EXEMPLES DE QUESTIONS COURANTES DE DROIT INTERNATIONAL AYANT UNE IMPORTANCE PARTICULIÈRE POUR LE CANADA

EXAMPLES OF CURRENT ISSUES OF INTERNATIONAL LAW OF PARTICULAR IMPORTANCE TO CANADA

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HUMAN RIGHTS LAW

1. UNITED NATIONS DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

In 1995, the United Nations Commission on Human Rights established a Working Group (WG) of states to elaborate a draft declaration, using as the basis for its work the "Draft United Nations Declaration on the Rights of Indigenous Peoples" prepared over a period of many years by the five UN experts of the UN Working Group on Indigenous Populations. The WG is open to all member states, NGOs with UN consultative status, and organizations representing indigenous peoples whose accreditation has been approved by the UN.

The WG has held four annual sessions, beginning in November 1995. During this period, deliberations at the WG have been protracted in view of its mandate to negotiate a strong and effective Draft Declaration with the full and effective involvement of groups representing indigenous peoples. The WG meetings have been marked by inconclusive discussions and debates, which generally have refrained from addressing the issue of the need for states to engage in and sustain multilateral negotiations. To date, two draft articles have been adopted at first reading, on gender equality and the right to nationality.

The *Draft Declaration on the Rights of Indigenous Peoples* is composed of a preambular introduction of nineteen paragraphs and an operational part of forty-five articles, an exceptional length for this type of instrument. The issues are complex and inter-related. Key issues that need to be addressed are the draft provisions concerning the right to self-determination, lands and resources, education, recognition of treaties as international instruments, and the framing of policy objectives as rights.

At the second session of the WG in 1996, Canada stated that it accepts a right of self-determination for indigenous peoples which respects the political, constitutional and territorial integrity of democratic states. At the Commission on Human Rights, Canada serves as lead delegation for the annual resolution on the Draft Declaration. Canada has stated at the UN and other multilateral fora that it is committed to adoption of a clear and strong Declaration before the end of the International Decade of the World's Indigenous People (i.e., 2004).

Canada has worked hard at the WG, and also inter-sessionally, to engage states in a discussion on how to achieve progress on the Draft Declaration. Canadian Aboriginal organizations have been consulted throughout the process, including through meetings with the Minister of Foreign Affairs in October 1996 and subsequent occasions, and have attended the WG sessions as members of the Canadian Delegation and in their own right.

The fifth session of the Working Group will take place on October 18 to 29, 1999 at Geneva.

2. THE ORGANIZATION OF AMERICAN STATES (OAS) DRAFT AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS POPULATIONS

In February 1997, the Inter-American Commission on Human Rights completed several years of work by approving the "Proposed American Declaration on the Rights of Indigenous Peoples", which it submitted to the OAS Permanent Council in April of that year for study. The draft instrument was prepared by the Commission pursuant to a resolution of the 1989 OAS General Assembly, requesting the Commission to "prepare a declaration on the rights of the Indian peoples". Since then, Canada and other member states have submitted detailed comments and observations regarding draft provisions, most recently to the Inter-American Commission on Human Rights in 1997 on its then existing draft, and to the Permanent Council in early 1998 (as required by the relevant resolution of the 1997 General Assembly).

A first meeting of government experts was held in February 1999 to consider the "Draft American Declaration on the Rights of Indigenous Populations" (retitled at the 1998 General Assembly). Subsequently, with Canada taking a lead role, member states have agreed to establish a formal Working Group which will meet for the first time on November 8 to 12, 1999 in Washington.

The Draft American Declaration covers a wide range of issues, including human rights, education, religious freedom, self-government, land and resources, and environmental protection.

Canada has spoken in favour of international instruments on the rights of indigenous peoples both within the context of the OAS and at UN fora. Canada supports the development of these instruments through a process that provides for the views of indigenous groups, and considers their participation in the process to be of great importance.

Canada believes that the Draft American Declaration should: 1) reflect the unique place of indigenous peoples in the Americas; 2) be universal in application; 3) promote reconciliation and protection of indigenous rights; 4) work effectively against discrimination; and 5) provide clear and practical guidance for the development of effective and harmonious relationships between indigenous peoples and states.

3. THE TENTH ANNIVERSARY OF THE CONVENTION ON THE RIGHTS OF THE CHILD

The *Convention on the Rights of the Child* (CRC) was adopted by the United Nations General Assembly on November 20, 1989 and entered into force in September 1990.

Canada played an active role in drafting the CRC and, pleased to be in the first group of ratifying countries, ratified it in December 1991. The CRC is the most widely ratified human rights treaty in history since all UN member states (with the exception of the US and Somalia) have ratified it.

Canada submitted its first report to the UN Committee on the Rights of the Child (the "Committee") in 1994, received Concluding Observations from the Committee in 1995 and is now in the process of finalizing its second report. Non-governmental organizations in Canada are also participating in the monitoring process of the CRC, developing reports and papers.

In its first 10 years, the CRC has made a significant contribution for the benefit of all children. However, despite the Convention's success of near universal ratification, the bigger challenge lies ahead in its full implementation. Canada continues to urge all states parties to promote the rights of children in their activities and programmes and to strive to implement all the commitments to children contained in the CRC.

The upcoming UN Special Session on Children (the "UNSSC") in September 2001 will review progress since the 1990 World Summit for Children and provide the opportunity to develop and agree on a "Global Agenda" for future work for child protection, welfare and rights. The Honourable Senator Landon Pearson has been appointed the Canadian Sherpa and, as such, will act as the personal representative of the Prime Minister to the session.

Canada also realizes that the success of the CRC has resulted in significant demands placed on the Committee in terms of its capacity to review states parties' reports efficiently and expeditiously. In order to address this issue, Canada hopes that there will be instruments of acceptance from other states parties to support the amendment to the CRC to increase the membership of the Committee from 10 to 18 members.

Finally, Canada considers it is important that children be effective and active participants in discussions leading up to the upcoming UNSSC that directly affect them. Canada will continue to work with the Committee, the Office of the High Commissioner for Human Rights, other member states and NGOs to fully realize this goal.

4. THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

A Working Group on the UN Commission on Human Rights was created in 1994 and has met five times since then to draft an *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*. The next and possibly final session of the Working Group will take place in January 2000.

The main objectives of this Optional Protocol are to obligate states parties to criminalize the sale of children, child pornography and child prostitution, and to put in place measures for the protection of child victims.

The scope of application of the Optional Protocol remains the most contentious issue, and the greatest obstacle to reaching a consensus. This issue is inextricably linked with the definition

of "sale of children", and differing positions amongst delegations regarding the mandate of the Working Group. Although there have been numerous requests that clarification regarding the mandate of the Working Group be sought from the UN Commission on Human Rights, this has not yet been done. The formulation supported by most southern delegations - "sale of children for any purpose and in any form" - is unacceptably vague to most northern states. Canada and most northern states have supported a narrow interpretation of "sale of children", as it is imperative to clearly define exactly what behaviour is to be criminalized.

The negotiations are much more advanced on the issue of child prostitution since the members of the Working Group have essentially agreed upon the elements of the definition and penalization section.

On the last issue, Canada supports a broad definition section of child pornography as well as a broad penalization provision, which is consistent with the provisions of the Criminal Code. This position is perceived by some delegations as being too broad.

In view of the growing international consensus that sex tourism is an act which needs to be criminalized, Canada has already taken the initiative to amend its Criminal Code to allow for the Canadian prosecution of Canadians who engage in sexual activity with children while outside Canada.

Canada has played an active role in the Working Group session by chairing informal negotiations and by developing consensus text. Canada intends to continue to work with its international counterparts in the hope that the Working Group will successfully conclude its negotiations and that the text of a strong Optional Protocol will be agreed upon by the tenth anniversary of the coming into force of the CRC in year 2000.

5. THE OPTIONAL PROTOCOL ON CHILDREN IN ARMED CONFLICT

A Working Group of the UN Commission on Human Rights has met five times since 1994 to draft an *Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict*. The next session of this working group will take place in January 2000.

The Convention on the Rights of the Child provides that states parties shall take all feasible measures to ensure that persons who have not attained the age of 15 do not take a direct part in hostilities (combat) and that states parties shall refrain from recruiting into their armed forces any person who has not attained the age of 15 (article 38(2) and (3)). The same norm is found in the *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, in the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, and in the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims in Non-International Armed Conflicts (Protocol II)*.

The main objective of the Optional Protocol is to raise the age for participation in hostilities and the age of recruitment. Another objective is to prevent the recruitment and use of children by non-governmental armed groups.

In the negotiations, there are three principal outstanding issues:

1. the minimum age for participation in hostilities -- the majority of states could support 18;

2. the minimum age for voluntary recruitment -- the current draft text contains options ranging from 16 to 18; and

3. whether there should be any exceptions to the minimum age for recruitment -- the current draft text could provide for exceptions for training.

The Working Group has agreed, *ad referendum*, that the minimum age for compulsory recruitment (conscription) should be 18. There is also broad support for a provision that would require parties to the Optional Protocol to take all feasible measures to prevent the recruitment of persons under the age of 18 by non-governmental armed groups.

Canada has been very involved in the drafting and supported the early conclusion of a strong optional protocol. Canada supports 18 as the minimum age for involvement in hostilities. On the age of recruitment, Canada is currently examining its domestic legislation to ensure that we are in a position to ratify a strong optional protocol once it is adopted at the UN.

The last meeting of the Working Group was abridged to provide additional time for consultation. A NGO coalition has been formed with the objective of getting together a group of countries to support the development of a protocol setting the age of 18 for both participation and recruitment. The Canadian Government has begun to engage other countries in a new "Friends of the Optional Protocol" group which purports to give some political impetus to the Optional Protocol negotiations and to determine how to maximize chances for a successful outcome of the Working Group's next session, with the hope that the text of the Optional Protocol can be finalized and adopted next year.

