

I. RECENT ECONOMIC DEVELOPMENTS

1. The Canadian economy will achieve its ninth year of consecutive growth in 2000, supported by a sound macroeconomic framework of low inflation and stable fiscal and external balances. The process of fiscal, regulatory, and trade reform pursued throughout the 1990s has increased the economy's capacity to adjust to external fluctuations, and has now translated into job creation, a falling unemployment rate, and increases in real after-tax incomes. More than two million jobs have been created since 1993, owing in part to the growth in exports to the United States under the North American Free Trade Agreement (NAFTA), highlighting the benefits of trade for specialization, resource allocation and, ultimately, incomes.

(1) MACROECONOMIC DEVELOPMENTS

(i) Output, employment, and trade

2. Canada's economy has rebounded strongly to grow by over 4% in 1999-2000 after a slowdown in 1998, which was caused mainly by the economic turmoil in Asia and the related fall in world commodity prices. Since the fourth quarter of 1998, strong real advances in GDP reflect buoyant exports to the United States and steady growth in domestic spending, and to a lesser extent rising commodity prices, notably for base metals, crude oil, livestock, and pulp. The substantial growth in the economy has brought Canada's historically high unemployment rate to below 7%, its lowest level since 1981. One exception to the broad-based expansion may be in farming, where incomes in 2000 remained approximately 25% below the high reached in 1996, partly because of the decline in world prices for many agricultural commodities.¹ Canada's recent economic indicators are presented in Table I.1.

3. An element of Canada's economic expansion has been strong export performance to the United States (Chart I.1). This in turn reflects a number of factors, including rapid economic growth in the United States, a flexible (and generally declining) Canadian dollar and the North American trade agreements. Exports of goods and services have increased from 30% of GDP in 1993 to 45% of GDP currently. Reflecting the extent of integration of the two economies, 86% of Canada's exports are destined to the United States.² As a result, more than a third of Canada's GDP is directly attributable to exports to the United States.

4. Growing investment in machinery, equipment, and technology continued to underpin the strength of domestic demand, suggesting that Canadian companies are exploiting new technologies. This also contributed to the recent strength of imports. While a downward trend in personal saving has persisted since the early 1990s, increased saving by other sectors (notably the Government) has provided a source of funds for investment in the Canadian economy. Annual domestic saving was 7.5% of GDP in 1999, compared with 5% in 1998.

5. Wage cost pressures in the Canadian economy were kept to a minimum in 1999, as unit labour costs for Canadian business increased only 0.5%, the lowest growth rate in the past four years. Underlying inflation (consumer price index, excluding food and energy) has remained under control despite the exceptional regional economic growth and the doubling of the crude oil price since March 1999. The total CPI rose 2.9% between June 1999 and June 2000, mainly due to rises in the energy index.

¹ See Chapter IV(3)(i) for a discussion of the possible policy causes of this decline.

² Data from Statistics Canada do not take into account the transshipment of products beyond the United States (DFAIT, 2000a, Box 2). According to the authorities, slightly over 80% of Canada's exports were actually destined to the United States.

Table I.1
Performance of the Canadian economy, 1993-2000
(Can\$ billion and per cent)

	1993	1994	1995	1996	1997	1998	1999	2000 (Q1) ^a	2000 (Q2) ^a
(Annual percentage change)									
Real GDP	2.3	4.7	2.8	1.5	4.4	3.3	4.5	5.1	4.7
Consumer expenditure	1.8	3.1	2.1	2.5	4.4	2.9	3.5	3.4	3.6
Government expenditure	-0.1	-0.4	-0.8	-1.5	-1.4	1.6	2.8	5.1	2.8
Residential investment	-3.5	4.2	-15.1	9.7	12.6	-2.0	6.6	0.6	-11.0
Business fixed investment	-2.4	9.2	5.7	6.4	20.7	6.1	10.5	15.4	19.5
Final domestic demand	0.6	2.8	0.8	2.2	5.2	2.8	4.4	5.2	4.8
Exports of goods and services	10.9	13.1	9.0	5.9	8.8	8.9	10.0	17.5	8.5
Imports of goods and services	7.8	8.3	6.2	5.8	15.1	6.1	9.4	14.7	10.2
GDP price deflator	1.5	1.1	2.3	1.6	1.0	-0.6	1.6	5.2	2.5
Consumer price index – all items	1.9	0.2	2.2	1.6	1.6	1.0	1.7	2.7	3.0 ^b
Core CPI	1.8	1.6	2.3	1.5	1.5	1.2	1.5	1.5	1.5 ^b
Unit labour costs	-0.5	-2.1	0.6	0.8	1.3	1.4	0.5	3.4	5.5
Monetary expansion (M2+)	3.7	2.0	4.1	4.2	0.8	-0.6	3.6	7.3	5.4 ^c
(Per cent)									
Interest rates (short-term) ^d	4.8	5.5	7.1	4.2	3.2	4.7	4.7	5.1	5.6 ^e
Capacity utilization – manufacturing	79.7	83.1	83.2	82.4	83.7	83.8	85.7	87.8	88.4
Unemployment rate	11.4	10.3	9.4	9.6	9.1	8.3	7.6	6.8	6.95 ^e
(Per cent of GDP)									
Current account	-3.9	-2.3	-0.8	0.6	-1.6	-1.8	-0.4	1.9	1.4
Federal budget balance	-5.6	-4.6	-3.9	-2.0	0.5	0.5	0.6	1.8	0.4
Primary balance	-0.1	0.7	1.8	3.4	5.5	5.4	5.2	6.2	4.7
Total government balance	-8.9	-6.8	-5.4	-2.8	0.2	0.2	2.2	3.2	3.0
Primary balance	0.5	2.3	4.3	6.3	8.7	8.7	10.1	10.6	10.4
Net federal debt	66.5	67.2	68.2	68.6	65.4	63.0	58.8	54.8	..
Total government net debt ^f	82.7	84.7	86.5	87.5	83.9	81.9	76.6	70.7	..
(Can\$ billion)									
GDP at current prices, income based	725.0	767.5	807.1	833.1	877.9	901.8	957.9	1,011.1	1,029.4
Exports (goods and services)	219.7	262.1	302.5	321.2	346.5	373.2	414.3	456.4	468.5
Imports (goods and services)	219.7	253.0	276.6	287.6	331.5	360.4	385.9	411.2	425.8
Memo items									
Commodity price index (1982-90 = 100 (US\$))									
Energy	76.5	70.7	70.6	85.1	83.4	64.6	78.9	106.8	109.2 ^e
Non energy	104.8	112.7	125.2	123.7	118.4	103.6	105.2	113.0	111.6 ^e
Terms of trade (1995 = 100) ^g	98.1	97.2	100.0	102.1	101.0	97.6	100.5	104.4	..
Exchange rate (Can\$ per US\$)	1.29	1.37	1.37	1.36	1.39	1.49	1.48	1.45	1.48
Real effective exchange rate (1995 = 100)	91.9	98.8	100.0	98.4	99.6	107.9	108.7	105.6	107.7

a Annual rates.

b July 2000.

c Estimate.

d Three-month treasury bills.

e July – August average.

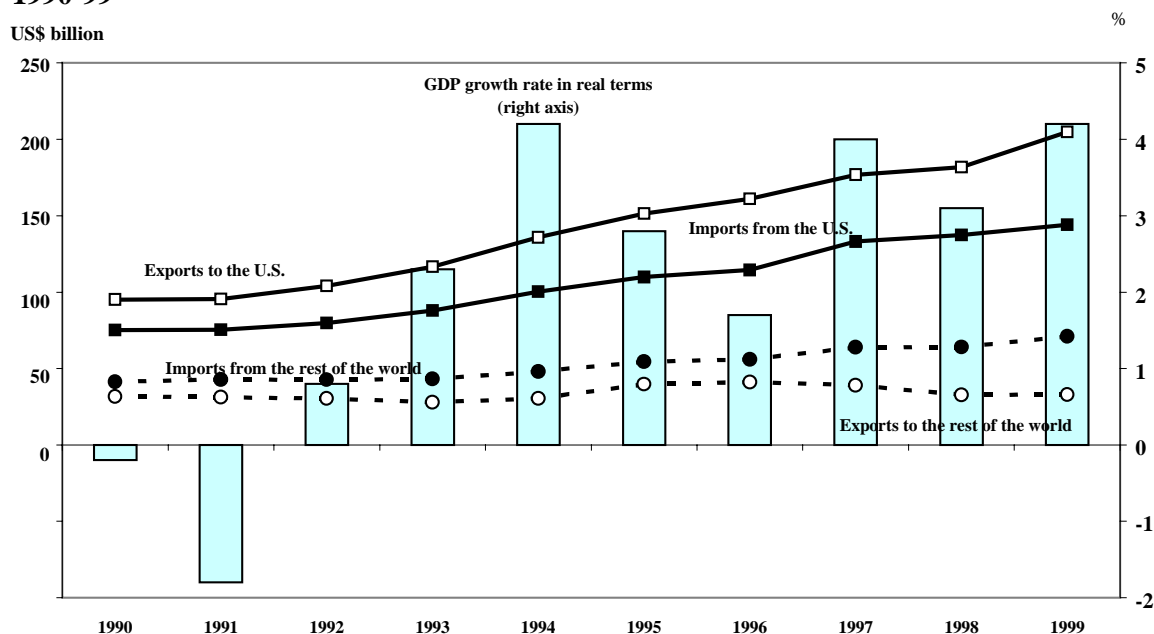
f Public accounts basis, starting with fiscal year April 1993-March 1994.

g Constant – weighted Laspeyres index.

.. Not available.

Source: WTO Secretariat, based on data from Statistics Canada, Department of Finance, and Bank of Canada.

Chart I.1

GDP growth rate and merchandise trade with the United States and the rest of the world, 1990-99

Source : UNSD, Comtrade database; and Statistics Canada.

(ii) Fiscal policy

6. Federal and most provincial governments have now completed the deficit-reduction process initiated in 1993-94, and are expecting overall surpluses in 2000-01. These surpluses are being used to increase spending in priority sectors such as health and education. The 2000 Budget also proposed a five-year tax reduction plan in order to increase disposable income, spur economic growth and stimulate job creation. The plan includes a reduction in the middle-income tax rate to 23% within five years, starting with a two-point reduction to 24% effective July 2000, as well as the restoration of full indexation of the personal income tax system to inflation at the beginning of 2000.

7. The Budget also reduced capital gains and corporate taxes. Regarding the latter, the Government announced its objective to reduce, within five years, the federal corporate income tax rate from 28% to 21% on business income not currently eligible for reduced tax treatment³, with a one-percentage-point reduction (from 28% to 27%) taking effect in January 2001. The Government has indicated that the announced personal and corporate tax reduction plan will be updated each year and that the tax reductions will be accelerated in the 2001 Budget and new options for further tax cuts will be contemplated.

8. Canada's governments have also made progress in recent years in bringing down the debt-to-GDP ratio. Nevertheless, this ratio is still high by international standards, leaving Canada vulnerable to unexpected developments, such as increases in domestic interest rates. Under the Debt Repayment Plan, the federal debt-to-GDP ratio is expected to decrease from a post-war peak of 71% in 1995-96

³ Small businesses are subject to a federal tax rate of about 12% on the first Can\$200,000 of taxable income, while resource, manufacturing, and processing sectors face a rate of about 21%. Other businesses, such as services, are subject to the 28% rate.

and 65% in 1998-99, to below 50% by 2004-05. However, in March 1999 the consolidated total debt of federal, provincial, and territorial governments still amounted to nearly Can\$835 billion and over 92% of GDP. The authorities expect this ratio to decline to 87% in 1999-2000, and to 81% in 2000-01.

(iii) Monetary policy and exchange rates

9. Monetary policy continues to be based on inflation targeting in combination with a floating exchange rate system. Adherence to the inflation targets ensures that Canadian interest rates are based on low inflation expectations. Accordingly, as signs of rising inflation pressures have appeared, the Bank of Canada has increased the Bank Rate four times since May 1999, to 6% in May 2000.

10. Over the past two years, the Bank of Canada has continued to rely on the exchange rate's flexibility to absorb fluctuations in external economic conditions, such as the sharp decline in 1997 of world prices of the primary commodities that Canada exports. The exchange rate decline facilitated a shift in activity from the primary sector to manufacturing and other export sectors. It also provided an additional incentive for these sectors to take advantage of a strong U.S. economy. The Canadian dollar has been rising steadily against most G7 currencies since 1997, but only marginally reversed its decline against the U.S. dollar.

(2) BALANCE OF PAYMENTS, TRADE AND INVESTMENT FLOWS

11. Historically, Canada's current account has posted a deficit as residents earn less from abroad than they spend on goods, services, investment income, and transfers (Table AI.1). Since 1995, however, this current account deficit has remained below 2% of GDP; it was reduced considerably in 1999 (-0.4% of GDP), and swung strongly into surplus (1.7% of GDP) in the first half of 2000 on account of the exceptional growth in merchandise exports and a declining deficit on the services balance. The deficit on the investment income balance is one of the main causes of the current account deficit, and partly reflects the servicing of Canada's relatively large net foreign debt. In the 1999 financial account, portfolio investment registered a large deficit, as Canadians made large net purchases of foreign stocks while non-residents reduced their holdings of Canadian money market instruments. As the substantial merchandise trade surpluses have improved the balance on the current account, the need for large surpluses in the capital and financial account has eased. In turn, this has reduced Canada's international indebtedness-to-GDP ratio, which fell to its lowest level in over 20 years in 1999.

(i) Foreign direct investment

12. Canada has high and growing stocks of both inward and outward foreign direct investment (Table AI.2). In 1999, inward FDI rose by almost 9.5%, to reach a stock of Can\$240 billion, while outward FDI reached Can\$257 billion. The exceptionally high share of inward and outward FDI in GDP also mirrors the process of integration with the U.S. economy: the flow of FDI in 1999, valued at Can\$37 billion and 4% of GDP, corresponded to large acquisitions by U.S. companies of Canadian assets in the resource and financial industries. The purchases contributed to bring the U.S. share of Canada's total inward FDI stock to 72%, up from 64% in 1990. Outward FDI was fuelled by acquisitions of U.S. firms by Canadian companies. At the end of 1999, 52% of direct investment abroad was in the United States at the end of 1999, and the remainder was geographically dispersed. The conclusion of foreign investment agreements has spurred Canadian outward FDI. For example, by 1999, Canada ranked fourth among foreign direct investors in Mexico, and second in Chile, encouraged by the stable and secure investment framework provided by free-trade agreements covering investment (Chapter II(3)(i)).

(ii) Merchandise trade**(a) Trade with the United States**

13. Following an impressive expansion that continued throughout 1998-2000, Canada has overtaken the Netherlands and Italy to become the world's sixth largest merchandise exporter.⁴ The recent Canadian export boom is largely a result of the robust U.S. economy: there has been a very strong correlation between the growth in U.S. imports and the advance of Canada's exports to the United States. In 1999, 86% of Canada's exports went to the United States, compared with 82% in 1997 (Table AI.3). In some sectors, such as textiles, clothing, steel, and automotive products, 90% of Canadian exports go to the United States.

14. The reliance on U.S. suppliers for merchandise imports has grown less strongly but is nevertheless high, with over three quarters of imports originating in the United States. Products for which the U.S. share in Canada's imports has increased significantly include non-ferrous metals, chemicals and other semi-manufactures, automotive products, and textiles.

(b) Trade with other countries

15. The dollar value of exports to the rest of the world (other than the United States) has decreased since 1997 (Table AI.4). These exports accounted for 14% of Canada's total exports in 1999, down from 18% in 1997. If transshipment estimates are taken into account both figures would be 4% higher.⁵ A recent study has highlighted the contrast between Canada-U.S. trade, which is diversified, and the typical pattern of trade with other regions, which involves exports of mainly resource-based products and imports concentrated in machinery and equipment and consumer goods (Table AI.5).⁶ According to this study, based on data prior to the financial crisis in Asia, Canada lost considerable ground in the emerging East-Asian economies (China; Republic of Korea; Hong Kong, China; and Chinese Taipei) because in these markets Canada mainly sold products for which demand is increasing at less than the average rate.

16. Imports from the rest of the world have remained stable at around 24% of total imports (Table AI.6). However, there are substantial differences across partners. Imports from Mexico, Canada's largest trading partner in Latin America, expanded fourfold over the past decade, in large part reflecting the entry into force of the NAFTA. Despite the non-reciprocal trade preferences granted under the General Preferential Tariff, the Least Developed Country Tariff and the CARIBCAN, imports from these groups of countries have not increased significantly, with the exceptions of China and South Asia. Canada played a role in aiding the recovery from the East Asian crisis: imports from East Asia are up by 36% since 1996, compared with 27% growth overall, with exceptional import growth from China, Malaysia and, to a lesser extent, Thailand.

(iii) Trade in services

17. Exports and imports of services have increased at a somewhat slower pace than merchandise trade since Canada's last Review; services receipts and payments reached about Can\$52 billion and Can\$58 billion in 1999 (Table AI.1). Commercial services represent nearly half of all services exports and imports, and have registered the fastest growth, particularly communication, computer and information services, R & D, and engineering services. The services balance has improved partly on account of the lower Canadian-U.S. dollar exchange rate, which led to improvements in the

⁴ WTO document Press/175, 6 April 2000.

⁵ DFAIT (2000a), Box 2, p. 11.

⁶ Dion (2000).

balance on travel spending with the United States. Canada traditionally records a deficit on its services account, (Table AI.7) largely because of transportation and travel balances with the United States. The latter accounts for 60% of Canada's total services exports. Aside from the United States, Canada's main trading partners for cross-border trade in services are the United Kingdom, France, Germany, and Hong Kong, China.

II. DEVELOPMENTS IN TRADE AND INVESTMENT POLICY

18. Canada's trade and investment regime continues to be one of the world's most transparent; generally liberal market access is granted to all trading partners. Canada views the WTO as the cornerstone of its trade policy and the foundation for its relations with trading partners.⁷ Over the past two years, new preferential trade and investment relationships have been pursued, based on Canada's conviction that multilateral, bilateral, and other forms of liberalization are mutually reinforcing. Canada has one of the world's highest FDI to GDP ratios, both inward and outward; it also has the highest trade to GDP ratio among G-8 countries. Canada's expanding network of preferential arrangements has raised concerns among Members about distortion in trade and investment patterns.⁸

(1) INSTITUTIONAL AND POLICY FRAMEWORK

19. Canada's trade and investment framework reflects the particular importance of foreign trade and investment to the Canadian economy (Chapter I(2)). The Department of Foreign Affairs and International Trade (DFAIT) is the leading federal agency for trade and international trade policy formulation. It coordinates with the Department of Finance and with Industry Canada for international investment policy issues⁹, and consults with provinces as appropriate. Transparency and accountability in policy-making are enhanced by the requirement for all federal government programmes to be evaluated for their cost, rationale, and efficiency by the Office of the Auditor General.¹⁰ Provinces also have independent auditors.

20. One of the distinguishing features of the policy formulation process is the interaction between federal and provincial governments and the private sector. An example of this partnership with respect to trade is Team Canada Inc, a "virtual" trade network of 23 federal departments and agencies whose international business development programmes and services are accessible to Canadian businesses through a single electronic window.¹¹ Team Canada trade missions bring together business and government representatives in visits to various priority countries to ensure that companies take full advantage of international opportunities.¹²

21. The Government also consults regularly with the public in the course of the policy formulation process. For example, in preparation for the WTO Ministerial Conference in Seattle in 1999, the authorities established a process of "Consultations with Canadians", in which interested

⁷ DFAIT (2000b).

⁸ See, for example, WTO (1998), Part D.

⁹ Industry Canada online information. Available at: <http://www.ic.gc.ca>.

¹⁰ For more information see Office of the Auditor General [Online]. Available at: <http://www.oag-bvg.gc.ca/domino/oag-bvg.nsf/html/menue.html>.

¹¹ The online source for export information is available at: <http://www.exportsource.gc.ca>.

¹² Further online information on the priorities and on the results of Team Canada visits is available at: <http://www.tcm-mec.gc.ca>.

parties were invited to submit their views regarding specific trade and investment-related issues.¹³ This interaction is also encouraged by provincial governments.¹⁴

22. Available information suggests significant differences in trade and investment policies and practices between the federal and provincial governments, as well as across provinces. For example, while Alberta has passed legislation that prevents the provision of funding or grants to the private sector, others appear to provide financial support to private companies (Chapter IV(3)(ii)).¹⁵ In order to mitigate the effect of these policy differences, since 1995, the Agreement on Internal Trade (AIT) has set transparency requirements on each governments' legislations, regulations, procedures, guidelines, and administrative rulings as they relate to internal trade. The AIT aims to "reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investment within Canada, and to establish an open, efficient and stable domestic market". The AIT specifies some 11 sectors or policy instruments that offer the greatest potential for the reduction of barriers: government procurement; environmental protection; consumer-related measures and standards; labour mobility; investment; agricultural and food products; alcoholic beverages; communications; transport; natural resource processing; and energy. Obstacles to internal trade also have a bearing on external trade and investment.

23. Developments since 1998 include the entry into force of the Second Protocol of Amendment revising the AIT, and of the Third Protocol of Amendment. The Second Protocol includes lists of remaining provincial presence and residency requirements. The Third Protocol extends the AIT's procurement disciplines to municipalities, municipal organizations, school boards and publicly funded academic, health, and social service entities (see also Chapter IV(5)); all provinces and territories except British Columbia and the Yukon have subscribed to the new rules. Talks are still ongoing to liberalize the procurement of federal and provincial crown corporations, many of which are exempt from the provisions of the AIT despite being major purchasers of goods and services.¹⁶ Negotiations have been completed to reconcile extra-provincial corporate registration and reporting requirements, thus eliminating the filing of duplicate information.

(2) PARTICIPATION IN THE WTO

24. Canada is a founding Member of the World Trade Organization. Canada's WTO Implementation Act gave effect to the WTO Agreement and to various laws to conform to Canada's WTO obligations. The notifications made by Canada to the WTO since mid-1998 in the context of the implementation of the Marrakesh Agreement are described in Chapter III. The framework of federal-provincial coordination has helped to promote the participation of provinces in the notification process and more generally in WTO matters, although this participation remains limited. While some provincial domestic support programmes have been notified to the Committee on Agriculture, provinces have not advised the Federal Government that they have programmes to be notified to the WTO Committee on Subsidies and Countervailing Measures. Provincial entities have not been listed in the Agreement on Government Procurement. No subfederal technical regulations have been notified to the WTO Committee on Technical Barriers to Trade since 1996. Market-opening amendments to provincial legislation on professional services, implemented between 1994 and 1996, were notified to the WTO in late 1998.

