

Trade Policy Review Body
12 and 14 March 2003

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TRADE POLICY REVIEW

CANADA

Minutes of Meeting

Addendum

Chairperson: H.E. Mrs. Mary Whelan (Ireland)

This document contains the advance written questions, and replies provided by Canada.¹

Organe d'examen des politiques commerciales
12 et 14 mars 2003

EXAMEN DES POLITIQUES COMMERCIALES

CANADA

Compte rendu de la réunion

Addendum

Présidente: S.E. Mme Mary Whelan (Irlande)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par le Canada.¹

Órgano de Examen de las Políticas Comerciales
12 y 14 de marzo de 2003

EXAMEN DE LAS POLÍTICAS COMERCIALES

CANADA

Acta de la reunión

Addendum

Presidente: Excma. Sra. Mary Whelan (Irlanda)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por Canada.¹

¹ In English only./En anglais seulement./En inglés solamente.

**ADVANCE WRITTEN QUESTIONS BY MEMBERS AND REPLIES
PROVIDED BY CANADA**

SWITZERLAND

Question 1

Canadian monetary policy, in contrast to US monetary policy, has become more restrictive. This is justified based on the more positive cyclical developments in Canada as well as on recent price developments. To what extent might the increase in Canadian interest rates resulting from a more restrictive monetary policy stance constrain investment in Canada, as the lower US interest rates make investments in the US relatively cheaper? (TPR, § 15, Section I)

Response

Canada is a net recipient of foreign investment, with liabilities exceeding assets by \$203.4 billion in 2001. This is a small increase from \$202.5 billion in 2000, but down substantially from \$290.2 billion in 1997. This decline in Canada's foreign investment deficit is a result of the booming US economy, which during the late 1990s, acted as a magnet, attracting foreign as well as Canadian investment. In 2001 the decline began to reverse as the Canadian economy started to accelerate, and in 2002 Canadian growth was stronger than that of the US. Already, Canadian interest rates have begun to rise while they continue to fall in the US, which is likely to further increase the attractiveness of Canada as a destination for foreign investment. Therefore, we do not feel that this is a constraint on investment in Canada.

Question 2

Could you explain the fluctuations of the Canadian dollar toward the US dollar between 2000 and 2002 as well as the effects on trade? (TPR, § 17, Section I)

Response

Between 2000 and 2002, the Canadian dollar moved in a fairly narrow range against the US dollar from a high of US\$0.69 at the start of 2000 to a low point of between US\$0.62 and US\$0.63. For the most part, these fluctuations can be seen as movements within a trading band centered on about US\$0.65 established following the global rise of the US dollar in the context of the emerging market crises of the late 1990s.

During the period 2000-2002, the Canadian dollar was relatively stronger within this band when capital flows into US dollar-denominated securities slowed and when factors considered to be supportive of the Canadian dollar in currency markets (e.g., commodity prices) moved in a favourable direction; and, of course, vice versa. The impacts of fluctuations in the Canadian dollar in this range did not likely have any discernible impacts on Canadian trade flows, which were driven primarily by growth trends in the United States.

Insofar as the valuation of the dollar played a role in Canada's trade performance in this period, it was in terms of its persistent under-valuation compared to what might be considered its longer-term equilibrium value as indicated by purchasing power parity estimates (estimates place the Canadian dollar's PPP exchange rate in the low US\$0.80 cent range).

The comparatively low market value of the Canadian dollar in 2000-2002, in comparison to the PPP standard and also in comparison to judgements based on the sound and improving fundamentals of the Canadian economy, undoubtedly enhanced the competitiveness of Canadian exporters and import-

competing industries vis-a-vis US competitors and played some role in determining the size of Canada's trade surplus during this period.

Question 3

Could you comment on the relationship between the negotiations for the Free Trade Area of the Americas including all the countries of the Western Hemisphere except Cuba and exploratory discussions toward possible negotiations for free-trade agreements with CARICOM, the countries of the Andean Community and the Dominican Republic? (TPR, §36, Section II)

Response

Canada is committed to the Free Trade Area of the Americas (FTAA) process, which is our top regional priority. The exploratory discussions toward possible negotiations for free trade agreements (FTAs) with CARICOM, the countries of the Andean Community, and the Dominican Republic - as well as the agreement currently under negotiation with four Central American countries (El Salvador, Guatemala, Honduras and Nicaragua) - will allow Canada the possibility of forging closer bilateral trade links and negotiating more compact, bilateral agreements with these countries.

In our view, bilateral negotiations can provide momentum to the FTAA negotiations and build alliances based on the mutual knowledge and trust that is developed through sub-regional negotiations. These initiatives can serve as building blocks for the FTAA, not least in their treatment of free trade between large and small economies.

Question 4

In its free-trade agreement with Chile, Canada has renounced raising anti-dumping duties against Chile and vice versa without the competition legislations being harmonised. How did Canada come to this result and what are the first experiences? (TPR, § 44, Section II)

Response

The Canada - Chile Free Agreement contains a chapter on Competition law (chapter J), which says in part:

"Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfilment of the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area."

Competition rules were not harmonized as a result of the free trade agreement because the Parties did not feel that this was going to be an issue in view of the inconsequential level of integration between the two economies, most dramatically reflected in the geographic distance between the two countries. To date, this arrangement has not been an issue between the Parties.

Question 5

Would Canada be ready to consider reciprocal access to sub-central government level with GPA Members including sectors of priority to Canadian suppliers and without particular provisions on small business and sets aside? (TPR, § 215, Section III)

Response

Paragraph 215 fully reflects Canada's position, which has also been stated in the WTO Committee on Government Procurement. Canada will only consider sub-federal coverage if other parties are prepared to include sectors of priority interest to Canadian suppliers, such as steel and transportation, to agree to circumscribe the use of small business and other set asides, and to agree to eliminate other discriminatory measures.

Question 6

What impact on the domestic textiles and clothing industry is expected with the elimination of import quotas by 31 December 2004 under the WTO Agreement on Textiles and Clothing? What adjustments are made to prepare for this liberalisation? (TPR, § 52, Section IV)

Response

The Agreement on Textiles and Clothing (ATC) is but one of the many initiatives affecting the Canadian textiles and clothing industries. Other initiatives, such as the full implementation of the Uruguay Round tariff reduction, our bilateral trade agreements, Canada's Market Access Initiative for Least Developed Countries, and initiatives by our major trading partners also play a great role in the future of these sectors. It is our view that isolating the specific impact of the ATC is therefore impossible and it would be inappropriate to try to forecast what will happen in 2005 to the textiles and clothing industries in Canada on the basis of the ATC alone.

The Government of Canada recently introduced the Canadian Apparel and Textile Industries Program (CATIP). This program will focus on projects that help our textile and apparel companies and their industry associations by strengthening marketing strategies, identifying high-potential niche markets, developing e-business capabilities, diversifying products, and by applying new technologies to improve productivity. Further information on the program can be found at www.strategis.gc.ca/catip. (This program was developed from the Strategic Framework mentioned in Chapter 4, paragraph 62 of the Secretariat Report)

In addition, the government has established a joint government-industry Working Group on Textiles and Apparel to help identify high-risk issues affecting the long-term competitiveness of the textile and apparel industries and to recommend, on an ongoing basis, measures that the government might take to assist these industries in addressing these issues.

Question 7

Section IV, p. 102 of the TPR mentions that: "Export subsidies were scheduled by Canada under the WTO Agreement on Agriculture for 11 product groups comprising cereals, oilseeds, dairy products, and vegetables, and were made subject to distinct reduction commitments. Canada's latest WTO export subsidy notification was made in March 2001 for the year 1999/00.¹ As in the three previous years, Canada notified no subsidies for any of the scheduled products, with the exception of dairy products". Are these 11 product groups exhaustive and what are Canada's future reductions plans?

Response

The 11 product groups listed in our export subsidy notifications, the most recent being G/AG/N/CAN/31 (March 2001) is a complete listing of all product categories for which Canada has export subsidy reduction commitments. As notified, Canada has not provided export subsidies for any of the scheduled products, with the exception of dairy products since August 1, 1995. In the WTO

¹ WTO document G/AG/N/CAN/41, 14 March 2001.

Agriculture negotiations, Canada is seeking the elimination of all export subsidies on agricultural products as quickly as possible.

Question 8

Do Canada's provinces have particular competences referring to price or product support?

Response

In Canada, agriculture is a shared jurisdiction between the federal and provincial governments. All domestic support to agriculture, including support by the federal and provincial governments as well as support provided through joint federal and provincial programs, is reported in Canada's annual notification of domestic support to the Committee on Agriculture of the World Trade Organization.

Question 9

The Canadian Wheat Board (CWB) and the Canadian Dairy Commission (CDC) benefit from a dominant position and privileged treatment on the market. Independently from future developments in the WTO negotiations, does Canada foresee to disengage in this area to provide freedom of action to the market and the private sector?

Response

Both the Canadian Wheat Board (CWB) and the Canadian Dairy Commission (CDC) have been notified as state trading enterprises under GATT 1994 Article XVII. The CWB and the CDC fully respect the obligations in Article XVII, as well as WTO obligations more generally.

NEW ZEALAND

Tariffs

Question 1

The Secretariat's report (WT/TRR/S/112, Table III.1) shows that in 2002 the average applied MFN tariff in Canada was 4.2% for non-agricultural goods, 21.7% for agricultural goods overall; and 237.7% for dairy products. Tariffs in the agricultural sector, and in particular, the dairy sector are thus vastly disproportionate to MFN tariffs for non-agricultural goods. How does Canada plan to reduce prohibitive tariffs in the dairy sector, and agricultural tariffs in general to a level proportionate with non-agricultural products?

Response

The comparison cited ignores the MFN tariff at which most trade occurs, the in-quota tariff for products subject to tariff quotas. Imports of products subject to tariff quotas generally enter at very low in-quota rates, averaging about 3% on an MFN basis, which is comparable to the rates for non-agricultural goods. The 21.7 average duty cited for agricultural goods includes the over-quota tariffs, which average 139 percent.

In the WTO agriculture negotiations, Canada has called for an ambitious harmonizing reduction formula to achieve maximum reductions from final bound tariffs and substantial reduction of tariff disparity between competing products and tariff escalation from the raw to processed form of the product. Such a formula should lower tariffs to a more uniform level, but for particularly sensitive products Members should have the option to achieve market access improvements in other ways -

such as providing a specified quantity of duty-free access to all Members through tariff quotas. Where a Member chooses to provide access improvements through tariff quotas, a significant improvement in market access can be achieved through commitments that expand access, eliminate in-quota tariffs, and ensure clear rules so that tariff quota administration does not impede access.

Local Content Requirements and State-Owned Enterprises

Question 2

Market distortions in the wines and spirits sector in Canada persist via local content requirements at the provincial level (WT/TRR/S/112, para 182) and monopoly sales by provincial state-owned marketing enterprises (WT/TRR/S/112, paragraphs 191-198). Could the Canadian authorities provide detailed reassurance as to the WTO compatibility of the policies underpinning these market distortions?

Response

The Provincial Liquor Boards (PLBs) in Canada were established before the GATT was created, and their existence and activity is consistent with the provisions of GATT Article XVII ["State Trading Enterprises"]. In accordance with that Article, they are notified to the WTO as STEs. The PLBs operate as businesses whose decisions are based solely on commercial considerations and market forces. In Alberta, responsibility for the selection, retailing, warehousing, and distribution of liquor rests with the private sector. The alcoholic beverage-producing countries, which are major exporters to Canada, have accepted the policies of Provincial liquor agencies through various bilateral agreements. Canada's commitments under these agreements are implemented on an MFN basis.

Imported products compete with domestic products in the PLB retail stores, and enjoy a large share of the Canadian market. By volume, imported spirits accounted for 31.2% of the market in 1999, rising to 32.4% in 2001; imported wines held 65.4% of the market in 1999, rising to 67.0% in 2001. Both the value and market share of wine and spirit imports continue to increase.

Where local content requirements exist, they actually have the effect of limiting the volume of wine, which can be sold in the private retail outlets, due to the limited potential of grape production in Canada.

Agriculture

Question 3

In tandem with prohibitive tariff rates, Canada maintains small tariff rate quotas for several agricultural products. The Secretariat has noted (WT/TPR/S/112, paragraph 32, page 102) that imports account for less than 5% of domestic consumption for some of these products (using the domestic consumption base period for the Uruguay Round commitments); for example, there are no imports of skim milk powder within the tariff-rate-quota. When does Canada intend to provide in-quota access of 5% for all agricultural products subject to tariff rate quotas?

Response

For most of the products listed, imports actually exceed 5% of consumption. Also, as noted in paragraph 32, for agricultural products subject to tariff quotas, the fill rates have been above the average when compared to the fill rate of TRQs across all WTO Members and for many, fill rates consistently achieve 100 percent. Some exceptions include wheat, barley and margarine, products for which Canada is highly competitive internationally and a significant exporter.

For some products subject to tariff rate quotas, supplementary import permits are issued for the importation of products at the low in-quota tariff in quantities that are outside the bound tariff quota volume commitment. The result is that for a number of products with tariff quotas, total imports exceed five percent of consumption for the base period established as part of the Uruguay Round. Canada considers the approach taken to the establishment of tariff quotas in the Uruguay Round to be seriously flawed, with the result that there are considerable inequities in the access levels provided by countries. Canada has suggested that this issue needs to be addressed in the current negotiations.

In the WTO agriculture negotiations, Canada has called for tariff quota volumes to be expanded to a common minimum end point of at least 5% of current consumption in a recent period. As well, tariff quota volumes should be determined and established on a product basis (e.g., pork, not meat; barley, not feed grains). This process must only expand existing tariff quotas; no tariff quota volume would be reduced from final bound levels. All in-quota tariffs should be eliminated. Clear rules are needed so that tariff quota administration does not impede access.

Question 4

Dairy industry representatives in Canada claim that an increase in tariff rate quota access for dairy products to 10% of domestic consumption would “spell the end of supply management”. Does the Government of Canada officially oppose the expansion of tariff rate quota access volumes to 10%, or more, of domestic consumption for dairy and other agricultural products? If so, for what policy objective?

Response

In the WTO agriculture negotiations, Canada has called for tariff quota volumes to be expanded to a common minimum end point of at least 5% of current consumption in a recent period, on a product basis. Canada has serious concerns about the Uruguay Round approach to tariff quotas, and the significant inequities that resulted in the levels of access provided by countries. For example, the establishment of tariff quotas at 5% of current consumption on a product basis would result in far more access in many markets than 10% on a Uruguay Round basis. Canada has raised this issue in the current negotiations.

Question 5

What policies does Canada intend to implement to facilitate adjustments in the dairy sector so as to avoid quantitative restrictions and “allow producers to respond better to the global marketplace and compete on the basis of their competitive advantage” (Government of Canada report, WT/TPR/G/112, paragraph 96)?

Response

Canada's dairy sector continues to adapt to changes in Canadian domestic dairy markets within the existing supply management framework that applies to production for that market. Production for export outside of that framework has recently been discontinued in response to a dispute settlement finding by the WTO. The Canadian dairy sector will thus have less involvement in future international dairy markets and will focus its efforts on maintaining its competitiveness in domestic dairy markets.

Question 6

The Canadian Dairy Commission, an STE, has a monopoly on imports of butter within Canada's scheduled tariff rate quota (WT/TPR/S/112, paragraph 31, page 102). The CDC sells imported butter to further processors in Canada. Can Canada commit to providing figures for the mark-up used to determine the price charged by the CDC to processors of imported butter, or alternately, the resale

price for the butter, as required by Article XVII of the GATT? How does Canada ensure that the resale price represents only a "reasonable profit" for the CDC?

Response

Canada submitted a new and full notification pursuant to GATT 1994 Article XVII in November 2002 (G/STR/N/4/CAN). Statistical information provided therein included the average import price, as well as the average representative domestic sales price of relevant commodities. Canada will continue to respect its obligations under Article XVII.

Steel

Question 7

The incidence of anti-dumping and safeguards investigations on steel imports into Canada has continued to increase since the last TPR of Canada in 2002, yet the share of imports in total consumption decreased from 44% in 2000 to less than 37% in 2001 and the first half of 2002 (WT/TPR/S/112, Table IV.5). Such investigations can be costly and disruptive for small, unsubsidised producers such as New Zealand, which has a small, longstanding export trade to Canada. How does Canada plan to minimise the disruption to normal trade in such cases?

Response

On the issue of volumes, annual import volumes for the entire year 2002 (6.3 million tonnes) were the third highest level on record - below only the level achieved in 2000 (7.9 million tonnes) and in 1998 (6.7 million tonnes). In 2002, domestic steel consumption in Canada rose 4.2% above the levels in 2001 but imports increased by 13.5% over the same period.

With respect to investigations, Canada has and will continue to conduct anti-dumping investigations on steel, as it would on any other product, in full accordance with its international trade obligations and its own domestic law, when its domestic industry makes a properly substantiated request.

With respect to Canada's recent steel safeguard investigation, the Government is still considering its response to the recommendations by the Canadian International Trade Tribunal. The issue of whether "normal trade" is or is not disrupted by trade remedy measures is not germane to the issue of whether such measures are legitimate and have been imposed in accordance with trade agreement obligations.

AUSTRALIA

Steel

Question 1

We note that Canadian steel imports account for a smaller percentage of consumption than they did at the time of the last trade policy review (37 per cent versus 44 per cent). Despite this, anti-dumping and safeguard actions on steel have increased. The Government has yet to respond to the Canadian International Trade Tribunal report of August 2002 which recommended remedies to safeguard steel. How does Canada plan to promote adjustment in the steel industry?

Response

On the issue of volumes, annual import volumes for the entire year 2002 (6.3 million tonnes) were the third highest level on record - below only the level achieved in 2000 (7.9 million tonnes) and in 1998

(6.7 million tonnes). In 2002, domestic steel consumption in Canada rose 4.2% above the levels in 2001 but imports increased by 13.5% over the same period.

Regarding the CITT recommendations, the Government is still considering its response and has not implemented any safeguard measure.

On the question of adjustment, since no safeguard action has been put in place, the steel industry has not undertaken any specific action to adjust to new competitive conditions. On this issue, Canada considers its support for and participation in the OECD steel process to discipline government intervention in the steel sector as adjustment action. In our view, multilateral disciplines on steel subsidies should reduce worldwide overcapacity and reduce trade fiction.

We are optimistic about prospects for an agreement on steel subsidies.

Regional and Bilateral Initiatives

Question 2

We note that Canada is extremely active in expanding its network of preferential trade agreements, including through its participation in negotiations to establish the Free Trade Area of the Americas (FTAA). Australia welcomes Canada's assurance that its multilateral and bilateral initiatives are designed to be mutually supportive, and that its bilateral efforts do not detract from multilateral efforts. How does Canada's elaborate network of free trade agreements complement and support trade liberalisation through the WTO, and the Doha Round negotiations in particular?

Response

Canada is of the view that bilateral and regional free trade initiatives can complement and reinforce multilateral liberalization by generating political momentum, by developing and refining elements of the trade regime, and by preparing domestic industries for the further opening of markets. By ensuring that such arrangements are consistent with WTO rules, these initiatives also help strengthen the multilateral system. Regional and sub-regional agreements, moreover, can play a positive role in advancing global negotiations either by flagging new issues and helping to place them on the global agenda, or by providing innovative solutions to trade problems that can subsequently be elevated and adapted from the bilateral or regional to the multilateral arena.

The bilateral and regional free trade agreements that Canada has negotiated contain some innovative features through which we have tried to enhance cooperation, strengthen institutional capacity, and promote long-term economic growth through increased economic exchanges. One example of this is the North American Free Trade Agreement (NAFTA), in which certain provisions, such as services and intellectual property, were ahead of the multilateral curve at the time the agreement was signed. A more recent example is the Canada-Costa Rica Free Trade Agreement (FTA), which is the first bilateral FTA containing innovative stand-alone provisions on trade facilitation.

In addition, closer economic relations, as well as the closer governmental relations forged by the negotiations process, contribute to progress on the broader social, political and environmental fronts. As such, bilateral and regional initiatives can be an important element of a country's development efforts. Engaging developing countries in FTAs also helps to build their capacity in trade negotiations.

Services

Question 3

Canada is continuing the process of gradually reforming its services sector and is an active participant in the services negotiations. However, despite a Review process favourable to multilateral air transport liberalisation (para. 131 of Secretariat's Report refers), Canada continues to oppose negotiations on air transport services under the General Agreement on Trade in Services (GATS). Would Canada explain why it opposes negotiations and indicate if its MFN exemptions relating to air transport services are still necessary?

Response

With respect to air transport services, Canada notes that extensive liberalization is already being achieved under the current system of bilateral agreements. While there may be some merit in considering alternatives to the bilateral process for negotiating air traffic rights, Canada believes that the bilateral process works efficiently and effectively, offering much flexibility in terms of further air liberalization. The bilateral process will likely remain the key method for dealing with international air services for the foreseeable future.

With respect to services not directly related to air transport services, Canada has participated in the review of the Air Transport Annex of the GATS and examined closely the question of whether certain services not directly related to traffic rights might be included for coverage by the GATS under the Annex. The Special Session of the Council in Trade in Services decided in 2002 to defer further deliberations with respect to appropriate coverage pending the convening World Air Transport Conference of ICAO (International Civil Aviation Organization) March 24 to 28, 2003, which will address future directions for air transport relations.

Canada currently has an MFN exemption for maintenance and repair services as well as for sales and marketing of air transport services. Canada believes that the exemption for repair and maintenance is still necessary because it wants to reserve the right to selectively negotiate agreements with other aeronautical authorities or service providers to recognize their accreditation of repair, overhaul and maintenance facilities and certification by such facilities of work performed on Canadian-registered aircraft and other related aeronautical products. It believes that the exemption for sales and marketing is still necessary because the rules and obligations for the selling and marketing of scheduled international air services are negotiated in Canada's bilateral air agreements while the selling and marketing of all international air services (including unscheduled) must be in general accordance with Canadian laws and regulations.

Question 4

With regard to professional services (ie, accountancy, architecture, engineering and law), Canada maintains a number of citizenship and residency requirements for accreditation at the sub-federal level in its GATS schedule of commitments. Would Canada explain the policy rationale for these limitations? Would Canada also indicate whether there are any review processes in place (either at the federal or sub-federal level) to examine whether there are less trade restrictive means of achieving the policy objectives underlying these limitations? If not, is Canada prepared to review the ongoing need for these limitations in the context of the current Doha Development round?

Response

Canada is in the process of consulting with its relevant professional associations to review the extent of liberalization undertaken since the Uruguay Round of GATS negotiations and whether there is scope for liberalization in the context of the Doha Round.

In 1998, Canada notified the Council for Trade in Services of the elimination of a number of citizenship, permanent residency and residency requirements in the professional services sector. These changes to the requirements for licensing for a number of professionals resulted from regular policy reviews undertaken by the respective licensing authorities.

THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

Recent Economic Developments

Question 1 (p. 4 paragraph 2)

Maintaining a low inflation rate has always been the main goal of Canadian monetary policy, and the recent surge in oil prices will surely bring new inflationary pressures. A tighter monetary policy is usually considered the best tool for tackling this problem, but in light of the dismal economic outlook, a more stringent monetary policy might have an adverse affect on Canada's economic growth. How does Canada determine what is the most effective monetary policy at this critical time?

Response

While economic growth in Canada eased in the last quarter of 2002 (largely owing to lower exports), final domestic demand continued to expand at a robust pace. It continues to be the view of the Bank of Canada that the level of aggregate economic activity in Canada remains near full production capacity and that the persistence of above-target rates of inflation has raised the risk of a rise in inflation expectations.

While there are considerable geopolitical and global economic uncertainties overhanging the short-run economic outlook, the Bank still expects demand for Canadian output to strengthen after mid-2003, as global uncertainties diminish. Even with the latest increase of 25 basis points in the target for the overnight rate, the Bank still feels that further reductions in monetary stimulus will be required to return inflation to the 2 per cent target over the medium term.

The timing and pace of increases in policy interest rates will depend on the following factors: the strength of demand pressures, changes in inflation expectations, the impact on confidence of geopolitical and global economic uncertainties, and the way in which developments in the Middle East affect demand and inflation, both globally and in Canada. The Bank will continue to monitor closely all of these factors.

Standards, technical regulations, and sanitary and phytosanitary measures

Question 2 (p. 51 paragraphs 89, 90)

According to our understanding, Canada has been applying measures under the Telecommunication Terminal Equipment Supplier's Declaration of Conformity (TTESDoC), since 2002. Would Canada please describe for us the current status of its implementation of the TTESDoC measures?

Response

Canada has had the Telecommunication Terminal Equipment Supplier's Declaration of Conformity (TTESDoC) measures in full implementation since January 19, 2002.

Sanitary and phytosanitary measures

Question 3 (p. 56-57 paragraph 114)

Chronic Wasting Disease (CWD) is a Transmissible Spongiform Encephalopathies (TSE). In 1996, CWD was diagnosed on 39 game ranches in Saskatchewan and one in Alberta, Canada. Nevertheless, as of March 2002, the number of CWD cases confirmed by the laboratory in Canada was 225. Recently, the presence of CWD has even been recognized in the free-ranging deer population of Saskatchewan. The information has indicated an increased prevalence of CWD in the Canadian-farmed elk industry. As a trading partner, we would appreciate having Canada's responses to the following questions:

What is the current state of CWD in Canada? What action has been taken by the Authorities to prevent its spread?

Response

Since 1996, CWD has been reported on 40 elk farms in Saskatchewan and 1 elk farm and 1 white tail deer farm in Alberta respectively. To date, the Canadian Food Inspection Agency (CFIA), in conjunction with provincial government authorities, have identified 231 CWD-positive farmed cervids and destroyed 8,675 farmed cervids due to exposure to positive animals.

CWD is a reportable disease in Canada and the CFIA has implemented a Control and Eradication Program. Full details on the Control and Eradication Program can be found on the CFIA website: www.inspection.gc.ca

Any cervid showing signs of CWD (neurological difficulties) is subject to lab analysis. To encourage reports, the CFIA has a farm compensation program in place for animals ordered destroyed. If CWD is confirmed, all cervids exposed to a known CWD positive are destroyed.

More generally, all TSE diseases in livestock are reportable in Canada under federal law. The entire herd is quarantined if a TSE disease is suspected to be present in an animal in the herd. If a herd is determined to be infected, all infected or exposed animals are destroyed and all products from infected animals would be traced back with the aim of removing them from the animal and human food chain.

How do the Authorities treat CWD-infected materials, including animal products, by-products and incinerated/rendered meals, to prevent the spread of contamination by TSE agents in the food chain?

Response

The CFIA has regulations that prohibit feeding ruminant rendered meat and bone meal from other ruminants. Any animal ordered destroyed by the CFIA due to a TSE disease is not allowed to be rendered. TSE positive and exposed animals are destroyed by incineration or burial according to Canadian sanitary and environmental standards.

Any animal slaughtered in the federally regulated meat inspection system are subject to ante-mortem inspection. Animals showing nervous system disease or clinical signs consistent with TSE diseases are rejected for human food. The CFIA in conjunction with provincial authorities has a national surveillance system for TSE diseases.

The Canadian rendering industry also has a voluntary standard where cervids and their by-products are not considered for rendering.

The Canadian cervid industry also has a standard of identification for velvet that allows the velvet to be traced back to the farm and animal of origin.

While there are currently no known infected herds, the provincial based surveillance programs in Alberta, Manitoba, and Saskatchewan which require the submission and testing of brains from all elk that are slaughtered or die, is an essential part in the continued search for CWD leading to Canada's freedom from Chronic Wasting Disease.

What sanitary measures should have been taken concerning these animals and related products in order to ensure safe trade?

Response

Please refer to the above mentioned measures which protect products traded both domestically and internationally.

Local-content requirements

Question 4 (p.74 paragraph 187, 188)

Please could Canada provide a description of the relevant measures it has taken since 15 February, 2001, to conform to the WTO Agreement. Please also describe the impact that these measures have had on the Canadian automobile industry.

Response

On September 17, 2000 the government repealed the Auto Pact's production-to-sales ratio requirement, as recommended by the WTO panel. The government repealed on February 18, 2001 the remaining Auto Pact measures (i.e. the Motor Vehicle Tariff Order (1998) and the Special Remission Orders). In doing so, Canada complied fully with the WTO ruling in the autos case.

Canada's auto sector is internationally competitive and highly productive for reasons independent of the Auto Pact. At the time the Auto Pact was revoked, Canadian assemblers were building almost two cars for every one purchased in Canada, well above the production-to-sales obligations set out in the Agreement. The automotive sector accounts for about 12% of Canada's manufacturing GDP and, in 2002, sustained over 165,000 direct manufacturing jobs and total employment of over 490,000. More than 60% of Canadian parts production and about 90% of Canadian vehicle production is exported, mostly to the United States, which remains Canada's largest automotive market. Canada recorded a net automotive sector trade surplus of \$13.4 billion in 2001, on exports of motor vehicles and parts totalling \$85.2 billion.

Companies, including from the automotive industry, invest in Canada because of our highly- skilled and productive labour force, competitive labour costs and excellent business climate. A recent study indicates that Canadian facilities enjoy a significant cost advantage over their U.S. counterparts. These are key factors in investment decisions, which bodes well for the future of the industry.

State-owned enterprises

Question 5 (p.75-78 paragraph 189-198)

Is it necessary for those who sell alcoholic beverages to register with the Canadian government? If not, how does the Canadian government oversee the retail sale of alcoholic beverages?

Response

The Canadian Government does not generally register sellers of alcoholic beverages, nor does it “oversee” retail sales. However, there is federal legislation which applies in this product area. The detailed substance relating to this question was given in Canada’s last notification under GATT Article XVII, State Trading Enterprises, as set out below:

A. Reason or purpose for establishing and/or maintaining state trading enterprise.

In Canada, the importation of and inter-provincial trade in alcoholic beverages is governed by the federal *Importation of Intoxicating Liquors Act (IILA)*. The objective of the *IILA* relates to the control of the consumption of alcoholic beverages in Canada for the purpose of protecting public health and morals.

B. Summary of legal basis for gaining the relevant exclusive or special rights or privileges, including legal provisions and summary of statutory or constitutional powers.

The *IILA* provides the provinces, within their respective jurisdiction, with control over the sale of intoxicating liquor, and over the importation, sending, taking or transportation of such liquor into the provinces. The provinces (except for Alberta) have delegated this activity to the provincial liquor control authorities. In Alberta, responsibility for the selection, retailing, warehousing and distribution of liquor rests with the private sector. The statute expressly provides that nothing in the *IILA* forbids the importation, sending, taking or transportation of intoxicating liquor for sacramental or medicinal purposes, or for manufacturing or commercial purposes not related to the use of liquor as a beverage.

As well, under the *IILA*, an exception exists for persons licensed by the Government of Canada under the *Excise Act* to carry on the business or trade of a distiller or brewer where the intoxicating liquor is imported solely for the purpose of being used for blending with or flavouring the products of the business or trade of that person.

Description of the functioning of the state trading enterprises

A. Summary statement providing overview of operations of the state trading enterprise.

The provincial liquor control authorities deal with the importation and sale of alcoholic beverages within their respective jurisdictions. Exportation of alcoholic beverages is a private matter of beverage manufacturers.

B. Specification of exclusive or special rights or privileges enjoyed by the state trading enterprise.

The *IILA* provides the provincial liquor control authorities with the delegated authority to import alcoholic beverages in Canada.

C. Types of entities other than state trading enterprises that are allowed to engage in importation/exportation and conditions for participation.

Private traders are allowed to import if they are licensed by the Government of Canada under the *Excise Act* to carry on the business or trade of a distiller or brewer where the intoxicating liquor is imported for the purpose of being used for blending with or flavouring the products of the business or trade of that person. Alcoholic beverages may be sold through stores operated by the provincial liquor control authority or through provincially authorized private retailers or a combination of both.

The private trade determines its own criteria pertaining to exports.

D. How import/export levels are established by the state trading enterprise.

Provincial liquor control authorities purchase or permit the purchase of alcoholic beverages in line with market needs as related to such commercial considerations as price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

Question 6

Paragraph 196 states: "Private retail operations are authorized for domestic wine but not for imported products. A private company also sells domestic and foreign beer." Please clarify how these regulations regarding the sale of domestic wine are in line with the WTO's national treatment principle.

Response

The Provincial Liquor Boards (PLBs) in Canada were established before the GATT was created, and their existence and activity is consistent with the provisions of GATT Article XVII ["State Trading Enterprises"]. In accordance with that Article, they are notified to the WTO as STEs. The PLBs operate as businesses whose decisions are based solely on commercial considerations and market forces. The alcoholic beverage-producing countries, which are major exporters to Canada, have accepted the policies of Provincial liquor agencies through various bilateral agreements. Canada's commitments under these agreements are implemented on an MFN basis.

Imported products compete with domestic products in the PLB retail stores, and enjoy a large share of the Canadian market. By volume, imported spirits accounted for 31.2% of the market in 1999, rising to 32.4% in 2001; imported wines held 65.4% of the market in 1999, rising to 67.0% in 2001. Both the value and market share of wine and spirit imports continue to increase.

Where local content requirements exist, they actually have the effect of limiting the volume of wine which can be sold in the private retail outlets, due to the limited potential of grape production in Canada.

Intellectual Property Rights

Question 7 (p. 86 paragraph 238-247)

Having the proper framework for the protection of intellectual property rights is an important factor in attracting foreign investment. We understand that the Canadian government has established a legislative regime for enhancing intellectual property rights protection. In this connection, we would appreciate an update on the status of IPR enforcement in Canada.

Response

Right holders in Canada remain eligible to take legal action through the judicial system to protect their intellectual property rights. Possible remedies include statutory damages, the seizure of goods, and a "wide injunction," which covers a broader range of copyright materials than usual injunctions. Copyright owners who decide to enforce their intellectual property rights through the courts can take advantage of summary procedures that are more expedient and less expensive than regular court actions. Canada also has criminal enforcement mechanisms in relation to criminal trade-marks counterfeiting and copyright piracy on a commercial scale.

Textiles and Clothing

Question 8 (p. 105 paragraph 52 & p. 106 Table IV.3)

It is noted that among the classifications of Customs Import Tariffs used by Canada, the General Preferential Tariffs (GPT) are lower than Most-Favoured Nation (MFN) tariffs.

For textiles and clothing imports to Canada, products of Taiwan are subject to the MFN tariff, while similar products from some other Asian WTO Members at a comparable level of economic development to Taiwan are subject to GPT. We would therefore appreciate information from Canada on the criteria used for granting GPT to its trade partners and on how the GPT system is applied. We consider that Taiwan's high-quality and competitively-priced textiles and clothing products could be of further benefit to Canadian manufacturers and consumers if they were classified under its GPT system.

Response

During the Uruguay Round Canada committed itself to major trade liberalization with respect to textiles and apparel. In 1994, the Most Favoured Nation (MFN) tariffs on textiles were between 16 - 22%. These rates have been progressively reduced and will be between 12-14% on January 1, 2004. For apparel, the 25% MFN tariff of 1994, will be down to 18% on January 1, 2004. Furthermore, all quotas on textiles and apparel are being abolished by January 1, 2005. Canada's commitments under the Uruguay Round continue to provide improved access into the Canadian market for textiles and apparel from Chinese Taipei.

The Canadian textile-manufacturing sector, having transformed itself in the last two decades through substantial and sustained capital investment, provides quality jobs for thousands of Canadians. The Canadian apparel sector is predominated by small firms, with approximately three quarters of firms having fewer than 50 employees. Given the relative sensitivity to imports of both the Canadian textile and apparel sectors, Canada extends General Preferential Tariff (GPT) treatment to few textile products and virtually no apparel products.

As stated on the WTO website: "That a WTO member announces itself as a developing country does not automatically mean that it will benefit from the unilateral preference schemes of some of the developed country members such as the Generalized System of Preferences (GSP). In practice, it is the preference giving country which decides the list of developing countries that will benefit from the preferences."

Canada's GPT is a bilateral instrument meant to assist access to Canada's markets by those countries and territories most in need. Canada does not seek reciprocity in extending GPT treatment. Canada unilaterally decides which developing countries will benefit from GPT. Canada has concluded that Chinese Taipei does not require GPT given its status as a major trading economy and its high GDP per capita.

Telecommunication and Audio-visual Services

Question 9 (p.114 paragraph 78)

According to the Telecommunications Act of Canada, the combined maximum allowed for foreign ownership of voting shares in facilities-based telecommunication service providers is 46.7%, i.e. 20% direct plus 26.7% indirect. Does Canada have any plans to relax this restriction on foreign ownership?

Response

Canada's Telecommunications Act requires that telecommunications common carriers be Canadian controlled and limits direct investment to 20% of the voting shares. The limit on the voting shares for holding companies is 33 and 1/3%. The maximum investment by foreign entities in an operating company is 46.7% (i.e. 20% of the operating company and 26.7% of the holding company (33 and 1/3% of the remaining 80%)).

The Minister of Industry announced on November 19, 2002 that he is seeking the views of Canadians on foreign investment restrictions in the telecommunications industry and that he had asked the Chair of the House of Commons Standing Committee on Industry, Science and Technology to undertake a review.

In this regard, the House of Commons Standing Committee on Industry, Science and Technology announced on December 11, 2002 that it would 'review federal laws that restrict foreign participation in Canada's telecommunications sector'. The Committee concluded hearings on February 27, 2003. A report from the Committee to the Government is expected in the spring of 2003. The Government will then decide on what action, if any, it might wish to take.

Audio-visual Services

Question 10 (p. 116 paragraph 87- 89)

Paragraph 87 states that “no broadcasting licence may be granted to a non-Canadian” and that “This restriction concerns all broadcasting companies.” Paragraph 89 indicates that foreign programming services must be approved for carriage by the CRTC and “listed” on the List of Eligible Satellite Services before they can be accessed by Canadian distributors. Please specify the difference between a “broadcasting company” as used in Paragraph 87 and a “distributor” as used in Paragraph 89.

