# CANADA

## TRADE SUMMARY

U.S. investment in Canada, which is a major contributor to the U.S. non-goods trade surplus with Canada, is concentrated in manufacturing, natural resources, and the Canadian financial sector. The U.S. trade deficit with Canada was $54.7 billion in 2003, an increase of $6.5 billion from $48.2 billion in 2002. U.S. goods exports in 2003 were $169.5 billion, up 5.3 percent from 2002. U.S. imports from Canada were $224.2 billion in 2003, an increase of $15.1 billion from 2002. Canada is the largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Canada were $24.3 billion in 2002 (latest data available), and U.S. imports were $18.4 billion. Sales of services in Canada by majority U.S.-owned affiliates were $51.2 billion in 2001 (latest data available), while sales of services in the United States by majority Canada-owned firms were $47.9 million.

### A Trading Relationship Based on Free Trade

The North American Free Trade Agreement (NAFTA) came into force on January 1, 1994 and replaced a bilateral free trade agreement implemented in 1989. The bilateral phase-out of tariffs between Canada and the United States was completed on January 1, 1998, except for tariff rate quotas (TRQ) that Canada has not eliminated on certain supply-managed agricultural products. However, Canada still maintains some non-tariff barriers of concern at both the federal and provincial levels, impeding access to the Canadian market for U.S. goods and services.

## IMPORT POLICIES

### Supply-Managed Products

Canada closely restricts imports of certain domestic "supply-managed" agricultural products such as dairy products, eggs and poultry through the use of TRQs (tariff rate quotas). This practice severely limits the ability of U.S. producers to increase exports to Canada above the TRQ.

Dairy: Over a number of years, the United States has argued before the WTO that Canada's dairy programs provided export subsidies to its dairy processors and farmers above the level that Canada committed to in the WTO. In its latest ruling in December 2002, a WTO Appellate Body found that Canada's system of subsidizing exports of dairy products continue to violate its WTO commitments. The United States and Canada reached agreement in May 2003 to comply with that report. Canada agreed to end all exports to the United States of subsidized dairy products and to bring all dairy exports to third countries within WTO export subsidy limits, both by August 1, 2003. To accomplish this, by the end of April 2003 all Canadian provinces had imposed regulations on all dairy production, including production by producers who do not hold domestic marketing quotas.

Margarine: The Province of Quebec continues to apply coloring restrictions on dairy margarine. In addition, provincial restrictions on the marketing of butter/margarine blends and imitation dairy products have served to limit and, in certain cases, prohibit the sales of these products in many provinces. The provinces of Ontario, Manitoba and Saskatchewan are challenging Quebec's provincial coloring regulations.

Cheese snack foods: Canada remains unwilling to resume duty-free trade in cheese snack foods between the United States and Canada. Prior to 1999, cheese snack foods were traded duty-free between the U.S. and Canada. Canada ceased issuing duty-free import permits, effective September 1, 2001, and initiated a tariff of 245 percent on U.S. exports of breaded cheese sticks to Canada. Canada was responding to a

1999 U.S. Customs Service reclassification of cheese sticks, which subjected imports to a TRQ and over-quota tariff. After USTR completed consultations with Congress on November 7, 2001, USTR stated and it was prepared to request that the President issue a Proclamation to return duty- and quota-free treatment to Canadian cheese sticks, provided Canada commits to providing the same tariff treatment for imports of similar U.S. cheese snack foods. In early January 2002, the Department of Foreign Affairs and International Trade informed USTR that Canada had no intention of reducing its duties or entering into negotiations with the United States.

Processed egg products: The Canadian Egg Marketing Agency maintains a dual pricing scheme for processed egg products. Under the regime, the domestic Canadian price for shell eggs is maintained at a level substantially above the world price. Producers are also assessed a levy on all eggs sold and a portion of the levy is used to subsidize exports of eggs. This practice artificially increases Canadian exports of egg products at the expense of U.S. exporters.

