

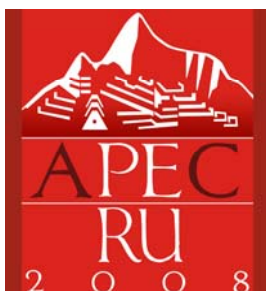


**Asia-Pacific
Economic Cooperation**

2008/SOM1/010anx2
Agenda Item: V

Canada's IAP Study Report 2007

Purpose: Consideration
Submitted by: APEC Secretariat



First Senior Officials' Meeting
Lima, Peru
2-3 March 2008

IAP Study Report – Canada 2007

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November 2007

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1. OVERALL ASSESSMENT OF CANADA'S INDIVIDUAL ACTION PLAN

1.1 Approach to 2007 Peer Review – Evaluation Methodology

The starting point for the general approach to this peer review is encapsulated by APEC's statement on 'evaluation methodology', viz, 'evaluate the current status of Canada's IAP and determine how much progress the economy has made towards achieving its Bogor goals' (as these have evolved). The base line of 1996 and the findings of Canada's last peer review in 2002 have served as a preface to Canada's actual and planned improvements during the five year period to 2007. While a detailed *ex post* monitoring exercise is not practicable, APEC's methodology clearly envisages some assessment of the extent to which the Canadian economy has been able to demonstrate improvements in its degree of economic openness. To that end, we have considered the nature and extent of actual and planned improvements, as stated in Canada's IAPs, along with any measurable indicators in relation to them.

The Guidelines governing this peer review envisage that the approach of experts will also be forward-looking and policy-relevant. A key part of the evaluation methodology has therefore been to determine what items remain to be addressed by Canada if its Bogor goals are to be achieved by 2010. As part of the Initial Questionnaire³, Canada was invited to provide its own assessment of its progress towards the Bogor goals, both in the last five years and up to APEC's 2010 target date for completion. The experts have also made their assessment of progress and future policy priorities in relation to each policy area, as well as the main aspects that may limit Canada's achievement of those goals.

A summary of the Bogor objectives by policy area for all APEC economies appears in Table 1.1⁴. The assessment of Canada's advances from 1996 to 2007 and the future policy priorities to achieve the 2010 Bogor goals are based upon different sources of qualitative and quantitative information relating to these objectives. These sources included:

- i) APEC papers and official documents (including the IAPs of Canada and other APEC members and Canada's responses to the Initial Questionnaire).
- ii) WTO papers and official documents (including the Trade Policy Review of Canada and other WTO members and the legal WTO texts).
- iii) OECD research papers and publications (including economic surveys of Canada, economic policy reforms, and data from the main economic indicators).
- iv) Papers, publications and statistical data from official and private websites on the Canadian economy (e.g., statistics Canada-CANSIM, trade policy according to Canadian Council of Chief Executives, and the Howe Institute).

³ The Initial Questionnaire (IQ) and Canada's responses are found in Annex 1. References to the IQ in the text are to the section number, the IAP chapter number and to the relevant question number(s), e.g., IQ II:3.2 refers to Section II of the IQ, chapter 3 (Services) and question 2 in that chapter.

⁴ A detailed list of the Bogor goals is provided in APEC (2007b).

- v) Research papers and publications on the Canadian economy from scientific journals and publishers.
- vi) Presentations and related material from officials and non-government expert participants⁵ at the in-economy meetings in Ottawa and Toronto.

The first group of Bogor objectives relating to the free or unrestricted trade flows of goods, services and business people, is relevant to several of the policy areas as shown in Table 1.1. A member liberalization index (MLI)⁶ is a quantitative tool that has been adapted for the purpose of assessing Canada's progress towards this group of objectives. The MLI allows the advances of an economy, in each area, to be compared with respect to the key and standard APEC-WTO principles (such as national treatment, trade facilitation, non-discrimination and comprehensiveness) and objectives which the index is based upon. This comparison is consistent with APEC's unilateral and voluntary approach to achieve free trade. The MLI sets an initial base line from which an economy's degree of trade and investment liberalization can be assessed and it ranges from 0 (closed economy) to 1 (open economy with free trade).

This composite index has three components: the trade in goods index, with a maximum value of 0.5; the trade in services index, with a maximum value of 0.08; and the non-merchandise trade index, with a maximum value of 0.42. The trade in goods index includes three subgroups of similar weights (which are standards and conformance, sanitary and phytosanitary measures, and tariffs including tariff quotas); a sub group of non tariff measures (NTMs) with identical weight to the tariff barriers subgroup; and a fifth subgroup regarding rules of origin (ROO). The services index has similar weight to tariffs and NTMs; and the non-merchandise trade index has seven subgroups⁷ of identical weight. References to the MLI throughout this report are supported by the detailed calculations shown in Annex 6.

Other indices from international sources such as the OECD (2006c) and the Global Competitiveness Report (WEF, 2006) (e.g., foreign investment restrictions, regulatory index and business climate indices) have also been used as an assessment tool for the first group of Bogor objectives and for specific policy areas; and qualitative data have been relied on throughout, including for assessing the transparency of the trade and investment regime and the collective action objectives.

While various factors have led to some variations in the evaluation methodology applied and in the presentation of results, these have not constrained our ability to reach agreed assessment conclusions. These conclusions, however, convey Canada's progress only in relation to the Bogor principles and objectives. Comparisons with other APEC economies, using the experts' methodological approach, escape the boundaries of the present report.

⁵ Annex 3 provides a full list of participants.

⁶ Proposed by Adams *et al* (2003, 2005) and used in Tello (2007).

⁷ *viz*, investment rules, competition policy, deregulation and regulatory review and reform, government procurement, intellectual property rights, movement of business people (permanent and temporary).

TABLE 1.1
APEC's Bogor Objectives by Issue Area

Issue Area	Unrestricted and free trade flows of goods, services, investment, and business people (Market Access, and MFN/National Treatment Principles) and elimination of regulations which may distort trade	Transparency, Trade Facilitation, Capacity Building, Technical Assistance, International Harmonization of Standards, Specific Collective Actions, harmonized, transparent, neutral and impartial rules of origin, and other trade/investment related objectives	Collective Actions			
			Active Participation in trade related and Standards organizations (e.g., APEC, WTO, ISO, etc.) and other relevant Fora	Reduction of Specific Trade Barriers and Specific Actions in Specific Regulated Sectors	Provision/Arrangements of Modern Information, Seminars, Undertaking of Research on Trade Impact and Lesson Studies, Mutual Recognition Activities, Follow-on work of the WTO Agreement	Capacity Building/Technical Cooperation, Transparency of the Trade and Investment Regimes, Good Regulatory Practice, Alignment with International Standards and other Trade/investment related objectives
1. Tariffs	X	X	X		X	
2. Non-Tariff Measures	X	X	X	X	X	
3. Services	X	X		X		
4. Investment	X	X				X
5. Standards and Conformance		X	X		X	X
6. Customs Procedures		X				X
7. Intellectual Property Rights		X				X
8. Competition Policy	X	X				X
9. Government Procurement	X	X				X
10. Deregulation / Regulatory Review and Reform	X	X				X
11. Implementation of WTO Obligations		X			X	
12. Dispute Mediation		X				X
13. Mobility of Business People		X				X
15. Information Gathering and Analysis					X	

1.2 Assessment Conclusions

Open and Liberal Economy

In relation to the first broad Bogor objective - trade and investment liberalization and non-distorting regulation (Table 1.1) - it can safely be affirmed that the trade and investment regime of the Canadian economy is relatively liberal. Despite specific trade and sectoral restrictions on the flows of goods, services, investments and business people, Canada is one of the most open and liberal economies among the APEC and WTO members. By the same token, it can also be affirmed that Canada's high degree of openness and trade liberalization reflect the concentration of its trade and investment with one trading partner, the United States.

Regardless of the factors that might explain the relatively low degree of openness with non-US economies, Canada's high level of trade dependency on the US has implied an intimate association between Canada's trade flows/policy regime and US policy and economic activity. Nonetheless, unilateral and reciprocal concessions (in terms of the flows of goods, services, foreign investment and business people) have also been extended to non-US economies.

Trade, Investment and Regulatory Restrictions

Despite Canada's high degree of openness it still maintains some specific trade restrictions which, due to trade concentration and trade agreements with the US, discriminate against non-US economies in particular. Although these trade restrictions decreased between 1996 and 2000, they practically have not changed between 2000 and 2006: the overall trade and investment MLI increased from 0.5955 in 1996/1998 to 0.6468 in 2003 and to 0.6528 in 2006. Furthermore, there still exist some distortions caused by the federal and sub-federal regulatory regime which the MLI does not take into account.

In 2006, the areas in which Canada had the lowest levels of federal restrictions⁸ were Deregulation and Regulatory Review and Reform and Intellectual Property Rights (IPR) (both with a ratio of 1.0), followed by domestic Competition Policy, Government Procurement and Mobility of Business People (each with a ratio of 0.9). On the other hand, the policy areas with the highest level of trade restrictions (and hence the lowest ratios) were: NTMs (0.170), Foreign Direct Investment (FDI) (0.40), Services (0.55), Implementation of WTO Obligations with specific regard to ROO (0.575), and Tariffs including tariff quotas (0.625). The main trade and investment restrictions that account for the MLI level and the regulatory restrictions that may distort trade are the following:

- i) Levels and simple average applied ad-valorem tariffs are still relatively high in some sensitive sectors such as Textiles and Clothing, Agriculture Products,

⁸ Measured by the ratio between the MLI for a specific area and the free trade index of 1.00 for that area.

Leather, Rubber and Footwear and Travel goods and Transport Equipment. Thus, there are tariff lines where the level of tariff is higher than 15%. Moreover, in these sectors simple average MFN tariffs are higher for non-US economies which are not members of Canadian free or regional trade agreements (FTAs/RTAs). Further, in 2006, 22 tariff lines were unbound⁹. However and on the positive side, Canada applies at least MFN tariff treatment to all WTO members; it complies with the WTO tariff bounds in 99.7% of the tariff lines; and, by January 2004, all Canada's WTO commitments (obligations) reached the MFN tariff bound.

- ii) Tariff quotas are still applied to sensitive agriculture products¹⁰; they cover 12% of the HS-6 digit agricultural tariff lines and have levels of out-of-quota tariffs higher than 200% for some agricultural products (including dairy products). The simple average out-of-quota MFN tariff in 2006 was 129.1% and the in-quota average was 3.1%.
- iii) Using the UNCTAD (2007c) codification on NTMs and regardless of the economic and non-economic reasons for imposing NTMs, Canada still maintains NTMs in some export and import sectors which may restrict trade flows. These NTMs include import licenses and permits, export permits, antidumping and countervailing measures.
- iv) Regardless of the rationale for restricting trade in services, Canada maintains numerous (unweighted) market access restrictions across all modes of supply, particularly affecting commercial presence and movement of natural persons. Restrictions are concentrated in but not exclusive to seven relatively protected sectors within Canada. Discriminatory provincial market entry requirements also remain. Overall, significant domestic policy and jurisdictional barriers are likely to constrain Canada from unilaterally achieving free and open trade in services by 2010.
- v) Despite the Agreement on Internal Trade, inter-provincial regulatory barriers remain in the form of *inter alia* excess and over-lapping business regulations which are not conducive to APEC's trade facilitation objectives.
- vi) Several sectors in Canada are affected by federal and sub-federal foreign investment restrictions on business control. These restrictions include: limitations on foreign ownership share of the Canadian business, on new business in the cultural sectors, on land in some areas, as well as a review and screening process for certain acquisitions using a net benefit test¹¹.

⁹ These cover: minerals, oil and fuels, electrical energy, cruise ships, tankers, tugs, drilling and platforms ships, and postage stamps.

¹⁰ Includes the agri-food sector and encompasses unprocessed, semi-and fully processed farm products, and certain services to agriculture.

¹¹ The OECD's FDI regulatory restrictiveness index (which happens to measure these types of 'deviations from national treatment') indicates that Canada is one of the five OECD economies with the highest levels of FDI regulatory restrictions (OECD, 2006c). Since there exist doubts about the relevance of this type of indicator, then the issue on transparency of the degree of FDI restrictions in the Canadian (and any other APEC-WTO) economy become more important.

- vii) The principal government procurement issue for Canada is the lack of a whole-of-market approach to national treatment and hence the opportunity (even if not an institutional inclination) for discriminatory procurement practices at sub-federal level.

Transparency and Information

The next two Bogor objectives that also may need further improvements for their achievement by 2010 are transparency and information in relation to the following issue areas in particular: NTMs, FDI, standards and conformance, intellectual property, and dispute mediation.

First and foremost, transparency of the trade, investment and regulatory regime means the provision of public information on the legal framework; the instruments by which national and foreign agents, firms and institutions have access to that information; and easy and user-friendly access to the set of conditions which national and foreign agents, firms and institutions need to meet in order to access and operate in Canadian markets. Of further assistance in meeting transparency and information objectives would be a simple and harmonized or unified legal framework throughout the economy; the availability of easily accessible data on the details of the regime; and official time series, for example on processing times that foreign agents, firms or institutions have experienced when trying to gain access to or expand in Canadian markets. Such information could also be used for evaluation and research purposes relating to the efficiency and economic impact of the Canadian trade, investment and regulatory regime, both at and inside the border. Among the main areas where potential improvements can be made in terms of the transparency and information objectives are:

- i) Collection of statistics on the types and number of NTMs generated at the different government levels which could be the basis for a future version of the APEC trade instruments database. These NTMs could also be classified according to the rationale (economic and non-economic) for imposing these NTMs. Such statistics could be a starting point for the analysis of the desirable number and types of NTMs which may reduce to a minimum the trade distorted effect of NTMs.
- ii) A consolidated database on the technical regulations and the sanitary and phytosanitary standards applied at federal and sub-federal levels - such that foreign exporters are informed on the details of these regulations and standards and the different requirements at different levels of government. The database could also be classified according to those regulations/standards that have been harmonized with international standards and those that are national and provincial/territorial in nature, as well as according to the rationale for imposing them.
- iii) Creation of a database, of easy access, to provide statistics about the process experienced by foreign investors in Canada, without disclosing confidential information on the potential business. The fact that in the period 1 January 2002 to September 2007 none of the reviewed applications (in all the non-

cultural sectors subject to restrictions) had been rejected, unfortunately, does not provide enough information on the degree of deterrence or the potential restrictive effect (if any) caused by the investment requirements of the Investment Canada Act¹². This fact together with the fact that there exist doubts about the information provided by current international FDI restriction indicators, suggest that statistics on the experience of potential business in Canada would be very informative and transparent for foreign investors about the real restrictive effect of the Canadian FDI legal framework.

- iv) Provision of trademark documentation online. In contrast to the US, where virtually an entire file from outgoing official actions to incoming responses, as well as the status of trademark oppositions, can be assessed and printed easily through the US Patent and Trade Office website, Canada has no available information on those trademark statistics¹³.
- v) Attempts to harmonize and/or unify the legal framework regarding the arbitration laws that parties need to follow on their disputes with Canadian parties. As a consequence of Canada's Constitution Act of 1867, parties choosing to arbitrate their international disputes in Canada must look not only at the federal and international laws but also the relevant provincial law(s) for the applicable procedures. The reason for this is that traditionally, it has been held that the subjects of arbitration and enforcement of arbitral awards (neither of which is specifically enumerated among the matters listed in Sections 91 and 92 of the Constitution Act) fall within the provincial legislative competence.

Actual and Planned Improvements in Individual Policy Areas

Relying mainly on the qualitative information reviewed, it is evident that over the past ten years Canada has instigated a range of improvements in line with the Bogor objectives and will continue to do so in the three remaining years to 2010. The main elements from our policy area assessments are summarized below, although it has not been possible for the experts to assess the actual impact of these improvements in relation to such objectives as business cost reductions and trade facilitation.

- i) In respect of WTO Obligations (including ROO), Canada has fully implemented from 1995/1996 its WTO commitments on goods, services, IPR and plurilateral agreements on government procurement; and it has met its WTO obligations on ROO.
- ii) In the area of Tariffs, Canada participates in and ensures the expeditious supply and updates of information for the WTO Integrated Database and APEC databases.

¹² For example, there may be potential investors, not statistically registered, who (a) have avoided entering into the review process simply because the restrictions were so high; (b) have participated in a previous negotiation without formally making application; and (c) have not formally entered the review process because of the impossibility of complying with specific requirements of the net benefit test and/or the performance requirements imposed by all levels of Canada's government.

¹³ IQ II: 7.1 refers to online offerings by Canada's Intellectual Property Office.

- iii) As an active participant in the GATS, Canada has been increasing its commitments to reflect marketplace developments in a range of services sectors. There has been some movement on national treatment under NAFTA and some reduction in discriminatory provincial requirements affecting the provision of professional, business and tourism and transport services. Canada is transparent as to the sensitive sectors in which it wishes to retain policy and regulatory flexibility.
- iv) In the area of FDI, there exists public and electronic information on the statutes and regulations of the Canadian investment regime; and the website for the Investment Partnership Branch is continually being updated with helpful information for potential investors.
- v) In respect of Government Procurement, Canada is progressing towards the addition of a federal government procurement chapter in its FTA with Chile which would bind national treatment and eliminate the discretion which presently exists to apply domestic preferences. Beyond that, Canada is in 'continuous improvement' mode with respect to federal practices/procedures.
- vi) In the area of Standards and Conformance, Canada's policy is to adopt international standards whenever possible and appropriate. Thus, in the last four years, an average of 65% of the new national standards have been adapted or based upon standards approved by the International Standard Organization (ISO) or the International Electro Technical Commission (IEC). Further, Canada has an active participation in: i) the international standardization activities of international standardizing bodies; ii) bilateral and plurilateral recognition arrangements of conformity assessment in the regulated and voluntary sectors; iii) the Specialist Regional Bodies activities; and iv) relevant international fora (e.g., the Canadian Leadership Forum in 2005). Canada has also made improvements on the level of technical infrastructure and provided assistance for the improvement of other economies' technical infrastructure (e.g., in Paraguay).
- vii) In the area of Customs Procedures, Canada's actual and planned improvements over the past five years have furthered all of APEC's objectives in that area. In particular, Canada is modernizing its border management through its approach to electronically delivered advance information, consistent with cross-border security imperatives. Current plans suggest a continuing focus on the transparency, accountability and efficiency and effectiveness of customs operations and enforcement, as well as a strengthening response to counterfeit products and the involvement of organized crime.
- viii) In the area of IPR, improvements over the past five years appear to have contributed in particular to the objectives of adequate and effective protection/enforcement of IPR, and transparency through electronic technologies. Planned improvements continue to focus on Canada's international role in TRIPS discussions, technical cooperation and effective enforcement in combating IP crime.

- ix) In the area of Competition Policy, most of the improvements cited by Canada in the past five years fall within the Competition Bureau's territory and reflect many consultations, revisions to guidelines/bulletins and review and advocacy processes. Over the next three years, the Bureau is explicit on the results it expects to achieve from its clearly signalled enforcement and advocacy priorities, including fewer government restrictions on competition. Canada's establishment of the Competition Policy Review Panel in July 2007 provides an opportunity to identify distortions to competition in the Canadian economy. At an international level, Canada has clearly earned a good reputation for informal and formal cooperation; and its signing of a number of bilateral cooperation agreements is a constructive response to cross-border competition issues.
- x) In the area of Regulatory Reform, Canada has taken some major initiatives over the past five years, including the adoption in April 2007 of the Cabinet Directive on Streamlining Regulation – a life cycle approach to federal regulating. Further planned improvements are focused on continuing development in support of implementing the Directive. Canada's penchant for regulatory transparency and consultation is a continued strength. If Canada succeeds in building a centre of regulatory expertise and in embedding in its bureaucracy the discipline of evaluation (against efficiency and other appropriate objectives), this should contribute to APEC's regulatory objectives.
- xi) In the area of Business Mobility, Canada operates a liberal and transparent visa policy and is alert to areas for further improvement in its immigration processes. It has recently committed to recognize the APEC Business Travel Card as a trade facilitation measure (not a visa waiver measure).
- xii) In the area of Trade Facilitation, Canada's IAP records that action on all of the 72 items selected from APEC's menu of concrete actions/measures has commenced and that implementation has been completed in respect of 51 of these items. Such continuous actions and measures give rise to a number of benefit types, thereby providing an important platform for pursuing the objective of APEC's Trade Facilitation Action Plan.
- xiii) In the area of FTAs and RTAs, Canada will continue to pursue regional and bilateral initiatives to reinforce and complement multilateral liberalization. However, to what extent these initiatives help towards a unified and consistent WTO multilateral framework is not clear as is shown in several studies (e.g., World Bank, 2000, Summers, 1991 and Bhagwati, 1999).
- xiv) In the area of Dispute Mediation, Canada will continue to introduce its international and provincial/territorial dispute mediation procedures in its bilateral and regional initiatives; and federal legislation to implement the recently signed ICSID convention will be introduced for Parliament approval.

Positive Outcomes

Overall, Canada has continued active participation in a wide range of multilateral, regional and bilateral activities and negotiations in support of the Bogor goals, including security objectives. Capacity building has been an important component of this international cooperation. Canada has accorded high priority to transparency and to new technology for information sharing and facilitating transactions in areas as wide-ranging as government procurement, standards and conformance, visa applications and advance customs data. Application of APEC's competition and regulatory reform principles is widespread, even though not comprehensive, and there has been some progress at both federal and provincial levels in reducing market entry barriers to trade and the professions.

1.3 Main Aspects that May Limit Canada's Achievement of Bogor Goals

There are at least three aspects that may affect Canada's achievement of the Bogor goals by 2010. One is 'external' and the other two are 'internal' to the Canadian economy. The first one, of external origin, is the completion year of the Doha Development Round (DDR) which started in 2001, was on hold between July 2006 and February 2007 and resumed since then.

As a result of the commitments derived from the eight rounds of GATT negotiations and since the GATT multilateral agreement in 1947 and up to year 2000, Canada consistently has reduced trade barriers (in particular, tariff barriers). In the context of an uncertain outcome for the WTO Doha Round talks, Canada is moving forward with an ambitious bilateral free trade agreement agenda to complement the multilateral approach. The change in the US trade and investment strategy (from a multilateral to a regional approach, which caused the revival of the so called 'new regionalism' in the 1980s) also implied a reinforcement in the focus of the Canadian trade and investment regime towards FTAs/RTAs and other bilateral and regional arrangements (e.g., the Foreign Investment Promotion and Protection Agreements, FIPAs) as complements to Canada's multilateral approach to trade liberalization. Reciprocal concessions under the GATT/WTO multilateral approach have been used on a narrow basis under the new regionalism; and unilateral non-reciprocal concessions granted by Canada to some (in particular developing) economies have been switched to reciprocal concessions in the bilateral/regional agreements¹⁴.

These changes towards reciprocal concessions on a regional or multilateral basis have resulted in negligible trade barrier reductions since 2000; this is because these reductions have been associated with the trade and investment bilateral and regional agreements signed by Canada, with further and more significant trade barrier reductions awaiting the multilateral results of DDR. Consequently, future advances for Canada (and the rest of APEC's developed economies) in the reduction of trade and investment barriers - in the areas of Tariffs (including tariff quotas); (UNCTAD defined) NTMs (including supply managed programs and domestic support in the agri-food sector); standards and conformance (including sanitary and phytosanitary measures); investment; services; customs procedures; intellectual property rights; and government procurement - will now depend much more upon the reciprocal

¹⁴ Chile, Mexico, Costa Rica and Israel have signed FTAs with Canada and previously have been beneficiaries of the unilateral concessions under the Canadian General Preferential Tariff (GPT).

concessions and commitments that will result from the completion of the DDA than upon unilateral initiatives in pursuit of the Bogor goals.

The second aspect, of internal origin, derives from the constitutional framework of the Canadian Federation. Under this framework, the powers of governance are divided between the federal and the provincial/territorial levels of government. While international trade policy (i.e., policy at the border) is the exclusive responsibility of the federal government, Canadian provinces and territories are not constitutionally bound to conform to Canadian international trade agreements in any matter within their jurisdiction. In practice, this legal framework has implied that for certain legislation the federal government (and other trade related agencies and institutions) need to consult with provincial governments and territories. On the other hand, different provincial and territorial legislation (policy inside the borders) may also affect the free flows of trade in goods, services and foreign investment. Thus, whereas trade arrangements at the federal level may achieve close to full trade liberalization, provincial and territorial legislation might sustain indirect trade distortions and/or limit the economic impact of this liberalization at the border.

The main inter-provincial/territorial device¹⁵ that affects most of APEC's issue areas is the Agreement on Internal Trade (AIT). The AIT is an inter-governmental agreement signed by Canadian premiers (of the provinces, territories and the federal government) that came into force in 1995¹⁶. Its purpose is to foster improved inter-provincial trade by addressing obstacles to the free movement of persons, goods, services and investments within Canada. The AIT areas which affect international trade are: procurement, investment, labor mobility, consumer-related measures and standards, agricultural and food products, dispute resolution and some services and goods sectors (such as alcoholic beverages, natural resources processing, energy, telecommunications, transportation, and environmental protection). It is worthwhile to mention, that at the August 2007 meetings of the Council of the Federation, premiers expressed renewed interest in strengthening domestic trade between provinces and territories by implementing a five-point plan for improving the AIT. This renewed attention to internal trade can be attributed in no small part to the Trade, Investment and Labor Mobility Agreement (TILMA) between Alberta and British Columbia, which came into effect on 1 April 2007, and is scheduled to be fully implemented by 1 April 2009. So far, however, other provincial governments have been reluctant to follow the TILMA's lead, preferring to concentrate on strengthening the AIT. To the extent that their plans seem to fall well short of the TILMA's prescription they could be missing an opportunity to reduce trade barriers dramatically within Canada as suggested by Macmillan and Grady (2007).

From an APEC perspective, these inside the border barriers to trade, competition, regulatory convergence and business facilitation, inhibit a comprehensive and whole-of-economy response by Canada to the Bogor goals. They risk discriminatory actions and regulatory divergence that may distort the efficient functioning of markets and add to business costs, and thereby hinder Canada's positive achievements in respect of international markets.

