.8	6.3	5.9

Source: Information provided by the Canadian authorities.

[214] Minister of Public Works and Government Services (2009), as updated by the authorities.
[215] Transportation Amendment Act, Bill C-11. Viewed at: http://www2.parl.gc.ca/Sites/LOP/LegislativeSummaries/Bills_ls.asp?lang=E&ls=c11&source=library_prb&Parl=39&Ses=1.
[216] The structure of NavCanada is described in WTO (2007).
[217] CATSA online information. Viewed at: http://www.catsa-acsta.gc.ca/home.aspx?id=1&pname=Home_Accueil&lang=en.

182. In July 2009, Air Canada entered into a financing agreement with a club of lenders (GE Canada Finance Holding Company; Export Development Canada; Aeroplan Canada Inc.; and ACE Aviation Holdings Inc.). According to the authorities, the financing plan extended a term credit facility of up to Can$700 million on commercial terms, for the purposes of debt refinancing, providing funding for working capital, and other general corporate purposes. Export Development Canada (EDC) (Chapter III(3)(iv)) provided a Can$150 million loan from its Corporate Account, and managed the Government of Canada's Can$100 million loan from the Canada Account. In August 2010, Air Canada issued corporate debt for which it received Can$1.075 billion, and repaid the loan with around Can$729 million of the proceeds.

183. The other significant development with respect to the airline industry in Canada has been the rapid expansion of Porter Airlines, which was established in 2006. It doubled its operations in terms of fleet and staff over 2008-09 and has rapidly gained market share.

184. Under the Canada Transportation Act, only Canadians are eligible for a license to provide domestic flights. Currently, foreign ownership of Canadian airlines is limited to 25% of voting shares. However, amendments to the Canada Transportation Act may open the door to increased foreign participation. The 2009 Budget Implementation Act (Bill C-10, Part 14) amended the definition of "Canadian" as it applies to airlines in the Canada Transportation Act by changing the minimum of 75% Canadian ownership to a foreign ownership ceiling, to be specified by regulation, that may not be more than 49% in respect of non-Canadians.[218] The authorities noted that consultations are being held with affected stakeholders on draft regulations. This change stemmed from concerns articulated in a government-established Competition Review Panel that maintaining the 25% threshold could exclude Canadian carriers from future consolidation transactions that would result in global carriers.[219]

185. The Competition Policy Review Panel also suggested that the Minister of Transport, on the basis of public consultations, should issue a policy statement by December 2009 on whether foreign investors should be permitted to establish separate Canadian-incorporated domestic air carriers using Canadian facilities and labour. However, there have been no changes in this direction.

(b) Airports

186. There have been no ownership or management changes in Canada's airports since Canada's previous review. Canada has 26 principal airports, forming the national airports system (NAS); these handle around 95% of Canada's scheduled air passenger and cargo traffic. The Federal Government owns the land of 23 of the 26 NAS airports but does not operate any of these airports. The operational and management responsibility for 22 of them was transferred to private not-for-profit, non-share-capital airport authorities under 60-year leases as well as to one municipality. The authorities note that these airports were leased to the current airport authorities following negotiations with the Federal Government; and the majority of the members of these airport authorities represent local interest of one form or another. There are also a large number of regional and local airports, most of which are owned and managed by municipalities or territorial governments.[220]

187. The authorities confirmed that there are no legal restrictions (in the GATS sense) on groundhandling in Canada; any limitations would be based on physical constraints or operational

[218] Part 15 of Bill C-10 also amends the Air Canada Participation Act, which will, once in force, subject Air Canada to the same foreign ownership rules as in the Canada Transportation Act.

[219] Government of Canada (2008).

[220] For a listing of NAS, regional and local airports, and their ownership status, see Transport Canada's Airport Divestiture Status Report. Viewed at: http://www.tc.gc.ca/eng/programs/airports-status-menu-441.htm.

constraints related to airport safety or security. A number of foreign companies are present in the groundhandling market, including Swissport Servisair, World Flight Services, Atlas Aviation Services, Menzies, and Cargo Zone Inc.