¹³ Further online information on these consultations is available at: <http://www.dfait-maeci.gc.ca/tna-nac/consult-e.asp>. See also House of Commons (1999).

¹⁴ For example, in the case of Alberta, online information is available at: http://www.gov.ab.ca/iir/trade/documents/roundtable_report.htm.

¹⁵ Online information on Alberta is available at: <http://www.alberta-canada.com/startbus/finance.cfm>.

¹⁶ Internal Trade Secretariat online information is available at: <http://www.intrasec.mb.ca>.

(i) **Trade policy priorities**

25. Since the last Review of Canada in 1998, the Federal Government has actively campaigned in favour of increased transparency in WTO councils and committees, so as to improve public and private sector understanding of the WTO and therefore build public support for trade and investment liberalization. In particular, the Government proposed that a portion of the WTO Secretariat budget fund regular outreach initiatives such as symposia, workshops, and the WTO website. Canada also posts on its website background information on its positions on WTO disputes in which Canada is involved, and, upon request, makes available to the public Panel and Appellate Body submissions, to enhance the transparency of the WTO dispute settlement system.¹⁷ In July 2000, Canada proposed that its December 2000 Trade Policy Review meeting be webcast on the Internet.¹⁸

26. At Seattle, the Government of Canada sought to extend the Uruguay Round's "built-in agenda", and supported broadening participation in existing sectoral agreements. Going beyond market access, Canada sought a round that improves and expands multilateral rules and disciplines. More specifically, Canada supported including competition policy within a broadly based negotiating agenda; the Government was continuing to consult with Canadians on the possible inclusion of investment (see below). On dispute settlement, Canada proposed to enhance transparency and improve mechanisms for implementation of DSB recommendations and rulings. In the context of all future trade negotiations, Canada intends to retain its capacity to regulate in the public interest in areas such as health, education, and culture. Canada has circulated several discussion papers and proposals that reflect its interests in a new round, including papers on market access, agriculture, services, dispute settlement, anti-dumping, biotechnology, coherence, trade and environment, trade and development, trade and labour, transparency, subsidies and countervailing measures, and electronic commerce.¹⁹

(a) **Agri-food trade**

27. In the current WTO negotiations on agriculture, Canada seeks substantial market access improvements, elimination of export subsidies, and significant reductions or elimination of trade-distorting domestic support.²⁰ A key theme underlying Canada's approach is to achieve these reforms in a way that levels the playing field, while preserving the ability to operate "orderly marketing systems", such as the supply management systems in poultry, dairy, and egg production, and the Canadian Wheat Board (Chapter III(7)).

28. Canada attaches high importance to protecting human, animal, and plant life and health. At the same time, concerns about the misuse of sanitary and phytosanitary measures as barriers to trade in some of its export markets are also of importance to Canada because of the significant contribution agri-food makes to total exports. Canada has argued in a number of WTO cases that trading partners were not meeting their multilateral obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (Table AII.1). The European Union's non-implementation of the WTO ruling on beef produced using growth hormones led Canada to retaliate with punitive tariffs under WTO dispute settlement rules.

29. As a relatively intensive producer of foods derived from biotechnology (i.e. containing genetically modified organisms - GMOs), Canada has reiterated its concerns, in the WTO, over

¹⁷ Available at: <http://www.dfait-maeci.gc.ca/tna-nac/dispute-e.asp>.

¹⁸ WTO document WT/TPR/W/26, 13 July 2000.

¹⁹ DFAIT online information "Trade Negotiations and Agreements". Available at: <http://www.dfait-maeci.gc.ca/tna-nac/>.

²⁰ Canada's trade policy on agriculture can be found in Agriculture and Agri-Food Canada online information. Available at: <http://www.agr.ca>.

mandatory labelling requirements imposed by a number of Members on foods derived from biotechnology, "which appear to go beyond a scientifically-based food safety objective".²¹ In this context, a voluntary labelling standard being developed in Canada was cited (Chapter III(5)(iii)). Canada's proposal for a WTO working party on biotechnology was designed to consider the adequacy and effectiveness of existing rules on trade in products developed through biotechnology.²²

30. Canada was a participant in the negotiations to conclude the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, and will be affected by its framework of rules and obligations upon ratification. On the conclusion of the negotiations on the Protocol, Canada recognized "the right of every country to restrict the import of living modified organisms that would harm its bio-diversity. That is why Canada supports the precautionary approach which allows nations to take action even in the absence of full scientific certainty".²³ However, Canada has not yet signed or ratified the Protocol, and has thus not taken on any of the Protocol's obligations.

(b) Trade in services and electronic commerce

31. In a statement prepared in the context of this Review, the Government has indicated that, in the ongoing negotiations to further liberalize trade in services, Canada seeks to strengthen multilateral, legally enforceable rules covering international trade in services, and to obtain improved access to foreign markets for Canadian service firms. At the same time, Canada will continue to safeguard its right to regulate in the pursuit of its national policy objectives. In preparation for these negotiations the Government has embarked on a wide ranging exercise of analysis and consultation with the provincial/territorial governments, private sector, and other stakeholders with a view to identifying Canadian negotiating interests and objectives. The Minister for International Trade has indicated that Canada's public health and public education systems will not be jeopardized in these negotiations. Further, Canada will not take on any new obligations that will restrict the Government's ability to achieve its cultural policy objectives.

32. Canada supports a free-trade environment for electronic commerce consistent with WTO principles and with its own economic and other domestic policy objectives, including consumer and privacy protection. Recent initiatives in this area include a new federal law related to privacy and electronic documents, and a decision by the Canadian Radio-Television and Telecommunications Commission regarding the regulation of new media services on the Internet (Chapter V(4)). An advisory committee on electronic commerce and taxation has stressed the importance of international cooperation and of tax neutrality.²⁴

(c) Market access for developing countries and other issues

33. Canada's market access regime for developing countries includes the system of tariff preferences granted under its "Generalized Preferential Tariff" (GPT) and CARIBCAN (Table AII.2). In May 2000, the GPT was extended to Bosnia and Herzegovina, and to the former Yugoslav Republic of Macedonia. Approximately 2% of total imports enter under GPT treatment, considerably less than the share of imports originating in GPT countries (13%). This is because many Canadian MFN tariffs are duty free, and importers do not therefore need to claim GPT treatment. Canada has participated in WTO trade facilitation measures in favour of developing countries. Canada supports the use of special and differential measures in favour of developing countries when this enables

²¹ WTO document G/TBT/W/134, 23 May 2000.

²² WTO document WT/GC/W/359, 12 October 1999.

²³ Environment Canada online information. Available at: http://www.ec.gc.ca/press/bio_n_e.htm.

²⁴ Canada Customs and Revenue Agency online information. Available at: <http://www.ccra-adrc.gc.ca/tax/business/ecommerce/ecomedoc.doc>.

countries to adjust to competition so as to enhance international trade consistent with WTO rules and to experience economic growth.²⁵

34. Canada's Least Developed Country Tariff provides duty-free access for close to 90% of all tariff items. Nevertheless, access to Canadian markets for some products of main interest to least developed countries (e.g. agri-food, textiles, and clothing) remains limited by high tariffs or quotas (Chapter III). The federal and provincial governments have thus been encouraged to consult with firms producing import-sensitive products with a view to improving market access for those goods.²⁶ The initiative announced in May 2000 by the Quad (Canada, European Union, United States, Japan) to grant duty-free and quota-free access to least developed countries for "essentially all" imports, does not englobe certain important agri-food, textiles, and clothing products.²⁷ In September 2000, Canada implemented an order expanding duty-free access for over 550 additional tariff lines (Chapter III(1)(ii)). Refined sugar and out-of-quota agri-food products continue to be excluded, as well as most textiles, clothing, and footwear.

35. Given their protectionist potential, Canada does not support the enforcement of core labour standards through trade measures. Canada cooperates with its NAFTA trading partners on labour issues under the North American Agreement on Labour Cooperation (NAALC)²⁸, and with Chile under the Canada-Chile Free Trade Agreement. The NAALC provides for fines enforceable in the domestic courts for disputes targeting Canada; if the United States or Mexico fail to pay the monetary assessment, complaining parties may suspend NAFTA tariff benefits. In principle, the provinces are not covered by the NAALC, but some have joined through declarations notified to the parties.

(ii) WTO dispute settlement

36. The Canadian Government has participated intensively in consultations and dispute settlement available under the WTO Dispute Settlement Understanding (DSU), based on the conviction that Canada benefits from a system based on rules, norms, and procedures rather than on the unilateral exercise of economic leverage. Canada has participated in nearly a third of all WTO dispute settlement cases (consultations, mutually agreed solutions, and panels) since the WTO's inception.²⁹ Canada has participated in about one quarter of consultations requested since September 1998.

37. Canada has also reserved third-party rights in a number of cases where it did not have a direct commercial interest (e.g. the EU/U.S. banana dispute). This reflects an interest in broad WTO jurisprudence as, in Canada's view, the dispute settlement system also serves to develop a body of case law, further enhancing the system's stability and predictability for Canadian exporters. The Government views a clear and coherent rules-based system as ensuring non-discriminatory access to foreign markets on predictable terms.

38. Since September 1998, trading partners have questioned Canadian measures on only one new matter (term of patent protection, Table AII.1). Panel findings regarding earlier cases cover: patent protection for pharmaceuticals; market access; pricing and export policy on dairy products; support to the periodicals publishing industry; measures related to the export of civilian aircraft; and the automotive trade regime (Chapter III).

²⁵ WTO document WT/GC/W/349, 11 October 1999.

²⁶ See, for example, House of Commons (1999), pp. 5-17.

²⁷ WTO document WT/GC/M/55, 16 June 2000.

²⁸ NAALC online information. Available at: <http://www.naalc.org>.

²⁹ WTO document WT/DSB/16/Add.1, 22 October 1999.

(3) DEVELOPMENTS IN INVESTMENT POLICIES**(i) Foreign investment policy**

39. Canada officially seeks to promote its advantages as an investment destination, except in areas of special sensitivity where restrictions continue to exist (Table II.1). Investment policy for these sectors, which include financial services, transportation, telecommunications and "cultural sectors" (e.g. broadcasting, film distribution), is implemented by the government departments responsible for those sectors. Further, regulators are in some cases allowed to place limits on the issue and transfer of shares of corporations in these sectors. As discussed below, restrictions to foreign direct investment (FDI) in certain service activities have had implications on domestic competition policy.

40. In addition, the Investment Canada Act (ICA) of 1985, which seeks to encourage investment in Canada that contributes to economic growth and employment opportunities, provides for the review of significant acquisitions of control of Canadian businesses by non-Canadians to ensure "net benefit to Canada". For the year 2000, foreign acquisitions exceeding a threshold of Can\$192 million are reviewable (the threshold is adjusted annually), as well as foreign acquisitions exceeding a Can\$5 million threshold in transport, financial services, and cultural sectors (Table II.1). Except for investments in the cultural sectors, the ICA applies only to acquisitions of Canadian companies and not to greenfield investments. The authorities have noted that in 1999, of the more than 700 investments notified under the ICA, only 35 were reviewed and none was denied.

41. These restrictions and review provisions have been criticized by trading partners³⁰; however, that they have accommodated an exceptional growth of inward FDI seems consistent with the authorities' view that the review of foreign acquisitions of Canadian businesses and the promotion of Canada as a location for investment are mutually reinforcing policy objectives (Chart II.1).

42. Certain of Canada's free-trade agreements, notably NAFTA, also include provisions relating to investment by persons, both legal and natural, who are from parties to the agreement (see below). By and large, however, the review process and related limitations provided by the ICA also apply to preferential partners. In the Investment and Services Working Group, NAFTA members have exchanged information on non-conforming investment measures at the subnational level.³¹

³⁰ See, for example, WTO (1998), Part D, "Advance Written Questions by Hong Kong, China, Japan, and the United States".

³¹ NAFTA online information. Available at: <http://www.nafta-sec-alena.org/english/nafta/anx1cda.htm>.

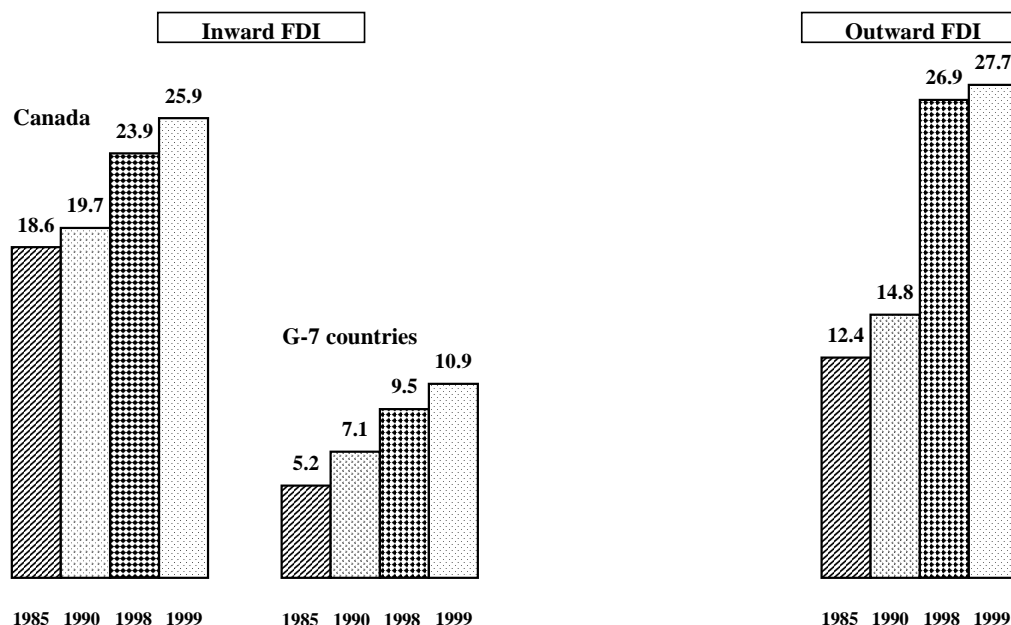
Table II.1
Selected investment restrictions and controls by sector, 2000

Sector	Level of government (legal base)	Limitation
Notification and review provisions		
All sectors	Federal (Investment Canada Act (ICA))	All acquisitions of control of Canadian businesses by non-Canadians must be notified; those exceeding Can\$192 million are reviewed.
Uranium production	Federal (ICA)	Review thresholds for all countries: Can\$5 million for direct acquisitions (i.e. foreign acquisitions of foreign-owned businesses in Canada; Can\$50 million for indirect acquisitions if the assets in Canada are 50% or more of the assets of the targeted company.
Transport services		
Financial services		
Cultural industries (publishing, film, video, music, and broadcasting)	Federal (ICA)	Review of all direct acquisitions over Can\$5 million (Can\$50 million for indirect acquisitions). All other investments must be notified and may be subject to review.
Ownership limitations		
Fishing	Federal (Fisheries Act)	Only Canadians or Canadian-controlled corporations are permitted to obtain fishing licences. Canadian fish-processing companies that have more than 49% foreign ownership are not permitted to hold commercial fishing licences.
Air transport	Federal (Canada Transportation Act)	Foreign ownership of an airline is limited to 25%.
Book publishing and distribution	Federal (ICA and supplementary policy guidelines)	Foreign investment in new businesses is limited to Canadian-controlled joint ventures. Foreign acquisition of existing Canadian-controlled businesses is allowed only if: (a) The business is in clear financial distress and; (b) Canadians have had full and fair opportunity to purchase. Indirect acquisitions are permissible subject to a net benefit test.
Broadcasting	Federal (Broadcasting Act)	Foreign ownership of a radio or television station is limited to 20% of voting shares (maximum 33.3% in the case of a parent corporation).
Film distribution	Federal (ICA)	Foreign acquisition of a Canadian-controlled distributor is not allowed. Foreign investment in new distribution businesses is permissible only for importation and distribution of proprietary products. (the importer owns world rights or is a major investor). Direct or indirect acquisition of foreign distribution businesses in Canada by foreign-owned companies is permissible only if the investor undertakes to reinvest a portion of its Canadian earnings "in accordance with national and cultural policies".
Financial services	Federal (Bank Act)	Individual ownership is limited to 10% of a Schedule I bank, regardless of nationality (however, see text for upcoming changes).
	Provincial laws	Foreign ownership is limited to 10% individually and 25% collectively of provincially regulated trust and loan companies and securities firms in several provinces.
Insurance agents	Prince Edward Island	Only residents or corporations established in the province may obtain licences.
Insurance services and other services auxiliary to insurance	Quebec (Loi sur les assurances)	Non-residents may not acquire more than 30% of the voting shares of a Quebec-chartered insurance company without ministerial approval.
	British Columbia (Financial Institutions Act)	Incorporation, share acquisition or application for business authorization, where any person controls or will control 10% or more of the votes of the company, is subject to ministerial approval.
	Quebec, Saskatchewan, British Columbia	Mandatory motor vehicle insurance is provided by public monopoly.
Telecommunications	Federal (Telecommunications Act)	Foreign ownership of Canadian common carriers is limited to 20% ownership, 33.3% indirect; and 46.7% combined direct and indirect foreign ownership of voting shares.

Source: WTO Secretariat, based on information provided by the Government of Canada.

Chart II.1

Inward and outward foreign direct investment, 1985-1999, selected years
Per cent of GDP



Source : United Nations (2000), *World Investment Report*.

(ii) International investment policy

43. Canada continues to support the ongoing "analytical and educative" work programme within the WTO Working Group on the Relationship between Trade and Investment. Over the past two years, the Government has undertaken consultations with domestic stakeholders to seek their views on investment issues, including the possibility of a WTO agreement on investment. Canada's support for the launching of negotiations on a WTO investment agreement hinges, in part, on the outcome of those consultations, reflecting public disquiet about the unfinished OECD negotiations on a Multilateral Agreement on Investment and lukewarm business interest.

44. Canada has gained experience on international investment agreements with the implementation of the NAFTA Chapter 11 investment provisions, notably including investor-state dispute settlement provisions. The Canada-Chile FTA contains similar investment provisions. The Government has partly attributed the recent strong growth of Canadian FDI into these countries to the enhanced security for Canadian investors provided by these provisions.³² The arbitration of investor-state investment disputes is also available under most of Canada's bilateral foreign investment protection agreements.³³ Arbitration provisions have been scheduled as an Article II exemption to the

³² DFAIT (2000b).

³³ Since January 1998, Canada has concluded Foreign Investment Protection Agreements with Armenia, Costa Rica, Lebanon, Panama, Thailand, Uruguay, and Venezuela. Negotiations are under way with Brazil, China, Colombia, India, and Russia. Double Taxation Agreements have been concluded with Algeria, Austria (Amending Protocol), Bulgaria, Chile, Indonesia, Japan (Amending Protocol), Jordan, Kyrgyzstan, Lebanon, Luxembourg, Portugal, and Uzbekistan.

GATS and have been the subject of questions from WTO Members as part of the mandated review of Article II (MFN) exemptions.³⁴

45. NAFTA investor-state dispute settlement provisions have also been used by private companies to challenge government policy in a number of areas (e.g. ban on the fuel additive MMT).³⁵ Since Canada's previous Review, arbitration continued in a dispute, advanced by the U.S. firm S.D. Myers, concerning Canada's imposition of a 1995 prohibition on the export of PCB waste to the United States. In March 1999, arbitration was started against Canada by a U.S. company (Pope & Talbot), claiming discrimination in Canada's implementation of the Canada-U.S. Softwood Lumber Agreement. Another U.S. company, Sun Belt Water Inc, alleges breaches of NAFTA Chapter 11 rules, by court and government officials in British Columbia, related to a contract for water exports. An arbitration has also been commenced by United Parcel Service of America Inc.. The claim alleges: breaches of the national treatment and minimum standard of treatment obligations under the NAFTA, as well as obligations respecting monopolies and state enterprises; and *inter alia*, that Canada gave more favourable treatment to Canada Post relative to private parcel and courier companies as regards custom treatment and failed to ensure that Canada Post did not engage in cross-subsidization of its courier business.

46. In this light, the authorities have stated that in any multilateral investment negotiation, Canada would want to safeguard a government's right to regulate, in the public interest, in "strategic" sectors such as health, education, environmental protection, and culture. In discussion with NAFTA partners, Canada is seeking to clarify certain provisions of the Investment Chapter, including the definition of expropriation. Canada is also in favour of increased transparency in the investor-state arbitration process.

(4) DEVELOPMENTS IN PREFERENTIAL TRADE AND INVESTMENT RELATIONS

47. One of the Government's key policy priorities is the management of the relationship with the United States, which accounts for a large proportion of Canada's exports and of foreign direct investment (Chapter I). To promote trade and investment diversification, preferential links are being forged with other partners in line with "Canada's firm commitment to trade and investment liberalization on all fronts".³⁶ Most of Canada's partners to reciprocal preferential trade agreements are located in the Americas (Table AII.2). Negotiations were under way in mid 2000 to finalize a free-trade agreement with the European Free Trade Association. Free-trade negotiations with Costa Rica were launched in July 2000.³⁷ The possibility of negotiating a bilateral free-trade agreement with Singapore is being explored.³⁸

48. Canada's relations outside the Americas generally take place on an MFN basis or, in the case of developing countries, under the GPT to the LDCT. Canada is a member of the Asia Pacific Economic Cooperation (APEC) process. According to the APEC Bogor Declaration, Canada has committed itself to MFN "free and open trade and investment" by 2010.³⁹ The pace of Canada's progress to achieve this goal is dictated by its voluntary commitments specified in its Individual Action Plan.

³⁴ See also WTO documents S/C/W/140, 15 May 2000, and S/C/M/44, 21 June 2000.

³⁵ For details see WTO (1998), Chapters II(4) and III(3)(i).

³⁶ DFAIT (2000b).

³⁷ DFAIT online information. Available at: http://webapps.dfaite-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/103533.htm.

³⁸ DFAIT online information. Available at: http://webapps.dfaite-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/103434.htm.