Fresh Fruits and Vegetables: Canada prohibits imports of fresh or processed fruits and vegetables in packages exceeding certain standard package sizes unless the Government of Canada grants a ministerial easement or exemption. To obtain an easement, Canadian importers must demonstrate that there is an insufficient supply of product in the Canadian domestic market. The bulk restrictions do not apply to intra-provincial shipments. These restrictions apply to all fresh and processed produce in bulk containers and have a particularly negative impact on U.S. potatoes, apples and blueberries. In addition, Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruit and vegetables in the absence of a pre-arranged buyer.

**Restrictions on U.S. Grain Exports**

U.S. access to the Canadian grain market has been limited due in part to Canadian varietal controls. Canada requires that each variety of grain be registered and be visually distinguishable. Because U.S. varieties may not be visually distinct, they are not registered in Canada. As a result, U.S. wheat is being sold in Canada as "feed" wheat at sharp price discounts compared to the Canadian varieties. The Canadian Grain Commission (CGC) is currently in the process of introducing a new system called Variety Eligibility Declaration, or VED, which is designed to monitor and control the type of grain that enters the grain handling and transportation system. After extensive consultations on the operational details of the VED system, the CGC is close to making its proposals public.

**Wine and Spirits**

Market access barriers in several provinces continue to hamper exports of U.S. wine and spirits to Canada. These market access barriers include "cost of service" mark-ups, listings, reference prices and discounting distribution and warehousing policies.

**The Canadian Wheat Board and State Trading Enterprises**

The Canadian Wheat Board (CWB) continues to enjoy government-sanctioned monopoly status as well as other privileges that restrict competition. In February 2002, the Bush Administration announced a four-prong plan, which it has pursued aggressively over the past two years.

First, the plan called for the examination of a possible WTO challenge. On March 6, 2003, USTR announced it would seek formation of a World Trade Organization dispute settlement panel to challenge the monopolistic wheat trading practices of the Canadian Wheat Board (CWB) and the unfair and burdensome requirements that the Canadian grain handling system places on imported grain, including U.S. grain. The dispute also raised certain discriminatory aspects of the rail transportation system for

grain in Canada. The United States argued that these unfair practices put American farmers at a disadvantage and undermine the integrity of the international trading system.

A WTO panel was established on March 31, 2003. An interim panel report was issued to the parties in December 2003 and the final report is scheduled to be issued to the public in early April 2004.

Second, in response to petitions filed by the North Dakota Wheat Commission, the Administration recently completed its antidumping and countervailing duty investigations on imports of certain durum and hard red spring wheat from Canada. While the Department of Commerce found that imports of durum and hard red spring had been dumped and unfairly subsidized, the International Trade Commission found that while imports of hard red spring wheat did materially injury the U.S. industry, imports of durum wheat did not. Therefore, antidumping and countervailing duty orders were issued only on imports of hard red spring wheat, with an antidumping margin of 8.86 percent and a subsidy rate of 5.29 percent.

Third, USTR announced that it would work with the U.S. industry to identify impediments to U.S. wheat entering Canada. The elements of the WTO dispute regarding Canada's grain segregation requirements and rail transportation rules are a direct result of those efforts.

Fourth, the United States committed to seek reform of state trading enterprises through the adoption of new rules in the WTO agriculture negotiations, which are part of the Doha Development Agenda launched in November 2001. The United States is aggressively pursuing this negotiating objective. In particular, the United States has proposed eliminating export monopolies so that any producer, distributor, or processor can export agriculture products. The United States has also proposed ending special financial privileges which are granted to state traders and expanding their WTO transparency obligations.

## STANDARDS, TESTING, LABELING AND CERTIFICATION

### Restrictions on Fortification of Foods

Canadian requirements for foods fortified with vitamins and minerals have created a costly burden for some American food manufacturers who export to Canada. Health Canada restricts marketing of breakfast cereals and other products, such as orange juice, that are fortified with vitamins and/or minerals at certain levels. The current regulatory regime requires that products such as calcium-enhanced orange juice be treated as a drug, and forces manufacturers to label vitamin and mineral fortified breakfast cereals as "meal replacements." These standards impose costs on manufacturers who are forced to make separate production runs for the U.S. and Canadian markets.