(c) Air services agreements

188. The air transport market in Canada is governed by bilateral agreements and arrangements with 91 countries.

189. As reported in its previous review, Canada launched a Blue Sky policy in November 2006, which called for a liberalized approach to bilateral air transportation negotiations. In addition, the negotiation of liberal air services agreements is one of the key priorities set out in Canada's 2007 Global Commerce Strategy (Chapter II). Since 2006, the Federal Government has negotiated air transport agreements with over 50 countries. These include open skies-type agreements with (Ireland, Iceland, New Zealand, Barbados, the Dominican Republic, Costa Rica, South Korea, El Salvador, Switzerland, Trinidad and Tobago, and Jamaica. The authorities note that open-skies-type agreements generally cover the following elements for scheduled passenger and all-cargo services: open bilateral markets (third and fourth freedom rights); no limit on the number of airlines permitted to operate; no limits on the permitted frequency of service or aircraft type; a market-based tariff regime for bilateral and third-country services; an open and flexible regime for the operation of code-sharing services; unrestricted services to and from third countries (fifth and sixth freedom rights); and rights for stand-alone all-cargo operations (seventh freedom rights).

190. Canada has also expanded existing agreements with Mexico, Japan, Jordan, Singapore, the Philippines, Morocco, Cuba, Egypt, and Algeria. New agreements have been concluded with Kuwait, Serbia, Croatia, Panama, Turkey, South Africa, Ethiopia, Tunisia, and Qatar.[221]

191. In addition, an air transport agreement was signed between Canada and the EU and its Member States in 2009. The authorities note that this represents 27 "open" bilateral agreements and includes 8 countries with whom Canada did not previously have agreements (Cyprus, Estonia, Latvia, Lithuania, Luxembourg, Malta, Slovakia, and Slovenia). It is the largest and most comprehensive agreement negotiated by Canada; it allows any number of air carriers from Canada to operate direct scheduled passenger and all-cargo services to any city between each partner's territory and to continue to a third country as part of a service to or from their home territory.[222]

(d) Sales, reservation, marketing, repair, and maintenance services

192. Canada's air transport commitments under the GATS are limited to aircraft repair and maintenance services, and computer reservations systems. Canada has not bound consumption abroad of repair and maintenance services, thus retaining the possibility of requiring carriers to use domestic repair providers and maintenance facilities.[223] Canada maintains MFN exemptions under Article II of the GATS for aircraft maintenance and repair services and for the sale and marketing of air transport

[221] For further information on each of these agreements see DFAIT online information. Viewed at: http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/facts-air-eclair.aspx?lang=eng#qatar.

[222] Transport Canada online information. Viewed at: http://www.tc.gc.ca/eng/mediaroom/releases-2009 -h172e-5755.htm.

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

services.[224] Canada did not make any further conditional offers on air transport services in its revised services offer submitted in May 2005.[225]

193. As noted in Canada's previous Review, computer reservation systems for the marketing and sale of commercial air services were partially deregulated in 2004. Certain provisions do still apply, particularly that information about commercial air services, distributed and displayed through CRS, should be comprehensive, neutral and non-discriminatory.[226]

194. Subject to the terms of bilateral air transport agreements, Canada permits the sale of international air transportation services by foreign air carriers in Canada, directly or through their agents, in Canadian dollars or in freely convertible currencies of other countries, without restriction. A foreign air carrier may establish a sales presence (i.e. local office) in Canada, subject to provincial laws and regulations.

195. As explained by the authorities, all maintenance and repair operations on Canadian-registered aircraft must be performed by organizations approved by Transport Canada in accordance with the Canadian Aviation Regulations or with the regulations of a foreign state that is party to an agreement or technical arrangement with Canada. Such agreements are necessary because Transport Canada's requirements for the training of maintenance personnel exceed ICAO standards. In the absence of an agreement maintenance can be performed only by a foreign aircraft maintenance organization (AMO) under contract to a Canadian AMO, with the latter providing the necessary oversight to ensure compliance with the applicable regulations. Transport Canada has approved 921 Canadian AMOs. There are no foreign ownership restrictions in Canadian AMOs and, although no concrete data are collected, the authorities indicated that there is foreign ownership in practice. Approved Canadian AMOs need to be located within Canadian borders. Transport Canada has issued approvals to foreign AMOs in accordance with existing technical arrangements: around 206 approvals are in place with EASA and EU member countries, and 38 approvals with Brazil; Singapore; Israel; and Hong Kong, China. According to the authorities, Canada's MFN exemption for aircraft maintenance and repair services (see above) was required because, for Mode 2, only foreign AMOs in certain countries may perform work on Canadian-registered aircraft outside of Canada.