CRIMINAL LAW

1. THE INTERNATIONAL CRIMINAL COURT

On July 17, 1998, the *Statute of the International Criminal Court* (ICC) was adopted by the Diplomatic Conference in Rome, Italy. The ICC Statute will enter into force once it has been ratified by 60 states. The ICC will be complementary to national courts and will exercise jurisdiction where national courts are unable or unwilling to bring transgressors to justice. The ICC will have jurisdiction over genocide, crimes against humanity and war crimes (as well as the crime of aggression once a suitable definition is adopted).

The ICC Statute has been signed by 86 states, and has been ratified by four (Senegal, Trinidad & Tobago, San Marino and Italy). Many other states are working to ratify as soon as practicable. A NGO campaign is pressing for sixty ratifications by December 2000.

Canada signed the ICC Statute on December 18, 1998. We expect to be among the first 60 states to ratify. We hope to introduce the necessary implementing legislation in Parliament this fall, and we expect to ratify once this legislation is in place.

A Preparatory Commission (PrepCom) is working out critical details of the Court's operation, such as elements of crimes and the rules of procedure. Philippe Kirsch, the Canadian Ambassador to Sweden, serves as the Chair of the PrepCom. The PrepCom met in February and July/August 1999 and will meet again in November/December 1999, with further meetings planned for 2000.

Canadian officials are working in many fora to encourage widespread signature and ratification of the ICC Statute so that the ICC may begin its essential work as soon as possible.

2. INTERNATIONAL CRIMINAL TRIBUNALS

a) International Criminal Tribunal for the Former Yugoslavia

Formation and Growth: The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the UN Security Council in 1993 to prosecute individuals alleged to have committed serious violations of international humanitarian law, including war crimes, crimes against humanity, and genocide since 1991. Over the course of its lifespan, the Tribunal's workload has increased significantly. To cope, the Security Council has added a third "Trial Chamber" (panel of judges), the ICTY's staff has expanded (766 members, 14 seconded personnel, and 24 interns), and its budget has increased to over US$94 million.

Leadership: US judge Gabrielle Kirk McDonald, who serves as the Tribunal's President, has indicated her intent to resign on November 17, 1999. Her seat on the court will be taken by Judge Patricia M. Wald (US) who will serve the remainder of Judge McDonald's term (two years). The Presidency of the Tribunal will be determined by a vote of its judges in November 1999. Madame Justice Louise Arbour served as Chief Prosecutor until September 15, 1999, when she

assumed a seat on the Supreme Court of Canada. On the recommendation of the Secretary-General, the Security Council appointed Carla Del Ponte of Switzerland to assume office on September 15, 1999.

Apprehension of Indictees: Since the summer of 1997, several SFOR arrest operations, as well as improved cooperation and voluntary surrenders precipitated by those arrests, have dramatically increased the number of indictees in custody. As a result, the Tribunal now has 33 indictees currently in proceedings before the Tribunal (31 in custody and 2 released pending appeal), one serving sentence in Norway, one acquitted on all charges and 33 still at large. To date eight persons have been convicted (seven have appealed to the Appeals Chamber).

Kosovo: In March 1999, Prosecutor Arbour sent leading Yugoslav and Serbian officials letters explaining their potential liability if they failed to protect civilians in Kosovo. Since the end of hostilities, forensic investigation teams from numerous countries, including Canada, have been collecting evidence of atrocities in Kosovo. A nine-person team from the Royal Canadian Mounted Police was among the earliest to enter Kosovo.

Milosevic Indictment: Indictments against Yugoslav President Milosevic, his Deputy Prime Minister, and Chief of Army Staff, as well as the President of Serbia and his Minister of Internal Affairs, were made public in May 1999. The accusations cover the conduct of Yugoslav forces in Kosovo over the preceding four months. Additional indictments against Milosevic and the other FRY leaders may yet emerge out of events in Croatia and Bosnia.

Canadian Support The Government of Canada strongly supports the Tribunal. We regard its work as essential in ending the cycle of impunity and violence. If indictees are not removed from their communities, their influence will remain unchecked and justice will not be done or seen to be done. Prospects for lasting peace in the former Yugoslavia in such a climate would remain elusive.

Financial Support: Canada has to date provided over $2.3 million in voluntary contributions to the Tribunal. This has been used for such activities as forensic investigations and the exhumation of mass graves, and for the "Rules of the Road" programme, which ensures that arrests of suspected war criminals by local authorities are consistent with international legal standards.

Political Support: Canada has been at the forefront in providing the Tribunal with strong political support. For example, in November 1998, Minister Axworthy sent a letter to the FRY Minister of Foreign Affairs referring to the FRY's clear violation of its obligations and urging unhindered compliance. We have also argued strongly in NATO and at the UN Security Council that the Kosovo Force should provide the fullest possible support for the ICTY's work, including apprehension of indictees and protection of evidence. Canada was also among the first countries to support publicly the recent indictments of President Milosovic and four other FRY leaders.

Legal and Investigative Support: Canada has consistently provided legal and investigatory support to the Tribunal, for example, by submitting an *amicus curiae* brief supporting the Tribunal's jurisdiction in 1997, and seconding two RCMP crime scene analysts in 1998. In December 1998, Canada signed an agreement with the Tribunal concerning the resettlement of witnesses. In June 1999, amendments were passed to the *Extradition Act* and other legislation which will allow full compliance with Canada's obligations to the ICTY. In July 1999, responding to the arrest warrant against Milosevic and others, Canada enacted the *ICTY Regulations* pursuant to the *United Nations*

Act, to freeze any Canadian assets of President Milosevic and his four co-indicted FRY government officials.

Other support: In March 1999, Canada successfully expanded the OSCE Kosovo Verification Force's mandate to include information gathering from Kosovo refugees on human rights violations by FRY forces. Six RCMP officers were among those gathering evidence in Albania. This information was passed to the ICTY for possible use in future prosecutions.

In June 1999, in response to requests from the ICTY, Minister Axworthy announced Canada's willingness to provide intelligence information support to the ICTY.

Also in June 1999, Canada was one of the first countries to provide a team of forensic experts to carry out crime scene analyses in Kosovo, in support of the work of the ICTY. Funding for this initiative ($0.5 million) was approved by CIDA through the Canadian Police Arrangement. Canada has subsequently provided a second team upon the completion of the mandate of the first team.

b) International Criminal Tribunal for Rwanda

Background: The International Criminal Tribunal for Rwanda (ICTR or "the Rwanda Tribunal") was established by UN Security Council Resolution 955 (1994) to bring to justice the architects of the genocide that occurred in Rwanda in 1994, claiming almost a million lives (mainly Tutsis with some moderate Hutus). The Tribunal itself (the Chambers and Registry) is based in Arusha, Tanzania, whereas the Office of the Prosecutor, headed by the Deputy Prosecutor, is in Kigali, Rwanda. The ICTR and the ICTY share the same Appeals Chamber as well as the same Chief Prosecutor. A second courtroom was added in April 1998 and a third panel of judges was sworn in in May 1999. The 1999 budget of the ICTR is US$68.5 million, with 667 persons on staff.

Leadership: In June 1999, Judge Navanethem Pillay (South Africa) was unanimously elected by her peers as President of the Tribunal for a mandate of two years. Madame Justice Louise Arbour served as Chief Prosecutor until September 15, 1999, when she assumed a seat on the Supreme Court of Canada. On the recommendation of the Secretary General, the Security Council appointed Carla Del Ponte of Switzerland to assume office on September 15, 1999.

Arrests: The ICTR has been successful in obtaining custody over high-ranking leaders indicted for the most serious crimes, through numerous high-profile arrests in several African and European countries. The Tribunal now has 38 out of 48 indicted persons in custody, including one detained in Texas, USA.

Convictions: Jean Kambanda, the former Prime Minister of the Interim Government of Rwanda, pleaded guilty to genocide and crimes against humanity in May 1998, and was sentenced to life imprisonment in September 1998. That same month, Jean Paul Akayesu, a former mayor of Taba, was found guilty of genocide and crimes against humanity and sentenced to life imprisonment. These precedent-setting cases mark a major step in the battle against impunity. The *Akayesu* decision provides a judicial interpretation of the crime of genocide (defined in the 1948 Genocide Convention) and affirms that sexual violence can in certain circumstances constitute an act of genocide. The ICTR has completed other important trials, including the conviction of Omar Serushago for genocide and crimes against humanity, and Clement Kayishema and Obed Ruzindana

for genocide.

Administrative developments: Reports of administrative inefficiencies and irregularities at the ICTR have persisted over the years. UN audits have noted significant improvements but have emphasized that serious administrative problems remain to be overcome. Public relations, security and protection of witnesses have been identified as areas where improvement is needed. In May 1999, the Secretary-General constituted an Expert Group to conduct a review of the operation and functioning of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, with the objective of ensuring the efficient use of the resources of the Tribunals.

Defence lawyers: Considerable controversy has been generated by the Registrar's decision to exclude Canadian and French lawyers from the list of defence lawyers available to assist indigent accused. The Registrar defended the move on the basis that Canadian and French lawyers are over-represented, and that steps were needed to ensure equitable geographic representation. Canada has urged the ICTR to consider a different approach, in order to ensure an impeccable standard of justice. The exclusion of lawyers based on their nationality has created in the eyes of many an appearance of impropriety. For example, the Yugoslav Tribunal permits indigent accused to choose their counsel, and does not restrict this choice on the basis of nationality. Canada's concern with this matter has been communicated to a United Nations group of experts struck to evaluate the workings of the ad hoc Tribunals.

Canadian support: Several Canadians are working for the Tribunal in a variety of capacities. Canada has provided $1 million in voluntary contributions, but much of this sum has remained unused to date. Canada has also provided other forms of assistance, such as the donation of a special collection of legal articles and publications on the law of genocide for the use of the Tribunal and its judges. In June 1999, amendments to the *Extradition Act* and several other statutes which permit surrender of indictees directly to the Tribunal were adopted.