A U.S. company may request a Temporary Marketing Authorization Letter (TMAL) from Health Canada which may grant a 2-3 year marketing authorization when the benefits of a product are clear, but the potential risks to a consumer are still under study. However, U.S. companies have encountered difficulties with consistency and transparency in this process, and many breakfast cereals are still prohibited from entering Canada without extensive re-labeling and without incurring associated marketing expenses, to re-brand breakfast cereal as, for example, "meal replacements." In May 2003, Health Canada put off a final decision on a TMAL for breakfast cereal pending the release of a study on Dietary Reference Intakes (DRIs) by the U.S. Institute of Medicine (IOM). The final report, which was released on December 11, 2003 and is currently being reviewed by both governments and interested parties, provides guiding principles for fortifying foods rather than explicit recommendations of fortification levels. A principal message contained in the report is that additional research will be required to determine the scientific justification for discretionary fortification. The need for further research provides the justification for the TMAL, whose very purpose is to generate information in support of the Food and Drug Regulations.

# CANADA

## EXPORT SUBSIDIES

### Softwood Lumber

The 1996 U.S.-Canada Softwood Lumber Agreement expired on March 31, 2001. This bilateral agreement was put in place to mitigate the effects of subsidies in several Canadian provinces. Upon expiration of the Agreement, the U.S. lumber industry filed antidumping and countervailing duty petitions regarding Canadian softwood lumber. Preliminary investigations found both dumping and subsidies, and led to the imposition of preliminary duties. On March 22, 2002, the U.S. Department of Commerce announced its final, company-specific antidumping duties and a countrywide (except for the Maritime provinces) countervailing duty determination. On April 26, 2002, the Commerce Department announced amended final antidumping rates ranging from 2.18 percent to 12.44 percent and an amended final countervailing duty rate of 18.79 percent.

Canada is challenging the underlying Commerce Department and ITC investigations in the WTO and NAFTA.

A WTO panel reviewing Commerce's final countervailing duty determination handed the United States a victory in August 2003 on two key issues: Canadian provinces' sale of timber from public lands can constitute a subsidy under the WTO Subsidies Agreement; and U.S. laws governing reviews of countervailing duty orders are consistent with the WTO Subsidies Agreement. The panel found fault with certain aspects of Commerce's calculation of the subsidy benefit, but its adverse findings were significantly narrowed by the Appellate Body in a January 2004 ruling that found in favor of the United States on key elements of the dispute. A NAFTA dispute settlement panel also found in favor of the United States on the key issues in the countervailing duty case. The NAFTA panel remanded the case to Commerce for reconsideration of the benefit calculation methodology. Commerce filed its remand redetermination with the NAFTA panel on January 12, 2004, and a ruling on that redetermination is expected in April 2004.

Another WTO panel is considering Canada's challenge to Commerce's initiation and conduct of its investigation into dumping of softwood lumber by Canadian producers. Public release of the panel's report is expected in April 2004. A NAFTA panel reviewing the same dumping case remanded the Commerce's determination in July of 2003 on three calculation issues. Commerce issued a remand redetermination in October 2003. The NAFTA panel is expected to rule on that redetermination in May 2004.

A third WTO panel is considering Canada's challenge to the International Trade Commission's May 16, 2002 determination that a U.S. industry was threatened with material injury by reason of dumped and subsidized softwood lumber imports from Canada. The panel's report was released in March 2004. However, as a result of NAFTA litigation described below, the ITC determination at issue in the WTO case has been replaced. Canada brought a parallel challenge to the ITC's determination under NAFTA. The NAFTA panel issued a decision in early September, in which it remanded the matter in part to the ITC for further action consistent with its decision. On December 15, 2003, the ITC filed a remand determination, which is now being reviewed by that panel. Thus, as a result of the NAFTA litigation, the determination reviewed by the WTO panel is no longer in existence.

Negotiations in 2003 to find a durable solution as an alternative to the cycle of trade cases and litigation progressed significantly and narrowed differences in several areas. The negotiations focused on two objectives: agreement as to the market-oriented reforms to Canadian provincial forestry practices that would be sufficient to enable the Department of Commerce to revoke the countervailing duty order on a

province-specific basis; and an interim measure to be imposed by Canada that would both stabilize the market pending the completion of reforms and provide an effective substitute for the deposits currently being collected under the antidumping and countervailing duty orders.

