CANADA

Canada continues to be the United States' foremost export market and single largest trading and investment partner. In 1997, total two-way trade in goods and services was nearly $1 billion per day. The U.S. trade deficit with Canada in 1997 was $17.9 billion, a decrease of $6 billion over the level in 1996. In 1997, U.S. merchandise exports to Canada were $150 billion, an increase of $17.5 billion (13.2 percent) from 1996. U.S. merchandise imports from Canada in 1997 totaled $168 billion, an increase of $11.6 billion (7 percent) from the level of imports in 1996.

The United States continues to be by far the largest foreign direct investor in Canada. In 1996, the stock of U.S. foreign direct investment (FDI) in Canada was $91.6 billion, up from $85.4 billion in 1995. U.S. investment in Canada is concentrated in manufacturing, financial, and petroleum.

The U.S.-Canada Free Trade Agreement and the North American Free Trade Agreement

On January 1, 1989, the U.S.-Canada Free Trade Agreement (CFTA) eliminated over a period of ten years virtually all tariff and non-tariff barriers to trade in goods between the two countries. The CFTA was superseded on January 1, 1994, with the entry into force of the North American Free Trade Agreement (NAFTA), which expanded the free trade area to Mexico. The NAFTA extended the CFTA to important sectors such as trade in services, investment, and government procurement. The bilateral phase-out of tariffs between Canada and the U.S. outlined in the CFTA and now the NAFTA was completed on January 1, 1998.

IMPORT POLICIES

Beer

The U.S. Government successfully challenged Canadian beer practices before the GATT in 1991. A series of negotiations led to the U.S.-Canada Memorandum of Understanding (MOU) on Provincial Beer Marketing Practices in 1993 and an annex to the MOU in April 1994 which significantly improved access to the Canadian market for U.S. beer. U.S. companies continue to harbor concerns about provincial minimum price policies and taxes.

Wine and Spirits

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

On May 28, 1996, Industry Canada issued amendments to the regulations on consumer packaging and labeling that retained the existing standard container sizes for wine. Industry Canada is currently revisiting the issue and hopes to conclude its review in 1998. Elimination of standard container sizes in Canada would allow U.S. exporters to ship wine in containers that are common in the United States but are not currently permitted in

Canada. The United States will continue to pursue removal of these barriers.

Supply Managed Products and Barley

As part of its implementation of the World Trade Organization (WTO) Agreements in 1995, Canada replaced its import quotas on certain supply managed commodities (dairy, poultry, and eggs) with tariff rate quotas (TRQs). Under the TRQ system, small amounts of imports can enter at a relatively low rate of duty, but imports above those limits are subject to prohibitively high duties ranging up to 350 percent. Canada also imposed tariffs on U.S. barley and barley products, which had been subject to import licensing, as well as on additional dairy products. In December 1996, a panel established under NAFTA Chapter 20 dispute settlement procedures upheld Canada's use of these tariffs.

In late 1997, Canada unilaterally suspended application of its tariff rate quota on barley and barley product imports from the United States.

Canada has failed to allow access for commercial fluid milk imports. In October 1997, the United States requested consultations under GATT Article 22 pertaining to Canada's compliance with its WTO obligations to limit dairy export subsidies and to provide access in the form of a TRQ for its fluid milk market. The first consultations were held in Geneva on November 19, 1997. On December 29, New Zealand also requested consultations with Canada on the same matter excluding the TRQ issue. On January 28, 1998, the U.S. participated in the consultations between New Zealand and Canada. On February 2, the U.S. requested establishment of a panel in the U.S.-Canada dispute.

Horticultural Import Restrictions

Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruits and vegetables without a prearranged buyer. Other restrictions prohibit bulk produce imports without a special ministerial waiver of Canadian packaging regulations.

Restrictions on U.S. Publications

In March, 1996, USTR initiated a Section 301 investigation and requested consultations with the Government of Canada to address certain discriminatory practices used by the Government of Canada to unfairly protect Canada's domestic magazine industry. Subsequently, USTR requested that a WTO panel be formed to consider Canadian measures prohibiting or restricting the importation into Canada of "split-run" and other imported magazines, including a ban on imports of magazines with advertising directed at Canadians, a special excise tax on "split-run" magazines, and discriminatory postal rates on imported magazines.

WTO panel findings, as amended by the WTO Appellate Body, supported all U.S. claims. The panel recommended that Canada bring its practices into conformity with its WTO obligations. The parties agreed on a 15-month time frame (from July 30, 1997) for Canada to implement the panel recommendations.

LACK OF INTELLECTUAL PROPERTY PROTECTION

On April 25, 1997, Royal Assent was given to Bill C-32, legislation containing extensive amendments to Canada's Copyright Act. Bill C-32 is intended to further modernize Canadian copyright law and harmonize it with certain international copyright conventions.

The U.S. has expressed concerns to Canada because Bill C-32 denies U.S. copyright holders certain broadcast rights and blank tape levy payments. These payments are collected and distributed to Canadian copyright holders and to other copyright holders who are members of the Rome Convention. U.S. performers and producers are denied proceeds, which is a denial of national treatment to U.S. copyright holders. The USTR announced on April 30, 1997, that due to these provisions, Canada was placed on the Special 301 Watch List. USTR remains concerned by Canada's denial of national treatment to U.S. interests, and will continue to monitor Canada's implementation of the law.