¹⁵ Two other legal devices, that affect specifically the dispute mediation process, are that of arbitration and the enforcement of arbitral awards as described in section 3. 12.

¹⁶ Nunavut is the only jurisdiction that is not covered by the AIT.

The third aspect, also of an internal nature, is the set of sensitive sectors supported by most of the political parties and provinces and territories of Canada. One set is the sensitive agriculture products (including the supply managed products and federal and provincial Agricultural Policy Framework products¹⁷). The second set covers the sectors which have market access restrictions, including FDI review processes and limits of foreign ownership. Whereas and due to the relatively small size of the sensitive agricultural sector, real net gains would result from reciprocal concessions at multilateral, bilateral and regional levels, this would not necessarily be the case for the main sectors which face FDI restrictions. Canada by 2006 is a net foreign investor abroad and reciprocal concessions may well not be of net benefit for Canada provided that in fact there exist current differences between the FDI barriers maintained by Canada and other APEC-WTO economies, as the international FDI restriction indicators seem to suggest.

Again from an APEC perspective, this internal aspect risks market distortions by constraining application of both the comprehensiveness and non-discrimination principles.

Overall, adherence to APEC's fundamental principles will be necessary for Canada's further progress towards the Bogor goals. Continuing improvements in federal-provincial cooperation and coordination will assist in a whole-of-economy approach to the efficient functioning of markets and to productivity growth. Continuous operational improvements to enhance trade facilitation will be welcomed, having regard to APEC's interest in 'concrete and commercially relevant outcomes' for business, and to the desirability of keeping new government rules simple, predictable and accessible. Strengthening the link between transparency and accountability, by encouraging objective assessment of targets, outcomes and trends would provide a sharper performance focus in various policy areas. Consideration might also be given to a deepening of institutional knowledge about APEC and how government departments might approach the Bogor goals in a more integrated manner.

¹⁷ These include animal, crops and organic productions (Agriculture and Agri-Food Canada, 2006).

2. OVERVIEW OF ECONOMIC AND POLICY ISSUES

2.1 Overview

Canada is one of the major leading trading economies of the world. It occupies:

- The 9th position in terms of the world share of exports value of goods (3.5%, in 2006);
- The 8th position in terms of the world share of the imports value of goods (2.9%, in 2006);
- The 14th position in terms of the world share of the exports value of services (2.1%, in 2006);
- The 11th position in terms of the world share of the imports value of services (2.8%, in 2006);
- The 9th position in terms of the world share of the stock of inward foreign direct investment (3.2%, in 2006);
- The 6th position in terms of the world share of the stock of outward foreign direct investment (3.6%, in 2006);
- The 10th position in the world in terms of the (real PPP) per capita gross domestic product (GDP, \$US 33,375 in 2005) and the 8th position in terms of nominal total GDP (in 2005);
- The 10th position in terms of the Gender Empowerment Measure (GEM) in 2005 – out of 93 ranked countries;
- The 4th position in the world in terms of UN Human Development Index (HDI, 96% in 2005)¹⁸

As one of the 12 founder economies of APEC in 1989, the Canadian economy has been commended for its liberal and transparent trade and investment regime (brought about through structural and liberal reforms since 1980s) in the last IAP Peer Review (APEC, 2003a) and APEC media release in 2003 (APEC, 2003c). Canadian economic growth continues to be solid as in the last 20 years (with an annual simple average rate of growth in real GDP of 2.8%, in the 1986-2006 period, and close to 3% in the last 7 years, the 2000-2006 period) and stable (with an average annual rate of inflation of 2.3% and 2.7% in the 1986-2006 and 2000-2006 periods respectively¹⁹).

In the last five years (period 2002-2006), nominal economic growth has been primarily driven by consumer spending and non-residential investment (in particular in resources extraction and related infrastructure), residential construction as well as business and government investments. The source of the economic growth comes from the increase of both. Although personal consumption has been supported both by an increase in labor income (5.3% average annual rate) and corporate profits (before taxes) (9.5% average annual rate), average compounded growth in personal consumption at 5.2% has lagged the average rate of expansion in nominal GDP (5.8%); and the growth in corporate profits has been lower than the investment in

¹⁸ The sources are UNCTAD (2007a), for trade in goods and services, Canada FAITC provided the figures for foreign direct investment and GEM data, WEF (2006) for GDP data and UN (2006) for the HDI data.

¹⁹ CANSIM (2007a).

non-residential structures (10.4% average annual rate)²⁰. Despite the sustainable growth of the past two decades, some challenges lie ahead for the Canadian economy (as suggested in reports from Department of Finance of Canada, 2007; Foreign Affairs International Trade Canada, 2007b and OECD, 2006a).

The first challenge arises from the global economic uncertainty regarding energy prices and the fluctuations of the American dollar. Much of the recent economic growth of the Canadian economy has been highly dependent on the natural resources sector (which accounts for close to a third of the total export value in the 2002-2006 period) and the oil price hikes (with an average annual compounded rate of 25.8% in 2002-2006²¹). However, the increase in energy prices together with the appreciation of the Canadian dollar (with an annual average decrease against the currencies of the two major trade partners, 8.5% with respect to the US dollar and 6.5% against the yen in the 2002-2006 period) has increased exports cost; decreased the Canadian dollar (Can\$) return of the Canadian export value for each American dollar and for the Japanese yen; produced an increase in the volume of real imports of goods and services (at an annual compounded rate of 6.2% in the 2002-2006 period); and a decrease in the real goods trade balance (from a surplus of 57.3 real chained 2002 billions of Can\$ in 2002 to a deficit of -14.3 real chained 2002 billions of Can\$ in 2006).

According to the OECD (2006a) report, energy reserves are plentiful in Canada. Alberta's oil sands reserves are estimated at 175 billion barrels deemed economically recoverable with today's technology. Those reserves place Canada second behind Saudi Arabia in the world ranking of crude oil reserves by country. Given current technologies, reserves could sustain production of 2.5 million barrels per day for over 200 years. The most important uncertainty facing Canada is related to future oil price developments. The current energy price hike is likely to last for some time, and futures prices point to a sustained high oil price for years. However, projections remain uncertain and so do future government revenue streams. Global supply-side pressures have also risen lately, because of production interruptions and geopolitical risks.

Similar uncertainty applies to the US dollar depreciation and its consequences of a potential fall in US economic activity, given the high dependency of Canadian exports upon the US market (see below). The sustainability of the US current account deficit is the subject of continuing debate without yielding any clear indication if a huge US dollar depreciation is needed to reduce the size of the current account deficit relative to GDP - which in 2006 hit its highest record (of 6.5%) in the last 50 years²². Moreover, less clear is the impact of the US dollar depreciation on the US GDP²³.

Regardless of the potential impact of the US dollar depreciation and the increase of energy prices on the Canadian economy, a second challenge of concern is the slow

²⁰ Foreign Affairs and International Trade Canada (2007b) and Statistics Canada (2007).

²¹ From Energy Information Administration (2007).

²² The size of the US current account deficit (relative to the GDP) has been rising since 1991 (Fernandez, 2007).

²³ Krugman (2007) and the five papers of the Brookings Papers on Economic Activity (Brainard, & Perry, 2005).

rate of labor productivity growth. Thus, an OECD (2007a) study considered Canada as 'lagging behind and not catching-up to the US' in terms of real GDP and labor productivity growth²⁴. The annual rate of labor productivity growth decreased from 2.7% in the 1997-2000 period to 1.0% in the 2000-2003 period and then it recovered in 2005 with a 2.2% rate of growth from the level of 0.4% in 2004 (OECD, 2006a). The strong performance of the economy together with the current depreciation of the American dollar provides to the Canadian economy a good opportunity to increase the rate of growth of labor productivity in the years to come.

A third challenge comes from the relatively high level of income (personal and corporate) tax in Canada as recognized recently by the Department of Finance Canada (2007). Achieving better growth may also pose stiff challenges, as population ageing begins to pinch labor markets, making capital investment all the more important. In a recent study, Mintz (2006) shows that the marginal tax rate remains high and stands at 8th highest among the 81 developed and developing economies and suggests, therefore, that a tax reform is needed, maintaining and ensuring at the same time a fiscal discipline. It is worthwhile to mention that since 2006, Canada has taken specific actions towards the reduction of corporate and personal taxes²⁵.

A fourth and last challenge, associated with the goal of ensuring fiscal discipline, is the rapid population ageing²⁶ in Canada which is expected to affect the size of the workforce and increase health care spending on the elderly. With forthcoming population ageing and rising health spending, it is useful to have a clear and predictable rule to allocate revenue windfalls. This is particularly important in the case of Canada as unexpected surpluses have been large in the recent past and have generated a number of requests for new spending, which would not be appropriate at this stage of the business cycle.

According to OECD (2006a) and as a consequence of its constitutional framework, Canada is one of the most decentralized of the OECD economies. The federal government delivers a number of per capita transfers, the most important being the Canada Health Transfer (CHT) to support health and the Canada Social Transfer (CST) to fund social programs and education. These transfers are financed through federal taxes. In addition, the federal government also transfers directly money to provinces and territories via the equalization scheme, but these payments represent less than 20% of the total amount of transfers to provinces. Overall, transfers and equalization payments to provinces and territories have trended up since 1997-98, with a marked increase in the last two fiscal years. Since income taxes are progressive, revenues are raised disproportionately from the 'have' provinces, in particular Ontario and Alberta. At the same time, program spending has been higher

²⁴ Several factors could explain this relative slow labour productivity rate of growth although it is not possible to pinpoint a single one (OECD, 2006a).

²⁵ Thus, the 2007 Economic Statement proposed a reduction in the federal general corporate income tax rate to 15 per cent by 2012, starting with a 1 percentage point reduction in 2008, beyond previously scheduled rate reductions. With these reductions, Canada will achieve the lowest overall tax rate on new business investment (i.e., marginal effective tax rate) in the G7 by 2011. In addition, Canada will have the lowest statutory tax rate in the G7 by 2012 (Department of Finance, 2007).

²⁶ The ratio of elderly (65 years old and over) to total population increased 0.8% in the period 1997-2005, with a ratio of 13.1% in 2005. It is expected to reach the level of 25% over the next 25 years (OECD, 2006a).

in the 'have-not' provinces than their shares of population, also because of demographic differences. This differs from other federations such as the United States where regional income does not appear to drive federal spending.

Disparities within Canada are likely to have widened recently as the oil price and exchange rate shocks have had different impacts on provinces reflecting sectoral specialization and resource endowments. Oil-producing provinces like Alberta have clearly experienced a boom, while manufacturing-based Ontario and even more so those Atlantic provinces without oil and gas have been negatively affected²⁷. These provinces have nonetheless benefited from positive spillovers from strong economic growth in the West, and overall have experienced robust growth.

Looking forward, disparities between provinces are likely to intensify over time. Indeed, most projections foresee sustained high oil prices which render exploitation of oil sands profitable and are likely to enlarge the gap between Alberta and the other provinces. Energy rents may accentuate net taxation differentials and encourage inter-provincial migration towards resource-based provinces, where pressures already exist on housing markets. Moreover, ageing populations will probably affect provinces differently. In particular, the Atlantic Provinces are forecast to experience the largest increase in the share of elderly people in total population. As the ageing process develops more quickly in the Atlantic Provinces, their per capita health expenditures, which are already higher than the Canadian average, will soar, putting further pressures on public spending (e.g., Jackson and McDermott, 2004).

2.2 Economic Policy Context

A brief assessment of the economic policy context in Canada for the period 1997-2006 is summarized in this section using a sample of representative macroeconomic indicators of economic policies for Canada and those for the United States and Japan provided for comparative purposes. The figures in Table 2.1 indicate the main elements of Canadian economic policy in the period considered. These are:

- i) Fiscal discipline and monetary policy continue to be one of the best of the OECD countries, maintaining a low rate of inflation and smooth rate of economic growth. Thus the fiscal budget has been in surplus for most years of the 1997-2006 period and the GDP share of federal government spending has been reduced from 44.2% in 1997 to 39.5% in 2006. On the other hand, money and quasi money rate of growth has supported a relatively low market interest rate spread (around 3.6%) and a stable rate of inflation (between 2.1% to 4.1%) in the 1997-2006 period;
- ii) As a consequence of the US and Japanese fiscal and current account deficits, the US dollar and the Yen continue to depreciate; this has generated a relative loss of competitiveness of Canada's export activities by increasing its relative domestic consumer prices (and unit labor cost in

²⁷ For the oil and gas industry, the major clusters in Canada are located in the western province of Alberta and the Atlantic provinces of Newfoundland and Nova Scotia. Approximately 80 per cent of Canada's oil and gas manufacturing and services facilities are located in Alberta, while Newfoundland and Nova Scotia account for the remaining 20 per cent.

the manufacturing sector) - or its real effective exchange rate as measured by the OECD (2007b)²⁸ - in the 2000-2006 period;

TABLE 2.1
Canadian Comparative Economic Policy Indicators (%)

Economic Policy Indicator	Canada				United States				Japan			
	1997	2000	2003	2006	1997	2000	2003	2006	1997	2000	2003	2006
I. Macroeconomic/Fiscal Policy and Financial/Monetary Policy												
Share of Fiscal Deficit out of GDP	0.2	2.9	-0.4	0.8	-0.8	1.6	-4.8	-2.2	-4.1	-7.7	-8.0	-2.4
Share of Federal Government Spending out of GDP	44.2	41.1	41.2	39.5	35.4	34.2	36.7	36.4	35.7	39.1	38.4	36.3
Corporate Tax Rates ¹	43.3	42.9	36.2	34.4	40.0	40.0	40.0	40.0	56.1	42.0	42.0	40.7
Relative Corporate Tax Rate ²	134.3	139.4	122.0	132.7	120.5	125.0	113.3	147.1	169.0	131.3	140.0	149.6
Personal Tax Rates Range ³	N.A.	15.1 - 25.9	13.9 - 23.1	13.2 - 22.7	N.A.	14.7 - 22.1	13.0 - 20.8	12.9 - 20.7	N.A.	5.5 - 11.2	5.3 - 10.7	5.7 - 11.8
Relative Personal Tax Rates Range ⁴	N.A.	123.8 - 113.1	120.9 - 103.1	117.9 - 101.8	N.A.	120.5 - 96.5	113.0 - 92.9	115.2 - 92.8	N.A.	45.1 - 48.9	46.1 - 47.8	50.9 - 52.9
Market Interest Rate Spread ⁵	3.1	3.8	3.6	3.6	3.0	2.7	3.0	3.0	2.1	2.0	1.8	1.4
Money and Quasi Money Annual Growth	4.4	6.6	0.5	12.4	8.0	8.1	4.0	8.6	5.8	1.3	1.3	-0.7
II. Exchange Rate Policy												
Nominal Exchange Rate (1 \$ CAN in partner currency)	1.0	1.0	1.0	1.0	0.72	0.67	0.71	0.88	87.3	72.6	82.7	102.5
Nominal Exchange Rate (1 USA \$ in partner currency)	1.4	1.5	1.4	1.1	1.0	1.0	1.0	1.0	121.0	107.8	115.9	100.0
Nominal Exchange Rate (1Yen in partner currency)	0.011	0.014	0.012	0.010	0.008	0.009	0.009	0.01	1.0	1.0	1.0	1.0
Average of 4 years Annual Rate of Growth Real Effective Exchange Rates ⁶	-2.9	-1.7	1.6	6.6	1.7	3.6	0.6	-3.2	-4.1	2.9	-2.9	-3.5
III. Entrepreneurship Climate⁷												
Intensity of Local Competition	72.8	78.3	75.0	80.0	82.7	91.7	81.7	81.7	77.3	73.3	75.0	83.3
Effectiveness Antitrust Policy	78.5	76.7	73.3	73.3	77.5	83.3	80.0	76.7	66.8	66.7	61.7	78.3
Venture Capital Availability	68.0	66.7	60.0	58.3	88.8	80.0	71.7	76.7	34.0	41.7	36.7	58.3
Local Equity Market Access	89.8	90.0	78.3	80.0	95.7	88.3	80.0	83.3	65.3	85.0	83.3	90.0
Financial Market Sophistication	88.8	83.3	85.0	85.0	96.2	96.7	95.0	88.3	57.5	61.7	56.7	78.3
University/Industry Research Collaboration	68.2	71.7	66.7	63.3	79.5	71.7	73.3	73.3	62.0	56.7	58.3	70.0
Company Spending on Research and Development	53.3	63.3	60.0	56.7	82.8	83.3	81.7	80.0	81.3	83.3	76.7	85.0
Share of R&D out of GDP ⁸	1.7	1.9	2.0	2.0	2.6	2.7	2.7	2.7	2.8	3.0	3.2	3.1
Quality of Scientific Research Institutions	72.5	78.3	71.7	75.0	94.2	95.0	86.7	83.3	79.5	78.3	73.3	80.0
Local Availability of Specialized Research and Training Services	N.A.	70.0	76.7	76.7	N.A.	91.7	90.0	83.3	N.A.	78.3	83.3	85.0

²⁸ The relative unit labour cost in the manufacturing sector, which is the alternative measure of the real effective exchange rate for the OECD, also follows the same pattern as the relative domestic consumer prices (OECD, 2007c).

IV. Regulatory Indices ⁷												
Burden of Government Regulation	48.7	55.0	66.7	61.7	54.8	50.0	60.0	56.7	52.5	66.7	70.0	56.7
Presence of Demanding Regulatory Standards	86.7	86.7	80.0	83.3	85.2	88.3	85.0	80.0	82.0	85.0	85.0	86.7

Continuation...

TABLE 2.1
Canadian Comparative Economic Policy Indicators (%)

Economic Policy Indicator	Canada				United States				Japan			
	1997	2000	2003	2006	1997	2000	2003	2006	1997	2000	2003	2006
V. Trade, Investment and Foreign Competition Policy												
Simple Average MFN Bound Tariff ⁹	7.8	7.2	6.8	6.5	5.9	5.4	5.1	3.5	5.6	8.8	6.3	6.5
Agricultural Domestic Supports (Billions of USD) ¹⁰	4.5	5.5	7.5	8.4	76.9	93.5	94.1	109.7	62.9	67.5	57.5	59.6
Foreign Ownership Restrictions (national business perception) ⁷	5.8	16.7	31.7	21.7	5.3	5.0	18.3	28.3	12.2	8.3	45.0	36.7
FDI Regulatory Restrictiveness Index ¹¹	N. A.	N. A.	N. A.	22.8	N. A.	N. A.	N. A.	11.9	N. A.	N. A.	N. A.	10.1

Source: OECD (2007b), OECD (2006c), OECD (2007d), OECD (2007e), OECD(2007f), OECD (2006d), OECD (2006e), WB (2007), IMF (2007), KPMG (2007), UN (2007), WEF (1999), WEF (2002), WEF(2004), WEF (2006), WTO (2007a), WTO (2007b), WTO (2006a), WTO (2006b), WTO (2002), WTO (2001), WTO (2000), APEC (2007a), APEC(2007c), APEC(2007d), APEC (2004a), APEC (2004b), APEC (2004c). ¹According to KPMG (2007), for USA corporate tax rate represents the marginal federal corporate income tax rate on the highest income bracket of corporations for 2007 (which is 35%) plus state and local governments income tax (which ranges from less than 1% to 12%) less state and local income tax expense deductions. For Japan, the corporate tax rate represents the illustrative effective tax rate for a company in Tokyo with paid-up capital of more than JPY 100 million after taking into account a deduction for business tax (business tax itself being tax deductible). This marginal corporate income tax rate consists of corporation tax (national tax), business tax (local tax) and prefectural and municipal inhabitant taxes (local tax). According to data provided by FAITC corporate tax rate for Canada includes federal tax of 22.1% plus the provincial weighted tax. ²The value means the ratio of the corporate tax rate of an economy and the average corporate tax rate of a sample of 92 developed and developing economies. ³This tax rate is imposed to a single adult without dependent, full time manual and non manual workers in the industry. The lower bound is imposed when the Average Wage is 67% of the Average Production Wage and the upper bound is imposed when the Average Wage is 167% of the Average Production Wage. ⁴The value means the ratio of the personal tax rate of an economy and the average personal tax rate of a sample of 30 OECD members for the corresponding lower and upper bound. ⁵The value means the interest rate charged by banks on loans to prime customers minus the interest rate paid by commercial or similar banks for demand, time, or savings deposits. The 2006 data correspond to 2005. ⁶According to the OECD definition, the real effective exchange rate index is a chain-linked index with base period 2000 and the percentage changes in the index are calculated by comparing the change in the index based on consumer prices for the country concerned to a weighted average of changes in its competitors' indices, using the weighting matrix of the current year. Then growth of the real effective exchange rates provides an approximation of the evolution of a country's aggregate external price competitiveness. ⁷All the indicators, except for 'Share of R&D out of GDP', means the national business perception about the indicator based on the international surveys of the Global Competitive Reports (that included 59, 75, 102 and 125 economies for 1997, 2000, 2003 and 2006 data in the table). The value of this indicators mean the percentage from a maximum value of 7 which means the best international level with respect to the other economies, except for the Regulatory Indices and Foreign Ownership Restrictions (national business perception) that accounts for the percentage from a maximum value of 7 which means the highest level of distortion according to the indicator. 1997 and 2000 data correspond to 1999 and 2001, respectively. ⁸2006 data correspond to 2004. ⁹1997 data correspond to 1998 for the three countries; 2003 data correspond to 2002 for Canada and USA; and 2006 data correspond to 2004 for USA. According to the information from the Individual Action Plans, in 2003 and 2006, the simple average applied tariffs were 3.9% and 3.8% for Canada; 5.1% and 4.8% for USA; and 7.1% and 6.9% for Japan. ¹⁰Data represent the Total Domestic Support (TSE) indicator of the OECD that indicates the annual monetary value of all gross transfers from taxpayers and consumers arising from policy measures that support agriculture. ¹¹This index measures the deviation from national treatments of the legal foreign investment framework (i.e., discrimination against foreign investment).

- iii) Subject to the definitions used (KPGM, 2007), Canada as the United States and Japan continues to have one of the highest corporate tax rates. Thus in 2006, Canada's corporate tax rate exceeded by 32% the average

corporate rate of the 30 OECD countries²⁹. Personal tax rates (although lower and close to the average tax rate of 92 developed and developing economies) are higher than the respective tax rate for Japan and, to a lesser extent, those of the United States. These high levels of income taxation may slow down Canadian economic growth and some tax reform has been proposed to reduce them (e.g., Mintz at the C.D. Howe Institute, 2006, CCCE, 2007a; and Department of Finance Canada, 2007);

- iv) Canada's (18th level of the) ranking of the business environment index, according to Porter *et al* (2006) is well below that of United States (which occupies the first place) and Japan (which occupies the 5th place). The areas wherein Canada relative to the US and Japan present more weakness are: intensity in the degree of local competition; effectiveness of the antitrust policy; university/industry research collaboration; quality of scientific research institutions, local availability of specialized research and training services and company spending on R&D (Research and Development)³⁰. Consistent with this last indicator is the share of R&D expenditure out of GDP: Canada has a lower share than Japan and the US for the 1997-2006 period;
- v) The weakness of the intensity of local competition and effectiveness of the antitrust policy indices, in Canada relative to the US and Japanese economies, is associated with the relatively high burden of government regulations, demanding regulatory standards and the foreign ownership restrictions and FDI regulatory indices³¹;
- vi) The three trade policy indicators suggest in the first place, a similar degree of trade liberalization of goods for Canada and Japan and a relatively higher level for the US. Thus, the simple average MFN bound tariff rates have been decreasing since 1997 for these economies and ending up at 6.5% for Canada and Japan and 3.5% for the United States in 2006 (WTO, 2007a, b, 2006a, b). In second place, despite the overall decrease of MFN ad-valorem tariff rates, protection or promotion measures continue in place in all these countries, in particular in the agricultural sector wherein the amount of agricultural domestic support is significantly higher for US, then for Japan and much lower for Canada. In the third place, the foreign direct investment restrictions indices suggest the difference between national business perception and the foreign investment legal framework. On the one hand, Canadian business perceives that the level of foreign ownership restrictions (although has increased between 1997 and 2006) are lower than the United States and Japan. On the other, the

²⁹ Canada's corporate tax rates were provided by Canada's Foreign Affairs and International Trade Canada.

³⁰ The Entrepreneurship Climate Indices reported in Table No 1 from the WEF (1998-2007) represents the national business perceptions ranked from a scale from 1 to 7 of the indicator that the indices attempts to measure. The indices have been transformed in scale from 0 to 100%. Thus, an indicator of 75% means that it falls short of 25% of its maximum value of the indicator.

³¹ Consistent with this last indicator is the OECD's FDI regulatory restrictiveness index. According to this index Canada has the 5th highest index among 42 developed and developing economies (OECD, 2006c).

FDI regulatory restrictiveness index (OECD, 2006c) means that the legal FDI framework is more restrictive in Canada than the other two economies. These two indices are mutually consistent with the degree of discrimination against foreign investors, particularly in some specific sectors.

2.3 Economic Trends

Analogously to the previous section, the main features of Canadian economic performance in the period 1997-2006 are listed in this section using another set of macroeconomic performance indicators not only for Canada but also for the US and Japan. According to the figures presented in Table 2.2, these main features are:

- i) From 1997 to 2003 Canadian per capita GDP (in US dollars of 2000) was catching up with the respective per capita GDP of US and Japan. Thus, 1997 Canadian per capita GDP increased from 65% and 56% of the per capita GDP of the US and Japanese economies to 69% and 65% respectively in 2003. However, this trend was reversed towards the end of 2006 with 67% and 64% respectively;
- ii) This lagging/catching-up of the Canadian per capita GDP may be explained by the decrease in Canada's rate of growth of per capita GDP and labor productivity relative to those rates of the US and Japan;
- iii) The slow down in Canada's economic growth in 2003-2006 (relative to the US and Japan) together with the Canadian dollar's real appreciation (relative to the American dollar and the Yen) have been associated with a slight decrease in the share of real value of exports of goods and services and a higher level of increase in the share of real value of imports of goods and services, yielding an increase in the share of the real value of the deficit in the trade in goods and services account. By contrast, the Yen's real depreciation has improved Japan's trade surplus. However, the trade deficit is still growing in the US, despite the real depreciation of the American dollar;
- iv) All three countries continue to be net foreign direct investors abroad in the period 1997-2006. Further, the share of GDP accounted for by the inward and outward stocks of FDI in Canada is much higher than the US and Japan;
- v) Fiscal, monetary and financial macroeconomic discipline in the Canadian economy has produced a lower rate of consumer price inflation than in the US. Japan's tight monetary policy, however, has produced a lower rate of consumer price inflation than in Canada;
- vi) Although labor participation and employment practically have not changed for the three economies, population ageing (measured as the share of population of 65 years or more out of the total population) has increased in Japan and Canada while remaining virtually unchanged in the US for the period 2003-2006.