³⁹ APEC Secretariat online information. Available at: <http://www.apecsec.org.sg>.

(i) Preferential trade in the Americas**(a) Trade relations with the United States and Mexico**

49. Canada's trade with the United States is now essentially duty free; Canada restricts only imports of the supply-managed (mostly dairy and poultry) agri-food products (Chapter III(2)). Over the last two years, the share of Canada's trade and foreign investment with the United States has continued to increase (Chapter I), partly in response to the economic integration made possible by free trade and investment under the NAFTA. There is recognition that this leaves the Canadian economy vulnerable to cyclical swings in the U.S. economy. In this context, extending NAFTA preferences multilaterally could help diversification, and further improve efficiency and resource allocation.

50. Bilateral trade flows between Canada and the United States (about Can\$1.5 billion daily) have remained to a large extent free of problems, with the exception of anti-dumping and countervailing measures. Canada believes that the use of these measures between integrated markets is inappropriate and has sought their reform and eventual elimination in Canadian-U.S. trade. Meanwhile, some seventeen disputes involving Canada were active at some point, under NAFTA's Chapter 19 (anti-dumping and countervailing), during the period September 1998 to April 2000. All except two cases related to anti-dumping duties, and most cases concerned trade in steel. In general, a high share of all investigations subject to Chapter 19 review are challenged before a Chapter 19 Panel. All panels completed between September 1998 and April 2000, involving either Canadian goods or agencies, found in favour of Canada.

51. Very few tariffs remain on items imported from Mexico, Canada's other NAFTA partner; those remaining, with the exception of the supply-managed dairy and poultry products, are scheduled for elimination on a ten-year staging period (to be completed by 2003). Canada and Mexico have accelerated tariff elimination twice since 1997. Among recent trade policy developments, Canada and Mexico have signed a commercial satellite services agreement and a Memorandum of Understanding on the acceptance of safety standards testing for telecommunications and information technology products, and have implemented an agreement on code-sharing in air transport services. Cooperation has also been enhanced regarding SPS inspections and the resolution of disputes in fruit and vegetable trade. From the implementation of NAFTA in 1994 to the end of 1999, imports and exports between Canada and Mexico doubled. Canadian direct investment in Mexico has increased tenfold since 1990 (Chapter I).

(b) Other preferential trade relations in America

52. Tariff cuts have been accelerated between Canada and Chile since the entry into force of the 1997 Canada-Chile Free Trade Agreement (CCFTA). Canadian tariffs on remaining goods will be phased out by 2003 except on certain supply-managed dairy and poultry products. Until 1 January 2000, the CCFTA also provided for minimum margins of preference for Canadian goods if Chile reduced MFN tariffs, which has been the case in each year since 1998. Bilateral trade in goods has accelerated; foreign investment has expanded faster and Canada has become the second-largest foreign investor in Chile.

53. In Toronto, in November 1999, Canada hosted the first negotiating meeting of Free Trade Area of the Americas (FTAA) Ministers, which includes all countries of the Western Hemisphere except Cuba. Ministers agreed, *inter alia*, to a common approach on agricultural export subsidies negotiations in the WTO, and adopted a package of business facilitation measures to be implemented by 1 January 2000. A target date of 2005 has been set to conclude the FTAA negotiations.⁴⁰

⁴⁰ FTAA online information. Available at: <http://www.alca.ftaa.org>.

(ii) Other preferential relations

54. Negotiations have continued on a Canada-EFTA Free Trade Agreement, with emphasis on tariff elimination and trade facilitation. However, Canada's supply-managed dairy, poultry, and egg sectors will not be covered; nor will it include new obligations in areas such as market access, services, investment, intellectual property, and government procurement. According to the authorities, the Agreement will introduce a new concept in terms of cooperation on competition policy. The authorities expected the agreement to be concluded by the end of 2000, and enter into force in mid 2001. The trade agreement with EFTA will be the first free-trade bridge with Europe. Relations with the EU, Canada's second-largest trading and investment partner, take place under the WTO Agreement and bilateral initiatives such as the EU-Canada Trade Initiative.

55. Three years into the 1997 Canada-Israel Free Trade Agreement (CIFTA), bilateral trade between the two countries is increasing steadily, mainly due to the absence of tariffs on industrial products and the reduction of tariffs on many agriculture and agri-food products. Although, in practice, the CIFTA covers the territory where Israel's customs laws apply (this includes the West Bank and Gaza following the signing of the Paris Protocols in 1995), the Government of Canada agreed to negotiate separate arrangements with the Palestinian Authority. In February 1999, Canada and the Palestine Liberation Organization on behalf of the Palestinian Authority signed the Joint Canadian-Palestinian Framework on Economic Cooperation and Trade, designed to improve market access and customs procedures on a reciprocal basis. Although the Framework exactly mirrors the CIFTA, it also states Canada's separate free-trade relationship with the Palestinians.

III. MARKET ACCESS IN GOODS

(1) TARIFFS AND OTHER CHARGES AND TAXES AFFECTING IMPORTS

56. Over 90% of Canada's imports, enter duty free either under MFN or preferential rules. Canada's trade weighted average tariff was 0.87% in 1999. MFN tariffs, collected on the landed value of imports, average 7.2% (Chart III.1); nearly half of the items are zero-rated. Further, all tariffs are rounded down to the nearest half percentage point, and tariffs declining to below 2% are automatically eliminated. Customs duties in 1999/2000 accounted for 1.3% of total budgetary revenue, down from 1.8% in 1997/98 and 2.3% in 1995/96.⁴¹

57. A simple average MFN tariff of over 13% on dutiable items reflects sizeable tariff barriers concentrated in a few of Canada's sensitive sectors, which are often also of particular interest to exporters from developing countries. The products are mainly certain foods, alcoholic beverages, textiles, clothing, and ships and boats. As a result, dispersion is relatively high in the Canadian tariff. Several drawback, concession, and remission schemes are used to offset the cost-rising effect of tariffs in an otherwise highly competitive Canadian market. Nearly 5% of tariff lines are non-*ad valorem*; concentrated in the agri-food sectors, they mask in some cases high levels of protection. Some tariffs depend on end-use.⁴²

MFN suppliers compete in virtually all products with Canada's preferential partners, particularly products from the United States. Tariff concessions in favour of developing countries under the Generalized Preferential Tariff are relatively modest compared with tariff preferences in favour of

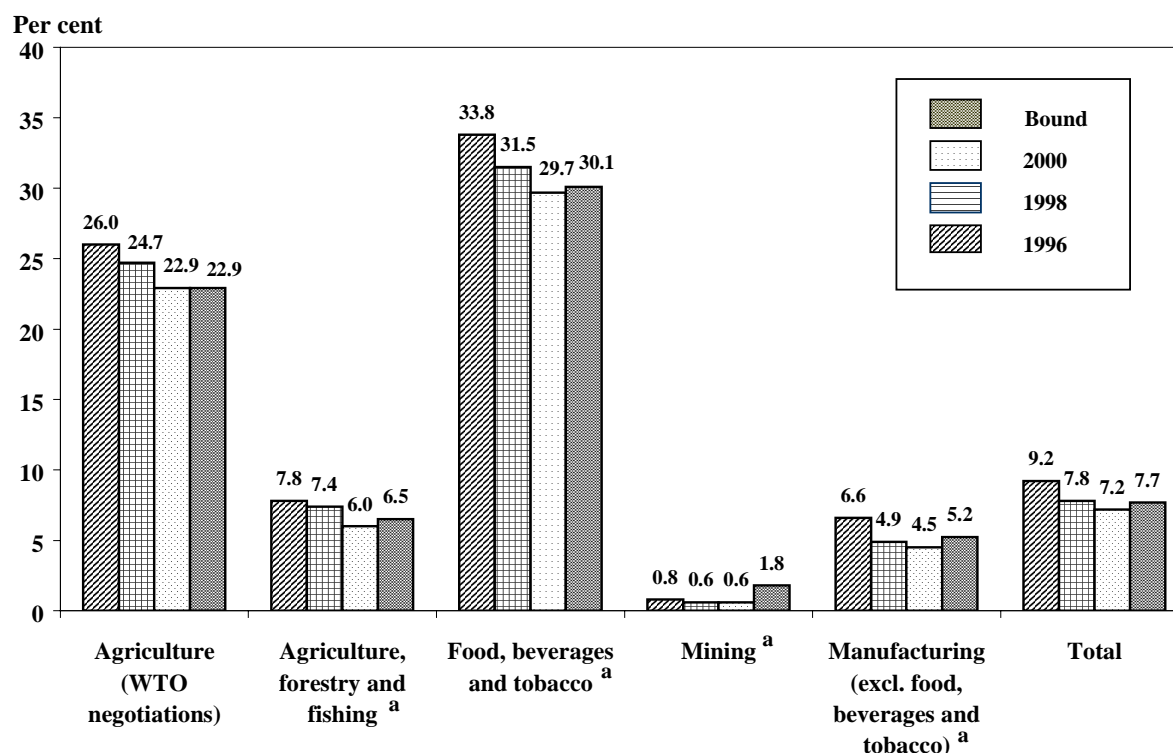
⁴¹ Department of Finance online information. Available at: www.fin.gc.ca/afr/2000/frt.001e.html#table3.

⁴² Canada Customs and Revenue Agency online information. Available at: <http://www.ccradrc.gc.ca/E/pub/cm/d1185ed/d1185ed.html>. The agency, formerly Revenue Canada, enforces Canada's tax, trade, and border legislation.

Mexico and Chile under free-trade agreements. Canada does not grant MFN status to imports from Albania, the Democratic People's Republic of Korea, Libya, and Oman, which are subject to the General Tariff currently levied at 35% on most products. However, Canada is in the process of granting MFN status to recently-acceded countries. In August 1999, retaliatory tariffs of 100% were imposed on EU exports of beef, pork (above a tariff quota), cucumbers, and gherkins in response to the European Union's non-implementation of the WTO dispute settlement ruling on Canadian beef produced using growth hormones (Table AII.1).

Chart III.1

MFN tariff averages 1996-2000, selected years, and final bound tariff (2004)



^a ISIC classification.

Note: Data for 1996, 1998 and 2000 exclude in-quota tariffs. Final bound rate (2004) includes *ad valorem* tariffs only.

Source: WTO Secretariat calculations, based on data provided by the Government of Canada.

(i) MFN tariffs

(a) Bindings

58. All tariff lines are bound except on some petroleum and gas products, electricity, and most ships and boats. Canada has communicated to the WTO its revisions resulting from the introduction of the HS96 nomenclature; these have been certified by WTO Members.⁴³ In addition, Canada has notified its final bound tariff. In general, Canada's tariffs are bound only slightly above the applied levels (Chart III.1).

⁴³ WTO document WT/Let/329, 23 February 2000.

(b) Recent MFN tariff reductions

59. Few changes have taken place in Canada's applied tariffs since the overhaul of the tariff regime in 1998. In January 2000, MFN tariffs averaged 7.2%, down from 7.8% in 1998 (Chart III.1).⁴⁴ The reduction represents the implementation of the following WTO commitments:

- reductions on textiles and clothing, which are being implemented on a ten-year schedule ending January 2005, and final reductions in January 1999 on other remaining industrial products, as provided by Canada's Market Access Schedule;
- reductions implemented in January 1999 and January 2000 (final) under the Agreement on Agriculture;
- reductions implemented in January 1999 and January 2000 (final) under the Information Technology Agreement⁴⁵; and
- reductions implemented in July 1999 under the second product coverage review of the Agreement on Pharmaceuticals⁴⁶; these reductions added 639 products to the list of products imported MFN duty-free by participating Members.

60. Some 47% of HS eight-digit tariff items are duty free (Table AIII.1), up from 45% in 1998, 32% in 1996 and 26% in 1994. The average tariff on dutiable items is 13.4%, down from 14% in 1998. As measured by the coefficient of variation (standard deviation divided by the mean), tariff dispersion has increased from 3.1 to 3.5; it remains high reflecting the contrast between duty-free trade on most items and substantial protection afforded to selected activities. The largest reductions between 1998 and 2000 have occurred in agriculture (ISIC1 – Chart III.1) where tariff protection has decreased to 6%.

(c) Tariff peaks, drawbacks, and duty concessions

61. MFN tariffs exceed 15% on 700 tariff lines, in addition to the 132 tariff lines covered by out-of-quota tariffs (section (2) below). The 700 lines consist mostly of textiles and clothing products, together with wine and cider, sugar, footwear, vegetables during the domestic production season, and cut flowers; tariffs on ships and boats are set at 25%. In the fabricated metal products industry, tariffs continue to exceed 12% for stamped, pressed, and coated metal products as well as most structural metal goods, wire gauze, iron fittings for coffins, knives, scissors, secateurs, pottery, and china. High tariffs impose costs on users, in addition to the administrative costs of operating remission schemes, and encourage users to purchase products imported from duty-free sources.

62. To offset the costs imposed by high tariffs on these products, a number of tariff relief measures are in place; these include tariff reductions on manufacturing inputs, and duty drawback or remission schemes.⁴⁷ For example, in the clothing industry, Canadian producers have traditionally relied on MFN imports for several key inputs despite high MFN tariffs. In practice, producers may

⁴⁴The tariff analysis in this section is based on *ad valorem* tariffs, *ad valorem* equivalents of non-*ad valorem* duties when available and, if not, the *ad valorem* component of alternate, compound, and other mixed duties. Unless specified, the analysis includes both in-quota and out-of-quota tariffs in the case of agricultural products subject to tariff quotas.

⁴⁵ WTO document G/MA/TAR/RS/19, 16 April 1997.

⁴⁶ WTO document WT/Let/316, 2 November 1999.

⁴⁷ Canadian Customs and Revenue Agency online information. Available at: <http://www.ccradrc.gc.ca>.

apply to the Canadian International Trade Tribunal for tariff relief; they must indicate the availability of domestic substitutes, prices, and the estimated domestic market for the end product. Twenty-seven applications were filed in the two years to March 2000⁴⁸; in 1998-99 the value of imports that entered under such relief was Can\$21 million, or 0.71% of imports. For other products, requests for reviews are conducted by the Department of Finance. In all cases, tariff relief is made by Executive Order amending the Customs Tariff.

63. Duty remission and drawback measures provide tariff relief when imported goods are used for certain purposes or under certain conditions. The vast majority relate to measures implementing the Auto Pact; six orders provide relief on certain textiles and clothing products.⁴⁹

64. MFN tariffs on certain motor vehicles stand at just over 6%. Companies established under the Auto Pact, however, may import those vehicles duty free from any MFN source, under various remission orders, subject to certain performance requirements for domestic production-to-sales and Canadian value added. This has been the subject of a recent WTO Panel (Table AII.1). The Panel found that the import duty exemption was not consistent with the MFN principle; and that the import duty granted conditional upon production-to-sales requirements constituted a subsidy conditional upon export performance. Following the confirmation of these findings by the Appellate Body, Canada advised WTO Members that it would implement the WTO ruling in two phases. Canada removed the duty remission schemes in September 2000. Canada has until February 2001 to implement the non-subsidy findings; details of how this would be done have not been disclosed.

(ii) Preferential tariffs and rules of origin

65. As a result of the ten preferential tariff schemes (and of the drawbacks and concessions mentioned above), the share of customs duties in imports declined from 1% in 1997 to 0.87% in 1999. Since 1998, the largest tariff reductions concerned imports from Mexico and Chile: Mexico's average tariff decreased from 4.4% to 3.3%, and Chile's average tariff decreased from 4.1% to 3.3%. Preferential access entails a significant advantage in areas protected by high MFN tariffs, and this is likely to favour trade from preferential suppliers (Table AIII.1). As described in Chapter I(2), Canada's preferential agreements have contributed to above average growth in trade flows with preferential partners, amplifying in particular Canadian-U.S. interdependence.

66. In September 2000, Canada implemented an Order expanding duty-free access for imports from least developed countries covering over 550 additional tariff lines, including iron and non-alloy steel, certain chemicals, prepared foods such as pasta, confectionery products, beverages, cut flowers, and crustaceans. As a result of this initiative, the number of non-*ad valorem* tariffs was halved to 179 lines; the share of duty-free lines increased from 83% to 90%; the average tariff declined from 4.6% to 4.3% and the average of dutiable rates increased from 28% to 41% (Table AIII.1). The largest percentage reductions took place in beverages (from 8.5% to 4.9%); tobacco products (from 54% to 1%); and in furniture and non-metallic products (from 1.7% to duty free).

67. Canada's preferential rules of origin are designed to ensure that trade preferences are limited to products originating in the corresponding free-trade areas. Rules under the North American Free Trade Agreement (NAFTA) in several cases require key components to be produced in the NAFTA region for NAFTA origin to be conferred (e.g. picture tubes for television receivers, or printed circuit assemblies for telephones). External suppliers of textile inputs, and Canadian processors, are confronted with strict "yarn forward" rules of origin under the NAFTA, which require in most cases that the finished products, the fabrics, and the yarns used for weaving or knitting are formed in participating countries in order for an article of clothing to qualify for tariff preferences.

⁴⁸ For the details of the scheme see Canadian Customs and Revenue Agency online information. Available at: <ftp://ftp.citt.gc.ca/menu/EmenuKCA.html>.

⁴⁹ WTO (1998), Table III.3.

68. As noted above, Canada has traditionally imported inputs for its clothing industry from MFN sources. Under the NAFTA "yarn forward" rule of origin, however, exports to the United States of clothing using non-NAFTA originating fabrics or yarns would not qualify as originating in Canada. Therefore, the NAFTA allows for specified quota amounts of non-originating clothing and textiles "the Tariff Preference Level" to be exported from Canada into the United States duty free.⁵⁰ In certain cases, notably woollen and cotton or man-made apparel, these tariff quotas are just about filled suggesting that exports of such products to the United States are competitive within the quota but may find it difficult to compete against MFN U.S. suppliers.⁵¹

(iii) Other charges and taxes affecting merchandise imports

69. A Goods and Services Tax (GST) applies to virtually all goods and services at a rate of 7%. Some supplies, including residential rents and financial services, are exempt, others are zero rated (e.g. certain basic groceries and agricultural goods). Province-specific sales taxes apply in six provinces; Alberta does not have a sales tax while in three provinces a harmonized sales tax of 15% combines the provincial and federal taxes. Exports are not covered by either the GST or any of the provincial sales taxes.

70. Federal excise duties are imposed on certain products as production levies, complemented by excise taxes imposed as sales levies. In the case of tobacco and certain spirituous beverages, a duty equal to the excise duty that would be levied on the goods under the Excise Act if they were manufactured in Canada is levied at the time of importation, under the Customs Tariff. Provinces also impose taxes on fuel and tobacco products, with different tax rates applicable for each province. Excise taxation of alcoholic beverages and tobacco has been under review since the time of the last Review of Canada.⁵² In 1998, the following other products carried federal excise taxes or duties: automotive and aviation fuels, jewellery, car air conditioners and heavy automobiles.

(2) TARIFF QUOTAS IN THE AGRI-FOOD INDUSTRY

71. Tariff quotas constitute the main instrument of import protection in the agri-food industry. Changes since Canada's last Review in the administration of these tariff quotas concern imports of chicken, barley, and fluid milk.⁵³ With regard to chicken and products, modifications to the allocation of the tariff quota have reportedly been phased in, as provided for in Canada's Uruguay Round commitments. The application of the barley tariff quota to imports from the United States has been suspended, thus introducing a trade preference in favour of the United States; and the Can\$20 limit on imports of milk for personal use has been removed.

72. In general, in accordance with Canada's Uruguay Round commitments, 21 tariff quotas continue to restrict imports of mainly dairy products, eggs, turkeys, chicken and products thereof, and to a lesser extent beef, wheat and barley, and their products (Chart III.2). The out-of-quota tariff rate is generally prohibitive and may act as a de facto quantitative restriction. This would be the case for products with fill rates at, or close to the in-quota maximum volume, which is true for most of the products subject to tariff quotas.

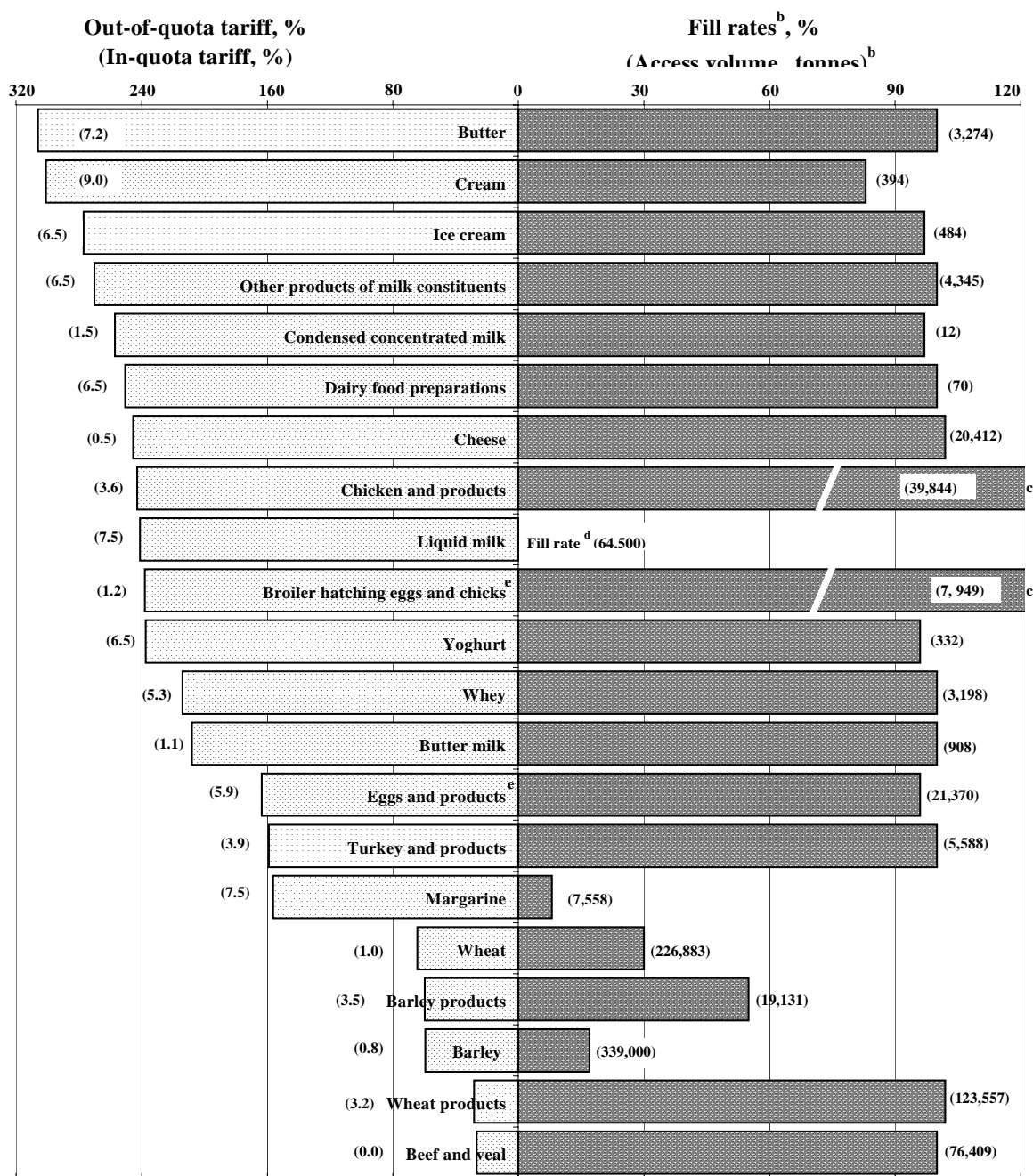
⁵⁰ Recent modifications to the administration of the Tariff Preference Level are described in the website of the Canada Customs and Revenue Agency: <http://www.ccra-adrc.gc.ca/E/pub/cm/d11422ed/330be.doc>.

