

CANADA

TRADE SUMMARY

U.S. goods exports in 2013 were \$300.2 billion, up 2.6 percent from the previous year. Corresponding U.S. imports from Canada were \$332.1 billion, up 2.5 percent. The U.S. goods trade deficit with Canada was \$31.8 billion in 2013, up \$437 million from 2012. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Canada were \$61.2 billion in 2012 (latest data available), and U.S. imports were \$29.8 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$125.6 billion in 2011 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$74.6 billion

The stock of U.S. foreign direct investment (FDI) in Canada was \$351.5 billion in 2012 (latest data available), up from \$331.7 billion in 2011. U.S. FDI in Canada is led by the nonbank holding companies, manufacturing, and finance/insurance sectors.

The North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico (“the Parties”), entered into force on January 1, 1994. At the same time, the United States suspended the United States-Canada Free Trade Agreement, which had entered into force in 1989. Under the NAFTA, the Parties progressively eliminated tariffs and nontariff barriers to trade in goods among them, provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the Parties concluded supplemental agreements on labor and the environment, under which the Parties are obligated to effectively enforce their environmental and labor laws, among other things. The agreements also provide frameworks for cooperation on a wide variety of labor and environmental issues.

In 2012, Canada and Mexico became participants in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns that our businesses and workers face in the 21st century. In addition to the United States, Canada and Mexico, the TPP negotiating partners currently include Australia, Brunei, Chile, Japan, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs

Canada eliminated tariffs on all industrial and many agricultural products imported from the United States on January 1, 1998, under the terms of the NAFTA. Tariffs and tariff-rate quotas (TRQs) remain in place on dairy and poultry tariff lines. Canada is phasing out its remaining MFN tariffs on imported machinery and equipment and intends to complete this process by 2015. Canada announced the elimination of MFN

tariffs on baby clothing and athletic equipment (valued at CAD \$76 million annually) in its 2013 federal budget.

Agricultural Supply Management

Canada uses supply-management systems to regulate its dairy, chicken, turkey, and egg industries. Canada's supply-management regime involves production quotas, producer marketing boards to regulate price and supply, and TRQs. Canada's supply management regime severely limits the ability of U.S. producers to increase exports to Canada above TRQ levels and inflates the prices Canadians pay for dairy and poultry products. Under the current system, U.S. imports above quota levels are subject to prohibitively high tariffs (*e.g.*, 245 percent for cheese, 298 percent for butter). The United States continues to press for the elimination of all remaining tariffs and TRQs.

The United States remains concerned about additional Canadian actions that limit the access of U.S. exporters to the Canadian dairy market. First, Canada changed the way in which it applies import duties to certain commercial "food preparations" that contain cheese. For these particular food preparations, rather than classifying the product under a single tariff heading as was done previously, Canada now requires the components of the food preparation to be classified separately. As a result, the cheese components of these food preparations are now subject to prohibitively high tariff rates. In particular, U.S. exports of a particular pizza topping product will experience much higher duties as a result of the change. Canada's actions implementing this change were taken without any consultations with affected trading partners or opportunity for public comment. The United States has asked questions and raised concerns about this change at the WTO Committee on Agriculture and the U.S. – Canada Consultative Committee on Agriculture.

Second, Canada's compositional standards for cheese, which entered into force on December 14, 2008, further restrict access of certain U.S. dairy products to the Canadian dairy market. These regulations limit the ingredients that can be used in cheese making, require use of a minimum percentage of fluid milk in the cheese-making process, and make cheese importers more accountable for ensuring that the imported product is in full compliance. The compositional standards also apply to cheese that is listed as an ingredient in processed food.

Geographical Indications

On October 18, 2013, Canada and the European Union (EU) announced an agreement-in-principle on the Canada-EU Comprehensive Economic and Trade Agreement (CETA) after more than four years of negotiation. Although the Canadian government and the European Commission have not released the text of the agreement, the details contained in government summaries and fact sheets have raised serious concerns with respect to access for current and future U.S. agricultural and foodstuff producers. For example, the Canadian government has agreed to the EU's request to automatically protect 179 food and beverage terms without providing for due process safeguards, such as the possibility of refusal of applications or objection by third parties. Also, while the agreement appears to provide limited safeguards for the use of generic terms with respect to a short list of specific terms for existing producers, concerns remain about the right for future producers to use those terms and for producers to use generic terms with respect to other products. In addition, the U.S. Government continues to examine the effect the agreement will have on the use of individual components of compound terms in trademarks, the use of translations in trademarks, and prior rights of existing trademark owners.