TABLE 2.2
Canadian Comparative Economic Performance (%)

Economic Indicator	Canada				United States				Japan			
	1997	2000	2003	2006	1997	2000	2003	2006	1997	2000	2003	2006
Real GDP per cápita USD (Thousands of USD)	20.6	23.2	24.2	25.6	31.7	34.6	35.3	38.1	36.5	36.7	37.2	40.0
Rate of Annual Growth of the Real GDP per cápita	3.1	4.1	1.1	1.9	3.2	2.5	1.8	2.4	1.1	2.7	1.5	2.3
Real Exports of Goods and Services share of Real GDP	39.0	44.3	39.9	39.4	10.9	11.2	10.0	11.5	9.9	11.0	11.8	14.7
Real Imports of Goods and Services share of real GDP	38.1	40.3	38.0	42.5	12.2	15.1	15.1	17.1	9.1	9.5	9.9	11.0
FDI Outward stock share of GDP	24.8	33.1	34.0	36.2	10.6	13.5	16.3	18.1	6.3	5.9	7.8	9.7
FDI Inward stock share of GDP	22.0	29.6	30.8	31.0	8.3	12.9	12.8	13.6	0.6	1.1	2.1	2.3
FDI Outflow share of GDP	3.6	6.2	2.6	3.5	1.2	1.5	1.2	1.6	0.6	0.7	0.7	1.1
FDI Inflow share of GDP ¹	1.8	9.2	0.9	5.4	1.3	3.2	0.5	1.3	0.1	0.2	0.1	0.1
Inflation Rates ²	1.6	2.7	2.8	2.0	2.3	3.4	2.3	3.2	1.7	-0.5	-0.2	0.2
Rate of Growth of Labor Productivity ³	4.1	2.9	0.3	2.1	1.6	2.3	3.0	1.8	2.2	2.9	1.9	2.9
Labor Participation ⁴	68.0	70.9	72.2	72.5	73.5	74.1	71.2	71.5	70.0	68.9	68.4	69.0
Labor Employment ⁵	13.9	15.0	15.9	16.4	131.9	139.2	140.1	146.7	67.4	65.3	63.5	63.9
Labor Employment Rate ⁶	46.7	49.0	50.1	50.9	48.4	49.3	48.2	48.6	53.4	51.4	49.8	50.0
Population ages 65 and above ⁷	12.2	12.6	12.8	13.2	12.4	12.4	12.3	12.4	15.6	17.2	18.7	20.2

Source: WB(2007), Statistics Canada(2007), BEA (2007), Cabinet Office (2007), OECD (2007d), OECD (2007g), OECD (2007h), OECD(2006f), CANSIM (2007a), CANSIM (2007b), UNCTAD (2005a), JETRO (2007), IMF (2007). ¹2006 data correspond to 2005 for Japan. The FDI inflow (share of GDP) in 2006 for Japan was -6.8 US\$ billion (-0.2). ²Inflation Rates are measured by the Consumer Price Index. ³Labor productivity measured as GDP per hour worked. 2006 data correspond to 2005. ⁴Labor Participation is the share of persons of working age (15 to 64 years) in employment. 2006 data correspond to 2005. ⁵Labor employment includes employees and self-employed. Data expressed in terms of jobs for Canada and Japan; in terms of people for USA. 2006 data correspond to 2005 for Canada and Japan. ⁶This rate indicates the percentage of labor employment over total population of the economy. 2006 data correspond to 2005. ⁷This rate indicates the percentage of population ages 65 and above over total population of the economy.

2.4 Canada's Approach to Trade and Investment Liberalization

Since 1947 (and originated by the GATT agreement at United Nations Conference on Trade and Employment held in Havana, Cuba), the Canadian economy has actively participated in the world trade and investment liberalization process which expanded notably through the eight rounds of GATT negotiations. Canada's role in this process has been and is based on four distinctive forums or trade arrangements: unilateral, preferential binding arrangements, preferential non-binding or voluntary arrangements and multilateral arrangements as a member of the GATT-WTO.

a. Unilateral

Historically, Canada's high dependency on trade with its main trading partner the United States, has implied that trade policy hinges around the trade strategy and the level of economic activity of the US economy (e.g., Pomfret, 2001; CCCE, 2007b, Schwanen, 2001; Berry *et al*, 1992). Similar to the US trade strategy, and since

Canada embraced multilateralism in 1947, Canadian trade barriers have been reduced progressively on a unilateral (without necessarily having reciprocity by trade partners), preferential (with reciprocity and discrimination in favor of the member economies) and multilateral (with reciprocity and non-discrimination) basis. Moreover, the difference between the preferential and MFN (Most Favored Nation) tariff rates (which Canada chooses to bestow even to WTO non-member countries³²) has been decreasing. Thus, by the end of the 1980s, effective Canadian tariff rates averaged 8% for goods imported from the US and 15% from other countries (Schawanen, 2001); and in 2006 the simple average tariff rate for goods imported from the US was 2.6% (WTO, 2007a) and the simple MFN applied tariff rate was 3.8% (APEC, 2007a).

Canada unilaterally has also reduced drastically tariff barriers to trade from most developing economies through the generalized systems of preferences (GSP). These include the General Preferential Tariff (GPT), the Least Developed Countries Tariffs (LDCT) and the Commonwealth Caribbean Countries Tariff (CCCT or CARIBCAN). In 2006, the simple average applied preferential and unilateral GPT has been 1.2%, close to 0% for the LDCT (APEC, 2007a) and 4.3% for the CARIBCAN (WTO, 2007a).

b. Preferential

Preferential binding arrangements have been implemented by Canada even before the multilateralism era began at the end of the 1940s, in particular with Canada's main trading partner, the United States (Pomfret, 2001 and Berry *et al*, 1992). The bilateral preferential US approach of Canada's trade strategy was reinforced and extended with other economies with the revival of regionalism at the beginning of the 1980s (e.g., Ethier, 1998). A key difference between the new and the old bilateral-regional trade approach is in the extension of sector coverage and the introduction of services, investment and non commercial areas of negotiations (such as intellectual property rights, labor and environment and others) which were also introduced in the Uruguay round of GATT-WTO negotiations in 1994.

To date, Canada has signed preferential or free trade agreements (FTAs) with the United States and Mexico, NAFTA (North American Free Trade Agreement³³), signed in 1993 and in force in January of 1994; Israel (Canada-Israel Free Trade Agreement, CIFTA) signed in 1996 and in force in January of 1997; Chile (Canada-Chile Free Trade Agreement, CCFTA) signed and in force in 1997, and Costa Rica (Canada-Costa Rica Free Trade Agreement, CCAFTA) signed and in force in 2001. Canada also is in negotiations for the implementation of FTAs with the European Free Trade Association (EFTA), Central American economies, Republic of Korea, Singapore, Peru and Colombia and 33 economies of the America Hemisphere (Free Trade Area of the Americas, FTAA) (APEC, 2007a; FAITC, 2007a).

Other types of arrangements related to investment have also been implemented by Canada such as the:

³² The list of MFN and GSP tariffs beneficiaries' economies, provided by CBSA (2007b), includes about 225 economies. The number of WTO member economies is 152.

³³ Prior to this agreement was the Canadian-US Free trade Agreement (CUFTA), signed in 1987.

- i) The Foreign Investment Promotion and Protection Agreements (FIPAs). These are bilateral agreements aimed at protecting and promoting foreign investment through legally-binding rights and obligations. By mid 2007, and for the period 1989-2006, Canada has signed 24 bilateral FIPAs³⁴;
- ii) Trade and Investment Cooperation Arrangements (TICAs) which are also bilateral/regional arrangements aimed to establish a bilateral/regional framework for the expansion and diversification of trade and investment between Canada and the other member economies. Thus far, Canada has signed three TICAs with MERCOSUR (Southern Cone Common Market, 1998), Andean Community (1999) and South Africa (1998);
- iii) Trade and Economic Cooperation Arrangements (TECAs) aimed to enhance economic relations and cooperation between economies, in particular in trade in goods and services, and investment. Canada has signed 4 TECAs with United Kingdom (1997), Australia (1995), Switzerland (1997) and Iceland (1998);
- iv) Memorandum of Understanding on Trade and Investment (MOUTI) aimed also to enhance economic relations in the fields of trade and investment with the member economies. Canada has signed one MOUTI with Central America (1998).

c. APEC

Canada is one of the 12 founder economies of APEC, which was established in 1989. Today APEC includes 21 economies³⁵. In 1995, this regional non-binding or voluntary arrangement established (in the APEC Osaka Action Agenda, OAA) a framework for reaching the Bogor goals of free trade in goods, services and investment through unilateral trade and investment liberalization, business facilitation, and economic and technical cooperation (known as APECs's three pillars).

In 2007, the Canadian priorities for APEC are: i) to advance key Canadian trade policy interests, including support for the WTO and the current round of negotiations, support for regional trade and investment promotion and policy objectives, and efforts to make the Asia-Pacific region more accessible to Canadian businesses, including women-owned enterprises; ii) to promote economic policy objectives such as tackling global climate change, energy security issues and economic sustainability; and iii) to enhance security in the Asia-Pacific region by expanding

³⁴ The list of the 24 countries is: Poland (1990), Argentina (1993), Czech Republic (1992), Slovak Federal Republic (1992), USSR (now The Russian Federation as the continuing state, 1991), Hungary (1993), Ukraine (1995), Philippines (1996), Barbados (1997), Venezuela (1998), Egypt (1997), Armenia (1999), Lebanon (1999), Croatia (2001), Peru (2007), Latvia (1995), Trinidad y Tobago (1996), Panama (1998), Thailand (1998), Uruguay (1999), Costa Rica (1999), Romania (1997). The FIPAs with South Africa, El Salvador and Peru although signed (in 1995, 1999, 2007 respectively) are not yet in force.

³⁵ These are: Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, The Russian Federation, Singapore, Chinese Taipei, Thailand, the United States, and Viet Nam.

adherence to counterterrorism agreements, providing counterterrorism capacity building, and enhancing health security and infectious diseases strategies (Foreign Affairs and International Trade Canada, 2007c).

d. Multilateral

The previous arrangements have been used by Canada and other economies as instruments to achieve more ambitious and comprehensive trade liberalization objectives within a multilateral context (as represented by the GATT, GATS and the WTO arrangement which by 2007 included 151 member economies). According to Foreign Affairs and International Trade Canada (2007d), Canadians have benefited, and will continue to benefit, from trade. The government has been an active participant in all aspects of the GATT/WTO eight rounds of negotiations and the current Doha Development Agenda negotiations. Canada has the following objectives in the current Doha negotiations:

- i) Reforming world agriculture trade. As the world's fourth largest agri-food exporter, Canada is seeking the elimination of all export subsidies; substantial reductions to, and disciplines on, trade-distorting domestic support; and real and significant market access improvements;
- ii) Increase market access for goods and services in areas of interest to Canadian exporters. In non-agricultural goods, Canada has been seeking real improvements in market access such as bound commitments on maximum tariffs that would be lower than the tariffs currently being applied. In services, Canada is pursuing increased access to foreign markets for Canadian services firms, including professional, business, financial, telecommunications, computer and environmental services;
- iii) Strengthening the rules on antidumping, countervailing measures and subsidies. Canada's goal is to strengthen and clarify rules governing antidumping, subsidy and countervailing duty measures, in order to achieve greater international convergence and predictability in their application;
- iv) Facilitation of trade at borders. Procedures at borders can also hinder trade. Part of Canada's objectives in the DDR is to facilitate trade by cutting red tape at the border and streamlining customs procedures. Such rules also support good global governance;
- v) Development Issues. To this end, the Canadian government is actively seeking to address some of the domestic, commercial and economic challenges that many developing countries face in implementing trade agreements. It is also seeking to address developing countries' concerns about taking on new commitments and pursuing initiatives to strengthen trade related technical assistance and capacity building, both at the WTO and bilaterally.

- vi) In addition to these main issues, Canada strongly supports negotiations on clarifications and improvements to the dispute settlement mechanism, greater clarity in applying international trade rules to e-commerce and seeks a voluntary, facilitative, simple and low-cost registration system for wines and spirits. In the area of trade and environment, Canada is working to ensure that the relationship between WTO rules and multilateral environmental agreements is mutually supportive.

2.5 Canada's Pattern of Trade and Investment: A Snapshot

Canada as many other economies shares the special feature that its trade in goods, services and foreign direct investment is dominated by one trading partner, the United States as the figures in Table 2.3 indicate. Thus, in the period 1997-2006, more than 80% of the exports goods value came from products exported to the US and more than half of the imports goods value came from US products. The US now also accounts for well over half of Canada's services exports and imports. On the other hand, since the middle of the 1970s Canada has been a net exporter of foreign direct investment (FDI) flows (Rugman-Tilley, 1987) and net exporter of FDI stocks from 1997, with more than 40% of its total stock of FDI abroad invested into the US market and with more than 60% of foreign capital invested in Canada coming from the US.

These figures suggest that Canada's degree of openness to goods, services and investment primarily originates with its trade with the US and, as a consequence, is highly dependent on the level of economic activity of its North American partner. Any trade indicator of liberalization and/or degree of openness will be biased towards the trade with respect to the US³⁶. These figures also suggest that there exist multilateral potential trade gains for Canada if trade increases with the rest of the world in a significant way.

The US and Japan face a more diversified geographic market for does Canada. Thus more than 60% of US and Japan trade and FDI are with the rest of (developed and developing) economies without including any of these three economies. The high degree of geographic market diversification of the US and Japan, in contrast with the high degree of geographic market concentration of Canada, has had and will have important implications for the trade arrangements that these countries signed or will sign.

In the first place, decreasing trade barriers at the multilateral level will have more effects in Japan and the US than for Canada due to the higher level of market diversification. Nonetheless, multilateral trade liberalization would be also important for Canada, not only because it would provide significant potential trade gains if Canada increases its geographic market diversification, but also because it would provide to Canada the same international trade and investment advantages as its major competitor and export/investment market, the US.

³⁶ For example, the import weighted average applied tariff rate f.o.b. is 0.9% while the simple average applied tariff rate is 3.8%. The lower weighted average applied tariff is explained by the trade with the US and the fact that a great proportion of that trade does not pay duties due to the NAFTA agreement (APEC, 2007a).

Secondly, the increasing of bilateral/regional (trade and investment) arrangements since the 1980s, led by the US, has implied that Canada also implement these types of arrangements, despite the low level of the trade share with its bilateral/regional partners (Berry *et al*, 1992). Further, these types of arrangements have allowed Canada to gain market access in goods and services and to receive concessions in investment and other trade related areas (such as labor mobility, intellectual property rights and so on) from non-US economies. As a consequence, Canada's trade shares with respect to its FTAs/RTAs partners have increased, although not to the same magnitude as its main trade partner.

In third place, unilateral preferential trade and non-reciprocal concessions to developing economies (such as the GPT, LDCT, CCCT/CARIBCAN) have also been implemented by Canada, for most of the goods (except for the sensitive Canadian sectors) despite the fact that the potential trade gains have not been significant for the Canadian economy. As a consequence, Canada is gradually replacing this type of unilateral arrangement with bilateral/regional agreements with some of these economies³⁷ gaining, in exchange, market access in goods, services, investment and other trade related areas.

A second feature of the pattern of trade and investment in Canada is its trade and investment structure, as shown in Tables 2.4, 2.5 and 2.6. Canada in comparison with the US and Japan is a natural resources net exporter economy (although concentrated towards its main export market the US), while Japan and US are net importer economies. Thus, for the period 1997-2006, approximately a third of Canada's value of exported goods was accounted for by products from sectors intensive in the use of natural resources, while for Japan and the US exports from those sectors were less than 10% of the total exports value. These figures are reversed for the imports value of products intensive in the use of natural resources: less than 15% for Canada and a third for the US and Japan.

For all three economies, more than 60% of trade flows (exports and imports) in services is concentrated in three sectors: transportation, travel, and other business sectors. The low shares of some services sectors (e.g., personal, cultural and recreational, communications, construction, and financial services) may well reflect the trade and investment restrictions that still exist in these sectors for all three economies, as is certainly the case for the Canadian economy.

The FDI sectoral distribution in these three economies may also reflect the degree of investment restrictions and the sources of comparative and competitive advantages that all these economies have. Thus the stocks of outward and inward FDI in natural resources sectors are more important for Canada than for the US and Japan. In the financial and insurance sector Canada is a net exporter of FDI; Japan and US are net importers. In services and retailing industries all the three economies are net exporters of FDI. In the all other industries they are net importers of FDI. One important implication of the FDI structure is that Canada, probably, will not gain with reciprocal investment concessions at the multilateral level as much as it will gain with reciprocal trade concessions, given that in the current international legal framework

³⁷ For example, with Mexico (through NAFTA), Chile (CCFTA), Israel (CIFTA), and Costa Rica (CCAFTA).

and Canada's investment arrangements, Canada is still maintaining its foreign direct investment restrictions in sensitive sectors.

TABLE 2.3
Canadian Comparative Trade and Investment Flows, 1997-2006

Destiny Economies	Exporter (Importer) Economy											
	Canada				United States				Japan			
	1997	2000	2003	2006	1997	2000	2003	2006	1997	2000	2003	2006
I. Exports of Goods												
Canada	-	-	-	-	21.8	22.6	23.4	22.2	1.4	1.6	1.6	1.5
United States	83.2	87.5	87.6	82.3	-	-	-	-	28.1	30.1	24.9	22.8
Japan	3.4	2.2	2.1	2.1	9.5	8.4	7.2	5.8	-	-	-	-
RAPECDE	0.5	0.4	0.5	0.7	2.5	2.2	2.4	2.5	2.5	2.2	2.9	3.4
RAPECLDE	3.8	3.0	3.2	4.7	26.1	28.3	29.5	29.6	35.6	34.0	39.8	41.2
Rest of World	9.1	7.1	7.6	10.2	40.1	38.6	37.5	40.3	32.4	32.1	30.9	31.1
Total (Billion \$)	213.0	275.2	271.6	389.4	687.6	772.1	723.7	1037.0	421.4	478.4	471.9	646.7
X share of GDP	33.4	38.0	31.3	30.7	8.3	7.9	6.6	7.8	9.9	10.2	11.2	14.8
II. Imports of Goods¹												
Canada	-	-	-	-	19.1	18.5	17.4	16.0	2.9	2.3	2.0	1.7
United States	67.5	64.3	60.6	55.1	-	-	-	-	22.4	19.1	15.6	12.0
Japan	4.6	4.7	4.1	3.9	13.8	12.1	9.3	7.9	-	-	-	-
RAPECDE	0.8	0.8	0.9	0.9	1.2	1.3	1.4	1.7	6.2	5.7	5.6	6.4
RAPECLDE	8.8	10.8	13.6	17.5	29.5	31.4	33.8	36.0	33.8	37.6	41.3	41.2
Rest of World	18.3	19.5	20.9	22.7	36.4	36.6	38.0	38.3	34.8	35.4	35.5	38.7
Total (Billion \$)	215.0	262.8	263.3	383.5	898.7	1238.2	1305.3	1919.2	338.7	379.6	383.0	578.6
X share of GDP	33.7	36.3	30.4	30.2	10.8	12.6	11.9	14.5	8.0	8.1	9.1	13.3
III. Exports of Services²												
Canada	-	-	-	-	8.1	8.3	9.1	9.4	1.5	2.2	3.2	1.8
United States	56.9	61.3	57.8	56.1	-	-	-	-	29.2	33.8	31.6	28.0
Japan	3.6	3.1	2.0	2.3	11.3	11.4	9.9	9.9	-	-	-	-
RAPECDE	1.4	1.4	2.0	1.7	2.0	2.0	2.1	2.3	2.9	2.3	2.6	2.1
RAPECLDE	7.9	6.7	6.5	7.0	14.0	33.4	15.2	15.7	36.7	33.7	30.6	34.1
Rest of World	30.2	27.4	31.7	33.0	64.6	44.9	63.7	62.7	29.8	28.0	32.4	34.0
Total (Billion \$)	31.5	40.0	43.9	55.3	281.9	298.6	304.3	422.6	69.3	69.2	77.6	117.3
X share of GDP	5.0	5.5	5.1	4.9	3.1	3.1	2.8	3.2	1.6	1.5	1.8	2.7
IV. Imports of Services²												
Canada	-	-	-	-	8.2	8.1	7.8	7.0	2.0	1.8	1.3	1.1
United States	62.5	63.6	59.3	59.4	-	-	-	-	31.9	32.8	29.3	31.0
Japan	2.2	3.2	3.7	3.0	8.8	8.4	7.5	7.4	-	-	-	-
RAPECDE	1.4	1.1	1.3	1.4	1.7	1.6	1.3	1.5	3.8	3.3	3.5	3.3
RAPECLDE	6.2	6.0	6.8	7.9	14.1	14.1	13.4	14.2	25.9	26.6	26.1	27.1
Rest of World	27.7	26.1	28.8	28.3	67.2	67.8	69.9	69.9	36.5	35.6	39.8	37.5
Total (Billion \$)	37.9	43.9	52.0	65.3	199.1	223.7	250.3	342.8	123.4	116.8	111.2	135.6
X share of GDP	6.0	6.1	6.0	5.8	2.2	2.3	2.3	2.6	2.9	2.5	2.6	3.1

TABLE 2.3
Canadian Comparative Trade and Investment Flows, 1997-2006

Destiny Economies	Exporter (Importer) Economy											
	Canada				United States				Japan			
	1997	2000	2003	2006	1997	2000	2003	2006	1997	2000	2003	2006
V. FDI Outflows												
Canada	-	-	-	-	8.0	11.8	13.4	6.8	1.3	0.2	1.1	1.8
United States	39.1	50.8	19.6	39.5	-	-	-	-	28.5	44.6	37.2	18.5
Japan	2.2	5.6	0.9	0.0	0.0	3.0	0.7	5.7	-	-	-	-
RDE	28.0	32.4	52.0	34.3	52.9	56.0	76.2	66.3	10.0	34.7	28.2	36.1
Rest of World	29.6	11.2	27.4	26.2	39.1	29.1	9.7	21.2	60.2	20.5	33.5	43.6
Total (Billion \$)	23.0	44.5	22.8	45.2	95.7	142.6	129.4	216.6	26.1	31.5	28.8	50.2
X share of GDP	3.6	6.2	2.6	3.5	1.2	1.5	1.2	1.6	0.6	0.7	0.7	1.1
VI. FDI Inflows³												
Canada	-	-	-	-	8.1	8.7	13.3	3.7	0.0	11.3	0.3	0.0
United States	73.5	17.7	48.6	27.2	-	-	-	-	15.6	0.0	0.0	6.1
Japan	3.5	0.2	4.9	3.2	9.9	2.5	16.1	12.1	-	-	-	-
RDE	18.3	79.1	41.0	40.4	74.1	80.8	63.6	74.3	52.3	47.5	74.1	37.6
Rest of World	4.7	3.0	5.5	29.2	7.9	8.0	7.0	9.9	32.1	41.2	25.5	56.3
Total (Billion \$)	11.5	66.5	7.4	68.9	103.3	314.0	53.1	175.4	3.2	8.2	6.2	3.2
X share of GDP	1.8	9.2	0.9	5.4	1.3	3.2	0.5	1.3	0.1	0.2	0.1	0.1
VII. FDI stocks abroad												
Canada	-	-	-	-	11.1	10.1	10.6	10.3	1.7	2.2	1.2	1.5
United States	50.6	49.9	41.1	42.7	-	-	-	-	37.6	47.5	41.4	34.8
Japan	1.4	1.6	2.0	0.9	3.9	4.3	3.3	3.8	-	-	-	-
RAPECDE	1.1	0.4	2.1	1.9	4.2	3.0	3.1	5.8	5.0	3.6	4.0	3.0
RAPECLDE	7.7	6.8	5.6	5.1	11.3	11.0	12.1	12.5	27.6	17.0	18.4	23.4
Rest of World	39.2	41.3	49.1	49.3	69.5	71.6	70.9	67.5	28.0	29.7	35.0	37.3
Total (Billion \$)	157.4	238.9	292.7	460.5	871.3	1316.2	1769.6	2384.0	272.0	278.4	335.9	449.7
X share of GDP	24.8	33.1	34.0	36.2	10.6	13.5	16.3	18.1	6.4	6.0	7.9	10.2
VIII. FDI stocks in the host economy												
Canada	-	-	-	-	9.6	9.1	6.9	8.9	2.8	4.2	4.0	2.1
United States	66.4	60.7	63.7	61.0	-	-	-	-	50.3	28.1	40.8	39.0
Japan	4.1	2.5	2.6	2.5	18.3	12.7	11.3	11.8	-	-	-	-
RAPECDE	0.4	0.6	0.5	0.6	1.8	1.5	2.7	1.5	0.5	1.2	0.7	0.5
RAPECLDE	2.0	1.4	1.5	0.5	1.8	1.7	1.3	1.5	12.2	7.8	5.4	7.7
Rest of World	27.0	34.9	31.6	35.3	68.5	75.0	77.9	76.3	34.3	58.8	49.1	50.7
Total (Billion \$)	139.9	213.8	265.3	394.9	681.8	1256.8	1395.2	1789.1	27.1	50.3	89.8	107.7
X share of GDP	22.0	29.6	30.8	31.0	8.3	12.9	12.8	13.6	0.6	1.1	2.1	2.4

Source: IMF (2007), CANSIM (2007a), CANSIM (2007b), UNCTAD (2005a), BEA (2007), MOF (2007), JETRO (2007). RAPECDE, Rest of APEC Developed Economies. RAPECLDE, Rest of APEC Least Developed Economies. RDE, Rest of Developed Economies. ¹CIF Imports of Goods. ²2006 data correspond to 2005 for Canada. For Canada, Exports and Imports of Services (share of GDP) in 2006 were 59.2 US\$ billions (4.6) and 72.7 US\$ billions (5.7). 1997 data correspond to 1999 for USA. For USA, Exports and Imports of Services (share of GDP) in 1997 were 256.1 US\$ billions (3.1) and 165.9 US\$ billions (2.0). ³2006 data correspond to 2005 for Japan. For Japan, FDI inflows (share of GDP) in 2006 were -6.8 US\$ billions (-0.2).