At the end of 2003, U.S. and Canadian negotiators agreed to present to their respective stakeholders a proposal for an interim measure. This proposal proved to be unacceptable to Canadian stakeholders. The Department of Commerce continues to work on a Policy Bulletin that is intended to provide a roadmap for market-based reforms of Canadian provincial forestry systems.

**Technology Partnerships Canada**

Technology Partnerships Canada (TPC) is a Canadian Government program that supports the research and development activities of selected industries. Established in 1996, TPC provides funding for pre-competitive research and development activities for companies incorporated in Canada that operate in three strategic areas, including aerospace and defense. Funding covers approximately 25 percent to 30 percent of a project's total costs, but may be significantly higher. Applicants must demonstrate that they have the capabilities to perform the R&D and that the project proposal has economic and commercial merit. To date, the program has made well over CN$2.0 billion in funding commitments for over 500 projects, of which about two-thirds have been disbursed. Publicly available information indicates that the aerospace and defense industry receives the largest amount of funds under the TPC. The U.S. government will continue to monitor this program and its consistency with WTO provisions.

**Pharmaceuticals**

The U.S. pharmaceutical industry has complained about the use of international price comparisons and the establishment of price ceilings on patented medicines in Canada and encourages Canada and the Patented Medicine Prices Review Board (PMPRB) to move towards a more market-based review system. The United States is monitoring Canadian policies with respect to patent and data protections. Canadian patent protection has improved following two WTO cases in which Canada agreed to, among other things, amend its patent law to provide 20-year patent protection to all patents filed before October 1989. Canada also has eliminated its regulations which previously allowed generic manufacturers to stockpile pharmaceuticals before a patent expired. However, Canada's compliance with its TRIPS and NAFTA obligations continues to be a source of concern. Although Canada has statutory data protection, several judicial rulings have cast doubt on how well these protections are being enforced as required by TRIPS Article 39.3 and NAFTA Article 1711. Canadian authorities allow parties other than the right-holder effectively to gain marketing approval in direct reliance on protected confidential data and it appears Canada may be in violation of TRIPS Article 39.3. In addition to this perceived discrepancy between the standard applied by Canadian courts and that provided under the TRIPS and the NAFTA, Canada apparently is failing to apply its "linkage regulations" effectively. Such regulations require that Health Canada determine if the marketing of generic pharmaceuticals infringes on existing name-brand patents.

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Canada is a member of the World Intellectual Property Organization (WIPO), and adheres to a number of international agreements, including the Paris Convention for the Protection of Industrial Property (1971), the Berne Convention for the Protection of Literary and Artistic Works (1971), and the 1952 Universal Copyright Convention (UCC). Canada is also a signatory of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (together the WIPO Treaties), which set the standards for intellectual property protection in the digital environment, but has not yet ratified either treaty.

To date, Canada has not introduced draft legislation that would ratify the WIPO treaties. While Canada was a strong supporter of both treaties, which led to it becoming a signatory, intense lobbying by Canadian broadcasters and provincial education ministers has prevented Canadian ratification. In the legislated five-year review of the 1997 Copyright Act, published in October 2002, Canada listed ratification of the WIPO Treaties as the top copyright priority. The Parliamentary committee charged with providing recommendations for copyright reform commenced its review in October 2003. The Parliamentary committee plans to hold extensive consultations and is not expected to finalize its recommendations until Fall 2004.

Canada's Copyright Act contains two provisions under which Canada applies reciprocal rather than national treatment. The first provision is for the payment of a neighboring rights royalty to be made by broadcasters to artists. Under Canadian law, those payments are only guaranteed to artists from countries that are signatories of the 1961 Rome Convention. The United States is not a signatory of the Convention, and Canadian authorities have still not granted U.S. artists national treatment in the distribution of these royalties. The second provision is for the payment of a levy, dubbed the private copy levy, by manufacturers and importers of blank recording media to artists from countries that provide an equivalent payment to Canadian artists. The levy covers analog and digital tapes and diskettes, and was expanded in December 2003 to include MP3 players. Canada's copyright law stipulates this reciprocity criterion in the distribution of the private copy levy to foreign artists. The United States does not impose a levy on analog tape, only on digital audio recording media, with proceeds distributed to applicable artists, including Canadians.