⁵¹ For information on utilization levels see Department of Foreign Affairs and International Trade online information. Available at: <http://www.dfait-maeci.gc.ca/~eicb/textile/ntpl-exe-dec-e.htm>.

⁵² Department of Finance online information. Available at: <http://www.fin.gc.ca/earev/eaann5%2De.html>.

⁵³ Pork imported from the European Union in excess of 2,970 metric tonnes has been subject to a 100% tariff since 1999, in retaliation for the refusal of the European Union to implement WTO dispute settlement findings regarding its ban on Canadian exports of beef produced using growth hormones.

Chart III.2

Applied tariffs^a on 21 groups of products subject to tariff quotas, 2000

^a *Ad valorem* equivalents estimated by the WTO Secretariat in the case of specific or compound tariffs.

^b Access volume for the year 2000. Fill rates are 1999 imports as a share of WTO access volume in 1999.

^c These fill rates (149% for chicken and 136% for broilers) reflect NAFTA commitments to allow imports of either a specified minimum share of domestic production in the previous year, or the WTO access volume, whichever is higher.

^d Unlimited for non-commercial cross-border imports in retail packages.

^e Access volume in thousands of dozen.

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

73. Quotas are administered in a variety of methods including on the basis of the past performance of the applicants (e.g. for most cheese, concentrated or condensed milk); and requirements of downstream users, who often depend on this access for competitively priced inputs (e.g. cream, hatching eggs).⁵⁴ The tariff quotas for margarine, wheat, wheat products, barley and barley products are administered on a first-come, first-served basis. The entire tariff quota for butter is allocated to the Canadian Dairy Commission (see below).

74. Access at low in-quota rates of duty, scheduled under the WTO Agreement on Agriculture, is in many cases extremely limited (Chart III.2). For certain dairy products, there is no market access commitment at all: for a number of tariffed products, other than the 21 WTO tariff quotas mentioned above, Canada specified in- and out-of-quota rates of duty but no quota volumes. These products notably include milk powder.⁵⁵ The authorities have noted that, in practice, the products affected are imported at the in-quota rate under supplementary import permits when temporary domestic shortages occur, or when the imported products are destined for re-export.

75. Five of Canada's 21 tariff quotas include reserved access in favour of four trading partners. In addition, the entire quota for fluid milk is reserved for personal cross border purchases (i.e. in practice from the United States). Accordingly, importers must ensure that their supplies originate in the countries with reserved access to the extent of the guaranteed share. This effectively limits further the available access for all other WTO Members. In particular, 61% of the quota volume for butter is reserved for New Zealand; 66% of the quota for cheese is reserved for the European Union; nearly 85% of the beef quota is reserved for Australia and New Zealand; the entire quota for concentrated or condensed milk or cream is reserved for Australia; and the whole quota for powdered buttermilk is reserved for New Zealand.

76. For some products, sizeable tariff preferences in both out-of-quota and in-quota treatment would seem to be a determining factor in the sourcing of imports. In the case of bovine meat, for example, duty-free out-of-quota rates on imports from Caribbean countries, Chile, Mexico, and the United States compare with an MFN tariff of 28%. Mexico and the United States also enjoy out-of-quota duty free treatment for imports of wheat, otherwise subject to a 50% duty; out-of-quota imports of margarine enter duty free when originating in Chile or Mexico, while the MFN tariff is Can\$0.8228 per kg. (equivalent to an *ad valorem* rate of some 73%, according to WTO Secretariat estimates). Examples of products with in-quota tariff preferences include chicken, and turkey products (MFN rates of 5-11% against duty free for U.S. and Chile on imports); and milk, cream and butter, and margarine (MFN rates ranging to 9%, duty free for U.S. and Chile on imports).⁵⁶

(3) ANTI-DUMPING, AND COUNTERVAILING ACTIONS

77. Although in most countries anti-dumping (AD), countervailing (CVD), and safeguard actions cover only a small percentage of production and trade, they may strongly affect the producers of the specific products concerned, both in supplying countries and in the country applying the measure, and consumers in the importing country because of their effect on prices and choices of supply. As a target of many AD and CVD actions, and an economy highly dependent on exports, Canada has been a long-standing advocate in multilateral negotiations for tighter rules in order to limit unnecessary restrictions to trade and market distortions that may result from the abuse of such measures.

⁵⁴ See WTO (1998) Table IV.5.

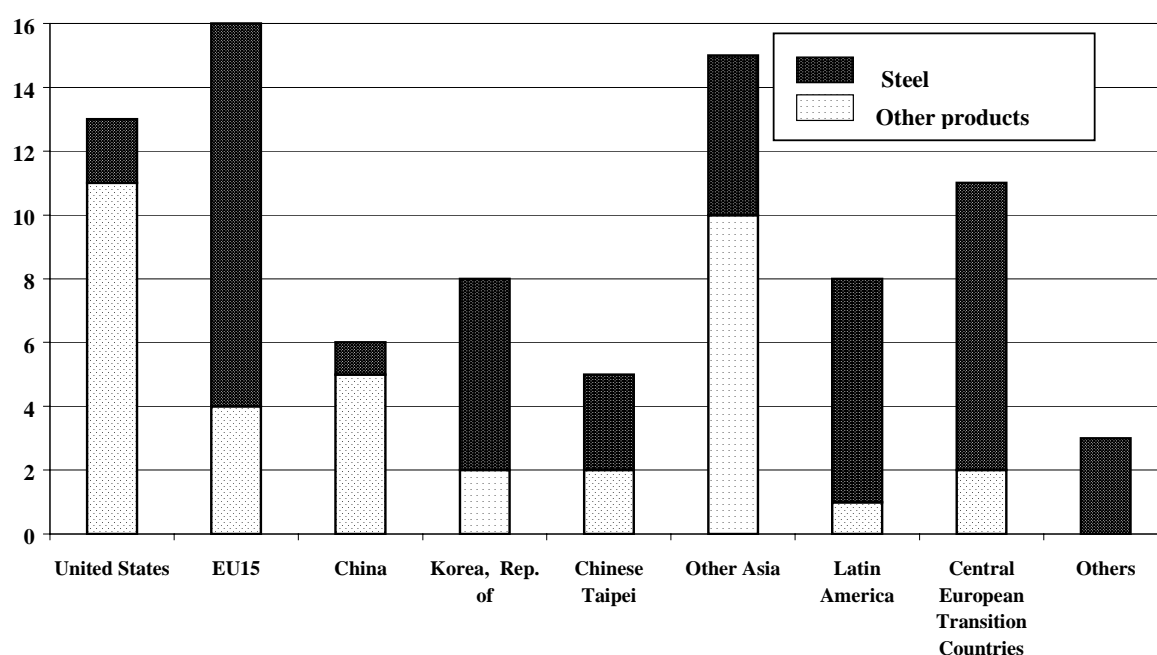
⁵⁵ The HS items affected are: powder milk and other milk, cream and buttermilk products – 04021010, 04022111, 04022121, 04022911, 04022921, 04039091; certain malt extract, chocolate ice cream mix, and mixes – 18062021, 18069011, 19012011, 19012021, 19019031, 19019051, 19019053; and other food preparations – 21069031, 21069033, 21069093; certain non-alcoholic beverages – 2202904; and certain animal food preparations – 23099031.

⁵⁶ Canada's latest notifications concerning imports under tariff quotas are contained in WTO documents G/AG/N/CAN/27, 29 April 1999 and G/AG/N/CAN/31, 12 January 2000.

78. Canada has maintained its position as one of the most active users of anti-dumping actions, with 85 definitive duties in force at end June 2000 (Chart III.3)⁵⁷, up from 73 in June 1998; this suggests that industry has increasingly sought such measures as an avenue of protection against import competition. Nevertheless, AD and CVD actions affect less than 0.5% of Canada's imports on average, and about 2% of domestic shipments.⁵⁸ Some 35 countries or customs territories are affected by these measures, EU and U.S. suppliers are the subject of most actions. Some 51 duties (58% of the total) cover steel products.

Chart III.3

Number of anti-dumping duties in force, by partner, June 2000



Source: WTO Secretariat.

79. The Canada Customs and Revenue Agency (CCRA – formerly Revenue Canada) conducts investigations and determines whether goods imported into Canada are dumped or subsidized.⁵⁹ The Canadian International Trade Tribunal (CITT) conducts inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry. Procedural amendments to both the Special Import Measures Act (SIMA), Canada's main AD and CVD legislation, and to the Canadian International Trade Tribunal Act (the CITT Act), were described in the previous Review; they were enacted in April 2000.⁶⁰ Among other changes, these amendments clarify the public interest provisions of SIMA, with a non-exclusive list of factors including: significant damage to downstream users, problems of access to inputs due to imposition of the full duty, significant impact on choice or availability of products to consumers, and elimination of

⁵⁷ WTO document G/ADP/N/65/CAN, 30 August 2000, contains Canada's report for the period January-June 2000.

⁵⁸ CITT (1997).

⁵⁹ See Anti-dumping and Countervailing Directorate online information. Available at: <http://www.ccradrc.gc.ca>.

⁶⁰ CITT (1999).

competition in the market-place. The factors are designed to guide the CITT in conducting an inquiry that would allow for duties to be reduced for reasons of public interest.⁶¹

80. Following the crisis in Asia, and the subsequent reduction in demand in that region, several steel companies, particularly in Asia, were faced with a collapse of their traditional markets in 1998. To avoid bankruptcy, they redirected their shipments to new markets; these included Canada, where imports surged.⁶² Reflecting this, some 22 of the 28 new AD and CVD actions initiated during the July 1998 – June 2000 period concerned steel products (Table AIII.2).⁶³ The six other cases involved imports from the United States of refrigerators, dishwashers and dryers; bingo paper; and x-ray contrast media; an investigation covering cigarette tubes; and another on waterproof footwear.

81. All but one of the recent investigations have resulted in a preliminary determination of dumping. According to the authorities, this reflects the high proportion, approximately 80%, of complaints rejected prior to initiation (i.e. not "properly documented complaints"). Over the period under review, preliminary findings resulted in provisional duties ranging from 12% to 136% of the customs value of the shipment, obliging exporters in some cases to increase their price by over 100% or pay the duty in order to continue selling in the Canadian market.⁶⁴ Moreover, products subject to recent investigations accounted in most cases for 100% of exports of that product from the countries concerned. Three price undertakings were in force as of February 2000, whereby exporters undertake to export to Canada above a set (confidential) price.

82. The lengthy duration of actions under Canada's legislation – 16% of measures are in place for ten years or more – is partly explained by numerous requests for review when an order is about to expire. Under the SIMA, all anti-dumping measures or undertakings are rescinded at the end of a five-year period unless the Tribunal decides on its own initiative, or at the request of the CCRA or any other interested party, to conduct a review. Between January 1996 and June 1998, the Tribunal issued an average of 1.5 review orders per month: 15 review orders were continued; 33 others resulted in the orders being rescinded. During the January 1998 to June 2000 period, 17 review orders were continued, and 32 were rescinded; among the latter, in 21 cases there was no likelihood of resumed dumping; in two cases no likelihood of injury, and in nine cases industry did not provide sufficient data to justify review.

83. Six countervailing duty measures were in place as at September 2000. Three of these are new measures resulting from countervailing investigations initiated in October 1999 regarding steel imports from India, Indonesia, and Thailand (Table AIII.3).⁶⁵

(4) QUANTITATIVE RESTRICTIONS AND CONTROLS

84. Quantitative restrictions and controls on trade are in most cases designed to ensure national security, safeguard consumer health and morality, or to preserve domestic plant and animal life and the environment. These have been described in previous Trade Policy Reviews and are generally notified to the WTO (Chapter III.5). Quantitative restrictions and controls are implemented through a

⁶¹ Canada has submitted a discussion paper on this issue to WTO Members (WTO document G/ADP/AHG/W/76, 19 October 1999).

⁶² See for example Canada Customs and Revenue Agency (2000).

⁶³ For information on all active cases see CCRA online information. Available at: <http://www.ccradrc.gc.ca/customs/business/sima/monthly-e.html>.

⁶⁴ In the Canadian system, exporters can avoid the payment of duties if they raise the relevant price to, or above, the level of "normal value".

⁶⁵ Canada's latest notification on countervailing duty measures is contained in WTO document G/SCM/N/62/CAN, 29 August 2000.

system of licences.⁶⁶ This section focuses on those restrictions maintained for economic purposes, such as on:

- used or second-hand motor vehicles less than 15 years old, except if manufactured to meet Canadian or U.S. safety standards;
- worn clothing; and
- reprints of Canadian and British works copyrighted in Canada.

(i) Agri-food products

85. Quantitative restrictions on imports of agri-food products have been converted into tariff quotas under the WTO Agreement on Agriculture (see above). Other non-tariff restrictions include imports (and interprovincial movement) of fresh fruit and vegetables without a pre-arranged buyer (a "confirmation of sales"), and imports (and interprovincial movement) of bulk horticultural products that do not meet standardized quality, labelling, and packaging requirements. Importers may obtain waivers of these restrictions under special circumstances, such as shortages in Canada.

(ii) Textiles and clothing

86. As noted in its previous Review, Canada met the requirements of the WTO Agreement on Textiles and Clothing (ATC) in its product integration programme for the first two stages (1 January 1995 and 1 January 1998), including the integration of some products under import quotas with the consequent removal of these quotas. Canada, like other countries maintaining quotas, has generally implemented the ATC by placing under GATT rules those textiles and clothing products for which no quotas were in place, leaving the most sensitive products for the end of the implementation period. The products selected for integration have been concentrated in products such as tops, yarns, and fabrics (16.7%), and in made-up textile products (15.5%), with only small shares of clothing products being liberalized (2.8%). Canada has never applied the transitional safeguard mechanism provided by the ATC.

87. Quotas for tailored collared shirts were eliminated in 1997 and these products were integrated into GATT rules at Stage 2 in 1998. These products accounted for nearly 20% of unrestricted imports of clothing in 1999. Quotas on rainwear, children's shirts and blouses, women's and girls' ensembles and knitted clothing, and babies' outerwear were removed in 1998 although these products were not integrated.

88. The removal of quotas on tailored collared shirts has resulted in dynamic market advances by China and India, and in important losses of market share for all other suppliers. The elimination of quotas for tailored collared shirts has therefore provided an insight as to how the Canadian import market may evolve when other restraints are eliminated. China is already Canada's largest supplier of clothing products, and third overall supplier of textiles after the United States and Korea. The authorities expect China, and to an extent India, to supply most of Canada's MFN imports of clothing once the system of restraints is fully dismantled.

89. In 1999, half way through the transition period of ten years for the ATC's implementation some Can\$2.2 billion of clothing imports entered under quota, accounting for 52% of total clothing

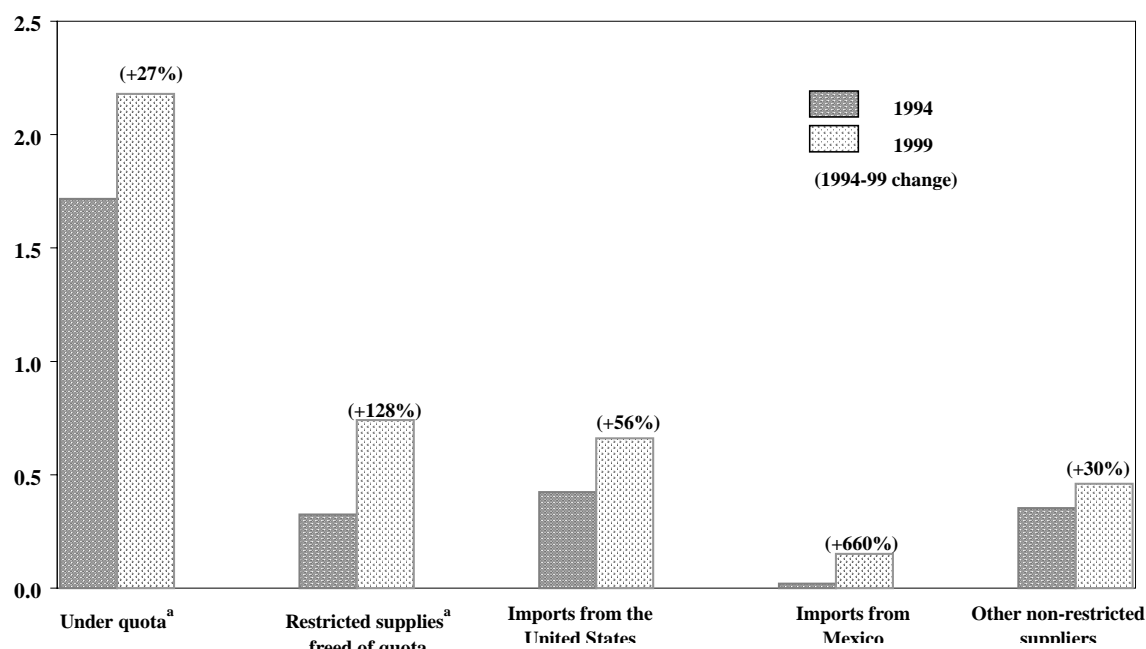
⁶⁶ These are handled by the Export and Import Bureau (DFAIT online information. Available at: http://www.dfait-maeci.gc.ca/eicb/epd_home.htm). Canada notified its import licensing procedures in WTO document G/LIC/N/3/CAN/3, 11 October 1999.

imports, down from 61% in 1994.⁶⁷ Between 1994 and 1999, the value of clothing imports under quota increased by 27%, reflecting the under-utilization of quotas in 1994, and the growth of quota size. Exports of products whose quotas had been freed (e.g. tailored collared shirts) expanded by 128%, suggesting that quotas were substantially restraining imports (Chart III.4). Imports from preferential partners under the NAFTA have also increased considerably: by 56% in the case of U.S. suppliers, and by a factor of seven in the case of Mexico.

Chart III.4

Imports of clothing from selected suppliers, 1994 and 1999

Can\$ billion



^a Supplies under bilateral agreements restricting exports of clothing to Canada.

Source: Canadian authorities

90. In early 2000, Canada was restraining imports of textiles or clothing products from 41 trading partners comprising 31 WTO Members and 10 non-members, down from 43 at the ATC's inception.⁶⁸ These include six least developed countries. Most exports from LDC countries to Canada in 1999 were clothing products, highlighting the current importance of this sector for these countries.⁶⁹ These LDCs have low overall quota utilization rates, except Bangladesh (82.6%). For some products,

⁶⁷ Other indicators regarding trade in textiles and clothing are provided in a Communication from the International Textiles and Clothing Bureau, WTO document WT/GC/W/283, 3 August 1999.

⁶⁸ The countries are: Bangladesh; Brazil; Bulgaria; Cambodia; China; Costa Rica; the Czech Republic; the Dominican Republic; Hong Kong, China; Hungary; India; Indonesia; Jamaica; Laos; Lebanon; Lesotho; Macau; Malaysia; Mauritius; Myanmar; Nepal; Oman; Pakistan; Democratic People's Republic of Korea; the Philippines; Poland; Qatar; Republic of Korea; Romania; Singapore; Slovak Republic; South Africa; Sri Lanka; Swaziland; Syria; Taiwan; Thailand; Turkey; United Arab Emirates; Uruguay; and Viet Nam.

⁶⁹ See, for example, DFAIT online information. Available at: http://www.dfait-maeci.gc.ca/geo/html_documents/76420-e.htm.

imports from Bangladesh, and to a lesser extent Cambodia and Laos, have utilization rates above 90%.

91. The quota system is likely to be most limiting on exporters with high quota utilization rates, e.g.: China (with a quota utilization rate of 90% in 1999); Hong Kong, China (89%); India (96%); Viet Nam (93%); and Thailand (75%). Despite the quotas, Canadian imports of clothing from the ASEAN countries, expanded particularly rapidly in 1998, thereby helping these countries to emerge from the 1997 financial crisis. These quotas were under-utilized to such an extent that there was room within the quotas for such rapid growth in addition to the growth of quotas themselves. Clothing (HS 61 and 62) is ASEAN's third largest export to Canada.

92. Under the ATC, Canada is committed to integrating a further 18% of 1990 import volumes into WTO rules on 1 January 2002, and all remaining products by 31 December 2004. The actual list of products is to be determined by the Minister for International Trade. In a discussion paper published in 1999 the authorities acknowledged the "strong dissatisfaction expressed by textile and apparel exporting countries with the delayed removal of bilateral quantitative restrictions by the major importing countries".⁷⁰ Aware of calls by developing countries "to undertake to implement positive measures to manifest their commitment towards liberalizing trade" in the textile and apparel sectors, the Canadian authorities have asked the views of Canadians regarding a possible re-examination of the Agreement's integration timetable. Based on these consultations, however, the authorities have no plans to accelerate the process of import liberalization and are opposed to any changes to the ATC schedule. They have noted that the Canadian textiles and clothing industry has undergone enormous transformations in two decades, causing the loss of 250,000 jobs, and turning a domestically supplied market into a market dominated by imports.