The Canadian Wheat Board

The United States has had longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. Canada passed the Marketing Freedom for Grain Farmers Act in 2011 to transition the Canadian Wheat Board from a crown corporation to a commercial entity over a five-year period. The legislation allowed Western Canadian farmers to sell wheat on the open market beginning on August 1, 2012. Several not-for-profit associations from both the United States and Canada created a task force in order to provide information to facilitate the marketing of grain and seed between the United States and Canada. The United States welcomes the progress made to date to transition the Canadian Wheat Board to a commercial entity.

Restrictions on U.S. Grain Exports

U.S. origin wheat and barley are not eligible to receive Canadian statutory grades, other than the lowest official statutory grade in the particular class (for example, feed-grade wheat or #5 Amber Durum). Regulations promulgated under the Canada Grain Act require that for wheat and barley to be eligible to receive statutory grades, the variety must be registered for use in Canada and grown in Canada. As a result, while U.S.-grown varieties of wheat and barley can be brought into Canada and sold at a fair price based on contract-based specifications, they must be segregated from Canadian varieties that are eligible for grading under Canada's grain handling system. Canadian wheat and barley exporters do not face such a two-tiered grain handling system in the United States that distinguishes between domestic and imported wheat. U.S. members of the task force described above would like to have a working group established to review issues concerning varietal declarations as well as the lack of access to Canada's grading system for foreign-grown grains.

Restrictions on U.S. Seeds Exports

Canada's Seeds Act prohibits the sale, advertising, or importation into Canada of seed varieties that are not registered in the prescribed manner. In order to apply for seed varietal registration, the applicant must reside permanently in Canada. In addition, once registered, the seed variety must be grown in Canada in order to avail the resulting crop of any benefits under the Canada Grain Act's grain grading and inspection system (described above). This operates as a trade barrier to the many U.S. seeds (*e.g.*, wheat, barely, etc.) that are not varieties registered in Canada. In 2013, the Canadian government has presented an options paper seeking guidance from industry on how to modernize and streamline the crop variety registration system. Among the options being considered is to remove the oversight role of Canada's federal government in varietal registration.

Personal Duty Exemption

On June 1, 2012, Canada increased the cross-border shopping limit for tax-free imports of goods purchased in the United States. Canadians who spend more than 24 hours outside of Canada can now bring back CAD \$200 worth of goods duty free (the previous limit was CAD \$50). Canada raised the duty-free limit for trips over 48 hours to CAD \$800, an increase from a CAD \$400 limit for stays of up to one week and a CAD \$750 limit for stays longer than 7 days. However, Canada continues to provide no duty-exemption for returning residents who have been out of Canada for fewer than 24 hours. The United States provides similar treatment for its returning travelers who spend more than 24 hours outside of the country, but unlike Canada, also allows up to \$200 of duty-free goods after visits of less than 24 hours.

Wine, Beer and Spirits

Most Canadian provinces restrict the sale of wine, beer and spirits through province-run liquor control boards. Market access barriers in those provinces greatly hamper exports of U.S. wine, beer and spirits to Canada. These barriers include cost-of-service mark-ups, restrictions on listings (products which the liquor board will sell), reference prices (either maximum prices the liquor board is willing to pay or prices below which imported products may not be sold in order to avoid undercutting domestic prices), labeling requirements, discounting policies (requirements that suppliers offer rebates or reduce their prices to meet sales targets), distribution, and warehousing policies. Moreover, while Canada increased its personal duty exemption limit in June 2012, Canadian tourists still face high provincial taxes on personal imports of U.S. wines and spirits upon their return to Canada from the United States. This inhibits their purchases of U.S. alcoholic beverages.