SERVICES BARRIERS

Broadcasting

The Broadcasting Act lists among its objectives, "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), is charged with implementing this policy. The CRTC requires that Canadian broadcasts make up 60 percent of television broadcast time-- 50 percent during prime time hours (6 p.m- 12 a.m.). Under previous CRTC policy, in cases where a Canadian service was licensed in a format competitive with that of an authorized non-Canadian service, the Commission could drop the non-Canadian service, if the new Canadian applicant requested it to do so. This policy led to one "de-listing" in 1995, and deterred potential new entrants from attempting to enter the Canadian market. In July 1997, the CRTC announced that it would no longer be "disposed" to take such actions. Nonetheless, the ruling contains a clause which allows Canadian licensees to appeal the inclusion of competitive non-Canadian services on the lists. In this connection, the CRTC will consider the removal of existing non-Canadian services from the list if they change format so as to compete with a Canadian pay or specialty service. The Broadcasting Act places the following restrictions on the carriage of U.S. signals and services by Canadian service providers: a Canadian service quota to require Canadian providers to carry a majority of domestic signals and services -- although non-programming service packages may consist of all non-Canadian signals and services. Secondly, U.S.-originated signals on non-basic pay television must be selected from a CRTC-approved list. If a competitive Canadian service is licensed, a U.S. service will not be added to the list.

Direct-to-Home Satellite Broadcasting

On December 20, 1995, the CRTC issued two national direct-to-home (DTH) satellite TV licenses, one of which went to U.S.-associated Power Direct TV. However, Power Direct TV has since abandoned its plans to launch a Canadian service because of technological issues, some of which were associated with CRTC regulations.

Simultaneously with the licensing of the two DTH systems, a number of DTH pay-per-view (PPV) services were also licensed. The DTH licenses specify that the only PPV services the two DTH licensees may offer are those services licensed by the CRTC. The PPV licenses are further conditioned in two significant respects.

First, it is a condition of license that feature film rights must be acquired from Canadian distributors except where the film is offered by a foreign distributor who owns worldwide rights or who has provided not less than half of the cost of producing the film. The U.S. Government and the U.S. industry are concerned that this condition of license, in effect, gives Canadian companies monopoly distribution rights with respect to certain films.

Second, it is a condition of license that 100 percent of revenues earned from the exhibition of Canadian feature films be paid to the producer/distributor. However, revenues earned from the exhibition of all non-Canadian feature films offered on English language services must be split, on a title by title basis, one-third to the DTH service, one-third to the programming undertaking, and one-third to the producer/distributor. U.S. industry sources believe that the likely effect of this restriction will be to restrain competition.

The Canadian Motion Picture Distributors Association and a number of U.S.-based studios appealed the licensing conditions to the Canadian Federal Court of Appeal on January 26, 1996, and to the Canadian federal Cabinet on February 2, 1996. On March 19, 1996, the Cabinet rejected the appeal, apparently deciding that the matter would best be dealt with by the courts. On June 26, 1996, the Federal Court of Appeal also ruled against the appeal.

Canada also imposes specific and extensive content requirements on television and cable broadcasting. DTH broadcasts must contain a preponderance (more than 50 percent) of Canadian content. For some specialty services like pay audio services, the applicable percentage of Canadian content is subject to change.

USTR will continue to closely monitor the effect of these policies on U.S. commercial interests.

Basic Telecommunications Services

In the recently concluded WTO negotiations on basic telecommunications services, Canada made commitments that were substantially less forthcoming than those made by most other OECD countries, which will result in higher costs to Canadian users of basic telecommunications services. For instance, full access to the market for international services between Canada and foreign countries other than the United States is not granted until March 1, 2000. Canada retained a 46.7 percent limit on foreign ownership, a requirement for Canadian control of basic telecommunications facilities and routing restrictions on domestic and international traffic to promote the use of Canadian facilities.

In December 1997, the CRTC eliminated third country routing restrictions for international traffic except for traffic routed to or from Canada through the United States. Therefore, Canada continues to maintain its “U.S. bypass restriction” on routing traffic through the United States, although the CRTC is considering eliminating this restriction on international traffic in a separate regulatory proceeding that should be decided by mid-summer. A Canadian carrier has appealed the CRTC’s decision eliminating third country routing restrictions on countries other than the United States. There is no deadline for deciding this appeal. The USTR is reviewing Canada’s routing restrictions under section 1377 of the Omnibus Trade and Competitiveness Act of 1988.

Also in its December 1997 decision, the CRTC eliminated most restrictions on how dominant firms (former monopolies) can price their long-distance services (but placed a four-year price ceiling on these firms' overall long-distance rates). U.S.-based firms in this market have expressed concern that this liberalization may be premature, allowing predatory pricing behavior by dominant firms.