(5) STANDARDS AND TECHNICAL REGULATIONS

(i) Recent international regulatory activities

93. In September 1999, the Standards Council of Canada (SCC), the central governmental body that oversees the National Standards System, accepted the TBT Agreement Code of Good Practice.⁷¹ According to the authorities, this ensures that standardizing bodies will continue to comply with the Code of Good Practice in order to remain accredited by the Council. Among other recent developments, the SCC launched the "Canadian Standards Strategy", designed to ensure an active role for Canada in the development and harmonization of standards internationally.⁷²

94. In 1999, Canada made 19 notifications of new technical regulations under Article 2.9 of the WTO Agreement on Technical Barriers to Trade.⁷³ Many of these notifications concerned motor vehicle safety, as well as new chemical regulations. In addition five notifications concerning regulatory changes on telecommunications equipment and medical products have been made under Article 5.6, in part following the entry into force of the mutual recognition agreements (MRAs) with the European Union and Switzerland (see below).

95. The negotiation of MRAs is viewed as a tool to reduce or simplify conformity requirements. MRA's are likely to facilitate bilateral trade with partner countries and do not, in Canada's view, unduly disadvantage third parties. In particular, the authorities have noted that Canadian MRAs do

⁷⁰ DFAIT (1999).

⁷¹ WTO (1998) Chapter III(3)(v)(a).

⁷² SCC online information. Available at: <http://www.scc.ca>.

⁷³ Article 2.9 contains notification requirements for new technical standards not in accordance with international standards or established when international standards do not exist.

not contain a rule of origin requirement, and that Canada allows products from third countries to be tested in Canada to partner-country technical requirements and vice-versa. Canada's MRAs consist of the 1998 Canada-European Union MRA on Conformity Assessment⁷⁴; a similar bilateral MRA on Conformity Assessment with Switzerland⁷⁵; and an MRA with the other EFTA countries, not yet in force. In addition, Canada has endorsed the APEC Mutual Recognition Arrangement on telecommunications⁷⁶, as well as a similar Inter-American arrangement on telecommunications.⁷⁷

(ii) Sanitary and phytosanitary measures

96. Canada has made 40 notifications to the WTO Committee on Sanitary and Phytosanitary (SPS) Measures since its last Review, a sharp increase over previous years. Most of these notifications described amendments made to the Food and Drug Regulations establishing new maximum residue levels (MRLs) for various chemicals contained in edible fruit and vegetables. The new MRLs were introduced for health and safety reasons following scientific assessments; as this process resulted in the harmonization of domestic with U.S. requirements, it should further intensify regulatory integration between Canada and its main trading partner. This reflects the work of NAFTA technical working groups to harmonize their regulatory approaches. Canada is working with the U.S. and Mexico through the NAFTA Technical Working Group on Pesticides to harmonize pesticide regulatory approaches among the three countries. Canada has also provided technical assistance to developing countries in the area of SPS measures.⁷⁸

97. In June 1999, the Canadian Food Inspection Agency imposed a prohibition on the importation from Belgium of pork and pork products, poultry and poultry products, and products that may contain eggs and animal feed. This provisional ban was then extended to beef and beef products, and dairy products processed or packaged in Belgium, in response to reports of contamination with dioxins. All of these dioxin-related import restrictions had been lifted by January 2000.

98. The import controls implemented in Canada in relation to Transmissible Spongiform Encephalopathy (TSE), including Bovine Spongiform Encephalopathy (BSE), remain in place.⁷⁹ They include import prohibitions on live animals (bovine, sheep, and goats), meat and meat products from countries that have confirmed cases of TSE in native animals in the preceding seven years. Importation from any other country requires a full risk assessment. Currently, Canada allows imports of bovines from Australia, Mexico, New Zealand, and the United States; sheep from Australia, New Zealand, and the United States; and goats from the United States. Other animal products (e.g. semen, hides and skins, dairy products) considered exempt from TSE restrictions by the OIE (Office International des Epizooties) can be imported if they meet Canada's other import requirements.

⁷⁴ For additional details, see WTO documents G/TBT/Notif.99.156, 9 April 1999; G/TBT/Notif.99.265, 4 June 1999; and DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/mra-eu-e.pdf>.

⁷⁵ See DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/mra-swis-e.pdf>.

⁷⁶ See APEC TEL WG online information. Available at: <http://www.apii.or.kr/telwg/mraTG/mra-apec.html>.

⁷⁷ See CITELE online information. Available at: <http://www.citel.oas.org>. A 1995 MRA with Korea covers telecommunications equipment (DFAIT online information. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/shared/mra-ko-e.pdf>).

⁷⁸ WTO document G/SPS/GEN/143/Rev.1/Add.1, 16 June 2000.

⁷⁹ WTO documents G/SPS/N/CAN/18, 24 and 39, 15 January 1997, 23 April 1997, and 16 April 1998 respectively.

(iii) Environmental regulations and trade

99. Environmental jurisdiction in Canada is shared between federal and provincial/territorial levels of government. Under the Canadian Environmental Protection Act (CEPA), as amended in 1999, the importation or manufacture of any substance not listed on the Domestic Substance List is subject to a notification and assessment procedure.⁸⁰ Environmental measures notified by Canada to the WTO are contained in the WTO Environmental Data Base.⁸¹ The CEPA was amended in 1999, among other things, giving increased power to the Federal Government to control the transboundary movement of hazardous wastes and hazardous recyclable material, as well as new power to control the import, export, and transit of non-hazardous wastes for final disposal.⁸²

100. Among recent international developments, Canada has signed but not ratified the December 1997 Kyoto Protocol to the Framework Convention on Climate Change.⁸³ Under the Kyoto Protocol, the Government of Canada is committed to reducing emissions to 6% below 1990 levels between 2008 and 2012, an ambitious objective given that greenhouse emissions have continued to increase. The 1999 Revised Emission Outlook forecasted that a 26% reduction compared to business as usual would be required during the commitment period. Implementing the Kyoto Protocol may have effects on trade and investment as, according to one recent estimate, the cost of implementing the Protocol could range from Can\$8.4 billion to Can\$17 billion annually by 2010, corresponding to 0.66-2% of annual GDP.⁸⁴ Canada will not ratify the Protocol until the National Implementation Strategy has been fully developed and the necessary international conditions are in place. Canada believes that to meet the broad objectives of the United Nations Framework Convention on Climate Change, there must be broad participation in mitigation activities by all major global economies, including key developing countries, and that the Protocol should allow countries maximum flexibility in determining their mitigation approaches.

101. One of Canada's recent TBT notifications relates to the introduction of an environmental assessment process for foods, drugs, and cosmetics that are micro-organisms, cultured cells, or products derived from micro-organisms, cultured cells, "transgenic" animals or plants under the Food and Drugs Act ("Transgenic" organisms are also referred to as genetically modified organisms (GMOs), or living modified organisms (LMOs)).⁸⁵ These regulations are expected to enter into force in 2001.

102. In May 2000, Canada communicated information on a project to develop a voluntary labelling standard for goods derived from biotechnology.⁸⁶ The project involves the Canadian General Standards Board developing, on behalf of the food industry and with the support of the Government, a standard to provide consumers with consistent information, and further guidance to the food industries. According to this communication, guidelines are in place for the labelling of foods, including those derived through biotechnology. These provisions require labelling of a product when the product "differs significantly from its traditional counterpart in terms of nutritional content, composition, intended use, or if the food carries a health or safety risk (e.g. allergenicity)".

⁸⁰ For New Substances Notification Regulations see Environment Canada online information. Available at: <http://www.ec.gc.ca>.

⁸¹ WTO document WT/CTE/W/118, 28 June 1999; and WT/CTE/W/143, 22 June 2000.

⁸² For details, see CEPA regulations [online]. Available at: <http://canada.justice.gc.ca/FTP/EN/Regs/Chap/C/C-15.3/index.html>; and Environment Canada [online]. Available at: <http://www.ec.gc.ca/cepa>.

⁸³ The Protocol will enter into force once it has been ratified by 55 countries representing at least 55% of developed countries' emissions.

⁸⁴ Study by Charles River Associates (*Financial Times*, 26 October 1999). See also Chamber of Commerce online information. Available at: <http://www.chamber.ca>.

⁸⁵ WTO document G/TBT/Notif.99.330, 14 July 1999.

⁸⁶ WTO document G/TBT/W/134, 23 May 2000.

(iv) Technical regulations at provincial level

103. Technical regulations and standards continue to differ among provinces. These internal barriers may reduce the competitiveness of Canadian industries, notably because of regulatory product differentiation, and may affect international trade.⁸⁷ Negotiations are still ongoing on changes to the Agricultural and Food Goods Chapter of the Agreement on Internal Trade, to reconcile technical barriers to trade in agricultural products and food. Since 1995, Canada has made three notifications under Article 3.1 of the TBT Agreement, which contains a best-efforts clause with regard to regulations established by local governments and non-governmental bodies. No notifications have been made since 1997.

(6) LOCAL-CONTENT REQUIREMENTS

104. A number of local-content requirements are in place at federal or provincial level. These require locally produced goods and services to be used or purchased to favour domestic industries. At federal level, local-content rules in the "cultural" sectors have not changed markedly since the 1996 Review of Canada, except that restrictions on the amount of advertizing space that may be purchased from foreign magazine publishers were partly liberalized (Chapter V(4)). Value added and production to sales requirements in motor vehicle production under the Auto Pact have also been the subject of a WTO Panel, which concluded, *inter alia*, that this resulted in less favourable treatment being provided to imports relative to domestic parts and materials and non-permanent equipment.⁸⁸

105. A number of local-content requirements are in place at provincial level. Among those known to the Secretariat are:

- Licensed wine manufacturers in Ontario may sell wine containing imported grapes only if the wine contains a minimum of 25% of Ontario grapes, and if they collectively purchase a minimum of 25,000 tonnes of Ontario grapes annually. These requirements are to be reviewed at the end of 2000.
- Alberta's Forests Act requires the permission of the Minister to export unprocessed wood (except dry pulpwood and Christmas trees). According to the authorities, logs and woodchips are currently being exported from the Province. The British Columbia Forestry Act requires a ministerial permit to export out of the province unprocessed timber from lands under provincial jurisdiction; issuance is conditional on sufficient supplies for the provincial processing industry. Timber may also be exported if it cannot be economically harvested and processed within the Province, or if exports will prevent waste or improve utilization.
- In New Brunswick, mining leases are conditional on processing or further processing in the Province. In Newfoundland, petroleum and gas projects are approved if they result in sufficient local employment and purchases of goods and services produced. In Nova Scotia, petroleum exploration rights are conditional on an attempt to use local labour and services. These issues are currently under negotiation as part of the implementation of the AIT's Energy Chapter.

⁸⁷ For details, see Internal Trade Secretariat online information. Available at: <http://www.intrasec.mb.ca>.

⁸⁸ WTO document WT/DS139/5, 2 March 2000.

(7) STATE TRADING, MONOPOLIES, AND OTHER EXCLUSIVITY RIGHTS AFFECTING TRADE

106. Canada's state-trading enterprises (STEs), as notified to the WTO Working Party on State Trading Enterprises, are the Canadian Wheat Board (CWB), the Canadian Dairy Commission (CDC), the Canadian Freshwater Fish Marketing Corporation, the twelve provincial and territorial liquor boards, and the Ontario Bean Producers Marketing Board.⁸⁹

(i) The Canadian Wheat Board (CWB)

107. The CWB is a state-trading enterprise with exclusive authority to export western Canadian wheat, durum wheat, and barley. It also controls domestic sales of milling wheat and malting barley. The CWB exported 15.7 million tonnes of wheat and barley in the 1998-99 crop year, down from 23.7 million tonnes in 1997-98. The decrease reflected the depressed world prices, record world production, and the crisis in Asia, which led farmers to shift more land out of wheat and barley production. CWB's largest export markets in 1998/99 were the United States (2.3 million tonnes), Japan (1.5), Indonesia (0.7) and Mexico (0.6); total wheat and barley sales reached almost Can\$3.4 billion.⁹⁰

108. In 1998/99, 8% of total exports involved credit sales guaranteed by the Federal Government, either to sovereign States under the Credit Grain Sales Programme, or under the Agri-food Credit Facility to private importers. To maintain sales, despite the Asian financial crisis and foreign competition, the CWB offered Can\$250 million in credit to Indonesia through the Credit Grain Sales Programme, and Can\$15 million to Korea, to enable them to continue buying Prairie-grown wheat. The largest clients under these credit programmes in 1998/99 were Indonesia and Iran.

109. Borrowing by the CWB is currently about Can\$7 billion (0.7% of GDP). Federal government guarantees allow the CWB to borrow money to finance its operations at "lower rates of interest than any private sector company of comparable size and credit worthiness".⁹¹ This results in significant savings for Western Canadian farmers (amounting to over Can\$60 million according to the CWB). The Federal Government is entirely liable in case of default.

(ii) The Canadian Dairy Commission (CDC)

110. The CDC continues to have a de facto monopoly on the importation of butter under the tariff quota system (Chapter III(2)). Butter imports represent approximately 2% of domestic consumption. The CDC is also active in export markets, although it does not have exclusive authority for the export of any product. In particular, the CDC negotiates the prices of milk purchased by manufacturers of dairy exports; this intervention has been the subject of a recent WTO panel (Chapter IV(1)(i)).

(iii) The twelve provincial and territorial liquor boards

111. No major change has been brought to the 1928 Importation of Intoxicating Liquors Act, which provides each province and two territories with a monopoly on the introduction of all alcoholic beverages into its territory both from abroad and from other provinces. As a result, imports are carried out by a (single) different public body in each province. Distribution and warehousing services for importers are generally reserved for the provincial "liquor boards". Among the exceptions, Alberta has privatized both warehousing and retail distribution; in British Columbia and

⁸⁹ WTO document G/STR/N/3/CAN, 5 September 1997.

⁹⁰ Canadian Wheat Board online information. Available at: <http://www.cwb.ca>.

⁹¹ Canadian Wheat Board online information. Available at: <http://www.cwb.ca/aboutcwb/general/general.htm>.

Ontario, private retail operations are authorized for domestic wines but not for imported products; and wines that are bottled in Quebec may be distributed through Quebec grocery stores. Although these regulations, under which provinces not only import but store, transport, distribute and sell products, are likely to distort competition, the authorities consider them effective in promoting responsible sale and consumption of alcoholic beverages.

IV. OTHER POLICIES AFFECTING TRADE IN GOODS

(1) EXPORT ASSISTANCE

112. Federal and provincial governments have developed an array of programmes and services over the years to assist exporters, reflecting the growing importance of trade as a means of generating income and employment. These programmes range from export promotion – information and intelligence, and counselling – to financial assistance, mainly in the form of export finance, equity, guarantees and insurance. They are intended to boost exports of goods and services, which have in fact increased dramatically and now account for 45% of GDP, up from 27% in 1986.⁹² However, there is no appropriate performance measure of the costs and benefits associated with this export support.⁹³ Since 1998, the export-related activities of two crown institutions - the Canadian Dairy Commission and the Export Development Corporation - have come under scrutiny by WTO panels. Also, a legislative review of the Export Development Act was completed in 1999.

(i) Agricultural export subsidies

113. For the third consecutive year, Canada reported no export subsidies in the agri-food sector in 1998-99, in contrast to levels exceeding Can\$600 million reported prior to the entry into force of the WTO Agreement on Agriculture. At the time, these export subsidies consisted mainly of support provided under the Western Grain Transportation Act, now abolished, and of dairy export subsidies, amounting to over Can\$150 million at the beginning of the 1990s.⁹⁴

114. A WTO panel recently examined the way Canada eliminated these export subsidies in the "supply managed" dairy sector.⁹⁵ A prior system of producer levy funds, to cover the difference between domestic and world market prices of dairy products, had been replaced in 1995 with a pricing system whereby the Canadian Dairy Commission delivers permits to provincial marketing boards for the sale of milk to dairy processors and exporters at prices below the levels otherwise available in Canada. The WTO panel found that this pricing system constituted an export subsidy, and that dairy exports provided through "classes 5(d) and (e)" were therefore subject to Canada's export subsidy reduction commitments. Implementation of the panel's findings will require reductions in exports of subsidized dairy products (Table AIV.1). According to the authorities, the previous pricing system will continue to apply to dairy exports to the extent of Canada's WTO commitments (as specified in Table AIV.1). In addition, under a new dairy export mechanism, individual farmers and processors are now able to negotiate private contracts for the purchase of milk outside the supply management system. The involvement in these contracts of the CDC or provincial marketing boards is prohibited.

⁹² These programmes, together with the institutions involved, have been described in previous reviews. Additional online information is available from DFAIT, at: <http://www.dfait-maeci.gc.ca>; the Trade Commissioner Service, at: <http://www.infoexport.gc.ca/programmes-e.asp>; the Canadian Commercial Corporation, at <http://www.ccc.ca>; Northstar, at: <http://www.northstar.ca>; and Province of Quebec, at: <http://www.micst.gouv.qc.ca/index.html>.

⁹³ For a discussion of the effectiveness of export promotion activities (but not export finance), see the 1996 and 1999 Reports of the Auditor General of Canada [Online]. Available at: <http://www.oag-bvg.gc.ca>.

⁹⁴ See GATT (1995), Vol. I, p. 128.

⁹⁵ WTO documents WT/DS103/R, 17 May 1999 and WT/DS103/AB/R, 13 October 1999.

(ii) Export financing

115. Most export financing in Canada is provided by the government-owned Export Development Corporation (EDC). As Canada's official export credit agency, it is authorized to borrow, to lend, and to guarantee loans, to enter into export and foreign investment insurance contracts against risks, and to issue guarantees regarding export transactions. Its mandate also includes the power to incorporate subsidiaries, make equity investments, provide domestic credit insurance, engage in leasing to users abroad, as well as provide domestic financing and enter into joint ventures. The EDC finances its activities by borrowing under a government guarantee, whereby the State ultimately assumes costs if a foreign debtor is unable to repay on time. The EDC maintains two accounts, the "Corporate Account" and the "Canada Account".

116. The EDC, because of its status, does not pay income or corporate taxes; does not normally pay dividends; may benefit from reduced borrowing costs; and benefits as a preferred creditor from Paris Club debt relief provided ex gratia under "Paris Club Agreements". The EDC is compensated by the Government for administering the Canada Account; compensation amounted to 20% of EDC's total administrative expenses of Can\$103 million in 1998. The EDC is financially independent and competes with the private sector.

(a) The Corporate Account

117. EDC carries out the vast majority of its business under the Corporate Account. In 1999, the Corporate Account total loan exposure exceeded Can\$14 billion. Of this, over Can\$8 billion were owed by sovereign States, mainly China, Peru, Venezuela, and Algeria.⁹⁶ In addition, the EDC provided Can\$27.6 billion in short-term insurance, Can\$5.9 billion in medium-term insurance, and Can\$456 million in loan guarantees. The Federal Government may request, as part of Paris Club debt forgiveness, certain non-performing debts to be written off the Corporate Account, and charged instead to the Budget. From 1990 to 1999, the cost of non-performing debts under the Corporate Account was approximately Can\$745 million.

118. The WTO panel that examined Canada's support to the aircraft industry rejected Brazil's claim that EDC's Corporate Account assistance constituted export subsidies as defined in the WTO SCM Agreement.

(b) The Canada Account

119. The Canada Account has been used to support transactions that the Federal Government deems to be in the "national interest" but that the EDC cannot support under the Corporate Account, for example because of size or country risk. The "national interest" involves considerations such as the employment generated or sustained by the transaction; the importance of the transaction to the exporter; foreign policy considerations, including Canada's bilateral relationship with the country in question; and the importance of the market to Canada.⁹⁷ Canada Account transactions require an authorization from the Minister for International Trade.

120. Under the Canada Account, contingent and direct liabilities are limited by law to Can\$13 billion. At end March 1998, the last year for which data are available, the outstanding balance of Canada Account loans totalled Can\$2.8 billion. Over 40% of the outstanding balance on these loans was concessional, in several cases interest-free, with repayment terms ranging to 55 years,

⁹⁶ Export Development Corporation (1999), pp. 34-35.

⁹⁷ Summary of the Report to the Treasury Board on EDC's Canada Account Operations for the Fiscal Year 1996-97 [Online]. Available at: <http://www.edc.ca/about/summary.html>.

frequently including a ten-year grace period. Over half of this concessional support was destined to China, followed by Morocco and Turkey. Large exposures on the latter two remain because of the concessional terms of transactions concluded before 1997. Over the 1990-99 period, Canada as a Member of the Paris Club has forgiven Can\$225 million under the Canada Account.

121. A dispute between Canada and Brazil regarding alleged subsidies to exports of civilian aircraft led a WTO panel to conclude that debt financing for the export of Canadian regional aircraft under the "Canada Account" constituted export subsidies inconsistent with Articles 3.1(a) and 3.2 of the WTO Agreement on Subsidies and Countervailing Measures.⁹⁸ In particular, direct export-contingent transfers of funds by a public body, at below market conditions, had conferred a benefit to a private company, in this case Bombardier.

122. Although EDC will still consider and finance regional aircraft export sales under the Canada Account, the authorities have stated that all Canada Account transactions in all sectors will comply with the OECD Arrangement on Guidelines for Officially Supported Export Credits (the OECD Arrangement).⁹⁹ In addition, no disbursements would be made to the regional aircraft industry by Technology Partnerships Canada (section (3)(ii) below).

123. According to a report prepared by private consultants for the legislative review of the Export Development Act, the Gowlings Report, Canadian exporters view the EDC as an "important alternative to Canadian banks which tend to be much more selective in their risk appetite".¹⁰⁰ In December 1999, the Government tabled a report in Parliament in response to the recommendations resulting from this review.¹⁰¹ One of the recommendations contained in the Report was to increase EDC's capacity for foreign project equity investments. This reflects two recent trends in international financing: (i) the shift away from sovereign debt towards project financing; and (ii) the growth in equity as a share of project financing, particularly in emerging markets where suppliers must invest in equity to win supply contracts. The Gowlings Report recommended that all other trade-related investments, as well as leasing powers, be exercised through taxable subsidiaries that would operate on commercial principles.¹⁰² The Report also recommended the further commercialization of EDC's activities, considering that "if EDC is able to stand on its feet then it should, provided there is no compelling public policy reason for continued government ownership and control".¹⁰³ The Government subsequently endorsed the general direction of the Gowlings Report, while also clarifying that EDC had a public mandate to promote and reflect Canadian values abroad.