3. THE CASE ON THE LEGALITY OF THE USE OF FORCE BEFORE THE INTERNATIONAL COURT OF JUSTICE (*YUGOSLAVIA* v. *CANADA*)

On April 29, 1999, the Federal Republic of Yugoslavia (FRY) instituted separate proceedings before the International Court of Justice (ICJ) against Canada and nine other NATO members (USA, UK, France, Germany, Italy, the Netherlands, Belgium, Portugal and Spain), alleging that they had violated international law by, among other things, the illegal use of force, intervention in the internal affairs of a state, failure to protect civilian populations, damage to the environment, violation of human rights and fundamental freedoms, interference in free navigation, use of prohibited weapons, and the infliction of conditions calculated to cause the physical destruction of a national group (genocide).

In the first phase of the proceedings, the FRY requested from the Court an indication of provisional measures for an immediate cessation of the use of force by Canada and other NATO members. On June 2, 1999, the Court rejected the FRY's request for provisional measures against Canada by a majority of 12 to 4. It accepted Canada's argument that the Court lacked *prima facie* jurisdiction on the basis that the FRY's April 25, 1999 declaration accepting the compulsory jurisdiction of the Court came into effect after the dispute arose (the commencement of air strikes on March 24). The Court noted that it did not have to consider Canada's argument that the FRY, as a non-member of the United Nations, was not a party to the ICJ Statute. It rejected the FRY's

attempt to find a jurisdictional base in the Genocide Convention.

On June 28, 1999, the Vice-President of the Court met with Agents of the FRY and the eight respondents whose cases remain on the docket (Canada, Belgium, France, Germany, Italy, Netherlands, Portugal, and the UK) to settle questions of procedure for the next phase of the case. The Court fixed January 5, 1999 as the date by which the FRY is to submit a memorial for its case against Canada, and July 5, 1999 as the date by which Canada is to submit a counter-memorial. In addition to the question of the jurisdiction of the Court and of the admissibility of the FRY's application, the Court ruled that the FRY could also submit a memorial on the merits. It noted that Canada could, if it wished, raise preliminary objections within the time limit fixed for the filing of its counter-memorial.

4. THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

The Ad Hoc Committee on the Elaboration of a *Convention against Transnational Organized Crime* ("TOC")was established by General Assembly Resolution 53/111 of December 9, 1998. The Ad Hoc Committee was charged with drafting the main text of the Convention, as well as international instruments dealing with trafficking in women and children, combatting the illicit manufacture of and traffic in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea. These later elements have emerged as three draft protocols to the main Convention, which will criminalize specific offences and supplement the Convention with mechanisms specific to these crimes. The three protocols are: the *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials*; the *Protocol Against the Smuggling of Migrants by Land, Sea and Air*; and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.*

The distinction between "smuggling" and "trafficking" is often blurred, but there are important differences. "Smuggled" people are usually aware they are engaged in a clandestine activity by entering another country, use fraudulent documents and pay for the service. "Trafficked" people are often deceived or forced into prostitution or labour, and may (or may not) enter a country legally with proper documents.

The TOC Convention will provide practical mechanisms for international law enforcement and judicial cooperation such as mutual legal assistance, assistance in investigations, extradition, asset seizure, criminalization of money-laundering and tracing of financial transactions. A deadline of late 2000 has been set for the completion of the TOC. While this target is ambitious because it includes the simultaneous completion of the three protocols to the TOC, Canada looks forward to the successful completion of the Convention and its Protocols within the time-frame allotted.

Of the three protocols, drafting of the Protocol on Illicit Trafficking in Firearms is the most advanced. The Protocol seeks, *inter alia*, to enhance information sharing and cooperation between states parties, and further to develop import-export controls, as well as tracking and record keeping. Canada drafted the initial text of the Protocol and continues to play a prominent role in the negotiation of this instrument, leading informal discussions. This text has been identified as one of the three prongs of the Minister Axworthy's approach to small arms issues.

Canada has also played an active role in the Protocol on Migrant Smuggling, having provided substantial input to the initial draft text, much of which has been adopted. While work on the Protocol on Trafficking in Persons, especially Women and Children is less advanced, we have

played a strong role in trying to find drafting solutions, and continue to work with our international counterparts to advance work on this Protocol as well.

5. SMALL ARMS

The Department is working in a number of areas to support the limitation of the proliferation of small arms - arms control and "peace-building" approach -, as well as on controlling illicit trafficking in firearms - a law enforcement approach.

While the Legal Bureau has the lead on the issue of controlling illicit trafficking in firearms, we also advise other interested divisions of the Department (Non-proliferation, Arms Control and Disarmament Division, and Human Rights, Humanitarian Affairs and International Women's Equality Division) on legal aspects related to the small arms issue. Furthermore, discussions are ongoing in the UN, in the context of the Lysoen Declaration, with Norway and Switzerland in preparation for a conference on small arms in 2001.

DROIT DE L'ENVIRONNEMENT

1. L'ACCORD NORD-AMÉRICAIN DE COOPÉRATION DANS LE DOMAINE DE L'ENVIRONNEMENT (ANACE)

L'ANACE, souvent appelé l' "accord parallèle" à l'*Accord de libre-échange nord-américain* (ALÉNA), est entré en vigueur le 1er janvier 1994. Le Canada, les États-Unis et le Mexique sont parties à l'Accord. L'ANACE vise notamment à favoriser une meilleure coopération et à protéger l'environnement nord-américain en veillant à ce que chaque État applique de façon effective sa législation dans ce domaine. Les articles 14 et 15 de l'ANACE permettent aux citoyens de déposer une plainte auprès du Secrétariat. Ils permettent aussi à ce dernier de préparer un "dossier factuel" sur une plainte alléguant l'omission d'une partie d'assurer l'application effective de sa législation sur l'environnement.

Au terme de la plus récente session du Conseil de la Commission de coopération environnementale (CCE), tenue en juin 1999 à Banff en Alberta, le Conseil a révisé les *Lignes directrices relatives aux communications sur les questions d'application visées aux articles 14 et 15* de l'ANACE. Les nouvelles Lignes directrices visent à mieux aider les citoyens à préparer des communications sur des questions d'application couvertes par l'ANACE.

À ce jour, huit (8) communications impliquant le Canada ont été présentées au Secrétariat de la CCE conformément aux articles 14 et 15. Parmi celles-ci, quatre (4) ont été rejetées pour n'avoir pas rencontré les critères initiaux. Quant aux autres communications, l'une d'entre elles fait présentement l'objet de la préparation d'un dossier factuel; une autre a fait l'objet d'une recommandation visant la préparation d'un dossier factuel; alors que les deux autres sont présentement sous étude par le Secrétariat en vue d'une recommandation possible visant la préparation d'un dossier factuel. Les diverses communications soumises à ce jour concernent notamment la protection de l'habitat du poisson contre les dommages causés par des barrages hydroélectriques en Colombie-Britannique, l'application des lois environnementales aux producteurs de porc au Québec, l'application et la mise en oeuvre générale des dispositions de la *Loi sur les pêches* relativement à la protection des habitats du poisson ainsi que de la *Loi canadienne sur l'évaluation environnementale* (LCEE), et l'application de certaines dispositions de la *Loi sur les pêches* relatives à la protection du poisson et de son habitat contre les effets environnementaux néfastes de l'industrie minière en Colombie-Britannique.

Pour consulter les nouvelles Lignes directrices et en savoir plus sur les différentes communications présentement à l'étude, on peut consulter le site Web de la CCE à l'adresse suivante: http://www.cec.org.

2. L'ACCORD DE COOPÉRATION DANS LE DOMAINE DE L'ENVIRONNEMENT ENTRE LE CANADA ET LA RÉPUBLIQUE DU CHILI

L'*Accord de coopération dans le domaine de l'environnement entre le Canada et le Chili*, un accord parallèle à l'*Accord de libre-échange entre le Canada et le Chili*, est entré en vigueur en juillet 1997. L'Accord reprend essentiellement les dispositions de l'ANACE et souligne l'engagement des deux parties de mener un programme de travail coopératif et de mettre en oeuvre des mesures visant l'application efficace de leurs lois environnementales.

Le Conseil de la Commission canado-chilienne de coopération environnementale, qui s'inspire du modèle de la Commission de l'ANACE, s'est réuni pour la première fois le 9 novembre 1998. À cette occasion, le Conseil a nommé les membres du Comité consultatif public mixte (CCPM) afin de sensibiliser encore plus le public aux questions environnementales. Il a également nommé les deux membres du Comité mixte d'examen des communications sur les questions d'application lequel est chargé de revoir les plaintes des citoyens sur les questions d'application des lois environnementales.

Pour en savoir plus à l'égard de cet Accord, on peut consulter le site Web canadien à l'adresse suivante: http://can-chil.gc.ca/.

3. LE PROTOCOLE DE MONTRÉAL RELATIF À DES SUBSTANCES QUI APPAUVRISSENT LA COUCHE D'OZONE (PROTOCOLE DE MONTRÉAL)

L'adoption de la *Convention de Vienne pour la protection de la couche d'ozone* en 1985 puis celle du *Protocole de Montréal relatif à des substances qui appauvrissent la couche d'ozone* en 1987 ont été le point de départ d'une coopération à l'échelle de la planète pour protéger la couche d'ozone stratosphérique. Le Protocole de Montréal a amené plus de 170 pays à prendre diverses mesures devenues nécessaires pour protéger la santé de l'être humain et de l'environnement contre les effets néfastes qui résultent de l'appauvrissement de la couche d'ozone.

Le Protocole de Montréal vise à éliminer graduellement la production et la consommation de substances qui appauvrissent la couche d'ozone telles les CFC, les halons, les HCFC et le bromure de méthyle. Divers amendements et ajustements ont été adoptés depuis 1987 en vue de devancer les échéanciers prévus au départ et ainsi permettre une réduction plus rapide de la production et la consommation de substances qui appauvrissent la couche d'ozone. En outre, les Parties ont créé un mécanisme de financement, le Fonds multilatéral, pour assurer aux pays en développement une coopération technique et financière afin qu'ils puissent s'acquitter des obligations qui découlent du Protocole. À ce jour, plus d'un milliard de dollars ont été versés aux pays en développement pour les aider à mettre en oeuvre les obligations découlant du Protocole.