Softwood Lumber

On September 30, 2013, the United States and Canada agreed to jointly initiate arbitration under the Softwood Lumber Agreement between the Government of the United States and the Government of Canada (SLA) to resolve a disagreement over the implementation of a prior SLA arbitration award (LCIA No. 81010). The award requires Canada to apply additional export charges on shipments of softwood lumber from Quebec and Ontario to remedy breaches of the SLA concerning certain forestry programs in those provinces. The additional export charges were designed to collect \$58.85 million over the term of the SLA, which was set to expire on October 12, 2013 when the award was issued. In January 2012, the United States and Canada extended the SLA until October 12, 2015. Canada has applied the additional export charges since March 2011, but had not collected \$58.85 million as of October 12, 2013. The United States and Canada have reconvened the original tribunal to determine whether the award requires Canada to continue to apply the additional export charges until \$58.85million is collected while the SLA remains in effect.

DOMESTIC SUPPORT MEASURES

Aerospace Sector Support

Canada released a comprehensive review of its aerospace and space programs in November 2012. The review offered 17 recommendations intended to strengthen the competitiveness of Canada's aerospace and space industries and guide future government involvement in both sectors. Recommendations called on the Canadian government to create a program to support large-scale aerospace technology demonstration, co-fund a Canada-wide initiative to facilitate communication among aerospace companies and the academic community, implement a full cost-recovery model for aircraft safety certification, support aerospace worker training, and co-fund aerospace training infrastructure.

The review also recommended that the Canadian government continue funding the Strategic Aerospace and Defense Initiative (SADI). The SADI provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defense, space, and security industries, and has authorized over \$900 million to fund 27 advanced research and development (R&D) projects since its establishment in 2007. To date, SADI has disbursed \$621 million.

The Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company in 2008 not to exceed CAD \$350 million (federal) and CAD \$118 million (provincial) to support research and development related to the launch of the new class of Bombardier CSeries commercial aircraft. According to the Public Accounts of Canada, the federal government has

disbursed CAD \$269 million dollars to Bombardier from April 2008 through March 2012. The United States will continue to monitor carefully any government financing of the CSeries aircraft.

While Parties to the February 2011 OECD Sector Understanding on Export Credits for Civil Aircraft implement the revised agreement, the United States also has expressed concern over the possible use of Export Development Canada (EDC) export credit financing to support commercial sales of Bombardier CSeries aircraft in the U.S. market.

Canada committed approximately \$3.25 million per year from 2009 to 2013 to support the Green Aviation and Research and Development Network and provides additional funding to the National Research Council's Industrial Research Assistance Program to support R&D in Canada's aerospace sector.

Ontario Feed-In Tariff Program

In December 2012, a WTO panel found that Canada breached its obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Trade Related Investment Measures (TRIMS), due to particular local-content requirements in Ontario's Green Energy and Green Economy Act of 2009 (Green Economy Act) that treat imported equipment and components less favorably than domestic products (see Canada – Certain Measures Affecting the Renewable Energy Generation Sector (WT/DS412) and Canada – Measures Relating to the Feed-In Tariff (FIT) Program (WT/DS426)). Canada appealed the panel reports in both disputes to the WTO Appellate Body. The Appellate Body issued its report on May 6, 2013, and found that the FIT program is inconsistent with GATT 1994 Article III:4 and Article 2.1 of the TRIMS Agreement. Ontario's Minister of Energy issued a directive to the Ontario Power Authority (OPA) in August 2013, instructing the OPA to reduce domestic content requirements for new FIT programs as an interim step to comply with the WTO's ruling. The Ontario government also announced in June 2013 that large renewable projects (projects over 500 Kilowatts) will be removed from the FIT program and procured under a new competitive process going forward.

A Texas-based renewable energy firm initiated an investor-state claim under NAFTA Chapter 11 against Canada in July 2011, claiming the Green Economy Act violates Canada's obligations under the NAFTA to provide investors with fair and equitable treatment.