Response

Paragraph 89 should have used the term, "broadcasting distributor", or more accurately, broadcasting distribution undertakings. The foreign investment restrictions described in Para 87 apply to all broadcasting undertakings, including broadcasting distribution undertakings such as a cable system or DTH service. The Lists of Eligible Satellite Services referred to in paragraph 89 apply only to broadcasting distribution undertakings. (The other broadcasting undertakings – radio, TV, specialty services, pay-TV, and pay-per-view services – are not distributors.)

Question 11

Paragraph 90 states that the CRTC “is not disposed to remove a non-Canadian service from the List of Eligible Satellite Services”. However, in order to protect the vested interests of investors, please specify the conditions required for a service to be removed from the list. Furthermore, Paragraph 85 states that “in order to foster Canadian cultural content and diversity, Canada maintains a number of regulations that affect foreign participation in the audio-visual sector”. How do these regulations relate to the removal of a non-Canadian service from the List of Eligible Satellite Services?

Response

Paragraph 85 seems to refer in a general sense to the entire basket of tools, regulations and regulatory policies that are designed to ensure the Canadian broadcasting system achieves the cultural and social objectives of the Broadcasting Act. The Lists of Eligible Satellite Services, collectively, constitute one

of these tools. There are no regulations specifically that deal with the removal of services from the Lists.

The CRTC has not specifically ruled on this matter. It has provided some clarity in the "Public Notice CRTC 1997-96 Revised Lists of Eligible Satellite Services", Paragraph 30. "The Commission wishes to reaffirm the continuing elements of its policy regarding the inclusion of competitive non-Canadian services on the lists. Specifically,

- a) it will not authorize non-Canadian services that can be considered either totally or partially competitive with existing Canadian pay or specialty services; and
- b) it will consider the removal of existing non-Canadian services from the lists if they undergo a change in format so as to become competitive with a Canadian pay or specialty service.

Insurance Services

Question 12 (p. 130 paragraph 155)

It is stated in Paragraph 155: "In an attempt to achieve uniformity among provincial regulatory regimes in the life and health insurance sector, the provinces have worked through the Canadian Council of Insurance Regulators to establish the Uniform Life Insurance Act, which is a model law governing insurance contracts and beneficiary rights". All provinces excluding Quebec have adopted the Uniform Act.

In addition to the life and health insurance sectors, please clarify whether it is the intention of the Canadian authorities to apply the practice to all other insurance sectors (e.g. P&C insurance, reinsurance, agents, brokers) among the various provincial regulatory regimes in order to achieve overall uniformity. We are particularly interested in knowing about such aspects as incorporation requirements and shareholding limits.

Response

Foreign insurance firms seeking to establish a subsidiary in Canada can do so federally or provincially, and most do so federally. Under the federal regime, foreign firms enjoy national treatment under uniform incorporation and ownership rules. With respect to incorporation requirements and shareholding limits for provincially incorporated insurance firms, rules and regulations do vary somewhat between provinces given that provinces have constitutional authority to incorporate insurance companies and exercise that authority according to the legislative and policy circumstances of a particular province. However, many provincial incorporation and prudential regulation rules for insurance firms are substantially similar to the federal Insurance Companies Act.

In practice, the substantial differences in principles relating to incorporation and regulation of property and casualty insurers are limited, other than in the area of automobile insurance where there are wide variations due to different economic and political preferences. For example, in some provinces, automobile insurance is delivered through government agencies while in other provinces it is underwritten and marketed by private sector insurers and insurance agents.

Similar to the efforts undertaken in the life and health insurance sectors, a project has also been initiated through a committee of provincial regulators working with industry to identify streamlining and harmonization efforts as they pertain to the property and casualty insurance industry (agent and adjuster licensing). In addition, a number of provinces are currently, or will soon be, conducting reviews of their financial services regulatory regimes with a view to further rationalization of policies.

BRAZIL

Trade and Investment Policy Framework

Question 1

As stated in page 13 of the Secretariat Report (Chapter II; (2); § 7), "In order to mitigate the effect of these policy differences on internal trade, the Agreement on Internal Trade (AIT), which came into effect in 1995, 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' ". Is there any province that has not joined the AIT? Is there any international provision that has not been implemented by a province?

Response

Except for Nunavut, all provinces and territories are signatories to the Agreement on Internal Trade. Nunavut, which was created after the Agreement was signed, is considering becoming a party to the Agreement.

Question 2

"The purpose of the Act (Investment Canada Act - ICA) is to encourage investment that contributes to economic growth and employment, and to provide for the review of significant investments by non-Canadians to ensure such benefits. Investments are judged by criteria such as their impact on competition, productivity, compatibility with national and provincial policies, and the participation of Canadians."(Chapter II; (3); § 14). According to this point of view, should the review be considered as being a kind of screening and/or performance requirement?

Response

The purpose of the Investment Canada Act is to encourage investment in Canada so as to contribute to economic growth. Under the Act, significant investments, such as foreign acquisitions of Canadian companies worth over \$223 million, are subject to review in order to ensure 'net benefit' to Canadians. During the review process, the likely impact of the investment is assessed (e.g., the effect of the investment on economic activity, productivity, competition, etc.). In practice, most transactions reviewed under the Investment Canada Act proceed. The review process is relatively quick and the Investment Canada Act sets out strict time limits within which the reviewing authority must respond. This is to ensure that the legislation does not unduly delay any investment in Canada. Further information on the Investment Canada Act is available at <http://investcan.ic.gc.ca/>.

Measures directly affecting imports

Question 3

What is understood by "supply managed agricultural products"? Which "supply managed agricultural products" does Canada closely restrict? In which ways does Canada limit imports of certain "supply managed agricultural products" (WT/TPR/S/112, para. 25, p. 98)?

Response

Supply-managed products include dairy, poultry, and egg products. Dairy products include products such as butter, cheese, fluid milk, yogurt, and ice cream; poultry includes chicken and chicken products, turkey and turkey products; egg products include fresh eggs and egg products, broiler hatching eggs, and chicks.

Under supply management, producers control – through their provincial marketing boards and national marketing agencies – the amount of product (supply) produced in Canada. Once the national agency determines demand requirements, it issues an allotment (production quota) to each provincial marketing board. The provincial marketing boards then divide their quota among individual producers.

Imports of supply-managed products are managed through tariff quotas (TRQs) in accordance with the commitments in Canada's Schedule V.

Question 4

According to paragraph 25 of the Secretariat Report, page 32, 4.2% of the MFN tariff lines are "non-ad valorem" tariffs. Is there any intention of the Canadian government to alter this situation? What is the Canadian position in relation to what the discussions in the WTO about the transformation of specific tariffs in "ad valorem" tariffs?

Response

Canada does not envisage modifying its customs tariff with respect to how agriculture and agri-food tariffs are expressed (e.g., in ad valorem or non-ad valorem terms). In the WTO negotiations on agriculture, Canada believes the focus should be on securing improvements in market access reductions in tariffs, rather than focusing on changing how a tariff is expressed.

Question 5

What kind of measures may be taken as a consequence of observations made by the steel import-monitoring programme (item 73 of WT/TPR/S/112, p. 113)?

Response

The import-monitoring program for steel was established to provide an early indication of general import trends in specific product categories as well as an early warning system regarding possibly dumped and/or subsidized imports that may be injuring Canadian industry. However, it should be emphasized that potential petitioners for trade remedy investigations must provide evidence of dumped and/or subsidized imports, as well as evidence of injury to domestic industry. Regarding imports, actual as opposed import permit data, which reflects intentions to import as opposed to actual imports, is used as evidence in considering whether to initiate an investigation.

Question 6

What are the terms of the 2001 Framework for Conducting Environmental Assessments of Trade Negotiations (item 106 of WT/TPR/S/112)?

Response

We are responding on the assumption that in asking about the "terms" of the Framework, the member is referring to the scope of Canada's assessment.

Assessments carried out under Canada's Framework are domestic in scope. They are intended to inform Canadian negotiators of the likely and significant environmental effects of trade negotiations in Canada. Assessments are also intended to address public concerns by documenting how environmental considerations are being taken into account in the course of trade negotiations.

The environmental assessments are being conducted in an open and transparent fashion. Canada recently presented its Initial Environmental Assessment of the WTO negotiations at the WTO Committee on Trade and Environment. The document is available on-line at: <http://www.dfait-maeci.gc.ca/tna-nac/consult1-en.asp#wto>.

Measures directly affecting exports

Question 7

What are the advantages in establishing a Government-to-Government basis commercial sale through the Canadian Commercial Corporation (CCC), as stated in item 143 of WT/TRP/S/S112? How does the CCC help Canadian exporters win sales in private-sector markets?

Response

For many governments around the world, buying on a government-to-government basis is the preferred approach to sourcing internationally as the risk of non-performance is perceived to be lower than dealing directly with an unknown foreign supplier. When the Canadian Commercial Corporation (CCC) is the prime contractor in an export sale, it acts as an agent of the Government of Canada and provides the assurance to the buyer that the Government of Canada stands behind the contract's completion.

Canadian exporters selling in private-sector markets can use the Corporation's contracting expertise to negotiate better terms and conditions. CCC's backing of an export sale increases the credibility of the Canadian exporter, which in turn, decreases the buyer's perceived risk for the transaction.

All CCC's services are offered on a fee for service basis, with the exception of any sales to the United States Department of Defense and NASA by virtue of the 1956 US-Canada Defense Production Sharing Agreement and the 1960 Letter of Agreement with NASA.

Trade policies in selected sectors Horticultural Import Restrictions

Question 8

Canada continues to restrict international trade of bulk produce. Although importers may request waivers, Canadian federal and provincial authorities may deny such requests. On what grounds can a waiver be denied?

Response

The Fresh Fruit and Vegetable Regulations, under the Canada Agricultural Products Act, are designed to ensure that all fresh fruits and vegetables entering into Canada or domestic supplies comply with Federal health and safety, quality, packaging and labeling regulations.

Processors or packers are free to source their supplies from the area or supplier of their own choice, including imports, provided those supplies comply with all the requirements of the Act and the Regulations.

In circumstances when adequate quality and quantity of compliant products are not available, processors or packers may apply to the Minister for an exemption to obtain non-complying products from another province or another country. Health and safety requirements will not be waived under any circumstance.

The Minister or a delegate of the Minister, when there is a shortage in Canada of a type of product, may exempt such products from the minimum quality (i.e., grade), labeling or packaging requirements in order to provide packers and processors with the supplies necessary to meet their needs.

The CFIA decides whether a shortage exists based on evidence submitted by the applicant. A waiver is denied only if a true shortage does not exist. If product is available in sufficient quantity with the appropriate characteristics, the ministerial exemption process is not triggered.

In order to ensure consistency and transparency in the application of Ministerial Exemptions, detailed guidelines for such requests are available on CFIA's website:

<http://www.inspection.gc.ca/english/plaveg/fresh/meguide.shtml>

Question 9

Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruit and vegetables in the absence of a pre-arranged buyer. Can it not be argued that such regulations constitute a limitation to foreign trade (WT/TPR/S/112, p.50, para. 85)?

Response

The Canadian Licensing and Arbitration Regulations prohibit consignment selling of both domestic and imported fresh fruits and vegetables. Sales between buyers and sellers are permitted as long as there is a contracted price. Moreover, there is no restriction on changing prices after the contract has been signed. These provisions apply to all federally regulated shipments, whether domestic or imported.

Wines and spirits

Question 10

In what sense are the conditions for local wine less restrictive than those for foreign products (item 12 of the Report by the Secretariat)?

Response

Wineries in the Provinces of Ontario, British Columbia, and Nova Scotia are permitted to sell their wines directly to consumers at the winery where they are made and through a limited number of off site locations within the province.

Services

Question 11

In modes 1 and 2, Ontario applies tax measures that result in differences of treatment with respect to payments for management services made to affiliated non-residents and the requirement to appoint an Ontario agent for the service of legal documents. Please, clarify this regime.

Response

The limitations of concern relate to two separate measures.

The first limitation, "Tax measures resulting in differences of treatment with respect to payments for management services made to affiliated non-residents", effectively imposes a 5% tax on management fees paid by an Ontario corporation to a non-arm's length non-resident person. This is accomplished by disallowing a portion of the management fee as a deduction in arriving at the Ontario corporation's

Ontario taxable income. This makes the payment to the non-arm's length non-resident person more expensive for the Ontario corporation, than if the fee had been paid to any one else (e.g., an arm's length non-resident). A non-arm's length person is a person that is related to the Ontario corporation (e.g., a foreign company that owns an Ontario company is dealing at non-arms length).

The second limitation, "Foreign corporations carrying on business in Ontario must appoint an Ontario agent for service of legal documents", requires that corporations incorporated under the laws of a jurisdiction outside of Canada must always have (a) an Ontario resident 18 years of age or older appointed to act as its agent for service of process, notices or other proceedings, or (b) have a head office or registered office in Ontario appointed to perform these functions (it is common for the Ontario agent to be the General Manager of an Ontario branch firm, an Ontario law firm, or an Ontario accountancy firm).

Question 12

In the mode 3 horizontal commitments:

Part A: There is an "unbound" for subsidies related to research and development. Please, clarify the scope and applicability of the regime.

Response

The scope of Canada's mode 3 NT reservation "unbound for subsidies related to research and development" is horizontal in nature and therefore applies across all sectors.

Part B. The control acquisition of a Canadian business or establishment of a new business related to Canada's cultural heritage or national identity by a non-Canadian is subject to approval. Please, specify the criteria for approval.

Response

The acquisition of a Canadian business or establishment of a new Canadian business related to Canada's cultural heritage or national identity (as referred to in subsection 15(a) of the Investment Canada Act (the Act)) by a non-Canadian is subject to notification under the Act. The Act has established rules that allow the Minister to review all investments by non-Canadians in the cultural sector. A review will be undertaken once an Order-in-Council directing a review is issued.

Section 20 of the Act sets out specific provisions to guide the Minister in her decision as to whether a given investment is of net benefit to Canada, namely the effect of the investment on: the level and nature of economic activity in Canada; the degree and significance of participation by Canadians in the Canadian business; productivity, industrial efficiency, production innovation, etc.; domestic competition; compatibility of the investment with national industrial, economic and cultural policies; and, Canada's ability to compete in world markets.

In addition to and consistent with the provisions set out in the Act itself, the Department of Canadian Heritage, in its review of applications, takes into account foreign investment guidelines for the book, periodical, magazine, film, and video sectors.

Part C: Measures related to the supply of services required to be offered to the public may result in differential treatment in terms of benefits or price. Please, clarify the scope and applicability of the regime.

Response

Under Mode 3, if a person wants to access the services listed in this reservation (e.g., social security) they may not be granted national treatment.

Part D: Priority is given by the Alberta Opportunity Fund to service suppliers owned and operated by Canadian citizens in Alberta. Please, clarify the scope of the Alberta Opportunity Fund.

Response

Alberta Opportunity Company (AOC) was established in 1972 (with a maximum fund size of \$300 million) with the object of promoting the development of resources and the general growth and diversification of the economy of Alberta. AOC was designed to provide financing for viable Alberta small businesses, which are unable to find the financing they need through conventional financial institutions. The AOC was designed to address the gap in the financial marketplace that exists for new and expanding entrepreneurial ventures. Often, banks and other conventional lenders are reluctant to take that extra measure of risk implicit in making loans to small business in smaller centres. As of April 1, 2002, the Alberta Opportunity Company was subsumed into the Alberta Agricultural Financial Services Corporation.

Question 13

There are indirect tax measures related to retailing services that result in different treatment with respect to delivery by mail of goods in Canada. Please, clarify such restriction.

Response

This reservation, taken on national treatment under mode 1, refers to a customs user fee of \$5.00 (handling charges) which is permitted under GATT Article VIII. The fee charged, as well as any increments, is limited in amount to the approximate cost of the services rendered and, according to Canadian Customs Act, must not represent indirect protection of domestic production or taxation of imports for fiscal purposes.

This user fee applies only to postal services; courier services are not obliged to collect the \$5.00 fee and may charge different fees.

Question 14

Please, indicate the legislation regarding Economic Needs Tests applied to the following services:

*Commercial courier services (CPC 75121) for Nova Scotia and Manitoba (mode 3);
Retail sales of motor fuel/retailing of petroleum (CPC 613) for Prince Edward Island (mode 3);
Banking and other financial services for Ontario, New Brunswick and Nova Scotia (mode 3);
Road transport Passenger transportation on taxis and rental services with drivers (mode 3);
Road transport Passenger transportation on interurban bus transport and scheduled services for British Columbia, Alberta, Prince Edward Island, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Northwest Territories (mode 3);
Highway freight transportation (CPC 71231, 71232, 71233, 71234) for British Columbia, Prince Edward Island, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland (mode 3);*

Response

The ENTs listed above are provincial measures. We will consult the provinces and provide the information as soon as possible.

Question 15

Canada scheduled commitments across a range of services under the GATS. However, there are no commitments for the following:

postal services;

courier services for goods;

audio-visual services;

tourist guides services;

commission agents' services for sales on a fee or contract basis of food products, beverages and tobacco; and sales on a fee or contract basis of pharmaceutical and medical goods;

wholesale trade services of agriculture and live animals; fisheries products; alcoholic beverages; musical scores, audio and video recordings; books, magazines, newspapers, journals, periodicals and other printed matter; pharmaceutical and medical goods; and surgical and orthopaedic instruments and devices;

food retailing services of liquor, wine and beer;

non-food retailing services of music scores, audio and video records and tapes; books, magazines, newspapers and periodicals; pharmaceutical, medical and orthopaedic goods; and printed music.

Are there restrictions of Market Access, National Treatment and domestic regulation that limit the provision of those services?

Response

Canada has no commitments for the above sectors and areas. Canada intends to submit its GATS initial offer of market access commitments with other WTO trading partners on March 31, 2003.

Rules

Question 16

Relating to paragraph 59 p. 41 of the Report, could Canada elaborate on the "quasi-judicial" nature of the CITT?

Response

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent and quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner. Its decision-making Members are appointed for fixed terms by the Governor in Council and are independent of government oversight or interference.

In carrying out its responsibilities, the Tribunal conducts hearings that are open to the public. The Tribunal has rules and procedures that are similar to those of a court of law, but not quite as formal or strict. The CITT Act gives the Tribunal the power to subpoena witnesses and require parties to submit information. The CITT Act also contains comprehensive provisions for the protection of confidential information.

Decisions of the CITT may be reviewed, in certain circumstances, by the Federal Court of Canada or, in the case of decisions affecting a NAFTA partner, by a binational panel.

Question 17

Considering the information presented in Table III.4, which indicates that the United States are contemplated with the largest quota for steel, could Canada explain the reasons for the

recommendation to adopt a safeguard referred to in Article XIX of the GATT-94, instead of a NAFTA safeguard mechanism?

Response

The NAFTA safeguard mechanism which allowed a "snap back" of duties is no longer operational since regular duties are now zero.

Question 18

Relating to paragraph 68, could the Canadian authorities elaborate more about the "prospective system" in which exporters are informed of the normal value for the products that they export to Canada? Could Canada explain in which way this mechanism is in conformity with Art. 9.3, which establishes that anti-dumping duties shall not exceed the dumping as established under Article 2?

Response

Article 9 of the Anti-dumping Agreement does not indicate a preference between the prospective or the retrospective methods of duty assessment nor does it provide detailed rules respecting how these methods of duty assessment are to be applied. Accordingly, the choice and implementation of a duty assessment system is left to individual Members.

A Prospective approach establishes normal values in advance of importation of subject goods thereby allowing the determination of the amount of duty liability at the time of importation. Generally, known exporters of subject goods are advised of the normal values applicable to their goods in advance of importation. When goods are imported, the Canada Customs and Revenue Agency (CCRA) determines whether or not the goods are, in fact, subject to an injury finding. If the subject goods are priced at or above the applicable prospective normal value at the time of importation, no anti-dumping duties are levied. However, if the export price is below the normal value, anti-dumping duties equal to the difference between the normal value and the export price must be paid.

The normal values established may be specific to individual products or general in nature. General normal values may be, for example, the declared selling price plus a specified amount.

The "margin of dumping" under Article 9.3 is the price difference set out in Article 2.1. Such a margin by definition varies in accordance with the pricing strategy of an exporter found to have engaged in dumping. An export price that equals or exceeds the normal value does not attract an antidumping duty. At the same time, an export price below the normal value will attract an amount equal to the difference between the normal value and export price of those goods (that is, the actual margin of dumping).

Administrative reviews conducted by the CCRA, normally on an annual basis, provide updated normal values and export prices. Exporters may also request administrative reviews because of changes in market conditions which impact on normal values or for purposes of establishing normal values for new products. The updated values, which are made known to exporters at the conclusion of the review, are then applied to subsequent importations.

In accordance with sub-paragraph 9.3.2 of the Anti-dumping Agreement, the redetermination provisions in the Special Import Measures Act (SIMA) allow importers to request a review of the normal value or the export price, or to determine whether the goods are in fact subject goods. This provides a mechanism to refund any anti-dumping duties that may have been imposed in excess of the margin of dumping.

Question 19

Paragraph 74 indicated that, on average, in cases where final duties were applied, provisional duties have been historically as high or higher than final duties. Could the Canadian authorities explain how these duties are refunded?

Response

Where the CITT makes a finding of injury, the goods covered by the finding are subject to review for anti-dumping or countervailing duty purposes. For those goods that were released during the provisional period, the CCRA makes a final assessment of the anti-dumping or countervailing duty payable. In accordance with section 55 of the SIMA, the CCRA's determination must be made within six months of the date of the Tribunal's finding.

Where the normal value, the export price, or the amount of subsidy established at the final determination is not considered a reasonable basis for the assessment of duty for goods imported during the provisional period because of significant changes in the exporter's costs and/or market conditions, a re-investigation will be initiated. The purpose of the re-investigation is to establish new values, or amounts of subsidy based on the changed costs and/or conditions. These new values will be used to make the assessments of anti-dumping or countervailing duty for goods imported during the provisional period. While the section 55 decision will not result in an assessment of duty greater than the amount of provisional duty paid or payable, it may result in a reduced assessment. In this case, refunds are issued promptly.

Question 20

Canada Customs and Revenue Agency (CCRA) initiated a reinvestigation of normal values and exports prices on January 27, 2003 in respect to certain corrosion-resistant steel sheet products originating in or exported from Brazil and other countries. What is the difference between the procedures of a "reinvestigation" and that of a "review"?

Response

The terms "reinvestigation" and "review" when used in the context of normal values and export prices, are interchangeable terms used to describe the process for updating or revising these values and prices. In other anti-dumping systems this process may be called "an administrative review". This process is distinct from the expiry review process.

Under the Canadian system two issues are considered in the expiry review process: Firstly, the Canada Customs and Revenue Agency (CCRA) will consider whether there is a likelihood of continued or resumed dumping. Where the CCRA finds that there is a likelihood of continued or resumed dumping, the Canadian International Trade Tribunal (Tribunal) will then conduct an inquiry to determine if the continued or resumed dumping is likely to result in material injury or retardation.

If the Commissioner determines that the expiry of the findings in respect of any goods is unlikely to result in the continuation or resumption of dumping, the Tribunal will not consider those goods in its subsequent determination of the likelihood of material injury or retardation and will issue an order rescinding the finding(s) with respect to those goods.

Competition Policy

Question 21

Document WT/TPR/S/112, page 65, paragraph 149, reads: "with respect to enforcement, in non-criminal matters the Commissioner may file an application with the Competition Tribunal, a

specialized quasi-judicial body, that hears and decides all applications made under relevant parts of the Competition Act." According to Canada TPR, this Competition Tribunal has the authority to award costs regarding matters subject to review, to make summary provisions when it finds no merit to the case or no genuine defense, and to hear references (questions involving a specific aspect of a case or interpretation of the law). The same document, referring to Canada Competition Law - The Competition Act (Amended in 2002) - continues: "the 2002 Act also allows private parties to apply directly to the Competition Tribunal to address matters regarding refusal to deal, tied selling, exclusive dealing, and market restrictions." How does the Competition Bureau, which reports to the Government, deal with these private actions? Which are the policies, systems and conditions, if there are any, undertaken by the Bureau in order to keep close attention to such private demands and preserve its responsibilities of impartial market monitoring and investigation?

Response

The 2002 amendments to the *Competition Act* introduced provisions allowing private parties to apply directly to the Competition Tribunal if they are directly and substantially affected by the conduct of another party. Private access to the Competition Tribunal is only available for conduct reviewable under sections 75 (refusal to deal) and 77 (exclusive dealing, tied selling, and market restriction) of the *Competition Act*.

The Competition Bureau is currently developing an internal document, which discusses the Competition Bureau's procedure following the filing of an application for leave to file a private action with the Competition Tribunal.

Under the Competition Act, the Commissioner of Competition has three opportunities to provide his input during private action procedures.

First, the Commissioner must certify if the matter for which leave is sought is the subject of an inquiry under the Act or that an inquiry has been discontinued due to a settlement.

Second, the Commissioner may make written representation to the Tribunal at the Application for leave.

Lastly, the Commissioner may intervene in any private proceeding once an Application has been filed following leave being granted.

To this date, only one Application for Leave has been filed (*The National Capital News Canada v. The Honourable Peter Milliken, M.P. 2002 Comp. Trib. 41*). The Tribunal did not grant leave. This decision is currently under appeal.

The private access provisions of the *Competition Act* exist to complement the enforcement activities of the Competition Bureau and will not affect the Competition Bureau's role as the agency responsible for the application of the *Competition Act*.

Question 22

How does the Canadian legislation deal with export cartels?

Response

In order to encourage and foster the benefits of international trade, section 45(5) of the *Competition Act* exempts export cartels from the domestic competition regime so long as the agreement does not trigger the following effects specified under section 45(6):

it had resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;
it has restricted or is likely to restrict any person from entering into or expanding the business for exporting products from Canada; or
it has prevented or lessened or is likely to prevent or lessen competition unduly in the supply of services facilitating the export of products from Canada.

Question 23

Canada considers that, since the rise in world trade and investment flows has also increased the possibility for concurrent jurisdiction of two or more competition authorities over the same international economic activity, it is necessary for competition authorities to co-operate internationally. Are there sectoral exemptions in the Canadian competition policy legislation?

Response

As a general rule, the *Competition Act* applies to all competitive business activity in Canada, with a few exemptions as follows:

(a) Specific Exceptions

There are a number of exceptions contained in the *Competition Act*. These include section 4 of the *Competition Act*, which exempts certain conduct of collective bargaining units and fishermen; section 5(1) which exempts certain conduct as between travel agents and certain domestic air carriers; section 5(1) which exempts underwriters; and section 6(1) which exempts amateur sport. Also, the conspiracy provision exempts export cartels in subsection 45(5).

There is also other legislation, which contain exemptions from the application of some or all the provisions in the *Competition Act*. For example, section 70 of the *Copyright Act* provides that section 45 of the *Competition Act* does not apply to certain agreements on royalties or related terms if the agreement is filed in accordance with the *Copyright Act*. Section 33 of the *Energy Supplies Emergency Act* provides that the Energy Board, after consulting with the Minister of Industry may, by order, exempt persons from the application of the *Competition Act* in respect of an agreement deemed necessary during periods of national emergency caused by shortages or market disturbances. Section 32 of the *Farm Products Agencies Act* provides that nothing in the *Competition Act* applies to any contract, agreement or arrangement where the regulatory agency has authority over the persons involved under the *Farm Products Agencies Act* or any other Act. The *Artists Act* excludes certain associations from application of the *Competition Act*. The *Shipping Conferences Exemption Act* exempts certain agreements involving ocean shipping from the application of the *Competition Act*.

Another exemption relates to specialization agreements. Under section 86 of the *Act*, specialization agreements can be registered by private parties with the Tribunal provided they meet certain criteria. In the event that a specialization agreement is registered, section 90 of the *Act* provides that section 45 does not apply to specialization agreements nor does section 77 as it applies to exclusive dealing.

(b) Overriding the Application of the Competition Act

Under certain sector-specific statutes it is possible to override the application of certain provisions of the *Competition Act* provided particular conditions are met. Two major examples are in the areas of transportation and bank mergers.

There are several specific provisions within the *Canada Transportation Act* (“CTA”) that deal with the interaction between the *Competition Act* and the CTA. The effect of these sections is to allow for the application of the *Competition Act* to the transportation sector except in certain specific

emergency situations. Thus, section 4(2) of the *CTA* provides that "Nothing in or done under the authority of this *Act* affects the operation of the *Competition Act*." Yet, section 47 provides that the Governor in Council may take any action considered "essential to stabilise the national transportation system" and that "notwithstanding subsection 4(2), this section and anything done under the authority of this section prevail over the *Competition Act*". While specific mention is made in the section to arrangements to address capacity and pricing issues, the wording of the section allows for broader application than in just those areas. In effect, the provision is broad enough to allow for the suspension of the *Competition Act* for a period of 90 days.

With regard to merger reviews, under section 94 of the *Competition Act*, the Competition Tribunal shall not make an order under section 92 in respect of a merger or proposed merger under the *Bank Act*, the *Trust and Loan Companies Act* or the *Insurance Companies Act* in respect of which the Minister of Finance has certified to the Commissioner the names of the parties thereto and that the merger is in the best interest of the financial system in Canada. In such an instance, the parties are also exempt from filing pre-merger notification information under Part IX of the *Competition Act*. The Tribunal is also precluded from issuing an order under section 92 in respect of a merger or proposed merger approved under subsection 56.2(6) of the Canada Transportation Act and in respect of which the Minister of Transport has certified to the Commissioner the names of the parties.

(c) *The Regulated Conduct Doctrine*

The RCD describes certain situations where the *Competition Act* becomes inoperative due to operational conflict with a statutory regulatory regime. In the instances of operational conflict between the *Competition Act* and the regulatory regime, where to obey one piece of legislation requires one to disobey another, the conduct in question is governed by the regulatory regime rather than the *Competition Act*. That is, the conflict must be such that obedience to one law means contravention of another. The RCD is a matter of limited application and only comes about when conflict between the *Competition Act* and the regime cannot be avoided. In general such situations are rare and in most cases the *Competition Act* and the regulatory regime will be able to simultaneously co-exist.

Government Procurement

Question 24

As far as government procurement is concerned, what are the main differences between the conditions offered by Canadian provinces to suppliers from Canada and those offered to suppliers outside Canada (item 14 of the Report by the Secretariat)?

Response

The Ontario government does not direct ministries and agencies covered under its directives to offer preferences based on origin of supplier. One exception is with regards to steel products, to mirror preferences found in the US.

Regarding the procurement of goods, the Alberta Government's Central Procurement Agency maintains no differential treatment policy with respect to the suppliers of goods from inside or outside of Canada. The procurement of services is carried out in a decentralized environment whereby the Central Procurement Agency encourages the same open, fair and competitive process with respect to Alberta Government service contracts. Notwithstanding, that under the Agreement on Internal Trade, provinces are not obliged to treat foreign suppliers on an equivalent basis to those that are based in Canada.

Question 25

Do customs duties or charges apply to government procurement of goods? If affirmative, are they actually levied or just considered for the evaluation of foreign tenders?

Response

The Federal Government process regarding customs duties as they apply to government procurement of goods can be found in Standard Clause A0221T at the following web-site: <http://sacc.pwgsc.gc.ca/sacc/index-e.jsp>

Question 26

Do Canadian governmental entities accept foreign documentation in the process of qualifying suppliers in a tendering procedure? On what basis?

Response

Canada fully complies with its international obligations. Federal government entities determine on a case-by-case basis what documentation will be accepted as evidence of compliance. Acceptable documentation is clearly stated in the bid documents.

Question 27

Is there a national electronic system that allows suppliers to access all legislation concerning federal and sub-federal procurement? If affirmative, please indicate the site.

Response

Information on federal government procurement legislation can be found at <http://canada.justice.gc.ca/> and information on the federal government's procurement policy, procedures, notices and circulars is available at: <http://www.tbs-sct.gc.ca/cmp/home-accueil.asp?Language=EN>

Question 28

Which are the offsets allowed in the Canadian bidding process?

Response

Canada fully complies with its international obligations, and thereby does not apply offsets for procurement covered by the GPA.

Question 29

Does Canada use the Build-Operate-Transfer (BOT) as a purchasing method? Is the Build-Operate-Transfer (BOT) included in the coverage of commercial agreements?

Response

The federal government may use any procurement method that complies with the Treasury Board Contracting Policy:
http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/contractingpol_2_e.asp#10-7

Question 30

What are the criteria used to characterize small and minority businesses?"

Response

The federal government has no set definition of small business. For procurement, Canada maintains a carefully circumscribed set-aside program for Aboriginal Business. The definition of an Aboriginal Business for purposes of this set-aside is:

An Aboriginal business is an enterprise that is:

- a) a sole proprietorship, limited company, cooperative, partnership, or not for profit organization in which Aboriginal persons have majority ownership and control meaning at least 51 percent, and in which, in the case of a business enterprise with six or more fulltime employees, at least 33 percent of the fulltime employees are Aboriginal persons, or
- b) a joint venture or consortium in which an Aboriginal business or Aboriginal businesses as defined in (a) have at least 51 percent ownership and control, and
- c) which certifies in bid documentation that it meets the above eligibility criteria, agrees to comply with required Aboriginal content in the performance of the contract, and agrees to furnish required proof and comply with eligibility auditing provisions.

JAPAN

Trade and investment policy framework

Foreign investment regime

Investment

Question 1

Since the definition of foreign direct investment (FDI) is different from country to country, Japan would like to know how FDI is defined in Canada.

Response

For data collection purposes, foreign direct investment is generally identified by ownership of at least ten per cent of the equity in an enterprise, and covers claims intended to remain outstanding for more than one year. Enterprises in which there is foreign direct investment are classified as direct investment enterprises, and can be incorporated or unincorporated entities. The foreign direct investment flows include reinvested earnings of direct investors. Short-term transactions by foreign direct investors are also included in these series.

For more details, the Statistics Canada publication entitled. "Canada's International Investment Position" (Catalogue number 67-202) should be consulted and is found at <http://www.statcan.ca>.

Question 2

According to Japan's understanding, there exists a limitation on the board members of Canadian companies (i.e., 25% and even more of the board members shall be Canadians). Considering the globalization of the economy, Japan is of the view that this limitation should be lifted. In this respect

we have heard that this limitation has been relaxed through amendment of the Canadian Business Corporation Act. Does Canada have any intention to further relax this limitation?

Response

In 2001, following a complete review of the Canada Business Corporations Act, the Act was amended. This was the first major revision of the Act since it came into force in 1975. As a result of this review, the residency requirement for boards of directors was relaxed. Under the new CBCA legislation, the Canadian residency requirement was reduced to 25% except for certain sectors (e.g., uranium mining, book publishing, and film and video distribution) and for certain corporations (e.g., Air Canada, Petro-Canada) where there were statutory ownership restrictions – in these cases the simple majority requirement continued to exist. It is, however, estimated that at least 99% of all CBCA corporations are covered by the new 25% requirement.

This liberalization was intended to provide more flexibility to corporations, enabling them to put the best qualified people on their boards, allowing Canadian export-oriented corporations to more easily develop foreign markets by adding foreign directors, and removing the incentive for corporations to incorporate in one of the 6 Canadian provinces that do not impose residency requirements for boards of directors. At the same time, by maintaining the requirement that 25% of the board be resident in Canada, it was still possible to ensure that a Canadian viewpoint was maintained even for boards where the corporations were controlled by non-residents. At this time, Canada has no plan to further liberalize this requirement.

Question 3

Japan would like to have Canada's view on the necessity of an examination by the Canadian Government in the case of Canadian companies being acquired by non-Canadian nationals. Indeed, if we are to take the example of 2001, out of the 649 cases notified in accordance with the Canadian Investment Act, only 44 cases were examined and none of those were rejected. Thus, Japan finds little necessity to carry out such examination mechanism on a horizontal basis. Please comment.

Response

The purpose of the Investment Canada Act is to encourage investment in Canada so as to contribute to economic growth. Under the Act, significant investments, such as foreign acquisitions of Canadian companies worth over \$223 million, are subject to review in order to ensure 'net benefit' to Canadians. In practice, most transactions reviewed under the Investment Canada Act proceed. The review process is relatively quick and the Investment Canada Act sets out strict time limits within which the reviewing authority must respond. This is to ensure that the legislation does not unduly delay any investment in Canada. Further information on the Investment Canada Act is available at <http://investcan.ic.gc.ca/>.

III. Trade policies and practices by measure

Measures directly affecting imports

Tariffs

Question 4

Japan hopes that Canada will consider favourably the reduction of tariffs on automobile (completely manufactured), spark plugs, and cosmetics so as to meet requests by Japanese industries.

Response

The Doha Declaration states that product coverage in the non-agricultural market access negotiations shall be "comprehensive and without a priori exclusions". Just as certain Japanese industries wish to obtain better access to Canada, Canadian industries have very specific interests with respect to the Japanese market. With good will and hard work on both sides, we believe we can arrive at a result that is mutually beneficial.

Technical regulations

Question 5

Under Ontario's building code, specific factory installations of machinery and equipment must be carried out under the authorization of an Ontario professional engineer. Other provinces, in contrast, permit such installations to be carried out under the authorization of professional engineers licensed in other provinces. Please explain why just the province of Ontario has a different system.

Response

The Ontario Building Code (OBC) regulates the construction of buildings, including the equipment and machinery necessary for the proper functioning of the building services, such as HVAC equipment, elevators, and fire protection systems. Section 2.3 of the OBC requires that the design and general review of certain buildings, depending on size and occupancy characteristics, be undertaken by a "professional engineer". The OBC defines a professional engineer as a person who holds a licence or a temporary licence under the Professional Engineers Act.

The OBC, however, does not regulate the installation of other machinery and equipment, such as machinery for the production of goods in factories. This machinery is not considered part of the "building fabric" and is beyond the jurisdiction of the OBC.

The Professional Engineers Act governs the engineering profession in Ontario. Many Ontario statutes and regulations make reference to the Act, requiring licensed engineers to undertake certain tasks, such as under the OBC, as noted above, and certifying the design of pressure vessels and elevators under the Technical Standards and Safety Act. Note that these regulations generally require the design of equipment to be certified by a professional engineer. Installation of such equipment is generally required to be done by licensed trades persons, not engineers.