La prochaine réunion des Parties se tiendra à Beijing, en Chine, du 29 novembre au 3 décembre 1999. À cette occasion, les Parties examineront, entre autres, certaines propositions d'ajustements et d'amendements additionnels. En outre, les Parties traiteront de la reconstitution du Fonds multilatéral afin de fixer le montant du financement nécessaire pour les pays en développement pour la période 2000-2002.

Pour en savoir plus à l'égard du Protocole de Montréal, on peut consulter le site Web du Secrétariat de l'ozone à l'adresse suivante: http://www.unep.ch/ozone/home.htm.

4. LA CONVENTION DE ROTTERDAM SUR LA PROCÉDURE DE CONSENTEMENT PRÉALABLE EN CONNAISSANCE DE CAUSE APPLICABLE À CERTAINS PRODUITS CHIMIQUES ET PESTICIDES DANGEREUX QUI FONT L'OBJET D'UN COMMERCE INTERNATIONAL (CONVENTION DE ROTTERDAM OU CONVENTION PIC)

La montée en flèche de la production et du commerce de produits chimiques au cours des années 1960 et 1970 a suscité certaines inquiétudes au sujet des risques que présentent les produits chimiques et les pesticides dangereux. Face à ces préoccupations, le Programme des Nations Unies

pour l'environnement (PNUE) et l'Organisation des Nations Unies pour l'alimentation et l'agriculture (FAO) ont mis au point et fait la promotion de programmes volontaires d'échanges d'informations. La FAO a diffusé en 1985 un *Code international de conduite pour la distribution et l'utilisation des pesticides*, et le PNUE a rédigé en 1987 les *Directives de Londres applicables à l'échange de renseignements sur les produits chimiques qui font l'objet d'échanges commerciaux au niveau international.*

Ces programmes prévoient un échange volontaire d'informations en vue de permettre l'obtention et la diffusion des décisions prises par différents pays à l'égard de l'importation et du transit de produits chimiques. Le but visé est d'encourager le partage des responsabilités entre les pays exportateurs et importateurs en vue de protéger la santé des personnes ainsi que de l'environnement contre les incidences néfastes que peuvent avoir certains produits chimiques et pesticides dangereux faisant l'objet du commerce international. Le Canada soutient depuis des années la procédure PIC et a été activement engagé dans la mise en oeuvre des deux mécanismes volontaires.

Des négociations récentes sous l'égide du PNUE et de la FAO ont mené à l'adoption, en septembre 1998, de la *Convention de Rotterdam sur la procédure de consentement préalable en connaissance de cause applicable à certains produits chimiques et pesticides dangereux qui font l'objet d'un commerce international.* La Convention de Rotterdam a été ouverte à la signature des États pendant un an au siège de l'Organisation des Nations Unies à New York, le 12 septembre 1998. À ce jour, 73 pays l'ont signée et un pays l'a ratifiée. La Convention entrera en vigueur 90 jours après le dépôt du cinquantième instrument de ratification ou d'adhésion. Le Canada envisage d'adhérer à la Convention une fois l'entrée en vigueur de la nouvelle *Loi canadienne sur la protection de l'environnement (1999).*

Comme la Convention de Rotterdam n'est toujours pas en vigueur, une résolution sur les dispositions provisoires a été adoptée à Rotterdam en vue de permettre l'application de la procédure sur une base facultative. Cette résolution sur la procédure PIC provisoire est entrée en vigueur le 11 septembre 1998 et cessera de s'appliquer à la date que fixera la Conférence des Parties à sa première réunion.

Pour de plus amples renseignements, on peut consulter les sites Web du PNUE ou de la FAO aux adresses suivantes: http://irptc.unep.ch/pic/ ou http://www.fao.org/AG/AGP/AGPP/Pesticid/PIC/piclinks.htm.

5. BIODIVERSITY

Negotiations continue for a global agreement on the safe transfer, handling and use of living modified organisms. These negotiations are conducted under the auspices of the Biodiversity Convention and aim at the adoption of a Biosafety Protocol to the Convention. The negotiations are focussed on the transboundary movement of living modified organisms (LMOs) resulting from modern biotechnology that may have an adverse effect on the conservation and use of biological diversity. The centerpiece of the Protocol is an "advanced informed agreement" (AIA) regime, requiring the notification of an intended transboundary shipment of LMOs and the assessment of associated risks before the receiving state permits import. The sixth session of the Ad Hoc Working Group on Biosafety took place in Cartagena, Colombia, in February 1999. It was originally anticipated that this would be the last session of the Ad Hoc Working Group and that the resulting Protocol would be ready for adoption at an extraordinary meeting of the Conference of the Parties

to the Convention on Biological Diversity also held in Colombia in February 1999.

In the end, however, the participants were unable to reach agreement and considerable difficulties remain. Key among these is the treatment of commodities, i.e. those LMOs intended for use in the food, feed or processing industries, rather than LMOs destined for contained use, or for deliberate release (seed). While some argue that commodities should be subject to the AIA regime, others argue that this regime is impractical for commodities and oppose the imposition of labelling or extensive documentation requirements for commodities. Equally divisive is the question of the relationship between the Protocol and existing trade instruments. While some see the Protocol as offering additional opportunities to take measures to protect their domestic environments, others note that any such measures will still have to meet the disciplines imposed by existing trade instruments. At the end of the Cartagena meeting, the chair prepared a text to facilitate further discussions. Consultations resumed on an informal basis and at a conceptual level in Vienna in September 1999. On the basis of those discussion, the parties agreed to schedule a further negotiating session for Montreal in January 2000.

6. THE GLOBAL CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

With the conclusion of the *Protocol on Persistent Organic Pollutants (POPs) to the United Nations Economic Commission for Europe Convention on Long-range Transboundary Air Pollution* in 1998, the focus has now moved to the negotiation of a global instrument under the auspices of UNEP (see UNEP GC Decision 19/13C). Negotiations commenced in June 1998 in Montreal. A second session of the Informal Negotiating Committee (INC) was held in Nairobi in January 1999 and a third session in Geneva in September 1999. A fourth INC is scheduled for February 2000. POPs are chemical substances that persist, bioaccumulate and pose a risk of causing adverse effects to human health and the environment. Global concern arises because of evidence of the long-range transport of these substances to regions where they have never been used or produced.

To this point, the substantive negotiations have focussed on three topics: (1) the identification of those chemicals that should be subject to the control regime of the Convention and the nature of that control regime including the precise language of the obligations to reduce\eliminate the production, use and trade of listed chemicals; (2) the procedure for adding new chemicals to the Convention; and (3) the availability of technical and financial assistance for developing countries.

The initial list of twelve POPs to be subject to the Convention regime can be grouped into three categories: (1) pesticides: aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex and toxaphene; (2) industrial chemicals: hexachlorobenzene and polychlorinated biphenyls (PCBs); and (3) unintended byproducts: dioxins and furans. The procedure for adding new substances will likely be based upon a subsidiary body to be known as the Persistent Organic Pollutants Review Committee with negotiations still to occur on the nature of the amending procedure to be adopted for adding new chemicals to the control regime. The issues of technical and financial assistance will be explored in greater detail at INC-4.

7. THE PROTOCOL TO ABATE ACIDIFICATION, EUTROPHICATION AND GROUND LEVEL OZONE

Under the framework of the *UN Economic Commission for Europe Long Range Transboundary Air Pollution Convention* (LRTAP), negotiations were successfully concluded, in

September 1999, on a *Protocol to Abate Acidification, Eutrophication and Ground Level Ozone*. This is the eighth protocol under the LRTAP framework.

Dubbed the "Multi-Pollutant, Multi-Effects" Protocol, its objective is to reduce pollutants that singly or in interaction, cause acidification (through acid rain, for example), eutrophication (which affects fish stocks in lakes and rivers) and ground level ozone (smog). This objective is to be achieved through emission ceilings for a series of pollutants (sulphur, nitrogen oxides, volatile organic compounds, and ammonia). The participants in the negotiations have set 1990 as the base year for emission reductions to be achieved by 2010. The long-term goal of the Protocol is to reduce the effect of these pollutants to their critical loads, the levels where significant damage to the environment or direct adverse effects to human health do not occur.

Recognizing that airborne pollutants can have a negative impact on health and the environment far from their source of emission, Canada has played a leading role in the negotiations of the eight LRTAP protocols. The *Protocol to Abate Acidification, Eutrophication and Ground Level Ozone* will be open for signature in Gothenburg, Sweden, from November 30 to December 1, 1999, during the ceremony to mark the twentieth anniversary of the LRTAP Convention.

8. AMENDEMENTS À LA LOI DU TRAITÉ SUR LES EAUX LIMITROPHES INTERNATIONALES

L'eau fait partie intégrante de la frontière du Canada avec les États-Unis. Plus de 300 fleuves, rivières et lacs longent et traversent cette frontière. Au fil des ans, les deux pays ont développé une structure afin de gérer ces ressources communes. Le *Traité sur eaux limitrophes* est un des piliers de cette relation coopérative. Le Traité a été signé en 1909 par la Grande-Bretagne au nom du Canada. La *Loi du Traité sur les eaux limitrophes internationales* (LTELI), adoptée par le Parlement en 1911, est la loi canadienne de mise en oeuvre du Traité.

Le 10 février 1999, le ministre des Affaires étrangères et le ministre de l'Environnement ont annoncé une stratégie afin d'interdire le captage d'eau en vrac des principaux bassins hydrographiques canadiens, y compris à des fins d'exportation. Un des volets fédéraux de cette stratégie consiste en une série de modifications à la LTELI. Les éléments clés en sont la prohibition de captage dans les eaux limitrophes, un système de licences et un pouvoir de réglementation. Le projet de Loi amendant la LTELI devrait être déposé au Parlement pour première lecture cet automne.