TABLE 2.4
Trade in Goods Structure for Canada, Japan and the United States (%), 1997-2006

Type of Goods	Canada				United States				Japan			
	1997	2000	2003	2006	1997 ¹	2000	2003	2006	1997	2000	2003	2006 ²
I. Exports												
Agricultural and Fish Products	8.2	6.4	7.3	6.9	6.7	6.2	7.7	6.4	0.5	0.4	0.4	0.4
Energy Products	9.0	12.4	15.1	19.0	1.9	2.2	2.6	4.0	0.5	0.4	0.4	0.8
Forestry Products	11.6	10.0	8.6	7.3	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Industrial Goods and Materials	18.7	15.8	16.6	20.6	19.7	20.2	21.7	23.0	17.9	17.0	18.6	20.2
Machinery and Equipment	22.7	25.6	22.2	20.8	45.4	46.2	41.2	40.5	59.8	60.2	56.1	55.0
Automotive Products	22.9	22.8	21.8	18.1	11.0	10.4	11.3	10.5	11.3	11.9	14.5	13.4
Other Consumer Goods	3.5	3.5	4.3	3.9	11.8	11.6	12.6	12.7	7.2	6.3	5.6	5.5
Miscellaneous Adjustments ¹	3.5	3.4	4.0	3.3	3.4	3.2	3.0	2.9	2.9	3.8	4.4	4.7
Total (Billion USD)	219.1	289.1	285.5	401.8	684.0	772.0	713.4	1023.1	421.0	479.0	470.5	597.5
Exports Share of GDP	34.4	39.9	33.0	31.5	7.4	7.9	6.6	7.8	9.9	10.3	11.1	13.1
II. Imports												
Agricultural and Fish Products	5.6	5.1	6.3	5.8	4.2	3.7	4.4	4.0	13.7	11.9	11.5	9.6
Energy Products	3.8	4.9	5.8	8.6	7.6	11.3	12.4	18.3	18.4	20.3	21.1	25.6
Forestry Products	0.9	0.8	0.9	0.8	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Industrial Goods and Materials	19.6	19.1	19.0	20.8	14.1	13.3	12.4	14.1	24.9	21.5	20.9	21.3
Machinery and equipment	32.9	33.9	28.8	28.3	28.7	28.3	23.4	22.5	24.0	27.7	27.3	25.8
Automotive Products	21.9	21.4	22.3	19.7	17.3	16.0	16.6	13.8	2.3	1.8	1.8	1.6
Other Consumer Goods	10.7	11.1	13.5	12.9	23.6	23.2	26.7	24.0	14.4	14.5	15.0	13.7
Miscellaneous Adjustments ³	4.5	3.6	3.4	3.2	4.4	4.2	4.0	3.4	2.3	2.3	2.4	2.4
Total (Billion USD)	200.6	244.0	244.5	356.6	1031.8	1226.7	1264.3	1861.4	338.5	379.6	382.6	518.2
Imports Share of GDP	31.5	33.7	28.2	28.0	11.2	12.6	11.6	14.2	7.9	8.1	9.0	11.4

Source: CANSIM (2007a), CANSIM (2007b), BEA (2007), MIAC (2007a), MIAC (2007b), Cabinet Office (2007). Classification of categories from the CANSIM database. For USA and Japan, categories have been rearranged to adjust CANSIM classification. Forestry Products category not available for USA and Japan. ¹1997 data correspond to 1999 for USA. ²2006 data correspond to 2005 for Japan. ³Miscellaneous Adjustments includes Special Transactions and Inland freight and other balance of payments adjustments.

TABLE 2.5
Trade in Services Structure for Canada, Japan and the United States (%),
1997-2006

Category of Services	Canada				United States				Japan			
	1997	2000	2003	2005	1997	2000	2003	2005	1997	2000	2003	2005
I. Exports												
Transportation	19.2	18.7	16.2	17.9	18.8	17.1	15.8	16.8	31.5	37.0	34.1	32.4
Travel	27.9	26.8	24.2	25.3	33.9	33.1	27.8	27.1	6.2	4.9	11.4	11.3
Communication	4.7	3.4	3.9	4.1	1.6	1.4	1.6	1.3	2.0	1.2	0.9	0.4
Construction	0.4	0.5	0.2	0.3	1.4	0.2	0.2	0.1	11.3	8.4	5.9	6.6
Insurance	6.7	4.8	7.9	5.7	0.8	1.2	2.0	1.8	0.5	0.2	0.5	0.8
Financial	2.7	2.2	2.4	3.3	4.9	6.7	8.0	9.0	2.7	4.1	4.5	4.6
Computer and Information	3.4	6.0	6.3	6.4	2.0	2.3	2.8	2.2	2.0	2.3	1.4	1.0
Royalties and License Fees	3.7	5.6	6.5	6.5	13.1	14.6	15.7	15.2	10.5	14.8	15.8	16.0
Other Business Services	24.8	25.5	26.7	24.8	12.7	14.4	17.4	17.6	31.2	25.6	23.3	24.8
Cultural and Recreational	3.7	4.0	3.3	3.1	2.4	2.9	3.3	2.8	0.3	0.2	0.2	0.1
Government Services, N.I.E.,	2.8	2.4	2.4	2.7	8.4	6.0	5.5	6.0	1.7	1.4	2.2	2.1
Total (Billion USD)	31.6	40.2	43.6	53.6	254.1	296.0	299.4	376.8	69.3	69.2	77.6	110.3
Exports Share of GDP	5.0	5.5	5.0	4.7	3.1	3.0	2.7	3.0	1.6	1.5	1.8	2.4
II. Imports												
Transportation	21.7	21.2	19.7	22.3	28.4	29.4	26.2	28.0	24.1	29.0	29.1	30.0
Travel	30.2	28.2	25.7	28.3	32.4	30.0	24.4	23.4	27.1	27.7	26.5	28.0
Communication	4.2	3.1	2.8	2.6	5.3	2.6	1.9	1.7	1.4	1.0	0.7	0.5
Construction	0.3	0.2	0.2	0.2	0.3	0.1	0.1	0.1	4.5	3.5	3.1	3.6
Insurance	7.7	6.4	9.5	7.3	3.6	5.0	10.1	9.1	1.7	1.8	3.3	1.4
Financial	3.3	3.5	3.6	3.5	3.7	5.4	3.9	3.9	2.2	1.6	2.0	2.0
Computer and Information	1.8	2.0	3.1	3.2	0.9	2.0	2.2	2.9	2.9	2.7	1.9	1.8
Royalties and License Fees	6.1	8.5	10.7	10.2	5.5	7.4	7.6	7.8	7.9	9.6	10.1	10.9
Other Business Services	20.1	21.8	20.0	18.2	11.2	10.9	12.3	12.2	26.2	21.1	21.2	19.8
Cultural and Recreational	3.2	3.8	3.5	3.0	0.3	0.1	0.1	0.3	0.9	1.1	0.9	0.8
Government Services, N.I.E.,	1.3	1.2	1.3	1.2	8.4	7.1	11.2	10.6	1.1	1.0	1.2	1.2
Total (Billion USD)	38.0	44.1	52.1	64.9	165.9	223.7	250.2	314.6	121.6	115.1	108.8	134.3
Imports Share of GDP	6.0	6.1	6.0	5.7	2.0	2.3	2.3	2.5	2.9	2.5	2.6	3.0

Source: OECD (2007b), OECD (2007i). N.I.E., not included elsewhere.

TABLE 2.6
FDI Stock by Industrial Sector in Canada, Japan and the United States (%)

Industrial Sector of Destination	Canada	United States	Japan
	2006	2006	2005
I. FDI Outward Stock			
Wood and paper industry	2.1	0.7	0.9
Energy and metallic minerals industry	23.2	7.3	10.0
Machinery and transportation equipment industry	4.5	3.7	20.5
Finance and insurance industry	44.1	23.2	19.1
Services and retailing industry ¹	13.0	46.1	15.8
All other industries ²	13.2	19.1	33.6
Total FDI Outward stock (billion USD)	461.4	2384.0	386.6
FDI Outward Stock share of GDP	36.2	18.1	8.5
II. FDI Inward Stock			
Wood and paper industry	3.1	0.7	0.0
Energy and metallic minerals industry	27.9	11.8	2.0
Machinery and transportation equipment industry	10.3	7.7	18.0
Finance and insurance industry	20.7	24.2	32.6
Services and retailing industry ¹	10.0	22.3	8.3
All other industries ²	28.0	33.2	39.1
Total FDI Inward stock (billion USD)	395.8	1789.1	100.9
FDI Inward Stock share of GDP	31.0	13.6	2.2

Source: CANSIM (2007a), BEA (2007), OECD (2007). Classification of Industrial Sectors from the CANSIM database. For USA and Japan, sectors rearranged to adjust CANSIM classification. ¹According to CANSIM (2007a), Services and retailing covers transportation services; general services to business; government services; education, health and social services; accommodation, restaurants, and recreation services; food retailing; consumer goods and services. ²According to CANSIM, Other industries covers food, beverage and tobacco; chemicals, chemical products and textiles; electrical and electronic products; construction and related activities; communications.

3. ASSESSMENT OF CANADA'S IAP - SPECIFIC ACTION AREAS

3.1 Tariffs³⁸

As a result of the Uruguay round of negotiations between 1986 and 1994 and the creation of the World Trade Organization, most industrialized economies including Canada have reduced progressively their simple average MFN applied tariff rates and their respective tariff bound rates³⁹ up to the first two or three years of the twenty first century. From then onwards, in economies such as Canada, the reductions have been negligible. Thus, for Canada⁴⁰, the respective simple averages for 1996, 2002 and 2006 were respectively 6.7%; 4.0%; and 3.8%. The US simple average MFN tariff bound rates were 6.4% (WTO, 1996a), 5.1% (WTO, 2006a) and 3.5% (WTO, 2007b)⁴¹ for 1996, 2003 and 2006 respectively. Further tariff reductions, however, are subject to the results of the Doha Development Round (DDR) still in progress.

Regardless of the results of the DDR and since the 1980s, Canada as many other industrialized economies has signed and implemented FTAs/RTAs to achieve further, although in a discriminatory fashion, tariff reductions. However, Canada still maintains higher than the simple average ad-valorem tariff rates (even with FTA/RTA member economies⁴²) in sensitive sectors (including Food products) such as agriculture, textile and clothing, leather, rubber and footwear, and transport equipment⁴³; and high tariff quotas, with out-of-quota tariffs between 26.5% (for Beef and veal) and 277% (for Ice Cream) in agri-food products (WTO, 2007a).

All these tariff barriers suggest that Canada, although it has achieved (in absolute terms) significant tariff reductions since 1996, has not achieved the Bogor goal of free and non-discriminatory trade in goods nor the APEC Food System goal on the progressive elimination of unnecessary impediments (including tariffs) to trade in food products. Further, the existence of sensitive sectors, the slow degree of progress of the DDR, and the proliferation of FTAs/RTAs, may limit the achievement of the Bogor objective by 2010.

The ongoing Bogor objective of the transparency of the tariff regime is fully achieved by Canada since tariff rates are available for the public in viewing (e.g., CBS, 2007b)

³⁸ The MLI score in tariffs in 1996 was 0.0825 and in 2003 and 2007 was 0.0938. To achieve the maximum level of MLI of 0.15 corresponding to the Bogor goal of free (non-discriminatory and comprehensive) trade in goods, Canada needs to eliminate the tariff quotas and the tariff dispersion among sectors.

³⁹ The former is calculated by summing all ad valorem MFN applied tariff rates for a year and dividing by the (HS-6digit) number of tariff lines. Excluded from this calculation were all lines carrying non-ad valorem tariff rates. The bound rate is similarly calculated using the MFN bound tariff rates.

⁴⁰ APEC (2007a, 2003a) and Canada's answers to IQ (Annex 1).

⁴¹ In 2006 the bound MFN tariff rate is equal to the applied MFN tariff rate.

⁴² For example, the average preferential tariff rates in the agriculture sector for Mexico and US (in NAFTA), Chile (in CCFTA), Costa Rica (CCAFTA) and Israel (CIFTA) are respectively: 17.7%; 17.5%; 17.8% and 21.5% (WTO, 2007a).

⁴³ The simple average ad-valorem tariff rates respectively for these sectors are: 4.0%; 8.1%; 5.6% and 5.2% (APEC, 2007a).

or downloadable format (e.g., the APEC tariff data base from APEC, 2008 and TRAINS, from UNCTAD, 2007).

3.2 Non-Tariff Measures (NTMs)⁴⁴

For the purpose of the assessment of this area, NTMs include the list of control measures provided by UNCTAD (2007c) which incorporate five groups of measures. These are: i) price control measures; ii) finance measures; iii) automatic licensing measures; iv) quantity control measures; and v) technical (including sanitary and phytosanitary) measures.

According to this list, NTMs imposed by Canada include exports and imports permits (i.e., quantity control measures), safeguards, antidumping and countervailing measures (i.e., price control measures), and technical, sanitary and phytosanitary measures. From a sample of 97 products, Ferrantino *et al* (2006) using 2001 data (i.e., TRAINS data from UNCTAD, 2007) finds that Canada imposes NTMS on: Fruits & Vegetables (which include 10 products), Bovine meats (10 products), Processed Food (15 products), Apparel (12), Meat Products (6), Dairy (4), and Electric Products (4). Tello (2007), using the same data base, finds that Canada in 2001 imposed 326 NTMs, wherein 23.3% were from tariff lines of Agricultural Products, 16.9% from Manufacture of Food Products and Beverages and 42.6% from Textiles and Wearing Apparel Products. The degree of price protection⁴⁵ generated by those NTMS has been estimated by Ferrantino *et al* (2006) as 54% for Fruits & Vegetables and 6% for Bovine Products. Using a different methodology, Bradford (2006) finds price increases of 5% in Vegetables, Fruits and Nuts, 222.7% in Crops, n.e.c. Garden Products, 23.7% in Dairy Products, 5.2% in Sugar, 16.6% in Beverage and Tobacco Products, and 46% in Textiles.

The IAP data (APEC, 2007a, APEC, 2003a, also data from WTO, 1998) describe, in a non-quantitative way, that Canada continues to maintain WTO-consistent NTMs required for protecting health, safety, security or environment as well as for complying with WTO obligations and other agreements. The Export and Import Permits Act provides for the establishment of the Import Control List (ICL), Export Control List (ECL) and Area Control List (ACL). The ICL generally comprises a list of goods, some of which are only controlled for certain countries of origin. The ACL is a list of countries for which export permits are required to export any item. Both ICL and ECL require permits. ICL products include: textiles and clothing subject to tariff preferences under the FTA/RTAs, agricultural products, steel products, and weapons and munitions. ECL products include: agricultural products, refined sugar, sugar-containing products and peanut butter, unprocessed logs and certain other forest products, softwood lumber, and other manufactured products.

Canada also applies Antidumping and Countervailing Measures (which legal base is the Special Import Measures Act-SIMA) and Safeguards (imposed in the form of surtaxes under the Customs Tariff Act and quantitative restrictions under the Export

⁴⁴ The MLI score for NTMs has been 0.0255 for the three years 1996, 2003 and 2007 from a maximum of 0.15. To achieve this maximum, that corresponds to free (and non-discriminatory) trade, Canada needs to eliminate: i) NTMs on exports; ii) expenditures on domestic agriculture support; iii) NTMs on imports; iv) safeguards provisions; and v) antidumping and countervailing measures.

⁴⁵ The rate of price increases relative to the world prices.

and Import Permits Act). These so called contingent measures are imposed under the WTO agreement on safeguards and under the four FTA/RTAs. Goods may be subject to antidumping and countervailing measures and safeguards simultaneously. The Canadian International Trade Tribunal (CIIT) estimates that antidumping and countervailing duty actions have affected only a small fraction (lower than 0.5%) of Canada's merchandise imports since 1994 (WTO, 2007a). As in June 2006, 48 Canadian Antidumping measures plus one price undertaking (on cigarette tube from France) remained in force. In 2000 there were 85 measures in force and 91 measures in 2003. The main economies affected by Canadian antidumping measures are: China, European Community, and US. Some 30 duties cover steel products.

On the other hand, by the end of June 2006, five countervailing duty orders were in place and 10 in 2003. The 2006 countervailing duties are to China (steel fasteners and Laminate flooring), EC (Refined Sugar) and India (hot-rolled carbon and steel sheet and Stainless steel wire) (WTO, 2007a). No safeguards have been applied on agriculture, textiles and clothing. In 2005 Canada initiated three investigations, although in none of the cases took any actions.

These different pieces of information indicate that Canada (as many other APEC and WTO economies), regardless of the economic and non-economic reasons (such as to protect health and the environment and for safety and security), is still imposing a series of NTMs and that these have not been reduced since 1998.

Another group of trade and production distorting non tariff instruments used by Canada and other economies is that related to Agriculture Domestic Support. Agriculture and Agri-Food Canada (2006) provides estimations of the provincial and government expenditures in support of the Agri-Food sector. These have increased from Can\$5.3 billion in 1999/2000 to Can\$7.9 billion in 2006/2007. More than a half of these expenditures are federal and the rest are provincial. They include five groups of expenditures: operating (with 29% of total estimated expenditures in 2006/2007), capital (with 1.2%), program (65.6%) and tax (4.2%). One of the main support programs which cover 36% of the total Agriculture Domestic Support is the Income Support & Stabilization program which includes the Supply Managed Products⁴⁶.

According to Gifford (2005), the current supply management system emerged from a situation in the 1960s of chronically depressed prices and highly distorted international markets. It is often forgotten that, prior to supply management, Canada was a net dairy exporter. However, as world markets began to close and export subsidies became the norm, a national consensus emerged that it was best to circle the wagons and concentrate henceforth on servicing the domestic market by matching supply with identified demand. This was achieved through the delegation of federal and provincial powers which permitted provincial marketing boards to control production, pricing and marketing on the basis of individual farm production quotas and single desk selling.

⁴⁶ These cover dairy products, chicken, turkey, eggs, and broiler hatching eggs (WTO, 2007a).

In the dairy industry, the federal government, currently, underpins the system by maintaining support prices for butter and skim milk powder and providing import protection through a system of tariff rate quotas. Because the over quota tariffs are prohibitively high, the import system acts as an import quota, with the permitted import volumes entering over low tariffs. Within quota imports are equivalent to about 3% of consumption – roughly the same access as provided by the European Union and the United States.

Reductions to justifiable types and number of NTMs and agriculture domestic support are part of the Doha Development Agenda, but it is not clear what will be the outcome in terms of real reductions of these trade and production distortion tools used by Canada and most of the developed and developing economies. Consequently, further improvements along these lines to achieve the Bogor goals in this area are subject to DDR outcomes and the position that economies take on their sensitive agricultural sectors.

Improvements in order to achieve the second major Bogor objective (i.e., ensuring the transparency of the NTMs) and the Collective Actions objectives are also needed in terms of data generation, information (similar to the tariff database) and research studies on the economic and sectoral impact of NTMs⁴⁷. The Canadian economy does not have a database on NTMs in terms of:

- i) The number and types of NTMs (for example using UNCTAD, 2007c) per tariff line;
- ii) The trend of these NTMs per tariff line;
- iii) The number and type of NTMs classified by the reasons for their imposition and the level of government (federal and provincial) which generates and imposes the NTMs.

This database would not only provide information on the progress on the first Bogor goal in this area, but would also provide information inputs for research studies on the trade and economic impact of these NTMS on Canada and the rest of APEC and WTO member economies. A recent applied general equilibrium study by Bradford (2006) estimates the welfare impact of eliminations of NTMs for a sample of regions (including developed and developing economies). Thus, Canada would gain about 2.19% (percentage points) of its GDP if the US, Australia, Italy, United Kingdom, Japan, The Netherlands and Germany eliminated their NTMs. On the other hand, the world would obtain a welfare gain of 0.05% if Canada eliminated its NTMs. Because of the absence of statistical data on NTMs, which could provide more precise welfare estimates, this study used estimations of the price distortions generated by the NTMs

⁴⁷ These are: i) pursue incorporation of information on non-tariff measures into a future version of the APEC tariff database and compile a list of measures recognized as non-tariff impediments and a list of products affected by these impediments; ii) identify industries in which the progressive reduction of non-tariff measures may have positive impact on trade and on economic growth in the Asia-Pacific region or for which there is regional industry support for early liberalization; iii) progressively reduce export subsidies with a view to abolishing them; iv) abolish unjustifiable export prohibitions and restrictions and endeavour to refrain from taking any such new measures; v) pursue a series of seminars/policy discussions on non-tariff measures (NTMs); and vi) undertake research to develop best practices to enhance transparency and progressively reduce NTMs.

Another transparency issue in this area is with regard to the number and types of NTMs per tariff line that satisfy the Bogor goal of: 'the reductions of NTMs to the maximum extent possible'. From 1994 and onwards, WTO members (including Canada) have dramatically increased NTMs at the same time as ad-valorem tariff rates have been decreased⁴⁸. These changes in the number and types of trade barriers do not provide a clear indication and/or information if the current number and types of NTMs imposed by Canada and other economies have reached the desired and justifiable level - to what could be considered as the minimum possible number and types of trade distorting NTMs⁴⁹ consistent with the first Bogor goal on reductions of NTMs.

Another related issue is the current NTMs on food products and the APEC food system goal on the progressive elimination of unnecessary impediments to trade in food products, such as identification and phasing out of WTO inconsistent non-tariff measures. Bradford (2006), using different sources of information, identifies the following unnecessary impediments in food, beverages and tobacco products imposed by the Canadian economy: i) in vegetables, fruit, nuts, overly restrictive sanitary standards and packaging requirements; ii) in vegetable oils and fats, restrictive rules on coloring of margarine; iii) in dairy products, restrictive inspection requirements; iv) food products n.e.c., different labeling requirements across provinces; v) in beverages and tobacco products, discriminatory price controls, taxes, listing procedures, and delivery regulations.

The implementation and development of a comprehensive federal and provincial database on NTMs would provide the basis for: i) defining the adequate number and types of these NTMs; ii) the identification of NTMs that unnecessarily produce trade impediments on food and other products; and iii) a more refined and precise analysis of the economic and trade impacts of the Canadian NTMs.

⁴⁸ It should be noted that in the period between July of 2002 and August of 2006, Canada notified 119 new technical regulations at the same time that the average MFN applied ad-valorem tariff rates decreased from 4% to 3.8%.

⁴⁹ On the one hand, the share of tariff collection out of government revenues fell from 22.4% in 1975 to 16.2% by 2004 (Fernandez de Cordova, Laird, & Vanzetti, 2006). On the other hand, the average of the number of tariff lines per country subject to at least one NTM rose from 1879 in 1994 to 5619 in 2004 (UNCTAD, 2006).

3.3 Services⁵⁰

The Starting Point: The Position in 1996

In 1996, the starting point for this review, Canada was a signatory to the General Agreement on Trade and Services (GATS), having signed in 1995. It was bound by a comprehensive offer which provided business people with opportunities to participate in a diverse range of Canadian services; it was one of only two APEC economies that had signed the Third GATS Protocol on the Temporary Movement of Persons; and it had offered to bind the end of the three remaining telecommunications monopolies. Foreign investment in facilities-based telecommunications was permitted up to a cumulative total of 46.7%. According to Canada's 1996 IAP, Canada had made bound commitments at the federal level under GATS in the area of energy related services, specifically engineering⁵¹, construction, environmental services, and services incidental to mining, although requirements for licences and/or the establishment of a commercial presence still existed at sub-national government level. In short, in 1996 Canada considered it had a very open and liberal services regime, accounting at that time for over 15% of Canada's total trade; and it had plans to review remaining restrictions on market access and national treatment.

The 2002 Peer Review

In summary, the 2002 Peer Review report (APEC, 2003d) concluded that Canada had an open services market but the economy wished, for domestic policy reasons, to maintain flexibility in setting policy in relation to public education, health and social services and culture. The peer review considered that Canada had been 'very vigilant' in updating its GATS schedules to reflect major liberalising reforms particularly in respect of financial and telecommunications services. Nonetheless, limitations covering these services remained in Canada's GATS schedule along with limitations on foreign direct investment and the movement of business people. Ownership restrictions applied to large and medium sized financial institutions; and while bank subsidiaries and bank branches could both be established, the latter were not allowed to accept retail deposits (and were not prudentially regulated). The 2002 study report also noted differences between provinces in financial sector regulation, although efforts were underway to promote uniformity. Canada advised that telecommunications was an area of exclusive federal jurisdiction.

At APEC's Peer Review session on Canada's 2002 Individual Action Plan, the discussant highlighted Canada's unilateral liberalization initiatives in financial services and certain professional services as market access improvements. At the same time, the discussant referred to a negotiation guideline adopted by WTO

⁵⁰ The MLI in services for Canada in the period 1996-2006 has not changed the figure of 0.044 from a maximum of 0.08 for free trade in services. In this period, there are 12 services sectors wherein Canada has GATS commitments and trade restrictions. These sectors are the same as the principal categories used in the qualitative analysis (and cover the 22 individual service categories analysed). (WTO, 2007a, 1998, 1996a and APEC, 2007a, 2003a and 2000.)

