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Register of United States Barriers to Trade

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FOREWORD

Canada and the United States are each other's principal trading partner, and have the largest two-way trading relationship in the world. In 1995, the value of goods, services and investment income flowing between Canada and the United States totalled C$454.1 billion. The bilateral relationship has been considerably enhanced through a series of trade agreements which have led to a reduction of barriers to trade and investment. Since the implementation of the Canada-United States Free Trade Agreement (FTA) on January 1, 1989, two-way trade of goods, services and investment income has grown by 83%.

On January 1, 1994, the North American Free Trade Agreement (NAFTA) was implemented and, together with the World Trade Organisation (WTO), now governs the trading relationship between Canada, the United States and Mexico. The NAFTA improves the FTA in many areas and further reduces trade barriers that affect Canadian exports to the United States. The expansion of trade with the United States has continued strongly under NAFTA. After a growth of 22% in 1994, two-way merchandise trade expanded by a further 12.5% in 1995 to C$370.7 billion. Under the NAFTA more than 30 trilateral Committees and Working Groups have been established. They are making further progress in areas such as technical standards, rules of origin, cross-border movement of persons and government procurement.

In addition to the NAFTA, Canada and the United States are partners in the World Trade Organization (WTO), which came into effect on January 1, 1995 and which has replaced the General Agreement on Tariffs and Trade (GATT) as the comprehensive, global rules-based trade organization. The WTO has assumed the full responsibility for implementing all of the Uruguay Round obligations for goods and services and has brought strengthened and improved rules and disciplines to many areas of international trade. The improved WTO dispute settlement provisions, together with the NAFTA, provide Canada with additional means to address bilateral trade barriers. The WTO work programme is aimed at building on the Uruguay Round results and achieving further trade liberalization, for instance through the current negotiations in bringing basic telecommunications within the framework of the General Agreement on Trade in Services. The WTO also provides for Ministerial Conferences at least every two years, the first of which will be held in Singapore in December 1996, to review the operations of the organization and provide guidance in terms of emerging issues in international trade.

Over the past year, Canada protected and improved access for Canadian exporters to the U.S. market through numerous consultations, negotiations and dispute settlement procedures. The following illustrates the range of issues dealt with:

- U.S. restrictions on imports of Canadian wheat were terminated in September 1995, thus restoring open Canadian access to the U.S. wheat market.

- Canada and United States are pursuing an agreement related to trade in softwood lumber with a view to avoiding litigation in this sector. Over the past fifteen years, Canadian softwood lumber exports have been subject to three separate U.S. countervailing duty investigations causing major uncertainty and disruption to the trade.

- Business travel between Canada and the United States has been greatly facilitated by the new Canada - United States Air Agreement. Since the agreement was signed in February 1995, 93 new scheduled transborder routes have been introduced, with a 28% increase in transborder seating capacity.

- Canadian and U.S. immigration and customs agencies began to implement a border accord to: promote international trade; facilitate the movement of people and goods across the border; and reduce costs.

- Canada mounted strong opposition to U.S. legislation (Helms-Burton bill) aimed at strengthening the U.S. embargo against Cuba in a manner which would adversely affect Canadian business interests. On March 12, 1996, Canada requested formal consultations with the United States on the Helms/Burton bill under Chapter 20 of the NAFTA.

- Based on the work of the NAFTA Trade Remedy Working Groups, the three NAFTA countries have been pursuing procedural changes in the administration of anti-dumping duty law, which will help to reduce the burden on exporters of trade remedy investigations.

- Canada and the United States signed the Report of the U.S./Puerto Rico-Canada/Quebec UHT (Ultra High Temperature) Milk Equivalency Study which led to the reopening of the Puerto Rican market for Canadian exports.

- NAFTA Chapter 20 consultations were pursued in relation to U.S. restrictions imposed on exports of refined sugar and sugar-containing products.

- Canadian interests were strongly defended in a NAFTA Chapter 20 dispute settlement panel established at the U.S. request to consider Canada's application of its WTO tariff equivalents to imports of U.S.-origin dairy, poultry, egg, barley and margarine products. The panel report is expected in August, 1996.

Although the vast majority of Canadian trade with the United States proceeds unimpeded, there still remain obstacles to the free flow of goods, services and investment between Canada and the United States. This Register offers an illustrative compendium of the range and complexity of barriers that Canadian business people must cope with at the federal, state and local levels. The Canadian Government is working to reduce these barriers. The Department of Foreign Affairs and International Trade will continue to monitor closely the U.S. legislative and regulatory process, assessing the implications for Canada and making representations to U.S. authorities to influence developments where market access for Canadian companies is threatened. In cases where barriers are inconsistent with U.S. obligations under the WTO or the NAFTA, Canada will pursue their elimination within the framework of the dispute settlement provisions of these agreements. In other cases, such barriers will continue to be addressed bilaterally with the United States through consultations and negotiations.

I. SUBSIDIES

Canadian producers face competition from subsidized U.S. goods not only in the Canadian market but also in the United States and other export markets. Some U.S. federal programs that affect Canadian business prospects are set out below. State and local governments also offer incentives to attract investments that might otherwise locate in Canada. The subsidy disciplines in the WTO and domestic countervailing duty law, including, the introduction of the "serious prejudice" provision in the Uruguay Round Agreement on Subsidies and Countervailing Measures, provides a recourse against U.S. subsidies which may harm Canadian interests in the United States and other export markets.

The WTO Agreement on Agriculture has a direct effect on some U.S. export support programs. Subsidies under the Export Enhancement Program (EEP), Dairy Export Incentive Program (DEIP), Sunflower seed Oil Assistance Program (SOAP), Cottonseed Oil Assistance Program (COAP) and Commodity Credit Corporation (CCC) direct sales are required to be reduced from either 1986-1990 or 1991-1992 average reference levels, totalling approximately US$930 million, to approximately US$595 million in 2001. Under the WTO Agreement on Agriculture export subsidies must be reduced by 36% in expenditure terms and 21% in volume terms from the 1986-1990 base period on a product grouping basis (e.g. wheat and flour, coarse grains).

Export Enhancement Program

The Export Enhancement Program (EEP) was introduced in May 1985 and is authorized under the U.S. Food, Agriculture, Conservation and Trade Act of 1990 (1990 Farm Bill). The 1990 Farm Bill authorizes the U.S. Department of Agriculture to use Commodity Credit Corporation-owned stocks or cash payments to subsidize a range of U.S. agricultural exports to targeted markets. Initially, the U.S. justification for the EEP had been to protect its market share from erosion by subsidized European Union commodities, however, over time the EEP has expanded to include the majority of export markets. This resulted in a severe reduction in overall world prices and lowered returns to Canadian producers.

Total EEP expenditures in the 1995 fiscal year equalled US$335 million. Although several agricultural commodities are eligible for export subsidies under the EEP, historically, approximately 90% of EEP expenditures are used to subsidize grains, oilseeds and their products. However, given strong international prices the United States has not used the EEP for wheat since July 1995.

The Canada-United States Joint Commission on Grains (the Commission) examined the EEP and its effect on third country markets as part of its overall investigation of Canadian and U.S. grain marketing and support systems. The Commission recommended the elimination of, or significant reduction with a view to eliminating, the EEP for all cereals and their products and a commitment not to implement replacement programs with similar effects.

The U.S. Administration has requested US$959 million in EEP funding for the 1996 fiscal year, which is the maximum allowed under the WTO export subsidy commitment of the WTO Agreement on Agriculture. Canada will monitor closely the United States use of previously appropriated funds under the EEP to ensure that they are not transferred to another program and used in a way as to circumvent the U.S. WTO export subsidy commitments.

Market Promotion Program

The United States Market Promotion Program (MPP) is authorized under the United States Food and Agriculture, Conservation and Trade Act of 1990 (1990 Farm Bill) and is administered by the United States Department of Agriculture's Foreign Agricultural Service. Funding for the 1995 fiscal year was increased by Congress to US$110 million. The U.S. Administration has again requested US$110 million in funding for the 1996 fiscal year. The Canadian industry has raised concerns about the impact of the program on the Canadian domestic market and on Canadian exports to third country markets.

Intermediate-Term Export Credit Guarantee Program (GSM-103)

The GSM-103 program authorizes the Commodity Credit Corporation (CCC) to provide low interest loans to facilitate the sale of a wide range of U.S. primary and processed agricultural products. The CCC guarantees 98 percent of the principal and a portion of the interest accrued during the financing period, which may range from three to ten years. If importers or their banks default on these loans, the CCC honours the guarantee by paying to the exporter or the exporter's bank the amount of the principal and interest covered by the guarantee. GSM-103 sales distort trade due to the concessional nature of the loan terms, which far exceed commercial terms. Under the 1990 Farm Bill, the United States government must allocate US$500 million in intermediate export credit guarantees under the GSM-103 program each year.

Under Article 10 of the WTO Agreement on Agriculture, WTO members committed to work towards the development of internationally agreed disciplines to govern the provision of export credits, credit guarantees and insurance programs. In 1994, there was a firm undertaking by Participants to the OECD Arrangement on Guidelines for Officially Supported Export Credits (the Arrangement) to start negotiations on including agricultural products in the Arrangement. A Working Group on Agriculture was established, with a view to producing a draft Sector Understanding on Export Credits for Agricultural Products with Options, by April 1996. Canada's objective in the OECD is to achieve agreement on meaningful disciplines on the use of agricultural export credits, including, for example, a 180 day cap on repayment terms for most agricultural products. This objective is shared by most other OECD members, with the exception of the United States, which favours much longer repayment terms, consistent with those under existing credit programs, such as GSM-103.