La Commission mixte internationale (organisme binational établi par le *Traité sur les eaux limitrophes*) étudie actuellement la consommation, l'usage et le détournement des eaux des Grands lacs, y compris le captage d'eau. Cette question lui a été soumise par le Canada et les États-Unis en 1999. Un rapport intérimaire a été présenté aux deux pays le 14 août 1999 et le rapport final doit être remis en février 2000. Les conclusions finales de la Commission seront très utiles pour établir les modalités du système de licences et de la prohibition dans les règlements.

9. CLIMATE CHANGE

Work continued on fleshing out the Kyoto *Protocol to the United Nations Framework Convention on Climate Change* adopted in December 1997 in Japan. Canada signed the Kyoto Protocol in April 1998. As of August 27, 1999, there were 84 signatories. The Protocol will enter

into force when 55 parties which account for 55% of global greenhouse gas emissions have deposited their instrument of ratification. Fourteen countries have ratified the Protocol to date.

The Protocol contains greenhouse gas emission reduction commitments aimed at reducing global emissions by at least 5% below 1990 levels in an initial commitment period spanning 2008-2012 (Article 3.1). These commitments, addressed to developed countries and countries with economies in transition ("Annex I Parties"), can be met through net changes in greenhouse gas emissions from sources and removals by sinks resulting from certain types of land-use change and forestry activities (Article 3.3). While this may change in the future, the Protocol does not introduce emission reduction commitments for developing countries. Canada committed to reducing its aggregate emissions of greenhouse gases by 6% from 1990 levels (Annex B to the Protocol).

A number of "flexibility mechanisms" (called the "Kyoto mechanisms") are set out in the Protocol. They are meant to allow parties that have made commitments under Annex B to choose the most efficient and cost-effective routes towards emission reductions and/or enhancement of emission sinks. Thus, the Protocol allows for joint implementation (Article 6), the use of a clean development mechanism (Article 12) and emissions trading (Article 17). The first two mechanisms enable parties to meet their Article 3 commitment by means of projects carried out abroad that provide a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur. The Protocol imposes other obligations on Annex I parties such as monitoring (Article 5) and reporting (Article 7) and provides for a review, by expert teams, of the information submitted under Article 7 (Article 8). International emissions trading involves transfers of portions of emissions allowances among parties.

Discussions have begun on a variety of issues in need of further clarification and guidance before the first meeting of the Conference of the Parties serving as the meeting of the parties to the Protocol. Canada has also been actively involved in discussions on greater involvement of developing countries. In the fifth Conference of the Parties that will be held in Bonn in October-November 1999, negotiators have been asked to work towards negotiating texts for the Kyoto mechanisms, compliance and capacity building. According to Article 18, "effective and appropriate" compliance procedures and mechanisms must be approved by the first meeting of the parties to the Protocol.

OCEANS LAW

1. THE UNITED NATIONS FISHERIES AGREEMENT (UNFA)

Canada ratified the *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 19, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UNFA) on August 3, 1999. UNFA, once in force, will provide a comprehensive framework for conservation and management of straddling and highly migratory fish stocks on the high seas, including a strong enforcement regime. Canada was able to ratify UNFA after implementing legislation, Bill C-27 (S.C. 1999, c. 19), was proclaimed into force on July 28, 1999. Regulations pursuant to this Act (SOR/99-313) were made on the same date.

UNFA will enter into force 30 days after the thirtieth ratification. As of mid-September 1999, 24 states had ratified, or acceded to, UNFA: Bahamas, Canada, Cook Islands, Fiji, Iceland, Iran, Maldives, Mauritius, Micronesia, Monaco, Namibia, Nauru, Norway, Papua New Guinea, Russian Federation, Saint Lucia, Samoa, Senegal, Seychelles, Solomon Islands, Sri Lanka, Tonga, USA and Uruguay. Canada continues to encourage all states to ratify UNFA.

2. THE PACIFIC TUNA CONVENTION

The fifth Multilateral High Level Conference (MHLC5) to negotiate a *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* ("Pacific Tuna Convention") was held in Honolulu on September 3 to 15, 1999. The next MHLC is scheduled for March 2000. Canada was present as a full participant for the first time, having been admitted at the end of the fourth session. Other participants were: Australia, China, Cook Islands, Micronesia, Fiji, France, French Polynesia, Indonesia, Japan, Kiribati, Korea, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, USA, Vanuatu, and Wallis & Futuna. Observers included the European Commission, the Forum Fisheries Agency, the Inter-American Tropical Tuna Commission and Mexico.

The Convention will provide for a conservation and management regime for highly migratory fish stocks (mainly tuna) in the western and central Pacific. While the framework of the Convention has taken shape, some major issues remain outstanding and will be addressed in future negotiating sessions. These issues include: boundaries of the Convention area, species to be covered by the Convention, financial arrangements, decision-making procedures and the details of the compliance regime.

As part of the negotiations, Canada seeks to ensure that the Pacific Tuna Convention does not derogate from the 1995 *United Nations Fisheries Agreement* (UNFA), that Canadian fishermen are treated equitably, and that the precautionary approach is respected.

3. THE PACIFIC SALMON TREATY

On June 30, 1999, Canada and the United States concluded a comprehensive, long-term Agreement under the 1985 *Pacific Salmon Treaty*. The Agreement confirms a cooperative,

conservation-based approach to the management of Pacific salmon fisheries, and a more equitable sharing of salmon catches between Canada and the United States. It includes four main elements:

1) 10 to 12 year fishing arrangements for Pacific salmon stocks;

2) two new Pacific salmon Endowment Funds totalling C$209 million (US$140 million) for fisheries conservation and science in both countries, funded by the U.S. federal government and administered jointly by Canada and the USA;

3) strengthened cooperation on science and fisheries management; and

4) a formal commitment by both nations to protect and restore salmon habitat.

The U.S. Administration is now seeking from Congress the first installment of the US$140 million to go into the bilaterally-managed salmon conservation funds.

4. PROJET DE CONVENTION SUR LA PROTECTION DU PATRIMOINE CULTUREL SUBAQUATIQUE

Le Canada a participé aux discussions d'experts qui se sont tenues à l'UNESCO concernant un projet de Convention sur la protection du patrimoine culturel subaquatique. Le projet émane de la préoccupation de l'UNESCO face au pillage des épaves à valeur historique, et de sa volonté d'élaborer un traité international qui favoriserait leur protection.

Le projet de Convention a fait l'objet de discussions détaillées lors de deux réunions d'experts, la dernière ayant eu lieu en avril 1999. Bien que des progrès importants aient été réalisés au cours de cette dernière réunion, des questions importantes restent à résoudre, relatives entre autres à la portée exacte de la Convention, au régime juridique des navires de guerre et d'autres vaisseaux appartenant à des États et à la protection des épaves gisant au-delà des eaux territoriales.

La prochaine réunion d'experts devrait avoir lieu au cours de la première moitié de l'an 2000.

INTERNATIONAL TRADE LAW

TREATIES

1. THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION AND ASSOCIATED TREATIES

The World Trade Organization (WTO) was created in 1994 to provide an institutional framework for the conduct of international trade pursuant to multilaterally agreed rules. It is essentially a council made up of representatives from all member states. It oversees all the agreements concluded in the Uruguay Round of Multilateral Trade Negotiations, including the *General Agreement on Tariffs and Trade 1994,* the *General Agreement on Trade in Services,* and the *Agreement on Trade-Related Aspects of Intellectual Property Rights.* The WTO is a forum for negotiations and consultations, and it oversees the dispute settlement procedures used in instances where member states are unable to resolve their differences respecting rights and obligations under WTO Agreements. It also cooperates with other international organizations including the International Monetary Fund and UNCTAD with a view to achieving greater coherence in global economic policy.

2. THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

This Agreement is incorporated into the new WTO Agreements and merits separate mention as one of the most important trade law treaties. Like its predecessor (GATT 1947), the GATT 1994 is a multilateral treaty establishing the basic rules applicable to trade in goods and providing the foundation for many of the obligations contained in the *North American Free Trade Agreement* (see below). It is a continuation of the original GATT of 1947 and is virtually identical to it in substance, although it is legally a distinct treaty. It is through the GATT that global tariffs have been lowered and that such principles as "most-favoured-nation treatment" and "national treatment" have been universalized. Note that the GATT does not apply to trade in services, which has been covered since 1994 by the *General Agreement on Trade in Services* (GATS).

3. THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

The NAFTA applies only to Canada, the United States and Mexico. It covers trade in goods, includes trade in services, intellectual property obligations and establishes a rules-based framework for investment. It also requires most government procurement contracts to be open to bids from corporations of the other member states. The NAFTA provides for binding dispute settlement, including investor-state arbitration with respect to investment obligations negotiated by the parties under the Agreement.

4. BILATERAL TRADE AGREEMENTS

Canada has bilateral free trade agreements with Chile and Israel. These are smaller-scaled agreements modelled on the NAFTA.

BASIC PRINCIPLES OF INTERNATIONAL TRADE LAW

The law of international trade is both wide-ranging and complex. This discussion should therefore be seen only as an introduction to some of the most basic elements of the law of international trade.

1. "MOST-FAVOURED-NATION TREATMENT"

This obligation is a hallmark of the WTO Agreements (GATT, GATS and TRIPS) and of the NAFTA. Where Canada grants most-favoured-nation (MFN) status to another country, it is promising to treat that country's products or services no less favourably than it treats any other country's products or services. Thus, a preference granted to the goods of one country must be extended to like goods of all MFN countries. This is an important obligation, since the GATT requires that all member states accord each other's goods MFN treatment. Canada must thus extend any preference to most of the world's countries. Note, however, that there are exceptions for preferences accorded within the framework of a regional free trade association. The MFN principle generally applies to border measures like tariffs, although it also applies to measures affecting the internal sale, offering for sale, purchase, transportation, distribution and use of products. It can be applied to both goods and services. In addition, NAFTA extends it to treatment accorded NAFTA investors and their investments.