The United States regards Canada's reciprocity requirement for both the neighboring rights royalty and the blank tape levy as denying national treatment to U.S. copyright holders. Consequently, USTR has placed Canada on its Special 301 "Watch List" for the past four years. While Canada may grant some or all of the benefits of the regime to other countries, if it considers that such countries grant or have undertaken to grant equivalent rights to Canadians, Canada has yet to grant these benefits with regard to the United States. A growing coalition of technology and retail companies advocating for the elimination of the private copy levy have successfully added the levy to the list of copyright issues that will be examined as a part of the ongoing Parliamentary review of the Copyright Act.

Canada's border enforcement measures have been the target of criticism U.S. intellectual property owners who express concern with the low rate of prosecution arising from counterfeit goods seizures. Deficiencies in border enforcement are compounded by the failure, or lack of resources, of law enforcement authorities to conduct follow-up investigations of many illegal import cases.

## SERVICES BARRIERS

### Audiovisual and Communications Services

In 2003, the Government of Canada amended the *Copyright Act* to ensure that Internet retransmitters are ineligible for the compulsory retransmission license until the Canadian Radio-television and Telecommunications Commission (CRTC) licenses them as distribution undertakings. Internet "broadcasters" are currently exempt from licensing. In 2003 the CRTC confirmed its intention to leave this exemption unchanged.

The Broadcasting Act lists among its objectives, "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the Canadian Radio Television and Telecommunications Commission (CRTC), is charged with implementing this policy. The CRTC requires that for Canadian conventional, over-the-air broadcasters, Canadian programs make up 60 percent of television broadcast time overall and 50 percent during evening hours (6 p.m. to midnight). It

also requires that 35 percent of popular musical selections broadcast on radio should qualify as "Canadian" under a Canadian government-determined point system. For cable TV and direct to home (DTH) broadcast services, a preponderance (more than 50 percent) of the channels received by subscribers must be Canadian programming services. For other services, such as specialty television and pay audio services, the required percentage of Canadian content varies according to the nature of the service.

The CRTC also requires that the English and French television networks operated by the Canadian Broadcasting Corporation (CBC) not show "popular foreign feature movies" between 7 pm and 11pm. The only non-Canadian films that maybe broadcast during that time must have been released in theaters at least two years previously, and not be listed in the top 100 of Variety Magazine's top grossing films for at least the previous ten years.

Under previous CRTC policy, in cases where a Canadian service was licensed in a format competitive with that of an authorized non-Canadian service, the CRTC could revoke the license of the non-Canadian service, if the new Canadian applicant so requested. This policy led to one "de-listing" in 1995, and has deterred potential new entrants from attempting to enter the Canadian market. In July 1997, the CRTC announced that it would no longer be "disposed" to take such action. Nonetheless, Canadian licensees may still appeal the listing of a non-Canadian service which is thought to compete with a Canadian pay or specialty service, and the CRTC will consider removing existing non-Canadian services from the list if they change format to compete with a Canadian pay or specialty service.

**Radiocommunication Act**

One of the foremost concerns of the Canadian Cable Television Association (CCTA) is the spread of unauthorized use of satellite television services. Industry findings, extrapolated on a national basis, established that 520,000 to 700,000 households within cabled areas use unauthorized satellite services. Any survey of the incidence of satellite theft outside cabled areas would add to these numbers.

This survey, combined with information obtained through Canadian film producers' investigations and related Internet newsgroups, supports the conclusion that there are approximately 1,000,000 illegal users of U.S. satellite systems in Canada, resulting in a significant annual loss to the legitimate satellite industry. Of this number of illegal users, it is estimated that over 90 percent are involved in the "black market" (i.e., signal theft without any payment to U.S. satellite companies), with the remaining 10 percent subscribing via "gray market." "Grey market" signal theft is less attractive at current exchange rates because of the unfavorable currency conversion in U.S. dollars. These survey results have led the Motion Picture Association to recalculate total losses to the U.S. motion picture industry due to signal theft in Canada. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Canada are estimated to be $122 million in 2002.