(2) EXPORT CONTROLS, RESTRICTIONS, AND CHARGES

124. A number of export controls are in place under the Export and Import Permits Act, administered by the Export and Import Control Bureau. These controls may be implemented for foreign and security policy purposes, and to fulfil international commitments. Controls may be placed on exports to particular countries listed on the Area Control List (currently Angola, Burma, and Yugoslavia), or on strategically controlled goods and technologies listed on Canada's Export Control List.¹⁰⁴ Permits are required for these exports, as well as to re-export goods originating in the United States, in order to help ensure the enforcement of U.S. restrictions on exports of controlled goods as well as U.S. embargoes to certain countries.

⁹⁸ WTO document WT/DS70/R, 14 April 1999.

⁹⁹ WTO document WT/DS70/8, 26 November 1999.

¹⁰⁰ Gowing, Strathy & Henderson (1999), p. 47.

¹⁰¹ DFAIT (2000c).

¹⁰² Gowing, Strathy & Henderson (1999).

¹⁰³ Gowing, Strathy & Henderson (1999), p. 130.

¹⁰⁴ DFAIT online information. Available at: http://www.dfait-maeci.gc.ca/~eicb/export/intro_e.htm#intro_ea.

125. Also under the Act, the Export and Import Controls Bureau restricts textiles and clothing exports to the United States to implement an export tariff quota ("tariff preference level", Chapter III(1)(ii)). Further, peanut butter, sugar-containing products, certain sugars, and syrups and molasses are licensed for export to the United States under tariff quotas maintained by the latter.

126. Under a five-year agreement in place since 1 April 1996, exports of softwood lumber to the United States from Alberta, British Columbia, Quebec, and Ontario are restricted by a tariff quota. The agreement provides for variable export fees imposed on shipments above certain thresholds. A dispute regarding stumpage charges in British Columbia was settled when Canada agreed to impose additional export fees on some B.C. lumber. In addition, the tariff re-classification of "pre-drilled and notched studs and rougher headed lumber" by the U.S. Customs Service is currently under arbitration. The authorities maintain the view that this agreement does not infringe the WTO Agreement on Safeguards, nor is it covered by any notification requirements under the WTO.¹⁰⁵ Canada's implementation of the Agreement has also been challenged under the investor-state provisions of the NAFTA (Chapter II(3)(i)).

127. Other products whose exportation requires a permit include the following: (i) pancreas glands of cattle and calves (all destinations), to ensure adequate supply in Canada; (ii) human serum albumin (all destinations), to ensure domestic supply; (iii) logs and pulpwood of all species of wood (all destinations) to ensure that there is an adequate supply and distribution in Canada.¹⁰⁶ In addition, the Province of British Columbia maintains its own export controls on logs and chips in order to ensure sufficient supply for domestic industries; (iv) blocks, bolts, blanks, boards, and any other material or product of red cedar that is suitable for use in the manufacture of shakes or shingles (all destinations). The measure was introduced following a U.S. CVD case covering shakes and shingles in the late 1980s, but no longer has any rationale; and (v) unprocessed roe herring, to ensure access to a reasonable supply for processors.

128. Exports of cigarettes and other tobacco products manufactured in Canada are, with some exemptions, subject to a tax (4 cents per cigarette) under the Excise Tax Act. This tax is part of a national programme to reduce tobacco contraband.

(3) FINANCIAL ASSISTANCE TO BUSINESS

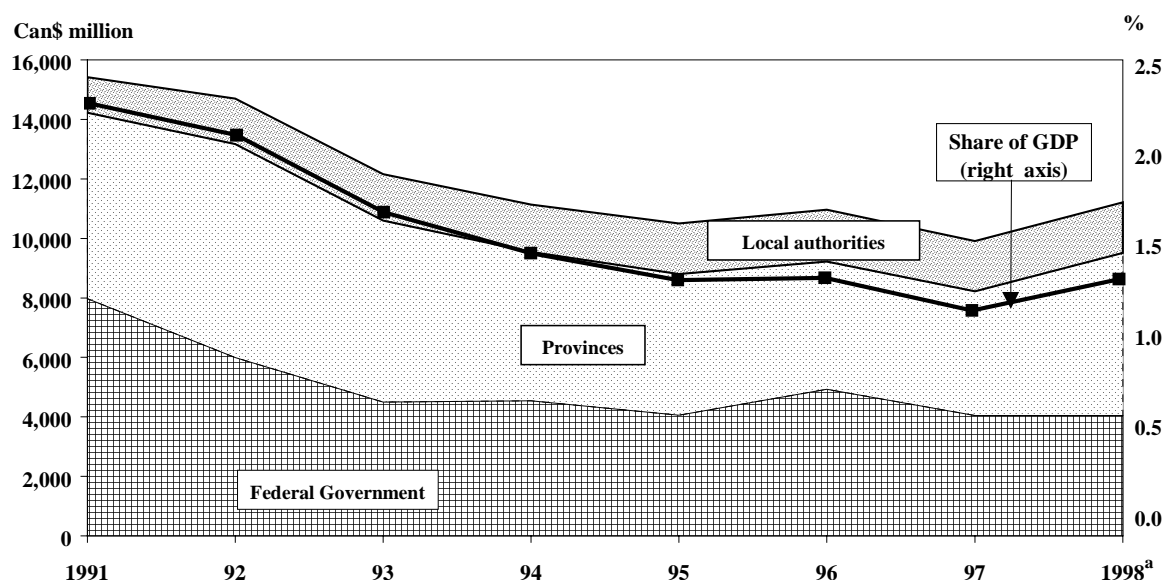
129. National accounts data for 1998, the latest year available, indicate an increase in current and capital assistance to businesses that year (Chart IV.1). At Can\$11.2 billion, total financial assistance in 1998 amounted to 1.3% of GDP at factor cost; most of that assistance went to Quebec (40% of the total) and Ontario (24%).¹⁰⁷ An increase in assistance observed in 1998 took place mainly in Quebec (+34%), followed by Alberta (+25%), and Saskatchewan (+21%); the authorities noted that the increase in provincial assistance that year reflected one-time payments to compensate for losses resulting from the 1997 winter ice-storm, rather than a change in provincial government policy regarding business subsidies. In 1999 and 2000, further increases may have resulted from recently introduced agri-food income support programmes. Some 40% of total financial transfers to the economy go to the agri-food sector.

¹⁰⁵Article 11(1)(b) of the WTO Agreement on Safeguards stipulates that Members "shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or import side. These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members".

¹⁰⁶ See also Chapter III(6) on local content requirement.

¹⁰⁷ Statistics Canada (1999), p. 239.

Chart IV.1
Current and capital assistance to business, 1991-98



a Estimate.

Note: Subsidies and capital transfers, national accounts definition (excluding tax breaks). Federal transfers include payments to government-owned business, such as local transit and utilities, as well as social payments in kind, such as payments to the Canada Mortgage and Housing Corporation; changes in 1996 and 1997 reflect in part statistical

Source: WTO Secretariat calculations, based on Statistics Canada (1998), *Provincial Economic Accounts*; and data provided by Statistics Canada.

(i) Assistance to agriculture and food processing

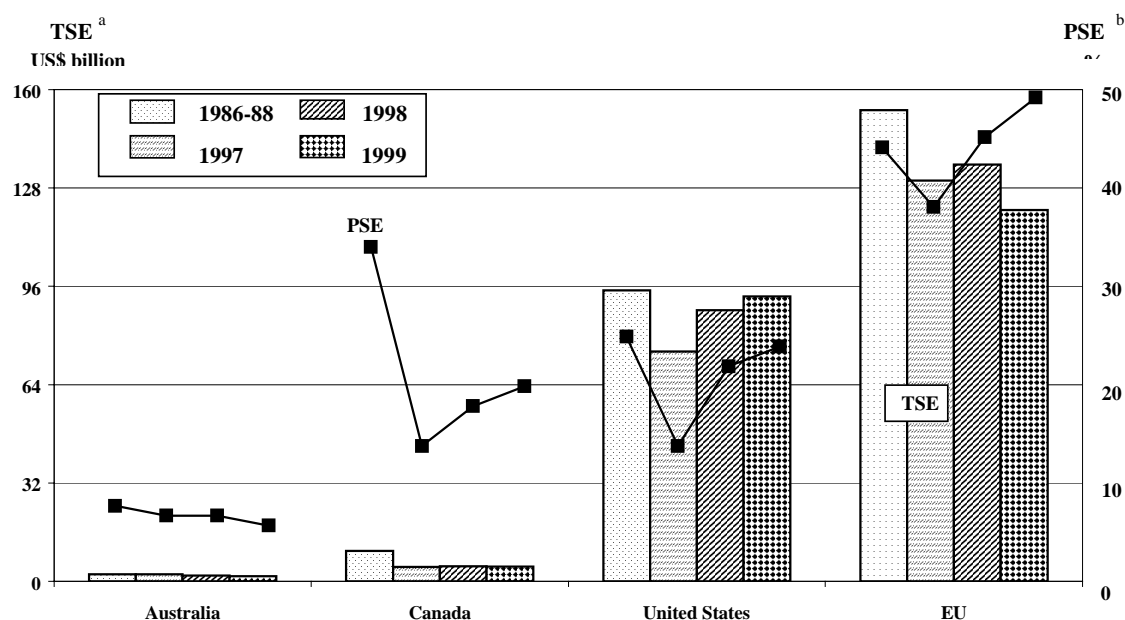
130. The authorities pointed out in the context of this Review that Canadian farm incomes have been hurt by depressed farm prices following several years of high world production, by reduced demand due to the crisis in Asia, and "by export subsidies and domestic support extended by some of our major trading partners". Increased budgetary payments to farmers in Canada have compounded the spiral of increased government outlays and falling agricultural prices. According to the OECD Secretariat, total farm support in OECD members reached an estimated US\$361 billion in 1999, up by US\$30 billion since 1997.¹⁰⁸ Canada's share in that total is minor in absolute terms, support relative to receipts averaging 20%, compared with an OECD average of 40% (Chart IV.2). In this context, Canada's Prime Minister has stressed "the need to continue pushing aggressively for an end to price-distorting agricultural subsidies through the World Trade Organization negotiations".¹⁰⁹

¹⁰⁸ OECD (2000).

¹⁰⁹ Agriculture and Agri-food Canada online information. Available at: <http://www.agr.ca/cb/news/n000224be.html>.

Chart IV.2

Estimates of support to agriculture by the largest OECD agricultural exporters



a Total support estimate (producer, general services, and consumer support) expressed at 1998 prices using U.S. GDP deflator.

b Producer support estimate as a share of gross farm receipts.

Source : OECD (2000).

131. Following a decade of progressive reform away from price support, Canada's agricultural assistance now consists mainly of income risk management programmes, such as the Net Income Stabilization Account (NISA), crop insurance, a new disaster-relief programme, and province-based safety nets. According to the authorities, total expenditure under these programmes is approximately Can\$2 billion per year for the 1998 to 2002 tax years. The recent increase in overall government expenditure in support of the whole agri-food sector, was about Can\$5 billion in both 1999-2000 and 2000-03 (Chart IV.3). This increase follows payments in 1998 and 1999 under the Agricultural Income Disaster Assistance (AIDA).

132. Funded 60% by the Federal Government and 40% by provincial governments, AIDA was a two-year programme (1998-99 and 1999-00) designed to provide income support to farmers when, for reasons beyond their control, there was an extreme reduction in their farm income. Federal commitments under the AIDA totalled over Can\$1 billion. The provinces provided additional income support slightly exceeding Can\$700 million during those years. According to the authorities, both AIDA and CFIP meet the "green box" criteria of Annex 2.7 of the WTO Agreement on Agriculture.

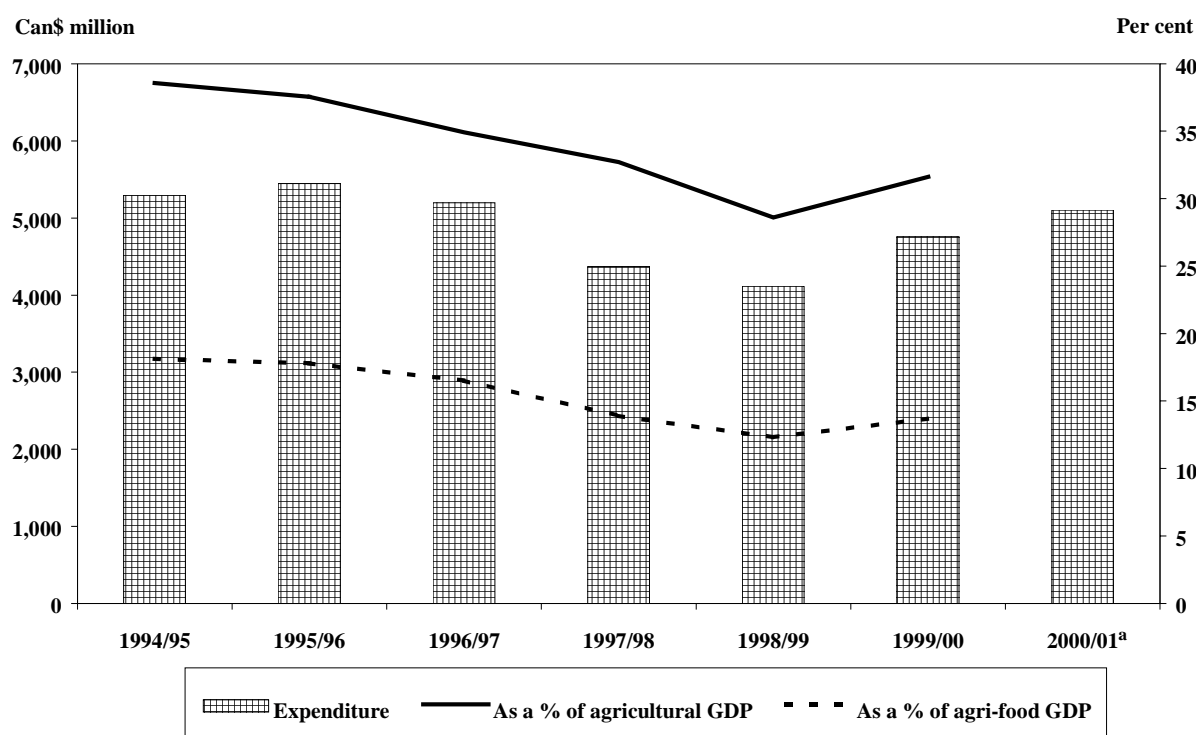
133. An additional one-time decoupled income support payment of Can\$240 million was provided in 2000-01 to producers in Saskatchewan and Manitoba. Canada has notified this programme as "green" or "amber" to the WTO Committee on Agriculture.¹¹⁰ The Alberta government has allocated Can\$ 145 million in new funding for Alberta farmers in fiscal year 2000/01. Nova Scotia announced a new relief package in November 1998, providing grants to assist farmers in paying loans taken out to offset weather-related losses. Ontario's 1998 Can\$40 million Whole Farm Relief Programme aims

¹¹⁰ WTO document G/AG/N/CAN/36, 14 July 2000.

to provide income relief for farmers suffering from low commodity prices and weather-related disasters. In Quebec, the Farm Income Stabilization Insurance Programme stabilizes the farm income of agricultural producers. Payments are triggered when the average selling price is lower than the price corresponding to a given income level. Total government expenditures under this programme for 1998/99 amounted to nearly Can\$333 million.

Chart IV.3

Government expenditure in support of the agri-food sector, 1994-2001



^a Estimate.

Source: Agriculture and Agri-Food Canada (2000), "Farm Income, Financial Conditions and Government Assistance", *Data Book*. Ottawa (<http://www.aor.ca>): and WTO estimates.

134. The supply-managed sectors (dairy, poultry, and egg production), which account for one fifth, in value terms, of Canadian agri-food production, continue to rely mostly on price support. In 1996, the last year for which data were notified to the WTO, nearly Can\$500 million was spent in supporting prices of dairy products alone. In 1999, the OECD's Producer Support Estimate for milk reached 58% (compared with an OECD average of 57%), suggesting that over half of milk farm income is provided by budgetary transfers and price support. This support relies on prohibitive out-of-quota tariffs, production quotas and, in certain cases, export support. The federal dairy subsidy is reportedly on track for elimination in 2002. In contrast, target prices for industrial milk were increased in February 1999, and support prices were raised for butter and skim milk powder, thus moving towards additional price support.

135. The Canadian Egg Marketing Agency maintains a producer-levy system for processed egg products, under which the domestic Canadian price for shell eggs is maintained at a level substantially above the world price. Under this Industrial Products Programme, the CEMA assesses a levy on all eggs sold. Processors pay one price (lower than the producer price) for eggs, whether destined for the

domestic market or for export. The levy is used to finance the difference in prices, and thus provides assistance to Canadian producers of egg products.

136. In the WTO Committee on Agriculture, Canada's last notification of current total Aggregate Measurement of Support (AMS) was for 1997¹¹¹; Canada has notified some 21 new or modified programmes of assistance that are deemed not to have trade-distorting effects. For 1997, the total AMS of Can\$522 million was well below its WTO commitment level of Can\$5 billion for the period in question.¹¹² In addition, Canada reported Can\$954 million in *de minimis* support and approximately Can\$1.2 billion in green box measures for that year.¹¹³

(ii) Assistance in other areas

137. Approximately 60% of government financial transfers to the private sector support secondary and tertiary activities.¹¹⁴ Information on certain federal subsidy programmes is provided in Canada's notifications to the WTO Committee on Subsidies and Countervailing Measures (SCM). According to the latest notification, expenditure under notifiable industrial subsidy programmes totalled about Can\$850 million in 1997/98. The main instruments of support include grants, as well as direct investments as in the case of the Technology Partnerships Canada Programme.¹¹⁵ The latter was found by a WTO panel to provide subsidies to the Canadian regional aircraft industry that were contingent upon export performance and has since been amended.¹¹⁶ According to the authorities, the amendments will ensure that when a financial contribution is made under the Programme, export performance is not a consideration or a condition of the contribution.

138. No information has been provided to WTO Members under the SCM Agreement regarding non-agri-food provincial and other subfederal measures that meet the definition of a subsidy and are specific, although descriptions of various provincial programmes have been provided in response to questions by Members.¹¹⁷ According to the authorities, certain provinces have indicated that they provide no subsidies requiring notification under the SCM Agreement. However, the relative absence of data on subfederal support preclude an overall assessment of assistance and of its effect on resource allocation and trade. Available information suggests that assistance programmes are being progressively restructured to focus more on technological innovation rather than commercialization or support to sunset industries, although there are exceptions.

139. For example, the Province of British Columbia granted loan guarantees in 1997-98 to the pulp mill of Skeena Cellulose Inc. at Prince Rupert, and continues to guarantee Skeena's operating loans; the province has also approved funding for 70% of a Can\$170 million capital expenditure on upgrading the pulp mill. As a result, British Columbia has now become the majority shareholder in Skeena Cellulose Inc. In addition, the firm benefited from a reduction in stumpage rates in the

¹¹¹ WTO document G/AG/N/CAN/37, 15 September 2000.

¹¹² WTO document G/AG/N/CAN/35, 21 March 2000. The total AMS is an indicator of outlays on trade-distorting subsidies.

¹¹³ *De minimis* in terms of the AMS includes product-specific support that does not exceed 5% of the value of production of the product concerned and non-product-specific support that does not exceed 5% of the value of total agricultural production.

¹¹⁴ Excluding processed food that is included in Agriculture and Agri-Food Canada support programmes.

¹¹⁵ WTO document G/SCM/N/48/CAN, 9 May 2000.

¹¹⁶ WTO documents WT/DS70/R, 14 April 1999 and WT/DS70/AB/R, 2 August 1999. See also Industry Canada online information. Available at: <http://statégis.ic.gc.ca/SSG/tp00212e.html>.

¹¹⁷ WTO documents G/SCM/Q2/CAN/14, 5 November 1999, and G/SCM/Q2/CAN/15, 8 November 1999.

province. British Columbia also supports R&D through various programmes.¹¹⁸ The Buy BC Programme encourages purchases of BC food products.¹¹⁹ In Prince Edward Island, the PEI Equity Investor's Incentive Programme offers non-repayable cash grants to encourage investment in PEI-based businesses in eligible projects.¹²⁰ The Export Development Programme provides marketing assistance and capital contributions of up to Can\$40,000 to eligible industries that clearly contribute to import replacement.¹²¹

140. Investissement Québec provides Quebec companies with interest-bearing or interest-free loans, and loan guarantees; these amounted to nearly Can\$70 million in 1997-98.¹²² In addition, the Quebec Government provides an attractive package of incentives for investment in research-intensive industries; almost Can\$500 million is allocated annually to support R&D spending, and to provide accelerated depreciation and other financial assistance to high-technology companies. As a result of the combined federal and provincial tax credits, a small company actually pays only 27% of its R&D wage bill, the rest being financed by the Government. In addition, several programmes provide incentives for local investment:

- The Small and Medium Size Business Guarantee (Garantie Québec) is applicable to loans granted by a financial institution for an expansion or a development project, including working capital. The guarantee is available for specific activities, notably exports or innovation (R&D, design and marketing). Reimbursement is guaranteed up to a certain percentage of net losses, for example 80% for export projects, 60% for start-up or expansion.¹²³
- The FAIRE Programme, with a budget of Can\$500 million for five years from 1999, provides refundable or non-refundable contributions. Projects must involve, *inter alia*, an investment of no less than Can\$10 million and create at least 100 jobs over a period of 36 months.
- The Quebec Business Investment Company (Société de placements dans l'entreprise québécoise) encourages investment in the common shares of Quebec-based small and medium-sized firms in specified sectors or activities, such as exporting or cultural production; investors benefit from tax deductions equal to 150% of their investment, and up to 30% of their net annual income.¹²⁴

(4) COMPETITION POLICY

(i) Legislation and international cooperation

141. The Competition Bureau's mandate on competition matters has contributed to the competitive prices, product choice, and quality service that characterize the Canadian economy. The

¹¹⁸ For more details, Science Council of British Columbia, and British Columbia's Information, Science and Technology Agency online information. Available at: <http://www.scbc.org> and <http://www.scitech.gov.bc.ca>.