2. "NATIONAL TREATMENT"

This principle was central to the GATT 1947 and, like MFN, is a central obligation of the three main WTO Agreements (GATT, GATS and TRIPS). It requires that internal laws not be used to afford protection to domestic production. Internal law includes internal taxes and all laws and regulations affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products. No imported goods shall be subject to internal taxes or charges in excess of those applied to like domestic products, and such taxes cannot be otherwise applied so as to afford protection to domestic production. NAFTA has expanded the application of the concept for its own purposes: under the NAFTA, the parties must extend national treatment to the investors and service providers of the other NAFTA parties. Treatment accorded to them shall be no less favourable than that accorded to Canadian investors and service providers.

3. DUMPING

This is the practice of selling goods in a foreign market at prices below the normal value of the goods. Where this causes or threatens to cause damage to domestic industry, the importing country may impose an anti-dumping duty on those goods.

4. SUBSIDIES AND COUNTERVAILING DUTIES

A subsidy is a financial contribution granted by a government conferring a benefit on the manufacture, production or export of a product. The WTO prohibits granting subsidies contingent on export performance or on the use of domestic over imported products. Where a subsidy is provided so as to contravene trade law disciplines, the importing country may level a countervailing duty charge equal in amount to the subsidy.

5. IMPORT AND EXPORT RESTRICTIONS

Trade law agreements seek to ban the imposition of quantitative restrictions on either imports or exports. Such restrictions include quotas, import or export licences and other measures, although they do not usually include duties, taxes or other financial charges.

6. GOVERNMENT PROCUREMENT

NAFTA requires the states that are parties to the agreement to open up government procurement for goods and services to bids from corporations and individuals in other NAFTA states. This means that in certain circumstances federal government departments may be prevented from awarding a contract without seeking bids ("single sourcing"). Mexican and U.S. bids would have to be accorded the same treatment as Canadian ones. At present, the WTO Agreement on Government Procurement is a plurilateral rather than multilateral agreement.

7. TECHNICAL BARRIERS TO TRADE AND SANITARY AND PHYTOSANITARY MEASURES

Trade law requires that regulations, standards, testing and certification procedures do not create discriminatory or unjustified barriers to trade.

8. INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights are covered by both the WTO and NAFTA. They can be subject to the "most-favoured-nation treatment" and "national treatment" obligations.

9. EXCEPTIONS

Trade law recognizes instances in which a country will not be obliged to apply treaty obligations. Thus, both GATT and NAFTA state that their provisions do not prevent, *inter alia*, the adoption of measures necessary to protect public morals, measures necessary to protect human, animal or plant life or health, or measures necessary for the protection of essential security interests.

10. DISPUTE SETTLEMENT

There are complex dispute settlement mechanisms built into GATT and NAFTA, and into the other multilateral agreements associated with the WTO. Very generally, these mechanisms work by having the parties first seek to settle a dispute through consultation. If consultations fail, the parties may resort to a binding dispute settlement procedure. Note, however, that a state cannot be forced to change its laws, even if they have been found to be contrary to a trade treaty. Where a state refuses to amend or withdraw an illegitimate measure, and absent agreed compensation, affected states are entitled to withdraw concessions of an equivalent value.

CURRENT ISSUES

At the multilateral level, Canada is preparing for the upcoming WTO Seattle Ministerial Conference which will take place on November 30, 1999. The Seattle Ministerial Declaration is expected to launch the eighth round of multilateral trade negotiations, known as the "Millennium Round". This Round is expected to address trade liberalisation in those areas falling under the built-in agenda from the Uruguay Round: agriculture and services. Other possible issues for this new round will be determined in Seattle.

On a regional level, Canada is taking part in negotiations targeted to the creation of the Free Trade Area of the Americas (FTAA). By 2005, negotiators hope to secure a comprehensive agreement that results in free trade in goods and services throughout the Americas. Canada looks forward to concluding a free-trade agreement with the European Free Trade Association (EFTA) this year.

CANADIAN CASES IN INTERNATIONAL TRADE LAW

1. WTO DISPUTES: CANADA AS COMPLAINANT

a) *Australia – Measures Affecting the Importation of Salmon*

Canadian fresh, frozen and chilled salmonids have been denied entry to the Australian market since 1975, purportedly for animal health quarantine reasons. A WTO panel established in 1997 found Australia's ban inconsistent with several provisions of the SPS Agreement including Articles 5.1, 5.5 and 5.6. Canada cross-appealed on two issues. The Appellate Body issued its Report on October 20, 1998. Despite finding that the panel had misdefined the measure at issue, the Appellate Body upheld the panel's Article 5.1 findings on modified grounds. It also upheld the panel's Article 5.5 finding, but reversed the panel's Article 5.6 finding on the basis of its mis-definition of the measure. The Report reinforces Canada's panel victory and advances the interpretation of the SPS Agreement in areas such as risk assessment and appropriate levels of protection.

The Report was adopted at the November 6, 1998 DSB meeting. Canada and Australia were unable to agree on a "reasonable period of time" for Australia to implement and this issue went to arbitration under Article 21 of the DSU. The arbitrator's award was issued February 22, 1999. The arbitrator agreed with Canada that the "reasonable period of time" should not include the time to do new risk assessments and awarded Australia eight months to implement rather than the fifteen months it had sought. Australia had until July 6, 1999 to comply.

On July 19, 1999, Australia announced new fish import policies to bring its measures into compliance with the WTO rulings. Canada considers the new policies to be unnecessarily trade restrictive and not in compliance with the WTO rulings. On July 28, 1999, Canada requested authorization from the WTO Dispute Settlement Body (DSB) to retaliate. Australia challenged our request and a panel has been established to determine the consistency of the recent Australian measures. If the panel rules against Australia, an arbitrator will be asked to rule on the amount of retaliation Canada will be allowed to take. A final result is not expected until early 2000.

b) *Brazil – Export Financing Programme for Aircraft*

Under the *Programa de Financiamento as Exportacoes (PROEX)*, Brazil grants export subsidies in the form of interest rate equalization payments and export financing programmes to foreign purchasers of Brazil's Embraer aircraft. Canada and Brazil held consultations in 1996 and in 1998, but failed to resolve the matter. Canada alleged that the export subsidies under PROEX are inconsistent with Article 3 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement). The Final Report was issued on March 12, 1999. The Panel found that Brazil's PROEX payments were inconsistent with the SCM Agreement and must be withdrawn within 90 days.

Brazil filed a notice of appeal of this decision on May 3, 1999. The appeal was heard on June 10, 1999. On August 2, 1999, the Appellate Body upheld the original panel findings. The ruling was adopted on August 20. The deadline for implementation of the ruling is November 18, 1999.

c) *European Communities – Measures Concerning Asbestos and Products Containing Asbestos*

On December 24, 1996, France enacted a decree prohibiting the manufacture, processing, sale and importation of asbestos and asbestos-containing products. Canada pursued but did not achieve a negotiated solution. Consultations were held on July 8, 1998, at the request of Canada. On November 25, 1998, following Canada's request, a panel was established. Brazil, the United States, and Zimbabwe reserved Third Party rights. Canada filed its first written submission on April 26, 1999. The first substantive meeting of the panel was held on June 1 and 2, 1999. On July 5, 1999, the panel announced its intention to seek expert scientific advice. The four experts are expected to provide their report on October 25, 1999. A second substantive meeting, and possibly a meeting with the experts, is scheduled for the week of November 22, 1999. The interim panel report is due on January 24, 2000, and the final report on March 27, 2000.

d) *European Communities – Measures Affecting Meat and Meat Products (Hormones)*

The European Communities (EC) banned the importation of animals and meat from animals, which have been administered certain growth promotion hormones. Canada alleged that the ban was inconsistent with Articles 2, 3 and 5 of the SPS Agreement, Article 2 of the TBT Agreement, Articles III or XI of GATT 1994, and Article 4 of the Agreement on Agriculture. The subject-matter of this dispute is identical to the U.S. complaint in which Canada made a Third Party representation.

On August 18, 1998, a WTO panel ruled in favour of Canada, finding the EC in violation of Articles 3.1, 5.1 and 5.5 of the SPS Agreement. On September 24, 1998, the EC appealed the panel report. The Appellate Body report, which was issued on January 16, 1998, substantially modified the panel report. The Appellate Body upheld the violation found by the Panel in respect of Article 5.1 but reversed the violations found by the panel in respect of Articles 3.1 and 5.5. The panel report, as modified by the Appellate Body, was adopted on February 13, 1998.

After negotiations between the EC, Canada and the United States failed to establish the

"reasonable period of time" for the EC to bring itself into compliance with WTO obligations, the parties submitted the dispute to arbitration. On May 27, 1998, the arbitrator decided that "the reasonable period of time" in this case was 15 months which ended on May 13, 1999.

On May 20, 1999, Canada requested authorization from the DSB to suspend trade concessions in the amount of $75 million. The EC requested arbitration on the amount of the retaliation. The arbitrator' s report was issued on July 12, 1999, and fixed the amount of retaliation at $11.3 million. On July 26, 1999, the WTO Dispute Settlement Body authorized Canada to retaliate against the EU in the amount of $11.3 million annually. On July 29, 1999, Canada announced the list of products subject to a 100-percent duty beginning on August 1, 1999.

e) *European Communities – Patent Protection for Pharmaceutical and Agricultural Products*

The WTO TRIPS Agreement requires that members, when giving greater protection than the minimum standards required by the Agreement, observe all provisions of the Agreement (Article 1.1). The Agreement prohibits discrimination in the enjoyment of patent rights on the basis of field of technology (Article 27.1). The EC has implemented a Supplementary Protection Certificate (SPC) regime that extends patent protection beyond the 20 years required by TRIPS – for up to an additional five years – for pharmaceutical and agricultural chemical products only. Canada and the EC have held two rounds of consultations, in January and April of 1999.

f) *United States – Countervailing Duty Investigation with respect to Live Cattle from Canada*

On December 22, 1998, in response to the petition of the Ranchers-Cattlemen Action Legal Foundation (R-Calf), the United States Department of Commerce (DOC) initiated countervailing duty (CVD) and anti-dumping investigations regarding imports of live cattle from Canada. The DOC decided to investigate 30 federal and provincial programmes.