(ii) Maritime transport

196. Maritime transport accounted for close to 5% of Canada's trade with the United States and close to 50% of its trade with other countries in 2009.[227] Canada's three main ports (Vancouver, Montreal, and Halifax) handled about 95% of containerized traffic (totalling 4 million twenty foot equivalent units (TEUs) in 2009, down from 4.45 million TEUs in 2008). Canadian ports play an important gateway role for imports to the United States. About 28% of the total containerized traffic unloaded at Canadian ports in 1999-2003 were for transhipment mainly by rail to the United States.

(a) Shipping services

197. Transport Canada is responsible for establishing maritime transport policies, regulations, and standards, while implementation and enforcement are mainly in the hands of the Canadian

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

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

[226] For more details on the 2004 reforms see WTO document S/C/W/270, 18 July 2006. CRS Regulations viewed at: http://laws.justice.gc.ca/eng/SOR-95-275.

[227] Minister of Public Works and Government Services (2009), Tables EC6 and EC/.

Transportation Agency. The Canada Shipping Act is the principal legislation governing the operation of Canadian flag vessels and foreign vessels in waters under Canada's jurisdiction.[228]

198. The Canadian merchant fleet (i.e. vessels flying the Canadian flag) carries mostly domestic cabotage and Canada-U.S. traffic, while more than 90% of Canadian international maritime cargo (other than to and from the United States) is carried by foreign flag ships. Most of the Canadian-controlled international fleet operates under foreign flags and employs foreign officers and crews. Canada has the 16th largest merchant fleet in the world in terms of control.[229] Dry bulk carriers remain the backbone of the Canadian merchant fleet, carrying the majority of domestic shipments of bulk materials on the Great Lakes and along Canada's coastline (Table IV.15). An extensive fleet of tugs and barges is also in operation both domestically and internationally (see also Chapter IV(4)(v)).[230] A U.S. company (Seaspan Marine Corporation) owns most of the tug boats providing cabotage on the Canadian west coast.

Table IV.15
Canadian-registered fleet by type, 2007-09

Type of carriers	Gross tons ('000)			Number of vessels		
	2007	**2008**	**2009**	**2007**	**2008**	**2009**
Dry bulk	1,096	1,194	1,137	62	69	66
Tankers	515	541	625	23	26	28
General cargo	132	131	131	19	19	19
Ferries	428	468	457	72	74	72
Other	38	38	38	6	6	6
Total	**2,209**	**2,372**	**2,388**	**182**	**194**	**191**

Note: Self-propelled vessels of 1,000 gross tons and over, including government owned ferries but excluding tugs are used in offshore supply.

Source: Canadian authorities.

199. There have been no legislative changes on cabotage during the review period. The Coasting Trade Act reserves certain commercial maritime activities to duty-paid, Canadian-registered ships in Canadian waters. This reservation includes the waters above the continental shelf, when the activities are related to the exploration, exploitation, or transportation of non-living natural resources of the continental shelf. Foreign ships may perform these activities where no Canadian-registered duty-paid ship is available or suitable to carry out the activity, and where the activity entails the carriage of passengers, an identical or similar marine service is not available. There are no limits in the Act on the number of waivers for foreign ships to engage in cabotage. A waiver application for a temporary coasting trade licence involves, *inter alia*, a search for a suitable ship by the Canadian Transportation Agency, and a "labour market test"[231] if the foreign or Canadian shipping company seeks to crew its vessel with foreign nationals. There were 125 waiver applications per year, on average, over 2006-09, and 109 applications in 2010.

[228] Department of Justice online information. Viewed at: http://laws.justice.gc.ca/eng/C-10.15/page-10.html#anchorbo-ga:l_17-gb:s__334.
[229] UNCTAD (2009) p. 53.
[230] In 2009, the Canadian fleet of tugs and barges was estimated to include 320 tugs (138,000 gross tons) and 890 barges and scows (1,017,000 gross tons).
[231] Labour Market Opinion by Human Resources and Skills Development Canada/Service Canada.