Sugar

The United States operates a price support program for sugar as well as maintains import restrictions on sugar and certain sugar-containing products, which ensures that U.S. domestic prices remain at levels significantly above world market prices. In addition, the United States administers a re-export program that allows U.S. refiners to import world price sugar for re-export as refined sugar. This program allows U.S. refiners to have access to cheaper world price sugar without compromising the U.S. domestic price support program. The NAFTA provides for the elimination of a similar re-export program for sugar-containing products.

U.S. Inland Waterway Transportation Subsidies

Major inland waterways in the United States (e.g. the Mississippi-Missouri and the Tennessee-Tombigbee river systems) have been developed by and are maintained at the expense of the federal government, with services provided by the United States Army Corps of Engineers. There are no lockage fees or other user tolls. However, barge operators pay fuel taxes which are targeted for new construction only. This system of waterways, canals, and locks, and its maintenance, constitutes a subsidy to inland transportation. By reducing the cost of bulk transportation for products, significant benefits accrue to users of the inland waterways.

Shipbuilding Subsidies and the OECD Shipbuilding Agreement

The "Title XI" program administered by the Maritime Administration (MARAD) provides loan guarantees of up to 87% for a period of up to 25 years to U.S. shipbuilders. Eligible projects include construction, reconstruction and reconditioning of commercial vessels in U.S. shipyards, as well as shipyard improvements. Both United States and foreign shipowners and U.S. shipyards are eligible. The program was expanded in 1993 to cover ships built for the export market.

The U.S., along with EU, Norway, Sweden, Finland, Japan and Korea, signed the OECD Shipbuilding Agreement concluded in December 1994. The Agreement is intended to limit shipbuilding subsidies and to address injurious pricing practices. It requires a standstill on existing subsidy levels and on new measures of support, and allows the continuation of previously committed aid subject to certain conditions, until the Agreement enters into force. Under the Agreement the United States will be required to reduce the Title XI program to a maximum loan guarantee of 80% over 12 years, and modify certain other programs supporting the maritime industry (see IX. Services/Maritime Transportation). Entry into effect of the Agreement has been postponed from January to June, 1996, as a result of delays in ratification by the United States and several other countries. In early 1996 Congress was considering legislation to implement the Agreement, which is considered an important trade priority by the United States.

In 1993 the United States also introduced the Maritime Technologies (MARITECH) program. This is a jointly-funded government/industry program to develop and apply advanced technology to improve the international commercial competitiveness of the U.S. shipbuilding industry. Through the five year term of the program up to US$220 million in federal funding could be provided to shipbuilding and related production technology. Foreign companies are involved in some MARITECH projects. Given the restrictions to the Title XI program resulting from the OECD Shipbuilding Agreement, the United States is placing greater attention on the MARITECH program as a means to improve domestic shipbuilding technology.

Anti-dumping and Countervailing Duties

The application of anti-dumping and countervailing duties on U.S. imports from Canada continues to be a concern for Canadian producers and exporters. In the last decade, the United States has initiated 25 anti-dumping and 13 countervailing duty investigations against Canada. On the dumping side, 12 of the investigations resulted in the application of anti-dumping duties, 12 were terminated and one other resulted in the conclusion of a suspension agreement. On the countervail side, 8 of the investigations resulted in the application of countervailing duties, 3 were terminated and 2 others were terminated by agreement.

U.S. trade remedy laws allow for the imposition of anti-dumping and countervailing duties on imports of dumped or subsidized goods respectively that cause or threaten injury to the domestic industry. U.S. industries seeking protection from import competition increasingly rely on trade remedy legislation. The U.S. system of law and practice also contains features that, in effect, allow U.S. producers to harass Canadian exports to the U.S. market. For an exporter, the defence of its interests before the United States government is both expensive and cumbersome.

The passage by the United States of the Uruguay Round Agreements Act and the entry into force of the Uruguay Round Agreements on January 1, 1995 resulted in a number of improvements with respect to the application of U.S. trade law. In addition, further to the deliberations of the Trade Remedy Working Groups established under the North American Free Trade Agreement, the NAFTA Parties have been pursuing a number of procedural changes which will make the application of trade remedy laws less burdensome on Canadian exporters. Furthermore, in the context of the Uruguay Round Agreements Act, Canada has made, and will continue to make representations regarding the development by the United States Administration of regulations with respect to the administration of U.S. trade law. Proposed regulations were published February 27, 1996.

Canada continues to hold the view that the use of trade remedy actions within a free trade area, as established by the North American Free Trade Agreement, is counter-productive and makes no commercial sense in an increasingly integrated North American market. The use of trade remedy actions is inconsistent with the objective of increasing the free flow of goods between all three countries. Canada will therefore continue to pursue its objective of fundamental reform of trade remedy laws within North America.

Some of the outstanding areas in U.S. legislation where Canada still has concerns are listed below.

Anti-Dumping

Anti-Circumvention

The United States Uruguay Round implementing legislation contains language which broadens the scope of the provision in the Omnibus Trade and Competitiveness Act of 1988 for the United States to take action against alleged circumvention of U.S. anti-dumping or countervailing duty orders. If circumvention is found, dumping or countervailing duties are applied without appropriate findings of dumping, subsidy or injury. Canada has long taken the position that any action taken further to U.S. anti-circumvention provisions without an appropriate investigation would be inconsistent with the United States' obligations under the WTO Anti-dumping Agreement.

Questionnaires

Canada has serious concerns regarding the nature, amount and level of detail required by U.S. Department of Commerce (DOC) questionnaires in anti-dumping duty investigations. Canada has made representations on this issue, noting most particularly that because of the nature of Canadian exports to the United States, i.e. small truckload shipments, responding to DOC questionnaires places a far greater burden on Canadian producers/exporters to submit information on a far greater number of individual shipments.

Countervailing Duties

Definition of Subsidy

There is now an international agreed definition of subsidy incorporated in the WTO Agreement on Subsidies and Countervailing Measures. Within that definition, however, U.S. legislation clearly gives rise to Canadian concerns regarding the possible countervailability of natural resource measures and upstream benefits as indirect subsidies. It is clear that language in the Statement of Administrative Action which accompanied the legislation is aimed at ensuring the countervailability of national resource measures as indirect subsidies. Any such action could be challenged since, in Canada's view, the WTO Agreement does not extend to natural resource pricing.

A further concern is language in the U.S. Uruguay Round implementing legislation which indicates that the DOC is not required to consider the "effect" of a measure in determining whether it is a subsidy. The United States' approach to the so-called "effects test" is a retrograde step in U.S. trade remedy law.

Specificity

Since "generally available" subsidies are not subject to trade action, any countervailing duty investigation requires a determination on whether a subsidy is specific or targeted. The WTO Agreement on Subsidies and Countervailing Measures sets out four factors to be taken into account in determining whether a subsidy is de facto specific. The U.S. Uruguay Round implementing legislation, however, provides that a determination of de facto specificity may be based on a single factor. In Canada's view, while a subsidy may be found to be de facto specific, (and therefore subject to trade action) on the basis of one factor, all four factors must be considered in arriving at that determination. There may be circumstances, for example, in which the other specificity factors could be used to explain away a finding of de facto specificity based on one factor.

Injury, Procedural and Institutional Issues

Initiation

The new WTO rules stipulate that an investigation may be initiated only where there is "sufficient evidence" of a subsidy or of dumping, of injury, and of a causal link between the subsidized or dumped imports and the alleged injury. Frequently, however, the DOC does not conduct before the investigation a verification of the allegations of dumping or subsidization, of the presence of injury, or of a causal link between them. On the countervailing duty side in particular, it has been relatively simple for a potential U.S. petitioner to identify Canadian subsidy programs that were involved in previous investigations and then list them in a petition, without offering evidence of whether they were in fact used by a Canadian exporter of the target product.

Standing

While the new U.S. legislation provides improvements related to the verification of a petitioner's standing, Canada still has concerns as the U.S. Statement of Administrative Action provides that, where the management of a firm expresses a position in direct opposition to its workers with respect to a petition, the DOC will treat the production of that firm as representing neither support for nor opposition to the petition. The ability of workers to neutralize effectively industry opposition to a petition gives rise to a concern about multi-plant unions and petitioners acting in concert to artificially satisfy the new standing requirements.

Captive Production

The U.S. Uruguay Round implementing legislation contains a provision which excludes from the calculation of the total domestic market, the production in downstream operations by petitioners in trade remedy cases. This provision could lead to an increase in affirmative injury findings by disregarding this production when assessing the impact of imports on the total domestic market.

Cumulation

A number of investigations conducted by the United States involve the cumulation of imports from several countries. In some cases, the volume of exports of a product from Canada has been insignificant and at times negligible in terms of its share of the U.S. market. Some recent injury determinations by the U.S. International Trade Commission have moved away from the concept of mandatory cumulation and have acknowledged differences between product characteristics and specific markets. Nevertheless, Canadian exporters are still vulnerable to situations where exports that are not harming U.S. industry will be cumulated with exports from other countries which are. Both the WTO Anti-dumping, and Subsidies and Countervail Measures Agreements provide specific rules for the cumulative assessment of injurious effects.