The Professional Engineers Ontario (PEO) is responsible for licensing of engineers in the province. For Canadian resident engineers who are already licensed in another province, the PEO has an expedited process for issuing a temporary Ontario license that requires the completion of the application, payment of fees and written verification of registration or membership with another provincial association. The PEO is a party to the Mutual Recognition Agreement (MRA) for engineers under the Agreement on Internal Trade. The MRA provides greater labour mobility for engineers within Canada. In practice, therefore, Ontario is as open as other provinces.

Measures directly affecting exports

Export control, regulation and charges

Question 6 (p.57, paragraph 118; p.60, paragraph 125)

Japan would like to point out that measures taken by some provinces for limiting the exports of logs is designed "to encourage the further processing of certain natural resources in Canada", and thus that, this is highly likely to violate Article XI of the GATT. Japan considers that the Canadian Government should "take such reasonable measures as may be available to it to ensure observance of the provisions", in accordance with Article XXIV:12 of the GATT. In this regard, has the Canadian

Government already taken such measures, and if not, does the Government have any intention to do so in the future?

Response

We believe that the relevant provisions of provincial legislations are consistent with Canada's WTO obligations.

State-owned enterprises

Question 7 (p. 76, paragraph 196)

Japanese industries complain that, due to the monopoly by the Liquor Control Board of Ontario (LCBO) on the sale of liquor, their sake, traditional liquor in Japan, cannot be sold or imported freely. In particular, the importers (or transporters) designated by the LCBO are unable to properly maintain the quality of the Japanese liquor for which the freshness is highly important. Please indicate Canada's prospects for relaxing the monopolized system on the sales of liquors including regulations on liquor importers /transporters.

Response

Canada has no plans to modify the current system relating to the importation and distribution (sales) of alcohol beverages. With reference to the issue of the freshness of sake when it is placed on the market in Canada, we have consulted with the Liquor Control Board of Ontario which is aware of the shelf life issue relative to sake and have assured us that they do all in their power to get the product to the market as soon as possible. They are only aware of one incident last Christmas where product was delayed due to a labour action in California, which was beyond their control. They have agreed to address the issue should representations be made to them by the importing agent in Ontario.

Intellectual property rights

Question 8 (p. 85, paragraph 236)

How can Canada explain the consistency between Section 31 of the Copyright Act, together with its draft amendment, and Article 13 of the Rome Convention?

Response

Section 31 of the Copyright Act, as amended, is still not in force but is compliant with Canada's international obligations. The recent amendment is intended to clarify the scope of the retransmission compulsory license with regards to literary, musical, dramatic, or artistic works used on the Internet. It does not address Rome Convention subject matter, such as that of Article 13.

Question 9 (p. 85, paragraph 236)

The bill to amend Section 31 excludes Internet-based retransmission of broadcast signals from compulsory licensing regulations. In such a case, how can intellectual property rights and neighboring rights (i.e. the provisions of the right to make available and the obligation concerning technological measures) be protected under Canada's Copyright Act?

Response

The 31 compulsory license applies only to copyright works contained in a broadcast and to the broadcast day as a compilation. It is limited to simultaneous retransmission of works contained in

wireless broadcast signals. This does not limit the making available right or any future obligations concerning technological measures.

Canada's Copyright Act already provides a making available right in the form of an exclusive right to communicate copyright works to the public. As part of the implementation of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, Canada is considering the granting of an exclusive making available right to performers and phonogram producers and protection of technological measures for authors, performers, and phonogram producers.

Question 10 (p. 85, paragraph 236)

Japan would like to have information on the current situation for ratifying or acceding the WCT and the WPPT.

Response

The Government is committed to bringing the Copyright Act into conformity with the WCT and WPPT once the issues involved are thoroughly analyzed, subject to appropriate consultations. That process is part of the short-term agenda for Canada's copyright reform.

Question 11 (p. 86, paragraph 242)

Is right to export to copyright holders and neighboring right holders provided for in Canada's Copyright Act? If it is so, please indicate in which Article this is stipulated.

Response

The Copyright Act does not provide for an export right "strictu sensu."

Question 12 (p. 85, paragraphs 235 and 236)

Please provide information on the following reports, mentioned in paragraphs 235 and 236. (If possible, we would like to consult all documents in full (the URL of the website would be adequate):

A Framework for Copyright Reform;

Consultation Paper on Digital Copyright Issues;

Consultation Paper on the Application of the Copyright Act's Compulsory Retransmission Licence to the Internet; and

the report initiating Parliamentary Review mentioned on line 10 of paragraph 236.

Response

A Framework for Copyright Reform

<http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwGeneratedInterE/rp01101e.html>

Consultation Paper on Digital Copyright Issues

[http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwapj/digital.pdf/\\$FILE/digital.pdf](http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwapj/digital.pdf/$FILE/digital.pdf)

Consultation Paper on Application of Copyright Act's Compulsory Retransmission Licence to the Internet

[http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwapj/retransmissione.pdf/\\$FILE/retransmissione.pdf](http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwapj/retransmissione.pdf/$FILE/retransmissione.pdf)

The report initiating Parliamentary Review mentioned on line 10 of paragraph 236

<http://strategis.ic.gc.ca/pics/rp/section92eng.pdf>

IV. Trade policies in selected sectors

Agri-food

State trading enterprises, export credits

Question 13 (pp. 103-104, paragraphs 38-43)

In the case where a decrease in production due to a poor crop is predicted (or has already occurred), Japan considers that it is natural for Canada, which adopts the system of export state trading, to fulfill its responsibility, as one of the world's largest food exporters, by maintaining the same level of stock as that of other countries adopting the trading system by private companies. Thus, Japan considers that Canada should always retain sufficient level of stock for the above case. Please comment.

Response

Canadian wheat producers operate in a commercial environment, with the marketplace dictating the types and quantities of crops produced. Neither the Canadian government nor the CWB influence producers' planting decisions or the quantities of grain that they wish to market. Canada has no stock policy dictating whether a particular level of stocks should be maintained.

Japan is one of Canada's best customers for high quality CWRS wheat. The CWB has worked with the Japanese Food Agency to meet Japanese demand even in a low production year such as 2002-03.

Canada believes that the food-security concerns underlying Japan's question are best met through an open and well-functioning international market, with supplies from production and imports, diversity of sources of supply in the international market place, and allowing producers to respond to market signals providing the best, most reliable basis for addressing variations in production due to weather in any particular producing country.

Question 14

Please provide the following information regarding the price of wheat and barley:

Part A How are determined the domestic producers' price (i.e. the price with which producers sell to collectors) and the distribution price (i.e. wholesale and retail prices) on wheat and barley produced in Canada? According to which level are they fixed? Please provide the latest data on such prices, should these be available to the public.

Response

The domestic producers' price for wheat and barley (except feed wheat and feed barley in the domestic market) is based on average pooled returns from the world and domestic market for the crop year. At the start of the crop year, an initial payment equal to 70% to 75% of expected pool returns is set. The producer receives this initial payment when he delivers his wheat or barley. Throughout the crop year, this initial payment may be adjusted upward if market conditions warrant. Farmers will receive any increases to the initial payment as adjustments are made. After the close of the crop year, any money remaining in the pool accounts after deducting CWB marketing costs is paid to the producer in a final payment.

Feed wheat and feed barley for sale in the domestic market can be marketed directly by producers.

The CWB determines prices for sales to Canadian flour mills and maltsters (the “distribution price”) based on the North American market. The CWB has indicated that its wheat sales price is based on the Minneapolis Grain Exchange. For malting barley, the domestic price is similarly based on cash prices quoted in the US.

Part B How are the export prices of wheat and barley determined and according to which level are they fixed? If the prices vary from country to country, please indicate the price for each country.

Response

Export prices for Canadian wheat and barley are determined by the CWB competing with prices offered by other exporters. The CWB publically quotes an export price. This is an offer price only, with actual sales potentially negotiated at other prices.

Part C Please describe the process of the collection system in Canada. Are there any differences between the crops for domestic consumption and those for export?

Response

The western Canadian “collection system” for wheat and barley marketed through the CWB is based on a series of three delivery contracts entered into by the CWB with individual producers. The producer offers a quantity of wheat or barley to the Board, the Board decides what percentage of the total quantity offered by all producers that it can market during the contract period, and informs the producer of the percentage of his offer that will be accepted. In the case of Board deliveries, there is no difference in how grain is assembled for sale between grain for export versus grain for domestic consumption. For feed wheat and feed barley, there are no restrictions on delivery.

Question 15 (p. 103, paragraph 39)

What regulations exist in Canada if a private company is to deal with wheat exportation?

Response

Just under half of the wheat exported from Canada is sold through accredited exporters which act as agents of the CWB. Although these companies can seek out wheat markets around the world, and negotiate the grade and other sales contract terms, the sales price is determined by the CWB.

Question 16 (p. 104, paragraphs 40-43)

Please provide information on the schemes and levels of any official support, including subsidies, export credit, financing support and others provided by the Canadian Federal Government and certain public entities to the producers of wheat and barley for exportation.

Response

Canada does not provide any export subsidies to producers of wheat and barley.

Financial services

Banking services

Question 17

Other than the regulation mentioned on page 128 of the Report, Japanese companies in Canada wish to request the relaxation of the nationality requirement on board members (i.e. 50% and even more),

as well as on the executives of subsidiaries of foreign banks. Does Canada have any intention to relax this limitation?

Response

The board of directors requirement is in place to 1) ensure that a Canadian viewpoint is expressed at board meetings of foreign-owned institutions; 2) to facilitate the enforcement of directors' liabilities under various legislation; and 3) because the Canadian regulatory regime places a significant emphasis on corporate governance, it is reasonable to have a residency requirement for directors.

The 50% requirement for boards of directors of federally incorporated foreign financial institutions is actually better than national treatment, as two thirds of the board of directors for federally incorporated Canadian FIs must be Canadian residents. Canada is not considering changing these rules.

Question 18 (p. 129, paragraph 146)

The Report notes that "[t]he C-8 legislative framework provides for authorized foreign banks to engage in these activities [specialized business management or advisory services]; however, implementing legislation has yet to be drafted". In this context, what kind of financial services, other than banking services, are currently allowed to be provided by foreign banks, either through their subsidiaries or by themselves? Also, what is the time-frame for the "implementing legislation" to be submitted to the Diet?

Response

Prior to Bill C-8, the specialized business management and advisory services power was linked to the power of a bank to invest in Canadian commercial entities (via a "specialized financing entity"). A bank could undertake specialized business management in its specialized financing entity. Foreign bank branches did not have this power, as a branch is not a vehicle to invest in Canadian entities.

Bill C-8, for technical reasons, split the specialized business management power from the specialized financing entity, and allowed banks to do specialized business management in-house. It was expected that specialized business management would still only occur in commercial entities the bank invested in through the specialized financing investment power.

Branches are not permitted to invest in Canadian entities, and so would not normally be given the power to undertake specialized business management, a type of business closely linked to the investment power. However, in the event that a branch identified an opportunity to engage in specialized business management or advisory services without investing in a company, C-8 permitted a branch to undertake the business so long as the appropriate regulations were drafted.

To date, no foreign bank branch has approached us about specialized business management or advisory services. If a branch did approach us, Canada will consider drafting the regulations.

Insurance services

Question 19 (p. 130, paragraph 154)

The Report indicates that "some provinces (e.g. New Brunswick) rely on OSFI for market regulation as well as financial solvency regulation". Please provide the names of the provinces which "rely on OSFI for market regulation".

Response

The information provided in Paragraph 154 is inaccurate. OSFI does not undertake any market conduct regulation.

Question 20 (p. 130, paragraph 155)

The Report states that "the provinces through the Canadian Council of Insurance Regulators have established the Uniform Life Insurance Act". Is it correct to understand that foreign or domestic insurers are exempt from applying for product approval in a province which has adopted the Uniform Life Insurance Act, provided that such insurers have previously applied and obtained approval for the same products in another province? How many times a year is held the Canadian Council of Insurance Regulators, and what function does it perform?

Response

Each provincial jurisdiction maintains small differences in its product approval regime, and therefore, the above characterization is not accurate.

Information about the CCIR, including its mission and the timing of meetings, can be found at <http://www.ccir-ccra.org/>

Question 21 (p. 130, paragraph 156)

The Report describes certain tax measures for life insurance companies established in Canada as being "designed to ensure that Canadian life insurance companies can compete in foreign markets". Is there any legislation or regulation which stipulates this objective? If those measures are designed for that purpose, is it considered to be subsidiary to Canadian life insurers?

Response

No legislation or regulation stipulates this objective. Canadian resident multinational life insurers have historically carried on their insurance business outside Canada through foreign branches. Income earned from foreign insurance branches is exempted from tax in Canada as Canadian insurers could not compete in other countries if Canada imposed the normal income tax rules on profits earned in a country that taxes on the basis of premiums or investment revenue only. The rules for this exemption are contained in the Income Tax Act and Income Tax Regulations. It should be noted that Canadian resident insurance corporations now operate abroad mostly through subsidiaries. The general taxation rules for the repatriation of profits apply to these corporations.

Question 22 (p. 130, paragraph 157)

Why does Canada think that capital requirements under the Branch Adequacy of Assets Test (BAAT) are more onerous than those under the Deposit Adequacy Test (DAT)? If such is the case, what is the rationale for imposing harsher capital requirements on foreign insurance companies?

Response

Paragraph 157 is not accurately drafted. On an industry level, the BAAT requirements are designed to be no more onerous than the DAT requirements. However, individual firms may find that BAAT requirements are more or less onerous.

Question 23 (p. 132, paragraph 164)

The Report indicates that “a federal excise tax of 10% is applicable on premiums paid to unauthorized foreign direct non-life insurers (except marine insurance) on risks within Canada”. Is this tax treatment also applicable to reinsurance? Is there any bilateral taxation treaty which enables exemption from this tax treatment?

Response

The 10% federal excise tax applies to premiums for the insurance of Canadian risks, other than premiums for life insurance, personal accident insurance, sickness insurance, marine insurance, reinsurance contracts, and insurance that is not available within Canada. Canada's tax treaties do not have any provisions to allow for exemption from this tax.

Question 24

In addition to relaxing the regulation on reinsurance services on page 132 of the Report, Japanese companies in Canada request a harmonization between the federal and provincial regulations on the activities of foreign insurance companies, as well as on the rationalization regarding the renewal of business licenses, which is required annually. Please provide Canada's intention for improving this.

Response

In general, provincial insurance legislation is very similar and the regulatory frameworks of both the federal government and the provinces are closely integrated. For example, a federally registered institution is automatically accepted for registration in Alberta.

PEOPLE'S REPUBLIC OF CHINA

Contingency Measures

Question 1

As indicated in Chart III.4, China was the third largest target of the anti-dumping measures by Canada till the end of 2001, which affected China's export for a volume of USD 100 million. It is expected that Canada will streamline and, to the extent possible, simplify the relevant procedures and will explain the consistency of its applied measures on anti-dumping with WTO principles. Besides, it is hoped that the efforts and achievements made by China in market economy reform will be recognized and taken into account in the process of anti-dumping investigations by the Canadian government.

Response

As a result of the Accession of the People's Republic of China to the WTO on 10 November 2001, Canada reviewed its relevant procedures with respect to anti-dumping investigations involving goods from the People's Republic of China. This review resulted in changes to Canada's domestic legislation, which came into force on September 30, 2002, and changes in relevant procedures with respect to investigations into alleged dumping of goods from China.

The change to the Canadian legislation removed the requirement to examine whether the government of China has a monopoly or substantial monopoly of its export trade. However, where there are allegations and evidence to suggest that there is involvement by the government of China in the domestic market of the industry sector in question, Canadian authorities will contact both the government of China and the Chinese producers to determine whether or not domestic prices are

substantially determined by the government of China and whether there is sufficient reason to believe that these prices are not substantially the same as they would be if they were determined in a competitive market.

Canada has revised the questionnaires to both the government of China and to the exporters as a result of these changes so that the producers in China can exercise their rights to demonstrate that market economy conditions prevail in the sector producing the like goods. Canada will continue, where appropriate and possible, to revise or simplify relevant procedures as this is mutually beneficial to all interested parties. Canada conducts its investigations and applies its anti-dumping measures in full conformity with its international trade obligations and its domestic law.

Standards, technical regulations, and SPS measures

Question 2

China attaches great importance to the technical cooperation with Canada with regard of the SPS measures on scientific basis and in consistence with the WTO rules. We would like to have Canada's view on the compatibility with scientific value and WTO rules of the following measures:

Part A: Chinese casing processors licensed by Canadian government can only export to Canada casings made with materials originating from certain members, while casings made with materials from other members, including China, are denied of access to the Canadian market. Please explain the scientific basis for this measure.

Response

Based on its risk assessment, the Canadian Food Inspection Agency (CFIA) has approved for importation only casings, which have been processed from inputs originating in countries that the CFIA has determined to be free of foot and mouth disease (FMD). Natural casings are pathways of transmission. CFIA does not consider China to be free of FMD and it has similar requirements for other countries it does not consider free of this disease. The CFIA provided its Casings Risk Assessment to Chinese authorities and invited comments from China.

Canada's requirements for imports of foods of animal origin, including those on Chinese products, are based on science and are consistent with our rights and obligations under the WTO. Detailed information regarding Canadian import requirements for these products are freely available to the public, including Chinese exporters, at the Canadian Food Inspection Agency's web site www.inspection.gc.ca.

With regard to the import of food of animal origin, it's expected that Canada can provide the criteria for food safety of these products, especially honey and shrimp, which will help the exporters meet these requirements.

Although the question is general, it does specifically mention honey and shrimp from China. With respect to honey and shrimp from China, CFIA tests these products on arrival, in particular for the presence of the veterinary drug chloramphenicol. This drug is banned by many countries, including and Canada and, indeed, China itself, because, scientifically, it is a known carcinogen. Following the detection of this carcinogen by Canada in imports of these products from China, CFIA elevated its level of testing and rejected products with positive results.

Our measures are designed to protect Canadian consumers from Chinese imports which clearly violate Canadian and Chinese requirements and do so in the least trade restrictive manner. We began immediately to share information with China in a cooperative effort to mitigate the risk at source in China and to reduce testing based on Chinese controls and appropriate Chinese assurances to that effect.

Based on this approach, we have reduced the level of testing on shrimp and are prepared to reduce it further once we receive further technical information and assurances from China. With respect to honey, we continue to test at a 100% level but, based on bilateral technical discussions, are prepared to reduce the level of testing once we receive science-based certification modalities from China.

As many members will know, Canada is not alone in taking measures against the presence of this banned carcinogen in exports of these products from China. We consider our measures to be effective, based on science, and far less onerous than measures taken by some other members with respect to these products.

Part B: Could Canada provide relevant information on the risk assessment, which leads to the import suspension against the poultry and rabbit meat from China?

Response

Poultry: CFIA has not suspended imports of poultry meat product from China as stated in the question. In fact, poultry meat has never been approved by the CFIA. The CFIA provided Chinese authorities questionnaires as part of the approval process but China has not yet replied with answers.

It is unlikely that CFIA could approve poultry meat from China at this time for valid animal health reasons.

The CFIA does not consider China to be free of Newcastle Disease and Highly Pathogenic Avian Influenza. These are serious poultry diseases, which appear on list A of the Office Internationale des Epizooties (OIE). These diseases, if introduced to Canada, would be detrimental to Canadian poultry flocks and related economic sectors. Until CFIA receives science-based information from Chinese animal health authorities demonstrating otherwise, imports of poultry cannot be allowed.

Rabbit: The CFIA approved imports of Chinese frozen rabbit carcasses several years ago. Recently, CFIA became aware of the possible presence of rabbit haemorrhagic disease in China and requested that certain control measures be certified as amendments to the official Chinese meat export certificate. These attestations are:

"The meat derived from rabbits which were born and kept in premises where no cases of rabbit haemorrhagic disease was reported during 60 days prior to slaughter."

"The rabbits and their meat have not been in contact with any animals, products or equipment of a lesser zoosanitary health status during their transportation and processing."

Rabbit haemorrhagic disease is an OIE List B disease, which does not occur in Canada. Canada has requested appropriate safeguards, consistent with OIE recommendations.

We are looking forward to a Chinese response that might serve as the basis for resuming these exports to Canada.

HONG KONG, CHINA

Customs Procedures

Question 1 (WT/TPR/S/112, P. 28-29, Para. 10-12)

Note that the Canada Customs and Revenue Agency (CCRA) has introduced a new system, the Customs Self-Assessment (CSA), to ensure smooth flow of trade and avoid delays at the border.

According to the Secretariat Report, the CSA involves screening, risk assessing, and pre-approving importers, carriers, and drivers that are deemed to be low-risk. So far, all pre-approved carriers are involved in trade with the US carried by road. The CCRA's online information further reveals that at present, eligible goods for the CSA include only those imported from the US. We would like to know if there is any schedule for the CSA to expand to cover goods from other supplying ends.

Response

The Customs Self-Assessment (CSA) program was expanded in 2002 to include goods transported to the United States by other modes of transportation (rail and air), as well as automotive goods from Mexico. Free and Secure Trade (FAST) is a harmonized commercial process (between the United States and Canada) that builds on the concepts and principles of the CSA program. Although there has been discussion to further expand the CSA program, there are no other plans for expansion at the present time.

Anti-dumping

Question 2 (WT/TPR/S/112, P. 44-45, Para. 72-73)

We note that there has been an increase in the use of anti-dumping measures by Canada in recent years. We are mindful of this trend and are concerned that the proliferation of anti-dumping measures would pose unnecessary barriers to trade and nullify the benefits of market access liberalization. We are interested to know Canada's view on the main reason for this rising trend.

Response

One of the main reasons for any increase in trade remedy actions and particularly anti-dumping measures, are the prevailing conditions in the international steel market. Over the last several years, the significant overcapacity in world steel production and the increasing number of new entrants to the international market have resulted in a proliferation of trade actions, not just in Canada but in many countries.

Question 3 (WT/TPR/S/112, P. 45, Para. 74)

According to the Secretariat Report, provisional measures were applied in 43 of the investigations initiated by Canada in 2000 and 2001 (93.5% of the total). Among these cases, 16 were ended with a final determination of no injury and no final measures. We are concerned about the trade distorting effects caused by the mere initiation of anti-dumping investigations and imposition of provisional measures. We would like to know Canada's views in this respect.

Response

Canada is very aware that any initiation of an anti-dumping investigation has a significant impact on the concerned exporters and their customers. As noted in paragraph 75 of the report, the high number of investigations where provisional measures were applied reflects the high proportion of complaints that never make it to the initiation stage because they are rejected by the Canada Customs and Revenue Agency.

Question 4 (WT/TPR/S/112, P. 46, Table III.5; and P. 47, Para. 76)

We also note that in some cases, anti-dumping duties are applied on imports that account for a fairly small share of the domestic market. We wonder if these dumped imports, which represent only a small share of the Canadian market could cause material injury to the relevant domestic industries. We are interested to hear Canada's views regarding this observation.

Response

As noted in Paragraph 76, the volume of dumped imports is only one factor examined when determining injury. The prices of the dumped imports and their effect on the domestic market are also examined. Sometimes small volumes of low-priced imports, or even low-price offerings can have significant effects on prices in the domestic market in terms of price erosion or price suppression, causing material injury to the domestic producers of like products.

Quantitative Restrictions on T&C Products

Question 5 (WT/TPR/S/112, P. 105, Para. 48; P. 107, Para. 54-57)

We note from the Secretariat Report that Canada's textiles and clothing industries "have benefited from a variety of import protection measures and adjustment assistance over the past quarter-century". The report also states that

integration of the most sensitive clothing products have been left to the end of the (ATC) implementation period;

over the two years 2000-01, clothing imports from all sources have grown at an accelerated annual growth rate compared with 1994-99; and

imports of products for which quotas had been freed also expanded at a rapid rate.

Could Canada provide specific information regarding its efforts in implementing Article 1.5 of the ATC which requires Members to allow for continuous autonomous adjustment and increased competition in their markets to facilitate the integration process, particularly in the light of accelerated textiles and clothing imports into the country in the past few years, and the observation that the bulk of the quotas for the more sensitive clothing products will remain in place until after termination of the ATC.

Response

Canada is also fully committed to the full integration of the textile and clothing sector into GATT 1994 disciplines by 1 January 2005 under the Agreement on Textiles and Clothing (ATC) and the elimination of all remaining quotas by that date. The ATC also provided a negotiated 10-year transition process to allow domestic industry to adjust - this represents a fundamental commitment Canada made to its industry.

Canada has met and exceeded its obligations under the ATC transition arrangements (apparel imports from restrained exporters are up over 80% from 1994 to 2001 (and domestic share held by the restrained importers is up from 31% to 45% from 1994 to 2001).

In addition, Canada has just implemented a major market access liberalization package for LDCs (except Myanmar (Burma)) to full quota-free and duty-free treatment for almost all products of LDC origin (i.e., other than supply-managed agricultural goods), including all textile and apparel products (and apparel alone accounts for more than half of the LDC's exports to Canada). The rules of origin for apparel, for this initiative, are designed to develop trade; they reflect the production capacity of LDCs, and allow LDCs to use imports of fabric and yarn originating in other LDC and developing countries (and Canada).

Canada's commitments under the Uruguay Round continue to provide improved access into the Canadian market for textile and apparel exports from developing countries.

Question 6 (WT/TPR/S/112, P. 107, Para. 54)

Will Canada confirm its commitment that all existing textile quotas will be removed on 1 January 2005 on termination of the ATC, and that its trade on textiles and clothing will be fully integrated into GATT 1994?

Response

Canada is fully committed to the full integration of the textile and clothing sector into GATT 1994 disciplines by 1 January 2005 under the Agreement on Textiles and Clothing (ATC) and the elimination of all remaining quotas by that date.

Telecommunications

Question 7 (WT/TPR/S/112, P. 114-115, Para. 78-79)

We note that the maximum cumulative total foreign investment of voting shares in Canada's facility-based telecommunications services providers is 46.7%. Such restrictions were considered necessary for reasons of national security and economic, social and cultural well-being in the last review. We would like to know whether these considerations still prevail. We also urge Canada to remove all these market access limitations in the current round of services negotiations.

Response

Canada's Telecommunications Act requires that telecommunications common carriers be Canadian controlled and limits direct investment to 20% of the voting shares. The limit on the voting shares for holding companies is 33.3%. The maximum investment by foreign entities in an operating company is 46.7%, i.e., 20% of the operating company and 26.7% of the holding company (33.3% of the remaining 80%).

The Minister of Industry announced on November 19, 2002 that he is seeking the views of Canadians on foreign investment restrictions in the telecommunications industry and that he had asked the Chair of the House of Commons Standing Committee on Industry, Science and Technology to undertake a review.

Further details can be found online at
<http://www.innovationstrategy.gc.ca/cmb/innovation.nsf/MenuE/Invest00>)

In this regard, the House of Commons Standing Committee on Industry, Science and Technology announced on December 11, 2002 that it would 'review federal laws that restrict foreign participation in Canada's telecommunications sector'. The Committee concluded hearings on February 27, 2003. A report from the Committee to the Government is expected in the spring of 2003. The Government will then decide on what action, if any, it might wish to take.

Insurance Services

Question 8 (WT/TPR/S/112, P. 130, Para. 154-155)

We note that all insurance companies, whether federally or provincially incorporated, must be licensed in each province where they do business. We would like to know the reasons for such a provincial licensing system. Would Canada consider simplifying the practice by issuing a single licence applicable to the whole country?

Response

In Canada, financial sector regulation is split between the federal and provincial governments, with provinces maintaining responsibility for much of the market conduct regulation for insurance firms, including licensing. In general, the provincial licensing requirements are very similar and the regulatory frameworks of the federal government and the provinces are closely integrated.

Provincial efforts are underway in both the life & health and property & casualty insurance industries to identify areas where harmonization can be promoted, but a single national licensing regime is not being actively contemplated.

However, the Canadian Council of Insurance Regulators (CCIR), an inter-jurisdictional association of regulators of insurance, has developed the Life License Qualification Program (LLQP) that establishes a common set of qualifications that life insurance agents must meet before being licensed. The LLQP is currently being implemented across Canada (excluding Quebec, which recently updated its relevant standards). More information on this can be found at <http://www.ccir-ccrra.org/>.

ARGENTINA

V) MEDIDAS ESPECIALES

Si bien la Argentina no se vio afectada directamente por la aplicación de salvaguardias a los productos siderúrgicos, preocupa lo que se advierte como una tendencia del gobierno canadiense de reforzar los procedimientos y la aplicación de medidas antidumping, de derechos compensatorios y de salvaguardias al comercio del acero. El Informe de la Secretaría da cuenta de esa tendencia en los párrafos 73 y siguientes del punto III(v)(b). ¿Podría explicar Canadá las razones que motivan dicha tendencia?.

English Translation:

Contingency Measures

Question 1

Even if Argentina was not affected by safeguards on steel, the Canadian trend to reinforce process and application of antidumping and countervailing measures and safeguards is of concern to it. Para 73 of the Secretariat Report mentions this trend. Can Canada explain its reasons?

Response

Although paragraph 73 refers to 46 initiations during the period of January 2000 to December 2001, only 33 new measures were put in place, including one undertaking. Most of the investigations concerned steel where annual import volumes for the entire year in 2002 (6.3 million tonnes) were the third highest level on record - below only the level achieved in 2000 (7.9 million tonnes) and in 1998 (6.7 million tonnes). In 2002, domestic steel consumption in Canada rose 4.2% above the levels in 2001 but imports increased by 13.5% over the same period.

Canada has, and will continue to conduct anti-dumping investigations on steel, as it would on any other product, only when its domestic industry makes a properly substantiated request, in full accordance with Canada's international trade obligations and the domestic law.

(vi) RESTRICCIONES Y CONTROLES CUANTITATIVOS

En el párrafo 85, punto III (vi)(a) "Productos Agroalimentarios", el Informe de la Secretaría señala que Canadá restringe las importaciones y el movimiento interprovincial de productos hortícolas a granel que no reúnan las condiciones estipuladas por Canadá en materia de calidad, etiquetado y

envasado. No obstante, se menciona que se otorgan excepciones a estas normas si el abastecimiento interior es deficitario. ¿Cómo define Canadá “deficitario” y cómo se informa de esta situación a los socios comerciales?

English Translation:

Quantitative Restrictions and Controls

Question 2

Chapter III, (vi) (a), paragraph 85 mentions that Canada restricts imports and interprovincial movement of bulk produce that do not meet quality, labelling and packaging standards. However, it mentions that an exception can be made if there is a shortage of domestic supply. How does Canada define "shortage of domestic supply"? How are trade partners informed of this?

Response

The Fresh Fruit and Vegetable Regulations, under the Canada Agricultural Products Act, are designed to ensure that all fresh fruits and vegetables entering into Canada or domestic supplies comply with Federal health and safety, quality, packaging and labeling regulations.

Processors or packers are free to source their supplies from the area or supplier of their own choice, including imports, provided those supplies comply with all the requirements of the Act and the Regulations.

In circumstances when adequate quality and quantity of compliant products are not available, processors or packers may apply to the Minister for an exemption to obtain non-complying products from another province or another country. Health and safety requirements will not be waived under any circumstance.

The CFIA decides whether a shortage exists based on evidence submitted by the applicant. Domestic supply shortage is oriented to the specific use and characteristics of the product as well. This is often a key determinant of the shortage. As such, shortage is not "notified" as many factors need to be taken into consideration. The shortage is identified by the importer/repacker/processor relative to the precise product specifications they need.

In order to ensure consistency and transparency in the application of Ministerial Exemptions, detailed guidelines for such requests are available on CFIA's website:
<http://www.inspection.gc.ca/english/plaveg/fresh/meguide.shtml>

FINANCIACION DE LAS EXPORTACIONES Y OTRAS FORMAS DE ASISTENCIA

En el punto III.4.(ii) del Informe de la Secretaría se indica que Canadá cuenta con una serie de instituciones que intervienen para ayudar a exportar a las empresas industriales, entre las que figura la EDC, el organismo oficial de crédito a la exportación. El funcionamiento de las líneas de crédito ofrecidas por esta institución han sido cuestionada en el ámbito de Solución de Diferencias de la OMC. ¿Podría Canadá detallar las condiciones que debe reunir una transacción para ser considerada de “interés nacional” y poder hacer uso de la “Cuenta del Canadá”?

English Translation:

Export financing and other assistance

Question 3

In Chapter III, (ii) Export financing and other assistance, the Secretariat Report mentions that Canada has in place a series of institutions to support export activities of industrial companies. EDC is one of these. The function of EDC's lines of credit has been investigated by the Dispute Settlement Body of the WTO. Could Canada detail the conditions that a transaction must meet to be considered of "national interest" and to be able to use the Canada Account?

Response

"Canada Account" consists of the class of transactions undertaken by Export Development Canada (EDC or the Corporation) pursuant to Section 23 of the Export Development Act (the Act). Under Canada Account, the Government of Canada is able to provide support for transactions which, on the basis of EDC's risk management practices, could not be supported under EDC's Corporate Account.

The eligibility considerations applied to transactions considered under the Canada Account program include:

In addition to falling within EDC's mandate, EDC's usual lending or insurance criteria (Canadian content, financial and technical capability of the exporter, technical and commercial viability of the project);

The government's general willingness to consider the country risk in question and the creditworthiness of non-sovereign borrowers, and;

National interest considerations such as:

economic benefits and costs to Canada, including the employment generated or sustained by the transaction;

importance of the export market to Canada; and

foreign policy implications, including Canada's bilateral relationship with the country in question.

Please note that the WTO panel in WT/DS222/R decided to:

reject Brazil's claim that the EDC Corporate Account and Canada Account programmes "as such" constitute prohibited export subsidies contrary to Article 3.1(a) of the SCM Agreement;

reject Brazil's claim that the EDC Corporate Account and Canada Account programmes "as applied" constitute prohibited export subsidies contrary to Article 3.1(a) of the SCM Agreement;

NORWAY

Telecommunications services

Question 1

Canada applies restrictions on foreign ownership in Canadian telecom companies. What does Canada intend to do in order to reduce or eliminate the restrictions on foreign ownership?

Response

Canada's Telecommunications Act requires that telecommunications common carriers be Canadian controlled and limits direct investment to 20% of the voting shares. The limit on the voting shares for holding companies is 33.3%. The maximum investment by foreign entities in an operating company

is 46.7% (i.e., 20% of the operating company and 26.7% of the holding company (33.3% of the remaining 80%).

The Minister of Industry announced on November 19, 2002 that he is seeking the views of Canadians on foreign investment restrictions in the telecommunications industry and that he had asked the Chair of the House of Commons Standing Committee on Industry, Science and Technology to undertake a review. (Further details can be found online at <http://www.innovationstrategy.gc.ca/cmb/innovation.nsf/MenuE/Invest00>)

In this regard, the House of Commons Standing Committee on Industry, Science and Technology announced on December 11, 2002 that it would 'review federal laws that restrict foreign participation in Canada's telecommunications sector'. The Committee concluded hearings on February 27, 2003. A report from the Committee to the Government is expected in the spring of 2003. The Government will then decide on what action, if any, it might wish to take.

Maritime transport services

Question 2

Under the Coasting Trade Act cabotage is reserved for Canadian-flagged ships. This law requires the carriage of goods and passengers as well as any other marine activities of a commercial nature in Canadian waters, to Canadian registered, duty-paid vessels (Ref. WT/TPR/S/112, page 120). What is Canada doing in order to give foreign flagged ships access to its cabotage?

Response

The Coasting Trade Act allows for the temporary importation of a non-Canadian registered or non duty-paid Canadian registered vessel, when no Canadian registered duty-paid vessel is available or suitable to carry out the activity. When the carriage of passengers is involved, a determination is also based on the availability of identical or similar adequate marine service from persons operating one or more Canadian vessels.

Energy-related services

Question 3

Canada is using local contents requirements in oil- and gas production, which in practice discriminate against foreign production companies and sub-contractors. What is Canada doing in order to improve market access for foreign oil and gas companies and sub-contractors in this industry?

Response

Canada is in the process of consulting with associations and working closely with the provinces to review the extent of liberalization undertaken since the Uruguay Round of GATS negotiations and whether there is scope for liberalization in the context of the Doha Round.

BANGLADESH

Question 1

The Government of Canada has taken a commendable decision to provide LDCs with enhanced market access. The new initiative of Canada, effective from 1 January 2003,

significantly increased the number of duty free items that include a wide range of agricultural, textiles, apparel and footwear products. This new measure is also accompanied by favourable rules of origin requirement.

The decision taken by the Canadian authorities clearly demonstrates their commitment to the Doha mandate to provide LDCs increased market access. We hope this decision will encourage other developed countries to make further improvements in their preferential scheme for LDCs. As the spokesperson of the LDC Group, we express our appreciation and thanks to the Canadian Government for their generous decision to further improved market access for LDCs= products.

In order to comprehend the new scheme, we would like to request the Canadian authorities to explain in detail the new market access initiative for LDCs including the rules of origin requirements.

Response

The Canada Customs and Revenue Agency has prepared a detailed guide to the LDC Market Access Initiative which includes information on rules of origin. This Guide was made available to members at the 7 March WTO Committee on Trade and Development meeting. It can also be accessed at www.ccr-aadrc.gc.ca/whatsnew by clicking on **archive** and then **December 2002**.

Background information re New rules of origin for apparel and textiles are for:

- a) full accumulation of input formed in LDCT beneficiary countries or Canada; or
- b) full accumulation of input formed in GPT beneficiary countries or inputs from Canada, provided the value added in the LDCT beneficiary country is 25%.

In both rules, the *apparel* would have to be assembled in an LDCT beneficiary country from fabric cut or knit to shape in that country.

The rules of origin for *fabrics and yarn* allow for full accumulation of originating input from LDCT or GPT beneficiary countries or Canada.