GOVERNMENT PROCUREMENT

Canada is a signatory to three international agreements relating to government procurement (the WTO Agreement on Government Procurement (GPA), the NAFTA, and the 2010 United States-Canada Agreement on Government Procurement). Canada ratified the modernized WTO GPA on December 3, 2013, and that agreement is expected to enter into force in April 2014. The current agreements provide U.S. businesses with access to procurement conducted by most Canadian federal departments and a large number of provincial entities. However, U.S. suppliers have access under these trade agreements to procurement of only seven of Canada's Crown Corporations. Crown Corporations are government organizations that operate following a private sector model, but generally have both commercial and public policy objectives. Canada currently has more than 40 Crown Corporations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Protection and enforcement of intellectual property rights is a continuing priority in bilateral trade relations with Canada. After placing Canada on the Special 301 Priority Watch List since 2009, the U.S. Government moved Canada to the Watch List in 2012 in light of steps taken to improve copyright

protection through the Copyright Modernization Act. The Act will come into force following additional legislative procedures and regulatory action, and the U.S. Government continues to urge Canada to implement the law as quickly as possible. With respect to pharmaceuticals, the United States continues to have serious concerns about the impact of the heightened patent utility requirements that Canadian courts have adopted. On enforcement issues, Canada re-introduced the Combating Counterfeit Products Act in the House of Commons in October 2013. The United States continues to urge the government of Canada to amend this legislation to address the problem of transshipment of counterfeit trademark goods and pirated copyright goods through Canada to the United States.

SERVICES BARRIERS

Telecommunications

Canada maintains a 46.7 percent limit on foreign ownership of certain suppliers of facilities-based telecommunications services, except for submarine cable operations. This is one of the most restrictive regimes among developed countries. Canada also requires that at least 80 percent of the members of the board of directors of facilities-based telecommunications service suppliers be Canadian citizens. As a consequence of these restrictions on foreign ownership, U.S. firms' presence in the Canadian market as wholly U.S.-owned operators is limited to that of a reseller, dependent on Canadian facilities-based operators for critical services and component parts. These restrictions deny foreign providers certain regulatory advantages only available to facilities-based-carriers (*e.g.*, access to unbundled network elements and certain bottleneck facilities). This limits those U.S. companies' options for providing high quality end-to-end telecommunications services, since they cannot own or operate their own telecommunications transmission facilities.

Canada amended the Telecommunications Act in June 2012 to rescind foreign ownership restrictions to carriers with less than 10 percent share of the total Canadian telecommunications market. Foreign-owned carriers are permitted to continue operating if their market share grows beyond 10 percent, provided the increase does not result from the acquisition of, or merger with, another Canadian carrier. Canada announced in March 2012 that it would cap the amount of spectrum that all large incumbent companies could purchase in the January 2014 700MHz spectrum auction in an effort to facilitate greater competition in the sector. No foreign entities participated in the auction which resulted in Canada's three large incumbent wireless providers winning 85 percent of the available blocks. Canada has blocked deals it believes would lead to excessive spectrum concentration among market leaders.

Canadian Content in Broadcasting

The Canadian Radio-television and Telecommunications Commission (CRTC) imposes quotas that determine both the minimum Canadian programming expenditure (CPE) and the minimum amount of Canadian programming that licensed Canadian broadcasters must carry (Exhibition Quota). Large English language private broadcaster groups have a CPE obligation equal to 30 percent of the group's gross revenues from their conventional signals, specialty and pay services. The Exhibition Quota for all conventional broadcasters is fixed at 55 percent Canadian programming as part of a group, with a 50 percent requirement from 6 p.m. to midnight.

Specialty services and pay television services that are not part of a large English language private broadcasting group are subject to individual Canadian programming quotas (time or expenditure or both), which vary depending upon their respective license conditions.

For cable television and direct-to-home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian programming services. Non-Canadian channels must be pre-approved ("listed") by the CRTC. Canadian licensees may appeal the listing of a non-Canadian service that is

thought to compete with a Canadian pay or specialty service. The CRTC will consider removing existing non-Canadian services from the list, or shifting them into a less competitive location on the channel dial, if they change format to compete with a Canadian pay or specialty service.

The CRTC also requires that 35 percent of popular musical selections broadcast on the radio should qualify as “Canadian” under a Canadian government-determined point system.