Late in 2003, the GOC introduced amendments to the Radio Communication Act which would significantly increase penalties for signal theft and for the sale of unauthorized hardware. However, this legislation expired at the end of the Parliamentary session in November 2003 but has been reintroduced in substantially the same form in the current session.

**Basic Telecommunications Services**

Under the terms of the WTO Agreement on Basic Telecommunications Services, Canada's commitments permit foreign firms to provide local, long distance, and international services through any means of technology, on a facilities or resale basis. However, Canada retained a 46.7 percent limit on foreign ownership for all services except fixed satellite services and submarine cables. In addition to the equity

limitations, Canada also retained a requirement for "Canadian control" of basic telecommunications facilities which stipulates that at least 80 percent of the members of a board of directors must be Canadian citizens. These restrictions prevent global telecommunications service providers from managing and operating much of their own telecommunications facilities in Canada. In addition, these restrictions deny foreign providers certain regulatory advantages only available to facilities-based carriers (e.g., access to unbundled network elements and certain bottleneck facilities). In April 2003 the House of Commons Committee on Industry recommended the complete removal of these restrictions.

Canada has revised its universal service system. Previously, contributions to universal service funds were based upon on a per-minute assessment. This system potentially overcompensated incumbent local suppliers, who also competed in the long distance sector. The Canadian regulator, CRTC, established rules for a more competition-neutral collection system as of January 1, 2001. On May 30, 2002, the CRTC released its price caps decision, which cut contribution rates by 10 percent to 20 percent. This new regime extends through 2006.

As a consequence of foreign ownership restrictions, U.S. firms' presence in the Canadian market as wholly U.S.-owned operators is limited to that of a reseller, dependent on Canadian facilities-based operators for critical services and component parts. This limits those U.S. companies' options for providing high quality end-to-end telecommunications services as it cannot own or operate its own telecommunications transmission facilities.

**Internet Services**

A recent Canadian Federal Court of Appeals ruling concerning "caching" has the potential to stifle the development of a vibrant Internet services market in Canada. Caching is a way for Internet Service Providers (ISPs) to store content in a local server to enable users to retrieve it quickly without having to access such content from a distant host. It is a more efficient means by which ISPs provide access to data. The Court ruling essentially requires the ISPs to pay royalties if they cache copyrighted materials. The case is pending before the Supreme Court of Canada, which heard arguments in December 2003. While this case would not lead to the application of tariffs on peer-to-peer file sharing, it could nevertheless impact the free flow of Internet traffic, and Internet usage, and hinder the growth of electronic commerce.

**Barriers to Film Exports**

The classification of theatrical and home video product distributed in Canada is within the exclusive jurisdiction of the provinces. There are six different provincial or regional classification boards to which MPA members must submit product destined for theatrical release. Most of these boards also classify product intended for home video distribution.

As a control device, and to display a video's Québec classification, the Québec Cinema Act requires that a sticker be acquired from the Régie du Cinéma and attached to each pre-recorded video cassette and DVD at a cost of C$0.40 per unit. The Québec government proposes to reduce the sticker cost to C$0.30 for English and French versions of films dubbed into French in Québec. In addition to the direct cost of acquiring the stickers, there are the administrative costs of attaching stickers to each unit and removing them from all returns, plus the per-title, per-distributor administrative fee of C$55.00 charged by the Régie.

In an effort to create a uniform, consumer-friendly classification system that more readily comports with national advertising campaigns and other practical concerns of the industry, the Canadian video distribution industry has initiated a voluntary national classification system for works distributed on videocassette and DVD. Under this system, a film's national rating is determined by averaging its

provincial ratings and is displayed on the packaging. While some provinces accept the average national classification for the purpose of providing consumer information on pre-recorded video material, three of the provincial/regional boards - Manitoba, Québec, and the Maritime Provinces (New Brunswick, Nova Scotia and Prince Edward Island) - also require that their own classification be displayed.

The lack of unanimous acceptance of the voluntary national classification, and the negative precedent established by the Québec stickering regime continue to create significant consumer confusion and expense.