⁵¹ These Engineering services included, *inter alia*: design services for civil engineering construction, advisory and consultative engineering services, engineering design for industrial processes and production.

members stating 'that there shall be no *a priori* exclusion of any service sector or mode of supply'. This was in the context of Canada still not having undertaken commitments in sectors including public education, health, social services or culture in its offers under GATS.

Actual and Planned Improvements between 2003-2007

Table 3.3.A categorizes and summarizes Canada's actual improvements in relation to services over the years 2003 to 2007 as well as any planned improvements for those same years. This table, along with its counterpart table in several other policy areas in this report, is based entirely on Canada's IAP updates over the period and the 2007 IAP. The information does not therefore purport to cover the nature or level of prior achievements; nor does it purport to reflect the significance or otherwise for Canada of any particular improvement(s), either relative to the Bogor goals or relative to the progress of other APEC or WTO members towards those goals. Notwithstanding, such transparent information is valuable in that it conveys the type of improvements Canada has been making, consistent with its pursuit of the Bogor goals.

The table shows that market access improvements were achieved through GATS, with some movement on national treatment under NAFTA, and some reduction in discriminatory provincial requirements affecting the provision of professional, business, and tourism and transport services.

However, in the five years since the 2002 Peer Review, it appears there were no improvements in the following areas identified in that review:

- i) the exclusion of certain service sectors from commitments under GATS offers
- ii) GATS limitations affecting telecommunications services
- iii) differences between provinces in financial sector regulation.

The WTO (2007a) confirms that since its 2002 review of Canada there were no major regulatory changes to Canada's telecommunications or broadcasting services. And Canada confirms that over the past three years there has been no specific progress towards mutual recognition within NAFTA in respect of Legal Services (IQ II: 3.2). At the same time, the mutual recognition agreement between the national accounting bodies and the three NAFTA governments has now been fully applied and implemented (IQ II: 3.4).

The Position in 2007

The latest figures available show Services accounting for 14% of Canada's total trade, although it was suggested to the experts that services trade is being undercounted and that investment is required in statistical agencies to ensure sample integrity in changing markets. The United States accounts for around 56% of Canada's services exports and 59% of its services imports. The EC accounts for less than 20% of Canada's services exports and imports, and Central/East Asia around 10%.

Canada continues to be a net importer of services with over half of its transactions in commercial services. Transportation and travel account for most of the remainder. While Canada sustains deficits in those three areas, it is a net exporter of the following services: Computer and Information; Architectural; Engineering and other technical; Communications; and Research and Development. In 2006, its overall net deficit was Can\$17.1 billion, with services exports at Can\$65.1 billion and imports at Can\$82.2 billion (IQ I:4). Clearly, increased diversification of and access to foreign services markets is important for Canada.

Key features of the current position are summarized below:

1. Canada has made no GATS commitments in respect of the domestically and politically sensitive service categories listed below:
 - Education
 - Health-related and Social Services
 - Recreational, Cultural⁵² and Sporting
 - Basic postal services

Neither have commitments been made in respect of commercial presence for the distribution of tobacco, alcohol, certain food, fisheries and agricultural products and a number of health-related and cultural products, or in respect of the practice of domestic law.

The absence of GATS commitments in respect of Air Transport (with two exceptions) needs to be viewed in the context of the Air Annex to GATS, as outlined in Canada's IAP.

Restrictions that affect market access in the above areas include content requirements, IP protections and bans on production and distribution.

2. Canada has not bound the following commitments: Computer Services (mode 4 access); Environmental services⁵³ (mode 4 access); aircraft repair and maintenance services (mode 2 access)⁵⁴.
3. The telecommunications sector attracted particular interest in the Initial Questionnaire, in the context of both the Services and Competition Policy chapters. The WTO's 2007 review on Canada sets out the institutional and legal framework relevant to telecommunication and broadcasting services (pp 108-111). The latter are excluded from Canada's specific GATS commitments, in accordance with Canada's aim of ensuring minimum levels of Canadian cultural content. Of particular note from the WTO Review are the following:

⁵² A cultural exemption also applies in bilateral negotiations.

⁵³ Canada's GATS commitments are completely open for the other three modes of supply (IQ II:3.21).

⁵⁴ In its comments on the draft report, Canada pointed out that APEC economies, as WTO Members, are well aware of where Canada is unbound in the GATS and that negotiations are ongoing. However, the experts considered that the information should be retained, especially as it featured in the 2007 IAP.

- i) Canada has bound its existing foreign ownership restrictions in telecommunications. Its GATS commitments on foreign investment reflect current foreign direct investment controls in facilities-based service providers. These controls limit foreign direct investment to a combined investment of 46.7% of voting shares; and Canadians must constitute not less than 80% of corporate board membership. Thus all telecom facilities-based common carriers must be Canadian owned and controlled and incorporated under federal or provincial laws.
 - ii) There are no restrictions to enhanced/value-added services.
 - iii) Canada's revised conditional offer on services contains a proposal to remove the remaining market access restriction on cross-border supply in respect of basic telecommunications services.
4. As at the end of 2006, Canada had made no decision to amend the restrictions on foreign direct investment in telecommunications (WTO, 2007a, para 107, p.109). However, Canada has asked its recently appointed Competition Policy Review Panel to address *inter alia* foreign investment restrictions in telecommunication, broadcasting, transportation and financial services.
 5. Financial services also attracted particular interest in the Initial Questionnaire. The WTO's 2007a review documents institutional changes in the financial sector and extensively reviews the current position in respect of banking and insurance services (pp 114-119). It confirms that Canada's revised Doha offer on banking services 'largely reflects the legislative and regulatory framework applied to the banking sector as at mid-2006' (WTO, 2007a, p.114). It also confirms that Canada considers that foreign financial institutions have a wide range of options for doing business in Canada and are given the same opportunities to offer financial services as domestic institutions (IQ II: 3.26-28). Foreign ownership of financial institutions is not restricted by statute. The rule that ownership of 'large banks' and demutualized insurance companies must be widely held applies to both domestic and foreign investors. At least half of the directors of a foreign bank subsidiary must reside in Canada at the time of their election/appointment.
 6. There are no statutory restrictions on the number of banks, foreign or domestic, or on the number of foreign bank subsidiary or branch offices. While foreign bank subsidiaries may offer the same services as domestic banks, and full service branches are allowed to accept deposits of Can\$150,000 or more, lending branches are still not permitted⁵⁵ to accept deposits of any kind.
 7. Despite the indication in the 2007 IAP of an imminent policy announcement of possible changes to Canada's foreign bank branch deposit taking policy and its policy on bank mergers, Canada now indicates that neither policy is a priority and that no announcement is expected (IQ II: 3.24-25). Canada's mandatory five-yearly reviews of the financial sector framework are intended

⁵⁵ This issue was previously raised in the 2002 review.

to ensure that this framework is kept up-to-date with changes in international fora (IQ II: 3.26-28). The last review of financial legislation was conducted in 2006.

1. Based on IAP Updates for Canada 2003-2006 and 2007 IAP
2. A = actual improvement in the year
3. P = planned improvement for the year

TABLE 3.3.A – SERVICES: IMPROVEMENTS 2003-2007

Nature of Improvement	Relevant Objective	2003	2004	2005	2006	2007
GATS						
- participate in negotiations		P				
- listed additional commitments	market access		A ⁵⁶			
- offered new commitments	market access		A ⁵⁷			
- revised offer	market access			A	A	
NAFTA						
- mutual recognition ⁵⁸	national treatment	P		P		A
PROVINCIAL						
- removal licensing/citizenship requirements	non-discrimination		A			A
- removal restrictions/fees in tourism/transport	non-discrimination		A			
FINANCIAL						
- bank branches/bank mergers	non-discrimination					A ⁵⁹
TRANSPARENCY	e-commerce			A	A	

⁵⁶ Foreign legal consultancy services.

⁵⁷ Transport services (excluding cabotage).

⁵⁸ Professional licences/certification.

⁵⁹ Imminent policy announcements.

Remaining Market Access Restrictions

Irrespective of the way that IAP information is formatted⁶⁰, numerous market access restrictions continue to apply across a wide range of services sectors in Canada. While half of 22 service categories have no restrictions in two or more of the four modes of supply, remaining market access restrictions affect all four modes of market access; these are concentrated in the M3 and M4 modes, with about twenty sectors affected by each. There is a significant concentration of market access restrictions in seven relatively protected sectors (i.e., relatively protected sectors within Canada, as distinct from relatively protected sectors in Canada *vis a vis* other APEC or WTO members): Postal⁶¹; Telecommunications; Education; Health-related; Recreational etc; Air transport; and Energy. There is a further concentration in the Business Services groupings.

These remaining restrictions give rise to national treatment limitations that originate at both federal and provincial levels. Included in the provincial limitations described in the IAP are the remaining citizenship and residency requirements affecting business and professional services. Seven of these requirements are in two of the smallest populated provinces, Nova Scotia and Newfoundland/Labrador, while six are in the largest, Ontario, and four in Alberta. As far as engineering services are concerned, non-residents can apply in all provincial jurisdictions for temporary recognition (IQ II: 3.8).

The IAP material (on both improvements and restrictions in the services sector) is not weighted, either within a service sector or between service sectors, and does not therefore readily lend itself to international comparisons with other APEC economies. The experts were not in a position to remedy this generic feature of the IAP approach. Measuring the degree of restrictiveness in a sector, as distinct from identifying areas where restrictions remain, may be an avenue for further inquiry.

2008-2010: Canada's Planned Improvements

Canada's planned improvements for services all relate to two areas:

- i) additional/improved commitments in offers/revised offers under GATS in the Doha Round
- ii) facilitating mutual recognition of licensing and credentials in the NAFTA context.

Realization of improvements in both of these areas would enhance non-discriminatory market access for foreign service providers. The services affected by the GATS commitments include legal; accounting/auditing/book-keeping; architectural, including urban planning/landscape; engineering; maritime transport (excluding cabotage), cargo

⁶⁰ Two qualitative matrices were prepared summarizing IAP material on the present position for each service category including remaining foreign entry restrictions by service category and market access mode. These tabulations of IAP data provided clearer indications of where policy adjustments would be required if Canada is unilaterally to achieve free and open services trade. However, these matrices have not been presented in the final report due to Canada's concerns that the re-formatted information did not provide an appropriate evaluation tool for the analysis of market access restrictions in the services area. The experts were not competent to judge Canada's principal concern that the re-presentations of the IAP material were at risk in that they were open to abuse in an international comparative context.

⁶¹ The official rationale for maintaining Canada Post Corporation's monopoly on basic postal services is set out at IQ II: 3.10.

handling/agency, access to additional services; road transportation; rail transportation. These sectors account for a significant portion of those areas where market access restrictions presently exist.

As the architectural associations in the provinces of Nova Scotia and Newfoundland and Labrador have advised that their residency requirements no longer apply in practice, Canada is currently considering removing these requirements from its GATS schedule in its second revised services offer (IQ II: 3.7). Also in anticipation of this second revised offer, negotiations on possible improvements are under way, including in respect of distribution and tourism services (IQ II: 3.21-22).

Architectural, Engineering and Other Professional services stand to benefit under mutual recognition arrangements in NAFTA. In respect of architectural services, Canada's mutual recognition agreement is expected to be ratified and implemented in all jurisdictions in the first quarter of 2008 (IQ II: 3.6).

In respect of air services, and in line with Canada's new (2006) policy for international air transport, Canada will continue to pursue the Bogor objective by pro-actively seeking to negotiate liberalized bilateral air transport agreements. The Asia-Pacific region has been identified as a priority under this strategy (IQ II: 3.21-22).

Progress on Bogor Goals

Canada's Self-Assessment

The Initial Questionnaire asked Canada if it considered it had made 'high quality services offers' in the WTO's Doha Round (IQ II: 3.31). In response, Canada considered that both its initial GATS offer in 2003 and its revised offer in 2005 represented high quality services offers. Canada envisages further progress in its second revised GATS offer which will continue to reflect the current domestic regulatory regime in several services sectors. From a multilateral perspective therefore, Canada considers it has fully met the Bogor goals.

Further, bound liberalization in a number of services sectors has been a feature of NAFTA and the Canada-Chile FTA. Other FTA negotiations will cover services (IQ II: 3.32). While from a regional/bilateral perspective Canada acknowledges limited progress (IQ II: 3.34), over the past year substantial negotiations - including on services - have been engaged in with three other APEC members: Peru, Republic of Korea and Singapore.

Canada's overall self-assessment of its progress between 1996 and 2007 towards the Bogor goals on services is 75% - less than 90% completion (IQ II: 3.34). Its degree of completion by 2010 is expected to be 90% - less than 100% (IQ II: 3.35). It is understood that this assessment has taken sensitive sectors into account. Canada's assessment is based on future policy priorities to improve its second revised GATS offer and to continue with actual and exploratory bilateral negotiations (IQ II: 3.35) including in respect of ratchet mechanisms for forward MFN as progressive liberalization takes place under FTAs.

Concluding Assessment

Canada has been an active participant in the GATS and in its initial and revised offers it has been increasing its commitments to reflect marketplace developments in a range of services sectors. Canada is transparent as to its sensitive service sectors and clearly wishes to retain policy and regulatory flexibility in relation to these. As a result, Canada would find it difficult to bind market access commitments in these sectors by 2010.

While regulatory authority in services sectors is shared under Canada's constitutional structure, and while discriminatory market entry requirements continue to be removed at sub-federal level, those remaining at that level clearly limit the extent to which liberalization initiatives can be progressed at multilateral and regional/bilateral levels. It is understood that federal and provincial consultations are ongoing in this regard. However, given the diffuse range of regulatory sources, coupled with the number of domestically and politically sensitive service sectors, it is difficult to anticipate the extent of marketplace improvements over the next three years, notwithstanding TILMA and AIT initiatives.

As shown in Table 3.3.A, some improvements have been recorded in Canada's IAPs over the 2003-2007 review period. At the same time it is evident that market access restrictions continue to apply across a wide range of services sectors in Canada. Canada plans to maintain its focus on enhancing non-discriminatory market access for foreign service providers.

Overall, significant domestic policy and jurisdictional barriers are likely to constrain Canada from unilaterally achieving free and open trade in services by 2010.

3.4 Investment⁶²

Although Canada is among the OECD countries that have liberalized foreign investment significantly since 1985, it also belongs to the group with the highest levels of overall restrictiveness to FDI, as measured by the OECD's FDI regulatory restrictiveness index. It occupies the fifth place among the 42 countries in terms of FDI restrictions. Latvia and UK are the countries with the lowest level of FDI restrictions (WTO, 2007a, OECD, 2006c). On this indicator, however, Canada has expressed concerns regarding the methodology used in the OECD study which examines only formal, not informal, barriers to foreign investment. This difference may lead to a lower ranking for Canada than another economy which may limit foreign investment using other less transparent means than those employed by Canada. In contrast to this indicator there is some evidence that suggests that the Canada legal framework on FDI may well not be as restrictive as the OECD indicator may suggest. Thus, for example, Canada has among the highest levels of foreign ownership among industrialized countries. Well over 50% of Canada's manufacturing industry is foreign controlled and over 80% of the oil and gas industry is foreign controlled. No other country has these high levels. Using the ratio of foreign investment to GDP, the level of foreign investment in Canada is second only to the UK. These doubts on the degree of FDI restrictions imply that the transparency of and information on the investment regime become more important to determine the real deterrence effect of the legal FDI framework of Canada as in many other APEC-WTO economies.

The 1985 Investment Canada Act (ICA) primarily governs the acquisition of control of Canadian businesses worth over Can\$281 million; the establishment of new businesses in the cultural sector is also governed by the ICA. There are also federal and provincial statutes that govern investment in particular sectors. To establish new business in Canada, foreign investment in non-cultural business sector is not subject to review. Only direct acquisitions from WTO members and non members of existing business - in excess of some determined threshold (which is revised yearly) - are subject to review. This threshold also applies to direct acquisitions in uranium production, transportation services, financial services and cultural business irrespective of the origin of the investor⁶³.

Under review, foreign investors may not acquire control of an existing business unless the Minister of Industry or the Minister of Canadian Heritage (for investment in cultural business) is satisfied that the 'investment is likely to be of net benefit to Canada'. The net benefit criterion includes the FDI effect on: economic activity, employment, resource processing, exports, the use of Canadian products⁶⁴, productivity, efficiency, technological development, product innovation and variety, and competition. The

⁶² The MLI score for investment in the period 1996-2006 has not changed: the figure is 0.024, from a maximum of 0.06 (representing national treatment for foreign investors in all Canadian sectors). In this period, Canada has imposed FDI ownership restrictions in 7 sectors: telecommunications, transportation, culture, energy, financial services, fisheries and communications services (APEC, 2007a).

⁶³ In 2007, the threshold for WTO members is Can\$281 million in assets and for non WTO investors the threshold is Can\$5 millions (APEC, 2007a).

⁶⁴ It should be noted that Canada does not negotiate undertakings related to exports or use of Canadian products as it is not allowed under their trade agreements. Though the two areas are mentioned in the factors under the Act, the trade agreements override the Act in these areas.

average completion period for a review is 43 days for Industry Canada and 75 days for Canadian Heritage.

According to APEC (2007a) and FAITC (2007e), the Canadian sectors with restrictions on the foreign ownership of acquisitions are: telecommunications⁶⁵, transportation (e.g., federally-regulated undertakings in sectors such as rail, maritime or air)⁶⁶, culture⁶⁷ (e.g., book publishing and distribution, newspaper and magazine publishing, distribution and sale and film distribution), energy (e.g., uranium)⁶⁸, financial services, fisheries⁶⁹ and communications services (e.g., broadcasting)⁷⁰. In addition to these federal restrictions some provinces have restrictions on foreign acquisition of land⁷¹, in particular recreational or farming land⁷². The existence of these FDI sensitive sectors reveals that there is still some room for improvement on the Bogor goal regarding liberalizing progressively for MFN treatment and national treatment. Moreover, there has not been any change in these types of restrictions in the period 1996-2007.

According to APEC (2007a) and FAITC (2007e), in the period 2002-2007, there were no rejected applications from the 179 reviewed investment applications⁷³; this fact together with the current doubts about the international indicators on FDI restrictions suggest that some transparency issues need to be addressed. The absence of adequate information on the experience of potential investors in Canada also implies that there are no research studies - either on the inward FDI deterrence of the regime or on effects on domestic competition, due to the absence of (majority owned) foreign competitors in the sensitive sectors⁷⁴. In this regard, however, the Government of Canada has recently created the Competition Review Panel, whose mandate is to look at the Investment Canada Act and the Competition Act and to make recommendations on further enhancing competition in Canada.

⁶⁵ However, there are no ownership restrictions for: operation of international submarine cables, satellite earth stations or companies which telecommunications services on a resale basis.

⁶⁶ Canadian airlines must be 75% owned or controlled-in-fact by Canadians, as defined in the Canada Transportation Act. In business services, there are also residency requirements for a number of professional business services providers (e.g., customs broker/brokerage, duty free shop operator, examiner of cultural property and some professions such as lawyers).

⁶⁷ In this sector both new business and acquisitions of any size in areas involving cultural heritage or national identity may be subject to a test review.

⁶⁸ In Oil and Gas the approval of the Minister of Natural Resources of a "benefit plan" is required to proceed with oil and gas development projects. However, there are no limits on foreign ownership applied to FDI in exploration and development.

⁶⁹ There is no limit on foreign ownership of fish processing companies that do not hold fishing licenses.

⁷⁰ There are also residency requirements for the Chief Executive Officer and 80% of the Board of Directors of a company which directly holds a broadcasting license.

⁷¹ These are: Alberta, Manitoba, and Saskatchewan.

⁷² There are some provincial regulations related to registration procedures as opposed to approval requirements.

⁷³ Statistics on: i) the number of potential foreign investors who were deterred from initiating the process of application simply because of the level of FDI restrictions imposed by the Canadian Investment Act; ii) the number of potential foreign investors who only started the reviewing process in an informal way without applying formally; and iii) the number of potential foreign investors who move away from the reviewing process given the impossibility of complying with some specific requirements of the net benefit test and/or the performance requirements imposed by the Canadian government, without breaching the confidentiality of the business information, could be useful in order to assess the real deterrence effect of the Canadian (as well as any other APEC-WTO economy) investment regime.

⁷⁴ The index of the intensity in the degree of local competition provided in Table 2.1 suggests that Canada is behind the US and Japan in that regard.

As a consequence of the slowing rate of progress in multilateral negotiations and the increased new regionalism, in the period 1989-2007, Canada (as many other APEC and WTO economies) has signed 24 reciprocal and bilateral FDI agreements called FIPAs. These are designed to protect and promote FDI through legally-binding rights and obligations between Canada and the other economy, which is in most of the cases developing, emerging, transitional and/or high risk economy⁷⁵. Although Canadian officials describe FIPAs as an improvement towards the achievement of the Bogor goals in the investment area, there is no clear evidence on the investment creation effects⁷⁶ nor on any reductions of FDI restrictions imposed by Canada in these FIPAs (in both member economies). Rather, the net FDI exporter position of Canada, and its concentration of outward and inward stocks of FDI to and from the US and other developed economies, suggests that the FIPAs have been instruments not only to promote and protect investments in the FIPA Party economies but also to strengthen and maintain that position with respect to less developed (emerging or transitional, and risky) economies. In addition, only three out of the 24 FIPAs in force are with APEC member developing economies⁷⁷.

Four major future and past Canada actions towards the Bogor goals are:

- i) The establishment of the Competition Policy Review Panel in July 2007 with its core mandate to review two key pieces of legislation, the Competition and Investment Acts. The Panel will also examine Canada's sectoral restrictions on foreign direct investment and the competition and investment regimes of other jurisdictions to assess reciprocity between their rules and Canada's. Separately, the Panel will also assess how Canada's policies may further encourage outward investment. The Panel will report to the Minister of Industry, on behalf of the Government of Canada, by June 30, 2008 with concrete recommendations to further enhance competition in Canada (Industry Canada, 2007);
- ii) The process of domestic ratification of Canada's (December 19) 2006 federal signature on the International Convention for the Settlement of Investment Disputes (ICSID) between States and Nationals of Other States;
- iii) An increase of the Double Tax agreements (DTAs) signed by Canada. By 2007, Canada has DDTs with 80 economies (of which 19 are APEC members) (APEC, 2007a);
- iv) The publication of regulations made under the Investment Canada Act in different Canada official webs (e.g., the Department of Justice, the parliamentary internet site and the Canada Gazette) as well as a quick access to statutes and associated regulations in text and compressed text .

⁷⁵ The Canadian Government identifies FIPA partners primarily on the basis of commercial factors. Countries are selected where Canadian investors would benefit most from the protections of a FIPA, for example where Canadian investment might be vulnerable given the host country's existing investment climate. To make this assessment, a series of criteria are considered. The criteria include: commercial and economic interests, such as the current level of and future prospects for CDIA; existing investor protection, such as application of the rule of law, regulatory quality and corruption; the likelihood of engagement and of achieving a quality agreement; and trade policy or other foreign policy interests. (FAITC, 2007f).

⁷⁶ Stiglitz and Charlton (2005) list the scanty number of studies in that regard.

⁷⁷ These are: Philippines (in force in 1996), Thailand (1998) and Peru (recently signed in 2007).

3.5 Standards and Conformance⁷⁸

In this section, a conceptual starting point will be worthwhile to distinguish the issues from those described in the area of technical regulations as NTMs. According to WTO (2007d, e) and UNCTAD (2007c), the key difference between a standard and a technical regulation⁷⁹, which includes sanitary and phytosanitary (SPS) measures, lies in compliance. While conformity with standards is voluntary, technical regulations are by nature mandatory. Technical regulations are registered as NTMs in UNCTAD (2007c) classification. Thus, if an imported product does not fulfil the requirements of a technical regulation, it will not be allowed to be put on sale. In the case of standards, non-complying imported products will be allowed on the market, but then their market share may be affected if consumers prefer products that meet local standards, such as quality or color standards in the case of textiles and clothing. On the other hand, conformity assessment procedures are technical procedures — such as testing, verification, inspection and certification — which confirm that products fulfil the requirements laid down in regulations and standards. Generally, exporters bear the cost, if any, of these procedures. Non-transparent and discriminatory conformity assessment procedures can become effective protectionist tools.

Technical regulations and conformity assessment procedures need to be notified to all the members of the WTO before they are implemented in the economy in which these regulations have been formulated. According to WTO (2007e), members must notify when two conditions apply: a. whenever a relevant international standard or guide or recommendation does not exist, or the technical content of a proposed or adopted technical regulation or procedure is not in accordance with the technical content of relevant international standards or guides of recommendations; and b. if the technical regulation or conformity assessment procedure may have a significant effect on the trade of other WTO members⁸⁰.

This section deals only with the standards and conformance procedures of technical regulations (including SPS measures). The trade distortion features of the types of technical regulations have been addressed in the NTMs section.

⁷⁸ The MLI score in standards and conformance (including sanitary and phytosanitary measures) in 1996 was 0.0910 and in 2003 and 2007 was 0.0980 from a maximum of 0.14. This maximum value is achieved when an economy satisfies the WTO's principles of national treatment and non-discrimination and the first APEC objective for Standards and Conformance (i.e., align the domestic standards with international standards). The MLI does not track any WTO-APEC obligation since conformity with standards is voluntary.

⁷⁹ Technical regulations and standards set out specific characteristics of a product — such as its size, shape, design, functions and performance, or the way it is labelled or packaged before it is put on sale. In certain cases, the way a product is produced can affect these characteristics, and it may then prove more appropriate to draft technical regulations and standards in terms of a product's process and production methods rather than its characteristics *per se* (WTO, 2007d).

⁸⁰ Draft regulations should be notified to the WTO Secretariat, if possible 60 days prior to their formal adoption so as to allow time for other Members to make comments. Regulations can also be notified *ex post* whenever urgent problems of safety, health, environment protection arise. Local Governments at the level directly below central government are required to notify technical regulations and conformity assessment procedures which have not been previously notified by their central government authorities.