Section 232 of the Trade Expansion Act of 1962

Section 232 of the Trade Expansion Act of 1962 empowers the President to take action to remove the threat to U.S. national security resulting from mass imports of certain products. For instance, in 1994, the Independent Petroleum Association of America filed a petition with the U.S. Department of Commerce (DOC) seeking to curb oil imports for national security reasons. In December 1994, President Clinton accepted DOC's recommendation that, while over-reliance on imported oil posed a national security threat, the cost of an import tariff would outweigh the benefits of trade action. Even if the United States had pursued oil import restrictions, Canada's position is that NAFTA Article 607 severely constrains the ability of the United States to use national security exceptions in NAFTA Article 2102 and GATT Article XXI against Canadian energy exports.

Section 332 of the Tariff Act of 1930

Section 332 of the Tariff Act of 1930 provides general authority for the U.S. International Trade Commission (ITC), on request from the Administration or Congress, to conduct fact-finding investigations of the foreign trade practices of other countries and their effect on U.S. industry. While import action is not authorized under this section, such investigations can develop information that may be used in a countervailing duty investigation. This is in addition to the burden sometimes placed on foreign industries and government to supply information. Along similar lines, Section 409 (B) of the U.S. Free Trade Agreement Implementation Act of 1988 allows U.S. industry to request that the U.S. Trade Representative provide information on the subsidy practices of countries with which the United States has entered into free trade agreements. If used, the provision can create uncertainty and possibly disrupt trade and investment decisions.

Section 301 of the Trade Act of 1974

Section 301 of the Trade Act of 1974 gives the United States Trade Representative (USTR) authority, on his own initiative, or as a result of a petition from a private party, to conduct investigations into another country's trade practices. If those practices are found to be "unfair", the United States is authorized by this legislation to retaliate unilaterally by imposing sanctions against the offending country, after following a prescribed timetable.

"Super 301" was first introduced in 1988 and enabled the United States government to cite "broad and consistent patterns of unfair trade practices" by certain countries, and mandated the USTR to retaliate unilaterally against foreign countries for such unfair trade practices. It provided strict time limits for consultations with foreign countries and for the determination of retaliation measures. After lapsing, it was reinstated by Executive Order of President Clinton in March 1994.

Special 301 directs the USTR to identify those countries which deny adequate and effective protection of intellectual property rights. In 1994, Canada was cited in a new "Special Mention" category for current and proposed policies relating to magazine publishing. This category does not trigger a statutory requirement for an investigation and subsequent determination by USTR.

The United States has indicated that it intends to use its Section 301 authority in a manner consistent with its international trade obligations, including using the WTO dispute settlement process, in making determinations of whether foreign practices violate WTO obligations.

The only current Section 301 case relates to Canadian interests was launched on February 6, 1995, when the USTR initiated a Section 301 investigation against Canada based on a petition filed by Country Music Television (CMT). CMT had been removed by the Canadian Radio and Telecommunication Commission (CRTC) from the list of foreign cable services eligible for distribution in Canada. On February 6, 1996, USTR Kantor made a determination that certain Canadian broadcasting practices are discriminatory. On March 6, 1996, the companies involved signed an agreement which will end this dispute. USTR will monitor the Canadian government's implementation of this agreement.

III. GOVERNMENT PROCUREMENT AND DOMESTIC PREFERENCE LEGISLATION

Although a significant amount of government procurement is covered by the WTO Agreement on Government Procurement and the NAFTA, many barriers to Canadian exports remain. The Buy American Act still affects some federal contracts, and related legislation creates barriers that flow through federal funding to state and local contracts. The Buy American Act also indirectly discourages U.S. distributors from selling Canadian goods, since it might require separate inventories of goods eligible for public contracts and those ineligible for such use. Small business set-asides are a further limitation on bids from Canada. In addition, state and local governments often apply a variety of discriminatory provisions in support of local business.

Buy American

Canadian exports are impaired by application of the Buy American Act (BAA) in U.S. federal contracts for goods which involve entities not covered by the NAFTA, and in construction services contracts valued at less than the NAFTA threshold (US$6.5 million). Materials purchased under construction services contracts, valued at less than US$6.5 million, for the construction or repair of any public building or public work in the United States must be of U.S. origin or manufacture, and the cost of American-origin components must exceed 50% of the cost of all components.

There are a number of specific "Buy American" restrictions in U.S. legislation, including:

- the "Berry Amendment", which requires the Department of Defense to buy food, clothing, fabrics and specialty metals that are products of the United States; and

- the "Byrnes-Tollefson Amendment", which prohibits foreign construction of U.S. ships or foreign supply of major ship components.

Other examples of U.S. federal Buy American requirements include:

- The Foreign Relations Act requires 55% American content on all Voice of America modernization contracts.

- The Foreign Assistance Act prohibits use of U.S. funds (including foreign military sales) for procurement from foreign sources unless the President determines that such procurement would not adversely affect the U.S. economy or industrial base.

- The Emergency Food Assistance Act, and other legislation related to government support of human feeding programs, requires that recipient agencies purchase to the extent possible U.S.-produced food products.

In 1995, Buy American requirements were included in a number of other statutes, including:

- 1996 Military Construction Appropriations;
- 1996 Appropriations for Agriculture, Rural Development, Food and Drug Administration and Related Agencies;
- 1996 Department of Transportation and Related Agencies Appropriations Act;
- 1996 Department of Defense Appropriations;
- 1996 Energy and Water Development Appropriations Act.

Other Discriminatory Legislation

Canadian exports are often impaired by protectionist provisions in state and local government contracts. Procurement by these levels of government is not covered by the WTO Agreement on Government Procurement or the NAFTA.

U.S. state and local governments, and private sector entities, often receive federal project funding on condition that procurement be restricted to U.S. suppliers. As a result, the use of Canadian products in such projects, frequently in sectors of significant interest to Canadian exporters such as transportation-related supplies and equipment, may be difficult or impossible.

Restrictions attached to federal funding of transportation projects (including urban mass transit, rail and highways) generally require the use of U.S. materials and equipment unless the granting agency determines that an exception should be made.

For example, grants by the Federal Transit Administration to state and local governments are only made on condition that all steel and manufactured products (except cement) used in the funded project be produced in the United States. All of the manufacturing processes for the product must take place in the United States and all items or materials used in the product must be of U.S. origin. However, grants made for the purchase of transit vehicles require that the cost of components produced in the United States be at least 60% of the cost of all components, and that final assembly take place in the United States.

Federal Aviation Administration grants to state, local and private organizations to build and improve airports and related facilities and equipment require that all facilities and equipment purchased with such funds contain a minimum of 60% U.S. materials, and final assembly of the goods or systems must take place in the United States.

Sub-contracting Requirements

Canadian companies are at a significant disadvantage when seeking subcontracts to U.S. prime contractors. Prime contractors to the United States government are required, for contracts valued over US$500,000 (US$1 million for construction contracts), to direct subcontracts to certain classes of U.S. business.

Small Business Set-Asides

The United States federal government moved aggressively in 1995 to encourage contracting officers to make maximum use of set-aside provisions. U.S. federal law requires that procurement contracts be awarded exclusively to U..S. small businesses if the contracting officer can reasonably expect two or more bids from competitive U.S. small businesses. The definition of "small" varies by industry, but may involve up to 1500 employees in a manufacturing firm, or annual revenue of up to US$17 million for a services firm. The effect of such set-asides is far-reaching. The value of goods and services contracts set aside for U.S. businesses in 1994 was approximately $6 billion ($2 billion goods, $4 billion services), of which 60% was for contracts valued over $500,000. Such set-aside provisions are also common in state legislation.

In addition, the U.S. Small Business Administration (SBA) provides loan guarantees and business assistance for small and minority-owned businesses, and acts as prime contractor to government for those who take part in its "8(a)" program.

Although a 1995 judicial decision led the U.S. Department of Defense to suspend key elements of its preference program for small disadvantaged business, the Defense Department has initiated new loan programs, under the U.S. SBA's 7(a) and 504 provisions, that provide or guarantee loans of up to US$1.25 million for qualified small defence-dependent businesses.

IV. TECHNICAL AND REGULATORY BARRIERS

Standards and Testing

Regulatory requirements applying to products vary widely under U.S. legislation on consumer protection, public health and safety and the environment. There is considerable variation in procedures for assessing regulatory compliance of products. State, regional and local regulations governing laboratory recognition and accreditation can also impede market access. In many industrial sectors, national accreditation or recognition of laboratories requires separate acceptance of most states, numerous local jurisdictions, regional code organizations and federal agencies. This complex regulatory environment is a major impediment to trade.

At the request of Congress, in 1995, the Science, Technology, and Economic Policy Board of the National Research Council of the National Academies of Science and Engineering studied the relationship between standards, product testing, certification and world trade. The Board was highly critical of the current U.S. system for assessing conformity of products and processes to standards: "Our system has become increasingly complex, costly, and burdensome to national welfare. This is reflected in unnecessary duplication and unwarranted layers of complexity at the federal, state and local levels. Manufacturers are increasingly forced to perform redundant tests and obtain repetitive certifications for products sold in different parts of the country. Testing laboratories pay unnecessary fees and undergo duplicative audits to demonstrate their competence to multiple federal, state, and local authorities. The result is higher costs for U.S. manufacturers, public procurement agencies, testing laboratories, product certifiers and consumers".