WTO consultations regarding DOC's decision to initiate an investigation were held in Washington on 22 April 1999.

On May 4, 1999, the DOC issued its Preliminary CVD Determination. It found 14 of the 30 programmes investigated to be countervailable (2 of the 14 were federal programmes, 12 were provincial programmes). The CWB and NISA were found not to be countervailable. As a result, no provisional CVD duties are being applied to Canadian cattle being exported to the USA. The DOC issued a positive preliminary determination in the anti-dumping investigation on July 1, 1999. As a result, anti-dumping duties are being collected on imports of Canadian cattle. The DOC's Final Determinations in both investigations are due to be issued on October 4, 1999. If necessary (i.e. if DOC makes a positive decision to impose countervailing duties and/or to continue to collect anti-dumping duties), the ITC will issue its Final injury Determination by November 18, 1999.

2. WTO DISPUTES: CANADA AS DEFENDANT

a) *Canada – Patent Protection of Pharmaceutical Products*

By way of exception to patent protection, Canada allows companies to experiment with patented drugs and to manufacture and stockpile generic versions of those drugs during the patent term. These exceptions allow generic drugs to enter the market on a commercial scale immediately after the relevant patents expire. The EU alleges that these exceptions violate the universal minimum standards for intellectual property protection required by the TRIPS Agreement. Canada claims that its patent exceptions are limited, do not unduly conflict with the exploitation of a patent, and are therefore allowable under the limited exceptions provision of the TRIPS Agreement (Art. 30). On January 5, 1998, the EU requested consultations, which were held on February 13, 1998 and June 12, 1998. A panel was established in March 1999. The first and second meetings of the Panel were held in June and July 1999. The descriptive portion of the draft panel report was issued on September 15, 1999.

b) *Canada – Patent Protection Term*

The TRIPS Agreement (Art. 33) requires a minimum term of patent protection of 20 years from the filing date. At the effective date of the TRIPS Agreement (1 January 1996), there were a number of patents in Canada that had been issued for a term of 17 years from the date of grant, which was the required term under Canada's legislation prior to 1 October 1989. The question in this case is whether the term of those patents must be altered retroactively in order to comply with the TRIPS obligations. A panel was established at the request of the United States on September 22, 1999 to determine this issue.

c) *Canada – Certain Measures Affecting the Automotive Industry*

On July 3, 1998, Japan requested consultations with Canada concerning measures taken in the implementation of the Canada-United States Automotive Products Trade Agreement, better known as the Auto Pact. Japan alleged that the measures violate Articles I, III and XXIV of the GATT, Articles II, VI and XVII of the GATS, Article 2 of the TRIMs Agreement and Article 3 of the SCM Agreement. Canada agreed to hold consultations under Articles XXIII of the GATT on August 27, 1998. The EC requested consultations on August 18. Those consultations took place on September 21. The panel was established on February 1, 1999. Two written submissions and two oral hearings with the panel took place.

The descriptive part of the report was released to the parties on August 6, 1999. The interim panel report is expected to be released to the parties on a confidential basis in early October for comments from the parties and the final report is scheduled to be released to the parties in mid-November. The final panel report will likely be released to all members and the public by December.

d) *Canada – Measures Affecting the Export of Civilian Aircraft*

On March 10, 1997, Brazil requested consultations with Canada pursuant to Article 4 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement). Consultations were held in Geneva on April 30, 1997, but failed to resolve the dispute. Brazil requested a panel, alleging that certain programmes and measures maintained by Canada or its provinces are inconsistent with Article 3 of the SCM Agreement. A panel was established pursuant to Brazil's request at the DSB meeting on July 23, 1998. The interim report was issued on February 17, 1999 and the final report was issued on March 12, 1999. The panel declared that Technology Partnerships Canada and the Canada Account are inconsistent with the Agreement on Subsidies and Countervailing Measures and must be withdrawn within 90 days.

Canada filed a notice of appeal of this decision on May 3, 1999. The appeal was heard on June 14, 1999. On August 2, 1999, the Appellate Body upheld the original panel findings and the appeal's ruling was formally adopted on August 20. The deadline for implementation of the ruling is November 18, 1999.

e) *Canada – Dairy Export Pricing/Milk TRQ*

On October 10, 1997, the United States requested consultations under Article XXII of the GATT on the export pricing mechanism used for sale of milk by provincial marketing boards and on Canada's tariff-rate quotas (TRQ) for consumer milk imports. New Zealand requested it's own consultations with respect to the export pricing issue on December 29, 1997.

A single panel for both the U.S. and New Zealand complaints was established on March 25, 1998. The panel found Canada's export measures to be inconsistent with our WTO obligations under that Agreement on Agriculture and our TRQ measures to be inconsistent with our WTO commitments under Article II of the GATT 1994. The final report was issued to all WTO members on May 17, 1999.

Canada appealed the report on July 15, 1999. The hearing before the Appellate Body took place on September 6, 1999 and the Appellate Body is expected to release its report on October 13, 1999.

3. NAFTA INVESTOR-STATE DISPUTE SETTLEMENT

Chapter Eleven of the North American Free Trade Agreement (NAFTA) establishes obligations of each of the NAFTA parties to respect and provide a mechanism for settlement of disputes between investors and NAFTA parties in respect of such obligations. The substantive obligations to investors and the dispute-resolution process under Chapter Eleven are similar to provisions found in numerous other investment treaties that have been concluded between countries over the years, including Canadian foreign investment protection agreements and U.S. bilateral investment treaties.

The obligations to investors are contained in Section A of Chapter Eleven. Examples are obligations of a NAFTA party to provide to investments and investors of other NAFTA parties national or most-favoured-nation treatment; an obligation not to impose requirements on investors or investments for domestic content or local preference; an obligation not to expropriate or take measures tantamount to expropriation of an investment except on certain

conditions including payment of compensation.

Section B of Chapter Eleven provides a mechanism for dealing with claims by investors that a NAFTA party has breached its obligations under Section A. The process envisages that the parties to a dispute attempt to settle a claim through consultation or negotiation. If an investor is to submit a claim to arbitration, the investor must first submit a notice of intent and then a notice of arbitration. Arbitration is by a three-person arbitral panel, and the panel must determine the dispute in accordance with the NAFTA and applicable rules of international law.

The rules applicable to the arbitration may be the ICSID (International Centre for the Settlement of Investment Disputes) Convention, the Additional Facility Rules of ICSID or the UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules, depending on the circumstances of the particular case. As Canada is not a party to the ICSID Convention, disputes involving Canada can only be submitted to arbitration under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules. Chapter Eleven provides that the applicable arbitration rules govern the arbitration except to the extent that they are modified by Section B.

NAFTA Chapter 11 Cases

a) *S.D. Myers - PCB Interim Order*

S.D. Myers, a U.S. corporation, submitted a Claim to Arbitration on October 30, 1998 under the dispute settlement provisions of NAFTA Chapter Eleven. The Claim alleges that the *PCB Waste Export Interim Order* of November 1995 ("*Interim Order*") breached Canada's obligations under Articles 1102 (national treatment), 1105 (minimum standard of treatment), 1106 (performance requirements) and 1110 (expropriation), causing US$20 million in damages to it and its Canadian investment. S.D. Myers operates a PCB waste treatment and disposal facility in Ohio and claims that it has an investment in Canada aimed at sourcing Canadian PCB wastes. U.S. legislation banned the importation of PCB wastes since the early 1980s. However, the U.S. Environmental Protection Agency ("EPA") announced in October 1995, and without any notice to Canada, that as of November 15, 1995, it would grant S.D. Myers an "enforcement discretion" effectively permitting it to import PCB wastes from Canada for disposal at its Ohio facility.

Canada issued the *Interim Order* prohibiting the export of PCB wastes effective November 20, 1995. The *Interim Order* was subsequently repealed with the coming into force in February 1997 of the *PCB Waste Export Regulations, 1996*, which permitted exports of PCB waste for disposal.

The Memorial of the Claimant was submitted on July 20, 1999. A motion by the Claimant challenging Canada's production of documents led to an order requiring Canada to make inquiries of ministers for documents in their possession and control and to provide further substantiation of its claim of Cabinet confidentiality for some documents. Canada's Counter Memorial was submitted to the Tribunal on October 5. The hearing on the merits is scheduled for the week of February 14, 2000.

b) *Pope & Talbot - Softwood Lumber Allocations*

Pope & Talbot Inc., a U.S. corporation, submitted a Claim to Arbitration under the dispute settlement provisions of NAFTA Chapter Eleven on March 24, 1999. The Claimant alleges that breaches to NAFTA Article 1102 (national treatment); Article 1103 (most-favoured-nation treatment); Article 1105 (minimum standard of treatment); Article 1106 (performance requirements); and Article 1110 (expropriation), caused damages of US$500 million to itself and to its investment in Canada.

c) *Other cases*

Judgments are expected in the fall of 1999 and in the Spring of 2000 in two Chapter 11 cases against Mexico, "Desona" and "Metalclad" respectively. These will be the first decisions issued after a Chapter 11 arbitration.