Similar to the case of FDI, the federal, provincial and territorial Canadian governments have the authority to promulgate technical regulations and sanitary and phytosanitary standards. The federal government is responsible for the implementation of international trade obligations. The federal legal framework for standards and conformance includes: a. the Statutory Instruments Act, b. the statutory instruments regulations, c. cabinet policy, and d. government of Canada regulatory policy. The Treasury Board Secretariat oversees the management and coordination of federal policy on technical and other regulations. The Regulatory Affairs secretariat (at the treasury board) ensures that regulations proposed for federal departments comply with the regulatory policy. Foreign Affairs and International Trade Canada (DFAIT) is responsible for implementation of the WTO TBT (Technical Barriers to Trade) agreement. DFAIT contracts with Standard Council of Canada (SCC) for the operation of Canada's enquiry point and notification authority. The Canada Gazette, monitored by the SCC, is the official paper of the Canadian government to identify relevant technical regulations and conformity assessment procedures for WTO notification. In general provincial regulations are not notified to the WTO because it is believed that they do not have an international impact (WTO, 2007a).

From 1996 to 2006, Canada has made substantial improvements toward the achievement of the Bogor goal on the alignment of its domestic standards with the international standards. In 1996/1997, about 50% of the annual number of national standards were adopted or based on ISO/IEC standards. For the period 2003-2006, this percentage increased to around 68%⁸¹. Regarding technical regulations, Canada notified 119 between July 2002 and mid August 2006 (56% from Health Canada, 22% from Transport Canada, 13% from Environment Canada, 8% from Industry Canada, 6% from other authorities), and 37 of conformity assessment procedures during the 2002-2006 period. It also notified one Mutual Recognition Agreement (MRA) with Australia in manufacturing practices for medicines (APEC, 2000a, 2007a, WTO, 1998a and 2007a). Canada's plan for further improvements in this area is continuing further alignment of its standards where this is judged appropriate.

Canada's plan in this area seems to be consistent with the technical regulations (as NTMs) objective of reductions of these measures to a 'maximum extent possible'. Thus, to the extent that there is no database on the number and types of the NTMs for an economy which determine, among other things, the appropriated number and types of technical regulations, there will not be a determined percentage rate set as (voluntary) target on the numbers of national standards which are adopted or based on international standards. A starting point to address (in a technical way) the issue of the appropriate number and type of national technical regulations, and which of them are desirable to be based upon international standards, would be if the standards and technical regulations (including others NTMs) were registered in a database. This database could be used for providing a detailed analysis by: i) the number, types and sectors, ii) the level of government (federal, provincial and territories), and iii) domestic and international technical regulations, standards, and conformance procedures.

Currently, Canada does maintain a catalogue list of technical regulations through The Canada Gazette⁸² which contains a consolidated list of federal statutory instruments

⁸¹ There is no information on the percentage rates for the total stock of domestic standards.

⁸² <http://canadagazette.gc.ca/index-e.html>.

since January 1955. Two additional databases are provided by Canada Standard Store⁸³: one is the RegWatch web page and the Standards Council of Canada - Information and Research Service. The former is a unique database of voluntary standards referenced in Canadian federal regulations. For members of government and private industry, RegWatch serves as a powerful search tool in identifying information on Canadian, foreign and international standards referenced in Canadian federal law. It is searchable by keyword, standard number, regulation or standards development organization and returns detailed information including the specific location of the reference within the regulation. The database also provides links to the full text of Canadian regulations that cite standards, and links to additional information about the referenced standards.

On the other hand, the Standard Council of Canada Information and Research Service has several objectives. These are: i) to better understand SCC's accreditation programs, services and activities; ii) to gain knowledge about the role of the National Standards System (NSS) and how to contact NSS organizations; iii) to identify applicable standards, regulations and conformity assessment procedures that would apply to the market acceptance of a product; iv) to pinpoint competent authorities to contact in Canada or abroad; v) to search and find scopes, tables of contents, and forewords of standards currently maintained in SCC's Technical Document Centre; vi) to identify Canadian, international and/or foreign standards on a particular subject area; and vii) to locate standards published or under development by a specific technical committee.

The Standards Council of Canada has also developed Standards Alert, a data base of Canadian and international standards and standards developed by Canada's major trading partners. Such a data base is unique among APEC member economies and demonstrates a strong commitment in supporting the application of standards solutions in the development of regulations.

Canada, however, does not maintain a database with the suggested features pointed out above nor register the technical regulations promulgated by the provinces and territories. Nevertheless, Canada does meet its TBT obligation to provide notification of provincial technical regulations that have an effect on trade. In fact, Canada has provided three out of the total of five notifications of the technical regulations of sub-national governments, by WTO member since the inception of the WTO in 1995.

At the federal level, in respect of the rest of the ongoing Bogor objectives in this area, Canada has made a significant number of improvements in the period 1996-2006, as reported in the answers to the experts' questionnaire (Annex 1) and APEC (2007a). The main improvements reported (in these documents) are:

- i) Active participation in the international standardization activities of international standardizing bodies. Thus, SCC holds P-Status in 400 technical committees and subcommittees⁸⁴ and O-Status on 103 committees⁸⁵;

⁸³ <http://www.standardsstore.ca/eSpecs/PopularStandards.do?std=research>.

⁸⁴ Under a participating (P-) status: committees are obligated to vote on all documents formally submitted for voting within the technical committee or subcommittee, on enquiry drafts and final draft International Standards, and to participate in meetings.

⁸⁵ Under an observing (O-) status: committees are entitled to receive committee documents and have the right to submit comments and attend meetings.

- ii) Active participant in Mutual Recognition Arrangements (MRAs) in both the regulated and voluntary sectors. In the regulated sector Canada has endorsed and is participating in the APEC MRA on Conformity Assessment of Telecommunications Equipment. Canada also has an MRA with Australia on Conformity Assessment in Relation to Medicines-Good Manufacturing Practice Inspection and Certification. On the MRAs in the voluntary sector, Canada (SCC) is a participant in the following multilateral mutual recognition arrangements: PAC (Pacific Accreditation Cooperation), NORAMET (North American Metrology Cooperation), IAAC (Inter-American Accreditation Cooperation), ILAC (International Laboratory Accreditation Cooperation), APLAC (Asia-Pacific Laboratory Accreditation Cooperation) and others;
- iii) On improvements on the level of the technical infrastructure, in 2007, SCC launched three new accreditation programs in the areas of food safety, information, security and occupational health and safety; and
- iv) On international cooperation and assistance, Canada is supporting through funds and expertise to some developing economies (e.g., Brazil, China, Costa Rica) and plans to continue its support in the future (e.g., in Brazil, China, and Peru).

3.6 Customs Procedures

The Starting Point: The Position in 1996

In its 1996 Individual Action Plan, Canada considered it had one of the most liberalized and progressive customs administrations in the world, resulting from continuous improvements over the years including simplification of the process for releasing cargo and expediting the flow of travellers. These facilitation efforts were balanced with enforcement and monitoring techniques. At that time, Canada's plan for the 1997-2000 period was for further simplifications; more client-centred measures; and improvements in transparency, electronic communications and productivity.

The 2002 Peer Review

The 2002 Peer Review report pointed to Canada's implemented reforms resulting in simplified and standardised customs procedures and, in particular, noted that Canada had implemented ten of the twelve Collective Action Plan objectives to modernise customs administration. At that time, Canada was implementing the advance classification ruling system and considering the establishment of a risk management training system.

Actual and Planned Improvements between 2003-2007

Table 3.6.A summarizes Canada's assessment of actual improvements in relation to customs procedures over the period 2003 to 2007 and also shows any planned improvements for those same years. These actual and planned improvements furthered all of APEC's objectives by simplifying and harmonising customs procedures, enhancing cross-border cooperation in the movement of goods and services, with particular regard to identifying security risks, and developing electronic applications.

While there were no actual improvements in Canada's 2003 summary, it is noted that the Canada Border Services Agency (CBSA) was created in December of that year as a single agency for bringing together the various elements of border control, i.e., customs, food inspection, health and immigration. And, while not recorded in the IAP, the legislation for advance tariff classification planned for 2003 is currently in place.

The Position in 2007

The key elements of the present position in respect of customs procedures, as ascertained from Canada's 2007 IAP, are summarized below:

Institutional Capacity and Legislative Authority

The relevant federal agency is the CBSA whose authorities are governed by the Customs Act. Integrity is identified as one of CBSA's values, obligating it to exercise its

Based on IAP Updates for Canada 2003-2006 and 2007 IAP
A = actual improvement in the year
P = planned improvement for the year

TABLE 3.6.A - CUSTOMS PROCEDURES: IMPROVEMENTS 2003-2007

Nature of Improvement	Relevant Objective	2003	2004	2005	2006	2007
PROCESS AND SYSTEMS	simplification/productivity	P				
- development (EDI)						
- targeting high-risk travellers		P				
- fairness initiative				A		
- dispute resolution processing times			A			
SMART BORDER ⁸⁶	simplification/streamlining		A	P		
SECURITY AND PROSPERITY PARTNERSHIP ⁸⁷				P A	A	A
LEGISLATIVE						
- advance tariff classification		P				
WCO DATA MODEL	harmonization and technical cooperation		A ⁸⁸	A ⁸⁹	P	P

⁸⁶ Canada/USA.

⁸⁷ Canada/USA/Mexico.

⁸⁸ Phase 1 of advance commercial information.

⁸⁹ Phase 2 of advance commercial information.

authority in a principled, open, fair, trustworthy and accountable manner. Measures are in place to ensure that national values and ethics and a code of conduct permeate the organization throughout the country.

Canada's valuation policy is communicated by the CBSA in a series of customs memoranda. The valuation provisions of the Customs Act and corresponding value for duty regulations, reflect the content of the WTO valuation agreement. Canada allows summarized cargo and release reporting with consolidated accounting. Most goods valued at under Can\$20 are exempt from duties, taxes and accounting. Informal documentation is required for goods under Can\$1600.

The Customs Act provides for both an internal and external dispute settlement process. Clients have a legislative right to contest CBSA rulings in relation to the advance classification system; origin; and all assessments of duties and taxes. Written decisions with reasons must be provided to clients; and the recourse directorate of the admissibility branch provides for impartial review of CBSA's trade administrative decisions. CBSA advised that it was unable to provide information on contested decisions as a proportion of the total number of CBSA decisions (as requested at IQ II: 6.6).

The CBSA does not have the legal authority to enforce either the Copyright Act or the trademarks Act. While the CBSA will detain goods that may be in violation of intellectual property rights, the interest and involvement of the Royal Canadian Mounted Police is a prerequisite to initiating a prosecution process (IQ II: 6.7). Canada advises that the issue of CBSA's authority may be looked at in future (IQ II: 6.8).

Transparency

The CBSA is responsible for the transparency and dissemination of all publicly disclosable information, including customs legislation, regulations and procedures, departmental memoranda, customs notices and brochures on certain customs programmes. It is understood that CBSA continually reviews website content, which includes valuation policy and information, and provides information for other related sites, including the APEC tariff database. An appeals link has been added to the CBSA homepage to allow clients easy access to dispute resolution requirements. Prescription instruments are being finalized for providing clients with information on the form, manner and information requirements for filing appeals.

Current CBSA Programmes/Initiatives

- i) The use of advance information is currently a key strategy for identifying and stopping high-risk people and goods before they get to Canada and for facilitating the release of low-risk goods. The (mandatory) marine and air components of the advance commercial information initiative have been implemented in the last five years, with phase III (eManifest) relating to highway and rail shipments within North America now in the planning and approval stage. This phase, which will have a five year implementation period, will require the electronic transmission of advance cargo and conveyance information from carriers for all highway and rail shipments. In addition, the electronic transmission of advance secondary data will be required from freight

forwarders; and the electronic transmission of advance importer admissibility data will be required from importers or their brokers. This phase III continues CBSA's commitment to providing its officers with electronic pre-arrival cargo information to enable health, safety and security threats related to commercial goods to be identified before these goods arrive in Canada.

- ii) The harmonized risk scoring/advance trade data initiative aims to address information gaps in the supply chain by:
 - harmonizing targeting processes to WTO standards
 - incorporating additional trade data for increased risk assessment
 - creating an end-to-end assessment in the commercial supply chain
 - intercepting threats at the point of origin
- iii) The advance inter-departmental reporting initiative is a strategy for developing and implementing a single window approach for the electronic collection, integration, consolidation and dissemination of advance commercial information within the government of Canada. The IAP explains that this single window will enable the CBSA to work with federal and industry partners to expand advance electronic reporting so as to streamline and better administer the programmes of other government departments and agencies at the border. Hong Kong, China was particularly interested in being able to monitor this initiative.
- iv) The border management plan is an integral part of CBSA's approach to managing risk. This is intended as an integrated risk management tool in relation to all ports of entry across Canada. The plan is designed to capture and measure results and to provide feed-back to the ports so that results can be improved.

The principal focus of customs activities under the North American Security and Prosperity Partnership relates to the security agenda with its goals of traveller, cargo, aviation and marine security; border facilitation; law enforcement; intelligence cooperation; bio-protection; protection, preparedness and response; and science and technology. Overall, CBSA's three strategic priorities are reflected in its focus on advance electronic information, risk-assessment systems and facilitation programs for low-risk people and goods.

International Cooperation

- i) CBSA is a signatory to both the body and the general annex of the Revised Kyoto Convention on Simplification and Harmonization (RKC);
- ii) CBSA is an active member of the WCO: it chairs its integrity sub-committee and its audit committee; it is an active participant in the WCO's harmonized system committee and also its review and scientific sub-committees;
- iii) Canada is a signatory to the WCO and other conventions relating to the temporary importation of goods;
- iv) CBSA is an active participant in the WTO's Technical Committee on Customs Valuation and the WTO's Technical Committee on ROO.

2008-2010: Canada's Planned Improvements

Analysis of Canada's planned improvements in customs procedures suggests a continuing focus on the transparency, accountability and efficiency and effectiveness of CBSA operations and enforcement. In particular, efforts are continuing on electronic reporting mechanisms, on establishing management priorities and improved risk management, and resource allocations. Canada is also strengthening its response to counterfeit products and the involvement of organized crime.

The planned improvements are summarized below:

1. In the interests of transparency and accountability, a review of brochures on appeal procedures, a brochure on the dispute process and a re-evaluation of the conduct and review of appeals relating to privilege programs
2. Continuing work-in-progress on EDI cargo and conveyance reporting, and release procedures
3. Progress in the next financial year on two components of the Advance Inter-departmental Reporting Initiative, viz, i) budget plan and business strategy for inter-departmental marine conveyance initiative, and ii) single window initiative for other government departments
4. Developing a compliance management plan for establishing CBSA priorities; and expanded resource model for managing risk and effective resource allocation
5. Streamlining and coordination for more focused and results-oriented initiatives under NAFTA's Security and Prosperity Partnership
6. Assisting other economies to implement version 2 of WCO data model
7. Strengthening response to counterfeit products through inter-departmental cooperation and a review of CBSA's legislative authorities
8. Possible accession to specific annexes in the RKC

Progress on Bogor Goals

Canada's Self-Assessment

While acknowledging that some progress is difficult to evaluate quantitatively, Canada considers that it has implemented between 76% and 90% of APEC'S Collective Action Plan for Customs Procedures (IQ II: 6.9). Priority is being given to modernising border management using latest science and technology with emphasis on advance electronic information (IQ II: 6.10) and Canada considers that by 2010 it will have advanced to between 90% and 99% completion of the Bogor goals (IQ II: 6.16).

Concluding Assessment

Canada has been progressing all of APEC's Customs Procedures objectives. It appears successfully to be modernizing its border management through its approach to

electronically delivered advance information, consistent with cross-border security imperatives. Capacity building has been important in this regard. Equally important will be harmonization of data requirements and electronic systems, particularly with the United States. Greater transparency of advance rulings and dispute resolution, subject to confidentiality, would also be welcomed.

A recent Conference Board report (2007) points to the increased costs for many companies of trading across the United States border, and finds that the efficiency benefits of risk-based border security programs since 9/11 are not yet being fully realized. This is attributed to infrastructure constraints and a lack of alignment between Canadian and United States programs. Policy-layering has created increased uncertainty as has a finding that border rules are inconsistently applied at different crossings. The Conference Board discussed the policy implications of its research into actual business experiences and suggests some practical measures for increasing efficiency and reducing uncertainty, with a focus on keeping new government rules simple, predictable and accessible. We can do no more than support this emphasis on continuous improvement. Overall, customs procedures are highly relevant to trade facilitation objectives, although official data integrity problems mean that there is limited ability to view progress from a trading perspective.

3.7 Intellectual Property Rights (IPR)⁹⁰

The Starting Point: The Position in 1996

In 1996 Canada was party to numerous IPR agreements including TRIPS, NAFTA and the WIPO Convention. At that time, Canada indicated it had fully implemented the TRIPS agreement and that its IPR enforcement was fully consistent with that agreement. For the 1997-2000 period, Canada was considering, *inter alia*, accession to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; the coming into force of the Budapest Treaty on International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure; and technical cooperation by means of advice and training for intellectual property officials. Further out, Canada was interested in strengthening protection of geographical indications for wines and spirits.

The 2002 Peer Review

The 2002 Peer Review report noted Canada's comprehensive system of IPR protection based on the premise that intellectual property rights are best enforced by individual right holders. While the review suggested that protection of IPR was generally adequate, it highlighted some enforcement concerns raised by the United States relating to the low prosecution rates arising from seizures of counterfeit goods at the border. The United States also queried the effectiveness of enforcement of TRIPS, particularly in respect of the marketing of generic pharmaceutical products. Further, the discussant at the review session queried whether individual enforcement actions by rights owners could be effective and suggested that Canada's enforcement authorities may wish to step up their enforcement efforts.

Actual and Planned Improvements between 2003-2007

Table 3.7.A summarizes Canada's assessment of actual improvements in relation to IP services over the period 2003 to 2007 and also shows any planned improvements for those same years. There were many actual and planned improvements relating to legislation, enforcement, CIPO activities and technical cooperation. These improvements appear to have contributed in particular to the objectives of i) adequate and effective protection/enforcement of IPR, and ii) transparency through electronic technologies. Some improvements, notably online services and outreach, are generically expressed in successive IAPs, but without reference to any specific improvements in those categories.

The Position in 2007

Canada's Policy and Legal Framework

Canada's current approach is intended to provide a comprehensive system of IPR protection, with the goal of encouraging innovation and creativity while also promoting the diffusion of inventions, works and knowledge in order to benefit society as a whole.

⁹⁰ The MLI scores for 1996/1998, 2003 and 2007 are respectively 0.0240, 0.0540 and 0.0600. Thus, in 2007, Canada has provisions for adequate and effective IP protection; and no international complaint has been received in the past four years.

Canada's system is fully TRIPS-compliant and continues to be premised on the belief that intellectual property rights are private economic rights and that the State's responsibility is to provide the infrastructure required to facilitate rights holders' enforcement of their rights. Possible remedies include damages, injunctions and goods seizure; and, in accordance with TRIPS, criminal enforcement can be pursued in relation to wilful trademark infringement, counterfeiting and copyright piracy on a commercial scale.

Canada's Competition Act provides that conduct engaged in pursuant only to the exercise of any IPR or enjoyment of any interests derived from that intellectual property, is not anti-competitive. But the Federal Court has the power, when asked by the Attorney General, to make remedial orders if it finds that a company has used the exclusive rights and privileges conferred by a patent, trademark, copyright or registered integrated circuit topography, to unduly restrain trade or lessen competition.

Canada's national legislative framework is detailed in Table III.16 of the WTO's 2007 Trade Policy Review. That report also devotes separate sections to patents, trademarks, copyright, industrial designs and topography of integrated circuits, and plant breeders' rights. Management of IP legislation is generally within the Minister of Industry's jurisdiction but must be coordinated with the Minister of Canadian Heritage who shares responsibility for copyright.

Since 2005, a federal inter-departmental working group chaired by Foreign Affairs and International Trade Canada has been directing some of its policy development work into IPR enforcement at the border. Two parliamentary committees have recently studied counterfeiting and piracy, focusing on health and safety as well as economic impacts. The Standing Committee on Public Safety and National Security reported in May 2007, concluding that Canada's laws need to be strengthened and more resources need to be allocated to the curtailment of the growing phenomenon of counterfeiting. The Standing Committee made 14 recommendations and requested that the government table a comprehensive response to the Committee's report. These recommendations, if adopted, would have implications *inter alia* for the trademarks, Copyright and Customs Acts and also for the mandate and powers of the Canada Border Services Agency (relevant to Customs Procedures).

The report of the Standing Committee on Industry, Science and Technology was issued in June 2007 and, similarly, contained numerous recommendations along with a request that the government table a comprehensive response to the report. These recommendations also had implications for the Canada Border Services Agency and gave prominence to establishing an annual reporting system for tracking the efficacy of the Canadian IP enforcement system.

Based on IAP Updates for Canada 2003-2006 and 2007 IAP
and on comments by Canada on draft table
A = actual improvement
P = planned improvement

TABLE 3.7.A - INTELLECTUAL PROPERTY: IMPROVEMENTS 2003-2007

Nature of Improvement	Relevant Objective	2003	2004	2005	2006	2007
LEGISLATIVE						
- industry consultation	transparency	P	A	P		A
- implementation WTO ⁹¹ decision	WTO			A		
- website on regime					A	
- Patented Medicines (Notice of compliance) Regulations and Food & Drug Regulations ⁹²	IPR protection				P A	
- tabling Copyright Act Review		P ⁹³				
- Bill proposing amendments to Copyright Act	IPR protection			A		
- Olympic and Paralympic Marks Act						P A
ENFORCEMENT⁹⁴				A	P A	
CIPO						
- operational capacity ⁹⁵	transparency and service efficiency					
- services online ⁹⁶	increased examination capacity	P A	P A	P A	P A	P A
- electronic filing system		P	A	P A	P A	P A
- more effective use of electronic communication			A	P	A	P A
- ISA and IPEA status ⁹⁷				P A	P A	P A
- integration international activities			A			
- outreach programme relating to PCT ⁹⁸	public awareness and outreach		A	A	A	A
TECHNICAL COOPERATION⁹⁹						
	productivity and international cooperation	P A	A	P A	P A	P

⁹¹ Access to medicines regime.

⁹² Including period of market exclusivity for innovative products.

⁹³ In House of Commons end 2002.

⁹⁴ Including counterfeit and piracy and border issues. The improvement for 2006 specifically refers to Canada's involvement with international initiatives of G8, OECD, WIPO, WCO, Interpol and the Canada-US-Mexico Security and Prosperity Partnership. That involvement is continuing.

⁹⁵ The hiring of more examiners has continued beyond 2004 and the ongoing maintenance/upgrade of CIPO's IT system.

⁹⁶ Plan is for fully online; the improvement reflects that an increasing variety of services is online.

⁹⁷ International Searching Authority and International Preliminary Examining Authority.

⁹⁸ Patent Cooperation Treaty.

⁹⁹ Ongoing through advice/training for IP officials and participation in IPR conferences etc.

The Canadian Government's formal response to both Standing Committees was identical and noted that, overall, many of the recommendations were consistent with the Government's IPR strategy and its efforts to review existing policies and legislative provisions. Essentially, Canada would continue to build on its existing efforts, while acknowledging the importance of collaboration with federal/provincial/territorial and domestic stakeholders as well as international partners (Government of Canada, 2007a,b).

Institutional Capacity

Canada's IPR administrator is CIPO, the Canadian Intellectual Property Office. Ten departments and agencies have a role in IPR enforcement. CIPO offers an increasing variety of its services and products online and has been endeavouring to match an increased volume of patent and trademark applications with increased operational capacity together with process improvements. (The principal measures employed by CIPO for determining whether or not the increased volume of applications is being handled expeditiously are described in Canada's response at IQ II: 7.2, in relation to patent applications, trademark filings and copyright/industrial design). The CIPO website covers the administration and registration of IP laws and public education; and other websites cover IP policies and enforcement.

Canada has been using more cost-effective tools for raising public awareness, improving document availability through both the patents and trademarks databases, and making IP publications available. One of CIPO's current activities is an IP publication inventory.

International Cooperation

- i) Canada is a signatory to several international IP treaties.
- ii) It is an active participant in the WTO TRIPS Council.
- iii) It is continuing its involvement with APEC's intellectual property experts group (the coordinating agency in Canada being the Intellectual Property, Information and Technology Trade Policy Division of Foreign Affairs and International Trade Canada).
- iv) It has active engagement in WIPO's patent search and examination programmes.
- v) It monitors the outreach activities of foreign IP offices for the purpose of exchanging best practices and lessons.
- vi) It provides technical advice for IP officials and annual specialized executive workshops in cooperation with WIPO.

2008-2010: Canada's Planned Improvements

Canada's planned improvements in respect of intellectual property continue to focus on the economy's international role in TRIPS discussions, technical cooperation and effective enforcement in combating IP crime. In summary, the planned improvements noted in Canada's 2007 Individual Action Plan are:

- 1. Continuing involvement in the TRIPS Council
- 2. Technical cooperation including IP conferences and training for IP officials

3. Considering options to enhance Canada's approach to effective (counterfeit and piracy) enforcement (IQ II: 7.3-9); and
4. Improving both the number of services online and electronic communications. CIPO will continue to work with its clients in order to determine priorities for placing transactions/services online. It envisages continued expansion in its online offerings (IQ II: 7.1).

Progress on Bogor Goals

Canada's Self-Assessment

Canada has assessed that by 2010 its degree of advance towards achieving the Bogor goals in the IP area will be between 90% and less than 100% (IQ II: 7.13).

Concluding Assessment

Canada is in a position to boast a comprehensive system of IP protection and active international cooperation. Emphasis during the 2003-2007 period was on transparency and enforcement; and one of the currently planned improvements is to enhance Canada's approach to combating counterfeit and piracy, which is consistent with the Parliamentary findings on the need for increased resource allocation to this area. Officials stressed that Canada was taking these enforcement issues particularly seriously, with a commitment to strengthening the IP regime being reinforced as recently as mid-October in a Speech from the Throne which officially opened the new session of Parliament. Canada clearly supports improved cooperation and collaboration with its most important trading partners as an important element in better combating counterfeit trade and piracy.