Apparel cut and sewn in an LDCT beneficiary country from input formed in another LDCT country or Canada would qualify for preferential treatment. Apparel using input formed in a GPT beneficiary country would also be eligible for preferential treatment if the LDCT beneficiary country met the 25% value-added requirement in producing the new article. Any input from Canadian sources would also be counted toward the LDC % value. Fabric has to be made from territorially (LDC, Canada or GPT countries) produced yarns and must be spun or extruded in the territory. There is no value-added rule for fabric

The previously existing general rules of origin will continue to apply for other products. These call for a minimum of 40 percent of the content of an eligible good to originate in least-developed countries (which can be accumulated) or Canada. [Cumulation provisions allow up to half of the 40% to be input from any other developing countries that are eligible for the Canadian General Preferential Tariff Scheme (or GSP) and not just from other least-developed countries. At least half of the 40% will still need to originate from least developed countries or Canada.]

Question 2

We thank the Canadian Government for a detailed account of their TRTA/CB programmes. The TRTA/CB programmes are of vital importance to LDCs in understanding and implementing

multilateral trade rules as well as in building institutions and productive capacity to effectively participate in world trade.

We are pleased to see the Government of Canada attach high importance to the institutional and supply side capacity of our countries in the delivery of their assistance. However, from the report it is not clear how much of expenditures in TRTA/CB programmes are devoted to LDCs. Could the Canadian authorities elaborate on the TRTA/CB programmes specially designed/targeted to the LDCs? Could they also explain how the TRTA/CB programmes are expected to benefit the LDCs, particularly in generating a supply side response?

Response

Canada thanks Bangladesh for its interest in Canada's trade-related technical assistance and capacity building (TRTA/CB) programmes. Canada believes in the importance of assisting developing and least-developed countries (LDCs) in building their own capacity to more fully participate in, and benefit from, the global trading system, and to use trade as a means to reduce poverty. Canadian approaches to TRTA/CB therefore focus on helping these countries inter alia to effectively negotiate in the current round of WTO and other regional/bilateral fora, mainstream trade into national development/poverty reduction plans, and benefit from a more open economy. Canada recognises the particular challenges faced by LDCs in the global trading system and therefore believes that TRTA/CB must respond to the needs as identified by these countries.

While it is difficult to calculate exactly what share of Canada's TRTA/CB expenditures are directed at LDCs, it is important to note that LDCs are a priority area for Canada, as evidenced by our recent LDC market access initiative and our commitment to the Africa Action Plan, further to the G8 Summit in Kananaskis. Contributions to several multilateral and regional agencies also illustrate Canada's commitment to addressing the trade-related needs of LDCs. Examples include (but are not limited to):

\$2 million to the Integrated Framework for trade-related technical assistance for least-developed countries;

\$1.5 million to the WTO's Doha Development Agenda Global Trust Fund for the Secretariat's coordinated technical assistance plan, for which LDCs are a priority;

over \$7.3 million to the Joint Integrated Technical Assistance Program (JITAP), which includes assistance to LDCs;

\$8.5 million to the Asia-Pacific Economic Integration Program which has extended assistance to LDCs;

\$900,000 to the Commonwealth Trade and Investment Access Facility.

Canada is one of the leading donors for the Integrated Framework (IF), as well as an active donor representative on the IF Working Group. The overall focus of the IF is to assist LDCs in integrating trade and TRTA/CB into overall development plans, which, depending on the LDC, can identify supply-side constraints as priority area for future follow-up assistance by the donor community and other TRTA/CB programs. Canada is also an active supporter of JITAP, which has as one of its main objectives, to enhance the capability of enterprises to export to new/existing markets, such as through the formulation of product sector strategies (addressing the supply-side).

Bangladesh may also be interested to know that the Canadian International Development Agency (CIDA) is very active in TRTA/CB programming specifically in Bangladesh. In recent years CIDA has contributed \$2 million to "Monitoring the Impact of the WTO", a project to assist women engaged in the garment industry with a range of health and social services. Additionally, CIDA has funded a \$4.1 million project to facilitate the export-oriented industries of Bangladesh. A new project related to private sector competitiveness is under design, with extensive discussions with civil society and the

Government of Bangladesh having recently taking place. The project will be likely well over \$4 million, with direct links to trade, and is expected to be operational by early 2004.

INDIA

Regional Trade Initiatives

Question 1

Canada participates in a number of regional trade agreements. Nearly 80 % of Canada's trade takes place with its preferential partners. These regional free trade agreements result in an elaborate and complex system of preferential tariffs and preferential rules of origin. Although Article XXIV of GATT 1994 permits derogation of MFN principle, it requires the countries party to a preferential trade arrangement to ensure that the trade of non-party member countries is not adversely affected on account of such an arrangement. Is there any system in place in Canada to objectively assess the impact of the RTAs it has concluded on the trade of non-party member countries?

Question 2

Has Canada made any study or assessment of the likely effect on its non-preferential trading partners and especially the developing countries of its regional trade initiatives?

Response to Questions 1 and 2

Canada and its free trade partners have been careful to ensure that the free trade agreements (FTAs) that have been negotiated are consistent with relevant WTO requirements, do not raise new barriers to third parties (whether tariffs or other regulations of commerce), and reinforce multilateral liberalization efforts now underway. Canada monitors its trade performance on an ongoing basis, and has examined the issue of trade diversion.

Canada has consistently participated in MFN trade liberalization, and the use of bilateral or regional free trade agreements in no way diminishes the fact that the multilateral trading system remains the cornerstone of Canada's trade policy. In fact, successive rounds of multilateral negotiations have resulted in significant decreases in Canada's MFN tariffs. Our free trade agreements with developed and developing countries are negotiated agreements that offer benefits to all parties of the agreement, not only by opening Canada's market but also allowing Canada's FTA partners to fully enjoy the benefits of free trade through their own market liberalization. Like most countries, Canada views its free trade agreements as incremental and complementary steps towards wider liberalization to be negotiated in a multilateral/WTO context.

In addition, consistent with Canada's commitment to ensuring that developing countries are able to participate fully in the international trade regime, the Prime Minister of Canada, the Right Honourable Jean Chrétien, announced in June 2002 steps that Canada would take to reduce poverty in the world's poorest countries. Key among these initiatives were steps to help the world's least-developed countries (LDC) strengthen economic growth through trade by eliminating tariffs and quotas on most of their exports to Canada, except for certain agricultural products. These changes came into effect on January 1, 2003. Canada also provides unilateral tariff preferences to developing countries under the General Preferential Tariff (GPT) and under the CARIBCAN Agreement (Chapter III(2)(iii)). For further information, please refer to the website of Canada's Department of Foreign Affairs and International Trade:

<http://www.dfait-maeci.gc.ca/tna-nac/social-en.asp#development>

Question 3

What percentage of Canada's external trade/imports are with/from countries with which Canada is in the process of negotiating PTA/FTAs?

Response

Canada is currently negotiating Free Trade Agreements (FTAs) with the FTAA region, the EFTA group of 4 countries, the Central America Four (El Salvador, Guatemala, Honduras, and Nicaragua) group, and Singapore.

Canadian exports to the 33 other countries of the FTAA region accounted for 88.84% of Canada's total merchandise exports in 2002. However, the majority of the trade is accounted for by our NAFTA partners and Chile (for which we already have established FTAs in place), which accounts for 88.10 of the 88.84 total percentage points, leaving only 0.74%. Of this 0.74 percentage points, 0.05 percentage points are accounted for by the Central America Four, who are also part of the FTAA region. Singapore and the EFTA group account for a further 0.50% of total exports. Thus a net of 1.24% of total Canadian exports is under FTA negotiation, after existing FTAs and duplication are factored out of the totals to avoid double counting.

On the imports side, the FTAA region accounted for 69.69% of total Canadian merchandise imports in 2002, of which 66.45 percentage points must be factored out on the account of trade with our NAFTA partners and Chile, leaving 3.24%. (The Central America Four account for 0.11% of total imports, but are already included under the non-NAFTA/Chile FTAA total.) EFTA accounts for an additional 1.58% of total imports and Singapore 0.28%. Thus a net of 5.10% of total Canadian imports is under FTA negotiation.

Note that Canada also has an FTA with Costa Rica; however, Canada's trade with this country was not factored out from the above, as the agreement only came into effect on November 1, 2002.

Question 4

In some of the preferential trade agreements, there are provisions concerning trade remedial measures (anti-dumping/countervailing duties and safeguard duties), which deviate from specific provisions of the corresponding multilateral WTO agreements. We would like Canada to present information with regard to such deviations and its assessment whether such a situation puts non-preferential trading partners into a doubly disadvantageous situation with respect to tariffs and also non-tariff instruments like trade remedial rules. For example under NAFTA, different injury determination standards in a safeguard investigation have been prescribed for regional partners compared to the corresponding rules in the WTO Agreement on Safeguards. How would Canada justify inclusion in its regional trade agreements of provisions deviating from the corresponding provisions in the relevant multilateral WTO agreements?

Response

The position of the Parties to the North American Free Trade Agreement (NAFTA), the Canada Israel Free Trade Agreement (CIFTA) and the Canada Chile Free Trade Agreement (CCFTA) is that the exclusion from another Party's application of a global safeguard action under certain circumstances, does not conflict with GATT Article XIX and the WTO Agreement on Safeguards in the context of a free trade agreement conforming to GATT Article XXIV.

In two WTO dispute settlement cases, i.e., wheat gluten and line pipe, the Appellate Body articulated the rule of "parallelism", pursuant to which the imports included in a serious injury determination should correspond to the imports covered by the safeguard measure. The Appellate Body went on to

say that, "although the safeguard measure was applied to imports from all sources, excluding Canada, the USITC did not establish explicitly that imports from these same sources, excluding Canada, satisfied the conditions for the application of a safeguard measure". The USITC was eventually compelled to make a determination that imports from all sources excluding Canada, were an important cause of serious injury. The line pipe case essentially confirmed the wheat gluten case. Canada has long held that the safeguard provision in NAFTA, the CIFTA and the CCFTA is consistent with its obligations under the WTO and the provision has withstood the test of the dispute settlement body.

Question 5

The Enabling Clause, which constitutes the legal basis for the GSP/GPT schemes, envisages that such preferences have to be granted in a 'generalized, non-reciprocal and non-discriminatory' way. Linking the benefits to non-trade issues such as labour or environmental standards introduces elements of discrimination and reciprocity into such schemes. Would Canada explain the justification for linking its GPT scheme to non-trade issues?

Response

Canada's General Preferential Tariff (GPT) treatment is a bilateral instrument meant to assist access to Canada's markets by developing countries. Canada currently extends GPT to 184 countries. Canada does not seek reciprocity in extending GPT treatment, nor does Canada link its GPT to the labour or environmental standards of developing countries.

Question 6

The preferential rules of origin under various RTAs ensure that preferential trading conditions are reserved for products originating in countries party to respective RTAs. Like in the textiles sector, 'yarn forward rule' in NAFTA provides that only textiles and clothing items produced from inputs originating in the respective RTA partner, starting from yarn/fibre would fully benefit from the preferential tariffs and rules. This effectively discourages Canadian exporters to procure inputs from non-party trading partners. Moreover presence of tariff escalation, especially in sectors like textiles where developing countries have crucial export interest, inhibits exports of downstream/final products from non-preferential producers. How does Canada intend to rectify such a situation?

Response

The rules of origin under Canada's preferential trade agreements, including those for textiles and apparel products, only apply to trade among Canada and the Parties to the Free Trade Agreements (FTA). They do not modify the market access conditions for imports into Canada from countries outside the FTAs. There is no evidence that imports of textiles and apparel products from countries with which Canada does not have a FTA are being negatively affected. Since 1995, non-FTA countries have seen their share of Canada's total imports of textiles and apparel increase, especially in the apparel sector.

Question 7

Table III.2 on page 36 of the Secretariat Report mentions, inter alia, that share of duty free lines in the Canadian tariffs is the following:

MFN- 48.4%,

Products under GPT (developing countries)- 64%

Products from LDC- 89.8%.

However the average of dutiable rate (other than zero tariff lines) against the above three category of exportable goods are 13.1, 15.1 and 39.8 respectively. This shows that most of the products of real export interest of developing countries and LDCs are having exorbitantly high tariff rates. We would like to hear the comments from the Canadian authorities on this aspect of discrimination against imports from Developing countries and LDCs.

Response

The Doha Declaration states that product coverage in the non-agricultural market access negotiations shall be "comprehensive and without a priori exclusions", aiming to reduce barriers "in particular on products of export interest to developing countries." It is our goal to arrive at a result in the Doha negotiations that respects the intent of that declaration. We would note that, since January of this year, LDCs have duty-free access to Canada for almost all goods, the only exceptions being over-quota dairy products, eggs and poultry. Our initiative is one of the most far-reaching LDC preference schemes of any developed country in terms of the countries eligible, the products eligible, and administrative simplicity.

With respect to textiles and apparel, rates have been progressively reduced. Textile tariffs will be between 12 and 14% on January 1, 2004, and apparel tariffs will be between 17 and 18%. The removal of quotas on these products in 2005 will improve access still further. This is irrespective of the outcome of the Doha negotiations. With respect to these negotiations, we would note that, just as India wishes to obtain better access to the Canadian market for its exporters, Canada has export interests with respect to the Indian market. With good will and hard work on both sides, we believe we can arrive at a result that is mutually beneficial.

Question 8

Para 38 of the Secretariat Report notes that tariff quotas are also used under FTAs to allow certain volume of trade in specified textiles and clothing products that do not meet the rules of origin required for preferential treatment. We would like to know from Canada as to how it justifies evident discrimination against non-party trading partners. We would also like to know whether the items covered under such quotas are those already integrated into the GATT1994 or the ones under quota maintained under the Agreement on Textiles.

Response

The preferential tariff treatment for non-originating textiles and apparel goods only applies to trade between Canada and the Parties to the Free Trade Agreements (FTA). They do not modify the market access conditions for imports into Canada from countries outside the FTAs. There is no evidence that imports of textiles and apparel products from countries with which Canada does not have a FTA are being negatively affected.

There is no correlation between product covered under the WTO ATC and products identified for preferential tariff treatment under FTAs. Therefore products covered by FTAs include both products that have been integrated into GATT 1994 and those which are still covered by the WTO Agreement on Textiles and Clothing.

Question 9

Canada has generally been supportive of the developmental aspect of the multilateral trading system and the case of developing countries for gaining market access for their products. However, under Canada's Generalized Preferential Tariffs (GPT) scheme for developing countries, the excluded products namely textiles, clothing, footwear, agricultural products are the ones that constitute the

export basket of most developing countries. Does Canada intend to review the product coverage aspect of its GPT?

Response

Pursuant to section 36 of the Customs Tariff, Canada's GPT will sunset on June 30, 2004, unless extended. A review of extending the GPT will commence later this year.

During the Uruguay Round, Canada committed itself to major trade liberalization with respect to textiles and apparel. In 1994, the Most Favoured Nation (MFN) tariffs on textiles were between 16 - 22%. These rates have been progressively reduced and will be between 12-14% on January 1, 2004. For apparel, the 22-25% MFN tariff of 1994, will be down to 17-18% on January 1, 2004. In addition, over 40% of textile tariff items are duty-free. Furthermore, all quotas on textiles and apparel are being abolished by January 1, 2005. Canada's commitments under the Uruguay Round continue to provide improved access into the Canadian market for textiles and apparel from developing countries.

The Doha Declaration states that product coverage in the non-agricultural market access negotiations shall be "comprehensive and without a priori exclusions", aiming to reduce barriers "in particular on products of export interest to developing countries." It is our goal to arrive at a result in the Doha negotiations that respects the intent of that declaration.

In the case of agriculture, Canada's GPT product coverage is taken into consideration in the context of the WTO agriculture negotiations, as well as other initiatives and negotiations. Significant portions of agricultural tariff lines are already covered by GPT (65%), and of those lines over 70% are duty-free. This does not account for the large number of products (almost 40% of all agricultural tariff lines) which are already MFN-free. This coverage largely responds to developing countries' export interests. For example, Canada provides duty-free quota-free access for essentially all tropical products.

Effective January 1, 2003, the Government of Canada has also extended duty free and quota free access to imports from 48 of the world's least developed countries (LDCs), with the exception of supply-managed agricultural products (dairy, poultry, and eggs). This means that all eligible imports from these countries would be assessed a tariff rate of zero, and all quotas on their eligible products are now eliminated. Our initiative is one of the most far-reaching LDC preference schemes of any developed country in terms of the countries eligible, the products eligible, and administrative simplicity.

Textiles

Question 10

Canadian government has started adjusting the Group-'A' limits for flexibilities invoked in Categories 9 and 31(a) from the year 1997 onwards. This does not appear reasonable for the following reasons-

There is no long standing practice of adjusting the level for Group-A while adjusting the restraint level for Category 9 and Category 31 (a) for flexibilities, as such adjustments were not made by Canadian authorities in 1995 or in 1996. The flexibilities for Category 9 and 31(a) were adjusted against Group limit for the first time in 1997.

The clothing limit for Group A applies to category 1a to category 8b. Category 9, though a clothing category, is clearly outside the Group A limit.

Furthermore, from 2001 the Canadian authorities have reduced the Group limits unilaterally adjusting the abolished restraint level for category 6 which would affect the availability of swing/carry over/carry forward flexibilities available to the exporting countries.

Are Canadian authorities considering reviewing their approach on the above issues?

Response

The administrative arrangements for the restraints of textiles and clothing products between Canada and India provided for extensive flexibility. One flexibility mechanism provides for dealing with market changes by swinging (transferring) quota from an under-used category to another one in greater demand. If India wishes to swing quota in or out of a group, then the group has to be adjusted accordingly. To do otherwise would result in an absolute increase in the overall restraint level every time a swing request were approved, which is not the intended purpose of the swing provision. Adjustments for swing between one category and another is our standing practice for all our bilateral agreements.

Canada is not aware of any lapse in the administration of this swing provision. We have reviewed our records and indeed in 1995, we adjusted the Group Level for swing out from Sub-Category 1a to Category 9 (133,701 mtk). If India so wishes, Canada is prepared to review its and India's records and make any necessary adjustments.

After eliminating its restraint on tailored collar (T/C) shirts, Canada did adjust India's aggregate restraint in order that the restraint level, which was normally used for T/C shirts would not be used for other products under restraint and thus provide unintentional increases in the remaining restraint. The ATC provides for this under Article 4.4. Canada did not, however, make any further adjustment in 1998 and in 2002 when it further eliminated a substantial number of restraint items even though it was within its rights to do so.

Question 11

Under the Agreement on Textiles and Clothing (ATC), the Members are required to integrate products from the list in the Annex to the Agreement in four stages. Canada included a restrained product in its integration programme for Stage 1. In Stage 2 also, it included an important restrained product, namely, tailored collar shirts. In addition it partially liberalized restrictions on certain other products. However, the preliminary examination of the Canada's third stage integration proposals indicates that no major products of commercial significance to India are included in the integration programme.

Some of the products (e.g. children's blouses and shirts, women's knitted blouses and shirts, women's blouses and shirts of silk saris), which had been integrated under the 2nd Stage of programme appear to be included in the 3rd Stage integration programme notified by Canada. It seems that Canada has chosen to liberalise quotas on a partial basis, liberalising some parts of particular quotas while leaving the other parts under restriction until the end of the transition process.

In view of such selective liberalisation, India's market access for apparel categories such as T-shirts, knitted shirts, blouses and similar articles, underwears etc., are affected. Would the Canadian authorities consider removing the restraint on these items?

Response

Canada is also fully committed to the full integration of the textile and clothing sector into GATT 1994 disciplines by 1 January 2005 under the Agreement on Textiles and Clothing (ATC) and the elimination of all remaining quotas by that date. The ATC also provided a negotiated 10-year transition process to allow domestic industry to adjust – this represents a fundamental commitment Canada made to its industry.

Canada has met and exceeded its obligations under the ATC transition arrangements (apparel imports from restrained exporters are up over 80% from 1994 to 2001 and domestic share held by the restrained importers is up from 31% to 45% from 1994 to 2001).

It should be noted that knitted shirts, blouses, and similar articles were all removed from quota on January 1, 2002. Of interest to India, it would appear that only T-shirts and underwear remains subject to quota.

Question 12

As per Article 1:4 of the ATC, the particular interests of cotton producing exporting members were to be reflected in the implementation of the provision of the ATC. However, restraining countries like Canada have entirely ignored the provision of Article 1-4 in their implementation of the ATC, with adverse implications for the balance or rights accruing to the cotton producing exporting Members. Will the Canadian authorities take appropriate remedial action to ensure that the provisions of Article 1:4 of the ATC are fully implemented?

Response

In addition to complying fully with the ATC transitional requirements under the integration process, Canada has also removed quota restrictions, including men's tailor-collared-shirts in 1997; rainwear, women's and girl's ensembles, selected women's, girl's and children's blouses and shirts, and babies winterwear in 1998; and baby wear, swimwear and other women's and girls' blouses and shirts in 2002. These are commercially important products for many restrained exporting Members, including the cotton-producing exporting countries such as China, India, and Pakistan.

Question 13

It is reported that the Canadian authorities have not debited the excess shipment of the year 2002 under Category 9 against the quota level of the year 2003 and asked for export licenses for 2003. The problem has been occurring during the last two years. There is no process to automatically charge the year-end excess shipments to the next year's quota, which results in held up consignments and consequent loss to the exporters as well as importers. Will the Canadian authorities consider introducing automaticity in this regard?

Response

Canada has debited the excess 2002 shipments against 2003 – we have done this and informed the Indian Embassy in Ottawa. We will not agree to automatic debiting of over-shipments from year to year, and we are very disappointed that for the second year in a row Indian authorities have over-issued export certificates, this time for twice the amount of the previous year. Canadian authorities will therefore be notifying Canadian importers that they should be monitoring Canadian import levels from India to be sure they are not caught unaware of potential over-shipment problems and possible delays.

Agriculture

Question 14

Canada is one of the largest exporters of agricultural products. However, it is noted that in Canada a number of barriers exist to free trade in the farm sector. The production of dairy products, chicken, egg etc is 'supply managed' and is subject to import restrictions. Similarly, it is the agriculture sector, which has the distinction of enjoying the highest MFN tariff protection ranging up to 300%. A number of MFN tariff lines in agriculture are having non-ad valorem rates, which further discourage

low priced agro-imports. How would Canada justify such measures, which impede imports from developing countries?

Response

The level of current Canadian MFN tariffs reflects the results of previous rounds of multilateral trade negotiations in which Canada participated. Overall, Canada has one of the world's most liberal tariff regimes. In the WTO negotiations on agriculture, Canada has proposed real and substantial improvements in market access for all agriculture and food products through a comprehensive approach addressing tariffs, tariff quotas and tariff-quota administration.

Trade remedial measures

Question 15

As the Secretariat Report notes Canada is one of the most frequent users of anti-dumping measures. Moreover, they are also initiating anti-subsidy investigations, many times in conjunction with the anti-dumping measure for the same product, against trading partners. It is not only the definitive anti-dumping/countervailing duties that affect trade but even the rumour of initiation of such an investigations affects the trade of the concerned country. Defending an anti-dumping/countervailing investigation also involves heavy expenditure. There is, therefore, an urgent need to put in place a mechanism to safeguard the interests of developing countries in ensuring their market access into the investigating countries. We would like to have Canada's comments on this issue.

Response

Canada recognizes that defending oneself in an anti-dumping or countervailing investigation can involve the expenditure of considerable resources. For that reason, Canada maintains a high standard for properly documented complaints from Canadian industries and must be assured that complaints are well documented before proceeding with the initiation of an investigation. Secure access to other Members' markets is important to all WTO Members. For that reason, Canada has proposed that initiation standards for anti-dumping and subsidy-countervail investigations be examined in the context of the current WTO rules negotiations.

Question 16

Article 15 of the Agreement on implementation of Article VI of the GATT 1994 requires special consideration to be given by developed countries to developing countries, and constructive remedies to be explored before applying anti-dumping duties on developing country WTO members. India would like to know the number and percentage of cases against exporters from developing countries in which Canada explored constructive remedies, nature of such remedies explored and the final outcome.

Response

Canada considers that price undertakings are a constructive measure that can be taken with respect to anti-dumping measures under the Anti-dumping Agreement. In this regard, all exporters are informed of the possibility of price undertakings at the time the investigation is initiated. Any discussions surrounding possible price undertakings would have been mentioned in the public notices issued by the Canada Customs and Revenue Agency during the course of its investigations.

Services

Question 17

In the post-September 11 scenario, the Canadian visa regime has become stricter and time consuming. Indian exporters, particularly the Small and Medium Entrepreneurs (SMES) who plan to visit Canada for the first time to explore the market opportunities for their respective electronics and IT related products and services sector face extreme difficulties in complying with the requirements laid down for grant of business visa at a short notice. Is Canada considering granting adequate flexibility in their visa regime so that business visas are granted expeditiously to Indian SMEs proposing to undertake market exploration tours to Canada ?

Response

Canada's regime on the temporary entry and stay of business people has been liberal for many years and has become more facilitative since entry into force of the Immigration and Refugee Protection Act and Regulations in June 2002. Employees of Indian SMEs exploring business opportunities in Canada do not need to obtain a work permit. They do, however, need to apply for a temporary residence visa to visit Canada. For more information, see <<http://www.cic.gc.ca/english/visit/index.html>>.) This is an entry document, not a business visa, and it is issued as quickly as possible, depending on the completeness of the application and the workload of the Canadian visa office abroad.

Question 18

Canada's commitment under GATS provides that intra-company transfer visa can be obtained by professionals covered, inter alia, under (a) Managers, (b) Executives, and (c) Specialists. However, visa is often denied to the persons falling in the above categories. This acts as a barrier to market access. Does the Canadian government have any programme to disseminate its legal commitments under GATS to its missions abroad so that visa is not denied to intra-company transferees?

Response

Canada issues work permits to qualified intra-company transferees consistent with its GATS obligation or its general immigration provisions. The Temporary Foreign Worker Guidelines/Foreign Worker Manual contains a GATS appendix and other relevant information on the requirements and processing for legitimate intra-company transferees. This administrative manual is used by Canada's visa officers abroad and it is also available to the public on the website of Citizenship & Immigration Canada at <<http://www.cic.gc.ca/manuals-guides/english/fw/index.html>>.

Question 19

One requirement by Canada for giving visa to intra-company transferees is that they should be employed by the transferring employer for at least one year prior to the application for visa. On account of the fluidity, particularly, in the information technology sector, this regulation acts as a market barrier for Indian professionals. Would Canada consider reducing the time frame of prior employment to six months?

Response

An employee of only six months with a transferring company is not a legitimate intra-company transferee. Such an employee would not have had enough time to acquire the necessary experience in, or knowledge of the transferring company and its foreign operations required of an executive, a manager or a person with specialized knowledge, according to their respective definitions. The 12-

month prior employment requirement is fair and reasonable and the standard for many GATS Members. In the current GATS negotiations, Canada has requested other Members commit to a more liberal prior employment period of one-year in the past three. Information technology workers should seek work permits under Canada's existing GATS commitment on professionals or under the pilot project Facilitated Processing for IT Workers.
For more information see <<http://www.cic.gc.ca/english/work/itw.html>>).

Miscellaneous

Question 20

Under the Canadian Constitution, provincial governments do enjoy legislative authority including on matters affecting international trade. For e.g., a number of local-content requirements are in place at the provincial level. Similarly in services, insurance companies are regulated at provincial level, which complicates market access in this sector. How does Canada intend to meet its obligations under the WTO within its constitutional structure?

Response

The Provincial Liquor Boards (PLBs) in Canada were established before the GATT was created, and their existence and activity is consistent with the provisions of GATT Article XVII ["State Trading Enterprises"]. In accordance with that Article, they are notified to the WTO as STEs. The PLBs operate as businesses whose decisions are based solely on commercial considerations and market forces. In Alberta, responsibility for the selection, retailing, warehousing, and distribution of liquor rests with the private sector. The alcoholic beverage-producing countries, which are major exporters to Canada, have accepted the policies of Provincial liquor agencies through various bilateral agreements. Canada's commitments under these agreements are implemented on an MFN basis.

Imported products compete with domestic products in the PLB retail stores, and enjoy a large share of the Canadian market. By volume, imported spirits accounted for 31.2% of the market in 1999, rising to 32.4% in 2001; imported wines held 65.4% of the market in 1999, rising to 67.0% in 2001. Both the value and market share of wine and spirit imports continue to increase.

Where local content requirements exist, they actually have the effect of limiting the volume of wine which can be sold in the private retail outlets, due to the limited potential of grape production in Canada.

EUROPEAN UNION

Report by the Government (WT/TPR/G/112)

II. Trade Policy Developments

Focus on the Canada-US relationship

Question 1 (para 49)

Could Canada please explain the current cooperation on regulatory issues with the US and what further steps does she intend to take to reduce the differences in approaches with the US through harmonisation, regulatory cooperation and mutual accommodation, while preserving Canadian values?

Response

Due to our geographic proximity and our close economic ties, Canada and the US, have a long history of regulatory cooperation in many sectors, including animal and plant health, food, chemicals, transportation, environment, and construction. Canada and the US, together with Mexico, are also parties to the NAFTA Committee on Standards-Related Measures whose functions include to facilitate greater North American compatibility in standards-related measures [including technical regulations] and to enhance cooperation on the development of standards-related measures. Part of the mandate of the NAFTA Committee on Sanitary and Phytosanitary Measures is to facilitate cooperation between the Parties including cooperation in the development, application, and enforcement of sanitary and phytosanitary measures. We are always open to exploring all means of enhancing regulatory cooperation with the United States, and with other trading partners as well. At the same time, we will ensure that we maintain the capacity to protect Canadian values, such as the health and safety of Canadians, while advancing both our economic and social interests.

Question 2

How will Canada prevent that closer regulatory cooperation with the US is translated into wider regulatory differences vis-à-vis other trading partners? Should not Canada rather aim at increasing international harmonisation of regulatory approaches?

Response

As the United States is Canada's largest trading partner, we view increased regulatory cooperation between our countries when appropriate as enhancing the potential to create substantial economic benefits for both Canada and the US. We do not see this objective operating so as to exclude other mechanisms to ease regulatory barriers, such as promoting regulatory cooperation with the EU as part of our bilateral Trade and Investment Enhancement Agreement. The use of international standards, guidelines, and recommendations is an important element in Canada's regulatory development process, and their development and use internationally is something we continue to support and promote.

Canada-US Smart Border Declaration

Part B: Does the Smart Border Regime apply to all goods and persons crossing the US-Canada border, including those originating in third countries?

Response

The Smart Border Declaration signed by Deputy Prime Minister Manley and Homeland Security Director Ridge in December 2001 recognizes that public security and economic security are mutually reinforcing. The Declaration is based on the long history of cooperative border management between Canada and the U.S. The Smart Border Declaration is not a regime; rather it consists of a 30-point Action Plan based on four pillars; the secure flow of people, the secure flow of goods, secure infrastructure, and the sharing of information.

Those initiatives in the Action Plan which relate to the movement of goods or people apply in either country and in some cases may be applicable to those originating in third countries (such as working together to identify security threats before they arrive in North America or the use of customs staff to target marine intransit containers arriving in Canada or the U.S.). Other initiatives such as NEXUS which expedites low risk travellers, or Free and Secure Trade (FAST) for low risk commercial goods, address Canadian and U.S. people and goods, respectively.

Part C: Could Canada please explain what additional measures are underway in the context of the Smart Border Declaration?

Response

On September 9, 2002, Prime Minister Chrétien and President Bush issued a joint statement to reaffirm both countries' commitment to fully realize the smart border vision and on December 6, 2002, Deputy Prime Minister John Manley and Governor Tom Ridge released a status report to mark one year of progress on the Smart Border Action Plan. While the status report highlights the significant progress made to date, confirming that Canada and the United States are on track in the implementation of the 30-point Action Plan items and in bringing steady improvement to the efficiency and security of our shared border, it also identifies areas of future work where close cooperation serves our mutual interests, such as biosecurity and science, and technology research and development (see link for September 2002 status report <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=v&mid=1&cat=10&did=1671>).

Regional and Bilateral Initiatives

Question 3 (para 69-72)

How does Canada see her numerous bilateral initiatives with Latin American countries (Central America, CARICOM, Dominican Republic, Andean Community) in light of the priority attached to the successful conclusion of the ongoing WTO negotiations and FTAA negotiations respectively?

Response

In Canada's view, our bilateral and regional free trade initiatives complement and reinforce the multilateral negotiations taking place through the WTO, which remains the cornerstone of Canada's trade policy. Likewise, Canada's negotiations with four Central American countries (El Salvador, Guatemala, Honduras and Nicaragua) and our exploratory discussions with CARICOM, the countries of the Andean Community, and the Dominican Republic are building blocks to the Free Trade Area of the Americas (FTAA) process, which is our top regional priority. Bilateral and regional agreements can support multilateral liberalization efforts by generating political momentum, developing and refining elements of the trade regime, and preparing domestic industries for the further opening of markets. By ensuring that such arrangements are consistent with WTO rules, these initiatives also help strengthen the multilateral system.

Regional and sub-regional agreements, moreover, can play a positive role in advancing global negotiations either by flagging new issues and helping to place them on the global agenda, or by providing innovative solutions to trade problems that can subsequently be elevated and adapted from the bilateral or regional to the multilateral arena. The bilateral and regional free trade agreements that Canada has negotiated contain some innovative features through which we have tried to enhance cooperation, strengthen institutional capacity, and promote long-term economic growth through increased economic exchanges. One example of this is the North American Free Trade Agreement (NAFTA), in which certain provisions, such as services and intellectual property, were ahead of the multilateral curve at the time the agreement was signed. A more recent example is the Canada-Costa Rica Free Trade Agreement (FTA), which is the first bilateral FTA containing innovative stand-alone provisions on trade facilitation.

In addition, closer economic relations, as well as the closer governmental relations forged by the negotiations process, contribute to progress on the broader social, political and environmental fronts. As such, bilateral and regional initiatives can be an important element of a country's development efforts. Engaging developing countries in FTAs also helps to build their capacity in trade negotiations.

Consultations and Transparency

Question 4 (para 84)

The EU would be interested in learning more about the measures Canada will consider in order to strengthen the role of parliamentarians during the negotiation and implementation of trade agreements.

Response

The Government has the privilege of keeping Parliament fully informed and consulted through the Standing Committee on Foreign Affairs and International Trade (SCFAIT). The committee has already conducted two studies (1999 and May 2002) that addressed WTO issues and held extensive public testimonies on various facets of these negotiations. The SCFAIT reports provide valuable direction and guidance for our participation in WTO negotiations and ensure that the Government's positions and proposals reflect the views of Canadians. The Government Response to the May 2002 SCFAIT Report entitled "Building an Effective New Round of WTO Negotiations: Key Issues for Canada" was tabled in the House of Commons in October 2002.

In light of the Inter-Parliamentary Union resolution on the creation of a parliamentary dimension to the WTO in February 2003, Canada is presently reviewing its consultation strategy with elected officials to ensure transparency, inclusiveness, and broad-based support for Canada's trade agenda.

Question 5 (para 85)

Could Canada please explain further provincial and territorial involvement in trade policy?

Response

Although the exclusive responsibility of the federal government, trade agreements and dispute settlement increasingly address areas of provincial jurisdiction and require provincial implementation. The federal government maintains a close relationship with the provinces and territories in the area of international trade policy by means of a variety of mechanisms. Provincial and territorial governments are consulted all along on the identification and refining of issues, and the development of strategies and positions. Federal, provincial, and territorial government officials participate in the Federal-Provincial-Territorial Committee on Trade (C-Trade), which meets at least quarterly in order to exchange information, share perspectives, and develop Canadian positions on a range of international trade policy issues, including negotiations. In addition to these regular meetings, Canadian Ministers responsible for trade as well as Deputy Ministers meet roughly once a year to develop further the cooperative relationship that exists with provinces and territories in trade policy, to update them on recent developments, and to discuss further cooperation on key issues. The Department of Foreign Affairs and International Trade also maintains restricted federal-provincial-territorial websites, and schedules numerous conference calls almost on a weekly basis with provinces/territories to facilitate the sharing of documents and current information on wide variety of trade policy matters.

Other initiatives

Question 6 (para 100)

The EU would be interested in learning more about the practical implementing steps of the Smart Regulation initiative announced by the Canadian Government. What tools will be applied in the application of this initiative and how do they link to Canada's regulatory impact analysis practices?

Response

The 2002 Speech from the Throne, which introduced the Smart Regulation initiative, also called for the creation of an External Advisory Committee that will "recommend areas where government needs to redesign its regulatory approach to create and maintain a Canadian advantage". The External Advisory Committee on Smart Regulation (EACSR) is being set up and will provide an external perspective and expert advice to the Government of Canada on regulatory issues spanning economic and social policy objectives. In February 2003, the Prime Minister appointed the Chair for the EACSR, and members will soon be appointed from various sectors, including business, non-governmental and academic communities.

Question 7

How does Canada plan to ensure that the implementation of the Smart Regulation initiative serves the objective of international harmonisation of regulatory approaches? Does this initiative foresee cooperation with third country regulators and consultation with third country stakeholders?

Response

As set out in the Speech from the Throne, " we need regulation to achieve the public good, and we need to regulate in a way that enhances the climate for investment and trust in the markets". Toward this objective, there is certainly room for international cooperation on regulatory issues.

The Canada-EU Joint Summit Statement in December 2002 identified regulatory cooperation as a priority area toward enhancing our bilateral trade relationship. Since then, we have engaged in dialogue on regulatory cooperation with Europe, which would include exchanges of our respective approaches in regulatory reform.

Report by the Secretariat (WT/TPR/S/112)

II. Trade and Investment Policy Framework

Institutional and Policy Framework

Question 8: *Follow-up of written question for the TPR of 2001: (para 7)*

Given the effects in terms of market access of divergent policies and practices at provincial level, could Canada please provide further information on the progress made in terms of reduction of this type of barriers in the context of the implementation of the 1995 Agreement on Internal Trade, particularly in relation to government procurement and standards?