These difficulties are compounded by the fragmented and disparate system for establishment of standards by reference in U.S. regulations. The U.S. standards system continues to operate without national coordination or uniform rules in most areas. A similar situation exists with regard to the system for establishment of procedures for product approval, certification, testing and inspection which are also used for determining regulatory compliance. This makes it difficult, particularly for small and medium sized exporters, to identify the authority responsible for required approvals. It also leads to frequent and costly delays in obtaining multiple approvals under varying conformity assessment procedures.

Many exporters find it difficult to prove that their products meet the United States Food and Drug Administration (FDA) requirements for quality and labelling. This is because of a lengthy decision-making process and the absence within the FDA of a mechanism for approval of exporters' labels in advance of shipment. These deficiencies create uncertainty for exporters and difficulties at border points. Additional difficulties can arise because of sometimes lengthy FDA laboratory testing procedures of food products stopped at the border. Such delays could be obviated, at least in part, if there were procedures in place to accept test results from independent laboratories.

On December 13, 1995, the U.S. Department of Agriculture (USDA) instituted an enhanced inspection regime for imports of Canadian potatoes. The enhanced inspections confirmed the high quality of Canadian exports. As a result, effective mid-February 1996, USDA resumed its previous inspection system of random spot checks.

Health and Sanitary Requirements

Shipments of agricultural products, including beef and livestock, are occasionally subject to long delays due to health and sanitary inspections at the U.S. border. A pilot project to resolve these issues is under way and meat products are currently moving across the border without delays. Delays resulting from the FDA's procedures to monitor pesticide residue have raised concerns among exporters. This type of delay can be damaging to perishable fresh fruits, vegetables or dairy products and impose additional costs on the Canadian exporter who may lose U.S. customers as a result.

In January 1996, the State of Florida introduced new inspection requirements for foreign plants and plant products imported by truck, and imposed a fee of US$70 per shipment to cover the cost of the inspection. While the stated purpose of the measure is to prevent the introduction of plant pests or diseases, unlawful pesticide residues and harmful bacteria, the State of Florida has not provided any evidence that the measure is based on scientific principles. The Florida measure is applied against foreign goods in a discriminatory manner. Shipments of plants and plant products originating from other U.S. States are not subject to inspection.

Standards applied to imported products by one agency can differ from standards applied by that same or other agency to an equivalent domestic product. In the USDA regulations, the definition of "poultry" does not include game birds; consequently, inspection of imported game birds falls outside USDA jurisdiction and is carried out by the FDA. Whereas the USDA considers salmonella to be an unavoidable contaminant in poultry carcasses and concludes that proper cooking normally eliminates any health hazard, it is the policy of the FDA to consider imported food containing salmonella to be adulterated and to prohibit such products from entering the United States. There is no evidence that the same policy is applied to game birds produced within the United States.

To detect the presence of listeria in cold smoked fish, canned lobster and ready-to-eat seafood, the United States has a trade restrictive policy of a zero tolerance level for listeria combined with a more rigorous sampling regime than that currently practiced in Canada. Canada considers the U.S. policy to be unnecessarily severe given the low level of risk resulting from a minimal listeria presence in these fish products. Instead, Canada uses and advocates a policy of good manufacturing practices which put into place process controls to reduce or eliminate the presence of listeria.

Milk and cream imported into the United States are subject to the U.S. Federal Import Milk Act. Under the Act, milk or cream may be imported only by the holder of a valid import permit issued by the FDA. To obtain a permit, a number of health and sanitary requirements must be met. These requirements effectively preclude imports. Interstate milk shipments in the United States are governed by the National Conference of Interstate Milk Shippers (NCIMS). NCIMS requires that milk and milk products shipped between U.S. states must be produced and pasteurized under regulations that are substantially equivalent to the Grade "A" Pasteurized Milk Ordinance (PMO) and have been rated by a state milk sanitation rating officer certified by the FDA. There are no provisions that pertain to imports from other countries.

The current import restrictions on ratites entering the United States were imposed by the United States Department of Agriculture (USDA) in 1990 after the detection of ticks on ostriches from Africa. No provision was made to exclude ratites from Canada when these restrictions were imposed. Post-entry quarantine requirements and maximum size and age restrictions on ratites imported into the United States present the greatest difficulty for Canadian producers wishing to export ostriches to the United States. The USDA is considering changes to its regulations regarding ostriches which would ease Canadian access to this market. Canada will continue to pursue this matter with the United States.

Alcoholic Beverages

Federal and state legislative measures have established several barriers to imports of Canadian beer, wine and cider into the U.S. market. Such measures include state-mandated distribution systems that impose added costs on importers of Canadian products by requiring that imported beer and wine be sold through an in-state agent or middleman, whereas local breweries can sell product directly to retailers. Some states require that foreign beer and wine be transported exclusively by private transport companies, while locally produced product can be shipped directly to retailers by the producers themselves. Various other state measures impose higher licensing fees on foreign beer and wine and dictate uniform prices for out-of-state beers and wines. Local producers, on the other hand, have the advantage of lower fees and the opportunity to be more price-competitive in local markets. Some states maintain listing practices which discriminate against imported wine.

Canada challenged the United States on these measures at the GATT. The 1991 GATT Panel Report concluded that sixty state and two federal measures were inconsistent with their international trade obligations. However, after almost four years since the adoption of the Report, only two states, Mississippi and Michigan, have altered legislation to bring tax measures into fully conformity with the GATT. (In addition see Taxes on Alcohol in Section X and Canadian Actions under the GATT in Section XII.)

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) of 1972 prohibits the taking and importation of endangered marine mammals and marine mammal products, subject to some exceptions. The prohibition has been applied to products of species that are not endangered. In addition, the ban does not apply to marine mammals taken by the Alaskan Aboriginal Peoples for subsistence or for the purpose of creating and selling authentic native articles of handicrafts and clothing. There is no such exception providing similar treatment for Canadian Aboriginal Peoples.

Newsprint Recycling Requirements

Since 1988, a number of states have established programs to promote the recycling of newspapers, which distorts local markets. These programs are either voluntary or mandatory in nature and typically specify levels of recycled paper to be contained in newsprint purchased by newspaper publishers. While newsprint recycling legislation has not been adopted so far in the Congress, certain measures have been proposed including content requirements, taxes on virgin materials and tax incentives to purchase recycling equipment. The only U.S. Administration measure on recycling affecting the paper sector has been the Executive Order announced October 20, 1993 by President Clinton calling for minimum recycled content in federally procured paper (20% in 1995 increasing to 30% in 1999). While the objective of the recycling programs is laudable, the requirement for minimum recycled content is trade restrictive.

Permanent Paper Standards

U.S. Government paper permanence standards, set by the Joint Committee on Printing of the U.S. Congress, serve as *de facto* national standards for the production of permanent paper in the United States. These standards use maximum lignin content and production process specifications rather than performance-based specifications for strength and brightness. The effect of these specifications is to limit access for certain Canadian pulp exports.

BATF Controls for Industrial Alcohol

The United States Bureau of Alcohol, Tobacco and Firearms (BATF) requirement that alcohol imports be shipped through a U.S. distilled spirits plant (DSP) for standards testing and taxation control purposes is a barrier to Canadian exports of industrial alcohol. This requirement imposes considerable additional costs on Canadian suppliers, which restrict their access to the U.S. market. In addition, the requirement to supply commercially sensitive information to the DSPs, which are often direct U.S. competitors, poses major problems for potential Canadian exporters.

Electricity Transmission

The Federal Energy Regulatory Commission (FERC) denied an application in 1995, by the U.S. marketing affiliate of a Canadian utility, to sell power in the United States at market-based rates. In its decision, the FERC noted that the applicant failed to meet the FERC's criteria for lack of market power in generation and in transmission. One of the FERC's five Commissioners noted that in order to be successful in such an application, the utility must offer, to its competitors in Canada seeking to supply U.S. markets, comparable access to transmission lines in Canada as the utility itself enjoys.

This decision raises broader concerns regarding the implications for Canadian electricity exporters of the ongoing restructuring of the U.S. electric utility sector. This restructuring is intended to replace the existing regulatory regime with one based on competition. In this regard, the FERC will issue new regulations in 1996 aimed, among other things, at opening access to the transmission lines of utilities selling power in the United States.

V. CUSTOMS AND ADMINISTRATIVE PROCEDURES

U.S. import requirements and their administration by border agencies, such as the U.S. Customs Service and the U.S. Food and Drug Administration (FDA), affect all Canadian exports to the United States and can often impede access to the U.S. market. Canada seeks to resolve border-related problems through various means, including direct discussions with U.S. authorities on specific problems and broader initiatives.

The NAFTA promotes uniform interpretation and application of its rules of origin, establishes a common origin certificate, uniform regulations for certain Customs procedures and provides for cooperation between Customs services in enforcement and in harmonizing documentation. The NAFTA also facilitates the temporary entry of persons for business and professional purposes. NAFTA working groups, such as the origin rules group (and its Customs sub-group) and the temporary entry working group are working to make rules and procedures more compatible.