The experts were advised that the Intellectual Property Institute of Canada (IPIC) supported the need for strengthening anti-counterfeiting measures in Canada through *inter alia* the creation/enhancement of civil offences under the trademarks and Copyright Acts, the imposition of increased damages and penalties, and changes to the Criminal Code and Customs Act.

While confident that Canada has an 'excellent IP system', IPIC identified some further areas for improvement based on its international experience. These included broad patentable subject matter for Canadian innovations; enhanced protection for famous marks; continuing improvements to the timeliness and quality of examination; the availability of trademark documentation online, as in the United States; online information about the status of trademark oppositions; and statutory protection of confidential communications between clients and their patent and trademark agents. IPIC also considered it noteworthy that Bill C-60 which died on the order paper with the calling of a federal election at the end of November 2005, has not been re-introduced, even though it was relevant to APEC's interest in appropriate protection of IPR in new fields, including electronic commerce (IQ II: 7.10 refers).

Canada's officials considered that IPIC had made a fair assessment, while noting that the goal posts are not fixed.

3.8 Competition Policy¹⁰⁰

The Starting Point: The Position in 1996

In its 1996 IAP, Canada pointed to its long history of effective enforcement and transparency of competition policy and laws and its regular scrutiny of policy and legislation to ensure that they remained abreast of domestic and international developments. Canada saw its Competition Act as one of its key framework business laws and highlighted its international involvement over time on competition policy issues.

In the medium term Canada would continue to participate in domestic and international regulatory reform, having regard to changing domestic and international circumstances; it would also continue to offer technical assistance and improve its national cooperation and enforcement agreements as a basis for greater international cooperation. Further out, Canada indicated a preparedness to explore the development of an APEC-wide notification/consultation/coordination mechanism in respect of anti-competitive practices.

The 2002 Peer Review

The 2002 Peer Review report assessed Canada as maintaining an effective, adequate and transparent competition policy coupled with effective enforcement by the Competition Bureau and the Competition Tribunal. It pointed to the role of Canada's Competition Policy objective in promoting an efficient and adaptable economy and broadly described the main provisions of the Competition Act. At the same it listed a few exemptions from the application of the Act, including export cartels. Implemented reforms were itemised, relating to transparency, the streamlining and modernising of legislation and various international cooperation agreements.

Actual and Planned Improvements between 2003-2007

Table 3.8.A categorizes and summarizes Canada's assessment of actual improvements in relation to Competition Policy for each of the years 2003 to 2007 and also shows planned improvements for those same years. Canada cites numerous improvements during this period, most of which fall within the Competition Bureau's jurisdiction and reflect many consultations, revisions to guidelines and bulletins, and review and advocacy processes. The range of Competition Bureau activities is relevant to the enforcement and transparency of Canada's competition law as well as to the advocacy of competition principles in various sectors.

Canada signed a number of bilateral agreements over the period and demonstrated continued participation in a number of international fora. Such international cooperation not only reflects the geographic expansion of markets and increased cross-border business activity, but also reflects a constructive response to competition issues that can and do arise (IQ II: 8.22-25).

¹⁰⁰ The MLI score for the period 1996-2007 is 0.0540. Canada has not achieved full score (i.e., 0.06) due to the fact that there has been at least one international complaint in the period.

Based on IAP Updates for Canada 2003-2006 and 2007 IAP
A = actual improvement
P = planned improvement

TABLE 3.8.A – COMPETITION POLICY; IMPROVEMENTS 2003-2007

Nature of Improvement	Relevant Objective	2003	2004	2005	2006	2007
LEGISLATIVE						
- Competition Act ¹⁰¹	maintaining effective competition law	A	A			
- other		P				
COMPETITION BUREAU						
- access to information ¹⁰²	enforcement, transparency/advocacy	A	A	A		
- guidelines/bulletins		P A	A ¹⁰³	A	A	A
- BMEG ¹⁰⁴		A	A	P		
- advocacy ¹⁰⁵				A	A	
- consultations on standards						A
Reviews						
- treatment of efficiencies ¹⁰⁶			A	A		
- horizontal restraints				A		
- enforcement ¹⁰⁷ airlines/telecommunications			A		A	
- Immunity program					A	
INTERNATIONAL COOPERATION						
- bilateral agreements ¹⁰⁸	response to globalization	A		A	A	
- MLATS		P ¹⁰⁹				
- positive comity principles ¹¹⁰			A			
- expanded open skies agreement ¹¹¹				A		
- participation APEC-OECD regulatory initiative			A			
- leadership role in ICN and ICPEN ¹¹²					A	

¹⁰¹ Consultations/analysis/Bill C-19 relating to (a) civil penalties; (b) restitution and civil cause of action; (c) conspiracy provisions; (d) decriminalizing pricing provisions; (e) inquiries into functioning of domestic markets.

¹⁰² Consultations and public comment in relation to possible policy and legislative changes with respect to lawful access to information and communications.

¹⁰³ Revised Merger Enforcement Guidelines.

¹⁰⁴ Consultation and public comment for review of Bank Merger Enforcement Guidelines.

¹⁰⁵ For example, in relation to telecommunications; commercial radio policy; air travel and cargo within North America and between Canada and offshore countries; and clauses in pharmaceutical contracts.

¹⁰⁶ Consultation paper and report.

¹⁰⁷ Abuse of dominant position.

¹⁰⁸ Agreements with UK, Mexico, Japan and Korea.

¹⁰⁹ By 2007, Canada was party to eight Mutual Legal Assistance Treaties with APEC economies, at least two of which were signed prior to the five-year period.

¹¹⁰ Canada and US agreement.

¹¹¹ With the US.

¹¹² Continuing role in International Competition Network and International Consumer Protection and Enforcement Network.

- cross border fraud		A	A	A		
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The Position in 2007

Statutory Framework

Four long-standing statutes, including the 1985 Competition Act, are designed to maintain and encourage competition in Canada, including by the prevention of misleading and deceptive marketing and promotional practices.

Canada's 2007 IAP clearly summarizes the key provisions of the Competition Act, including in relation to horizontal, vertical and dominant firm practices, and mergers and acquisitions. The Act's coverage is comprehensive and includes the commercial activities of both provincial and federal government corporations. The few exemptions that are specified include agreements relating solely to the export of products from Canada, R&D joint ventures and bank amalgamations (IQ II: 8.13-14). According to the OECD, the 'regulated conduct doctrine' which exempts anti-competitive behaviour when required by regulation, means that 'significant parts' of the economy remain sheltered from competition law, especially those areas sheltered by provincial government regulations.

The Consumer Packaging and Labelling Act, the Textile Labelling Act and Precious Metals Marking Act are standards-based criminal statutes which prohibit the making of false and misleading representations in labelling and marking, and set out mandatory specifications. The Competition Act itself contains provisions relating to the use of misleading representations and deceptive marketing practices in promoting the supply or use of a product or service or any business interest. Criminal offences include deceptive telemarketing, pyramid selling, deceptive notice of winning a prize and false or misleading representations that are made knowingly or recklessly. Civil sanctions are also available in relation, for example, to false or misleading representations, performance claims that are not based on adequate and proper tests, and promotional contests. The number and proportion of cases involving foreign parties is not known (IQ II: 8.6).

Institutional Capacity

The 2007 IAP also sets out clearly the roles of the Competition Bureau and its Commissioner who is an independent law enforcement official responsible for the administration and enforcement of the four statutes just mentioned. The Bureau's five operating principles, including transparency (via the website and annual report for example), are documented, as is a description of the 'conformity continuum' with its emphasis on education and voluntary compliance. The Bureau maintains an active publication programme, including issue-specific bulletins and detailed guidelines (notably on mergers and acquisitions).

The role of the quasi-judicial Competition Tribunal established in 1986 is described in the IAP, and it is noted that only the Bureau Commissioner may take applications for remedial orders to the Tribunal on non-criminal matters.

The Competition Act authorizes the Commissioner to make representations to and call evidence before federal boards, commissions or other tribunals, although in the case of

provincial bodies the Commissioner may only make representations at the request of, or with the consent of, the particular agency. The Bureau sees its role as encouraging regulators to adopt approaches that rely to the greatest extent possible on market forces (IQ II: 8.1-3).

Competition and Efficiency

The 2007 IAP very much suggests that economic principles are embedded in Canada's competition law. For example:

- i) In encouraging competition in Canada, the purpose of the Competition Act is, *inter alia*, to promote the efficiency and adaptability of the Canadian economy and international competitiveness.
- ii) The Act's abuse of dominance provision provides that 'superior competitive performance' is a relevant consideration when determining whether or not a practice is anti-competitive.
- iii) The exercise of intellectual property rights does not constitute anti-competitive conduct.
- iv) Evidence of market concentration or market share is not determinative in merger cases.
- v) Efficiency gains are to be taken into account in merger cases. In cases where efficiencies are claimed, the Competition Bureau now applies the principles set out in the Federal Court of Appeal Decision *Commissioner of Competition v Superior Propane Inc. and ICG Propane Inc.* 2001 FCA 104.

International cooperation

It is clear from the 2007 IAP that Canada has continued to be active in seeking effective international cooperation on competition matters, not only by its participation in international agencies (including WTO, OECD and UNCTAD) but also through entering a number of bilateral cooperation agreements and developing a network of mutual legal assistance treaties (MLATS). Canada is currently party to 30 bilateral MLATs in criminal matters, eight of which are with APEC economies: Australia, People's Republic of China, Republic of Korea, Mexico, Thailand, the United States, Peru and The Russian Federation.

Canada is also an active contributor to the international consumer protection and enforcement network whose focus is on inter-agency cooperation for dealing more effectively with the 'growing problem' of cross-border telemarketing, mail and internet scams.

2008-2010: Canada's Planned Improvements

Improvements on Canada's 2007 IAP planning agenda for competition policy have been classified under five headings:

1. Possible amendments to the Competition Act
 - (Bill C-41) abuse of dominant position in telecommunications (IQ II: 8.12)
 - (Bill C-425) obligation to provide certain technical information (IQ II: 8.16)
 - (Bill C-441) enforcement of 'fair pricing' in specified circumstances

- (Bill C-414) child protection from advertising exploitation
2. Publications including Bulletins
 - possible review of IP enforcement guidelines
 - predatory pricing enforcement guidelines (IQ II: 8.15)
 - corporate compliance bulletin
 - confidentiality bulletin
 - abuse of dominant position in telecommunications (IQ II: 8.1, 7-9)
 3. Consultations
 - communication and treatment of information under the Competition Act
 - possible reform of s.45 horizontal agreements (IQ II: 8.18)
 4. Research
 - generic pharmaceuticals sector¹¹³
 - competition within regulated professions (IQ II: 8.4)
 - *ex post* merger reviews (IQ II: 8.20-21)
 5. Cooperation
 - enhancing cooperation with the European Commission by building on existing 1999 agreement between the Government of Canada and the European Communities on the application of their competition laws.

Additional Competition Bureau material shows that present enforcement priorities include domestic cartels and bid-rigging, fraudulent and misleading health performance claims, and clarification of key enforcement principles relating to mergers and abuse of dominance. The Bureau's advocacy priorities for 2007-2009 encompass the integration of competition analysis into policy development and the identification of restrictions on competition in the self-regulated professions. The health and telecommunications sectors will also attract advocacy resource.

Progress on Bogor Goals

Canada's Self-Assessment

Canada assesses that it has fully met the Bogor goals for Competition Policy and will continue to promote these as well as taking additional steps to ensure that Canadian competition legislation remains relevant and effective (IQ II: 8.26-27).

Concluding Assessment

Canada has a transparent, comprehensive, non-discriminatory and independent competition law and enforcement regime. The Competition Bureau's Merger Enforcement Guidelines are particularly well regarded and the increased frequency of technical backgrounders has been welcomed. Increased transparency on case-specific reasoning would also be welcomed.

¹¹³ This report was released 29 October 2007.

All the improvements noted in Table 3.8.A appear compatible with APEC's competition policy objective, although experts are not in a position to judge the actual contribution of these improvements to the efficient operation of markets, competition among producers and traders and consumer welfare. That said, Canada's Competition Bureau is very clear on the results it expects to achieve from its clearly signalled enforcement and advocacy priorities over the next three years, coupled with an incremental approach to statutory amendments. Importantly, it expects fewer government restrictions on competition (Competition Bureau, undated). This focus on government as well as private sector restrictions is entirely consistent with the APEC principles to enhance competition and regulatory reform (APEC, 1999b) and, in the experts' assessment, both advocacy and application of these principles at federal and provincial government levels is a priority for advancing APEC's competition policy objective.

Canada's establishment of the Competition Policy Review Panel in July 2007 was described by a trade and competition expert as an 'enlightened initiative' as it provides an opportunity for identifying distortions to competition in the Canadian economy. The Panel is mandated to make recommendations on how Canadian competitiveness can be enhanced, with a focus on both competition and investment policies. It is to review how Canadian competition policies, including its competition law, affect Canada's competitiveness; and, of particular relevance to the services sector, the Panel will focus on the impacts of sector-specific investment regimes, including those that affect telecommunications, broadcasting, transportation and financial services. A consultation paper has been issued with submissions due by 11 January 2008 (Government of Canada, 2007c).

At an international level, Canada has clearly earned a good reputation for informal and formal cooperation, including with other APEC economies. It has entered a range of international cooperation agreements which represent a constructive response to cross-border competition issues, although confidentiality prevents assessment of their effectiveness in practice (IQ II: 8.22-23, 25). Canada is not alone in exempting export cartels from its competition law but it is for APEC and the WTO to determine whether or not their pervasiveness needs to be addressed more seriously in the context of international objectives.

3.9 Government Procurement¹¹⁴

The Starting Point: The Position in 1996

Canada was a foundation member of the WTO Agreement on Government Procurement (GPA) which came into force on 1 January 1996. In the 1997-2000 period, Canada planned to encourage other APEC members to accede to the GPA and to support negotiations for enshrining its due process and transparency obligations on a multilateral basis. Canada would also support early re-examination of the GPA to enhance its effectiveness.

The 2002 Peer Review

The 2002 Peer Review report assessed that Canada's government procurement policies and systems were easily available and understandable in relation to the 'liberal' market. In 1999, Canada adopted APEC's non-binding principles on government procurement (APEC, 1999a) and, the review found, had implemented an effective online tendering service. Canada pointed out that the APEC principles required only limited adjustments to its procurement regime. The review outlined the objective of the federal 'best value for money' policy which seeks to provide equal access to all Canadian suppliers and adheres to Canada's responsibilities under international agreements, subject to specified exceptional circumstances. The review noted that foreign suppliers located in countries that are signatories to the WTO, GPA and NAFTA are eligible to bid for federal contracts covered by those agreements and are able to initiate bid challenge procedures where agreements have allegedly been breached.

As the GPA did not apply to provincial policies, the review found that supply by foreigners could be restricted. Canada's policy position at the time was that the provinces were not prepared to commit to coverage of their entities until other members of the GPA, particularly the United States, were prepared to improve market access in sectors of priority interest to Canadian suppliers.

Actual and Planned Improvements between 2003-2007

No actual or planned improvements in Canada's federal or provincial government procurement practices were recorded in Canada's IAPs for the 2003-2007 period.

As a signatory to the GPA and as a party to APEC's non-binding government procurement principles, Canada reported its participation at those international levels over the period. On completing its reporting in 2005 to the APEC Government Procurement Experts' Group, Canada considered that it had met all of the Bogor goals in respect of government procurement. This is noted in Table 3.9.A as an actual 'improvement' in that year¹¹⁵.

¹¹⁴ The MLI score for the period 1996-2007 is 0.0540. Canada has not achieved full score (i.e., 0.06) due to the fact that there has been at least one international complaint in the period.

¹¹⁵ (IQII: 9.16) indicates 1997 as completion date.

Based on IAP Updates for Canada 2003-2006 and 2007 IAP
 A = actual improvement in the year
 P = planned improvement for the year

TABLE 3.9.A - GOVERNMENT PROCUREMENT: IMPROVEMENTS 2003-2007

Nature of Improvement	Relevant Objective	2003	2004	2005	2006	2007
APEC-Government Procurement Principles	shared information and compliance			A ¹¹⁶		

¹¹⁶ Completion of reporting to APEC Government Procurement Experts' Group on all non-binding principles.

The Position in 2007

International Framework - Federal and Sub-Federal Procurement

To the extent that procurement is covered by the GPA and NAFTA's Chapter 10, Canada grants national treatment to foreign suppliers. Under the GPA, equal access is restricted to federal procurement and contracts, as sub-federal procurement is not covered. NAFTA's Chapter 10 also excludes sub-federal procurement, with market access being further restricted by thresholds and exclusions. Nonetheless, in the context of fair dealing and non-discrimination, Canada seeks to ensure equal access to procurement to all suppliers, consistent with competition, lower purchasing costs, efficiency and transparency. Further, it considers that it is fully compliant with its international commitments, including conformity with APEC's Government Procurement Guidelines (IQ II: 9.3-7). Hong Kong, China expressly commended Canada for its procurement practices, being 'fully consistent' with its obligations under the GPA.

At the same time, access conditions under Canada's Agreement on Internal Trade (AIT) do not extend automatically to procurement from foreign suppliers; and procurement not falling within the scope of the AIT¹¹⁷ may be granted provincial or regional preferences. Sub-federal government procurement is not insignificant. In 2003-04 (the latest statistics available) procurement by provinces and territories is estimated by the WTO (WTO, 2007a) at Can\$9 billion¹¹⁸. ABAC has expressed concern over what it perceives as the 'highly discriminatory regulations (with buy-Canadian flavor)' that it claims favour domestic bidders at the provincial level.

Canada responds that no evidence in support of this claim has been provided to Canada and that provincial procurements of sufficient size to be of interest to foreign suppliers are generally advertised publicly using electronic tendering. Any conditions or domestic benefits that are sought are normally described in the notice of intended procurement or in the bid documents (IQ II: 9.13). Canada considers that while its provinces and territories are not obligated to open procurement to foreign suppliers, they generally follow open and transparent procurement practices. Canada further notes that no province or territory has a broad-based small business set-aside or price program of general applicability (IQ II: 9.13). Any change to this regime remains conditional upon reciprocity within the WTO and, particularly, a change in the United States federal policy.

Institutional and Legal Framework

The WTO's 2007 Trade Policy Review sets out the institutional and legal framework that governs government procurement in Canada (paras 215-220). It cites the Financial Administration Act as the statute that underpins all contracting activities and associated financial arrangements and obligations; and the Government Contract Regulations and the Treasury Board's Contracting Policy set out the main government procurement rules.

¹¹⁷ Table III.13 in WTO (2007a) includes coverage, exclusions, selected features and thresholds in relation to the AIT, although there is no measure of the portion of procurement that falls outside the scope of the AIT.

¹¹⁸ This amount excludes procurement by municipalities, municipal organizations, publicly funded academic institutions and health and social services entities. Federal procurement was estimated at Can\$19 billion in 2004.

The federal government's principal purchasing department is Public Works and Government Services. All federal procurements in excess of Can\$2million that are not subject to NAFTA or the GPA are reviewed by an inter-departmental procurement review committee for potential regional and industrial benefits. The WTO Review also describes the bidding process (paras 221-225) and dispute resolution (paras 226-230).

Transparency, Openness, Accountability and Due Process

Most of the government procurement section in Canada's 2007 IAP relating to the current position is devoted to the information available on federal government procurement practices and processes. Websites with links are provided and cover, *inter alia*:

- laws, regulations and judicial decisions
- contracting policies and procedures
- standard contract clauses
- procurement opportunity notices
- electronic tendering service (designed as a user-friendly system to give fast, effective and equal access to larger government contracts)
- information for potential suppliers
- bid evaluation criteria
- contract award notices
- seven year retention of complete documentation for each procurement
- independent audits and examinations
- review mechanism through the Canadian International Trade Tribunal - the bid challenge authority for NAFTA, GPA, any bilaterals and Canada's AIT. The international agreements also provide for state-to-state dispute resolution¹¹⁹.

Canada advises that it does not collect data on the extent of foreign participation in federal contracts over time, the number of pre-qualified foreign suppliers for participating in standing offers by federal departments/agencies, nor the extent to which any pre-qualified foreign suppliers have succeeded in competition for such standing offers (IQ II: 9.9-11).

2008-2010: Canada's Planned Improvements

Canada's 2007 IAP, which covers federal government procurement policy and practices, contains no further planned improvements.

Progress on Bogor Goals

Canada's Self-Assessment

Canada assesses that it has fully met the Bogor goals in the government procurement area. In the future, Canada seeks continuously to make improvements in the manner procurement activities are carried out (IQ II: 9.17-18).

¹¹⁹ It was suggested by one non-official source that the bid challenge process at the federal level, while open, may have become somewhat too complicated and cumbersome in pursuit of fairness and due process.

Concluding Assessment

The federal government is fully compliant with its international government procurement obligations and is currently in 'continuous improvement' mode although, as noted earlier, no actual or planned improvements were recorded in Canada's IAPs during the past five years and neither does the 2007 IAP specify any planned improvements in federal practices/procedures. Of potential significance however is the progress in the Canada-Chile Free Trade Agreement towards adding a chapter on federal government procurement (IQ II: 9.15). This chapter would bind national treatment and eliminate discretion to apply domestic preferences in the context of the agreement.

The principal government procurement issue for Canada is the opportunity for discriminatory practices at sub-federal level absent any national treatment obligation. At a policy level, Canada makes clear that until an 'acceptable balance of concessions can be achieved', any change in Canada's GPA coverage (in relation to sub-federal procurement) is unlikely (IQ II: 9.14). However, while sub-federal agencies reserve the right to provide for domestic preferences, it is understood that they rarely do so. And, if they do so, such domestic benefits are normally transparent (IQ II: 9.13). Thus, while the discretion available at sub-federal level increases the risk of discriminatory practices, that is not to say that there is any institutional inclination to discriminate. The Ontario Provincial Government for one relies on complaint-led indications of any problem areas, although it appears that provincial bid challenge procedures are less robust than federal procedures in that there is limited provision to seek other than judicial review.

If concerns continue to be raised in relation to Canada's sub-federal government procurement practices, these should be supported by evidence not assertions. At the same time, given the significance to the Canadian economy of sub-federal procurement, a 'whole of market' approach to national treatment is clearly desirable in the context of APEC's overall goals.

3.10 Deregulation/Regulatory Review and Reform¹²⁰

The Starting Point: The Position in 1996

Canada's 1996 Individual Action Plan indicated that the economy had initiated a thorough regulatory review including the Regulatory Efficiency Act and a revised regulatory policy which sought to ensure, *inter alia*, that Canada's international obligations were met. In the 1997-2000 period, Canada planned a regulatory review to improve the efficiency in six priority sectors, *viz.*, biotechnology; health, food and therapeutic products; mining; automotive and auto parts manufacturing; forest products and aquaculture. Canada also planned to integrate all federally mandated food inspection and quarantine services into the Office of the Food Inspection Systems.

The 2002 Peer Review

The 2002 Peer Review report assessed that Canada had a liberal and transparent regulatory regime. In turn, this had been applauded by the OECD. It assessed that Canada's institutional and legal framework enabled continual regulatory reviews and, where necessary, reforms of domestic regulation that may distort or restrict trade, investment or competition.

The peer review referred to Canada's regulatory policy objective of ensuring that the government's regulatory powers resulted in the greatest 'net benefit' to Canadians. The Cabinet's Regulatory Policy required principles-based regulation and respect for international and inter-governmental agreements. It also contained specific requirements for regulations affecting trade. The peer review noted that Regulatory Impact Analysis Statements had been required since 1986 to accompany any proposed regulation. As well, government policy required departments and agencies to embed evaluation into their management practices. Notwithstanding, the OECD had identified further candidates for reform, *viz.*, the internal market under the Agreement on Internal Trade; import and foreign ownership restrictions in sensitive sectors; and restrictions on agricultural and textile products.

The discussant at the 2002 peer review session commended Canada for applying more of a performance-based model to rules and regulations. The discussant also invited Canada to consider giving due weight to quantitative assessment of the likely costs and benefits arising from any regulatory activity, as a basis for minimising compliance costs.

Actual and Planned Improvements between 2003-2007

Table 3.10.A captures some major government regulatory reform initiatives over the last five years, starting with Smart Regulation in 2002. The Smart Regulation improvement recorded in 2005 related to the Government's announcement of its implementation strategy with three strategic areas:

¹²⁰ Canada has achieved the full trade liberalization score in this area for the period 1996-2007.

Based on IAP Updates for Canada 2003-2006 and 2007 IAP
A = actual improvement in the year
P = planned improvement for the year

TABLE 3.10.A - DEREGULATION/REGULATORY REVIEW AND REFORM: IMPROVEMENTS 2003-2007

Nature of Improvement	Relevant Objective	2003	2004	2005	2006	2007
SMART REGULATION	efficient markets		A ¹²¹	P ¹²² A	P	
- Sectoral reform ¹²³	efficiency, standards and reduced business costs		A	A		
STREAMLINING REGULATION ¹²⁴						A
RIAS ¹²⁵						A

¹²¹ Completion of External Advisory Committee report with recommendations on international and intra-Canada cooperation; risk management; reform; and renewal (including in biotechnology, environmental assessment, offshore oil and gas and product formulation/approval).

¹²² Including developing an evaluation framework and performance measurement of federal regulatory programs.

¹²³ Relating to pharmaceuticals, business paperwork burden, food safety, automobile safety standards and pesticides.

¹²⁴ Adoption of Cabinet Directive.

¹²⁵ Pilot phase of framework to tailor regulatory submission requirements more effectively in context of preparing Regulatory Impact Analysis Statements.