Response

Since the Agreement on Internal Trade came into effect in 1995, governments have made considerable progress. Details are highlighted below.

In 1998, governments, with the exception of British Columbia and the Yukon, agreed to extend the non-discrimination commitment to procurement undertaken by their municipalities, academic institutions, social service agencies, and hospitals (the "MASH" sector). The Secretariat estimates this expansion covers an additional \$30 billion of annual purchasing.

In 2002, British Columbia agreed to extend non-discrimination provisions to its MASH sector.

The implementation of AIT requirements for transparency in procurement and corporate registration and reporting through Internet-based systems has made it easier for firms to operate across provinces.

In 1997, an Internet-based electronic tendering system came into operation for procurement by government departments;

In 2000, a portal was established for procurement by MASH entities;

In 2002, governments launched a web site to make it easier for corporations to do business anywhere across provincial boundaries.

By July 2001, the requirements of the Labour Mobility Chapter had largely been met.

Of the 51 regulated professions under consideration, regulatory bodies for 42 of them had either met or were well on their way to meeting the requirements of the Agreement. This represents 97% of the workers in these regulated professions.

Progress is being made on the nine remaining occupations.

Unlike occupations that are usually regulated by non-government bodies, trades are regulated directly by all provincial/territorial governments. Each jurisdiction determines which trades it will regulate, whether certification in the trade will be compulsory or voluntary, and what training is required. All jurisdictions have taken steps or committed to offer further recognition of qualified trades persons.

Parties have signed a cooperative enforcement agreement on consumer related measures to facilitate intergovernmental cooperation among consumer protection enforcement agencies.

Parties have made progress towards national standards on truck safety, weight and dimensions and some have eliminated extra-provincial truck operating authorities.

Participation in the WTO

Question 9: (para 19)

Does Canada plan to include in future notifications domestic support for agriculture, subsidies and import licensing? What is the reason behind the lack of notifications by Canadian provinces to the WTO since 1998?

Response

With respect to import licensing, Canada has included detailed information on each of these subjects in previous WTO notifications, and will do so in the future.

Canada's latest notification regarding domestic support is for 1999. The notification for 2000 will be submitted as soon as possible. All domestic support to agriculture, including support by the federal and provincial governments as well as support provided through joint federal and provincial programs, is reported in Canada's annual notification of domestic support to the Committee on Agriculture of the World Trade Organization.

Canada notifies changes to practices on import licensing (MA:1). There have not been any changes to practices on import licensing since our last notification on August 2, 2001 (G/AG/N/CAN/45).

The Federal Government remains engaged in on-going consultations with Canadian provincial governments regarding notification requirements under Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures. Thus far, the provinces have not advised the Federal Government of any programs that meet the criteria for the purposes of notification.

III. Trade Policies and Practices by Measure

Measures directly affecting imports

(i) Customs procedures

Question 10 (para 11)

What is the scope of the Canadian Customs Action Plan? Is it intended to apply to other trade than US trade carried by road? What are the requirements for importers to Canada to benefit from the pre-approved carrier status? How will the security measures applied in the aftermath of September 11 affect the implementation of this Plan?

Response

The Customs Action Plan (CAP) is an ambitious change regime, intended to provide Customs with a more appropriate balance between facilitation and enforcement in Customs program delivery. The Plan is designed to achieve this balance by facilitating the flow of low-risk goods and people while ensuring that there is improved program compliance and interdiction of inadmissible goods and people. This requires a broad-based approach to fundamentally change Customs processes. The new approach to program delivery is premised on the principles of self-assessment, advance information, and pre-approval. While these principles exist in current program delivery, the CAP approach is expanding their application well beyond what has existed previously. Underpinning the application of these program delivery principles are risk-based processing, and a fair and effective sanctions regime.

The initiatives outlined under the Customs Action Plan are not limited to trade with the United States. Within the four commitments of the Customs Action Plan, the CCRA's fourth commitment is to "promote certainty and consistency for exporters and for Canadians traveling abroad." The international focus of this commitment includes traveler's initiatives, such as Advanced Passenger Information/Passenger Name Record (API/PNR), and commercial initiatives such as Advance Commercial Information (ACI).

As part of the Customs Action Plan, there are two programs which allow importers to benefit from pre-approved carrier status. These programs are the Customs Self Assessment program (CSA), a progressive new trade option for clients who invest in compliance, and Free and Secure Trade (FAST), a harmonized commercial process (between the US and Canada) that builds on the concepts and principles of the CSA program.

Customs Self Assessment:

Importers eligible to apply to the CSA program include those who:

- are resident in Canada;
- have a history of actively importing for at least two years;
- are without contraband or major commercial infractions;
- are prepared to make an investment in business systems;
- are willing to provide senior management representation that commercial business processes, customs interfaces, and the required trigger, audit trails, and linkages exist or will exist in the business's books and records; and
- are prepared to sign a Client Undertaking document with the CCRA

Carriers eligible to apply to the CSA program include those who are:

- bonded or post-audit;
- have a history of transporting goods to Canada for at least two years;

without contraband or major commercial infractions;
willing to be liable and maintain control of CSA shipments until delivered;
willing to provide senior management representation that proper commercial business processes and audit trails exist or will exist; and
prepared to sign a Client Undertaking document with the CCRA.

Free and Secure Trade:

In order to transport goods under the FAST program, commercial carriers and drivers must be registered and able to demonstrate a high level of compliance with the laws and regulations administered by the Canada Customs and Revenue Agency (CCRA).

The FAST driver program involves a rigorous pre-screening and approval process for their registration, which is jointly administered by the CCRA, the United States Customs Service and Citizenship and Immigration Canada, and the United States Immigration and Naturalization Service.

Participants will be granted membership if the applicant has not had a serious customs infraction, has not been convicted of any offence, and there is no other information that undermines the CCRA's confidence of the applicant's compliance with program obligations.

Drivers applying to the FAST program will qualify if they are:

Citizens or permanent residents of the U.S. or Canada

Admissible to Canada or the U.S. under applicable immigration laws and have no criminal record for which they have not received a pardon, rehabilitation and/or waiver

Are of good character

Are 18 years of age; and

Have a valid driver's license

For Canada, the criterion is similar to what is used for the Commercial Driver Registration Program (CDRP). If drivers are planning on using FAST clearance option into Canada or the United States, they must be FAST approved.

Investing in the Future: The Customs Action Plan (CAP) 2000-2004, published in April 2000 provides CCRA with a new perspective and vision for border management and trade administration. The two main features of the Customs Action Plan are risk-based processing, for travellers and traders, which will streamline processing for low risk clients and intensify processing for those that are higher and unknown risk, and a fair and effective sanctions regime.

The Customs Action Plan was in place prior to the events of September 11, 2001, and provides the basis for initiatives we are currently pursuing. The events of September 11th resulted in the acceleration of some CAP initiatives, while other initiatives have been adjusted or remained consistent with their original implementation schedule.

(iii) Tariffs

Question 11

Follow-up of written question for the TPR of 2001: (para 27)

Canada has tariff peaks (exceeding 15%) on 657 lines, not taking into account the 183 tariff lines covered by out-of-quota tariffs. Could Canada please indicate whether and how she intends to reduce or eliminate such tariff peaks in the on-going WTO negotiations?

Response

The Secretariat's report (WT/TRR/S/112, Chapter III, Table III.1) shows that in 2002, the average applied MFN tariff in Canada was 21.7% for agricultural goods overall which includes the over-quota tariffs which average 139 percent. Imports of products subject to tariff quotas generally enter at very low in-quota rates, averaging about 3% on a MFN basis which is comparable to the rates for agricultural products not subject to tariff quotas and non-agricultural goods.

The level of current Canadian MFN tariffs reflects the results of previous rounds of multilateral trade negotiations in which Canada participated. Overall, Canada has one of the world's most liberal tariff regimes.

In the WTO agriculture negotiations, Canada has called for an ambitious harmonizing reduction formula to achieve maximum reductions from final bound tariffs and substantial reduction of tariff disparity between competing products and tariff escalation from the raw to processed form of the product. Such a formula should lower tariffs to a more uniform level, but for particularly sensitive products, Members should have the option to achieve market access improvements in other ways – such as providing a specified quantity of duty-free access to all Members through tariff quotas. Where a Member chooses to provide access improvements through tariff quotas, a significant improvement in market access can be achieved through commitments that expand access, eliminate in-quota tariffs, and ensure clear rules so that tariff quota administration does not impede access.

(vi) Quantitative restrictions and controls

Question 12 (para 88)

Could Canada please explain on which basis US-manufactured products are excluded from the prohibition of import of second-hand motor vehicles and aircraft?

Response

The following imports are prohibited under the Customs Tariff: second-hand motor vehicles less than 15 years old, except if manufactured in the United States; used or second-hand aircraft, except if imported from the United States; and reprints of Canadian and British works copyrighted in Canada. Prohibitions on the importation of used goods are common. In the context of FTAA negotiations, for example, a number of countries are proposing a blanket prohibition on all used goods. Canada is prepared to consider eliminating its prohibition on used vehicles in the context of bilateral or multilateral negotiations, if other countries are prepared to do the same. Canada withdrew the prohibition on the importation of used vehicles from the United States during the negotiation of the Canada-U.S. FTA. Canada and Mexico agreed to phase-out the prohibition on originating vehicles under the NAFTA. Under the Canada-Chile FTA, however, Chile chose to maintain its prohibition on used vehicles; therefore Canada maintained its measure.

It is important to note, however, that Canada's *Motor Vehicle Safety Act* and Regulations require that all vehicles imported into Canada comply, at the time of importation, with the Canada Motor Vehicle Safety Standards in effect on the date the vehicle was manufactured. Vehicles manufactured for sale in countries other than Canada and the United States that do not comply with the requirements of the Canada Motor Vehicle Safety Act, **cannot** be altered to comply and **cannot** be imported into Canada. The only exceptions to this rule are **vehicles fifteen (15) years old or older** as determined by the month and year in which the vehicle was manufactured and buses manufactured before January 1, 1971.

Vehicles acquired in foreign countries other than the U.S. and designed, built, tested and certified to meet either all applicable *Canada Motor Vehicle Safety Standards* or all applicable United States *Federal Motor Vehicle Safety Standards* and bearing a statement of compliance label affixed by the original manufacturer, as required by the Regulations, may be eligible for importation into Canada provided the vehicle has not been altered and the certification from the original manufacturer is maintained. Further information is available from: Transport Canada, Road Safety and Motor Vehicle Regulation Directorate, at 1-613-998-8616 for further information.

(vii) Standards, technical regulations, and sanitary and phytosanitary measures

Question 13 (para 91)

In accordance to the Government of Canada Regulatory policy, a specific directive must be followed when regulating. Could Canada indicate what are the criteria laid down in such directive? Is international regulatory policy one of those criteria? Does a similar directive exist for regulatory policy at provincial level?

Response

The Regulatory Policy of the Government of Canada provides the primary policy framework for making regulations. It provides the guiding principles for the development of regulations and it imposes certain requirements, including:

1. Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs.
2. They can demonstrate that a problem or risk exists, federal government intervention is justified and regulation is the best alternative.
3. The benefits outweigh the costs to Canadians, their governments and businesses. In particular, when managing risks on behalf of Canadians, regulatory authorities must ensure that the limited resources available to government are used where they do the most good.
4. Adverse impacts on the capacity of the economy to generate wealth and employment are minimized and no unnecessary regulatory burden is imposed. In particular, regulatory authorities must ensure that:

information and administrative requirements are limited to what is absolutely necessary and that they impose the least possible cost;

the special circumstances of small businesses are addressed; and

parties proposing equivalent means to conform with regulatory requirements are given positive consideration.

5. International and intergovernmental agreements are respected (see Appendix A of the Government of Canada Regulatory Policy) and full advantage is taken of opportunities for coordination with other governments and agencies.
6. Systems are in place to manage regulatory resources effectively.
7. Other directives from Cabinet concerning policy and law making are followed such as the Cabinet Directive on Law-making and the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals and the Cost Recovery and Charging Policy.

When developing or changing regulations, federal regulatory authorities must ensure that regulatory officials are aware of and adhere to obligations set out in international and intergovernmental agreements and accords.

In particular, for technical regulations that affect trade, federal regulatory authorities must:

With regard to notification

prepublish proposals for new or changed technical regulations in Canada Gazette, Part I for a period of at least 75 days, except in urgent circumstances, and take into account comments received;

With regard to performance-oriented requirements specify, where possible, technical regulatory requirements in terms of performance rather than design or descriptive characteristics;

give positive consideration to accepting as equivalent other forms of technical regulatory requirements, if satisfied that they adequately fulfil the objectives of the existing regulations;
for TBT, ensure technical regulations treat products from one jurisdiction no less favourably than like products from another;

for SPS, ensure measures do not arbitrarily or unjustifiably discriminate where identical or similar conditions prevail;

ensure technical regulations are no more restrictive of entry into markets than is necessary;

With regard to international standards

use available international standards, guidelines and recommendations where those standards achieve the regulatory objective;

With regard to enforcement

treat regulatees and products from one jurisdiction no less favourably than those from other jurisdictions when assessing conformity to technical regulatory requirements, providing they are in comparable situations;

With regard to complaint resolution

have in place a process to review complaints concerning conformity assessment procedures and must take corrective action when justified.

(The Canadian Government Regulatory Policy document is available in full at the following Internet link: <http://www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&page=publications&sub=governmentofcanadaregula>).

There is no similar directive for regulatory policy at the provincial level. It should be noted that under the Canadian constitution, the provinces have exclusive legislative jurisdiction in a number of areas.

Question 14 (para 97)

It is stated in the report that technical regulations and standards continue to differ among provinces. Could Canada please inform about the steps that have been taken to ensure that provincial level standards (for example for heaters, valves, pumps, as well as work safety and security standards) are transparent and can be easily accessed by foreign producers?

Could Canada please explain further in what consists the on-going work of the Intergovernmental Affairs and Trade (IGAT) Branch with the Agreement on International Trade Secretariat, aimed at reducing differences in technical regulations and standards, particularly on goods, among provinces?

Response

The Canadian Government continues to encourage the provinces to be more transparent and provide notifications at an earlier stage.

The Intergovernmental Relations and Outreach Branch (IRO) within Industry Canada has overall responsibility for recommending any changes to the Agreement on Internal Trade to the federal Minister of Industry. Within the Agreement, the sectoral chapters (e.g., Consumer-Related Measures and Standards, Agricultural and Food Goods, Alcoholic Beverages, etc.) deal with some aspect of technical regulations and standards. IRO Branch liaises with federal officials responsible for the sectoral chapters to monitor progress towards meeting the targets and obligations in these chapters.

Question 15 (para 98)

According to this paragraph, Canada's Standards Strategy is aimed at promoting the use of (voluntary) adopted or adapted internationally accepted standards to the greatest extent possible. Could Canada please elaborate further on how this objective is ensured in practical terms under the above-mentioned Strategy?

Response

Under the Canadian Standards Strategy (CSS), SCC has developed a framework for developing national positions with respect to international standardization. This includes participation in international forums, agreements, and events.

SCC policy is to continually improve the rate of adoption of international standards as the basis of national standards of Canada (NSCs). Of the 189 NSCs approved by SCC in 2001/02, 84% were adopted from or based on international standards.

SCC is a major player and continues to expand its role in the development of international standards. In 2003, SCC had Participation status in 434 ISO and IEC technical committees, subcommittees, and Observer status in 122 committees. This represents an increase over the previous year.

SCC continues to promote the benefits of voluntary standardization among Canadian stakeholders. In 2002 we launched "Regwatch" an electronic data base which enables Canadian regulators to track standards in Canadian regulations. In 2003 SCC will be launching "Standards Alert" a similar electronic based system which will enable Canadians to learn about Canadian and international standards. These initiatives represent a significant contribution to promoting transparency and demonstrating the benefits of voluntary standardization to a wide range of users, including industry, government, and consumers.

Part B: Does this Strategy intend to cover also Canadian provinces? Could Canada please indicate whether the harmonisation of standards within the regional context of the NAFTA conflicts with international standards and, if so, to what extent?

Response

Canada's provinces and territories are key players in the development and implementation of the CSS. The SCC's Provincial and Territorial Advisory Committee (PTAC) is made up of provincial and territorial government representatives. PTAC has special status in being recognized under the SCC Act, with two seats on Council (board of directors). PTAC also has representatives on all the other SCC advisory committees, to help ensure national policy coordination on standards related issues and effective provincial and territorial engagement at all levels of the National Standards System.

In participation in regional trade initiatives, international standards remain the foundation for Canada and its regional partners. Wherever possible, regional standards are harmonized with relevant international standards. However, NAFTA Article 905 permits derogation from use of international standards where such standards are ineffective or inappropriate means to achieve a Party's legitimate objectives, or to achieve a higher level of protection than can be achieved if the measure were based on the relevant international standard. The NAFTA Agreement is consistent with the WTO. Currently, there are no NAFTA harmonized regional standards.

Question 16 (para 100)

This paragraph mentions the development by Canada of criteria for undertaking MRA negotiations and enhancing existing agreements. Could Canada give an indication of those criteria?

Response

Several key criteria for Canada when we consider entering into MRA discussions are: clear demonstration of tangible trade and regulatory benefits from the conclusion of an MRA; support from jurisdictional partners and stakeholders; compatibility in the regulatory systems of the contracting parties; and, sufficient resources to ensure effective MRA negotiation and implementation.

Question 17: (para 102)

It is stated in the report that, with regard to TBT provisions on labelling Canada considers them to be balanced and adequate. The EC recalls, that in 1996 Canada submitted to the CTE and the TBTC a communication (WT/CTE/W/21, G/TBT/W/21) on elements of a possible understanding to the TBT Agreement on eco-labelling.

The EC would like to inquire whether Canada intends to raise the elements outlined in its communication in the context of the DDA mandate 32iii on labelling for environmental purposes?

Response

Canada would be pleased to respond to any questions or clarify information contained in our Trade Policy Review. We have noted the EC's comment on our 1996 Communication (WT/CTE/W/21; G/TBT/W/21) to the Committee on Trade and Environment and the Committee on Technical Barriers and Regulations. Canada would be pleased to discuss with the European Commission our views on labeling requirements for environmental purposes in the Committee on Trade and Environment.

Question 18: (para 109)

It is stated in the report that, where there are no health and/or safety concerns, Canada favours the use of voluntary eco-labelling schemes to provide consumers with information about a particular product or services and that Canada's main environmental labelling programme is Environmental Choice that uses criteria based on life-cycle approach.

The EC would like to inquire whether the Environmental Choice programme uses as a basis the ISO Standard 14024 on voluntary eco-labelling schemes based on a life-cycle approach?

Response

The Canadian Environmental Choice Program (ECP) was created in 1988, i.e., before the completion of the ISO 14,024 standard. The ECP was very active in the development of the ISO 14,024 and the latter very much follows the ECP. ECP also has a life cycle focus and considers the broad range of environmental aspects and impacts.

Part B

With regard to the 32,000 products and services carrying the Environmental Choice label, the EC would like to inquire whether this figure contains any foreign products?

Response

This figure does indeed include foreign products, primarily from the US, but also from India and China.

Part C

The EC would also like to request Canada to provide a list of any other voluntary eco-labelling schemes, whether provincial/territorial or non-governmental, in use in Canada and explain whether these follow the ISO standard.

Response

The following is an indicative list of some of the eco-labelling programs in place (note that these items are fully private sector activities, *i.e.* are not related to the government); the HAC Green Leaf™ Eco-Rating Program is a graduated rating system designed to identify hotels committed to improving their bottom line fiscal and environmental performance; GreenLinks™ is a Canadian-based company providing independent and verified eco-efficiency ratings for golf courses; and TerraChoice also offers the Clean Marine Green Leaf™ Eco-Rating Program which offers marine operators the opportunity to ensure that their marinas are following environmentally sound practices and protecting waterways. To provide a complete list, we would require more extensive consultations with our provinces and territories. To this end, it would be worthwhile if all Members undertook to provide such information, including at the sub-national level.

Part D

The EC would furthermore like to request Canada to inform whether it has in place any certification schemes for Sustainable Forest Management.

Response

In Canada, certification is pursued as a voluntary, market-based initiative. Three major 'sustainable forest management' certification schemes are in operation: that of the Canadian Standards Association (CSA), the Forest Stewardship Council (FSC) and the Sustainable Forestry Initiative (SFI). We also have 113.8 million ha. of forest lands certified under the generic ISO 14001 environmental management system.

The area of forest certified to sustainable forest management systems is significant and is increasing quickly. As of December 31, 2002, more than 28 million hectares had been certified under one of the three available forest-specific certification systems (CSA: 14.4 million ha; SFI: 12.7 million ha; FSC: 1.0 million ha). This represents a 64% increase over one year ago. By 2006, the area certified under these systems is expected to reach 136 million ha: CSA 71.7 million ha.; SFI 37.7 million ha.; and FSC 26.8 Million ha.

Part E

Moreover, the EC would like to inquire whether Canada has in place any mandatory environmental labelling requirements, whether federal and/or provincial/territorial.

Response

Two examples where there are mandatory labelling requirements under the Canadian Environmental Protection Act 1999 (CEPA 1999) are:

Under the Storage of PCB Material Regulations (SOR/92-507), every owner or manager of a PCB storage site shall affix a prescribed label to containers containing certain amounts of PCBs

Under the Export of Substances Under the Rotterdam Convention (PIC) Regulations (SOR/2002-317), exporters of a substance on the Export Control List must affix a label to the container containing the substance that includes the following information:

the name of the substance as it appears on the Export Control List;

any hazard to human health or the environment; and

any precautionary measures to be followed when handling or being exposed to the substance

Canada's "*Regulations Respecting Energy Using Products and Requirements Pertaining to their Importation and Interprovincial Shipment*", otherwise known as "*Energy Efficiency Regulations*" applies to a number of energy-using products, such as dishwashers, clothes washers and dryers, gas furnaces, oil-fired water heaters, and room air conditioners. All the listed energy-using products must meet federal energy efficiency standards in order to be imported into Canada or manufactured in Canada and shipped from one province to another. The *Regulations* continue to apply to these products if they are incorporated into a larger unit or machine, even when that unit or machine is an unregulated product. A complete list of products and more details may be found at http://oee.nrcan.gc.ca/regulations/html/EERGuide_Part1.cfm.

Measures affecting production and trade

(i) Competition Policy

Question 19: (para 153)

According to this paragraph, the 2002 Competition Act has introduced "a new framework to facilitate co-operation between foreign competition authorities in cases where the laws of the foreign State that address the conduct are substantially similar to Canadian law". Could Canada explain further what the novelties of the 2002 Act are in this respect? How do the international cooperation provisions of the new Act relate to bilateral competition agreements/arrangements?

Response

The 2002 amendments to the *Competition Act* introduced provisions that allow Canada to enter into Mutual Legal Assistance Treaties with foreign jurisdictions in non-criminal matters. Parties to these agreements will be able to formally request that the other jurisdiction assist in obtaining or gathering evidence pursuant to an evidence gathering order, a search and seizure order, an order for statement by video link, or an order for the lending of exhibits. The new provisions in the *Competition Act* set out the basic requirements to be incorporated in any mutual legal assistance agreement negotiated for this purpose:

- assistance provided to Canada will be comparable in scope to that provided by Canada;
- the circumstances in which Canada may refuse a request;
- confidentiality protections that will be afforded to any record or thing;
- undertakings by the foreign state that any record or thing provided by Canada will be used only for the purpose for which it was requested;
- undertakings by the foreign state that any record or thing provided by Canada will be used subject to any terms and conditions on which it was provided, including conditions respecting applicable rights and privileges under Canadian law.

The new provisions of the *Competition Act* allow Canada to enter into Mutual Legal Assistance Treaties with foreign jurisdictions for the gathering of evidence related to civil competition matters.

Currently, Canada's bilateral cooperation agreements provide for: notifications, cooperation and coordination, positive comity, communications, avoidance of conflict, confidentiality.

(ii) Financial and other assistance to business

Question 20: (para 168)

Could Canada please explain the continuing lack of notifications of subsidies by Canadian provinces under the WTO SCM Agreement?

Response

Canada's last subsidy notification was submitted in June 2002 and it covered 1998/99 and 1999/2000. The document is G/SCM/N/60/CAN.

The Federal Government remains engaged in on-going consultations with Canadian provincial governments regarding notification requirements under Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures. Thus far, the provinces have not advised the Federal Government of any programs that meet the criteria for the purposes of notification.

(iii) Local-content requirements

Question 21: (para 182)

Could Canada indicate what has been the percentage increase of outlets reserved to domestic wine in the Canadian provinces which have such outlets? Could Canada please also refer to the ratio of those "exclusive" outlets for domestic production vis-à-vis the outlets available to imported wine?

Response

Canada has bilateral agreements with major trading partners which limit the number of private wine store licenses to the number in existence when the agreements were signed - notably the Canada/US Free Trade Agreement which sets the date at October 4, 1987. There has been no increase since that time. While there is no national data immediately available on the ratio of private outlets to those available to imported products, in Ontario there are more than twice as many outlets where imported products can be sold than there are outlets selling exclusively Canadian products. Sales of wine through stores selling exclusively Canadian wines is approximately 10% of total wine sales in Ontario and British Columbia, which has not increased since 1995.

Question 22: (para 183)

Newfoundland and Labrador have reserved the right under the Agreement on Internal Trade to deny out-of-province beer and beer products access to brewers' agents. Could Canada explain the reasoning behind this prohibition? What is the aim of the on-going review of this policy?

Response

This exception was negotiated under Canada's Internal Trade Agreement and applies to all beer except Newfoundland beer. Its purpose is to facilitate the development of the provincial beer sector. It is reviewed on a regular basis with a view to potential changes should market conditions warrant. It is worthy to note that in the last five years the number of outlets available for distribution of out of province beer has doubled from approximately 55 to 110 today.

(v) Government Procurement

Question 23: (para 201)

Is federal procurement, especially the opening and submission of tenders fully available online, and are all kinds of goods and services included? Is information on municipal procurement opportunities made available online also?

Response

Notices of Proposed Procurements for goods, services, and construction services are advertised on MERX, an on-line advertising system used by the federal government of Canada. A number of provinces and municipalities also use MERX. MERX provides links to other provincial and municipal systems. The federal government does not use MERX for the opening and submission of tenders.

Part B

How often and by whom is Canadian procurement policy evaluated and updated? Is such a review undertaken systematically or only in the case of complaints/reports of infringements?

Response

The determination of the contracting policy of the Government of Canada is the responsibility of the Treasury Board (TB). The TB is a Committee of Cabinet, made up of Ministers. TB has approved and enunciated a series of policy statements that must be observed by all government departments. All federal Cabinet ministers have statutory authority to enter into contracts in order to accomplish the objectives of their respective departments. The TB, through its policy role, has an intrusive right to require all ministers and government departments to observe the TB Contracting Policy and related directives and guidelines issued by the TB. TB amends the TB Contracting Policy as and when required.

The Parliament of Canada has given a unique procurement authority to Public Works and Government Services Canada (PWGSC). This department has the exclusive right to acquire any good that any other department of government may require. In turn, authority to acquire low dollar value items, up to \$5,000 (\$25,000 in some cases), has been delegated to departments. In addition to TB contracting policies, PWGSC and most larger departments issue supplementary contracting directives and guidelines. Usually, these are more concerned with process rather than policy. They outline the various steps that must be taken within the departmental organization to satisfy the several internal checkpoints related to the procurement process.

Question 24: (para 205)

In regard to challenge procedures could Canada please explain the following:

As the Contract claims Resolution Board provides dispute resolution services for all procurement-related disputes except bid challenges is it the Canadian International Trade Tribunals' (CITT) responsibility to deal with complaints regarding bids?

Response

Paragraph 205 outlines the role of the Contract Claims Resolution Board, which is to provide dispute resolution services, with the exception of bid challenges. The CITT has the responsibility to handle complaints relating to procurements at the federal level that are by the AIT, NAFTA, CKTEA, and WTO-GPA.

Question 25: (para 206)

According to the report, “for transactions covered by the GPA, national treatment conditions apply to most federal procurement.” Could Canada please clarify whether there are exceptions to national treatment other than those exceptions contained in the general notes and notes to Annexes in the Appendix I of the GPA?

Response

Paragraph 206 states: ‘Canada grants national treatment to foreign suppliers in respect of procurement covered by the GPA and other international agreements. For transactions covered by the GPA, national treatment conditions apply to most federal procurement, subject to agreed thresholds of SDR 130,000 for goods and services and SDR 5 million for construction contracts.’

Canada fully complies with its obligations under the GPA. The national treatment obligation of the GPA is applied to all procurement covered by the GPA. The sentence in the Secretariat report would be better stated if the word ‘most’ were to be omitted.

Question 26: (para 209)

Does the term “Canadian suppliers” include foreign-owned companies established in Canada and how does the AIT ensure equal market access conditions to such companies in comparison with domestically owned companies?

Response

Article 518 of the AIT defines “Canadian supplier” as a supplier that has a place of business in Canada. As long as foreign-owned companies meet this definition, they would have the same access as Canadian-owned firms for any procurement opportunity restricted to “Canadian suppliers”.

Question 27: (para 213)

Can Canada please explain the large number of complaints made to the CITT from foreign-owned companies based in Canada and what were the main complaints raised?

Response

In fiscal year 2001/2002, 39 procurement complaints were accepted for inquiry by the CITT, a very small number. Canada does not have any statistics on complaints from foreign-owned companies. Complaints relate to various aspects of the procurement process although there have been no complaints made on the basis of discrimination against a supplier because they are foreign owned.

Question 28: (para 214)

The discriminatory practices currently exercised against foreign suppliers such as offering financial incentives to small and medium sized domestic suppliers to encourage them to make bids (for example through the Atlantic Canada Opportunities Agency) lead to a significant decrease in the value for money of the goods and services procured and a high additional cost to federal expenditure. Are there any efforts being made to eradicate such harmful, distortionary practices?

Response

Where Canada is committed to open procurement under the trade agreements, suppliers from member countries may bid as specified in those agreements. Where commitments have not been made,

Canada retains the right to apply domestic preferences. Information on any such requirements is always contained in the bid documents.

Canada's Treasury Board Contracting Policy Manual identifies Canada's policy objective as follows: 'The objective of government procurement contracting is to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.'

Canada strives to contract in a manner that will ensure the pre-eminence of operation requirements, while respecting its international obligations.

Question 29: (para 215)

Canada has stated that "it is prepared to table an offer at the sub-central level if Members are prepared: (1) to include sectors of priority to Canadian suppliers, for example, in the steel and transportation areas; and (2) to agree to circumscribe the use of small business and other set asides in a manner that, while not precluding their use, would provide an acceptable security of access to suppliers from all Parties." The European Community has opened the transport sector to certain GPA Parties and does not have any preferences for small and medium-sized enterprises. Could Canada please explain the apparent inconsistency in its position given that it has refused to enter into negotiations with the European Community with respect to entities at the sub-central level?

If the reason for not offering entities at sub-federal level is the existence of restrictive and discriminatory measures at sub-federal level in one GPA Party, why does Canada refuse to negotiate reciprocal access with the remaining GPA Parties?

Response

Paragraph 215 fully reflects Canada's position, which has also been stated in the WTO Committee on Government Procurement. Canada will only consider sub-federal coverage if other parties are prepared to include sectors of priority interest to Canadian suppliers, such as steel and transportation, to agree to circumscribe the use of small business and other set asides, and to agree to eliminate other discriminatory measures.

Canada is an active member of the ongoing GPA Review which has three goals: simplification of the text, removal of discriminatory provisions, and improved coverage. We remain committed to the process and seek a balance of concessions between Parties of the GPA as negotiations proceed. We believe it is in the best interests of all GPA Parties to work together in the GPA to achieve the goals of the Review.

Question 30: (para 216)

Could Canada indicate what percentage of provincial government procurement is still restricted to local bidders? How has action under the Agreement of Internal Trade (AIT) helped reducing this percentage?

Response

The Ontario government does not direct ministries and agencies covered under its directives to offer preferences based on origin of supplier. One exception is with regards to steel products, to mirror preferences found in the US.

No data are available on the percentage of provincial government procurement restricted to local bidders where "local" is defined as "within the province or territory". The Procurement Chapter of the Agreement on Internal Trade calls for all provinces as well as the territories (except for Nunavut) and the federal government to consider bids from suppliers across Canada on an equal basis. As a

result, the provincial procurement market has become more competitive though no data are available to gauge the extent of this change.

Part B

This paragraph also refers to the fact that the similar access conditions granted to other Canadian suppliers for provincial procurement falling under the scope of the AIT “do not extend [...] automatically to procurement from foreign suppliers”. Could Canada indicate whether there are any cases of provinces granting access to their government procurement markets to foreign bidders?

Response

Since November 2001, the Province of Quebec has had a government procurement agreement with New York State. This agreement covers goods, services, and construction contracts.

Regarding the procurement of goods, the Alberta Government's Central Procurement Agency maintains no differential treatment policy with respect to the suppliers of goods from inside or outside of Canada. Current Alberta practices allow for foreign suppliers of goods to bid on tenders issued by Alberta's Central Procurement Agency. Like Canadian suppliers, foreign suppliers must meet all the terms and conditions of the tender to be deemed a qualified bidder. The Central Procurement Agency receives bids from time to time from foreign suppliers of goods as well as some information technology service providers and treats their bids as they would those received from Canadian suppliers.

The procurement of services is carried out in a decentralized environment whereby the Central Procurement Agency encourages the same open, fair and competitive process with respect to Alberta Government service contracts. The Central Procurement Agency is not aware of any complaints from foreign bidders with respect to market access issues involving Alberta government procurement.

(vi) Intellectual Property

Question 31: (para 236)

Could Canada please further elaborate on the grounds for amending Section 31 of the Copyright Act on compulsory license applicable to retransmission of copyright protected works?

Response

The amendments to Section 31 were part of a bill to amend the *Copyright Act*, passed in Parliament on December 2002 and expected to be proclaimed into force in the early months of 2003. Section 31 sets out the compulsory licence applicable to the retransmission of copyright protected works in signals broadcast over the air by television and radio stations. The new bill aims to clarify that distribution systems such as cable and satellite may continue to retransmit over-the-air radio and television signals by paying royalties and respecting other provisions in the *Copyright Act*. The bill also excludes Internet-based retransmission of broadcast signals from compulsory licensing regulations unless the Canadian Radio-television and Communications Commission (CRTC) specifically adapts its regulatory framework to accommodate such transmissions.

Question 32: (para 237)

Could Canada please refer to the objectives and the IPRs protected in the envisaged second Intellectual Property Law Improvement Bill?

Response

The IP Improvement Bill proposes non-controversial, administrative amendments to the Patent, Trade-marks and Industrial Design Acts. These are largely housekeeping changes intended to modernize these Acts. This bill does not affect substantive protection or the scope of IPRs.

Trade Policies in Selected Sectors

Telecommunication services

Question 33: (para 74)

The EU welcomes the review of foreign ownership rules in the Canadian telecommunications sector announced by Minister Alan Rock in November 2002. The EU would be interested in an explanation by the Canadian Government of this initiative.

Response

Canada's Telecommunications Act requires that telecommunications common carriers be Canadian controlled and limits direct investment to 20% of the voting shares. The limit on the voting shares for holding companies is 33.3%. The maximum investment by foreign entities in an operating company is 46.7% i.e., 20% of the operating company and 26.7% of the holding company (33.3% of the remaining 80%).

The Minister of Industry announced on November 19, 2002 that he is seeking the views of Canadians on foreign investment restrictions in the telecommunications industry and that he had asked the Chair of the House of Commons Standing Committee on Industry, Science and Technology to undertake a review. (Further details can be found online at <http://www.innovationstrategy.gc.ca/cmb/innovation.nsf/MenuE/Invest00>)

In this regard, the House of Commons Standing Committee on Industry, Science and Technology announced on December 11, 2002 that it would 'review federal laws that restrict foreign participation in Canada's telecommunications sector'. The Committee concluded hearings on February 27, 2003. A report from the Committee to the Government is expected in the spring of 2003. The Government will then decide on what action, if any, it might wish to take.

Maritime Transport

Question 34

Could Canada please indicate whether she is ready to expand the coverage of her GATS commitments on maritime transport (i.e. coasting trade) in the on-going negotiations and under which conditions?

Response

With respect to the on-going GATS negotiations, Canada intends to submit its initial offer of market access commitments to its WTO trading partners within the prescribed timeline of March 31, 2003, as set out in paragraph 15 of the Doha Ministerial Declaration. Any potential extension of Canada's GATS commitments in the area of maritime transportation services will be addressed by the initial market access offer.

Air Transport

Introduction

Question 35: (para 113)

Can Canada please confirm that the CAN\$ 160 million compensation programme for Canadian air carriers and the indemnities for third-party war-risk liability were a single, special event aid? Considering the present political situation are there any further or new plans for compensations, indemnities or special financing facilities for airlines?

Response

The compensation programme and the indemnities for third-party war-risk were a single, special event aid. The current indemnity for third party war risk ends on May 1, 2003, but there is the possibility of an extension. At the current time, there are no plans for other compensation, indemnities, or special financing for the airline industry.

Question 36

As acknowledged by the Canadian Competition Commissioner, liberalisation of the Canadian domestic air transport is the best way to ensure a competitive market for the benefit of Canadian consumers. The EU would be interested in knowing whether and how this reality will be reflected on Canada's position in GATS negotiations on air transport.

Response

At this time, Canada has no intention of opening its domestic air transport market to foreign competition. Canada believes that competition is emerging in the domestic market as new Canadian entrants and low cost carriers enter the market and expand, and this trend is expected to continue. In this regard, there is no intention to change Canada's position with respect to the inclusion of air transport services at the GATS negotiations.