200. Canadian shipbuilding has benefited from tariff protection, which has led to an ageing fleet and appears to have adversely affected the competitiveness of Canadian shipping companies.[232] The 25% MFN tariff on foreign vessels was lifted in 2010 (Chapter IV(4)(v)).

201. To register a ship in Canada, the owner must be a Canadian citizen, permanent resident or a corporation incorporated under federal or provincial laws of Canada (regardless of the origin of capital). However, foreign corporations may also register a ship in Canada, if the ship is not already registered in another country, and if one of the following is acting with respect to all matters relating to the ship: (i) a subsidiary of the foreign corporation that is incorporated in Canada, (ii) an employee or director in Canada of a branch office of a corporation that is carrying business in Canada, or (iii) a ship management company incorporated under the federal or provincial laws of Canada.[233] Notwithstanding the above, the Minister of Transport may direct the registrar to refuse to register a vessel built outside Canada.[234] This provision was not used during the period under review. A Canadian-registered ship must be operated by Canadian officers and a Canadian crew hold Canadian certificates, and comply with Canadian safety standards (Marine Personnel Regulations). According to the authorities, flying the Canadian flag does not confer access to any subsidies or preferential port treatment. Canada does not maintain any foreign ownership restrictions on maritime shipping companies, unless the acquisition of control involves a "net benefit test" under the Investment Canada Act (Chapter II(2)).

202. The 1987 Shipping Conference Exemption Act, which exempts certain collusive practices of shipping conferences, such as common prices and sharing of capacity, from the provisions of the Competition Act, was amended in 2001 to promote more competition in liner shipping conference operations (Chapter III(4)(iii)).[235] There are no requirements for non-conference liner companies to be licensed or to file documents with the Government of Canada.

(b) Port services

203. The Canada Marine Act (CMA) of 1998 provided the basis for the restructuring of Canadian ports, to shift the financial burden of port management from taxpayers to users, and to improve the efficiency of the Canadian port system. Management and operation of Canada's 19 major ports was transferred to non-profit corporations (Canada Port Authorities), and the St. Lawrence Seaway was transferred to a not-for-profit corporation (St. Lawrence Seaway Management Corporation).[236] There are three categories of ports: (i) Canada port authorities (CPAs), (ii) regional/local ports, and (iii) remote ports.[237] CPAs are autonomous federal entities that have the power to manage federal real property or own property in their own names. They are required to be financially self-sufficient. New or revised port fees may be implemented by a CPA 60 days following the posting of public notice. Permitted activities are stipulated in their Letters Patent signed by the Minister of Transport. The CPAs may engage in leases or contracts with third parties, including foreign firms, for the provision of services within the limits of the port. There are currently 17 port authorities in Canada: the 3 British Columbia port authorities (Vancouver, Fraser River, and North Fraser) were amalgamated in January 2008 into the new Vancouver Fraser Port Authority.

[232] Ministry of Public Works and Government Services (2001).
[233] Canada Shipping Act, 2001, Part 2.
[234] Canada Shipping Act, 2001, Article 50.
[235] See WTO (2007).
[236] The St. Laurence Seaway serves a large number of international and regional ports in Canada and the United States.
[237] Regional and local ports are smaller than CPA ports, and serve regional economic and tourism needs; remote ports serve the transport needs of isolated communities.

204. The Port Divestiture Program is planned to end on 31 March 2012 but Canada is currently re-evaluating whether the programme should be renewed. The programme seeks to transfer the ownership and operation of regional/local ports from Transport Canada to other federal departments, provincial/territorial governments, or local interests, including municipalities.

205. The Canada Marine Act was amended in 2008 to allow the CPAs to apply for funding under contribution programmes for infrastructure projects, environmental sustainability, and the implementation of security enhancements. Other amendments enhanced the financial flexibility of the larger CPAs: the Government determines the maximum amount a CPA can borrow; however, since 2008, qualifying CPAs that meet the eligibility threshold of earning over Can$25 million in operating revenues in three successive years may access a commercially based borrowing regime upon request.

206. The St. Lawrence Seaway Management Corporation charges tolls to recover its costs; these are negotiated with Transport Canada and filed with the Canadian Transportation Agency. Marine navigation services and ice-breaking services for channels and ports remain under the responsibility of the Canadian Coast Guard; the fees for these services recover only a portion of the costs.