¹¹⁹ British Columbia Ministry of Agriculture Food and Fisheries online information. Available at: <http://www.agf.gov.bc.ca/foodind/buybc/buybcfnd.htm>.

¹²⁰ Prince Edward Island Business Development online information. Available at: <http://www.peibusinessdevelopment.com/programs/equity.php3>.

¹²¹ Prince Edward Island Business Development online information. Available at: <http://www.peibusinessdevelopment.com/programs/support.php3>.

¹²² WTO document G/SCM/Q2/CAN/14, 5 November 1999.

¹²³ Investissement Québec online information. Available at: <http://invest-quebec.com>.

¹²⁴ For more details, see Invest Québec online information. Available at: <http://invest-quebec.com/p-financiers/societe-speq-htm>.

Commissioner of Competition is head of the Bureau, which administers and enforces the provisions of the Competition Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act, and the Precious Metals Marking Act.¹²⁵ To achieve conformity with the legislation, the Bureau has adopted an integrated approach, referred to as the Conformity Continuum, which includes a variety of education, compliance, and enforcement instruments.¹²⁶ In cases of alleged violation of the Competition Act's criminal provisions, the Commissioner may refer the matter to the Attorney General of Canada. For non-criminal matters, the Commissioner may file an application with the Competition Tribunal, a specialized quasi-judicial body established under the Competition Tribunal Act, which hears and decides all applications made under relevant parts of the Competition Act.¹²⁷

142. Legislation amending the Competition Act and the Competition Tribunal Act (Bill C-20) was passed in March 1999, and has since entered into force. The amendments allow the Bureau to deal more easily with emerging business trends and enforcement requirements, in Canada and abroad. The amendments add a new criminal provision dealing specifically with deceptive telemarketing practices, and impose strict disclosure requirements on telemarketers. The provisions on merger pre-notification have been deleted from the Competition Act and included in the Notifiable Transaction Regulations to facilitate future amendments to these regulations in a changing global environment.¹²⁸ New provisions to the Act permit the Commissioner to apply for wiretaps in respect of enquiries involving price-fixing and market-sharing conspiracies, as well as deceptive telemarketing.

143. As noted in its previous Reviews, Canada actively cooperates with other countries on competition-related issues, notably under the 1995 Canada-U.S. Agreement Regarding the Application of Their Competition and Deceptive Marketing Practices Laws. A similar cooperation agreement was signed in June 1999 with the European Union, and provides a framework for information exchange and closer cooperation and coordination in the enforcement of competition laws. Other related agreements include the Canada-U.S. Mutual Legal Assistance Treaty and the Extradition Treaty. Canada also engages in notifications under the 1995 OECD Recommendation Concerning Cooperation Between Member Countries on Anticompetitive Practices Affecting International Trade.

(ii) Enforcement and other activities

144. As of April 1999, the Competition Bureau had 48 enquiries in progress. In addition, the Bureau has engaged in enforcement activity in 11 cases with an international dimension, reflecting the globalization of competition policy enforcement concomitant with the growing integration of the world economy. In one case, fines totalling nearly Can\$80 million were imposed on several companies for multiple conspiracies to fix prices and allocate market shares for ten vitamin and food additive products sold in Canada. One firm was fined Can\$48 million for its role in the conspiracy, the largest fine levied in Canadian criminal law history. In addition, a senior officer of a company was sentenced to nine months imprisonment for his part in fixing prices and allocating markets for choline chloride. Recent domestic cases have involved acquisitions, price fixing, and advertising.

¹²⁵ Competition Bureau online information. Available at: <http://strategis.ic.gc.ca/SSG/ct01254e.html>. The Competition Act is available at: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/C/C-34.html>.

¹²⁶ More information on the Conformity Continuum may be found in the Bureau's online information.

¹²⁷ Competition Tribunal online information. Available at: <http://www.ct-tc.gc.ca>. The Competition Tribunal Act is available at: <http://canada.justice.gc.ca>.

¹²⁸ More information is available from the Competition Bureau's online information. Available at: <http://strategis.ic.gc.ca/SSG/ct01254e.html>. The OECD also provides a review of competition law policy developments in member countries (http://www.oecd.org/daf/clp/Annual_reports/98-99.htm).

145. In response to recent deregulation and structural adjustment in key sectors, the Competition Bureau has conducted a number of industry-specific reviews and issued opinions and guidelines to clarify the requirements of the Competition Act in these sectors. In December 1998, the Bureau announced that the mergers of the Canadian Imperial Bank of Commerce and the Toronto-Dominion Bank, on the one hand, and of the Royal Bank of Canada and the Bank of Montreal, on the other, were likely to lead to a substantial lessening of competition that would cause higher prices and lower levels of service and choice for several key banking services in Canada. In January 2000, following a number of changes to the proposed merger, which eliminated initial competitive concerns, the Bureau approved the proposed merger between the Toronto-Dominion Bank and Canada Trust because it would not substantially lessen or prevent competition by raising prices, limiting choice or decreasing service (see also Chapter V(1)).

146. The Bureau announced in December 1999 that it would not oppose the proposed acquisition of Canadian Airlines Corporation by Air Canada, despite the fact that this would result in a dominant firm in domestic markets. Instead it recommended a number of measures to lower the barriers to entry to the domestic airline market, as well as other measures to increase foreign competition in the domestic market. Subsequently, legislation was introduced to, among other things, protect consumer interests (see Chapter V(2)).

(5) GOVERNMENT PROCUREMENT

147. The Federal Government estimates that it procures Can\$10 billion annually in goods and services. There is no consolidated data on procurement at all levels of government. Public expenditure on goods, services, and construction, which can be used as an estimator of total public purchases, amounted to some Can\$61 billion in 1996, or 7% of GDP at factor cost.¹²⁹ Chart IV.4, which is based on Canada's previous Review because no later information was available, shows that public expenditure at subfederal levels accounts for over three quarters of total expenditure.

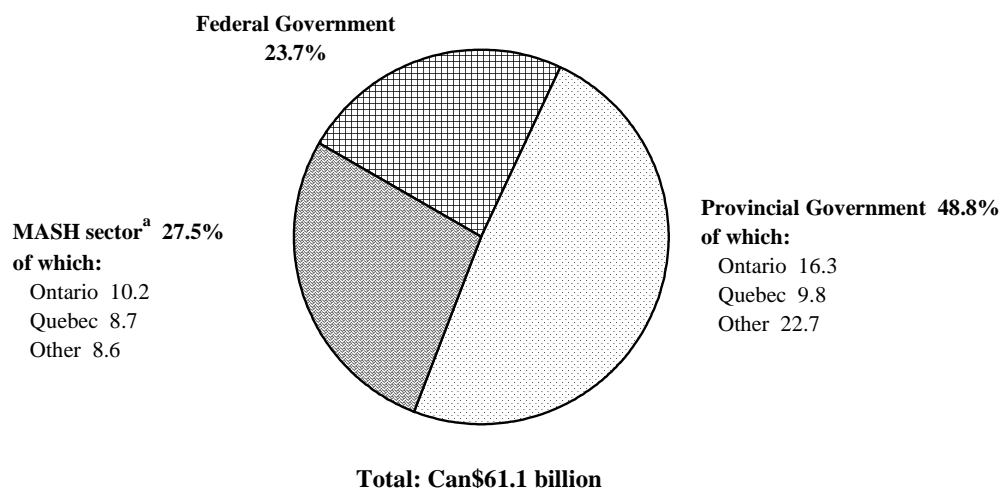
148. As a Member of the WTO Agreement on Government Procurement (GPA), Canada shares the goals of transparency, accountability and international competition in public procurement world-wide, in order to optimize resource allocation and minimize costs. Domestically, transparency in public purchasing is enhanced by MERX, an Internet-based tendering system in place since 1997.¹³⁰

149. Foreign suppliers based in countries that are signatories to the GPA may bid on federal contracts covered by the GPA's provisions. Canada's commitments under the NAFTA are similar to those under the GPA. GPA provisions concerning federal entities exclude certain important purchases, such as those of special industry machinery and computer equipment by Transport Canada, and purchases, by all departments, of ships (including shipbuilding and repair services), urban transport equipment, including urban rail, and of communications equipment. In practice, and as in many other industrialized countries, public procurement still consists mostly of domestic goods and services purchased from domestic suppliers.¹³¹

¹²⁹ In the absence of available procurement data, national accounts public expenditure on goods, services, and construction (excluding labour income) is used as an indicator for public procurement. The authorities have noted, in addition, that procurement data would be collected on the basis of contract values at the time contracts are let, while public expenditure data trace the funds when they are spent.

¹³⁰ MERX, Canada's Electronic Tendering System is available at: <http://www.merx.cebra.com>.

¹³¹ See for example WTO document GPA/21/Add.1, 16 October 1998.

Chart IV.4**Public expenditure on goods, services, and construction, 1996**

^a Municipalities, academic institutions, social services and health entities.

Source: WTO Secretariat, based on Statistics Canada (1997), *Provincial Economic Accounts*; and data provided by Statistics Canada.

150. A number of GPA participants consider that Canada has yet to fulfill its commitments under the GPA in providing the definitive list of subfederal entities subject to the Agreement's disciplines.¹³² As a result, several GPA signatories have excluded Canadian companies from market-access commitments at both the government-enterprise and subfederal level. Canada's position remains that the provinces, having reviewed the offers from other signatories, particularly that of the United States, are not prepared to commit coverage of their entities until such Members are prepared to improve market access in sectors of priority interest to Canadian suppliers.

151. The Agreement on Internal Trade (AIT) attempts to ensure equal access to procurement for Canadian suppliers. It covers procurement by federal and provincial governments; and procurement by municipalities, publicly funded academic institutions, social services agencies and hospitals (MASH entities) except in British Columbia and the Yukon. It applies to "Canadian suppliers", i.e. suppliers having an establishment in Canada where activities are conducted on a permanent basis. This definition does not exclude foreign-owned companies (however, see below). The AIT excludes most crown corporations (e.g. public utilities) and procurement for many services (e.g. certain professional services, most financial providers, health and social services, and advertising services).¹³³

152. The Canadian International Trade Tribunal (CITT) receives, enquires into, and decides on bid challenges concerning federal government procurement that is covered by any of the three agreements entered into by Canada: the GPA, the NAFTA, and the AIT. Foreign suppliers may therefore challenge federal procurement that they believe has not been tendered in accordance with these

¹³² Canada's commitments under the GPA are contained in WTO document GPA/W/35/Rev.1, 8 July 1999.

¹³³ AIT Secretariat online information. Available at: http://www.intrasec.mb.ca/pdf/consol_e1.pdf.

agreements.¹³⁴ Since 1998, the CITT has dealt with over 50 cases annually. Approximately 4% of cases were initiated by foreign companies, mostly under the NAFTA. Canadian suppliers may also challenge certain subfederal public purchases under the AIT; these challenges are coordinated through the AIT Secretariat.

153. Many buy-local restrictions remain in force, when the agreements described above do not apply. In turn, the exclusion of non-local (and foreign) suppliers results in the fragmentation of the market and a loss of efficiency in government procurement. For example, in a recent procurement for reinforcing steel bars, the Saskatchewan Property Management Corporation reserved the right to give preference to tenders received from Saskatchewan or other western provinces.¹³⁵

154. Canada last notified annual statistics under Article XIX:5 of the WTO Agreement on Government Procurement in October 1998.¹³⁶

(6) TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

155. Since 1998, Canada has participated in the WTO review of legislation on patents, layout-designs (topographies) of integrated circuits, protection of undisclosed information and control of anti-competitive practices in contractual licences.¹³⁷ Canada also participated in the review of legislation on enforcement¹³⁸, and notified the WTO of its contact point for TRIPS, including for technical cooperation.¹³⁹

156. Canada's legislation on patents has been challenged twice in the WTO since 1998. The first case related to the two exceptions to the otherwise exclusive rights of the patentee to make, construct, use or sell a patented invention. The first such exception allows producers of generic pharmaceuticals to work a patented product for the purpose of completing the regulatory approval process applicable to that product (Early Working Provisions). The second exception allows manufacturers to manufacture and stockpile patented drugs for the six months before the patent expiry.¹⁴⁰ The European Union claimed that such provisions were not compatible with the TRIPS Agreement. The WTO panel found in March 2000 that the first exception is consistent, and the second inconsistent with the TRIPS Agreement.¹⁴¹ According to the authorities, Canada implemented the panel's decision in October 2000.

157. This WTO ruling is not expected to impact measurably upon Canadian consumers' access to generic drugs.¹⁴² According to the Canadian Drug Manufacturers Association (CDMA), the WTO ruling translates only into a delay of several weeks in getting generic drugs – and their associated cost savings – to Canadian consumers.¹⁴³ In 1999, sales of generic pharmaceutical products in Canada totalled some Can\$800 million, representing about 9% of the Can\$8.9 billion of sales of all

¹³⁴ The CITT online information. Available at: <ftp://ftp.citt.gc.ca>.

¹³⁵ Reference No. SK-SPMC-001-98346 (MERX online information. Available at: <http://www.merx.cebra.com>).

¹³⁶ WTO document GPA/21/Add.1, 16 October 1998.

¹³⁷ WTO document IP/Q3/CAN/1, 5 May 1998.

¹³⁸ WTO documents IP/Q4/CAN/1, 28 July 1998, and IP/Q4/CAN/1/Rev.1, 12 October 1998.

¹³⁹ WTO document IP/N/3/Rev.3, 10 November 1998.

¹⁴⁰ Canada's position can be found in the DFAIT's online information. Available at: <http://www.dfait-maeci.gc.ca/tna-nac/summary-e.asp>.

¹⁴¹ WTO document WT/DS170/R, 5 May 2000.

¹⁴² Regulations Repealing the Manufacturing and Storage of Patented Medicines Regulations, Regulatory Impact Analysis Statement, *Canada Gazette*, Part 1, August 5, 2000.

¹⁴³ Canadian Drug Manufacturers Association (CDMA), press release, March 17, 2000.

pharmaceutical products.¹⁴⁴ According to the CDMA, generic drugs are on average 50% cheaper than patented drugs, and research and development activities in pharmaceuticals are encouraged by this legislation.¹⁴⁵

158. A second WTO panel examined the U.S. claim that Canada had failed to grant a full 20-year patent term to patents applied for prior to October 1989.¹⁴⁶ The panel agreed with the U.S. claim. The panel decision was subsequently upheld by the Appellate Body of the WTO.

V. MARKET ACCESS IN SELECTED SECTORS

(1) FINANCIAL SECTOR REFORM

159. Following the recommendations made by the Task Force on the Future of the Canadian Financial Services Sector, which reported in 1998¹⁴⁷, the Government announced, in June 1999, a reform of the financial sector, improving conditions for foreign market access to Canada's trade in financial services. This reform is described below. In July 1999, Canada communicated to the WTO a revised schedule of commitments in financial services¹⁴⁸; the schedule came into force on 10 April 2000. In June 2000, the Government introduced legislation (Bill C-38) to implement the reform and create a new policy framework for financial services.

(i) Foreign bank branching

160. The new branching regime is set out under the title of Authorized Foreign Banks in Part XII.1 of the Bank Act. It is supplemented by regulations and guidelines developed by the Office of the Superintendent of Financial Institutions (OSFI).¹⁴⁹ Also, Canada has abolished the requirement for WTO Member foreign bank subsidiaries to request ministerial approval to establish more than one branch. The new regime (see Annex V.1), creates opportunities for foreign banks entering the Canadian market, mainly for commercial banking; however, it appears to provide only modest additional scope for retail banking, notably because of the restrictions on the ability of foreign bank branches to take deposits. Since 1999, 16 applications have been made to open foreign bank branches; two have already been approved.

161. Before the new branching regime came into force in June 1999, foreign bank branching was not allowed, putting foreign banks at a disadvantage compared with their Canadian competitors. For example, they were precluded from competing for large corporate loans, as they could not lend more than 25% of the subsidiary's capital to a single borrower, and could not take advantage of their parent bank's capital. Another disadvantage of operating as a subsidiary was the obligation to maintain a separate board of directors, half of whom had to be Canadian residents.¹⁵⁰

¹⁴⁴ Patented Medicine Prices Review Board (1999).

¹⁴⁵ The Canadian Drug Manufacturers Association online information. Available at: <http://www.cdma-acfpp.org>.

¹⁴⁶ WTO document WT/DS170/R, 5 May 2000.

¹⁴⁷ See also Chapter IV(4) above for competition policy developments in the financial sector; and WTO (1998), Chapter IV(5)(i).

¹⁴⁸ WTO document S/C/W/118, 23 July 1999.

¹⁴⁹ OSFI online information. Available at: <http://www.osfi-bsif.gc.ca>.

¹⁵⁰ The Canadian Bank Act stipulates that resident Canadians must constitute a majority of directors of the Board of a foreign subsidiary.

(ii) Expected changes in "the widely held rule"

162. Among the recommendations of the Task Force was a new size-based ownership regime that would be more welcoming to new entrants. Under the current rule, no one person (Canadian or foreign) may own more than 10% of any class of shares of a "Schedule I" bank. The June 1999 policy paper, "Reforming Canada's Financial Services Sector: A Framework for the Future", put forward a new definition of "widely held" that would permit an investor to own up to 20% of any class of voting shares, and 30% of any class of non-voting shares, of a widely held bank, subject to a "fit and proper" test.¹⁵¹ This would allow banks to enter into substantial share exchanges, in order to solidify strategic alliances and joint ventures. The new ownership rules are expected to pass Parliament before the end of 2000.

163. The policy paper also proposed to establish three classes of bank, based on size of equity, for the purposes of determining ownership restrictions: small (less than Can\$1 billion), medium (Can\$1 billion to Can\$5 billion) and large (greater than Can\$5 billion). Under the Bank Act, small banks would have no ownership restrictions other than "fit and proper" tests. Medium-sized banks would be allowed to be closely held, but subject to a public float of 35% of voting shares. Large banks must remain widely held and cannot be acquired. The policy paper contemplates that existing Schedule I banks with equity of less than Can\$5 billion would be subject to the widely held rule. However, the Minister of Finance would have the discretion to consider changing the status of the bank to closely held.¹⁵²

164. The widely held rule means that, in practice, control of large Canadian banks cannot be acquired by single entities. However, the authorities have stated that mergers can be a viable business strategy, but that each merger proposal must be assessed on its own merits. Consequently, the Government is implementing a review process for merger proposals between large banks that will include a formal mechanism for public input. In addition to reviews by the Competition Bureau and the Office of the Superintendent of Financial Institutions, merger proponents will be required to prepare a Public Interest Impact Assessment, which the House of Commons Finance Committee will be asked to review. In December 1998, the Government indicated that it would not consider further merger proposals until the new framework was in place.

(iii) Insurance services

165. Early in 1999, legislation was passed to permit large federally regulated mutual life insurance companies to convert into stock companies, a process known as demutualization. Canada's four largest mutual insurance companies have recently demutualized. With demutualization, insurance companies intend to strengthen their capital bases by public offerings of shares, and facilitate the re-organization of their activities through mergers and the use of holding-company structures. Demutualized life insurance companies are now able to issue common shares, as well as preferred shares and debt instruments and are able to borrow for short-term liquidity purposes.

166. Currently, the Insurance Companies Act requires that these companies, if they have assets in Canada of Can\$7.5 billion or more on 31 December 1991, be "widely held", defined as no one person having a significant interest in any class of the converted company or the upstream holding company. A person has a "significant interest" in a class of shares of a company if the person beneficially owns or controls an entity that beneficially owns more than 10% of any class of shares. Any other

¹⁵¹ Department of Finance online information. Available at: <http://www.fin.gc.ca/finserv/docs/finserv2e.html#Ownership>.

¹⁵² Department of Finance online information. Available at: www.fin.gc.ca/newse00/data/00-047_2e.html.

Canadian or foreign-owned stock insurance companies need not be widely held. The widely-held rule does not apply to federally regulated companies under foreign control.

167. A new ownership regime has been introduced in Parliament for large demutualized life insurance companies as part of Bill C-38 (see above in the case of banks). During a two-year transition period that will end in 31 December 2001, no mergers among, or acquisitions of, demutualized insurers would be permitted; companies that had equity and surplus in excess of Can\$5 billion prior to their demutualization will be required to meet a new widely held requirement in which no person may own greater than 20% of any class of voting shares or 30% of any class of non-voting shares. At the end of the transition period, such companies would be required to continue to meet this new widely held requirement and would not be permitted to be acquired (subject to certain exceptions that will permit the company to be owned, for example, by a widely held insurance holding company). The Minister would have discretion to change the ownership status of these companies. Companies that had surplus and equity between Can\$1 billion and Can\$5 billion prior to their date of demutualization would be required to maintain their current widely held status (maximum 10% in any class of shares) during the transition period. Once the transition period ends, these companies may become closely held, subject to a 35% public float requirement. Any person may own up to 100% of the shares of a demutualized life insurance company with equity under Can\$1 billion with the approval of the Minister of Finance. Existing federal stock insurance companies would be required to have a 35% public float of voting shares if equity exceeds Can\$1 billion. Closely held insurance companies would be allowed to grow beyond Can\$5 billion in equity without any ownership restrictions, other than the 35% requirement.

168. The conditions of investment in the Canadian insurance industry have not otherwise changed since 1998. Although investment is subject to review, prior approval, and to certain ownership restrictions including at provincial level (Table II.1), foreign insurance companies play an important role in the Canadian market. In the case of both life and non-life insurance, foreign companies may establish as a subsidiary or a branch, or they may establish a new insurance business or acquire an existing Canadian enterprise, subject to notification to Investment Canada and approval by federal and in some cases provincial authorities.¹⁵³ A foreign insurance company wishing to register in Canada must have assets of at least Can\$200 million, with a minimum capital and surplus margin of between 5% and 10% of liabilities. Furthermore, a foreign insurance company wishing to insure risk in Canada must maintain assets vested in trust in a Canadian financial institution. Initially, a foreign insurance company is expected to vest in Canada assets that would cover the projected capital requirements for a period of three to five years.