During United States President Clinton's Ottawa visit in February 1995, Canadian and U.S. immigration and customs agencies signed an accord which establishes common objectives for a joint approach to the management of the Canada-United States border. The objectives are designed to promote international trade; to facilitate the movement of people and goods across the border; to provide enhanced protection against illegal activity and to reduce costs. In January 1996, the agencies issued a progress report which outlined achievements and next steps. No less than thirteen initiatives have been implemented or are being studied or tested to facilitate the cross-border movement of people and merchandise.

Country of Origin Marking

U.S. Customs law requires that imported goods be marked in a conspicuous place in order to inform the ultimate purchaser in the United States of the English name of the country of origin. This broad and long-standing requirement historically has frustrated Canadian exporters, leading to rejections or delays at the border and additional costs for Canadian exports vis-a-vis U.S. domestic products which are not required to be marked.

In many cases, the U.S. Customs Service administers the country of origin marking requirements in an inflexible and excessive manner. For example, the U.S. Customs Service continues to examine its proposal that retail packages containing imported frozen produce (including imported produce packaged in the United States) be marked with the country of origin specifically on the front of the package with a minimum type-size and two specific type-styles. This overly strict requirement would adversely affect Canadian exporters of frozen produce. Following objections from Canada and other sources, the Customs Service is initiating anew the regulation-making process.

In the past, the Customs Service has administered the key marking concept of "substantial transformation" unevenly and on a case-by-case basis, leading to uncertainty for Canadian exporters. Following the NAFTA, the Customs Service introduced marking rules based on changes in tariff classification, a more objective standard. In addition, Annex 311 of the NAFTA establishes disciplines for marking requirements. These two developments should lead to greater clarity and consistency for Canadian exporters. However, the basic requirement to mark Canadian exports with the country of origin continues to create difficulties for Canadian companies.

During 1995, the United States changed its textile and apparel rules of origin which it uses for quota and country of origin marking purposes for imports from all countries. When implemented on July 1, 1996, the new rules will adversely affect certain made-up textile articles (e.g. comforters) which were previously considered products of Canada but which will now be subject to U.S. restraint arrangements (quotas and export visa requirements) if the fabric components are sourced from restrained countries. Canada continues to discuss this issue with the United States.

Border Administration

Certain United States entry procedures complicate the entry of Canadian exports leading to delays and additional costs.

In 1994, the U.S. Customs Service introduced the National Compliance Measurement Program. The program aims to measure the extent to which shipments comply with all U.S. import laws. On a product basis, over the course of each year, Customs is conducting a specified number of random intensive examinations of shipments and import documents, including the complete unloading of shipments at the border. Importers (often the Canadian exporter) must absorb all related costs and delivery delays. Exporters and industry sectors which establish high compliance records can expect to receive fewer inspections in the future.

In certain border areas, Canadian exporters have complained of delays in obtaining U.S. Food and Drug Administration (FDA) decisions to release food products (i.e. imported food products cannot be released into U.S. commerce until the FDA has decided whether to sample the shipment). In addition, when samples are taken, the laboratory analysis process can introduce delays which are costly, in particular if perishable products are involved. For example, a long-standing exporter of carrots recently experienced three consecutive testings for pesticide residues, some of which took up to two weeks. U.S. domestic products are not subject to shipment-by-shipment approvals. The gradual introduction of an electronic interface between Customs and the FDA may alleviate some of these delays. Although a recent U.S. Government Accounting Office report indicates that progress has been slow, FDA officials have indicated that the program is being rejuvenated.

Fees

The NAFTA specifically exempts originating goods imported from Canada from the U.S. Customs merchandise processing fee. Canada has opposed attempts by the United States to charge fees as a means of financing not only enhanced but also basic mandatory services, since they can undermine efforts by both countries to facilitate cross-border movements and can result in additional burdens for Canadian exporters. For many years, U.S. Customs has applied a commercial vehicle fee to finance Customs overtime inspections. At the beginning of 1994, the United States began to apply its existing entry fee on persons arriving by air and sea to passengers arriving from Canada and Mexico via the same modes (Canada and Mexico were exempt previously). In 1995, the U.S. Administration proposed to Congress, as part of the budget process, to impose a fee on persons entering the United States at land border crossings from Canada and Mexico. Following opposition from Canada and U.S. domestic interests, the Administration modified its proposal to provide individual states the option to have the fees applied at their own border points. At the time of writing, the United States Senate Judiciary Committee had begun to consider a $1.00 per person mandatory border (as approved at the sub-committee level last summer). The House has, to date, rejected a border fee. Canada continues to register its opposition at every opportunity.

VI. EXTRATERRITORIAL LEGISLATION

The extraterritorial application of United States domestic legislation, outside of agreed multilateral or bilateral arrangements, promotes uncertainty in the international trading system, and can threaten legitimate Canadian economic interests.

The 1917 Trading With The Enemy Act provides the President very broad powers to act against foreign interests, in times of national emergency, by intervening in foreign purchases of U.S. assets or in the activity of foreign-owned entities in the United States. This authority is the basis of the Cuban Asset Control Regulations, which imposes the U.S. trade embargo against Cuba. Under U.S. law - Section 1706(a)(1) of the United States National Defense Authorization Act of 1993 (the "Cuban Democracy Act") - the embargo provisions purport to assert jurisdiction over the conduct of foreign subsidiaries of U.S. companies, including those incorporated in Canada.

In addition, the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, or Helms/Burton bill, which expands the ambit of the Cuban embargo, was passed in March, 1996. It contains a number of measures to discourage foreign investment in Cuba, by proposing measures against foreign nationals who take an interest in property that was expropriated from U.S. citizens. Many of the legislation's proposed measures are extraterritorial in effect and would have a direct impact on Canada. They are contrary to the methods and procedures available under international law for the settlement of international claims.

Another bill currently before Congress (the "D'Amato Bill") would impose sanctions on persons, including foreign persons, investing in either Iran's or Libya's oil and gas sector. The Canadian government has registered its concerns with regard to the extraterritorial effect of such measures.

VII. AGRICULTURE BARRIERS

Sugar and Sugar Containing Products

The United States maintains quantitative restrictions on the importation of a wide range of sugar containing products (SCPs) through tariff rate quotas (TRQs). On January 1, 1995, the United States added crystal drink mixes, previously unrestricted, to the list of products subject to the "basket" TRQ for SCPs. The "basket" TRQ has been set at 64,709 tonnes for the sugar year beginning October 1, 1995. The TRQ is administered on a global first-come first-served basis. In addition, certain Canadian exports of SCPs containing more than 65% sugar and undergoing further processing have been cut off completely due to changes made by the United States Customs Service to the definition of "further processing" and "ultimate consumer". The reclassification of crystal drink mixes and the definitional changes made by U.S. Customs have led to a 40 to 50% reduction in Canada's exports of certain SCPs to the United States.

Beginning October 1, 1995, Canadian exports of refined sugar have been subject to a global TRQ of 22,000 tonnes. The TRQ is in effect for the sugar year beginning October 1. In 1995, the TRQ was filled in November. Since 1991, Canada's exports of refined sugar to the United States averaged 35,000 to 38,000 tonnes yearly.

Peanut Butter

Effective January 1, 1995, as part of its Uruguay Round implementing legislation, the United States imposed new quantitative restrictions on Canadian exports of peanut butter and peanut paste in the form of an annual Canada specific TRQ of 14,500 tonnes. This measure restricts any future growth in Canadian exports, which had increased from 4,281 tonnes in 1991 to 14,546 tonnes in 1993.

Dairy and Dairy Products

With the implementation of the WTO, and the resulting expiry of the U.S. GATT waiver for Section 22 action, the United States tariffied its import restrictions for dairy products, effective January 1, 1995. Imports of dairy products must also comply with laws and regulations such as the U.S. Federal Import Milk Act and U.S. milk marketing orders.

The administration of U.S. technical restrictions on the importation of yoghurt has presented difficulties for Canadian exporters. As a result of unclear and sometimes conflicting interpretations of the regulations of the United States Federal Import Milk Act and the Grade A Pasteurized Milk Ordinance, several Canadian companies have been unsuccessful in their attempts to obtain the required permission to distribute their yoghurt products in the United States.

Wheat End-Use Certificates

As part of the United States NAFTA Implementation Act, on February 27, 1995, the United States implemented an end-use certificate requirement for imports into the United States of wheat from countries that, as of April 8, 1994, required end-use certificates for U.S. imports. As Canada is the only country requiring such certificates, the regulation only applies to imports from Canada. Canada will continue to monitor carefully the U.S. regulation to ensure that U.S. end-use certificates are not applied in a trade restrictive manner.

The end-use certificate requirement in both countries was reviewed by the Canada-United States Joint Commission on Grains (the Commission) as part of its overall investigation of Canadian and U.S. grain marketing and support systems. The Commission recommended that both countries pursue arrangements for eliminating the requirement.

Minnesota Wheat and Barley Checkoff Fee

In April 1994, Minnesota extended its one cent per bushel wheat and barley checkoff fee to cover out-of-state and foreign grain as well as grain produced within the state of Minnesota. The checkoff fee is used to fund Minnesota wheat and barley research and market promotion councils. An exemption may be granted if it can be demonstrated that a fee with a "comparable purpose" is paid in the home jurisdiction. Canada has requested an exemption from the fee, on the basis that Canadian grain is subject to a comparable fee in the form of various producer funded research and promotional initiatives in Canada including the Canadian checkoff fee implemented on January 1, 1995.