207. Numerous federal and provincial Crown corporations operate in the maritime sector (Table III.23). Pilotage is provided by four federal Crown corporations (Atlantic, Laurentian, Great Lakes, and Pacific Pilatage authorities), which are required by law to be financially self-sustaining. Pilotage charges must be fixed by the financial and operational issues within each port, to avoid cross-subsidization among ports; charges are subject to approval by the Minister of Transport.

208. There are three major government initiatives to assist Canadian ports (amongst other institutions). The Asia-Pacific Gateway and Corridor Initiative (APGCI), launched in 2006, is intended to support trade with the Asia-Pacific region and provides funding for transportation infrastructure projects (Can$1 billion). Costs are shared between the Federal Government with other levels of government and the private sector.[238] The federal contribution of selected projects is limited to 50% of eligible costs.

209. The Gateways and Border Crossings Fund is a seven-year (2007-14) infrastructure fund (Can$2.1 billion), under which CPAs are included as eligible recipients. The maximum federal grant from all sources is 50% of the total eligible project costs, or 25% in the case of public-private partnerships.[239]

210. The 2009 Budget established a new Can$4-billion Infrastructure Stimulus Fund that provides funding towards the rehabilitation or construction of provincial, territorial, municipal, and community infrastructure projects, including port and cruise-ship infrastructure. Funding is available for two years for projects built during the 2009-11 construction seasons and completed by 31 October 2011.

(c) Other

211. The Small Vessel Regulations of 1 July 2007, pursuant to the Canada Shipping Act, 2001, aim to protect the health and well-being of individuals; to promote safety in marine transportation and recreational boating; and to encourage viable, effective, and economical marine transportation,

[238] Government of Canada online information. Viewed at: http://www.pacificgateway.gc.ca/apgci.html.

[239] Infrastructure Canada online information. Viewed at: http://www.buildingcanada-chantierscanada.gc.ca/funprog-progfin/target-viser/gbcf-fpepf/gbcf-fpepf-eng.html.

commerce, and recreational boating.[240] According to the authorities, the Small Vessel Regulations will reduce the administrative burden for manufacturers and importers of small vessels by transferring to them, from Transport Canada, the responsibility for the production of compliance notices that certify small vessels are constructed according to regulated standards and by harmonizing the construction requirements for pleasure craft and non-pleasure vessels of six metres and less in length. The Small Vessel Regulations also specify processes for certification of small vessel construction that are consistent with those of United States and the European Union.

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

213. Under the NAFTA, Canada and Mexico agreed not to introduce more restrictive measures affecting international maritime transport other than those already in place at the time of the signing of the agreement. Canada has an agreement with China to strengthen cooperation in maritime transport, which was updated by a Protocol that entered into force in December 2009. Canada has not negotiated any other bilateral maritime agreements.

(8) PROFESSIONAL SERVICES

(i) Legal services

214. Canada's, legal profession is self-governing and comprises lawyers and notaries (in Québec). The professional practice of legal services is conditional on membership in one of the 14 independent bodies, commonly known as law societies, mandated under provincial/territorial legislation to regulate their respective members in the "public interest".[241] As at 31 December 2007, Canada's 11 provincial and 3 territorial law societies had approximately 79,000 practicing members; non-residents accounted for 3.9% of the total.[242]

215. Law societies set their own admission[243] and professional conduct[244] standards; relevant mandatory fee structures, as well as residency, training, and examination process requirements vary

[240] Notified to the TBT Committee in WTO document G/TBT/N/CAN/264, 28 May 2009. The regulations apply to pleasure craft of all sizes (including human-powered pleasure craft), non-pleasure vessels of not more than 15 gross tonnage (except passenger vessels that carry more than 12 passengers), and human-powered non-pleasure vessels of all sizes.

[241] The number of regulators reflects Canada's sub-federal jurisdictions, as well as the duality of the civil law tradition respected in Québec and the common law tradition that governs all other provinces and territories. In 11 provinces and territories the governing body that regulates lawyers is known as a law society, whereas in Nova Scotia the regulator is called the barristers' society. The province of Québec has two regulators: the Barreau du Québec regulates lawyers, and the Chambre des notaires du Québec regulates notaries.