## INVESTMENT BARRIERS

### General Establishment Restrictions

Under the Investment Canada Act, the Broadcasting Act, the Telecommunications Act and standing Canadian regulatory policy, Canada maintains restrictions that inhibit new or expanded foreign investment in the energy, publishing, telecommunications, transportation, film, music, broadcasting, and cable television sectors.

### Investment Canada Act

The Investment Canada Act (ICA) is intended to regulate foreign investment in Canada. The Government of Canada reviews the direct or indirect acquisition by a non-Canadian of an existing Canadian business of substantial size (as defined below). It also reviews the specific acquisition of an existing Canadian business or establishment of a new Canadian business by a non-Canadian in designated types of business activity relating to Canada's culture, heritage or national identity (as described below) where the federal government has authorized such review as being in the public interest. The Government of Canada must be notified of any investment by a non-Canadian to:

- establish a new Canadian business (regardless of size); or
- acquire direct control of any existing Canadian business which either has assets of C$5 million or more, or is in a business that is identified by regulation to be culturally sensitive, or in uranium production, financial services or transportation services; or
- acquire the indirect control of any existing Canadian business, the assets of which exceed C$50 million in value in a non-cultural business, or between C$5 million and C$50 million in a cultural business.

In 2002, the C$5 million threshold was increased to C$218 million in cases where the country of the acquiring non-Canadian investor is a member of the World Trade Organization (WTO). The WTO exemption for amounts over $5 million does not include investments in production of uranium; financial services; transportation services or acultural business. The dollar threshold varies year-to-year and is a function of GDP growth.

In addition, there is no review process applicable to an indirect acquisition of a Canadian business by a non-Canadian whose country is a member of the WTO. The reviewing authority is the Department of Canadian Heritage in the case of investments related to cultural industries, and the Department of Industry in other instances. The ICA sets strict time limits within which the reviewing authority must respond, in an effort to ensure that the legislation does not unduly delay any investment in Canada. In practices, Canada has allowed most transactions to proceed, though in some instances only after compliance by the applicant with certain undertakings.

### Publishing Policy

Since January 1992, Canadian book publishing and distribution firms that would transfer to foreign ownership as a result of an indirect acquisition need not be divested to Canadians, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited circumstances. Under an agreement on periodicals reached with the United States in May 1999, Canada permits 100 percent foreign ownership of businesses to publish, distribute and sell periodicals. However, direct acquisition by foreign investors of existing Canadian-owned businesses continues to be prohibited.

### Film Industry Investment

Canadian policies prohibit foreign acquisitions of Canadian-owned film distribution firms. A new distribution firm established with foreign investment may only market its own proprietary products. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian Government.

## GOVERNMENT PROCUREMENT

As a party to the WTO Government Procurement Agreement (GPA), Canada allows U.S. suppliers to compete on a non-discriminatory basis for its federal government contracts covered by the GPA. However, Canada has not yet opened "sub-central" government procurement markets (i.e., procurement by provincial governments), despite commitments in the GPA to do so no later than July 1997. Some Canadian provinces maintain "Buy Canada" price preferences and other discriminatory procurement policies that favor Canadian suppliers over U.S. and other foreign suppliers. Because Canada does not cover its provinces, Canadian suppliers do not benefit from the United States' GPA commitments with respect to 37 state governments' procurement markets. In recent years, several U.S. states and Canadian provinces have cooperated to make reciprocal changes in their government procurement systems that may enhance U.S. business access to the Canadian sub-federal government procurement market. However, the Administration and a number of U.S. states have expressed concern that Canadian provincial restrictions continue to result in an imbalance of commercial opportunities in bilateral government procurement markets.

## ELECTRONIC COMMERCE

There are currently few barriers to U.S.-based electronic commerce in Canada. In the WTO context, Canada has consistently supported the U.S. initiative for duty-free cyberspace. The CRTC announced in 1999 that it would not attempt to regulate the Internet, but this decision is subject to review after five years (expected in 2004).

Early in 2000, Canada passed a new personal information protection law, the Personal Information Protection and Electronic Documents Act, which took effect on January 1, 2001. It requires persons or firms which collect personal information in the course of commercial activities to inform the subject of all purposes to which the data may be put, and to obtain informed consent for its use.