Marketing Orders

Under Section 8(e) of the Agriculture Marketing Agreement Act of 1937, over 20 agricultural commodities are subject to federal marketing orders, which include inspection requirements, as well as minimum size, grade, quality and maturity standards. Federal marketing orders apply to products grown in the United States within a designated area. In the case of some marketing orders, imports of fruits and vegetables into all regions of the United States must meet the standards established under the order, even though competing U.S. producers in areas excluded from the order are not subject to the same standards.

VIII. INVESTMENT

There are numerous U.S. federal laws and regulations that limit foreign investment in the United States. Canadians can invest only with restrictions in U.S. radio and television, air carriers, ship building, banking and insurance, maritime transport and fisheries, natural resource industries, communications and defence-related sectors. Federal and state research and development programs sometimes contain regulations that prevent Canadian firms from becoming members of consortia.

A few examples of the legislation and programs affecting Canadian investment are: the **Federal Aviation Act of 1958**, which mandates that air transportation between two points in the United States be carried out only by U.S. companies with at least 75% U.S. ownership, and two-thirds of the management of the board must be U.S. citizens; the **Atomic Energy Act of 1954**, which restricts foreigners or foreign corporations from operating in the nuclear energy industry; and the **Advanced Technology Program**, which denies eligibility to foreign firms unless the parent company of the foreign firm is based in a country that grants national treatment and effective intellectual property protection to U.S. firms. (Other examples are cited in Section IX on Services.)

The United States justifies its federal restrictions almost exclusively on the grounds of national security (only in the fishing industry are federal restrictions on foreign investment based on criteria other than national security). For purposes of investment, the term "national security" has never been publicly defined. However, in a few industries, such as banking and insurance, treatment given a foreign firm in the United States depends on the treatment given a U.S. firm operating or desiring to operate in the same industry of the foreign company.

The broadest provision governing foreign direct investment in the name of national security is Section 721 of the Defense Production Act of 1950 (commonly referred to as the "Exon-Florio" provision). Since 1975, the Committee on Foreign Investment in the United States (CFIUS) has reviewed foreign investments that, in the judgement of the Committee, might have implications for the U.S. national interest. More recently, Section 5021 (the Exon-Florio Amendment) of the Omnibus Trade and Competitiveness Act of 1988 empowered the President to suspend or prohibit any acquisition merger or takeover by a foreign person on national security grounds. As a result of a 1992 amendment to the Exon-Florio provisions, the President is now required in the context of his review to take into account the potential effect of a transaction on U.S. technological leadership in critical defence areas. "Defence critical technology" has not been defined. Also, CFIUS investigations are now required in all transactions involving entities controlled by or acting on behalf of a foreign government. Furthermore, the President must submit written reports to Congress on each case referred to him by CFIUS.

State governments place restrictions on foreign ownership, particularly in real estate (some 30 states maintain restrictions on non-resident foreigners or foreign corporations), banking, insurance, mining and utilities.

Antitrust Law Exemptions

U.S. antitrust law provides for specific exemptions to the application of U.S. laws. Certain sectoral exemptions may constitute a violation of the principle of national treatment and give rise to investment distortion effects. The practical effect of these types of exemptions is that exporters to the United States may be subject to antitrust liability for anti-competitive practices while their U.S.-based competitors will not.

On the 10th of June 1993, the President signed into law the National Cooperative Research and Production Act (NCRPA) of 1993. This statute amends the 1984 National Cooperative Research Act (NCRA) by extending the more favourable antitrust treatment given to R&D joint ventures to manufacturing joint ventures as well. One important difference between the NCRPA and the NCRA is that the 1993 Act contains reciprocity conditions that the 1984 act does not. Moreover, in order to receive the 1993 law's antitrust benefits, the joint venture's principal facilities must be located in the United States.

To the extent that U.S. antitrust law plays a role in investment-location decisions, the availability of such exemptions for only U.S.-based enterprises may produce an investment distortion effect.

IX. SERVICES

Basic Telecommunications

The 1934 Telecommunications Act provides the Federal Communications Commission (FCC) with broad discretionary powers regarding the licensing and foreign ownership of telecommunications services. The test normally applied by the FCC when deciding the exercise of this discretion is the "public interest, convenience and necessity test" (PCN). The criteria are not defined, providing the FCC the administrative leverage to deny service applications by foreign telecommunications service providers in a manner which could constitute a barrier to these foreign companies.

Section 310 of the Telecommunications Act prohibits direct foreign ownership in common carrier radio licensees greater than 20%. While the statute gives the FCC the discretion to allow greater than 25% "indirect" foreign ownership in the parent of a licensee, the FCC has never exercised this discretion to the extent of allowing foreign control. This effectively precludes substantial foreign investment in the U.S. local exchange (mobile and microwave licenses) and long distance (microwave and satellite licenses) markets. Foreign ownership limitations apply to common carrier radio licenses needed to provide long distance service.

A U.S. carrier engaged in international long distance services and controlled by a foreign carrier is subject to full dominant carrier regulation (eg. the same as AT&T) unless it can satisfy the FCC that its foreign affiliate is unable to discriminate against unaffiliated U.S. carriers in its home market. All other carriers (eg. MCI, Sprint) are subject to streamlined regulation only.

In February 1995, the FCC proposed new rules to increase competition in the United States and to open foreign communications markets to U.S. industry. These new rules would enable the FCC to consider whether effective market access is, or soon will be, available to U.S. carriers seeking to provide basic telecommunications carrier services in the home country of the carrier seeking entry to the United States when deciding whether companies from those countries will be allowed to own or invest in U.S. communications companies.

In November 1995 the FCC adopted new rules to include additional factors in its public interest review, and will now consider whether U.S. telecommunications carriers have "effective opportunities" to compete in foreign markets when it considers applications by foreign carriers to serve the U.S. market. This introduces a principle of reciprocity which Canada has traditionally opposed in favour of MFN (most favoured nation) treatment.

Major new U.S. telecommunications legislation, the United States Telecommunications Act, was passed by Congress on February 1 and signed into law on February 8, 1996. There is a status quo position on foreign ownership of telecommunications services. The bill leaves considerable discretion to the FCC when it considers applications by foreign carriers to serve the U.S. market. The FCC analysis would include public interest factors that take account of broad trade and foreign policy, national security and law enforcement. The subjective nature of these criteria, which are unrelated to telecommunications services, creates uncertainty for Canadian companies applying for greater participation in the U.S. telecommunications market.

Negotiations on liberalization of basic telecommunications services are currently underway under the provisions of the WTO-based General Agreement on Trade in Services (GATS). These negotiations are set to conclude by April 30, 1996. The key issues for market access in this sector are foreign investment limits, the elimination of monopolies and the regulatory regime required to ensure competition when monopolies are eliminated. Increased access to the U.S. and certain other markets is essential for future growth of the Canadian industry. It is therefore important that an MFN-based outcome to the negotiations be achieved that will open up markets. The position of the U.S. is central to the success of the negotiations. Significant interests in the U.S. have a strong preference for bilateral sectoral reciprocity in telecommunications, which has led the U.S. to resist MFN obligations unless there is a "critical mass" of countries (as yet undefined) which have agreed to open their markets.

Maritime Transport

A range of U.S. programs and legislation serve to benefit the U.S. shipping, and shipbuilding and repair industries. For example, an operating differential subsidy (ODS) is paid to some U.S.-flag vessels in international shipping services to improve their competitiveness with respect to foreign-flagged vessels. The ODS program will expire in 1997; in early 1996 Congress was considering legislation for a successor program that would provide up to $1 billion in subsidies for approximately 50 vessels over ten years. Under the Capital Construction Fund (CCF) and the Construction Reserve Funds (CRF) tax deferral benefits are available to operators and owners of American vessels to construct, reconstruct or acquire vessels which have been constructed in the United States.

Under the provisions of the OECD Shipbuilding Agreement (see I. Subsidies/Shipbuilding Subsidies) the ODS, CCF and CRF programs will have to be modified to conform with the provisions of the Agreement. The 50% ad valorem duty charged on non-emergency repairs to U.S. flag ships undertaken abroad will also have to be removed (this tariff is already being progressively reduced vis-a-vis Canada under the provisions of the Free Trade Agreement and is to be eliminated entirely by January 1, 1998; the current rate is 7.5%).

In 1994, regulations enacted under the Oil Pollution Act (OPA 90) introduced U.S. requirements for insurance certificates of financial responsibility and tug escorts for tankers transiting short sections of U.S. territorial waters in the Strait of Juan de Fuca on voyages into B.C. ports. The resulting expenses imposed upon Canada-bound shipping have three effects: (1) a higher cost for Canada's international transportation services, (2) enhanced revenues for U.S. services suppliers, and consequently (3), a potential for U.S. services suppliers reaching greater economies of scale with the additional Canadian revenues, thereby reducing their unit costs and effectively subsidizing U.S. commerce.

Under the Alaska Power Administration Asset Sale and Termination Act, which became law in November, 1995, the U.S. Coast Guard discriminates against foreign shipping interests by requiring that Alaskan crude oil be carried solely by U.S. flagged and U.S. owned vessels.