[242] The statistics are sometimes provided in approximate numbers (Federation of Law Societies of Canada online information. Viewed at: http://www.flsc.ca/en/lawSocieties/statisticsLinks.asp).

[243] The law societies have recently approved a report from a task force of the Federation setting the criteria for approved Canadian common law degrees. The criteria should be implemented in 2015. The Federation is also working on uniform national standards for admission to the profession in Canada.

across sub-federal jurisdictions. In general, a law degree from a recognized Canadian university is a prerequisite for membership in a Canadian law society.[245] Members of the law societies of Alberta, Saskatchewan, and Prince Edward Island must be either Canadian citizens or permanent residents; the law society of Newfoundland and Labrador requires its members to be residents of Canada.[246] Maintaining a status of good standing in a Canadian law society is typically contingent upon the payment of compulsory fees, such as admission and membership fees, as well as contributions to the liability insurance plan and the compensation fund administered by the relevant law society.[247] In case of non-compliance with its professional code of conduct, a law society may impose fines or conditions on the member's practice, suspend membership, or disbar the member.

216. Consultations with the federal government are conducted through an umbrella organization, the Federation of Law Societies of Canada (FLSC), which has no regulatory functions.[248] Through its National Committee on Accreditation, the FLSC assesses and certifies the credentials of internationally trained individuals who wish to apply for membership in a Canadian law society (other than in Québec where the Barreau du Québec and the Chambre des Notaires conduct their own assessments).[249] The Committee also evaluates qualifications from Québec for the purpose of entry into the bars of the common law provinces.

217. The National Mobility Agreement, the Territorial Mobility Agreement and the Québec Mobility Agreement provide for the mobility of legal professionals across provinces and territories.[250] The National Mobility Agreement sets out the principles that govern both the temporary (for a maximum of 100 days) and permanent transfers of lawyers among Canada's law societies, except the 3 territorial societies and the Chambre des notaires du Québec. Since June 2008, the Barreau du Québec allows lawyers from other Canadian jurisdictions to work in Québec as Canadian Legal Advisors, with the right to practise federal law, the law of their home jurisdiction, and public international law. The Québec Mobility Agreement, signed in March 2010, paves the way for implementation of reciprocal mobility for members of the Barreau in all other provinces and the territories, on the basis of the Canadian Legal Advisor regime.[251] Under the Territorial Mobility

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[244] The law societies of Prince Edward Island, Newfoundland and Labrador, the Yukon and the Northwest Territories have adopted the Code of Professional Conduct of the Canadian Bar Association. In 2009, the Federation of Law Societies of Canada adopted a Model Code of Professional Conduct, with the objective of bringing greater consistency to the professional conduct rules governing lawyers in Canada. The Model Code has already been implemented by the Law Society of Manitoba, and the law societies of Alberta and British Columbia are in the process of doing the same.

[245] Canadian law schools, except those in Québec, typically require their prospective students to hold a recognized Bachelor degree (Federation of Law Societies of Canada online information. Viewed at: http://www.flsc.ca/en/lawSocieties/lawSocieties.asp).

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

[247] The liability insurance plans administered by law societies provide for coverage of at least Can$1 million for each claim; the Barreau du Québec provides for coverage of Can$10 million for each claim.

[248] The Canadian Bar Association, a voluntary organization provides a voice on behalf of the legal profession; it has approximately 37,000 members (CBA online information. Viewed at http://www.cba.org/CBA/about/main/).

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

[250] In 2007, there were 434 permanent and 252 temporary transfers between law societies (Federation of Law Societies of Canada online information. Viewed at: http://www.flsc.ca/en/lawSocieties/statisticsLinks.asp).

[251] This agreement has been implemented by the law societies of British Columbia, the Northwest Territories, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Prince Edward Island. According to the authorities it will be implemented in New Brunswick and Nunavut by the end of April 2011 and in the Yukon by end May 2011.