CHILE

Original question in Spanish

En Canadá la comercialización de bebidas alcohólicas está regulada por consejos provinciales gubernamentales. Cada gobierno provincial controla la comprar, venta y distribución con normativas propias que difieren en cada provincia. Esto suele resultar en discriminación contra los productos importados. Por ejemplo, en la provincia de Ontario el vino importado solo puede ser vendido a público (retail) en las tiendas del LCBO (Liquor Control Board of Ontario), en cambio el producto local puede ser vendido además en los supermercados. Asimismo, los márgenes (mark ups) que aplica el LCBO son mayores para los vinos importados que los locales, afectando el precio final de los primeros y por lo tanto su atractivo en el mercado.

¿Cuál es el fundamento de las restricciones que aplica la Provincia de Ontario a la comercialización de vinos importados? ¿Piensa Canadá revisar dichas restricciones? Si es así, ¿dentro de qué plazo considera hacerlo? ¿Cual es la justificación para aplicar un margen (mark up) más alto a los vinos importados?

English translation

Question 1

In Canada, the commercialization of alcoholic beverages is regulated by provincial government councils. Each provincial government controls the purchase, sales, and distribution with its own norms that are different in each province. This usually results in discrimination against imported products. For example, in Ontario, imported wine can only be sold to the public (retail) at LCBO stores, while domestic products can be sold at supermarkets. Additionally, mark-ups applied by the LCBO are higher for imported wines, increasing retail price and reducing their attractiveness in the market.

What is the basis for the restrictions applied by Ontario for the commercialization of imported wines? Is Canada considering to review such restrictions? If this is the case, in what time-frame would these be reviewed? What is the justification for applying higher mark-ups to imported wines?

Response

The Provincial Liquor Boards (PLBs) in Canada, including the Liquor Control Board of Ontario, were established before the GATT was created, and their existence and activity is consistent with the provisions of GATT Article XVII ["State Trading Enterprises"]. In accordance with that Article, they are notified to the WTO as STEs. The PLBs operate as businesses whose decisions are based solely on commercial considerations and market forces. In Alberta, responsibility for the selection, retailing, warehousing, and distribution of liquor rests with the private sector. The alcoholic beverage-producing countries that are major exporters to Canada, including Chile, have accepted the policies of Provincial liquor agencies through various bilateral agreements. Canada's commitments under these agreements are implemented on an MFN basis.

In Ontario, supermarkets cannot sell wine. There are no plans to review Ontario's current practices at this time.

Provincial liquor boards apply a mark-up to all products they handle, whether domestic or imported. This mark-up varies by province but is typically in the range of 120%-160% of landed cost on spirits products and 60% - 120% on table wines and 30% to 100% on beer, except in Alberta where a flat mark-up per litre applies. (Landed cost = supplier cost, freight, insurance, federal customs and excise duties and taxes). This mark-up covers all provincial charges in the normal course of business including storage, distribution and taxes, except for provincial retail sales taxes in most provinces. There are usually additional fees associated with initial listing applications and may be additional levies for specific purposes (e.g., environment).

Nominal cost of service differential charges are applied by most provinces on imported products to cover the additional costs of service necessarily associated with imported products when compared to domestic products. While Provinces do not apply higher base mark-ups to imported wines than they do on domestic wines, in three Provinces (including Ontario) this cost of service differential is built into the mark-up and comprises the entire difference between provincial charges applied to imported wines over domestic wines. Please refer to Paragraph 4 (a) of Annex C-10.2 of the Canada - Chile FTA which deals with this issue.

REPUBLIC OF KOREA

II. TRADE AND INVESTMENT POLICY FRAMEWORK

Question 1: (para. 14)

To revise the penalty structure applied for infractions of the Customs Act or the Customs Tariff, the Canadian Customs and Revenue Agency (CCRA) reportedly introduced a new Administrative Monetary Penalty System (AMPS) in late 2001, which entered into force on 1 October 2002.

Has there been any specific effort to raise awareness amongst foreign exporters about the AMPS? If there has been no such effort, does Canada have any intention to make one in the near future?

Response

The Administrative Monetary Penalty System (AMPS), which was fully implemented on October 7, 2002, is a civil penalty regime that will secure compliance with Customs legislation through the application of monetary penalties. The use of monetary penalties will largely replace the use of seizure and forfeiture provisions for technical infractions. It is important to note that AMPS does not add any new obligations to comply with Customs requirements; all requirements remain the same under AMPS.

Regarding the issue of ensuring awareness of AMPS with our clients, the CCRA has been very proactive in educating and informing Canadian importers, exporters, and their service providers about AMPS. Under the Customs legislation, the domestic importer and exporter are held responsible for true, complete, and accurate Customs information. Within this context, the CCRA has emphasized the need for our domestic clients to educate their foreign suppliers about all Customs requirements.

During 2002, the CCRA made presentations on AMPS to various exporter groups in the United States, provided information to the Asia-Pacific Economic Cooperation (APEC), and responded to enquiries from individual exporters about AMPS. At the present time, there are no plans to carry on an organized outreach to educate and inform foreign exporters.

For foreign exporters who are interested in AMPS, information is available through the CCRA's web site at <http://www.ccra-adrc.gc.ca/customs/general/amps/menu-e.html>.

III. TRADE POLICIES AND PRACTICES BY MEASURE

Question 2 : (para. 60-61)

It is reported that after the safeguard investigation the CITT made determinations of serious injury on five of the nine imported steel products. The CITT provided recommendations to the government regarding measures to be taken for each product and the government is expected to respond to the recommendations soon. The lack of a codified timetable of the safeguard measures may lower the predictability and transparency of the trade system of Canada.

Does the Canadian government have any intention to codify the timetable of the application of the safeguard measures?

Response

Canada has no intention of codifying and/or legislating a timetable and/or deadline for a decision regarding the possible application of safeguard measures following an investigation.

The protection of the steel industry in Canada can be achieved in a more positive manner through a multilateral discussion forum rather than through unilateral actions like the safeguard measures. What is the view of Canada on this matter?

Canada continues to believe that efforts underway at the OECD to address global overcapacity in steel production and reduce subsidies and market access barriers is the best way to address the root cause of steel trade problems.

We were very pleased with the results with the December meeting of the High Level Group, which agreed to go forward with work on subsidy disciplines in the steel sector as a high priority.

Question 3: (para. 74)

The Report by the Secretariat indicated that the high rate of provisional duties imposed on steel products during investigations provided protection to the domestic industry for a period of about four months at the expense of the foreign supplier. In particular, Korean suppliers of cold-rolled steel sheets and hot-rolled steel sheets suffered from high provisional duties up to 68.6% and 34.2% respectively during the period of anti-dumping investigations, which ended in a no injury determination.

We are concerned that frequent initiation of anti-dumping investigations and the excessively high rate of provisional duties imposed by Canadian authorities may have served more often to restrict imports than not. What is the view of Canada on the matter?

Response

Since the conduct of trade remedy investigations in Canada is triggered by a properly documented complaint from the domestic industry, the Government is in no way responsible for the frequent initiation of investigations. However, conditions prevailing in the international market for certain products often explain the frequency of anti-dumping investigations on those products. In steel, for example, which is the object of the majority of recent Canadian investigations, there has been a growing global overcapacity, collapsing, or still recovering demand in some markets, and the continuing emergence of new participants in international trade, all of which have led to a significant surge in low priced steel imports into many countries, including Canada. These circumstances have led inescapably to an increase in trade remedy actions. As has been noted on many occasions, Canada is not alone in experiencing a trend toward more trade investigations. According to a recent WTO report, over 30 countries have anti-dumping duty orders in place against steel from 47 different countries. That is why Canada, along with many other steel producing countries, including Korea, support recent efforts within the OECD to discipline trade distorting subsidization to the steel sector.

As for the high rate of provisional duties, this is exclusively related to the circumstances of individual respondents. Canada cannot comment further without knowing the specific circumstances to which Korea refers.

Question 4: (para. 215-216)

The Report by the Secretariat stated that Canada did not table an offer in the GPA at the sub-federal level and that its provinces grant similar access conditions to procurement from the rest of Canada, but do not extend this automatically to procurement from foreign suppliers.

Has there been any progress in access to procurement from foreign suppliers since the last TPR of Canada in 2000?

Does Canada have any plan to further improve access to procurement from foreign suppliers?

Response

Paragraph 215 fully reflects Canada's position, which has also been stated in the WTO Committee on Government Procurement. Canada will only consider sub-federal coverage if other parties are prepared to include sectors of priority interest to Canadian suppliers, such as steel and transportation, to agree to circumscribe the use of small business and other set asides, and to agree to eliminate other discriminatory measures.

Canada is an active member of the ongoing GPA Review, which has three goals: simplification of the text, removal of discriminatory provisions, and improved coverage. We remain committed to the process and seek a balance of concessions between Parties of the GPA as negotiations proceed. We believe it is in the best interests of all GPA Parties to work together in the GPA to achieve the goals of the Review.

IV. TRADE POLICIES IN SELECTED SECTORS

Question 5: (para. 72-73)

According to the Report by the Secretariat, Canada has administered a steel import-monitoring programme based on the provisions of the Export and Import Permits Act and has renewed it every three years, most recently in August 2002. Pursuant to this programme, individual import permits are required for each shipment of carbon and specialty steel products. It is also stated that the issuance of the permits is automatic.

What is the main purpose of the import-monitoring programme?

If the purpose of this programme is to gain statistical data on trade in steel, then why is this programme being implemented in the form of "permits", instead of "reports"?

It is stated that permits are not required when the importer is a vehicle manufacturer. Please explain the specific reason for this exemption.

Response

The import monitoring program for steel was established to provide an early indication of general import trends in specific product categories as well as an early warning system regarding possibly dumped and/or subsidized imports that may be injuring Canadian industry. However, it should be emphasized that potential petitioners for trade remedy investigations must provide evidence of dumped and/or subsidized imports as well as evidence of injury to domestic industry. Regarding imports, actual imports as opposed import permit data, which reflects intentions to import as opposed to actual imports, is used as evidence in considering whether to initiate an investigation.

As for the administrative provisions pertaining to automotive companies, individual permits are not required on the condition that the importing companies provide a detailed report on the importations each month. Imports by automotive companies were exempted because of their longstanding administrative arrangements with Canada Customs, in which they reported entries each month, and the significant volume of importations.

Question 6: (para. 78-79)

Under the Telecommunications Act, all telecommunications facility-based common carriers must be Canadian-owned, controlled and incorporated under the laws of Canada or a Province. The Act specifically puts strict limitations on the foreign ownership of voting shares, but such provisions do

not apply to the ownership or operation of international submarine cables, nor to satellite earth stations, which can be foreign-owned.

Does that mean international submarine cables and satellite earth stations are not classified as facility-based common carriers?

Response

An international submarine cable or a satellite earth station is considered to be a “transmission facility” such that persons that own or operate these for the purpose of providing telecommunications services to the public for compensation would be a “telecommunications common carrier” for purposes of the Telecommunications Act.

Question 7: (para. 159-164)

The Secretariat reports that companies wishing to provide insurance services must be licensed by the Province’s insurance authority, and cross-border supply of unlicensed companies is not permitted. It is also reported that a federal excise tax of 10% is applicable on premiums paid to unauthorized foreign direct non-life insurers (except marine insurance) on risks within Canada, unless such insurance is deemed not to be available in Canada.

What is the purpose of putting such restrictions on cross-border supply by foreign insurers given that Canada has accepted the Understanding on Commitments in Financial Services?

What is the view of Canada on the opinion that the application of the federal excise tax to foreign insurers is a discriminatory measure?

Response

Because the Canadian regulatory regime places a significant emphasis on consumer protection (especially of unsophisticated consumers/investors), it is reasonable to have a licensing requirement for the sale of most forms of insurance.

Most Canadian provincial governments impose a sales tax on insurance sales by licensed agents and brokers. As provincial sales tax is not applied to non-resident suppliers, the resulting price difference for the consumer would put domestically licensed agents brokers at a disadvantage. The 10% excise tax is not discriminatory as it is meant to level the playing field for domestic and foreign firms licensed in Canada.

EL SALVADOR

I. DESARROLLO ECONOMICO RECIENTE

Original question

1) El comercio en ambas vías representó cerca del 80% del Producto Interno Bruto de Canadá en la primera mitad del 2002. Las exportaciones de bienes y servicios han sido el componente principal del crecimiento en los últimos años... (Párrafo 2) ¿Qué medidas adopta el gobierno canadiense para mantener estos altos niveles de exportación?

English translation

Question 1

Two-way trade represented close to 80% of GDP in the first half of 2002. Exports of goods and services have been the main component of growth in recent years. What measures has the Government adopted to maintain such high levels of exports?

Response

Canada is an open economy that has pursued trade liberalization at the bilateral, regional, and global levels. We also share geographical proximity, an integrated production system, a competitive exchange rate, and an enhanced free trade agreement with the United States. These factors coupled with strong US demand for Canadian exports have worked in favour of Canada selling relatively more and more of its output abroad, particularly to the United States.

The trading relationship with the United States dominates Canada's statistics on foreign trade. In fact, Canada-US bilateral trade flows are the greatest paired flows of any two countries in the world. We have, thus, also made other steps aimed at fostering the flow of goods and services across its borders, particularly for flows to the United States. Chief amongst the steps taken has been efforts aimed at improving the secure flow of goods and people across the Canada-US border, most notably the Smart Border Action Plan and efforts to improve border infrastructure.

PRODUCCIÓN, EMPLEO Y PRECIOS

Original question

2) Según el Informe de la Secretaría, la tasa de ahorro se incrementó de un 3,7% en el tercer cuarto del año 2001 a un 4,7% en el tercer cuarto del 2002. (Párrafo 5) ¿A que factores adjudica Canadá este incremento? ¿Existe en Canadá alguna medida para incrementar el ahorro?

English translation

Question 2

According to the Secretariat Report, savings rate grew from 3.7% in the third quarter of 2001 to 4.7% in the third quarter of 2002 (paragraph 5). What are the factors behind this growth? Is there a measure in place Canada to increase savings?

Response

In general, lower taxes and institutional measures that encourage savings lead to higher savings rates. Canada has recently implemented a large tax cut package, which lowered tax rates, changed tax brackets, and indexed exemptions and tax brackets to inflation. In addition, Canada has a system of registered savings plan, which allows individuals to save for retirement and shelter those savings, up to a limit, from income tax until their retirement.

PATRONES DE INVERSIÓN Y COMERCIO

Inversión Extranjera

Original question

3) Canadá, además de ser un país que invierte en el extranjero, es un país receptor de inversión extranjera directa (FDI). Canadá recibe una inversión significativa de portafolio y otros tipos de inversión. Continuar atrayendo la inversión extranjera se ha convertido en uno de los objetivos principales de su política económica. (Párrafo 36)

¿Cuáles son los aspectos que Canadá considera relevantes al tomar su decisión de invertir en el extranjero? ¿Cuáles otras medidas, además de incrementar las tasas de interés, toman las autoridades para atraer la inversión extranjera?

English translation

Question 3

In addition to investing abroad, Canada is a recipient of FDI. Canada receives significant amounts of portfolio and other investments. Attracting FDI has turned into one of the main objectives of its economic policy. What factors does Canada consider relevant when deciding to invest abroad? What other measures, other than increasing interest rates, does Canada take to attract foreign investment?

Response

Canadian companies invest abroad for a variety of commercial reasons. Firms also take into consideration the predictability and stability of the investment regime of the host country including such factors as the promotion of the rule of law, and the principles of fairness, transparency, and non-discrimination.

Investment Partnerships Canada (IPC), which is an agency operated jointly by Industry Canada and the Department of Foreign Affairs and International Trade, is mandated to attract foreign direct investment. An indicative list of measures and issues of key importance to Canada to attract investment can be found on the IPC website at <http://investincanada.gc.ca>, including the need to maintain a strong, open and competitive economy.

II. MARCO DE LA POLÍTICA DE INVERSIÓN Y COMERCIO

INTRODUCCIÓN

Original question

4) En la actualidad Canadá ha tomado iniciativas a nivel bilateral y regional, lo que le ha ayudado a establecer una estrategia de comercio orientada hacia afuera, sin embargo, estos esfuerzos también han creado un sistema elaborado de tarifas preferenciales y reglas de origen. (Párrafo 3) ¿A que se refiere Canadá con 'un sistema elaborado' de tarifas preferenciales y reglas de origen? ¿Qué medidas tomará Canadá para manejar este sistema elaborado de tarifas preferenciales y reglas de origen, generado por las negociaciones bilaterales y regionales?

English translation

Question 4

Currently, Canada has taken initiatives, at the bilateral and regional levels, that have assisted it to establish a trade strategy oriented outwards. However, these efforts have as well created an elaborated system of preferential tariffs and rules of origin. What does Canada mean by "elaborated system" of preferential tariffs and rules of origin? What measure will Canada take to manage the elaborated system, generated by regional and bilateral negotiations?

Response

Rules of origin are an essential element of preferential trade agreements. For each FTA to which it is a Party, Canada favours rules of origin that are transparent, simple to understand by the trading community, and simple to administer in a consistent and predictable manner. For goods that are not wholly obtained, each FTA contains an annex of detailed product-specific rules of origin based primarily on a change in tariff classification. Furthermore, each FTA establishes procedures for the administration of the rules of origin by the customs authorities in each Party, including the development of a uniform Certificate of Origin.

MARCO JURÍDICO E INSTITUCIONAL

Original question

5) Para mitigar el efecto de las diferentes políticas en el comercio interno, el Acuerdo de Comercio Interno (AIT), trata de reducir y eliminar, en la medida de lo posible, las barreras para el libre movimiento de personas, productos, servicios e inversión, dentro de Canadá. Además trata de establecer un mercado doméstico estable y eficiente. (Párrafo 7) ¿Cuáles han sido los logros y beneficios, obtenidos bajo el Acuerdo de Comercio Interno (AIT), en los temas de movimiento de personas e inversión?

English translation

Question 5

To reduce the effect of different policies on local trade, the AIT tries to reduce and eliminate as possible barriers to the movement of people, goods, services, and investment within Canada. It also tries to establish a stable and efficient (para 7) domestic market. What have been the achievements and benefits of the agreement with respect to movement of people and investment?

Response

Labour Mobility

When the Agreement on Internal Trade (AIT) came into effect in July 1995, governments agreed that workers qualified for an occupation in one part of Canada should have access to employment opportunities within that occupation in any other province or territory. To this end, the AIT: ended the requirement to live in a province or territory as a condition of employment or eligibility to practise an occupation; called for the licensing or registration of workers to be based on their competence and established a requirement to prevent undue delays in obtaining necessary certification; and aimed to reconcile differences in occupational standards for dozens of regulated professions and trades.

By July 2001, the requirements of the Labour Mobility Chapter had largely been met. Of the 51 regulated professions under consideration, regulatory bodies for 42 of them had either met or were well on their way to meeting the requirements of the Agreement. This represents 97% of the workers in these regulated professions. Progress is also being made on the nine remaining occupations.

Unlike occupations that are usually regulated by non-government bodies, trades are regulated directly by all provincial/territorial governments. Each jurisdiction determines which trades it will regulate, whether certification in the trade will be compulsory or voluntary, and what training is required. All jurisdictions have taken steps or committed to offer further recognition of qualified trades persons.

Investment

With respect to investment, the AIT ensures that Canadian firms are able to make business decisions based on market conditions rather than on discriminatory or investment-distorting government measures. Specifically, the investment provisions provide for non-discriminatory treatment of Canadian businesses regardless of where the head office is located, where the firm is incorporated or where the owners live. The AIT also prohibits the use of local content and purchasing requirements except in limited cases for regional development programs. Finally, governments have agreed not to “poach”, i.e., give incentives to an enterprise located in another province that would directly result in the relocation of that operation to its own territory.

In June 2002, governments agreed to strengthen the disciplines on bidding wars by requiring parties to refrain from engaging in bidding wars. They also agreed to some technical amendments aimed at clarifying the “Code of Conduct on Incentives”. For example, they agreed that Parties to the AIT may not provide incentives through other governments (e.g., municipalities) in order to circumvent their obligations.

Dispute Settlement

The AIT provides individuals, businesses, and governments with a dispute settlement process to resolve complaints that a government’s practices are inconsistent with its obligations.

Original question

6) Como parte del Acuerdo de Comercio Interno (AIT), el gobierno provincial acordó enfocarse en 11 sectores o instrumentos de política que ofrezcan el mayor potencial para la reducción de barreras. Un capítulo de dicho Acuerdo del sector de energía, esta todavía por completarse con el fin de facilitar la transmisión de electricidad dentro de las provincias. (Párrafo 8) ¿Ha definido el Gobierno de Canadá un plazo específico para completar el capítulo de energía en mención?

English translation

Question 6

As par of the AIT, provincial governments agreed to focus on 11 sectors or policy instruments that offer the greatest potential for reducing barriers. An AIT chapter on the energy sector is still to be completed with the objective of facilitating electricity transmission between provinces (para 8). Has the Government of Canada defined a specific timeframe to complete such chapter?

Response

Canada has not set a deadline for the completion of the Energy Chapter of the Agreement on Internal Trade.

III. POLÍTICAS Y PRÁCTICAS COMERCIALES POR MEDIDAS MEDIDAS QUE AFECTAN DIRECTAMENTE A LAS IMPORTACIONES

Regulaciones y normas técnicas

Original question

7) Otra herramienta considerada útil por Canadá para armonizar los estándares y simplificar requerimientos es la firma de los Acuerdos de Reconocimiento Mutuo (MRAs)... (Párrafo 100) Además de que el Gobierno Federal suscribe Acuerdos de Reconocimiento Mutuo con otros países, ¿existe un Acuerdo interno entre el Gobierno Federal y las Provincias, respecto a la reducción de requisitos de desempeño en los sectores y productos en los cuales se mantienen requisitos de contenido local? Cuando el gobierno central firma un Acuerdo de Mutuo Reconocimiento, ¿es este reconocido por todas las provincias?

English translation

Question 7

Another tool considered useful by Canada to harmonize standards and simplify requirements is the signing of MRAs (para 100). In addition to the Federal Government signing MRAs with other countries, is there a domestic agreement between the Federal Government and the provinces regarding the reduction of performance requirements in those sectors and products with local content requirements? When the Federal Government signs an MRA, is it recognized by the provinces?

Response

The federal government, the provinces, and the territories (except Nunavut*) signed the Agreement on Internal Trade (AIT), which came into effect in 1995. The AIT includes provisions dealing with performance requirements and local content. In particular, the Investment Chapter (Six) of the AIT prohibits the use of local content and purchasing requirements except in limited cases for regional development programs.

* Nunavut was created after the AIT came into effect. Nunavut is now considering whether to become a signatory to the AIT.

Under the Canadian constitution, the provinces have exclusive legislative jurisdiction in a number of areas. As a matter of practice, when it negotiates international treaties touching on areas of provincial jurisdiction, the federal government consults with the provinces to ensure that their views and interests are taken into account.

Original question

8) Entre el periodo comprendido entre el año 2000 y mediados de 2002, Canadá realizó 64 notificaciones de nuevas regulaciones técnicas a la OMC. (Párrafo 101) Además de las notificaciones de estas regulaciones técnicas, ¿son notificados ante la secretaría de la OMC los reglamentos técnicos emitidos por las provincias canadienses? ¿Existe un catalogo consolidado de todos los reglamentos técnicos emitidos por las provincias canadienses? ¿Cuál es la dirección electrónica en la cual se puede consultar?

English translation

Question 8

Between 2000 and mid-2002, Canada made 64 notifications of new technical regulations to the WTO (paragraph 101). In addition to these notifications, are technical regulations issued by provinces notified to the Secretariat of the WTO? Is there a catalogue of all technical regulations issued by the provinces? On which website is it available?

Response

Technical regulations issued by the provinces are not notified as such to the Secretariat of the WTO. No catalogue of all technical regulations issued by the provinces exists. Some of the provinces, however, do have some mechanisms in place for providing notification; *i.e.*, the province of Quebec publishes proposed legislation in the official Gazette of Quebec (<http://publicationsduquebec.gouv.qc.ca/home.php>), and the Government of Ontario has a process of consultation for proposed regulatory changes (environmental regulations) in its Environmental Registry (http://204.40.253.254/samples/search/Ebrquery_REG.htm).

MEDIDAS QUE AFECTAN LA PRODUCCIÓN Y EL COMERCIO

Compras Gubernamentales

Original question

9) Con relación a las compras gubernamentales, se menciona que el 89.8% de los contratos realizados fueron adjudicados por métodos competitivos y el 10.2% fueron adjudicados por métodos no competitivos. (Párrafo 199)

¿A que se refieren con los términos métodos competitivos y métodos no competitivos? ¿Cuales modalidades de contratación contemplada en las regulaciones canadienses se consideran competitivas y cuales se consideran no competitivas?

English translation

Question 9

In relation to government procurement, it is mentioned that contracts representing 89.8% of the total value were allocated through competitive methods and 10.2% allocated in a non-competitive fashion. (Paragraph 199) What do you mean by competitive methods and noncompetitive methods? What modalities of procurement in Canadian regulations are considered competitive and non-competitive?

Response

Competitive methods involve contracts where the process used for the solicitation of bids enhances access, competition and fairness and assures that a reasonable and representative number of suppliers are given an opportunity to bid by:

Either

(1) by giving public notice, using electronic bidding methodology, possibly supplemented by traditional bidding procedures, of a call for bids for a proposed contract or of an intention to award a contract to a pre-identified contractor in accordance with limited tendering reasons set out in the trade agreements,

Or

(2) by giving public notice, using traditional bidding procedures (such as a suppliers' list, etc.) and in a manner that is consistent with generally accepted trade practices, of a call for bids for a proposed contract, and where,

In both situations:

a. in the case of a call for bids, the lowest bid or the bid that offered the best value, as set out in the evaluation criteria in the bid solicitation and as determined by the contracting authority, was accepted;

b. in the case of a call for bids where only one bid, compliant with mandatory criteria set out in the bid solicitation was received, fair value to the Crown, as determined by the contracting authority, was obtained;

Non-competitive methods refer to any contract for which bids were not solicited or, if bids were solicited, the conditions of a competitive contract were not met.

Original question

10) Dentro de la sección de Compras Gubernamentales, se hace referencia al margen de preferencia no mayor del 10% otorgado en las contrataciones realizadas bajo AIT y para todas las contrataciones no cubiertas en NAFTA y los Acuerdos de Compras de Gubernamentales. (Párrafo 210) Para las contrataciones en las cuales se otorga un margen de preferencia a los bienes y servicios con valor agregado canadiense, ¿Como se determina cual es el margen de preferencia a ser establecido en dicha contratación?

English translation

Question 10

Paragraph 210 cites that for procurement not covered by the GPA or NAFTA, entities covered by the AIT may accord a preference for Canadian value-added, provided the preference margin is no greater than 10%. How do you determine the margin of preference to be established?

Response

Article 504 (5) of the Agreement on Internal Trade permits federal, provincial, and territorial governments to accord a preference for Canadian value-added of up to 10%. Governments decide for themselves whether to take advantage of this provision and, if so, the level of preference to be given for Canadian value-added.

Original question

11) En esta sección, se expresa que se permite limitar la contratación a productos y proveedores canadienses cuando la entidad contratante considera que existe suficiente competencia dentro de los proveedores canadienses. (Párrafo 210) ¿Existe algún mecanismo para permitirle determinar a la entidad contratante la existencia de competencia suficiente entre los proveedores canadienses? De no existir un mecanismo a seguir por las entidades contratantes, ¿Como determinan ellas que hay suficiente competencia?

English translation

Question 11

In this section, it is also cited that there may also be a limit to tender to Canadian goods and suppliers, provided the procuring entity is satisfied that sufficient competition exists within the Canadian suppliers. (Paragraph 210) Do mechanisms exist to help the procuring entity determine the existence sufficient competition between Canadian suppliers? If no existing mechanism exist, how do these procuring entities determine sufficient competition?

Response

Where Canada is committed to open procurement under international trade agreements, suppliers from member countries may bid as specified in those agreements. Where commitments have not been made, Canada retains the right to apply domestic preferences. Information on any such requirements and how they will be applied is always contained in the bid documents.

IV. POLÍTICAS COMERCIALES POR SECTORES

TELECOMUNICACIONES Y SERVICIOS AUDIOVISUALES

SERVICIOS DE TELECOMUNICACION

Original question

12) El monopolio Teleglobe en servicios de telecomunicaciones extranjeros fue abolido en 1998. La competencia parece haber incrementado aun mas en el sector de telecomunicaciones y el costo de ciertos servicios a disminuido. (Párrafo 6) ¿En cuáles otros servicios del sector telecomunicaciones ha bajado el costo para el consumidor, además del costo reducido en las llamadas internacionales?

English translation

Question 12

The Teleglobe monopoly in telecommunications was abolished in 1998. The competition seems even to have increased in the telecommunications sector and the cost of certain services diminished. (Paragraph 6) In which services of the telecommunications sector have costs been lowered for the consumer, in addition to the reduced costs of international calls?

Response

Besides international services, competition has benefited consumers in many other areas. A recent OECD (Organisation for Economic Co-operation) publication, *OECD Communications Outlook 2003*, indicated that Canada ranks 4th in the OECD in terms of wireline telephone charges and places 6th for mobile prices. The provision of Internet services is equally competitive, contributing to Canada's ranking of 4th for dial-up Internet pricing and 1st for DSL (Digital Subscriber Loop) Internet prices. In addition, 98% of Canadian households have a telephone while broadband Internet services are available to 85% of Canadians.

SERVICIOS FINANCIEROS

Original question

13) La legislación financiera canadiense esta sujeto a revisión cada cinco años. Como un resultado de la última revisión, en febrero de 2001, el gobierno ha introducido una legislación para reformar el marco legislativo para los servicios del sector financiero. Bill C-8, la ley que estableció la

'Financial Consumer Agency of Canada' entro en vigencia en octubre de 2001. (Párrafo 133) ¿Cuales son las funciones y el rol de la "Financial Consumer Agency of Canada"? ¿El Bill C-8 está disponible públicamente?, y de ser así, ¿Adonde se puede encontrar ésta información?

English translation

Question 13

The Canadian financial legislation is subject to review every five years. As a result of the last review, in February 2001, the government introduced legislation to reform the legislative framework for the financial services sector. Bill C-8, the Act to Establish the Financial Consumer Agency of Canada, entered into force in October 2001. (Paragraph 133) What are the functions and the role of the Financial Consumer Agency of Canada? Is the copy of Bill C-8 publicly available and if so, where can this information be found?

Response

The Financial Consumer Agency of Canada (FCAC) is a federal agency working to protect and educate financial services consumers. It fulfils its mandate by:

providing consumers with information about their rights and responsibilities; and enforcing federal consumer protection laws and regulations, including the monitoring of financial institutions' business practices (known as voluntary codes of conduct) concerning small business lending and the use of debit cards.

The FCAC monitors and supervises financial institutions that are regulated at the federal level. These institutions include all banks and all federally incorporated or registered insurance, trust and loan companies and co-operative credit associations.

Further information about the FCAC can be found on its website at:
<http://www.fcac-acfc.gc.ca>.

The contents of Bill C-8 can be found online at:
http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-8/C-8_3/C-8_cover-E.html

UNITED STATES

I. Economic environment

II. Trade policy regime: framework and objectives

(2) Institutional and Policy Framework

Question 1

Section II (2) of the secretariat's report states that the Office of Consumer Affairs at Industry Canada, along with the Competition Bureau, analyzes "the impact of trade ... changes on consumers ... the Bureau aims to prevent ... monopolistic pricing and anti-competitive conduct that could cause a reduction in consumer welfare." If this is true, why do consumers pay higher prices as a result of The Government of Canada, through the Canadian Dairy Commission, setting support prices for butter and skim milk powder (SMP)?

Response

The operation of supply management in the Canadian dairy, poultry, and eggs sub-sectors is implemented using government powers to limit production by issuing production or marketing quotas to individual producers, which represent a share of the available domestic market. To achieve this, government has created agencies which also assist producers to market their products.

These arrangements generally fall outside the scope of the Competition Bureau because they are carried out by, or specifically authorised by, governments.

III. Trade policies and practices by measure

(2) Measures Directly Affecting Imports

vii. Standards, technical regulations and SPS

Question 2

Many US breakfast cereals and orange juice are fortified with vitamins and minerals. Health Canada has restricted these products on the premise that they are meal replacements and treated as drugs. Although the US company can request a temporary marketing authorization letter from Health Canada for 2-3 years to show the benefits of the product, U.S. Companies are still having problems with the process, as breakfast cereals are still prohibited. What steps are being taken to make this process more transparent and the outcome more predictable?

Response

Canada's restrictions on the import and sale of foods with added vitamins and minerals result from differences between the Canadian regulations on fortification of foods, which have been promulgated over the course of the last 40 years, and those of other countries, including the United States. Canada's regulations on fortification of foods are consistent with the Codex Alimentarius Commission's General Principles for the Addition of Essential Nutrients to Foods CAC/GL 09-1987 (amended 1989, 1991) and the U.S. Food and Drug Administration Fortification Policy (21CFR§104.20).

The sale in Canada of U.S. fortified breakfast cereals has not been restricted on the premise that they are meal replacements. Canada permits the fortification of breakfast cereals but has more controls on the extent and level of fortification than does the United States. There is no requirement in the Canadian *Food and Drug Regulations* for fortified breakfast cereals to be considered as meal replacements.

In addition, there is no requirement in the Canadian *Food and Drug Regulations* for orange juice fortified with vitamins and minerals to be treated as a drug. However, one U.S. company chose to sell calcium-fortified orange juice as a calcium supplement. All vitamin and mineral supplements are currently regulated as drugs in Canada.

In the late 1990s, recognizing industry concerns that the current regulations were too restrictive and limited consumer choice, Canada initiated a review of its policies on addition of vitamins and minerals to foods, following an established, step-wise process. Proposed policy recommendations were issued for public comment in October 1999 and an update on the status of the project with options for implementation was published for discussion in October 2002. The new Dietary Reference Intakes (DRIs) established by the Institute of Medicine of the National Academies of the United States were used as a tool in developing the options for implementation. The work to establish

the DRIs was funded for the most part by the governments of the U.S. and Canada between 1997 and 2003.

Canada's review of its policies on the addition of vitamins and minerals to foods and the subsequent development of options for implementation have been completely transparent and have incorporated ongoing consultations with stakeholders, including industry associations and individual food industries. The policy review and implementation process is intended to address industry concerns that the current regulations were too restrictive and limited consumer choice. The process is fully justified in that it has been guided by current scientific information, including that provided by the Institute of Medicine of the National Academies of the United States.

The comment period on the October 2002 discussion paper closed on January 31, 2003. Comments received from stakeholders are currently being analysed by Health Canada. The comments are available to the general public. Regulatory amendments which will allow more flexibility in the addition of vitamins and minerals to foods, while at the same time meeting public health needs and protecting the population from the harmful effects of excessive or imbalanced intakes, are anticipated in 2004.

Question 3

Canada has an application system for granting waivers for the importation of bulk produce. What measures will the Canadian government take to ensure consistency and transparency in the awarding of such waivers?

Response

The Fresh Fruit and Vegetable Regulations, under the Canada Agricultural Products Act, are designed to ensure that all fresh fruits and vegetables entering into Canada or domestic supplies comply with Federal health and safety, quality, packaging and labeling regulations.

Processors or packers are free to source their supplies from the area or supplier of their own choice, including imports, provided those supplies comply with all the requirements of the Act and the Regulations.

In circumstances when adequate quality and quantity of compliant products are not available, processors or packers may apply to the Minister for an exemption to obtain non-complying products from another province or another country. Health and safety requirements will not be waived under any circumstance.

In order to ensure consistency and transparency in the application of Ministerial Exemptions, the CFIA recently reviewed its guidelines with the aim of enhancing consistency and transparency. These are available to the public on CFIA's website:

<http://www.inspection.gc.ca/english/plaveg/fresh/meguide.shtml>.

Question 4

Section III(2)(vii) of the Secretariat's report mentions standards and conformity assessment as solutions to inter-provincial trade and regulatory obstacles. Yet, as mentioned in that section, "Technical regulations and standards continue to differ among provinces. For example, Quebec has refused to allow the process to continue by not supplying an intermediary for the dispute initiated by the provinces of Ontario, Alberta, Saskatchewan and Manitoba. What efforts are being made to align inter-provincial discrepancies regarding establishment of standards for trade in margarine?"

Response

A wide range of issues that affect the internal trade of agriculture and food goods, including standards, regulations, and technical issues, are being addressed on a regular basis by various forums – two of which are the Federal-Provincial Agriculture Trade Policy Committee (FPATPC), and the Federal-Provincial-Territorial Agri-food Inspection Committee (FPTAFIC). The FPATPC, for example, has identified margarine colouring standards as a technical barrier to internal trade, and continues to keep the matter under review with the objective of resolving the issue.

(3) Measures Directly Affecting Exports

(ii) Export Financing and other Assistance

Question 5

In section III (3)(ii) of the Secretariat's report, there is no mention of the Government of Canada (Agriculture and Agri-Food Canada, Department of Foreign Affairs and International Trade, Western Economic Diversification Canada, Canada Development for Quebec and the Atlantic Canada Opportunities Agency) Agri-Food Industry Market Strategy (AIMS) funding to foster exports. According to Agriculture and Agri-Food Canada's Departmental Performance Report for 2001/02, AIMS funding paid industry associations "C\$9.8 million in financial assistance towards numerous market development activities throughout the world." Can Canada provide an explanation for why this data was not included in the Secretariat's report?

Response

We would not want to speculate on why the Secretariat might choose to include or not to include specific issues. With respect to Agri-Food Industry Market Strategies (AIMS), Canada operates the program to encourage Canadian agri-food industries to increase exports.

(d) Export restrictions for commercial purposes (paragraph 124)

Question 6

Regarding the Softwood Lumber dispute mentioned in paragraph 124 of this report, has Canada notified any of its subsidy programs providing benefits to the Canadian lumber industry to the WTO Subsidies Committee, as required under Article 25 of the Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement)? If not, for each of the following programs please identify the form of the subsidy, subsidy per unit, policy objective, duration of the program and statistical data on the trade effects of the program:

- a) Non-Payable Grants and Conditionally Repayable Contributions from the Department of Western Economic Diversification ;*
- b) Federal Economic Development Initiative in Northern Ontario (FedNor);*
- c) Forest Renewal B.C. ;*
- d) Job Protection Commission of British Colombia;*
- e) Private Forest Development Program of Quebec;*

f) Provincial Stumpage Programs administered by the Provinces of British Columbia, Quebec, Ontario, Alberta, Manitoba, and Saskatchewan.