169. Life insurance and non-life businesses must be carried on in separate companies. Widely held insurance companies are permitted to own "Schedule II" (not widely held) banks and to network products of other financial institutions, including other insurers. Under Bill C-38, these companies would be permitted to own a bank under Can\$5 billion, subject to the 35% float requirement. However, under Bill C-38, banks, and trust and loan companies would remain prohibited from offering most insurance services except credit-related insurance products on behalf of insurance companies.

(2) AIR TRANSPORT SERVICES

170. While Canada has retained barriers to foreign entry (Table II.1), there has been strong rivalry between domestic airlines. As a result, and because of the relatively small size of the Canadian market, only one, now dominant, carrier has survived. This generates competition policy concerns.

¹⁵³ Insurance companies may be regulated at the provincial or federal level.

(i) Market and competition policy issues

171. The airline industry has undergone a continuous process of restructuring since 1987-88, when the market was deregulated and Air Canada was privatized, with subsequent strong competition on fares with Canadian Airlines, the other main airline.¹⁵⁴ Access to all internal routes is now open to free entry and exit for Canadian carriers. All fares are decontrolled; services on monopoly or duopoly routes may be withdrawn on 120 days' notice; and licensing of new entrants is based on a "fit, willing, able" criterion.¹⁵⁵ The Federal Government has also to a large extent withdrawn from involvement in infrastructure management, leading to the commercialization of main airports and the air navigation system (now NAVCAN), and the decentralization of responsibilities for smaller airports.¹⁵⁶

172. Intense commercial rivalry has resulted in the exit of a number of firms. In 1999, Air Canada was allowed to purchase Canadian Airlines, which was facing immediate bankruptcy, despite the fact that the two carriers together accounted for over 90% of total domestic passenger revenues. The Competition Bureau has expressed the view that very significant competition concerns will develop in the domestic market as a result of a dominant carrier emerging from the purchase of Canadian Airlines by Air Canada.¹⁵⁷ For example, at Toronto Pearson Airport, Air Canada, Canadian Airlines, and their regional affiliates accounted before the takeover for 75% of slots held by all airlines, and for 92% of slots held by Canadian carriers. According to the authorities, Air Canada has ceded slots at Toronto as part of the approval for the take-over. In addition, Air Canada has ceded gates and facilities at five airports for reallocation to competing domestic services suppliers. Further, the Bureau was of the view that competition concerns may also arise in certain international and transborder markets if the dominant carrier provides most of the international services out of Canada.

173. In order to maintain competition in the sector, the Bureau has advocated that the Government review the "largest regulatory barriers to entry into the airline industry", namely the current restrictions on foreign ownership and control, and the prohibition of cabotage. Meanwhile, Canada has designated three airlines to provide scheduled services to France, Germany, and the United Kingdom.

174. In July 2000, legislation was passed in order to protect the public interest against excessive pricing in the dominant carrier environment, foster competition, and protect consumers. In particular, the legislation is expected to prevent price gouging and to ensure that a full range of fares is provided in all markets.¹⁵⁸ This legislation incorporates several commitments by Air Canada, regarding competition, fair treatment of employees, and maintenance of services to communities. In addition, changes were made to the Competition Act to expand the Bureau's ability to deal with anti-competitive acts, including predatory pricing, in this industry.¹⁵⁹ Attaining these objectives could also be helped by permitting cabotage: if foreign airlines were allowed to serve the Canadian

¹⁵⁴ The 1996 Review of Canada contained a discussion of the policy framework for air transport (WTO, 1996).

¹⁵⁵ "Fit" means the ability to meet minimum financial requirements imposed by the Act, while "able" refers to the carriers' compliance with existing safety requirements.

¹⁵⁶ For more details, see Transport Canada online information. Available at: <http://www.tc.gc.ca/airports/nap/nov99Update.htm>.

¹⁵⁷ Letter from the Commissioner of Competition to the Transport Minister, 22 October 1999 [Online]. Available at: <http://strategis.ic.gc.ca>.

¹⁵⁸ Transport Canada online information. Available at: http://www.tc.gc.ca/nrelease/00_H005e.htm.

¹⁵⁹ For more information see the Competition Bureau online information. Available at: <http://strategis.ic.gc.ca>.

domestic market, the existence of a dominant carrier might no longer be a problem.¹⁶⁰ Further, multilateral air transport liberalization could benefit Canadian consumers and expand international market opportunities for the national flag carrier(s).¹⁶¹

(ii) Foreign investment and trade restrictions

175. Under the "widely held" rule, a single shareholder (domestic or foreign) is prevented from owning more than 15% of Air Canada. No individual ownership restrictions apply to any other airline. In November 1999, this legislation was invoked by a Quebec court to rule illegal an offer by a Canadian buy-out company (Onex) to purchase and merge Canadian Airlines and Air Canada. The court decision opened the way for the purchase of Canadian Airlines by Air Canada.

176. Approval by Investment Canada is required for the acquisition of any transport company with assets of over Can\$5 million; exempt are companies operated by non-Canadian residents and companies engaged exclusively in cross-border transport. New investment in transport is not subject to review. Under the Canada Transportation Act, only "Canadian" companies may provide domestic air transport services and those international services negotiated under bilateral air agreements. The Act defines "Canadian" as a company with a maximum of 25% of the voting shares owned by foreign citizens. The Act also requires that an airline be under effective Canadian control.

177. Currently, access to international and transborder routes is organized through over 70 bilateral aviation agreements (traffic rights are not covered by the GATS). Many agreements impose restrictions on capacity, and some specify aircraft type. As a result of the 1995 Canada-U.S. Aviation Agreement, the two governments refrain from regulating prices, limiting the number of airlines, and stipulating routes. As in most other countries, foreign carriers are prohibited from flying domestic routes ("cabotage") in Canada, in order to protect the market of domestic carriers.

178. Canada's air transport commitments under GATS are limited to aircraft repair and maintenance services and computer reservation systems. Canada has not bound consumption abroad of repair and maintenance services, thus retaining the possibility of requiring carriers to use domestic repair and maintenance facilities. The selling and marketing of air transport services and aircraft maintenance and repair services have been listed as MFN exemptions under Article II of the GATS.

(3) TELECOMMUNICATIONS SERVICES

179. As a result of Canada's long-term commitment to liberalization in the telecommunications industry, a liberal regime now provides for resale-based competition in most basic telecommunications services. No foreign ownership restrictions apply to resellers. Since 1998, the following measures have been abolished: Telesat's exclusive rights on satellite facilities and earth stations; a requirement that Canadian equity holdings in mobile satellite equal Canadian usage levels; Canadian ownership requirements on the landing of sub-marine cables; and Teleglobe's monopoly on overseas (non-U.S.) facilities-based services.

180. The authorities have noted that competition in the Canadian market has resulted in both business and residential telephone service prices that are lower than in other G7 countries. Canada also has the lowest G7 wireless communications costs and is outpacing its main trading partners in

¹⁶⁰ Opinion of experts regarding the issue of cabotage, Letter from the Commissioner of Competition to the Minister of Transport, 22 October 1999 (available online at: <http://strategis.ic.gc.ca/SSG/cto1638e.html>).

¹⁶¹ For a discussion of negotiations on cabotage with the United States, see Standing Committee on Transport (1999).

terms of online subscribers with a high-speed Internet connection.¹⁶² In part due to this, Canada is not presently planning to ease or eliminate existing restrictions under which foreign equity in all facilities-based suppliers is limited (Table II.1). Foreign investment in facilities-based telecommunications service suppliers is permitted up to a cumulative total of 46.7% of voting shares, based on 20% direct investment and 33.3% indirect investment. In addition, at least 80% of the members of the board of directors must be Canadian citizens and the service supplier must be Canadian-controlled. Canada has undertaken a commitment to abide by the WTO Reference Paper on Regulatory Principles.

(4) CULTURAL POLICY AND TRADE IN RELATED SERVICES

181. Cultural services, which include visual and performing arts, publishing, music, film, video and television production and programming, as well as some types of content distributed on the internet, continue to be subject to a number of specific production, trade, and investment measures designed to ensure the preservation and promotion of Canadian culture and identity. The Secretariat Report for Canada's 1996 Review contained an overview of the main trade-related instruments of support, often granted in combination, which include direct subsidies, tax incentives, foreign ownership restrictions (Table II.1) and local-content requirements.¹⁶³ As an example of the latter, the federal broadcasting regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), requires that for Canadian conventional, over-the-air broadcasters, Canadian programming make up 60% of television broadcast time, and 50% during the evening hours (6 p.m. to midnight). For other services, such as specialty television and pay-TV, the required percentage of Canadian content varies according to the nature of the service, but is generally less than the requirement for conventional television. The CRTC requires that 35% of "popular" musical selections broadcast on radio should qualify as "Canadian" under a government-determined points system.

182. The Canadian Radio-Television and Telecommunications Commission has decided not to regulate services on the Internet under the 1991 Broadcasting Act or under the Telecommunications Act. The Broadcasting Act is designed to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada". The Act encourages the development of Canadian expression through a broadcasting system that provides "a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity".¹⁶⁴ The CRTC's decision not to regulate content on the Internet reflects, *inter alia*, the existence of a substantial Canadian presence on the Internet, supported by demand for Canadian new media content.

183. Canada has not made any commitments under the GATS regarding cultural services industries.¹⁶⁵ This has not prevented certain aspects of its cultural policies to be challenged in two instances under the WTO. In 1996, a prohibition on the importation of certain periodicals, including split-run editions; an excise tax on split-run editions of periodicals; and the application of differential postal rates between domestic and foreign periodicals were challenged under the GATT 1994 as restrictions on trade in goods.¹⁶⁶ All three were found not to be in conformity with GATT 1994, notably Article XI (quantitative restrictions) in the case of the import prohibition, and Article III (national treatment in applying internal taxes and regulations) with respect to the excise tax and the postal subsidy (see also Chapter II(2)(ii)).

¹⁶² OECD (1999).

¹⁶³ WTO (1996).

¹⁶⁴ Information provided by the authorities in the context of this review.

¹⁶⁵ Support measures for film, video, and television programming and production are listed as MFN exemptions under Article II.

¹⁶⁶ WTO documents WT/DS31/R, 14 March 1997, and WT/DS31/AB/R, 30 June 1997.

184. In May 1999, a bilateral agreement on periodicals was reached with the United States to limit the share of advertising targeted at Canadians. The agreement amends the prohibition on foreign publishers selling advertising services aimed primarily at the Canadian market (C-55, the Foreign Publishers Advertising Services Act of June 1999), to allow two limited forms of access: (i) a de minimis exemption, which will allow foreign publishers to publish immediately up to 12% of advertisements aimed at the Canadian market, up to 15% in 18 months and 18% 36 months after the date of enactment of the Act; and (ii) an exemption that will enable foreign publishers to have access to a greater percentage of the Canadian advertising services market, providing they create majority Canadian content and establish a new periodical publishing business in Canada. Acquisitions of Canadian publishers will not be permitted.

185. In addition, the rules governing tax deductibility available to Canadian advertisers were changed to provide full deductibility in any periodical – as defined in the Foreign Publishers Advertising Services Act, regardless of the nationality of ownership – that includes at least 80% original or Canadian content. Canadian advertisers will receive half the deduction for ads placed in foreign periodicals under the de minimis exemption, as well as advertisements placed in magazines created by foreign investors that include less than 80% original or Canadian content. The authorities have stated that the policy does not discriminate among foreign suppliers. In December 1999, the Canadian Heritage Minister announced a three-year Can\$150 million fund to provide direct financial assistance to Canadian magazines.¹⁶⁷

186. Under the current rules applicable to newspapers (i.e. published more frequently than once a week), corporations advertising in newspapers that are more than 25% foreign owned are not allowed to deduct advertising costs as a business expense.

187. In another case, described in the previous Review of Canada, certain aspects of the foreign investment guidelines for film distribution (Table II.1) were the subject of consultations requested by the European Union, under Articles II (MFN treatment) and III-1 (Transparency) of the GATS.¹⁶⁸ The guidelines state, *inter alia*, that investment to establish new distribution business in Canada will only be allowed for importation and distribution of proprietary products, for which the importer owns world rights or is a major investor. These guidelines apply only to foreign businesses that applied to distribute films in Canada after February 1987. Polygram, the investor at the centre of the EU complaint, invested after 1987 and was thus subject to the guidelines. It was subsequently subject to two further changes in ownership and origin and in each case the transaction was subject to the guidelines. Between 1986-87 and 1997-98, foreign-owned distributors earned an average of 85% of theatrical distribution revenues in Canada.

(5) PROFESSIONAL SERVICES AND MOVEMENT OF NATURAL PERSONS

(i) Professional services

188. The Secretariat Report for the 1998 Review of Canada contained a detailed review of measures affecting trade in professional services.¹⁶⁹ As noted therein, province-specific limitations constitute the main obstacle to the provision of professional services by foreign persons. In particular, incorporation is prohibited in many provinces, and only sole proprietorship or partnership is allowed (e.g. legal, accountancy, and architectural services). When incorporation is permitted (e.g. engineering), there are requirements to maintain a minimum percentage of local directors.

¹⁶⁷ For details see Canadian Heritage online information. Available at: <http://www.pch.gc.ca>.

¹⁶⁸ WTO document WT/DS117/1, 22 January 1998.

¹⁶⁹ WTO (1998), Chapter IV(5)(iv).

189. With regard to national treatment limitations, all professionals who wish to practice must be licensed or accredited by provincial professional bodies. Each professional body sets its own rules, regulations, and standards for professional practice. Some provinces and territories maintain residency requirements for certain licensed professions, such as architects and engineers, which prevent serving a market on a cross-border basis.

190. In December 1998, Canada notified changes in provincial requirements that had taken place between 1994 and 1997. In addition, the prohibition on licensing of non-resident general insurance agents was repealed in 1998. Thus, access and national treatment at provincial level may be more liberal in practice than that contained in Canada's 1994 GATS commitments. The notified changes are the following:

- In Manitoba, the bylaws of the Institute of Chartered Accountants were amended in November 1995, to remove the permanent residency requirement for membership in the provincial institute; the bylaws of the Certified General Accountants Association were amended in September 1996 to eliminate the residency requirement for membership.¹⁷⁰
- Since 1996 and 1997, respectively, commercial presence is no longer restricted to sole proprietorships and partnerships for law firms in Nova Scotia and New Brunswick.¹⁷¹
- Since January 1995, there is no residency requirement to become accredited as a public or chartered accountant in Prince Edward Island.¹⁷²
- Since 1994, the amended Code des Professions du Québec does not require citizenship for accreditation as one of the 24 designated professionals governed by the Code, nor for use of any of the 20 professional titles.¹⁷³

191. These subfederal regulations also affect interprovincial services trade and labour mobility: according to submissions made by representatives of lawyers', engineers', and accountants' associations to the Standing Committee on Foreign Affairs and International Trade, one common issue was barriers for their members to work not only abroad but in other provinces.¹⁷⁴ In order to address some of these barriers, the Agreement on Internal Trade is seeking the maximum possible reconciliation of differences in occupational standards for over 50 regulated professions and trades. In this context, guidelines have already been prepared laying out a process for mutual recognition and reconciliation of occupational standards across provinces.¹⁷⁵

(ii) Movement of natural persons

192. GATS commitments regarding the movement of natural persons ("mode 4") specify under which conditions foreign persons may enter a country on a temporary basis to supply a service. The Uruguay Round negotiations on mode 4 resulted from the demands both by developing countries and multinational companies for greater access for their services sector workers. The relatively limited commitments by WTO Members in this area, reflect the domestic regulatory concerns about

¹⁷⁰ WTO document S/C/N/86, 14 December 1998.

¹⁷¹ WTO documents S/C/N/87 and 88, 14 December 1998.

¹⁷² WTO document S/C/N/89, 14 December 1998.

¹⁷³ However, certain designated professional associations in Quebec maintain the discretion to impose permanent residency requirements.

¹⁷⁴ House of Commons (1999), pp. 6-10.

¹⁷⁵ Further information about these guidelines can be found at Human Resources Development Canada online information. Available at: http://www.hrdc.gc.ca/stratpol/socpol-old/mobility/guide/guide_e.html.

immigration and the protection of the domestic labour force.¹⁷⁶ Canada's priorities in this area, implemented by Citizenship and Immigration Canada, are to recruit skilled workers and attract self-employed workers to provide a steady flow of talent and new skills to the Canadian labour force.¹⁷⁷ Canada's Parliament is considering legislation to modernize the selection system for skilled workers and business immigrants and facilitate the entry of temporary foreign workers.

193. Canada's WTO commitments, similarly to those commitments made by other Members, are limited to skilled personnel: intra-corporate transferees (executives, managers, and specialists) are allowed to work in Canada for a maximum period of three years provided the foreign firm maintains a commercial presence in Canada; and business visitors may enter the country for up to 90 days to market or negotiate services contracts, but without making sales to the public or supplying services themselves in return for payment. Canada's commitments also provide for the temporary entry and stay, without the requirement of a commercial presence, of the following foreign professionals: engineers, agrologists, architects, forestry professionals, geomatics professionals, land surveyors, foreign legal consultants, urban planners, and senior computer specialists.

194. NAFTA Chapter 16 facilitates the temporary entry and stay of four categories of business persons from NAFTA member countries to carry on activities related to trade in goods and services: business visitors, professionals, intra-company transferees, traders and investors. Access under the NAFTA includes a wider group of persons than WTO commitments. Appendix 1603.D.1 of Chapter 16 lists 63 professions that may enter into another NAFTA member country to engage in employment without the requirement for job validation, labour certification or other forms of labour market tests.

195. In September 1998, Canada introduced a pilot project to authorize employment without labour market testing to spouses of "highly skilled foreign workers who are admitted to Canada in key high-growth sectors" for at least six months.¹⁷⁸ Over 1,100 authorizations have been issued under this process, which has been found effective as a recruitment aid and as a support for attracting foreign investment in Canada. Therefore the Government is continuing the project while a permanent process is being designed.

196. In 1999, Citizenship and Immigration Canada issued approximately 190,000 temporary employment authorizations. Authorizations are normally issued following a labour market assessment by Human Resources Development Canada, certifying that no Canadians are available to fill the jobs. They may also be issued to accommodate international agreements where reciprocal opportunities exist for Canadians or where significant employment benefits to Canada will result.

¹⁷⁶ For a discussion of the movement of natural persons and labour mobility, see Young (1999).

¹⁷⁷ Citizenship and Immigration Canada [Online]. Available at: <http://www.cic.gc.ca>.

¹⁷⁸ Citizenship and Immigration Canada [Online]. Available at: <http://www.cic.gc.ca/english/press/98/9853-pre.html>.

Annex V.1: Canada's new foreign bank branching rule¹

1. The new foreign bank branching rules do not affect the conditions for operating a foreign subsidiary. An authorized foreign bank (i.e. a foreign bank incorporated under the laws of another jurisdiction outside Canada) may establish a bank branch under the Bank Act.² The new branching regime permits foreign banks to directly undertake banking activities in Canada without establishing a fully capitalized subsidiary.

2. The new rules stipulate that a bank branch must be established "directly under the authorized foreign bank", so that the banks are adequately regulated and supervised by their home regulator, in addition to the Canadian regulator, the Office of the Superintendent of Financial Institutions (OSFI). This rule is in place to prevent a foreign non-bank entity from establishing a bank branch in Canada.

3. A branch in Canada will not be required to maintain a separate board of directors in Canada. However, the foreign bank must appoint a principal officer to be the focal point of contact between supervisors and the foreign bank regarding its operation in Canada. The principal officer is required to be a Canadian resident and an employee of the foreign bank.

4. However, foreign bank branches in Canada are limited in their deposit-taking activities. Specifically, the new rules state that an authorized foreign bank can establish only one of two types of bank branches: (i) a full service bank branch, which may take deposits above Can\$150,000 or (ii) a lending bank branch, which may not take any deposits. A lending bank branch can only borrow money from financial institutions. According to the authorities, this restriction is in place so as not to place the funds of "unsophisticated" Canadians at risk. A foreign banks wishing to take retail deposits must establish a bank subsidiary in Canada, which may open up additional branches in other locations within Canada.

5. The guidelines developed by OSFI require a foreign bank wishing to establish a full-service branch to have a minimum of Can\$5 billion in world-wide assets, the same amount required to establish a foreign bank subsidiary. Foreign banks wishing to establish a lending branch need not meet this requirement.

6. Full-service branches and lending branches will be required to maintain a deposit with a Canadian financial institution approved by the Superintendent of Financial Institutions. The deposit for full-service branches will be set at 5% of branch liabilities, or Can\$10 million, whichever is greater. Bill C-38, the proposed new policy framework for domestic banks, proposes to reduce the capital requirement for banks and full-service branches to Can\$5 million. Lending branches will be required to maintain a deposit of Can\$100,000.

7. The new rules also preclude foreign bank branches from engaging in the activities of a specialized financing corporation, as defined in the Bank Act. As a result, foreign branches may not provide specialized business management, make investments or provide financing or advisory services. Foreign banks may establish a "specialized financing corporation" in Canada to provide

¹ The new branching rules are set out under the title of Authorized Foreign Banks in Part XII.1 of the Bank Act. They are supplemented by regulations of the Government of Canada and guidelines developed by the Office of the Superintendent of Financial Institutions (See OSFI online information. Available at: www.osfi-bsif.gc.ca).

² Requirements to become an authorized foreign bank (and consequently operate subsidiaries and branches in Canada) are contained in Sections 524 to 536 of the Bank Act, supplemented by regulatory guidelines developed by the Office of the Superintendent of Financial Institutions (See OSFI online information. Available at: <http://www.osfi.gc.ca>).

specialized business management or advisory services. Bill C-38 proposes to provide foreign bank branches with the in-house power to undertake specialized business management or advisory services.

8. An authorized foreign bank cannot establish a lending bank branch in conjunction with a full-service bank branch, a bank subsidiary, a loan company, or a trust company that accepts deposits. A foreign bank that has been authorized to establish a lending bank branch may not simultaneously operate a bank or any other deposit-taking financial institutions in Canada. This is designed to ensure a level playing field for domestic banks, which cannot choose to operate a lighter-regulated banking entity such as a lending bank branch. Bill C-38 proposes to eliminate these restrictions.

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