Agreement, provincial law society members wishing to practise in the northern territories are granted permanent, but no temporary, mobility (transfer) rights.[252]

218. Foreign lawyers may be licensed as foreign legal consultants to provide legal advice only on the law they are permitted to practise in their home jurisdiction and, in Québec and British Columbia, on public international law. Ten law societies have adopted rules governing the issuance of permits/licences for foreign legal consultants; local presence is not required under any of these regimes. To practise as a foreign legal consultant, foreign lawyers must apply for a permit from the relevant jurisdiction. Requirements vary, although there are a number of common elements.[253] The three territorial law societies and the Chambre des notaires du Québec have not yet adopted rules enabling foreign lawyers to act as foreign legal consultants. International law firms may establish an office in Canada, provided that the lawyers employed in that office have been licensed by the relevant law society to practise as foreign legal consultants. As at 31 December 2007, there were 105 licensed foreign legal consultants in Canada.

219. Under the GATS, Canada made binding commitments on its regimes in existence as at December 1994 for legal services provided by foreign legal consultants in the provinces of British Columbia, Ontario, and Saskatchewan.[254] When establishing in Canada, foreign legal consultants must take the form of a sole proprietorship or partnership. As specified in Canada's horizontal commitments, foreign legal consultants may enter Canada temporarily with a pre-arranged service contract and stay up to 90 days or the time necessary to complete the service contract, whichever is less, on the condition that they have obtained the appropriate provincial licence.[255] Under NAFTA, representatives of the legal professions of Canada, the United States, and Mexico have negotiated an accord containing recommendations and a model rule on the regulation of foreign legal consultants. Although negotiations were concluded in 1998, the accord has not been implemented.

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[252] The authorities note that the Territorial Mobility Agreement is likely to be renewed beyond 2011.

[253] Applicants are generally required to: have three years of experience in their home jurisdiction or agree to work under the direct supervision of a foreign legal consultant from the same jurisdiction who satisfies the experience requirement; be of good character; provide proof that they are a member in good standing with the legal profession in their home jurisdiction; undertake not to handle trust monies in the jurisdiction in which they are seeking to practise; and carry professional liability insurance or a bond in an amount reasonably comparable to liability insurance required of lawyers in the jurisdiction in which they wish to practise. There is no requirement for validation by the National Committee on Accreditation of the credentials of foreign lawyers seeking to practice as foreign legal consultants.

[254] Statistical information about such applications for accreditation can be found at: http://www.flsc.ca/en/foreignLawyers/stats.asp.

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

(ii) Accounting services

220. The three main professional accountancy designations legally recognized in Canada are: Chartered Accountant (CA), Certified Management Accountant (CMA), and Certified General Accountant (CGA). At end March 2010, there were some 76,296 CAs, 42,050 CMAs, and 48,000 CGAs.[256] Each designation is regulated and protected by provincial legislation, and is represented at the national level by its respective national professional body.[257] To provide accountancy services as a CA, CMA or CGA, membership of one of the registered professional bodies in the relevant province is essential: the educational and experience requirements vary from one jurisdiction to another.

221. Some provinces restrict the provision of public accounting services to a particular designation. According to the authorities, accountants within Canada benefit from the labour mobility provisions of the Agreement on Internal Trade (AIT) (Chapter II(1)). In 2001 and 2005, panels convened under the AIT dispute resolution mechanism found that public accounting regulations in Ontario and Québec impeded internal trade and labour mobility, and recommended that certain changes should be made. Since then Québec has amended its legislation to remedy the situation. However, as not all designations enjoy the same mobility in Ontario, Manitoba initiated a dispute against Ontario on behalf of CGA Canada in November 2010.

222. Under the GATS, Canada has made commitments on accounting, auditing, and book-keeping services. The cross-border provision of auditing services may be restricted by citizenship (in Manitoba and Québec) and permanent residency requirements for the accreditation of auditors (in Alberta and Ontario). There are scheduled limitations with respect to permitted forms of commercial presence in certain provinces[258]; as well as requirements that auditors' offices located in certain provincial jurisdictions be under the management of a resident.[259] In Manitoba, the accreditation of licensed public accountants is scheduled as being subject to a residency requirement.[260] The authorities note that in practice there are no longer any residency requirements in Alberta and Ontario, and Manitoba does not accredit licensed public accountants.