Response

The programmes listed by the U.S. are not subsidies and are not specific within the meaning of Article 1 and Article 2 of the SCM Agreement, respectively. Consequently, the obligation to notify does not arise.

(ii) Export financing and other assistance

(b) Export Development Canada

Question 7

This report states that the EDC's 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 reasons of exceptional risk." Please explain how this provision conforms with regulations set out in the SCM Agreement regarding export subsidies (Article 3.1(a)).

Response

EDC's Canada Account was extensively examined, from both a programme and transaction perspective, by two WTO panels, most recently in Canada-Export Credits and Loan Guarantees for Regional Aircraft (WT/DS222). The Panel found that EDC's Canada Account was not inconsistent, "as such", with Article 3.1(a) of the SCM Agreement.

(4) Measures Affecting Production and Trade

(ii) Financial and other assistance to business

(c) Selected federal measures and programs, regional assistance (paragraph 175)

Question 8

In evaluating companies that are eligible to receive loans from FedNor and the Credit Unions of Northern Ontario, is the competitiveness or commercial viability of these companies taken into consideration?

Response

Yes. Given that assistance provided is in the form of a repayable contribution, an assessment of the ability of the enterprise to repay the contribution is undertaken, as are competitive factors.

Question 9

Please explain whether financial assistance provided by the Province of British Columbia to the pulp mill of Skeena Cellulose at Prince Rupert has been notified under Article 25 of the SCM Agreement, and if not, whether the GOC plans to do so in the future. In addition, could you please also explain whether other firms or industries are (or were) eligible for similar assistance?

Response

The provincial government's financial assistance to Skeena Cellulose was not notified under Article 25 of the SCM agreement since it is considered not to fall under these notification requirements

The government's involvement in Skeena formed part of Skeena's restructuring plan under the Companies' Creditor Arrangement Act restructuring plans, which was approved by creditors and the B.C. Supreme Court in February 1998. The restructuring plan was, intended to restructure Skeena to enhance the long-term viability of the company's operations.

In 2001, the government made a priority of returning Skeena to private sector ownership. The sale of Skeena was subsequently concluded in April 30, 2002 and ownership of Skeena now rests solely in the hands of the private sector. The government has no further financial interest in Skeena (no financing, loans, loan guarantees, or ownership/investment interest).

Question 10

Please provide further explanation as to the requirements for commercial fishers to qualify for assistance under the New Brunswick Fisheries Development Board. Could you please also explain to what extent support through this program contributes to the creation or maintenance of capacity in the fisheries sector? More specifically, how are factors such as oversupply and overcapacity taken into account when determining the amount of support given to commercial fishers through this program?

Response

The requirements for commercial fishers to qualify for assistance under the Fisheries Development Board are given below:

ELIGIBILITY CRITERIA ²:

Applicants must not have any loans in arrears with the Department.

Applicant must be a certified commercial fisherman and must provide a copy of any relevant fishing licenses.

Applicants must provide a copy of their income tax returns including the statement of income and expenses of fishing for the past three years.

Applicants must pledge their licences in support of any loan provided.

An applicant who has been convicted of an offence related to illegal fishing activity within the last 5 years may not be eligible for financial assistance.

Applicant must have attempted to obtain the required financing from conventional sources such as banks or financial institutions.

In February 2002 the Department of Business New Brunswick implemented a "need criteria", as outlined in the 6th bullet above, whereby the Applicant must demonstrate that funding is not available elsewhere from conventional lenders on reasonable terms and conditions.

In addition, in order to qualify for support the Applicant must demonstrate the viability of the proposal.

The vessels considered for funding are matched to the licenses and quotas held by the fishermen, and these licences and quotas are controlled and allocated by the *Government of Canada*. Issues of supply and capacity therefore are not directly considered under this program as they fall under the purview of

² *Fisheries Development Program* guidelines (loans for commercial fishing), Department of Business New Brunswick

the federal government, which is responsible for resource management, and quota and license allocation.

It was noted that, as per the Department of Fisheries and Oceans Canada, “the Licensing Policy is an integral part of a number of federal government initiatives to restructure the commercial fisheries and lay the foundation for a fishery that is environmentally sustainable and economically viable. The objectives of the policy are to reduce capacity, improve the economic viability of participants in commercial fishing operations and prevent future growth of capacity in the commercial fishery.”³

Question 11

Based on our review of public information regarding fisheries programs, we have identified the following additional programs:

- a) Fisheries Diversification Program*
- b) Government Restrictions on Licences for Processing Plants*
- c) Subsidized loans to the Fisheries Industry*
- d) Local Processing Requirement for Shrimp*
- e) Federal and Provincial Tax Breaks for Diesel Fuel*

Please provide information regarding the following programs and explain whether they will be notified to the Subsidies Committee under Article 25 of the Subsidies Agreement.

Response

The above programs or initiatives have not been notified because it is considered that they do not fall within the provisions of Article 25 of the ASCM.

Question 12

Could you please provide more information regarding requirements for companies to receive interest-free loans and other assistance under the Investissement Quebec program? For example, are Small and Medium Size Business Guarantees contingent on exportation? Also, how is it determined whether contributions provided to companies under the FAIR programme are refundable or non-refundable?

Response

L'obligation de notification des mesures spécifiques prévue à l'article 25 de l'Accord sur les subventions et les mesures compensatoires ne s'applique pas aux deux mesures mentionnées et ces mesures ne sont pas subordonnées aux résultats à l'exportation.

Le programme FAIRE vise à faciliter la réalisation de projets d'investissement et, dans les cas où une contribution gouvernementale est accordée, la contribution est généralement remboursable. Investissement-Québec peut cependant, sans excéder 10% de son portefeuille d'engagements, rendre la contribution non remboursable lorsque les retombées économiques découlant du projet d'investissement le justifient.

Le programme Garantie-PME ne s'adresse qu'aux entreprises ayant moins de 100 employés sur une base consolidée ou moins de 10 M \$CA de chiffre d'affaires. Pour l'essentiel, il s'agit d'une garantie de remboursement d'au plus 80% de la perte éventuelle que pourrait subir une institution financière après

³ From the Fisheries and Oceans Canada website: <http://www.glf.dfo-mpo.gc.ca/fm-gp/rm-gr/lic-dp/index-e.html>

réalisation de ses garanties en cas de non remboursement d'un prêt par l'entreprise. Des honoraires de garantie variant de 1% à 2,25% du solde du prêt, selon le risque, et une commission d'engagement de 1% sont imposés à l'entreprise bénéficiaire de la garantie d'emprunt. Ces taux sont comparables à ceux pratiqués sur le marché commercial.

Question 13

In Newfoundland and Labrador, projects in the petroleum and gas industries are "approved only if they result in sufficient local employment and purchases of goods and services produced." Please explain how these local content requirements conform with Canada's obligations under Article 3.1(b) of the Subsidies Agreement. Please also provide the level of local purchases of goods and services that is prescribed for these projects.

Response

The statements made by the U.S. are inaccurate. As per the Canada-Newfoundland Atlantic Accord, projects in the petroleum and gas industry are approved based on the economic viability of the project. The Atlantic Accord states that: "1st consideration shall be given to services provided from within the province and to goods manufactured in the province, where those services and goods are competitive in terms of fair market price, quality and delivery".

There is no prescribed level of local purchases of goods and services for these projects.

This requirement does not conflict with Canada's obligations under Article 3.1b of the WTO Agreement on Subsidies and Countervailing Measures.

(iv) Intellectual Property Rights

Patents

Question 14

Regarding the recent decision of the Canadian Supreme Court that "higher life forms" are not patentable, can you please explain the scope of this decision. For example, could microorganisms within the meaning of TRIPS Article 27(3)(b) be found to be "higher life forms" within the meaning of that decision?

Response

In Canada, an innovation is patentable only if it comes within the term "invention" as defined in the *Patent Act*, and fulfills the patentability criteria: novelty, non-obviousness and utility. The Canadian *Patent Act* does not distinguish between the patentability of various life-forms. Jurisprudentially, in the recent Supreme Court of Canada decision on the *Harvard Onco-mouse* case, it was held that a higher life form, such as a genetically-modified mouse, was not an invention within the meaning of the current *Patent Act*.

In the recent Supreme Court of Canada decision on the *Harvard Onco-mouse* case, it was held that a higher life form, such as a genetically-modified mouse, was not an invention within the meaning of the current *Patent Act*.

With regard to lower the life forms, the majority of the Supreme Court stated:

"The patentability of lower life forms was not at issue before this Court, and was in fact was never litigated in Canada. In *Abitibi*, *supra*, the Patent Appeal Board, the Commissioner concurring,

rejected the prior practice of the Patent Office and issued a patent on microbial culture that was used to digest, and thereby purify, a certain waste product that emanates from pulp mills. [...The Board determined that]:

...this decision will extend to all micro-organisms, yeasts, moulds, fungi, bacteria, actinomycetes, unicellular algae, cell lines, viruses or protozoa; in fact all new life forms which are produced *en masse* as chemical compounds are prepared, and are formed in such large numbers that any measurable quantity will possess uniform properties and characteristics.”

It is accepted in Canada that lower life forms are patentable.

The Supreme Court’s decision regarding patenting of higher life forms is relatively narrow - restricting itself to higher life forms. Other biotechnological inventions such as those relating to genetic inventions were not considered by the court.

Question 15

We are concerned about the protection biotechnology-related inventions in Canada because of this decision. Does Canada have any current plans to address these matters in the legislature?

Response

In the recent Speech from the Throne, the Government of Canada committed itself to adapting its intellectual property framework to enable Canada to be a world leader on emerging issues such as multicellular inventions.

The Government of Canada will be acting soon in response to the Supreme Court of Canada’s *Harvard Onco-mouse* decision. It will be consulting Canadians and the Canadian Biotechnology Advisory Committee. In addressing the challenge raised by the *Harvard Onco-mouse* decision, the Government of Canada will continue to seek the right balance between fostering innovation, encouraging the diffusion of knowledge and protecting the values of Canadians.

It is worth repeating that the Supreme Court’s decision regarding patenting of higher life forms is relatively narrow - restricting itself to higher life forms. Other biotechnological inventions such as those relating to genetic inventions were not considered by the court at all. The Canadian Intellectual Property Office’s practices regarding what subject matter is patentable has not changed as a consequence of this decision.

Copyright and Related Rights

Question 16

What is the status of ratification to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty? As you are aware, these two Treaties entered into force nearly a year ago, and have 40 and 39 members, respectively. It is of utmost importance for the United States to be able to welcome Canada to these Treaties in the near future.

Response

The Government is committed to bringing the Copyright Act into conformity with the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty once the issues involved are thoroughly analyzed, subject to appropriate consultations. That process is part of the short-term agenda for Canada's copyright reform.

Question 17

While Canada continues to make progress on resolving the outstanding issue of national treatment of U.S. artists in the distribution of proceeds from Canada's private copying levy and its "neighboring rights" regime, what is the status of this issue currently?

Response

Canada's private copying levy and our neighbouring rights regime are in conformity with our national treatment obligations.

Trademarks

Question 18

We understand that Canada and the European Union are close to agreement on the phasing out of the use of certain generic terms in connection with wines and spirits in Canada. Section 11.18(3) of the Trade-marks Act of Canada lists certain generic terms for wine which can be used on labels and in trademark registrations. Section 11.18(4) of the Trade-marks Act of Canada lists certain generic terms for spirits which can be used on labels and in trademark registrations. How will this development affect the rights of trademark holders whose marks incorporate these generic terms?

Question 19

Related to the question above, how will this development affect the rights of trademark holders to maintain, protect, assert, and enforce their rights in these trademarks?

Response to Questions 18 and 19

Canada and the European Union are currently negotiating a bilateral agreement on wines and spirits, which includes provisions related to the protection of geographical indications in Canada. Canada has held a consultation, open to both foreign and domestic stakeholders, which considered the question of whether or not certain wine names currently deemed as generic in Canada could be removed from this list in the context of a mutually beneficial bilateral wine and spirits agreement between Canada and the European Community. Canada has received a number of comments from both domestic and foreign parties; it would not be appropriate to comment on the outcome of these consultations at this point in time as the bilateral negotiation is ongoing.

IV. Trade policies by sector

(2) Agriculture

(ii) Main forms of Support

Question 20

Section IV (2)(ii) of the Secretariat's report states that total payments under marketing and trade programs amounted to C\$81 million in 2001/02. Since C\$9.8 million is purely under the AIMS program, the remaining C\$71.2 million must represent interest payments to the Canadian Wheat Board (CWB) on behalf of the Government of Canada on defaulted Credit Grain Sales debt from sovereign countries. However, according to the public accounts of Canada for 1997/98, defaulted liabilities totaled C\$6.7 billion, generating interest payments of C\$74 million to the CWB. The public accounts for Canada in 2001/02 indicate that outstanding debt in the form of defaulted grain sales was C\$7.3 billion. While interest earnings from the GOC to the CWB were not reported in the

2001/02 public accounts of Canada, it is likely more than the remaining C\$71.2 million. We request that Canada substantiated this amount, which we would have expected to be in the range of C\$80-85 million range. Can Canada explain in detail why this discrepancy occurred and what they are doing to alleviate the problem?

Response

The \$81 million for marketing and trade in 2001/02 cited by the Secretariat does not include any amount for reduction of foreign debt owed to the Canadian Wheat Board (CWB) and renegotiated at the Paris Club.

Debt relief granted has no relation to the calculations outlined in the question.

(iv) Export support

Question 21

Could you please explain how Canada plans to implement the Appellate Body decision of December 2002 regarding Canada's CEM scheme and continued operation of Special Milk Class 5(d)?

Response

On December 20, 2002, the WTO Appellate Body ruled that Canada was found to be breach of its WTO obligations for providing export subsidies through its dairy export practices (a combination of the supply of commercial export milk and the operation of Special Milk Class 5d) above its WTO quantity commitment levels. On January 17, 2003 the WTO Dispute Settlement Body adopted the "WTO Dairy" Appellate Body and Compliance Panel reports.

Detailed trilateral consultations with New Zealand and the United States are being conducted on compliance issues. The various provincial commercial export milk mechanisms were shut down as of December 31, 2002. Canada is also removing, through re-regulation at the provincial (and ultimately federal) level, the various steps taken to establish the various commercial export milk mechanisms. This process varies province-by-province. It is dependent upon the regulatory framework in each province and the associated need for public consultation with industry stakeholders. As of February 11, 2003, five provinces have re-regulated commercial export milk (Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Ontario). It is expected that the re-regulation process in the remaining provinces can be completed by March 31, 2003.

(3) Textiles and Clothing

(ii) Trade policy developments

Question 22

Please provide additional details regarding the C\$3 million in provincial assistance provided to a knit and dye plant located in Drummondville, Quebec under Investissement Quebec. Please indicate whether Canada has notified this program to the Subsidies Committee and whether the assistance provided by Investissement Quebec, Economic Development Canada, or the local Drummondville government is contingent upon export performance.

Response

Une aide de 3 M \$CA a été versé à l'entreprise dans le cadre du programme FAIRE (voir plus haut) . l'investissement totalisait 50 M \$CA. Ce programme n'était pas assujéti à l'obligation de notification en vertu de l'article 25 de l'Accord sur les subventions et les mesures compensatoires .

L'assistance donnée à cette entreprise à Drummondville n'était pas subordonnée aux résultats à l'exportation.

(4) Steel

Question 23

Please explain how financial assistance provided by federal, provincial and municipal governments to Algoma Steel in Ontario under the Companies' Creditors Arrangement Act (CCAA) complies with Canada's commitments as laid out in the Subsidies Agreement. Please also explain whether this program has been notified under Article 25 of the SCM Agreement and if not, whether the GOC plans to do so in the future.

Response

Algoma Steel Inc restructured its operations under the protection of the Companies' Creditors Arrangements Act (CCAA), bankruptcy legislation which is similar to the Chapter 11 process in the United States, from April 2001 to January 2002. During this restructuring period, federal, provincial and municipal governments were each asked to make a contribution to this restructuring effort. Each government ultimately decided to provide some measure of assistance.

The federal government provided Algoma with a \$50 million loan guarantee for a period of two years, based on commercial terms with Algoma paying a guarantee fee. The Province of Ontario, through the Ontario Pension Guarantee Fund, agreed to the firm's restructuring of its pension obligations that largely removed from the firm's books the pension obligation for its current retirees. The City of Sault Ste Marie agreed to forego certain taxes owed to it.

Canada is currently working on updating its subsidy notification made in June 2002 to the Committee on Subsidies and Countervailing Measures. The programs benefiting Algoma would be taken into consideration in the preparation of that notification. For the sake of transparency and in response to the question from the U.S., Canada is making available here to the Members a copy of a paper which Canada has submitted to the OECD and which outlines the circumstances of the Algoma assistance package.

The paper is contained in OECD web site (SG/Steel(2002)20/3).

(5) Telecommunication and Audiovisual Services

(iii) Audiovisual services

Question 24

What are Canada's plans with regard to the reduction of foreign equity limits in telecom and cable TV?

Response

Canada 's Telecommunications Act requires that telecommunications common carriers be Canadian controlled and limits direct investment to 20% of the voting shares. The limit on the voting shares for holding companies is 33.3%. The maximum investment by foreign entities in an operating company

is 46.7%, i.e. 20% of the operating company and 26.7% of the holding company (33.3% of the remaining 80%).

The Minister of Industry announced on November 19, 2002 that he is seeking the views of Canadians on foreign investment restrictions in the telecommunications industry and that he had asked the Chair of the House of Commons Standing Committee on Industry, Science and Technology to undertake a review. (Further details can be found online at <http://www.innovationstrategy.gc.ca/cmb/innovation.nsf/MenuE/Invest00>)

In this regard, the House of Commons Standing Committee on Industry, Science and Technology announced on December 11, 2002 that it would 'review federal laws that restrict foreign participation in Canada's telecommunications sector'. The Committee concluded hearings on February 27, 2003. A report from the Committee to the Government is expected in the spring of 2003. The Government will then decide on what action, if any, it might wish to take.

In a separate process, the Standing Committee on Canadian Heritage is examining foreign ownership of broadcasting undertakings as part of its comprehensive review of broadcasting in Canada.

Question 25

What is Canada doing to ensure non-discriminatory access to cable TV networks by Internet service providers?

Response

The Canadian regulatory regime established by the Canadian Radio-Television and Telecommunication Commission is non-discriminatory and fair for all industry participants. There is no "discriminatory access" to cable networks in Canada.

Question 26

Apart from television programming, Canada also has several regulations in the audiovisual sector that pertain to the support of the Canadian film industry. Could you please explain if any of these programs or regulations have been notified to the Subsidies Committee? If not, for each of the following programs, please identify the form of the subsidy, subsidy per unit, policy objective, duration of the program and statistical data on the trade effects of the program:

- a) *The Canadian Film or Video Production Tax Credit*
- b) *Ontario Film and Television Tax Credit*
- c) *Ontario Production Services Tax Credit*
- d) *Ontario Computer Animation and Special Effects Tax Credit*
- e) *Ontario Interactive Digital Media Tax Credit*

Response

The Canadian Film or Video Production Tax Credit has not been notified to the Subsidies Committee, as film and video production are services, identifiable by the MTN.GNS/W/120.

Question 27

The GOC explained earlier in this report in paragraph 167 that the no Canadian provinces have reported to the federal government that they have subsidy programs that meet the notification requirements set out in the Subsidies Agreement. It appears as though several of the programs administered by provincial governments meet the definition of a subsidy as laid out in Article 1 of the

Subsidies Agreement. Could the GOC please explain whether the provincial programs listed above, as well as provincial programs benefiting other industries, will be notified to the Subsidies Committee under Article 25?

Response

These programs or initiatives have not been notified to the Subsidies Committee, as these programs relate to services, identifiable by the MTN.GNS/W/120.

MALAYSIA

Question 1

The Secretariat's report in para 31 noted that most of Canada's trade is with the United States, with export share rising from 79% to 87% in 2001. In comparison, trade share with other countries was not maintained but has fallen quite significantly. Could Canada elaborate on the factors for this decline?

Response

Canada's export share to the US has risen over the past decade along the manner suggested in the question. A corollary of this observation is that the export shares of the rest of Canada's trading partners have fallen by an amount equal to the US gains. This does not, however, imply that the level of trade with non-US partners has fallen. Indeed, exports to both the US and non-US may increase at the same time. It is only if exports to the US rise at a faster rate than exports to non-US destinations will the US share increase. This is, in fact, what has happened as Canada's merchandise exports to the US increased 130% over 1993-2002 while Canadian exports to all other sources increased by over 35%. Canada shares geographical proximity, an integrated production system, a competitive exchange rate, and a free trade agreement with the United States. These factors coupled with strong US demand for Canadian exports have worked in favour of Canada selling relatively more and more of its output to the United States.

Question 2

In para 1 of the Executive Summary, it is noted that Canada is diversifying its economic relationships through preferential trade arrangements. Is Canada adopting other measures to diversify other than through the FTA route?

Response

Canada is a strong supporter of the multilateral trading system and an active participant in the WTO negotiations.

Question 3

Canada's current account balance has improved from negative territory to positive balance since 1999, due mainly to larger trade surpluses and more stable outflows of investment outcome. Could Canada provide reasons for this and if they anticipate that this situation could be maintained in the near future?

Response

Canada shares geographical proximity, an integrated production system, a competitive exchange rate, and a free trade agreement with the United States. These factors coupled with strong US demand for Canadian exports have worked in favour of Canada selling relatively more and more of its output to the United States. As goods exports have expanded faster than imports, Canada's current account surplus for goods and services has grown (Canada runs a small but stable services deficit). Expansion of the goods and services surplus has, in turn, pulled the overall current account balance into positive territory, offsetting the investment income deficit noted in the question. With a strong US appetite for imported goods it is likely that the situation will be maintained over the near future.

Question 4

*In para 234 of the Secretariat report, it is noted that **higher** life-forms such as mice and chimpanzees cannot be patented. Is there a distinction in Canadian Patent law on the different life-forms?*

Response

The Canadian *Patent Act* does not distinguish between the patentability of various life forms. It only speaks to what is considered to be a patentable invention within Canada's patent regime.

In the recent Supreme Court of Canada decision on the Harvard Onco-mouse case, it was held that a higher life form, such as a genetically-modified mouse, was not an invention within the meaning of the current *Patent Act*.

With regard to lower life forms, the majority of the Supreme Court stated:

"The patentability of lower life forms was not at issue before this Court, and was in fact was never litigated in Canada. In *Abitibi, supra*, the Patent Appeal Board, the Commissioner concurring, rejected the prior practice of the Patent Office and issued a patent on microbial culture that was used to digest, and thereby purify, a certain waste product that emanates from pulp mills. [The Board determined that]:

...this decision will extend to all micro-organisms, yeasts, moulds, fungi, bacteria, actinomycetes, unicellular algae, cell lines, viruses or protozoa; in fact all new life forms which are produced *en masse* as chemical compounds are prepared, and are formed in such large numbers that any measurable quantity will possess uniform properties and characteristics."

It is accepted in Canada that lower life forms are patentable.

The practice of the Canadian Intellectual Property Office has not changed as a consequence of the recent Supreme Court of Canada decision. Based on the current definition of invention within the *Patent Act*, CIPO did not and does not allow patent claims for higher life forms.

HUNGARY

Question 1

Hungary notes that in most provinces of Canada introduction of alcoholic beverages is a state monopoly which limits the access of producers to the market.

Could Canada explain how the principle of "commercial consideration" and national treatment for imported products is implemented under the existing regulations?

Response

The detailed substance relating to the 'commercial consideration' question was given in Canada's last notification under GATT Article XVII, State Trading Enterprises, as set out below:

A. Reason or purpose for establishing and/or maintaining state trading enterprise.

In Canada, the importation of and inter-provincial trade in alcoholic beverages is governed by the federal *Importation of Intoxicating Liquors Act (IILA)*. The objective of the *IILA* relates to the control of the consumption of alcoholic beverages in Canada for the purpose of protecting public health and morals.

B. Summary of legal basis for gaining the relevant exclusive or special rights or privileges, including legal provisions and summary of statutory or constitutional powers.

The *IILA* provides the provinces, within their respective jurisdiction, with control over the sale of intoxicating liquor, and over the importation, sending, taking or transportation of such liquor into the provinces. The provinces (except for Alberta) have delegated this activity to the provincial liquor control authorities. In Alberta, responsibility for the selection, retailing, warehousing and distribution of liquor rests with the private sector. The statute expressly provides that nothing in the *IILA* forbids the importation, sending, taking or transportation of intoxicating liquor for sacramental or medicinal purposes, or for manufacturing or commercial purposes not related to the use of liquor as a beverage.

As well, under the *IILA*, an exception exists for persons licensed by the Government of Canada under the *Excise Act* to carry on the business or trade of a distiller or brewer where the intoxicating liquor is imported solely for the purpose of being used for blending with or flavouring the products of the business or trade of that person.

Description of the functioning of the state trading enterprises

A. Summary statement providing overview of operations of the state trading enterprise.

The provincial liquor control authorities deal with the importation and sale of alcoholic beverages within their respective jurisdictions. Exportation of alcoholic beverages is a private matter of beverage manufacturers.

B. Specification of exclusive or special rights or privileges enjoyed by the state trading enterprise.

The *IILA* provides the provincial liquor control authorities with the delegated authority to import alcoholic beverages in Canada.

C. Types of entities other than state trading enterprises that are allowed to engage in importation/exportation and conditions for participation.

Private traders are allowed to import if they are licensed by the Government of Canada under the *Excise Act* to carry on the business or trade of a distiller or brewer where the intoxicating liquor is imported for the purpose of being used for blending with or flavouring the products of the business or trade of that person. Alcoholic beverages may be sold through stores operated by the provincial liquor control authority or through provincially authorized private retailers or a combination of both.

The private trade determines its own criteria pertaining to exports.

D. How import/export levels are established by the state trading enterprise.

Provincial liquor control authorities purchase or permit the purchase of alcoholic beverages in line with market needs as related to such commercial considerations as price, quality, availability, marketability, transportation and other conditions of purchase or sale.

With reference to 'national treatment', wineries in the Provinces of Ontario, British Columbia and Nova Scotia are permitted to sell their wines directly to consumers at the winery where they are made and through a limited number of off site locations within the province. Distillers may also sell their distilled products at the distillery where they are made. In addition, wine sold through corner grocery stores in Quebec must be bottled in Quebec. The alcoholic beverage-producing countries that are major exporters to Canada have accepted the policies of Provincial liquor agencies through various bilateral agreements. Canada's commitments under these agreements are implemented on an MFN basis.

Imported products compete with domestic products in the PLB retail stores, and enjoy a large share of the Canadian market. By volume, imported spirits accounted for 31.2% of the market in 1999, rising to 32.4% in 2001; imported wines held 65.4% of the market in 1999, rising to 67.0% in 2001. Both the value and market share of wine and spirit imports continue to increase.

Question 2

Members have the right to protect human, animal or plant life or health. SPS measures however may not constitute a disguised trade restriction and should be used in a way that minimizes their effect on trade.

In view of this how would Canada explain that according to the experience of Hungary some risk assessment procedures have not been completed after 3-5 years?

Response

Canada is very surprised that Hungary has raised this question, as we believe that Canada has been both accommodating and responsive to Hungary's requests to export certain meat products to Canada.

Canada uses a standard questionnaire and where applicable, on-site visits, as the basis to approve third country meat inspection systems or a country's animal health status for serious diseases. This is not an unreasonable approach and is aimed at receiving information upon which to base an approval. Regrettably, many of the delays that Hungary speaks of were due to Hungary's failure to respond to Canadian requests for information and follow-up.

For example, Hungary has requested the Canada recognize it as free of Classical Swine Fever. In order to complete its review, in February 2002, Canada requested, in writing, that Hungary provide results of its 2001 survey of the commercial swine population. As of 11 March 2003, Canada had not received this material.

Similarly, in November 2002, Hungary strongly raised concerns that Canada had not responded to a February 2002 letter relating to the export of goose livers from Hungary to Canada. Upon further investigation by Hungarian officials, it was revealed that Hungary had not, in fact, forwarded the letter to Canada. Hungary sent the letter in question to Canada on November 14, 2002 and Canada provided a comprehensive response on December 12, 2002.

Canada would also note that import conditions were established in August 2001 for Hungarian salami exported to Canada.

We are not aware of any risk assessments relative to Hungary that have taken 3-5 years due to a lack of action or response from Canada.

In closing, Canada values its relationship in this area with Hungary. We will continue to be responsive and work co-operatively with Hungarian officials on these matters.

Question 3

Geographical indications are increasingly recognized as representing significant commercial value and are to be protected under Section 3 of the TRIPS Agreement. According to our information last October consultations were initiated with Canadian stake-holders about the timed phasing-out of some terms for wines and spirits that are deemed to be generic according to the sections 11.18(3) and (4) of the Trade-marks Act.

How would Canada describe its relevant policy with a view to reports that suggest that Canada intends to deregister some wine brands? Please provide detailed information on what measures Canada will take to strengthen the protection of geographical indications?

Response

The consultation referred to in question 3 is directly linked to our bilateral negotiation with the European Community on wines and spirits and was open to all interested stakeholders. The consultation considered the question of whether or not certain wine names currently deemed as generic in Canada could be removed from this list in the context of a mutually beneficial bilateral wine and spirits agreement between Canada and the European Community. Canada has received a number of comments from both domestic and foreign parties; it would not be appropriate to comment on the outcome of these consultations at this point in time as the bilateral negotiation is ongoing.

Canada complies with its TRIPS obligations on the protection of geographical indications under the current provisions of the Trade-marks Act of Canada.

INDONESIA

Question 1

Canada has successfully reduced tariff rates and liberalized almost all sectors and the average MFN tariff has declined from 7.2% to 6.8%. However, for some sectors high tariffs are still in place especially those related to the interest of developing countries such as clothing. At the same time many clothing products are still restricted by imposing quotas. We are impressed that Canada imposes double protection. Could Canada give clarification on this matter?

Response

With respect to Canadian tariffs, 51% of Canada's tariffs are applied at MFN free. Another 13% are applied at rates between free and 5%. Another 24% of Canada's tariffs are applied at between 5 and 10%. Based on 2001 imports, Canada's trade-weighted applied MFN rate is 3.5%. With respect to textiles and apparel, Canada committed to major trade liberalization for these sectors in the Uruguay Round. The MFN tariffs on these products are being significantly reduced (textile tariffs are being reduced from 16-22% in 1994 to 12-14% by January 1, 2004; for apparel from 25% to 18% by January 1, 2004).

Canada is also fully committed to the full integration of the textile and clothing sector into GATT 1994 disciplines by 1 January 2005 under the Agreement on Textiles and Clothing (ATC) and the elimination of all remaining quotas by that date. The ATC also provided a negotiated 10-year transition process to allow domestic industry to adjust - this represents a fundamental commitment Canada made to its industry.

In addition, Canada has just implemented a major market access liberalization package for LDCs (except Myanmar (Burma)) to full quota-free and duty-free treatment for almost all products of LDC origin (i.e., other than supply-managed agricultural goods), including all textile and apparel products (and apparel alone accounts for more than half of the LDC's exports to Canada). For this initiative, the rules of origin for apparel are designed to develop trade; they reflect the production capacity of LDCs, and allow LDCs to use imports of fabric and yarn originating in other LDC and developing countries (and Canada).

Canada's commitments under the Uruguay Round continue to provide improved access into the Canadian market for textile and apparel exports from developing countries.

Question 2

On page 27 of the Secretariat Report we note that Canadian producers have continued to seek protection from imports considered to be dumped and of all antidumping allegations the most are directed on steel products. Within two years (2000 and 2001) 32 new final antidumping measures were imposed. Since Canada has taken a great number of antidumping actions in a relative short time, Indonesia has a strong impression that Canada uses the Agreement on Antidumping to protect domestic industries from import competition rather than to provide remedy to offset injury from unfair competition. Please explain.

Response

The Anti-dumping Agreement is not meant to protect industries from import competition but to protect industries from unfair trade which causes material injury. Canada does not aim to conduct more trade remedy investigations in one sector in particular and does not target steel products specifically. Frequent use of the anti-dumping law is something requested by Canadian steel firms, not the Government. When its domestic industry makes a properly substantiated request, Canada will continue to conduct anti-dumping investigations on steel, as it would on any other product, in full accordance with its international trade obligations and its own domestic law.

It is important to note that in the steel sector annual import volumes for the entire year in 2002 (6.3 million tonnes) were the third highest level on record – below only the level achieved in 2000 (7.9 million tonnes) and in 1998 (6.7 million tonnes). In 2002, domestic steel consumption in Canada rose 4.2% above the levels in 2001 but imports increased by 13.5% over the same period.

Question 3

In the Report, it is very obvious that Canada will apply its Antidumping Legislation on MFN basis to all countries. Nevertheless, Canada will exclude Chile from the imposition of antidumping duty on dumped imports from Chile due to Free Trade Agreement. The questions are:

Assuming that of all sources of dumped import products, 60% are imported from Chile and the main cause of injury are products from Chile. In this context, will Canada ignore the dumped imports from Chile and the scope of investigation will be limited to other sources?

From the legal point of view, we seek to clarify whether free trade agreement can be used to justify unfair trade practices such as dumping and subsidies. And we would also like to have further clarification whether NAFTA as a free trade agreement has the same rules and disciplines, which also excludes its member from dumped imports and countervailing action.

Response

The Canada-Chile Free Trade Agreement came into effect on July 5, 1997. The Agreement precludes Parties from initiating anti-dumping proceedings against each other on a particular product as of the earlier of the date on which the product becomes tariff free in both countries or, as of January 2003. Currently, therefore, Canada cannot initiate anti-dumping proceedings with respect to goods from Chile. The North American Free Trade Agreement with Mexico and the United States does not contain this type of exemption from anti-dumping or countervail action.

Question 4

While most antidumping actions are taken against steel products (vide Table AIII.3) from almost all sources, at the same token, Canada first safeguard investigation (March 2002) was also taken to protect domestic steel industries. Most importantly, the petition of safeguard was not filed by domestic

producers and/or group of producers or association of steel producers but the Government of Canada. Since most antidumping and safeguards actions which both are different in nature are taken to protect domestic steel industries, we have a strong impression that imported steel products are target of Canada. Please explain.

Response

The Anti-dumping Agreement is not meant to protect industries from import competition but to protect industries from unfair trade which causes material injury. Canada does not aim to conduct more trade remedy investigations in one sector in particular and does not target steel products specifically. Frequent use of the anti-dumping law is something requested by Canadian steel firms, not the Government. When its domestic industry makes a properly substantiated request, Canada will continue to conduct anti-dumping investigations on steel, as it would on any other product, in full accordance with its international trade obligations and its own domestic law.

It is important to note that in the steel sector annual import volumes for the entire year in 2002 (6.3 million tonnes) were the third highest level on record – below only the level achieved in 2000 (7.9 million tonnes) and in 1998 (6.7 million tonnes). In 2002, domestic steel consumption in Canada rose 4.2% above the levels in 2001 but imports increased by 13.5% over the same period.

Questions raised by the Discussant (H.E. Mr. Stefán Hauker Jóhannesson)

Macroeconomic Environment

Question 1

How does one put one's house in order while maintaining economic growth? Canada's experience with its economic reform process would provide useful insights to other WTO Members.

Response

During the 1980s, a consensus developed among OECD nations on the combination of policies most likely to deliver sound economic performance. It was built around four key principles: trade liberalization, structural reform, fiscal prudence, and low and stable inflation. Canada has followed a policy framework based on these four key principles over the past decade and our recent economic performance shows that they do lead to better economic performance. Growth in the Canadian economy averaged 3.8% per year over the 1997-2002 period, up from only 1.5% over the 1990-1996 period. Moreover, our economy has consistently exceeded the average growth rates of the world's most industrialized countries since 1997, including over the past two years during which the world economy struggled. Both the IMF and the OECD predict that Canada's economy will outperform those of other G-7 countries again this year.

Canada made a number of accomplishments as well as sacrifices in order to make progress on all four principles. To promote free trade, Canada signed the Canada-U.S. Free Trade Agreement in 1989 and the North American Free Trade Agreement in 1994. Governments have taken steps to reduce distortions in the personal income tax system, implemented a goods and services tax to replace the outdated tax on manufacturers, introduced a \$100-million tax cut package in 2000, strengthened the incentive to work through changes to the unemployment insurance program, and made important changes to the public pension system. Fiscal policy was guided by the principle of putting the ratio of public debt to GDP on a sustainable, downward track, which implied reducing public spending and restoring fiscal health. Since 1991, monetary policy has operated with a system of inflation-control targets, creating a climate of low, stable, and predictable inflation to help smooth out fluctuations in the economy and create the best possible environment for longer-term economic growth. The success on the fiscal front, together with low and stable inflation, allowed the Bank of Canada to lower interest rates when it was necessary, and provided the government with sufficient financial resources to reduce the tax burden and invest in key areas. Only by remaining focused on the medium-term goals of macroeconomic policy can a country put its house in order and maintain economic growth in the face of global uncertainties and challenges.

Question 2

It would be desirable for Canada to diversify the geographic composition of its trade, which I presume is currently being sought in part through an expanding number of preferential trade agreements and arrangements. To what extent would Canadian authorities consider it desirable to extend this to other WTO Members, for example through tariff reductions on an MFN basis in the context of the Doha Development Agenda.

Response

The Doha Declaration states that negotiations with respect to non-agricultural market access shall aim to "reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation". It also states that "product coverage shall be comprehensive and without a priori exclusions", aiming to reduce barriers "in particular on products of export interest to developing countries." It is our goal to arrive at a result in the Doha negotiations that fully meets that

mandate. Just as certain Members wish to obtain better access to Canada for their exporters, Canadian industries have their own export interests. With good will and hard work on everyone's part, we believe we can arrive at a result that is mutually beneficial.