Border Broadcasting

In 1976, Canada adopted a tax provision denying Canadian enterprises tax deductions for the cost of advertising in foreign print and broadcast media when the advertising is directed primarily at Canadians. The main targets of this legislation were advertisements placed on U.S. border television stations broadcasting into Canada.

Government-to-government and industry-to-industry consultations have failed to provide a compromise solution to this problem. As a result of a 1980 Section 301 determination that the Canadian law both injured and discriminated against U.S. commerce, the United States enacted mirror legislation in the 1984 Trade Act against Canada's broadcast media.

Banking and Insurance

The banking industry in Canada is governed by the federal Bank Act, which currently is in the process of being overhauled. In September 1997, Canada issued a foreign bank entry policy "Consultation Paper" as part of its efforts to develop a new financial services regime which would allow foreign banks to branch directly into Canada. The Consultation Paper sets out principles the Canadian government is using in drafting new legislation for foreign banks. Specific proposals allow for foreign banks to operate both retail subsidiaries and wholesale branches and allow for those foreign banks not establishing regulated entities to provide a limited range of unregulated financial services. U.S. banks and securities firms will continue to have a clear right of establishment and guarantee of national treatment. Presently, a foreign bank wishing to conduct business in the Canadian banking industry must establish as a subsidiary (Schedule II bank). Following implementation of new legislation, foreign banks will have expanded investor choice in establishment. New legislation is expect to be introduced in early 1998.

U.S. insurance companies may enter Canada as branches, but some provinces bar foreign companies from buying provincially-chartered insurance companies.

INVESTMENT BARRIERS

General Entry Restrictions

Canada

Under the Investment Canada Act and Canadian policies in the energy, publishing, telecommunications, transportation, film, music, broadcasting, and cable television sectors, Canada maintains laws and policies which inhibit new or expanded foreign investment.

Investment Canada Act

The Investment Canada Act requires the federal government to review proposed acquisitions by U.S. and other foreign investors to ensure "net benefit to Canada." Foreign investments in new businesses, direct acquisitions worth less than C$5 million, and indirect acquisitions worth less than C$50 million do not require prior government approval. Screening of indirect acquisitions by U.S. investors has been eliminated. However, these exemptions do not apply to foreign investments in "culturally sensitive sectors" such as publishing, film, video, music, broadcasting, and telecommunications. Any foreign investment in these sectors is subject to review.

Publishing Policy

Prior to 1992, when ownership of a firm engaged in the publication, sale, or distribution of books, magazines, periodicals, or newspapers in Canada passed to foreign investors as a result of mergers and acquisitions of foreign parent firms or "indirect acquisition," Canada required divestiture of control to Canadian investors.

Since January 1992, Canadian book publishing and distribution firms that fall into foreign hands through indirect acquisition need not be divested to Canadian control, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited circumstances. Also, since 1993, Canada treats the publication of any new magazine title by foreign-owned firms as a new investment subject to review. Under current policy guidelines, approval for a new magazine title would not be granted. The United States is monitoring the effect of these new policies on U.S. interests.

Film Industry Investment

Canadian policies prohibit foreign takeovers of Canadian-owned film distribution firms and allow investment to establish new distribution firms for proprietary products only. Indirect or direct takeovers of foreign distribution firms operating in Canada are only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian Government. The European Union has requested consultations under WTO dispute settlement procedures with regard to Canadian investment limitations of foreign-owned film distribution companies.

On February 4, 1998, the Canadian government announced a discussion paper outlining how to encourage more Canadian film production. The paper proposes questions to the National Film Board's future role on Canadian film promotion and marketing, screen time availability, and percent of film distribution availability to Canadian companies. The U.S. encourages distribution incentives for Canadian film products to any film distributor regardless of national origin. The outlined policies could possibly be harmful to the U.S. film industry.

Performance Requirements

Reviews by Investment Canada of prospective foreign investments involves an examination of the investor's business plan. Approval of the investment creates a legal obligation on the part of the investor to fulfill the business plan, which may include commitments in areas such as research and development or the promotion of Canadian authors. NAFTA represents progress toward ending the imposition of performance requirements on U.S. investors, and on third country investors when U.S. trade interests would be affected. The United States will continue to pursue the elimination of investment restrictions, including performance requirements, both bilaterally and multilaterally.

OTHER BARRIERS

Canadian Wheat Board

The Canadian Wheat Board (CWB) has exclusive authority to market western Canadian wheat, durum wheat, and malting barley for export. It also controls milling wheat and malting barley sales domestically. The United States has been working to have the export activities of state trading enterprises, such as the CWB, addressed in the WTO Working Party on State Trading Practices on Agriculture. In the October 1995 report of the private, binational Joint Commission on Grains (JCG), the JCG recommended that both countries "eliminate the excessive discretionary pricing practices of their institutions" which for Canada would mean "placing the CWB at risk of profit or loss in the marketplace, or conducting itself in an equivalent manner."

Late in 1997, at Congress' request, the U.S. General Accounting Office (GAO) initiated a study of the Canadian Wheat Board, the results of which will be reported to Congress in 1998. USTR is working with USDA to request an audit of the CWB to determine whether its pricing practices are fair and transparent.