INVESTMENT BARRIERS

General Establishment Restrictions

The Investment Canada Act (ICA) has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada prior to the direct or indirect acquisition of an existing Canadian business above a particular threshold value. In 2014, the threshold for review of investments/acquisitions by companies from World Trade Organization (WTO) Members was \$354 million. Canada amended the ICA in 2009 to raise the threshold for review to \$1 billion over a four-year period. The new thresholds will come into force once regulations are drafted and published (bids by foreign state owned enterprises (SOEs) will remain subject to the current \$354 million threshold, however). Industry Canada is the government of Canada’s reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage. Foreign acquisition proposals under government review must demonstrate a “net benefit” to Canada to be approved. The ICA sets a 45 day time limit for the reviews, extendable by an additional 30 days if the investor is notified prior to expiry of the initial 45 day period. Reviews of investments in cultural industries usually require the extended 30 days to complete. Canada added a national security review to the ICA in 2009 that permits the Industry Minister to review investments that could be “injurious to national security.” National security reviews can take up to 130 days to complete under existing timelines.

The ICA was amended in June 2012 to allow the Industry Minister to disclose publicly that an investment proposal does not satisfy the net benefit test and publicly explain the reasons for denying the investment so long as the explanation will not do harm to the Canadian business or the foreign investor. Canada blocked a \$38.6 billion hostile takeover by an Australian company in 2010 of Potash Corp. of Saskatchewan as not being of “net benefit” to Canada under the ICA.

Under the ICA, the Industry Minister can make investment approval contingent on meeting certain conditions such as minimum levels of employment and research and development. Since the global economic slowdown in 2009, some foreign investors in Canada have had difficulties meeting these conditions. The June 2012 ICA amendments allow the Industry Minister to accept security payment from investors when found by a court to be in breach of their ICA undertakings. Canada also introduced guidelines that provide foreign investors with the option of a formal mediation process to resolve disputes when the Industry Minister believes a non-Canadian investor has failed to comply with a written undertaking.

On December 7, 2012, Canada issued new rules to supplement its guidelines for investment by foreign SOEs, including the stipulation that future SOE bids to acquire control of a Canadian oil-sands business will be approved on an “exceptional basis only.”

OTHER BARRIERS

Port Hawkesbury Paper Mill

The United States remains concerned about the nature and extent of assistance provided by the Province of Nova Scotia to the Port Hawkesbury paper mill following a bankruptcy settlement that resulted in the sale of the mill to a Canadian firm.

Cross-Border Data Flows

The strong growth of cross-border data flows resulting from widespread adoption of broadband-based services in Canada and the United States has refocused attention on the restrictive effects of privacy rules in two Canadian provinces, British Columbia, and Nova Scotia. These provinces mandate that personal information in the custody of a public body must be stored and accessed only in Canada unless one of a few limited exceptions applies. These laws prevent public bodies such as primary and secondary schools, universities, hospitals, government-owned utilities, and public agencies from using U.S. services when personal information could be accessed from or stored in the United States.

The Canadian federal government is consolidating information technology services across 63 email systems under a single platform. The request for proposals for this project includes a national security exemption which prohibits the contracted company from allowing data to go outside of Canada. This policy precludes some new technologies such as “cloud” computing providers from participating in the procurement process. The public sector represents approximately one-third of the Canadian economy, and is a major consumer of U.S. services. In today’s information-based economy, particularly where a broad range of services are moving to “cloud” based delivery where U.S. firms are market leaders; this law hinders U.S. exports of a wide array of products and services.

Container Size Regulations

Canada announced in its 2012 budget that it would repeal standardized container size regulations for food products. The Canadian government has stated that these regulations do not provide a food safety benefit and that the elimination of such regulations would remove an unnecessary barrier for the importation of new products from international markets. The timeline for implementing the new regulations continues to be extended, however, and the existing regulations have not been repealed to date. The Canadian Food Inspection Agency conducted consultations with some companies and industry groups in 2013, during which several Canadian food manufacturers expressed opposition to the removal of container size requirements. For the time being, the existing regulations for food container sizes remain in force.