In the WTO agriculture negotiations, Canada is seeking real and substantial improvements in market access for all agriculture and food products through a variety of techniques.

Question 3

Canada welcomes foreign direct investment and about 50% of manufacturing production is carried out by foreign companies. Canada also actively participates in the WTO Working Group on the Relationship between Trade and Investment. In this context, would it not be time for a review of the Investment Canada Act of 1985 and of the existing restrictions on foreign direct investment?

Response

The purpose of the Investment Canada Act is to encourage investment in Canada so as to contribute to economic growth. Under the Act, significant investments such as foreign acquisitions of Canadian companies worth over \$223 million are subject to review in order to ensure 'net benefit' to Canadians. During the review process, the likely impact of the investment is assessed (e.g., the effect of the investment on economic activity, productivity, competition etc). In practice, most transactions reviewed under the Investment Canada Act proceed. The review process is relatively quick and the Investment Canada Act sets out strict time limits within which the reviewing authority must respond. This is to ensure that the legislation does not unduly delay any investment in Canada. Further information on the Investment Canada Act is available at <http://investcan.ic.gc.ca/>.

Trade Policy Regime

Question 4

The Secretariat Report highlights the reforms introduced to streamline and facilitate the import process, based on risk management, advance information, pre-approval, and self assessment in border management. For the time being, however, these reforms seem to have facilitated trade mostly with the United States, since all carriers pre-approved by late 2002 were involved in Canada-US trade transported by road. In the interest of preventing any discrimination, it would be helpful to know whether the new trade facilitation provisions apply to trade with non-US partner and, if not, when the provisions may be generalised.

Response

Many of the new initiatives being introduced by the CCRA do apply to non-US partners. The G7/Electronic One Step Import and G7 Electronic Export projects, for example, are designed to streamline and facilitate the import and export processes, and were built upon the work started by the G7 Initiative to Harmonize and Simplify Customs Procedures. These projects, slated for implementation in the summer of 2003, will coincide with a similar UK pilot, and will not be restricted to Canada/US trade.

With respect to programs with pre-approved carrier status, there are currently two such programs at the CCRA: the Customs Self Assessment (CSA) program and Free and Secure Trade (FAST). The Customs Self Assessment program is a progressive new trade option for clients who invest in compliance, and Free and Secure Trade is a harmonized commercial process, between Canada and the United States, that builds on the concepts and principles of the CSA program.

The Customs Self-Assessment program was expanded in 2002 to include goods shipped directly from Mexico to an importer who is a vehicle manufacturer within the automotive industry. In addition, given that CSA clearance processes are available to other modes, two rail companies and an air courier are now authorized under the program. Further expansion of the program is subject to evaluation; however, there are no plans for further expansion at the present time.

Question 5

Does Canada intend to reduce its high tariff peaks in such products as dairy and poultry products, textiles and clothing, and boats and ships? If so, what timeframe is envisaged?

Response

With respect to textiles and apparel, Canada committed to major trade liberalization for these sectors in the Uruguay Round. The MFN tariffs on these products are being significantly reduced (textile tariffs are being reduced from 16-22% in 1994 to 12-14% by January 1, 2004; for apparel from 25% to 18% by January 1, 2004). All quotas on clothing and textiles products are being abolished. Canada's commitments under the Uruguay Round continue to provide improved access into the Canadian market for textile and apparel exports from developing countries. In addition, since January of this year, Least Developed Countries have duty-free, quota-free access to Canada for almost all goods, the only exceptions being over-quota dairy products, eggs and poultry. This is irrespective of the outcome of the Doha negotiations, which we believe can yield additional benefits for all Members, particularly if all Members are willing to work hard and make appropriate contributions.

With respect to boats and ships, Canada continues to have concerns with subsidies that some foreign governments provide to their shipbuilding sectors. We would hope that these will be addressed during the Doha Round as well.

The level of current Canadian MFN tariffs and Canada's tariff quota regime, which includes dairy and poultry products, reflects the results of previous rounds of multilateral trade negotiations in which Canada participated. Overall, Canada has one of the world's most liberal tariff regimes. In the WTO agriculture negotiations, Canada is seeking real and substantial improvements in market access through a variety of techniques for all agriculture and food products.

Question 6

The exclusion of some members with which Canada has bilateral agreements, such as Chile, from antidumping investigations is an interesting development of Canadian trade policy. It seems to me that the application of this exclusion might, in principle, discriminate in favour of Chilean firms, which could not be investigated even if there were reasons to believe that such firms may be engaged in dumping. It would be interesting to have further details on this mechanisms, and to know if Canada is considering including this type of exclusion in future free trade agreements.

Response

The Canada -Chile Free Trade Agreement came into effect on July 5, 1997. The Agreement precludes Parties from initiating anti-dumping proceedings against each other on a particular product as of the earlier of the date on which the product becomes tariff free in both countries or, as of January 2003. Chile is the only country with which Canada has a mutual exemption from anti-dumping investigations. Respecting on-going or future regional trade negotiations, Canada is not prepared to discuss its possible negotiating positions in the context of the TPR exercise.

Question 7

New legislation adopted in Canada since its last Review includes provisions to facilitate international cooperation on competition issues. Canada has also sought to further international cooperation on competition policy through its participation in a growing number of bilateral agreements. How does Canada see the interaction between those agreements and ongoing multilateral efforts in this area?

Response

Canada views multilateral cooperation efforts and bilateral cooperation agreements as complementary.

In Canada's view, a multilateral agreement on competition policy would provide a flexible framework for cooperation. This recognizes that cooperation at the WTO is a long term and incremental process. It also means that cooperation could include a variety of activities, relating to developing institutional capacity, sharing information among competition authorities, or administering the agreement.

Any WTO provisions on cooperation, however, would not take the place of ongoing, case specific cooperation that occurs under bilateral cooperation arrangements. Multilateral cooperation would supplement, but not replace, bilateral cooperation.

Question 8

The Secretariat Report notes that local content requirements, performance or purchasing requirements continued to be maintained on a number of products, including unprocessed fish and roe herring, logs and pulpwood, and wine products to encourage local production and employment. In this respect, is Canada considering phasing out these requirements, which could constitute a source of market distortion?

Response

With reference to wine products, relevant Canadian provinces are not considering phasing out any of the province-specific local content requirements currently in place.

Where local content requirements exist, they actually have the effect of limiting the volume of wine that can be sold in the private retail outlets, due to the limited potential of grape production in Canada.

Performance and purchasing requirements are established by the Provincial Liquor Boards (PLBs) in Canada (except in Alberta). These PLBs were established before the GATT was created, and their existence and activity is consistent with the provisions of GATT Article XVII ["State Trading Enterprises"]. In accordance with that Article, they are notified to the WTO as STEs. The PLBs operate as businesses whose decisions are based solely on commercial considerations and market forces. In Alberta, responsibility for the selection, retailing, warehousing and distribution of liquor rests with the private sector. The alcoholic beverage-producing countries that are major exporters to Canada have accepted the policies of Provincial liquor agencies through various bilateral agreements. Canada's commitments under these agreements are implemented on an MFN basis.

Imported products compete with domestic products in the PLB retail stores, and enjoy a large share of the Canadian market. By volume, imported spirits accounted for 31.2% of the market in 1999, rising to 32.4% in 2001; imported wines held 65.4% of the market in 1999, rising to 67.0% in 2001. Both the value and market share of wine and spirit imports continue to increase.

Question 9

On federal and provincial financial assistance to businesses, what are Canada's views as to the circumstances that warrant the granting of government assistance and whether this may not impair efficiency in an economy otherwise largely free of policy-induced distortions?

Response To follow from the Canadian authorities.

Question 10

Will provincial procurement be included in the GPA. If so, when? Are there plans to extend the procurement disciplines in the Agreement on Internal Trade to provincial crown corporations?

Response

Discussions are underway to include the coverage of federal, provincial, and territorial Crown corporations under the Agreement on Internal Trade.

Canada is an active member of the ongoing GPA Review, which has three goals: simplification of the text, removal of discriminatory provisions, and improved coverage. We remain committed to the process and seek a balance of concessions between Parties of the GPA as negotiations proceed. We believe it is in the best interests of all GPA Parties to work together in the GPA to achieve the goals of the Review.

Question 11

With respect to intellectual property rights, an important step taken by Canada during the period under review is the amendment of Canadian patent law in 2001 to bring its legislation into conformity with a WTO Appellate Body decision concerning patent terms. Canada also signed the Patent Law Treaty, which will facilitate the harmonisation of administrative practices for processing fees. As the Secretariat Report notes that the Treaty had not yet been ratified by Canada in late 2002, what progress has been made towards ratification of the Treaty?

Response

Canada signed the Patent Law Treaty (PLT) in 2001. Canada has reviewed its patent legislation to identify what changes are required in order to be compliant with the Patent Law Treaty. Canada intends to ratify the PLT once these required changes are implemented.

Question 12

Part A: Two other issues in the area of IP protection have captured my interest. The first relates to the implementation of the WTO Panel ruling with respect to stockpiling by generic manufacturers of patented medicines, which resulted in the passing of new regulations. What is Canada's view on the effects of these new regulations after they were adopted?

Response

Former section 55.2(2) of Canada's "Patent Act" created an exception to patent infringement for third parties who wished to use a patented invention for the purposes of stockpiling articles intended for sale after patent expiry. However, s.55.2(2) was only rendered operative through the passage of subordinate regulations.

The only subordinate regulations ever passed in that respect were "The Manufacturing and Stockpiling of Patented Medicines Regulations" which allowed generic drug manufacturers to stockpile generic versions of patented drugs within 6 months prior to patent expiry.

In 2000, Canada repealed those regulations by passing "The Regulations Repealing the Manufacturing and Storage of Patented Medicines Regulations". Repeal of the regulations rendered s.55.2(2) inoperative and brought Canada into compliance with the WTO ruling on stockpiling.

As a house-cleaning measure, Canada later repealed s.55.2(2) itself with the passage of Bill S-17, "an Act to Amend the Patent Act" in 2001.

Part B: The second issue concerns the decision by the Supreme Court, in December 2002, to rule that higher life forms cannot be patented. What is Canada's assessment of the implications of this ruling?

Response

In Canada, an innovation is patentable only if it comes within the term "invention" as defined in the *Patent Act*, and fulfills the patentability criteria: novelty, non-obviousness and utility. The Canadian *Patent Act* does not distinguish between the patentability of various life-forms. Jurisprudentially, in the recent Supreme Court of Canada decision on the *Harvard Onco-mouse* case, it was held that a higher life form, such as a genetically-modified mouse, was not an invention within the meaning of the current *Patent Act*.

The practice of the Canadian Intellectual Property Office has not changed as a consequence of this decision. Based on the current definition of invention within the *Patent Act*, CIPO did not and does not allow patent claims for higher life forms.

With regard to lower the life forms, the majority of the Supreme Court of Canada stated in the *Harvard onco-mouse* case that:

"The patentability of lower life forms was not at issue before this Court, and was in fact was never litigated in Canada. In *Abitibi, supra*, the Patent Appeal Board, the Commissioner concurring, rejected the prior practice of the Patent Office and issued a patent on microbial culture that was used to digest, and thereby purify, a certain waste product that emanates from pulp mills. [...The Board determined that]:

...this decision will extend to all micro-organisms, yeasts, moulds, fungi, bacteria, actinomycetes, unicellular algae, cell lines, viruses or protozoa; in fact all new life forms which are produced *en masse* as chemical compounds are prepared, and are formed in such large numbers that any measurable quantity will possess uniform properties and characteristics.

It is accepted in Canada that lower life forms are patentable.

The Supreme Court's decision regarding patenting of higher life forms is relatively narrow - restricting itself to higher life forms. Other biotechnological inventions such as those relating to genetic inventions were not considered by the court.

Sectoral Policies

Question 13

I was very interested by Canada's new Agricultural Policy Framework and I would welcome more information on the subject. I would be particularly keen in learning how the framework will be implemented as to achieve its goals of improving the responsiveness of the agricultural sector to

market signals and global competition. On the same topic, the Government Report mentions that within the APF, Canada seeks the integration of all international agricultural activities, including enhancing cooperation with developing countries. Could Canada elaborate on this point.

Response

The Agricultural Policy Framework (APF) is an action plan agreed to by governments, the goal of which is to achieve a stronger, sustainable agricultural sector. The APF is composed of five elements: food safety and food quality; environment; science and innovation; renewal; and business risk management. One of the key commitments of the APF is making Canada a world leader in supplying high-quality and safe food produced in an environmentally responsible manner; and, to be positioned to meet the changing demands of a highly segmented world market.

Achieving this commitment will require effective collaboration within industry and between industry and government. The key vehicle that has been implemented for achieving this collaborative approach is the Value Chain Roundtable. These Roundtables bring together all components of a sector's supply chain as well as governments in order to foster dialogue and collaborate on shared goals.

In regards to the integration of international agricultural activities, and as part of fulfilling the commitments that it undertook as a signatory to the Doha Agreement, Canada is in the process of identifying and prioritizing appropriate international development projects in technical trade cooperation and trade-capacity building. Such cooperation will assist developing countries to benefit from increased trade as well as to be able to fully participate in the global trading system. Canada believes that assisting developing countries in these areas will not only strengthen the trading system itself but also support the goals of establishing an equitable trading system and appropriate international technical standards and policies.

Question 14

I would like to raise one issue not addressed in the reports -- the groundfish resource collapse in the early 1990s. I am referring in particular to the collapse of the cod stock, mainly adjacent to the coast of Newfoundland. The collapse of this important fishery sounded a warning bell to governments around the world. It would be interesting for me if Canada could shed some light on the status of the regeneration of the concerned fish stocks, what the outlook is, and what lessons could be learned from the near depletion of these fish stocks and the crisis the fishery industry faced in the affected regions.

Response

The status of the cod stocks in question is currently under review. The scientific advice used in the assessment is based on an open and transparent peer review process. This peer review is currently taking place and involves DFO scientists, international fisheries scientists and provincial representatives, as well technical experts from the industry and other organizations.

The indications to date on the status of the stocks are not promising. The Minister of Fisheries will make a decision on possible actions following recommendations made by the Fisheries Resource Council of Canada in late March. Any comment on the status of the stocks at this time would not be appropriate.

Question 15

What types of measures is Canada taking to facilitate the adjustment of the Canadian textiles and clothing industry as the deadline approaches for the elimination of all import quotas.

Response

The Government of Canada recently introduced the Canadian Apparel and Textile Industries Program (CATIP). This program will focus on projects that help our textile and apparel companies and their industry associations by strengthening marketing strategies, identifying high-potential niche markets, developing e-business capabilities, diversifying products, and by applying new technologies to improve productivity. Further information on the program can be found at www.strategis.gc.ca/catip.

In addition, the government has established a joint government-industry Working Group on Textiles and Apparel, in order to assist in identifying high-risk issues affecting the long-term competitiveness of the textile and apparel industries, and to recommend, on an ongoing basis, measures that the government might take to assist these industries in addressing these issues.

Question 16

Regarding both air and maritime transport, gradual reforms appear to focus on improving competition and reducing costs for users. It would be interesting to know if these reforms are likely to result in new proposals by Canada for liberalization in the WTO.

Response

With regard to air transport, Canadian government policy over the last decade has been moving in the direction of improving domestic competition and reducing costs for users. Domestically, the airline industry is deregulated and Canada has commercialized its airports and air navigation system. It has also largely reduced its subsidies. Internationally, Canada has been pursuing gradual liberalization through the bilateral process. At this time Canada is not planning any new proposals for liberalization in the WTO framework.

With respect to maritime transport, any proposals in the maritime sector that might be made by Canada will be tabled during the negotiations.

Question 17

In financial services, market access has been further improved in banking services, with the extension of operations permitted for foreign bank branches. Ownership restrictions in banks have also been liberalized. In this context, I wonder how these changes are likely to affect the market structure of the banking sector.

Response

Recent reforms introduced in Bill C-8 were designed to provide as much structural flexibility as possible for the industry while preserving safety and soundness and consumer protection principles. As such, it introduced a new size-based ownership regime, a new holding company option and expanded the range of permitted investments, among other measures.

The new framework is intended to facilitate joint ventures, strategic alliances and a variety of other strategic options for all federally regulated financial institutions, domestic and foreign. It is enabling, and ultimately it is up to individual institutions to determine how they will make use of that flexibility. Canada has a very competitive banking sector, with generally narrow profit margins and few untapped market niches. Nonetheless, firms view the Canadian financial system as attractive; it is stable, yet dynamic, with good opportunities for growth.

Question 18

With respect to telecommunications, where competition appears to have increased and the cost of certain services dropped, it would be interesting to know whether Canada intends to relax the remaining market access restrictions, such as Canadian domestic ownership requirements for facilities-based carriers.

Response

Canada has bound its current open and competitive regime in its current GATS schedule of commitments.

With respect to Canadian domestic ownership requirements, the Minister of Industry announced on November 19, 2002 that he is seeking the views of Canadians on foreign investment restrictions in the telecommunications industry and that he had asked the Chair of the House of Commons Standing Committee on Industry, Science and Technology to undertake a review.

In this regard, the House of Commons Standing Committee on Industry, Science and Technology announced on December 11, 2002 that it would 'review federal laws that restrict foreign participation in Canada's telecommunications sector'. The Committee concluded hearings on February 27, 2003. A report from the Committee to the Government is expected in the spring of 2003. The Government will then decide on what action, if any, it might wish to take.

Question 19

What is the proportion of agri-food exports that consists of fish and fisheries products?

Response

Canada's agri-food exports in 2002 were at \$25.7 billion, which excludes seafood products which were an additional \$4.7 billion. Thus, the total agri-food and fish exports for 2002 were \$30.4 billion, of which fish and sea products comprised 15.5%.

Question 20

What, if any, are the limits on indirect ownership of fish processing operations?

Response

Foreign ownership limitations in the fisheries sector are minimal. Concerning eligibility requirements related to the issuing of Canadian commercial fishing licences, a corporation must be at least 51% Canadian-owned to hold a licence. Canada has maintained a reservation relating to this requirement in all trade/investment agreements to which Canada is a party.

Question 21

How effective have Canada's measures been in reducing fisheries capacity in Canada?

Response

Targeted early retirement and license retirement programs in the 1990s reduced the number of license holders in the Atlantic fisheries by over 20% and also reduced the number of license holders in the Pacific salmon fishery by over 50%. The adoption of stricter licensing rules reduced the numbers even further and will limit new entry in the future. In addition to these past adjustment measures,

through the ongoing Integrated Fisheries Management Plans process, comprehensive input and output control and self-adjustment measures are in place to ensure sustainable use of fisheries resources and to help maintain a balance between fishing capacity and available resources.

Question 22

What are your views on the internal consistency of measures, especially provincial assistance to the fisheries sector versus federal capacity measures?

Response

In Canada, federal jurisdiction over the marine fisheries sector and the measures in place through Integrated Fisheries Management Plans help ensure that harvesting capacity remains in balance with available resources, regardless of any provincial programs. With regard to the processing sector, which is an area of provincial jurisdiction, both provincial and federal policies and programs now tend toward rationalization of processing capacity across different fish species.

Question 23

Given Canada's demographic trends, is Canada having problems with its pension system? What reforms have been undertaken?

Response

In addition to the general remarks made at the review by Mr. Randle Wilson, Canadian Delegation Head, here are additional information:

The following paragraph summarizes the changes to the system of pension and RRSP limits over the years, including the recent budget changes.

The system of limits for registered pension plans (RPPs) and registered retirement savings plans (RRSPs) underwent a major reform in 1990, which made them fairer and more flexible. A comprehensive limit of 18 per cent of earnings was established for all registered savings, whether in RPPs, RRSPs or both, and the carry-forward of unused RRSP room was introduced. A number of other improvements to the system were made in the mid-1990s. Most recently, the 2003 budget proposed to increase the RPP and RRSP contribution limits to \$18,000 by 2005 and 2006 respectively, with corresponding increases to the maximum pension limit for defined benefit RPPs. In addition, the budget indicated that the government would review representations to improve the savings system and, in particular, examine whether tax pre-paid savings plans could be a useful and appropriate mechanism to improve the tax treatment of savings and to provide additional savings opportunities for Canadians.

Also, page 139 of the budget provides a brief summary on securing the strength and long-term stability of the retirement income system.

Encouraging Savings by Canadians: Increasing the RPP/RRSP Limits

Private domestic savings are a critical source of capital in the economy as well as a fundamental instrument for individual Canadians to finance their retirement and meet other needs such as buying a home or supporting the education of their children. The tax treatment of savings is an important factor for the formation of private savings because it affects the after-tax return on savings and therefore the incentive to save.

In Canada registered pension plans (RPPs) and registered retirement savings plans (RRSPs) are the principal tax-assisted savings vehicles. The deferral of tax on savings in these plans reduces the tax

burden on savings and therefore increases the incentive to save. Savings in RPPs and RRSPs total over \$1 trillion and are a key source of funds for investment in the economy.

RPPs and RRSPs together form the third pillar of Canada's retirement income system, along with Old Age Security and the Guaranteed Income Supplement, and the Canada and Quebec Pension Plans. RPPs and RRSPs play a major role in assisting Canadians in planning and funding their retirement. They also reduce the costs to employers of providing compensation packages, including retirement plans, that are competitive; RPP and RRSP limits can thus be a factor in the decision of mobile, skilled workers to accept employment in Canada, and in the ability of employers to attract and retain such workers.

The ability of taxpayers to save in RPPs and RRSPs is governed by limits on the pension benefits that may be provided under "defined benefit" RPPs and on the contributions that may be made to RRSPs and "money purchase" RPPs. Setting appropriate limits on savings in RPPs and RRSPs is an important objective of public policy. However, over the years there have been successive delays in implementing planned increases in the RPP and RRSP contribution limits to \$15,500 that were first proposed in 1984. The result is that the existing RRSP contribution limit is \$13,500, and the real value of the limits in 2003 is well below their levels in 1976.

As part of the strategy to improve the tax system to encourage economic growth and job creation, and building on success in securing the first two pillars of Canada's retirement income system, this budget proposes to increase the RPP and RRSP limits. First, the currently scheduled increases in the RPP and RRSP annual contribution limits to \$15,500 will be accelerated by one year. As a result, the 2003 contribution limits for RRSPs and money purchase RPPs will increase to \$14,500 and \$15,500, respectively. These RPP and RRSP limits will then be increased in steps to \$18,000 by 2005 and 2006, respectively. Corresponding increases will be made to the maximum pension limit for defined benefit RPPs, bringing it to \$2,000 per year of service by 2005. The limits will be indexed to average wage growth for subsequent years.

The Three Pillars of Canada's Retirement Income System

Canada's retirement income system is based on three pillars:

OAS/GIS: The Old Age Security (OAS) and Guaranteed Income Supplement (GIS) programs provide a basic, minimum income guarantee for seniors.

CPP/QPP: The Canada and Quebec Pension Plans (CPP/QPP) ensure a basic level of earnings replacement in retirement for all working Canadians.

Tax-Assisted Retirement Savings: The system of private tax-assisted savings in RPPs and RRSPs encourages and assists Canadians to save for retirement to supplement their public pensions.

Through sound economic and fiscal management, the Government has succeeded in securing the strength and long-term stability of the first two pillars.

By balancing the budget, putting the debt-to-GDP ratio on a firm downward track and exercising continued prudent fiscal management, the Government has ensured that the OAS/GIS programs can be financed on a sustainable basis.

By implementing with the provinces the 1997 CPP reforms, it has put the CPP on a secure financial footing. According to the chief actuary of the CPP in his most recent actuarial report, the 9.9-per-cent contribution rate that took effect on January 1, 2003—the final step in fully implementing the 1997 reforms—should be sufficient to sustain the plan for more than the next 50 years.

Having secured the first two pillars of the retirement income system, the Government is now moving to strengthen the third pillar by increasing the RPP and RRSP limits. This budget increases the RRSP annual contribution limit to \$18,000 by 2006 and indexes it to average wage growth in subsequent years. It makes corresponding increases to limits for both money purchase and defined benefit RPPs.

The increases in RPP and RRSP limits will support savings and investment. Higher limits will also better meet the retirement savings needs of Canadians, including skilled workers and small business owners constrained by the current limits. They will also improve the ability of employers in Canada to attract and retain highly qualified personnel.

Table 5.5 Existing and Proposed RPP/RRSP Limits

| | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|--------|--------|---------|---------|---------|
| (dollars) | | | | | |
| Money purchase RPPs: annual contribution limit | | | | | |
| Existing | 14,500 | 15,500 | Indexed | | |
| Proposed | 15,500 | 16,500 | 18,000 | Indexed | |
| Defined benefit RPPs: maximum pension benefit (per year of service) | | | | | |
| Existing | 1,722 | 1,722 | Indexed | | |
| Proposed | 1,722 | 1,833 | 2,000 | Indexed | |
| RRSPs: annual contribution limit | | | | | |
| Existing | 13,500 | 14,500 | 15,500 | Indexed | |
| Proposed | 14,500 | 15,500 | 16,500 | 18,000 | Indexed |

Moving forward, it is important that the tax system continue to provide effective mechanisms to support saving. The Government has received numerous representations from individuals, researchers and businesses that Canada's tax system should be more conducive to saving. The Government intends to carefully review these representations and to conduct analysis in order to identify possible approaches for future improvements. In particular, the Government will examine whether tax pre-paid savings plans could be a useful and appropriate mechanism to improve the tax treatment of savings and to provide additional savings opportunities for Canadians.

For further information on the 2003 budget, please refer to: <http://www.fin.gc.ca/budtoce/2003/budliste.htm>

With respect to EI rates in Budget 2003, the Government had indicated that it was reviewing the issue of premium rate-setting. The budget set out the principles that the government will take into account in designing a permanent premium rate-setting regime.

Briefly, they are as follows:

- * Premium rates should be set transparently;
- * Premium rates should be set on the basis of independent advice;
- * Expected premium revenues should correspond to expected program costs;
- * Premium rate-setting should mitigate the impact on the business cycle; and
- * Premium rates should be relatively stable over time.

The government has begun consulting on how a permanent regime can best incorporate these principles. Officials will be meeting soon with key stakeholders. Interested parties can provide submissions to the government until June 30, 2003 by mail or through the web sites of the Departments of Finance and Human Resources Development.

To provide employers and employees with certainty about contribution rates until the new regime is in place, the Government is proposing to set the employee premium rate for 2004 at \$1.98, by legislation. Based on the private sector economic forecasts used in the budget, it is estimated that this rate would generate premium revenues equal to projected program costs for 2004.

Response to questions raised during the Trade Policy Review of Canada

Question 1

Members asked for more information on the Agricultural Policy Framework.

Response

See related response to Discussant Question 13 (reproduced as follows):

The Agricultural Policy Framework (APF) is an action plan agreed to by governments, the goal of which is to achieve a stronger, sustainable agricultural sector. The APF is composed of five elements: food safety and food quality; environment; science and innovation; renewal; and business risk management. One of the key commitments of the APF is making Canada a world leader in supplying high-quality and safe food produced in an environmentally responsible manner; and to be positioned to meet the changing demands of a highly segmented world market.

Achieving this commitment will require effective collaboration within industry and between industry and government. The key vehicle that has been implemented for achieving this collaborative approach is the Value Chain Roundtable. These Roundtables bring together all components of a sector's supply chain as well as governments in order to foster dialogue and collaborate on shared goals.

In regards to the integration of international agricultural activities, and as part of fulfilling the commitments that it undertook as a signatory to the Doha Agreement, Canada is in the process of identifying and prioritizing appropriate international development projects in technical trade cooperation and trade-capacity building. Such cooperation will assist developing countries to benefit from increased trade as well as to be able to fully participate in the global trading system. Canada believes that assisting developing countries in these areas will not only strengthen the trading system itself but also support the goals of establishing an equitable trading system and appropriate international technical standards and policies.

Question 2

Hong Kong, China asked about Intellectual Property Rights as they relate to music. In particular, they asked if IPRs in Canada were different/weaker for products that are not in English or French.

Response

Copyright protection is identical regardless of the language of the work. This applies to all works, including music.

Question 3

Is the anti-dumping exemption in the Canada-Chile FTA being considered for future FTAs, in particular the FTAA? (Brazil)

Response

Respecting ongoing or future regional trade negotiations, Canada is not prepared to discuss its possible negotiating positions in the context of the TPR exercise.

Question 4

Japan's written question number 6: Japan would like to point out that measures taken by some provinces for limiting the exports of logs is designed "to encourage the further processing of certain natural resources in Canada", and thus that, this is highly likely to violate Article XI of the GATT. Japan considers that the Canadian Government should "take such reasonable measures as may be available to it to ensure observance of the provisions", in accordance with Article XXIV:12 of the GATT. In this regard, has the Canadian Government already taken such measures, and if not, does the Government have any intention to do so in the future?

Response

Already provided in Remaining Response_Japan.doc (reproduced below):

We believe that the relevant provisions of provincial legislations are consistent with Canada's WTO obligations. Notwithstanding, the Government of Canada is prepared to take such measures as may be available to it to ensure that the WTO/GATT provisions continue to be observed.

Question 5

What influence will 3rd parties have with regard to smart regulation? Will Canada ensure that new regulation is WTO consistent? (EC)

Response

The current regulatory system provides an avenue for third party consultation on proposed regulations and amendments through a notice and comment period. The Government of Canada Regulatory Policy requires that any proposed regulations having an impact on trade be pre-published in the Canada Gazette for a period of 75 days. All proposed regulations and amendments are then notified to the WTO.

The Regulatory Policy also requires that departments or agencies adhere to obligations set out in international agreements, including obligations as laid out in the WTO TBT and SPS Agreements.

Question 6

How far does Canada intend to go with Air Transport liberalization? (Norway)

Response

Provided that aviation safety and security are not compromised and sufficient consumer protection exists, Canada is prepared, through the bilateral process, to incrementally and progressively liberalize the economic rules governing air services. It will do so where there is a prospect of increased air services and benefits for Canadian entities, especially Canada's air carrier industry.

Question 7

Does Canada plan to revise the restriction that an employee be employed by a company for one full year before being eligible for an intra-company transfer to Canada. (Raised by India)

Response

The 1-year prior employment requirement for an intra-company transferee is fair and reasonable. An executive, manager or specialist needs time to acquire experience and knowledge of a transferring

company's management and operations to be eligible as an intra-company transferee. The 1-year prior employment requirement is used by many GATS Members, notably India. In the current GATS negotiations, Canada has requested other Members commit to a more liberal prior employment period of one-year in the past three. Is India willing to make such a commitment?

Question 8

Canadian commercial fisheries subsidies and their consistency with the Subsidies and Countervailing Measures Agreement, Article 25. (USA)

Response

See responses to related written questions from the US.

Question 9

Chile suggested it would like a future open-skies agreement between Canada and Chile. Any reaction?

Response

Canada already has an open skies agreement with Chile. In August 2001, it was agreed that cities in both countries may be served by any number of airlines from each country. Service could be provided via any intermediate cities in third countries with transit rights, and beyond to any cities in third countries with transit rights. There are no limitations on the frequency of flights between Canada and Chile, and fares between the two countries are accepted unless the authorities of both countries are dissatisfied. These arrangements are already in force.

Question 10

On SPS, Hungary complained that the Canadian market is closed to it for bovine and swine fresh, chilled and frozen meat.

Response

Also see written response to written Question 2 from Hungary:

With respect to fresh/chilled/frozen bovine meat, Canada does not consider Hungary to be a country free of BSE. Under Canada's BSE policy, imports are permitted only from countries recognized by the Canadian Food Inspection Agency to be free of BSE. Hungary is free to formally request Canada to consider Hungary's BSE-free status, provided Hungary is prepared to provide, in a timely manner, the risk assessment information that would be required. This fundamental step would be a practical prerequisite to any further consideration of other animal health and sanitary aspects of Hungary's regulatory system for fresh or frozen bovine meat.

On fresh/chilled/frozen pork, we would invite Hungary to formally request, in writing, an approval for products it wishes to export to Canada. However, in a practical vein, Hungary has yet to provide the Classical Swine Fever data requested over a year ago. This would be an important step to any further consideration of other aspects of Hungary's pork meat system.

Question 11

What protection may Canada offer for the GI for Tokai wine? (Hungary)

Response

Canada and the European Union are currently negotiating a bilateral agreement on wines and spirits, which includes provisions related to the protection of geographical indications in Canada. Canada has held a consultation, open to both foreign and domestic stakeholders, which considered the question of whether or not certain wine names currently deemed as generic in Canada, including Tokay, could be removed from this list in the context of a mutually beneficial bilateral wine and spirits agreement between Canada and the European Community. Canada has received a number of comments from both domestic and foreign parties, it would not be appropriate to comment on the outcome of these consultations at this point in time as the bilateral negotiation is ongoing.

Question 12

The Secretariat, in paragraph 19 of its Report, mentions:

[...] The Government is a central participant in nearly all WTO activities, and has met most of its notification obligations over the period since December 2000. Exceptions include notifications on domestic support to agriculture, on subsidies, and on import licensing (Table II.2). Provinces have not notified any measures to the WTO since 1998.

The Community notes that Canada, in the previous Review, responded to a question on this issue by stating that:

“No province has indicated to the federal government that it has subsidies that are subject to the notification requirements of the SCM Agreement. Federal officials have questioned whether the provinces have fully reviewed their programmes, and are actively consulting with them in this regard.” Doc. G/SCM/N/48/CAN

Could Canada explain why Provinces still do not notify their support programmes to fisheries?

Response

The Federal Government has been engaged in on-going consultations with the Canadian provincial governments regarding subsidy notification requirements as set out in Article 25 of the Agreement on Subsidies and Countervailing Measures (ASCM). Thus far, the provinces have not advised the Federal Government of any fisheries programmes that meet the criteria for the purposes of notification.

Question 13

According to publicly available information, the province of Quebec is maintaining a whole range of support programmes for fisheries, in particular in the area of investment i.e. construction of new vessels, modernisation of vessels. Examples of these programmes are: “Programme d'appui financier à la flotte de pêche côtière”, “Programme de financement de la pêche commerciale” and “Programme de modernisation de la flotte de pêche au poisson de fond”

Overcapacity in the fisheries sector is increasingly becoming a matter of concern.

Could Canada indicate whether these programmes will continue in the future or whether they will be phased out? Has Canada quantified the total amount of subsidies, for all provinces and for all programmes, that has been granted to the fisheries sector?

Response

Il est à noter que les permis de pêche et les allocations de prises sont fonction de l'état des ressources halieutiques et que les programmes québécois n'ont pas d'influence sur le niveau de la récolte.

Il n'est pas prévu, pour le moment, de terminer ni le programme d'appui financier à la pêche côtière ni le programme de financement de la pêche commerciale, un programme de garantie bancaire pour acheter, réparer et construire des bateaux et de garantie pour les achats de contingents et de permis de pêche. Cependant, le programme de modernisation de la flotte de pêche au poisson de fond, qui s'applique depuis l'année financière 2001-2002, se termine en 2003-2004.

As indicated in the above answer, the provincial governments have not identified any fisheries programs, which meet the notification requirements under the ASCM.

Website listings on Canadian Government policies

Foreign investment in telecommunications industry

Review of foreign investment restrictions in the telecommunications industry:
<http://www.innovationstrategy.gc.ca/cmb/innovation.nsf/MenuE/Invest00>

Customs procedures

Investing in the Future: The Customs Action Plan (CAP) 2000-2004, published in April 2000:
http://www.ccr-aadrc.gc.ca/customs/general/blue_print/menu-e.html

Administrative Monetary Penalty System (AMPS):
<http://www.ccr-aadrc.gc.ca/customs/general/amps/menu-e.html>

Canada's implementation of the ATC

http://www.dfait-maeci.gc.ca/eicb/textile/wto_atc-en.asp

Contingency measures

Canadian International Trade Tribunal (CITT)
<http://www.citt.gc.ca/>

TBTs

Official Gazette of Quebec (<http://publicationsduquebec.gouv.qc.ca/home.php>)

Government of Ontario Environmental Registry
(http://204.40.253.254/samples/search/Ebrquery_REG.htm).

Government Procurement

<http://canada.justice.gc.ca/> [use "Search"]

Information on the Federal government's procurement policy, procedures, notices and circulars is available at:
<http://www.tbs-sct.gc.ca/cmp/home-accueil.asp?Language=EN>

Intellectual Property, including copyright

A Framework for Copyright Reform
<http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwGeneratedInterE/rp01101e.html>

Consultation Paper on Digital Copyright Issues
[http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwapj/digital.pdf/\\$FILE/digital.pdf](http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwapj/digital.pdf/$FILE/digital.pdf)

Consultation Paper on Application of Copyright Act's Compulsory Retransmission Licence to the Internet
[http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwapj/retransmission.pdf/\\$FILE/retransmission.pdf](http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwapj/retransmission.pdf/$FILE/retransmission.pdf)

Agreement on Internal Trade (AIT)

<http://www.intrasec.mb.ca/>

Agricultural Policy Framework (AAFC):

http://www.agr.gc.ca/puttingcanadafirst/index_e.php

http://www.agr.gc.ca/puttingcanadafirst/index_f.php

Trade Negotiations and Agreements (DFAIT):

<http://www.dfait-maeci.gc.ca/tna-nac/menu-en.asp>

<http://www.dfait-maeci.gc.ca/tna-nac/menu-fr.asp>

Trade and Economic Analysis (DFAIT):

<http://www.dfait-maeci.gc.ca/eet/menu-en.asp>

<http://www.dfait-maeci.gc.ca/eet/menu-fr.asp>

Investment Canada Act (IC):

<http://investcan.ic.gc.ca/>

Initial environmental assessment of the DDA negotiations:

<http://www.dfait-maeci.gc.ca/tna-nac/consult1-en.asp#wto>

<http://www.dfait-maeci.gc.ca/tna-nac/consult1-fr.asp#wto>

Canadian Apparel and Textile Industries Program (CATIP):

www.strategis.gc.ca/catip
