X. TAX MEASURES

Non-Resident Corporations

The United States has enacted various tax measures applicable to non-resident corporations conducting business in the United States. These measures deter Canadian life insurance corporations from doing business through branch operations. Internal Revenue Code Section 842 (b) states that Canadian companies must report a minimum amount of "effectively connected" net investment income to their branch operations. Canadian companies find these rules to be punitive and not reflective of the realities of their U.S. operations. As a result, some have moved their U.S. branch business to U.S. subsidiaries to avoid the rules.

Internal Revenue Code Section 842 (c) and regulation 882-5 provide a formula for allocating interest that is deductible by a foreign corporation for U.S. tax purposes. This differs from interest actually paid to generate income in the United States. Canadian life insurance companies are concerned that the application of this regulation will result in the disallowance for U.S. tax purposes of significant amounts of customer liability expenses on their guaranteed income certificate business. Internal Revenue Code Section 884 imposes a branch profits tax on U.S. branches of foreign corporations. Canadian life insurance companies are concerned that the computation is inconsistent with Section 842 (b) and 882 (c).

Selective Tax Measures

Selective tax measures confer subsidies in the form of special benefits to specific domestic firms, industries, activities or regions and have the potential to distort international trade. Some of the more generous selective tax measures for U.S. industries are provided through tax-deferral measures such as the Foreign Sales Corporation Program which permits the permanent deferral of income taxes on a portion of export profits. Several U.S. states provide fuel tax rebates, and property tax reductions and exemptions to agricultural land uses. By assessing agricultural lands at less than fair market value, these programs reduce operating costs for agricultural land owners by lowering property taxes.

Taxes on Alcohol

The Omnibus Budget Reconciliation Act of 1990 provided substantial excise tax exemptions for most U.S. beer and wine producers. In addition, several states also grant substantial excise tax exemptions for local producers. The cumulative effect of such measures for small New York breweries, for instance, is equivalent to a tax rebate of over $17 per barrel of beer. Canadian brewers and wineries shipping to the United States must compete against such subsidies.

Excise Tax on Recycled Halon

U.S. legislation (the Budget Reconciliation Act of 1989, s4681) provides for an exemption from U.S. excise tax for halon recycled in the United States. This denies national treatment, in a manner inconsistent with U.S. NAFTA obligations, to recycled halon imported from Canada and has the effect of restricting such imports. The application of this discriminatory measure has resulted in commercial losses for Canadian exporters.