223. Mutual recognition agreements (MRAs) for CA qualifications have been signed by the CICA with professional accounting bodies in England and Wales; Scotland; Ireland; South Africa; New Zealand; Australia; Hong Kong, China; Belgium; and France. There is also a trilateral MRA with Mexico and the United States. CMA Canada has established MRAs with two professional accounting associations in the United Kingdom[261] and has an MRA with CPA Australia. CGA-Canada has signed an MRA with the Association of Chartered Certified Accountants, an international accountancy body.

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

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

[258] Under its GATS commitments the provinces of Saskatchewan, Newfoundland and Labrador, Nova Scotia, Manitoba, and Ontario may require auditors to establish a commercial presence in the form of a sole proprietorship or partnership.

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

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

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

(iii) Architectural and engineering services

224. The engineering and architecture professions are regulated at the sub-federal level. The practice of either profession is subject to licensing by the relevant provincial/territorial association of architects or engineers. Licences are valid only for the province or territory in which they have been issued; licensing requirements, including education and professional experience prerequisites, vary across jurisdictions. In some provinces, an authorization or a Certificate of Practice is also required, along with professional liability insurance, in order to offer services to the public. In principle, the mobility of professional engineers and architects between Canada's sub-federal jurisdictions is ensured under the AIT (Chapter II(1)). The Canadian Architectural Licensing Authorities (formerly the Committee of Canadian Architectural Councils) is the national coordinating body of provincial/territorial associations on regulatory matters, including licensing. Engineers Canada (formerly Canadian Council of Professional Engineers) is the national organization of the provincial and territorial associations that regulate the practice of engineering; it serves its members through national programmes, policies, and guidelines.

225. Foreign architects wishing to obtain a licence must have their academic qualifications certified by the Canadian Architectural Certification Board, which also serves as the accrediting body for Canadian schools of architecture. The certification is a mandatory first step towards licensure and registration for all graduates from professional university programmes in architecture.[262] Foreign architects may also apply for a temporary licence to practise in collaboration with a registered architect of the province. Licences are for a specific project and must be renewed after one year. There are no residency requirements to obtain an architectural licence.

226. Foreign engineers wishing to obtain a licence must have their academic and professional experience credentials assessed by the relevant provincial engineering association. Temporary licences may be obtained in Québec (where the licence is project specific), Ontario (where a licensed collaborator must be named), and in Manitoba. Neither citizenship nor permanent residency are required for permanent licensure in any of the provinces or territories; all jurisdictions grant full practicing rights to individuals who meet their requirements, regardless of residency status.

227. Under its GATS commitments, Canada requires foreign architects to establish a commercial presence in the form of a sole proprietorship or partnership. Canada's GATS commitments for architectural services also stipulate residency and citizenship requirements in some provinces for both cross-border supply and presence of natural persons.[263] Canada imposes no limitations on the legal form of establishment or ownership of an engineering firm by foreigners; residency, citizenship, or commercial presence requirements affect market access in eight provinces.[264] Canada allows foreign architects and engineers to enter the country temporarily and stay up to 90 days or the time necessary to complete the contract, whichever is less.

[262] Certification fees depend on the mode by which the applicant satisfies the Canadian education standard for admission to provincial architectural associations in Canada. For the current fee schedule, see CACB online information. Viewed at: http://www.cacb-ccca.ca/index.cfm?Voir=sections&Id=10414&M=1358&Repertoire_No= 660386109.

[263] A residency requirement is in place in Nova Scotia, New Brunswick, and Newfoundland; a citizenship requirement is applied in Québec.

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

228. Several mutual recognition agreements (MRAs), signed by the different regulatory bodies, cover the architecture and engineering professions. An agreement under NAFTA exists for engineers.[265] The Canadian Council for Professional Engineers has also negotiated MRAs with professional engineering bodies in Australia, France, Ireland, and Hong Kong, China.

229. For architects, a Canada-United States Inter-recognition Agreement, signed by professional licensing bodies in 1994, establishes grounds for reciprocity to 55 jurisdictions in the United States and 11 jurisdictions in Canada. The jurisdictions of Yukon and Nunavut have not signed the agreement as they do not have a regulatory authority in place. A Tri-National Mutual Recognition Agreement for International Practice between Canada, the United States and Mexico was finalized and ratified by all parties in mid 2010; it provides for the recognition of credentials between the three countries; a pilot process will be conducted in late 2011.

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

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