Concern also exists about the absence of an offer by the United States in the WTO/GATS negotiations on maritime transportation services, which are scheduled to conclude in June, 1996. The objective of the negotiations is to achieve commitments and eliminate restrictions in international shipping (domestic cabotage is excluded), auxiliary services (e.g. cargo handling, freight forwarding), and access to and use of port facilities. The negotiations are unlikely to be successful without a significant U.S. offer.

Merchant Marine Act (Jones Act)

The Merchant Marine Act of 1920 ("The Jones Act") requires that cargo transported by water between points in the United States be carried on vessels which are U.S. registered, built and crewed. Moreover, U.S. citizens must hold at least 75% equity interest in partnerships or corporations which own the vessel. Under other legislation, similar restrictions apply to the domestic carriage of passengers.

Foreign rebuilding of a vessel permanently forfeits domestic privileges as does foreign registration for any period during the life of the vessel. In response in part to a NAFTA undertaking, a final rule is expected to be issued in 1996 that will establish a clear threshold for rebuilt determinations. However, the proposed threshold (between 5-10% of the steelweight of the hull and/or superstructure) is so low that the rule is unlikely to result in any significant liberalization of U.S. restrictions in this area. Legislation being considered by Congress in early 1996 for the reauthorization of the Coast Guard also contains a provision that would require all non-emergency repairs to Coast Guard vessels to be performed in the United States.

The Jones Act (coupled with the defence-related prohibitions of the Byrnes/Tollefson Amendment), effectively prevents Canada from participating in the domestic shipping trade of the United States, from investing in the U.S. shipbuilding industry, and from supplying shipbuilding components and related services to the U.S. market.

Another extension of the Jones Act, the Commercial Vessel Anti-Reflagging Act of 1988, restricts the activities of foreign-built vessels over five net tonnes in the fishing industry to the transportation of fish. The Act also prohibits vessels built or rebuilt outside the United States from engaging in coastal shipping and the fishing industry.

Both the WTO/GATT agreement and the OECD Shipbuilding Agreement (when it enters into force) contain special monitoring and reporting requirements on the Jones Act, and the United States to submit a report to the WTO in December, 1995. A debate within the U.S. maritime industry on the reform of the Jones Act also resumed during 1995, but by early 1996 no specific proposals for change had emerged.

Federal Maritime Commission (FMC)

Under the Foreign Shipping Practices Act of 1988, the Federal Maritime Commission (FMC) is authorized to take unilateral action to address foreign shipping practices affecting U.S. carriers. The FMC may also take action against restrictions on non-liner vessels and port and onward transit services. Possible remedies include the imposition of fees; cargo restrictions; suspension of a carrier's operating rights; restrictions on sailings to and from U.S. ports; denial of entry to U.S. ports or waters, and detention of vessels.

Ocean shipping reform legislation being considered by Congress would abolish the FMC and introduce a number of regulatory changes, including ending the requirement for carriers to file their tariffs and contracts. It would also give individual lines within carrier conferences a mandatory right of independent action on service contracts and allow shippers and carriers to make confidential contracts, while retaining anti-trust immunity for carrier conferences. However, the initiative would retain the United State's ability to take unilateral action to address foreign shipping practices affecting U.S. carriers.

Cargo Preference Measures

U.S. military supplies being transported by sea must be transported by U.S. vessels. In addition, 50% of government non-military cargoes and 75% of certain agricultural commodities (e.g., food and humanitarian aid shipments) must normally be transported by vessels of U.S. registry. As well, cargoes being shipped under U.S. export programs must normally be carried by U.S. vessels. (Up to 50% of such cargoes may be carried by vessels of the recipient country if the recipient country does not discriminate against U.S. vessels.)

Financial Services

Since 1980, Canadian financial sector reform has significantly outpaced that of the United States. Accordingly, many aspects of laws and regulations governing U.S. financial services result in significantly less access to the U.S. market than that enjoyed by U.S. financial institutions in Canada.

One of the key barriers is the variety of geographic restrictions on banking within and across state boundaries created by the MacFadden Act. The adoption of the Riegle-Neal Interstate Banking and Branching Efficiency Act in late-1994 has resulted in some improvements, but still offers no certainty that Canadian institutions will be able to operate freely across state lines.

In effect, the Act grants banks the basic right to acquire other banks across state lines. However, it defers to states the decisions with regard to consolidation and merger of banks across state lines as well as *de novo* establishments. Specifically, the Act grants states until June 1997 to take actions on those matters. Early indications are that a number of states will allow banks to merge their activities into one single entity. Only a few are expected, however, to allow *de novo* establishments, the preferred way to establish a presence abroad.

Another key barrier is the ownership restrictions imposed on banks in the Glass-Steagall Act of 1933. This Act prohibits all banks, domestic and foreign, from being affiliated with insurance companies and organizations "primarily engaged" in the securities business. These constraints have been somewhat relaxed in the recent years as a result of administrative and court decisions allowing banks to undertake limited activities in these areas. For instance, the Federal Reserve has allowed banks to generate not more than 10 % of their gross revenues from dealing and underwriting in securities other than bank-eligible securities (generally government securities) over any two year period. In spite of these improvements, the scope of activities permissible to banks in the security and insurance sectors remains fairly limited.

These ownership restrictions in the United States sharply contrast with the Canadian situation where banks have been allowed to own securities firms and insurance companies since 1987 and 1992 respectively. With an increasingly integrated North American market, Canadian financial institutions have not been able to take full advantage of the Canadian cross-ownership rules, due to the constraints on their securities and insurance activities in the United States.

Foreign banks operating in the United States may also be faced with a few additional barriers in the near future. For instance, foreign banks will be charged a fee for examinations beginning July 25, 1997. This measure would clearly put Canadian banks at a disadvantage relative to their U.S. counterparts. Furthermore, this measure would appear to be contrary to the national treatment provisions of the NAFTA.

Also in the area of securities, foreign broker-dealers are generally restricted by the Securities and Exchange Commission (SEC) to providing investment advice and other securities services to a limited range of major institutional clients in the United States. In many cases, the business must be conducted through a registered broker-dealer located in the United States. This limits the scope for cross-border provisions of securities services. Moreover, where SEC rules do not permit access to the U.S. market by non-resident broker-dealers, the broker-dealer must also comply with state securities laws, which are sometimes more restrictive. This contrasts with the Canadian market, where U.S.-based securities firms have very wide scope for offering services to sophisticated investors.

Affiliation between banks and insurance companies is prohibited in the United States, but is permitted in Canada.

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 financial institutions 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 measures such as the Foreign Sales Corporation Program which permits the permanent deferral of income taxes on a portion of export profits. Similarly, the so-called "title-passage" provisions of the U.S. sales source rules allow U.S. manufacturers to arbitrarily exempt from taxation 50 % or more of income derived from exports. 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, s 4681) 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.

Included in the Budget Reconciliation bill, vetoed by the President on December 6, 1995 for other reasons, was legislation intended to address Canada's concerns in this regard.

Section 337 of the Tariff Act of 1930

Under Section 337 of the United States Tariff Act of 1930, imported products that allegedly violate United States intellectual property rights can be barred from entry into the United States. Complaints under Section 337 are made to the United States International Trade Commission (ITC), and generally involve allegations of infringement of intellectual property rights, i.e. patents, trademarks or copyrights. Relief, in the form of an exclusion order (import prohibition of a specific article) or a cease and desist order (an order prohibiting a party from importing) or both, may be granted to the successful complainant.

Section 337 gives U.S. intellectual property owners a major advantage over foreign competitors, who face expensive litigation and the threat of harassment. Section 337 provisions contain more direct remedies against alleged violators than available against alleged domestic violators in U.S. domestic courts. Foreign firms also face more onerous administrative procedures in the ITC than in U.S. domestic courts.

A 1989 GATT Panel determined, *inter alia,* that Section 337 violated U.S. GATT obligations by providing different procedures for claims against foreign defendants than were provided for domestic defendants. U.S. commitments under the TRIPS Agreement and the NAFTA, in addition to reflecting those in the GATT, also provides in cases where a civil remedy is ordered as a result of administrative procedures for those administrative procedures to be in conformity with principles equivalent in substance to those provided in judicial proceedings.

The U.S. Uruguay Round implementing legislation has reduced some of the inconsistencies with U.S. obligations, by:

- preventing simultaneous ITC and District Court proceedings involving the same issues;
- providing for counterclaims;
- requiring the complainant to post a bond when seeking cease and desist orders;
- providing for indemnification of aggrieved defendants; and
- restricting the authority to issue exclusion orders.

The legislation and new ITC regulations, however, do not remove the threat of discriminatory treatment for non-U.S. defendants who will continue to face the risk of an additional burden.

XII. CANADIAN RESPONSES TO U.S. BARRIERS

Canada defends its interests with respect to U.S. trade barriers through representations, negotiations, consultations and dispute settlement proceedings on a bilateral basis or multilaterally through international trade agreements such as the NAFTA and the WTO. Throughout the year, Canada monitored the implementation of specific U.S. regulations which were required to give effect to the various provisions negotiated in the NAFTA. The NAFTA improves upon the terms of the FTA and provides for the discussion of further progress on trilateral trade issues through the establishment of more than 30 NAFTA Committees and Working Groups in such areas as technical standards, rules of origin and government procurement. The Working Groups on Anti-dumping and Subsidies/Countervailing Duties, for example, provide an opportunity to negotiate improved disciplines on the use of trade remedy measures. There is also an ongoing work program under the WTO, including multilateral negotiations on services and government procurement.