4. CASES UNDER THE CANADA - U.S. SOFTWOOD LUMBER AGREEMENT

a) *B.C. Stumpage (USA v. Canada)*

On June 1, 1998, British Columbia implemented lower stumpage fees for coastal producers. The United States asserted that this was a circumvention of the 1996 Canada-U.S. Softwood Lumber Agreement and on July 28, 1998, requested arbitration under the dispute settlement provisions of the Agreement. On August 26, 1999, and prior to any Panel ruling, the Governments of Canada and the United States signed an exchange of letters which resolved the dispute. Under this arrangement, the previous fee schedule was maintained for all softwood lumber first manufactured in British Columbia and exported to the United States by B.C. companies, up to the average volume shipped in the first two years of the Agreement (i.e. prior to the stumpage reduction); higher fees apply to volumes exported in excess of that average, with the effect of discouraging B.C. lumber exports in excess of the pre-stumpage reduction average.

b) *Drilled Studs (Canada v. USA)*

In February 1997, U.S. Customs classified drilled softwood lumber studs (used in house construction) in a tariff heading outside the scope of the 1996 Canada-U.S. Softwood Lumber Agreement. On July 1, 1998, Customs revoked that ruling and reclassified drilled studs into a tariff heading covered by the Agreement, effective immediately. Consultations were held under the Agreement at Canada's request on July 23, 1998.

A domestic U.S. court proceeding brought by the U.S. Association of Homebuilders and U.S. National Lumber and Building Material Dealers Association and supported by Canadian interests, challenged the drilled studs ruling. The U.S. Court of International Trade (CIT) ruled in favour of the defendant, the U.S. Department of Justice, on December 15, 1998. The plaintiffs filed an appeal on January 28, 1999. The decision on appeal is expected by the end of 1999.

Canada also placed the product classification aspect of this dispute on the agenda of the Harmonized System Committee of the World Customs Organization (WCO) on September 2, 1998. The advisory opinion of the WCO issued on May 10, 1999 recommends that drilled studs

retain their original classification under tariff heading 4418. The U.S. has entered a reservation which the WCO will address during its October 1999 session.

c) *Notched Studs Lumber (Canada v. USA)*

In February 1997, the U.S. Customs Service made four rulings which had the effect of placing notched studs lumber products outside the scope of the 1996 Canada-U.S. Softwood Lumber Agreement. On June 1, 1999, the U.S. Customs Service revoked the earlier rulings, thus reclassifying these products into a tariff heading covered by the Agreement. Consultations were held under the Agreement at Canada's request on June 24, 1999.

Canada also placed the product classification aspect of this dispute on the agenda for the October 1999 meeting of the World Customs Organization (WCO) Harmonized System Committee.

d) *Rougher Headed Lumber (Canada v. USA)*

On March 10, 1999, U.S. Customs announced a proposal to reclassify rougher headed lumber from a tariff heading which is outside the scope of the 1996 Canada-U.S. Softwood Lumber Agreement to a tariff heading which is covered by the Agreement. Canada requested consultations under the Agreement on March 26, 1999. Consultations were held on April 21, 1999. On June 9, 1999, Canada requested arbitration. The panel selection stage is proceeding.

Canada also placed the product classification aspect of this dispute on the agenda for the October 1999 meeting of the World Customs Organization (WCO) Harmonized System Committee.

TREATY LAW

There are over 3,000 bilateral and multilateral treaties to which Canada is a party. During the last year, Canada has taken over 100 treaty actions involving the signature, ratification, entry into force or amendment of treaties. These can be broken down into 72 bilateral treaties and 29 multilateral. We have also examined approximately 100 non-treaty instruments, such as Memoranda of Understanding. The following paragraphs set out some of the highlights in 1998 and 1999.

1. MULTILATERAL TREATIES

The *Agreement on International Humane Trapping Standards* between Canada the Russian Federation and the European Communities, was ratified by Canada on December 17, 1998. It has been applied provisionally as of June 17, 1999 between Canada and the EC, pending its eventual ratification by the Russian Federation. This provisional application will ensure continued access of Canadian furs to the European market.

The *Agreement between Canada and the European Communities Regarding the Application of their Competition Laws* was signed on June 17, 1999 and entered into force on the same date, and will provide considerable cooperation between respective competition authorities of Canada and the EC.

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction* entered into force for Canada on March 1, 1999. *Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices* annexed to the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons* entered into force for Canada on December 3, 1998. On December 18, 1998, we ratified the *Comprehensive Nuclear Test Ban Treaty*.

Protocols to the North Atlantic Treaty on the Accession of the Czech Republic, Hungary and Poland entered into force for Canada on December 4, 1998.

In the area of criminal law cooperation, Canada signed the Rome *Statute of the International Criminal Court* on December 18, 1998, the *Inter-American Convention Against Corruption* on June 8, 1999, and ratified the *Inter-American Convention on Transparency in Conventional Weapons Acquisitions* on June 7, 1999. We ratified the *Convention on Combatting the Bribery of Foreign and Public Officials in International Business Transactions* on December 17, 1998. The latter Convention entered into force for Canada on February 15, 1999.

Treaty actions with respect to seven multilateral environment agreements were taken including ratification of *Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer*, acceptance of *Amendments to Annex I and Adoption of Annexes VIII and IX to the Basel Convention on Transboundary Movement of Hazardous Wastes*, ratification of the *Convention on Environmental Impact Assessment in a Transboundary Context*, and ratification of the Protocols to the LRTAP *Convention on Heavy Metals and Persistent Organic Pollutants*.

Treaty actions with respect to several multilateral trade agreements were taken,

including acceptance of the *Fifth Protocol to the General Agreement on Trade in Services*, signature of the *Food Aid Convention 1999*, and entry into force of the *Protocol on Rum to the Trade and Economic Co-operation Agreement between Canada and Member States of the Caribbean Common Market.*

2. BILATERAL TREATIES

Canada and China exchanged instruments of ratification of our *Consular Agreement*, which entered into force on March 11, 1999. The Agreement will be an important tool in the management of our consular programme in China. Instruments of ratification were also exchanged with Brazil bringing into force, on May 16, 1998, our *Transfer of Offenders Agreement* facilitating the return of individuals imprisoned in our respective correctional institutions. A *Treaty on the Transfer of Offender*s with Cuba was signed on January 7, 1999 and entered into force on August 10, 1999. Treaty actions were taken with respect to eight *Mutual Legal Assistance Treaties* to improve international cooperation between officials in criminal matters, including treaties with Jamaica, Norway, Ukraine, Greece, Kenya, Peru and Romania.

A *Joint Canadian-Palestinian Framework for Economic Cooperation and Trade* was signed on February 27, 1999 to facilitate free trade between Canada and the Occupied Territories. An important *Understanding on Mutually Beneficial Cooperation in the Destruction of Antipersonnel Land Mines Stockpiled by the Armed Forces of the Ukraine and Prohibited by the Land Mines Convention* was signed on January 28, 1999, and will lead to concrete measures to destroy 10 million land mines currently on the territory of Ukraine.

Treaty actions with respect to nine air agreements to govern air services were taken with various countries (Hungary, Mexico, Ukraine, Cuba, India) including an Exchange of Notes with Finland to amend our bilateral air services agreement to improve flexibility and take account of alliances between airline companies.

Treaty actions concerning fifteen double taxation agreements were taken with Austria, Bulgaria, Japan, Netherlands, Portugal, Chile, Denmark, France, Iceland, Indonesia, Kazakhstan, Kyrgyzstan, Lebanon, Switzerland and Vietnam, which will be important tools for promoting investment abroad. In the same vein, treaty actions were taken with respect to six *Foreign Investment Protection Agreements* (FIPAs), which will improve the position of Canadian investors and their investments abroad. This includes FIPAs with El Salvador, Lebanon, Uruguay, Costa Rica, Panama and Venezuela. Treaty actions concerning twelve social security agreements were taken which will coordinate and improve the payment of pensions for Canadians and permanent residents internationally, including agreements with Croatia, Grenada, Korea, Trinidad and Tobago, Uruguay, Morocco, Saint Vincent and the Grenadines, Slovenia, Turkey and the United Kingdom.

There have been a number of advances in treaty relations with the United States. On October 7, 1999, Canadian and U.S. officials exchanged instruments of ratification of the *Protocol Amending the Migratory Birds Convention*, bringing the amendment into force as of that date. This is a landmark development, bringing the Convention into conformity with developments in our constitutional law as it relates to aboriginal rights and in conformity with principles of sustainable development. Another highlight was the Exchange of Notes of June 30, 1999 (in force the same date) constituting an *Agreement relating to the Pacific Salmon*

Treaty which has improved the sustainable management of salmon on the West Coast of Canada and the United States. Commercial relations have been advanced through the Exchange of Notes with the USA on March 31, 1999 (in force the same date) further to the *Columbia River Treaty* permitting the disposal of the Canadian Entitlement to certain hydro-electric power under this treaty in the United States. Also noteworthy in this regard was the Exchange of Notes of August 26, 1999 (in force the same date) amending the *Softwood Lumber Agreement*. Commercial-cultural relations were enhanced with the Exchange of Notes of June 3, 1999 (in force the same date) constituting an *Agreement concerning the Canadian Periodical Advertising Services Market*.

3. OTHER TREATY ACTIVITIES

The treaty section has continued to provide Depositary services with respect to six multilateral treaties (UNIDROIT Factoring, UNIDROIT Leasing, NAFO, Open Skies, PICES, the *Agreement to Ban Smoking on International Passenger Flights*). We have registered 107 treaties with the United Nations under section 102 of the United Nations Charter, which allows parties to treaties that have been so registered to invoke them before any organ of the UN. Ninety-two treaties have been printed in the Canada Treaty Series and distributed.

Providing information services with respect to treaties has formed a large part of our work, peaking at about 300 requests per month during our busiest months. To improve informational services, the section has developed an electronic data base to accommodate the total treaty collection (over 3,000 active and that many inactive treaties). The long process of inputting and verifying data has been commenced and is proceeding well. When completed, a summary version of our database will be placed on the departmental Website. There are also plans to place copies of our treaties in force on the Website when the electronic data base is launched. The first 430 of our treaties have now been scanned.