Regular bilateral consultations at the level of Ministers or officials to address individual trade problems have been instrumental in preventing issues from escalating into full-blown disputes or in resolving them when they do. The dispute settlement provisions of both the WTO and the NAFTA provide a last resort when negotiations and consultations fail. Canada has made aggressive and effective use of the dispute settlement provisions to protect Canadian trade interests as will be seen from the list of panel proceedings below.

Canadian Actions under the Free Trade Agreement

The following are the binational panels that have been established at Canada's request under the FTA since January 1, 1989.

Chapter 18 Panels

Minimum Size Requirements for Imported Lobster:

Established in January 1990, the panel upheld the U.S. minimum size requirements imposed on imported live lobster.

Non-Mortgage Interest as Territorial Content in the FTA Rules of Origin:

Established in January 1992, the panel upheld the Canadian challenge of the U.S. interpretation of the treatment of non-mortgage interest in the FTA rules of origin. The United States amended its interpretation accordingly.

UHT Milk:

In March 1993, an FTA panel agreed that Canadian interests have been damaged by closing the market in Puerto Rico to UHT milk from Quebec and recommended that an equivalency study of milk production standards be conducted. The study was completed in October 1995 and exports of UHT milk from Québec to Puerto Rico have resumed.

Chapter 19 Panels (Anti-Dumping/Countervail Cases)

Anti-Dumping Determination on Imported Red Raspberries:

Established in March 1989, the panel review resulted in the United States Department of Commerce having to recalculate the dumping margins against Canadian exporters. This recalculation resulted in a finding that there was no evidence of dumping.

Anti-Dumping Determination on Paving Equipment:

Established in March 1989, the panel upheld the United States Department of Commerce finding that parts for Canadian paving equipment are covered by a dumping order, and therefore eligible for duty.

Anti-Dumping Determination on Paving Equipment:

Established in April 1989, the panel upheld the United States Department of Commerce's adjustment for Canadian taxes in calculation of the dumping margin.

Anti-Dumping Determination of Salted Codfish:

Established in April 1989, the panel review was terminated with the consent of both parties because the anti-dumping order was revoked.

Anti-Dumping Determination on Paving Equipment:

Established in June 1989, the panel consolidated this request with the panel review of April 1989, regarding the same issue.

Countervailing Duty Determination on Fresh, Chilled and Frozen Pork:

Established in August 1989, the panel resulted in the United States Department of Commerce recalculating its countervailing duty, lowering it from eight to three cents per kilogram.

Countervailing Duty Determination on Imported Steel Rails:

Established in September 1989, the panel review resulted in the United States Department of Commerce recalculating its countervailing duty, lowering it from 112.34 percent to 94.57 percent.

Anti-Dumping Duty Determination on Imported Steel Rails:

Established in September 1989, the panel upheld the United States Department of Commerce's use of "best information available" in calculating its dumping margin.

Injury Determination in Countervailing Duty Cases on Imported Steel Rails:

Established in October 1989, the panel consolidated this request with the following panel review, which upheld the United States International Trade Commission's finding of injury against the Canadian producer.

Injury Determination in Anti-Dumping Case on Imported Steel Rails:

Established in October 1989, the panel upheld the United States International Trade Commission's finding of injury against the Canadian producer.

Injury Determination of Fresh, Chilled and Frozen Pork:

Established in October 1989, the panel review resulted in the United States International Trade Commission issuing a negative finding, terminating a duty imposed on Canadian pork. This panel decision was appealed by the United States to an Extraordinary Challenge Committee, which subsequently refused the appeal.

Anti-Dumping Determination on Imported Parts for Paving Equipment:

Established in June 1990, the panel review resulted in the United States Department of Commerce recalculating its dumping margin three times before it was affirmed by the panel at a rate of 17.97 percent. The original rate was 9.47 percent.

Scope Determination on Imported Oil Country Tubular Goods:

Established in November 1990, the panel review was terminated by joint consent of all parties.

Anti-Dumping Determination and Cancellation of Suspension Agreement on Imported Sheet Piling:

Established in December 1990, the panel review was terminated by joint consent of all parties.

Scope Exclusion Determination on Imported Oil Country Tubular Goods:

Established in May 1991, the panel review was terminated by joint consent of all parties after the United States Department of Commerce issued a decision excluding the goods from the anti-dumping order.

Anti-Dumping Determination on Imported Iron Construction Castings:

Established in June 1991, the panel review was terminated at the request of the complainant.

Countervailing Duty Determination on Imported Live Swine:

Established in July 1991, the panel review resulted in the recalculation of the countervailing duty rate on live swine for the 1988/89 review period, lowering it to 0.51¢/lb from 4.49¢/lb. The panel decision was appealed by the United States to an Extraordinary Challenge Committee which subsequently denied the appeal.

Countervailing Duty Determination on Imported Live Swine:

Established in October 1991, the panel review resulted in the United States Department of Commerce recalculating its countervailing duty rate on live swine for the 1989/90 review period, lowering it from 9.32¢/lb to 9.27¢/lb.

Anti-Dumping Determination on Paving Equipment:

Established in October 1991, the panel review was terminated at the request of the complainant.

Countervailing Duty on Imported Softwood Lumber:

Established in July 1992, the panel review resulted in a negative subsidy determination on remand by the United States Department of Commerce. The United States appealed the panel decision to an Extraordinary Challenge Committee, which subsequently denied the appeal.

Injury Determination on Countervailing Duty Cases on Imported Softwood Lumber:

Established in July 1992, the panel review was terminated after the negative finding of subsidy was upheld by an Extraordinary Challenge Committee.

Countervailing Duty Determination on Imported Magnesium:

Established in August 1992, the panel review resulted in the maintenance of the countervailing duty.

Anti-Dumping Determination on Imported Magnesium:

Established in August 1992, the panel review resulted in the United States Department of Commerce recalculating its anti-dumping duty, lowering it from 31.33 percent to 21 percent.

Injury Determination in Anti-dumping and Countervailing Duty Cases on Imported Magnesium:
Established in September 1992, the panel review resulted in the affirmation of the United States International Trade Commission's finding of injury.

Anti-Dumping Determination on Cold Rolled Carbon Steel Flat Products:
Established in July 1993, the panel review is stayed pending the outcome of proceedings in the United States Court of International Trade on the injury determination.

Anti-Dumping Determination on Hot Rolled Carbon Steel Flat Products:
Established in July 1993, the panel review is stayed (as at March 16, 1994) pending the outcome of proceedings in the United States Court of International Trade on the injury determination.

Anti-Dumping Determination on Corrosion-Resistant Carbon Steel Flat Products:
Established in July 1993, the panel review resulted in a lowering of the anti-dumping duty rate.

Anti-Dumping Determination on Cut-to-Length Carbon Steel Plate:
Established in July 1993, the panel review resulted in a lowering of the anti-dumping duty rate.

Injury Determination on Corrosion-Resistant Carbon Steel Flat Products:
Established in September 1993, the panel review resulted in the affirmation of the United States International Trade Commission's finding of injury.

Canadian Actions Under the NAFTA

The following are the panels that have been established at Canada's request under the NAFTA since January 1, 1994.

Chapter 19 Panels (Anti-Dumping/Countervail Cases)

Countervailing Duty Determination on Imported Live Swine:
Established in March 1995, the panel review for the 1990/91 review period resulted in a lowering of the countervailing duty rate.

Anti-Dumping Determination on Colour Picture Tubes:
Established in June 1995, the panel review is still in process.

Canadian Actions Under the GATT/WTO

Since January 1, 1989, the following GATT panels have been established at Canada's request to examine and rule on U.S. trade practices.

Countervailing Duty Determination on Fresh, Chilled and Frozen Pork:
Established in August 1990, the panel found that the United States had violated the GATT by presuming that subsidies on the production of live swine were completely passed on to the exporters of processed pork. Duties paid by Canadian pork exporters were subsequently refunded.

Federal and State Measures Concerning Alcoholic and Malt Beverages:

Established in May 1991, the panel found that two U.S. federal excise taxes on wine and beer and 60 measures in 39 states and Puerto Rico discriminated against Canadian wine and beer. The panel requested that the United States bring these measures into conformity with its GATT obligations. To date, the United States has failed to take any significant action to comply.

Initiation of Countervailing Duty Investigation on Softwood Lumber:

Established in December 1991, the panel found that the United States had not met its obligations under the Subsidies Code when it imposed interim duties on imports of softwood lumber from Canada prior to a preliminary determination of subsidy. The panel also found, however, that the United States had met its obligations of sufficient evidence under the Code when it self-initiated its countervailing duty investigation. On October 19, 1994, the USTR published in the United States Federal Register a notice to terminate the Section 301 action, and to release the existing bonds.

Initiation of Countervailing Duty Investigation on Magnesium:

Established in January 1992, the panel process was terminated before the panel could complete its deliberations, as a result of satisfactory discussions between Canada and the United States.

U.S. Limits on the Use of Foreign Tobacco:

Established in January 1993, the panel to examine the compatibility of the tobacco provisions of the United States Agricultural Reconciliation Act of 1993 with the GATT, found that certain provisions of U.S. tobacco laws were inconsistent with U.S. obligations under the GATT. In its Uruguay Round implementing legislation, the United States amended its tobacco laws to conform with the ruling of the Panel.

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