- i) strengthening regulatory management, with emphasis on strengthening the policy and analytical requirements of regulation
- ii) the capacity to undertake life cycle management to enhancing regulatory cooperation, both within Canada and internationally, and
- iii) achieving results in key sectors and thematic areas, consistent with government priorities and the interests of Canadians.

The actual improvement in 2007 in relation to streamlining regulation was Canada's adoption on 1 April of the Cabinet Directive on Streamlining Regulation (the Directive). This encompasses the foreshadowed life cycle approach to federal regulating and differs from previous regulatory policy which applied only to regulatory development. Thus the Directive incorporates many of the recommendations of the 2004 Smart Regulation report.

In noting progress in 2005 on a number of the sectoral reform issues, Canada cited a 58% increase in process efficiency for drug approvals as well as efforts to identify concrete proposals for reducing the business paperwork burden. Also, there were amendments to Canada's business corporation regulations, allowing federal corporations governed by the US Securities and Exchange Commission to prepare and audit their financial statements using generally accepted US accounting principles rather than having to incur the cost of preparing and auditing two sets of financial statements. An environmental assessment MOU had also been signed for east coast offshore oil and gas development to eliminate duplication and delays.

The planned improvements arising from the North American and Prosperity Partnership (SPP) were not only to encourage cooperation and compatibility but also to reduce redundant testing and certification while maintaining high standards for health and safety.

The Position in 2007

Current federal policy is centred on the Directive which will apply to all stages of regulatory development: the identification and assessment of policy issues, regulatory development, implementation, and evaluation and review. Information pertaining to this life cycle approach, as well as the stock of existing regulation, are available on websites. (IQ II: 10. 1-10 also refer.)

There are legal requirements for publication of federal regulations. The Directive specifically requires that notice of proposed regulations and amendments be such as to ensure there is time to take into account comments from those consulted and to make changes. Pre-publication of draft regulations, along with the requisite regulatory impact analysis statement, provide the public with an additional opportunity (minimum 30 days) to comment. A central internet consultations portal has been established with links to a range of consultations involving regulatory matters.

Canada's policy is thus to continue to embed the 'discipline of evaluation' in the management of all federal policies, programmes and initiatives, including regulatory programmes. The focus is on whether initiatives are delivering intended results and on continually implementing improvements to that end.

The Directive also requires that technical regulations that affect trade be pre-published in the *Canada Gazette* for a period of at least 75 days. This fulfils Canada's international notification obligations, viz, WTO and NAFTA provisions on technical barriers to trade; WTO and NAFTA provisions on sanitary and phytosanitary measures; as well as other multilateral, regional and bilateral agreements referring to regulations and standards.

The Directive also contains provisions on international cooperation.

2008-2010: Canada's Planned Improvements

With Canada's adoption of the Directive early 2007, further planned improvements are focused on continuing development of guidelines and tools aimed at supporting its implementation. Officials consider they now have a policy foundation for establishing baseline performance indicators and for more rigorous cost/benefit and risk analyses in support of regulatory reform, with emphasis on high and medium impact proposals. Such a centre of regulatory expertise, and the meeting of service standards for approval processes, has capacity building implications.

Progress on Bogor Goals

Canada's Self-Assessment

While Canada has not ranked its degree of actual and prospective advance towards APEC's deregulation/regulatory review objective, its regulatory reform agenda is considered as giving impetus to that advance.

Concluding Assessment

There is no doubt as to Canada's future policy priority in relation to regulatory reform (as distinct from deregulation): the 2007 Directive provides a policy impetus for a more rigorous, systematic and transparent approach to regulatory policy and management in the future, with the potential for significant reach. As the OECD concluded in 2002, Canada's emphasis on regulatory transparency and consultation was a 'great asset for moving forward'. The same is true today.

If Canada succeeds in building a centre of regulatory expertise and in embedding the discipline of evaluation (against appropriate objectives) in its bureaucracy, this should contribute to APEC's objective - of 'eliminating domestic regulations that may distort or restrict trade, investment or competition and are not necessary to achieve a legitimate objective' and of 'speeding up reforms which encourage efficient and well functioning product, labour and capital markets'.

It is encouraging that the Competition Bureau is to be involved in a working group on cost/benefit analysis. Hopefully this will ensure that significant impacts of federal regulations on competition and efficiency will be to the fore in cost/benefit analyses, not only of new regulatory proposals but also of regulatory review proposals.

While provincial agencies do not come under the purview of federal regulatory policy, Canada advises that there are mechanisms such as the Federal-Provincial-Territorial

Working Group on Regulatory Reform and the Canadian Council of Ministers of the Environment which aim to promote and strengthen regulatory reform throughout Canada (IQ II: 10.4). It is noted that one of the OECD's 2002 review findings was that policies to improve federal-provincial coordination should continue to be a high priority. The OECD had also concluded that further pro-competitive regulatory reforms were important, as were actions to reduce inter-provincial barriers to trade.

Inter-provincial trade barriers have been described by the C.D. Howe Institute (Macmillan and Grady, 2007) in terms of their negative impact on Canadian productivity and investor perceptions; and justification for their reduction/removal 'should not require exaggerated estimates of their cost'. Excess and over-lapping business regulations are said to be amongst the most important remaining barriers. The Institute has therefore welcomed the Trade, Investment and Labour Mobility Agreement (TILMA) between Alberta and British Columbia which came into effect on 1 April 2007 and is scheduled to be fully implemented within two years. TILMA's primary objective is to create a seamless border between the British Columbia and Alberta provinces, thereby addressing 'a host of regulatory and administrative matters' that the Agreement on Internal Trade does not cover.

Mutual recognition or reconciliation of all standards and regulations (including those that affect financial and professional services, occupation certification and construction safety) is clearly an important (albeit ambitious) feature of TILMA.

3.11 Implementation of WTO Obligations

Since the last IAP Peer Review report (APEC, 2003d), Canada has fully and effectively implemented its Uruguay Round commitments with many obligations being implemented ahead of schedule. In APEC (2007a) and Canada's responses to the IQ (Annex 1) a detailed list of the dates and coverage of the WTO obligations are provided. Despite these achievements in goods, services, and intellectual property rights, there are still some trade distortions imposed by Canada (and other APEC and WTO economies) which undermine the Bogor goals on the free flow of trade in goods and services as described in the respective sections of this report.

One particular distortion not discussed in these individual sections relates to the two APEC goals on rules of origin (ROO), namely: i) to ensure full compliance with internationally harmonized rules of origin to be adopted in relevant international fora, and ii) to ensure that their respective rules of origin are prepared and applied in an impartial, transparent and neutral manner. Canadian ROO as in many other APEC and WTO economies are not internationally harmonized and they are not necessarily neutral¹²⁶.

Canada has preferential and non preferential ROO. Further, ROO among preferential reciprocal (i.e., FTAs/RTAs) and non-reciprocal (e.g., GPT) arrangements are also different (FAITC, 2007g). In a recent WTO study (Stevadeordal *et al*, 2007) the differences among ROO of FTAs/RTAs around the world are shown. The study concludes that ROO in NAFTA are amongst the most restrictive (and therefore non-neutral), in particular in the sensitive sectors (Agriculture, Textiles and Apparel). On the other hand, although ROO do diverge among FTAs/RTAs around the world, there are some signs of a *de facto* cross-regional stylistic harmonization of ROO as the NAFTA model is spreading into Asia Pacific arrangements.

As a consequence of the ROO deficiencies, the key APEC collective action - to study in due course the implications of ROO on the free flow of trade and investment, with a view to identifying, in the longer term, both positive and negative aspects as well as effects of ROO-related practices - is in urgent need of achievement.

¹²⁶ The MLI score in the implementation of WTO obligations with respect to ROO is 0.0315 in 1996/1998 and 0.345 for the years 2003 and 2007. The free trade (maximum) score in ROO (of 0.06) is achieved if no ROO are applied.

3.12 Dispute Mediation

By 2007, Canada's legal framework on Dispute Mediation (DM) has the following features¹²⁷:

- i) According to Canada's Constitution Act of 1867, legislative powers on 'arbitration' and on 'enforcement of arbitral awards' are shared: the federal government deals with the international legal framework on DM and the provinces and territories with the domestic (provincial and territorial) laws;
- ii) On the international side, Canada has similar, although with some specific differences, DM rules and procedures between the two major types of trade-investment arrangements: the multilateral arrangement under which Canada follows the WTO Dispute Settlement Understanding (DSU); and Canada's FTAs/RTAs including the FIPAs. In NAFTA, Chapter 11 sets out dispute resolution procedures to resolve complaints between the investor and the host state. Dispute settlement provisions for countervailing duty and antidumping matters are covered under Chapter 19. Chapter 20 includes provisions relating to the avoidance or settlement of all disputes regarding the interpretation or application of NAFTA. The CCFTA contains equivalent provisions to NAFTA Chapters 11 and 20. In the CCRFTA and CIFTA, provisions for consultations and effective state-to-state settlement through arbitration have been included. CCFTA and the 2006 FIPA between Canada and Peru, which use the NAFTA model on DM, contain provisions which encourage the effective resolution of state-to-state and investor-state disputes through consultations and arbitration;
- iii) In 1986, Canada acceded to and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The 'New York Convention'). The federal government implemented the New York Convention through the enactment at the federal level of the United Nations Foreign Arbitral Awards Convention Act; and the provinces implemented the Convention either within the same statute as the implementation of the United Nations Commission on International Trade Law (UNCITRAL) Model of Law on International Commercial Arbitration, or by separate statute, resulting in 14 separate jurisdictions within which enforcement of an arbitration award may be sought. Although the UNCITRAL Model of Law on International Commercial Arbitration did not create treaty obligations, it still required domestic legislation to make its provisions effective within Canada;
- iv) The Federal Commercial Arbitration Act applies to domestic and international commercial arbitrations, but is limited to maritime or admiralty arbitrations or those disputes involving at least one party that is Her Majesty in right of Canada, or a Canadian federal crown corporation or department. Most provinces and territories have separate international arbitration legislation which applies to international commercial arbitrations between private parties where one of the parties is 'foreign' and where the federal Commercial Arbitration Act does not apply;

¹²⁷ From APEC (2007a) and Davidson (2007).

- v) On 15 December 2006 Canada signed onto the International Centre for the Settlement of Investment Disputes Convention (ICSID). The ICSID Convention provides for effective dispute settlements using various forms of Alternative Dispute Resolution (ADR). It is also an independent body which provides for the review and enforcement of ICSID arbitral awards. Laws to implement the ICSID Convention have been enacted in five of Canada's provinces and territories, and other implementing legislation is expected in the coming year. Federal legislation to implement the ICSID Convention has been prorogued up to next year.

These features of the DM laws in Canada affect the Bogor objectives 'to facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments and disputes between private parties in the Asia-Pacific region, and to ensure increased transparency of government laws, regulations and administrative procedures' of DM procedures. Consequently, there is a need for a unified internal legal framework consistent with international laws and also unified rules and procedures within the international arrangements signed by Canada.

One collective action of particular interest in the present section relates to statistical information with respect to resolution of disputes between private parties and between parties and APEC economies. In order to achieve the Collective Action goal on statistical information and learn about the trade and cost effects of the current Canadian DM rules, it is also necessary to develop a database with regard to:

- i) The number of disputes classified by: a. their form or resolution (i.e., arbitration, mediation and conciliations); b. types of parties (private, levels of government and economies) involved; and c. by the final outcomes of the disputes; and
- ii) Registration of past experience on the DM cases to be used for future improvements (such as reducing cost and time) of DM procedures.

Information on DM cases involving the government of Canada since 2005 is provided In APEC (2007a).

3.13 Mobility of Business People¹²⁸

The Starting Point: The Position in 1996

The position in 1996 was that citizens of several APEC members required visas. The usual length of a visa granted to business persons was six months but this could be renewed or extended once the person was in Canada. For multiple-entry visas, the length of stay for any single entry was limited to six months. With respect to work permit requirements, exemptions were based on occupation and not nationality. In 1996, Canada undertook to participate actively in the WTO and APEC work on mobility of business persons.

The 2002 Peer Review

In its 2002 assessment, the Peer Review team credited Canada with enhancing the mobility of business people by increasing the transparency of the visa regime and streamlining processes for people entering Canada. But it also noted Canada's distinction between two groups of APEC members and the fact that it did not participate in the APEC Business Travel Card Scheme. While Canada's view was that short term visa-free access was available to most APEC members, this still left foreign nationals from nearly half the APEC member economies requiring a visa for short term business travel. However, for economies that were not visa-exempt, multiple entry visas could be issued for up to five years, being two years more than recommended in the Osaka Action Agenda.

Actual and Planned Improvements between 2003-2007

As shown in Table 3.13.A, improving information access, application process improvements and continuous training support for officers, were all noted by Canada in the 2003-2007 period. No changes were noted by Canada over the past five years in the visa regime, short term/temporary business entry, or technical cooperation in training. Neither was there any reference to the APEC Business Travel Card Scheme.

The Position in 2007

Governing Framework

The Immigration and Refugee Protection Act which came into force mid-2002 was aimed at streamlining and improving the efficiency of document processing for temporary foreign nationals, including business persons. It represented a move away from a strict protection of specific job opportunities for Canadians to facilitating the entry of highly skilled workers, subject to the statutory requirements of the Immigration Act and regulations, i.e., when the result is of net economic benefit to Canada.

Canada's Border Services Agency (CBSA), established at the end of 2003, resides under Canada's federal department of Public Safety and Emergency Preparedness and

¹²⁸ The MLI score for the period 1996-2007 is 0.0540. Canada has not achieved full score (i.e., 0.06) due to the fact that permanent and temporary visas are still granted on a discriminatory basis, i.e., using selection and admissibility criteria respectively.

works closely with the Citizenship and Immigration Department (CIC) which is responsible for immigration policy and guidance and which has visa offices in 19 of the APEC member economies. General visitor and temporary residency information, plus application forms and guides and other services, are provided on the redesigned CIC website. A 'business visitor' link to facilitate navigation is being investigated.

While CIC does not have a formal mechanism for dialogue with business relating to APEC business mobility issues, it does participate in conjunction with Foreign Affairs and International Trade Canada in consultations with various stakeholders when trade related business mobility issues are raised.

The Public Service Modernization Act requires senior managers to undergo comprehensive training on values, ethics and leadership. Canada is confident that all visa applicants receive equitable services` based on natural justice, procedural fairness and the principles of administrative and common law (IQ II: 13.7).

Transparency

The 2007 IAP describes CIC as one of the lead departments in the government's online initiative, i.e., a single website which is to be an integrated, multi-service delivery network with information and services organized by topic or client sector. While no recent survey has been undertaken on the level of user satisfaction with the transparency achieved, Canada is considering a feedback strategy (IQ II:13.1).

Current Policy

- i) Business people entering Canada for short term visits require a temporary resident visa unless exempted.
- ii) Exemptions currently exist for nationals of 10 APEC economies. (IQ II: 13.13 'additional information'). A range of criteria applies for determining exemption. These criteria do not include reciprocity or membership in a particular economic or political union (IQ II: 13.13).
- iii) Applicants are not required to lodge their visa applications in person, although an interview may be required.
- iv) Multiple-entry visas are available for business visitors from the other APEC economies and repeat business visitors are encouraged to apply. These have a maximum validity date of up to five years or one month prior to the expiry date on the passport/re-entry visa, whichever is the earlier. Upon arrival at a port of entry, entry may be granted for a stay of up to six months.
- v) If temporary entry status and visa remain valid, applications to extend the stay may be submitted in Canada.
- vi) Canada does not participate in the APEC Business Travel Card Scheme.
- vii) All commercial airlines are required to provide specific information to CBSA regarding persons prior to their arrival in Canada.

Based on IAP Updates for Canada 2003-2006 and 2007 IAP
 A = actual improvement in the year
 P = planned improvement for the year

TABLE 3.13.A - MOBILITY OF BUSINESS PEOPLE: IMPROVEMENTS 2003-2007

Nature of Improvement	Relevant Objective	2003	2004	2005	2006	2007
INFORMATION/ONLINE ACCESS	transparency		A	A		A
PROCESSING APPLICATIONS	ICT use to improve		A			
TRAINING OFFICERS¹²⁹ co-training	capacity building technical cooperation	A				

¹²⁹ Continuous training support, but no specific outcomes were cited for the period.

- viii) Nationals of APEC economies seeking temporary business residency are required to apply for a temporary work permit and also a visa unless otherwise exempted.
- ix) Streamlined procedures are described in the IAP for intra-company transfers of senior executives and managers.
- x) Where specialized knowledge is claimed, evidence must be provided that that claim is valid and that the position in Canada requires such knowledge.
- xi) In most cases the work permit for an intra-company transferee would be valid for up to three years if the applicant demonstrates that the purpose of the stay is temporary.
- xii) Accompanying family members of work permit holders may be issued with work or study permits, but never visas on arrival (IQ II: 13.6b).
- xiii) A foreign national who wishes to become a permanent resident must apply for a Permanent Resident visa. While the applicant is not required to hold a work permit, it is to the advantage of the Federal Skilled Worker classification for the applicant to have worked or studied in Canada (IQ II: 13.8).

Statistics

Canada publishes detailed statistics by country for temporary resident visas and work permits. Overall, the number of Canada's visa cases for the Asia-Pacific region increased by over a quarter between 2002 and 2006; temporary work permits increased by 57%. Processing times are also publicly available (IQ II: 13.4, 6a). Overall, 81% of temporary resident visa cases are processed in seven days or less and 62% in two days or less. (Over 85% of intra-company transfer applications from APEC economies are completed in 28 days or less.) Whether or not any improvement in these statistics is envisaged over the next three years is not known as Canada does 'not engage in forecasting processing times' although it believes its current visa processing times are exemplary (IQ II: 13.3). As there is no visa specifically for business visitors/business purposes, and hence no specific business visitor code, Canada is unable to track the number of business visitor visas issued nor processing times in relation to them.

2008-2010: Canada's Planned Improvements

Canada's planned improvements in 2007 in respect of business mobility reflect work-in-progress in five specific areas. These are summarized below:

1. Implementing the Advance Passenger Information(API)/Passenger Name Record (PNR) program, with the CBSA's current focus on air travel, to facilitate the flow of legitimate, low-risk people and goods and to focus resources on unknown or potentially high-risk areas. While for air, API has been in place since October 2002 and PNR since July 2003, definitive timelines have not yet been established for the remaining modes of transportation (IQ II: 13.2)
2. Continuing CBSA's work on document fraud and security
3. Continuing to monitor the impact on temporary people movement to Canada of the 2002 Immigration and Refugee Protection Act

4. Continuing commitment to professional development for all visa and immigration officers, and
5. Continuing consultations with Canada's ABAC representatives on business mobility issues within APEC.

Electronic filing of visa applications is also being planned. Further, Canada states that it has made a commitment to recognize the APEC Business Travel Card, as a trade facilitation measure, starting 1 January 2008. Two phases are envisaged along with legislative review (IQ II: 13.9-13.10), noting that economies currently requiring a visa and valid passport to enter Canada will continue to face that requirement.

Progress on Bogor goals

Canada's Self-Assessment

Canada points to its further liberalization of temporary entry of foreign nationals, including business persons, during the 1996-2007 period; and it assesses that it has achieved 90%-100% completion of APEC's business mobility objectives. It expects further to advance in that range by 2008. At the same time, Canada considers that there will always be ways to streamline processes and consultative mechanisms further, suggesting that the APEC goal is in fact a process of continuous improvement (IQ II: 13.12-13).

Concluding Assessment

As earlier summarized, Canada's IAPs show several improvements over the 2003-2007 period and a number of currently planned improvements. However, in the absence of accompanying performance measures, the extent and impact of these improvements cannot be assessed. Officials advised that, absent an integrated system focusing on business mobility, it was difficult to target or monitor progress towards APEC's business mobility goals, hence the focus on areas that affect business mobility in practice.

Certainly it appears that Canada has a liberal and transparent visa policy and that it is alert to areas for further improvement in its immigration processes. It may well be that a less compartmentalized approach, and one that focuses on business purposes and that incorporates relevant measures, might better facilitate assessment of Canada's advance towards the Bogor goals. The ultimate purpose of enhancing the mobility of business people is to facilitate trade (and investment). Facilitating trade in this way could usefully be given more prominence in the CIC mandate.

3.14 Free and Regional Trade Agreements (FTAs and RTAs)¹³⁰

According to APEC (2004d), two major APEC objectives on FTAs and RTAs are on the one hand, the (degree of) consistency between FTAs/RTAs and the WTO multilateral arrangement and on the other hand, the (degree of) consistency between FTAs/RTAs and APEC principles and goals, in particular the principle of non-discrimination on the rules of trade and investment among APEC (including FTAs/RTAs member and non-member) and between APEC and non-APEC economies (including member or non-members of the FTAs/RTAs).

On the latter issue, there are some specific areas among the Canadian FTA/RTAs in the period 1988-2002 where the APEC/WTO principle of non-discrimination does not hold. Thus:

- i) In ad-valorem MFN tariffs, the average applied tariff rates on each of the four Canadian FTAs/RTAs, although lower than the respective MFN applied tariff rate, are different between the member economies¹³¹;
- ii) Canada's sensitive agriculture sectors have higher than the average preferential ad-valorem tariff rates in each Canadian FTAs/RTAs, although lower than the respective MFN tariff rate¹³²;
- iii) Antidumping duties are not allowed in CCFTA. In CIFTA and NAFTA the antidumping measures have specific provisions and in CCRFTA, there are no provisions (Prusa WTO, 2007). CIFTA and NAFTA have specific safeguard provisions and CCRFTA and CCFTA do not have specific safeguard provisions other NTMs follows the WTO rules;
- iv) All the agreements have specific ROO;
- v) In services, NAFTA does not cover most air transport services, maritime transport services and basic telecommunications services. In CIFTA and CCAFTA, the service is governed by WTO rules. In CCFTA the sectoral services coverage is substantial (although it excludes some air services on cross-border trade in services);
- vi) In other areas included in Canada's FTAs/RTAs (e.g., government procurement, dispute settlement, investment etc.) there are also some differences, although in most cases the WTO rules are applied.

To what extent these differences among FTAs/RTAs help towards a unified and consistent WTO multilateral framework in the DDR of negotiations is not clear for many

¹³⁰ Due to the discriminating effect of FTAs/RTAs, some subtraction of the MLI has been made in tariffs, antidumping and countervailing measures.

¹³¹ In 2006, for the USA and Mexico (NAFTA) is 2.6%; Chile (CCFTA) 2.5%, Costa Rica (CCAFTA) 3.5% and Israel (CIFTA) 3.1%. (WTO, 2007a). Costa Rica and Israel are not APEC economies.

¹³² In 2006, the ad-valorem tariff rate in the WTO agriculture sector in NAFTA is 17.7%, in CCFTA 17.5%, in CCRFTA, 17.8% and in CIFTA 21.5%. (WTO, 2007a).

experts¹³³. Nonetheless, these differences among Canadian FTAs/RTAs shed some doubts on both the (degree of) consistency between FTAs/RTAs and the WTO multilateral arrangement and the (degree of) consistency between FTAs/RTAs and APEC principles and goals.

¹³³ There are extreme positions: those studies which argue that FTAs/RTAs contribute to multilateralism (e.g., World Bank, 2000 and Summers, 1991) and those which argue that FTAs/RTAs obstruct multilateralism (e.g., Bhagwati, 1999).

3.15 Trade Facilitation

Highlights on Trade Facilitation Work since Shanghai Accord

Canada's 2007 IAP includes highlights on trade facilitation work, both in 2007 and cumulatively since the adoption of the Shanghai Accord. Table 3.15.A classifies a number of improvements that have been facilitating the movement of goods and passengers, the harmonization, conformity and transparency of regulatory standards, the reliability and privacy of the internet, as well as capacity building.

Implementation of Concrete Actions and Measures since 2004

Table 3.15.B shows Canada's assessment of progress in terms of commencing or completing its selection of items from the APEC menu of concrete actions and measures. Canada records that implementation of all of its 72 selected items has commenced and that implementation has been completed in respect of 51 (or 71%) of those 72 items. Most of the items classified as work-in-progress fall within the customs procedures and electronic commerce areas. Canada does not foresee 'significant obstacles' to completing the remaining 21 actions in the near future.

Canada's Planned Improvements and Policy Priorities

Further improvements in customs procedures are expected to flow through into trade facilitation improvements - relating specifically to the flow of legitimate people and cargo, the availability of accessible and timely information, and an assurance of fairness when dealing with the CBSA. Canada will also continue to encourage the internationalization of standards and employ electronic means to improve information available through the Standards Council of Canada.

Benefits and Measurement

Canada has documented its assessment of the type of benefit derived from its implemented actions and measures, as well as the type of benefit to be derived from a number of ongoing/updating actions and measures. While not mutually exclusive, these benefit types are set out in Table 3.15.C.

While Canada's IAP expresses confidence that its substantial progress in implementing its selection of actions and measures will significantly contribute to APEC's trade facilitation objective, it has also acknowledged that the overall effect of its trade facilitation initiatives has not yet been measured. But Canada has indicated that it is interested in working with other APEC members in establishing an appropriate measurement methodology.

Concluding Assessment

The continuous actions and measures that give rise to the type of benefits identified in Table 3.15.C are providing an important platform for Canada's contribution to the objective of APEC's Trade Facilitation Action Plan. The experts are not however in a position to take this assessment further. Both data integrity problems and (as indicated

by officials) a lack of focus on 'output' measurement, necessarily limit assessment of the actual impact of Canada's trade facilitation measures in terms of 'concrete and commercially relevant outcomes'.

Based on 'Highlights on Trade Facilitation Work' 2007 IAP.
 Numerous detailed cumulative but undated improvements since the Shanghai Accord are not shown in this table.
 A = actual improvement

TABLE 3.15.A - TRADE FACILITATION: IMPROVEMENTS 2003-2007

Specific Area	Nature of Improvement	Relevant Objective	2003	2004	2005	2006	2007
CUSTOMS	ACI ¹³⁴ marine and air	movement of goods		A	A	A	
STANDARDS	committees	harmonization					A
	conformity assessments/measurement comparisons	conformity			A	A	
	accreditation programs	conformity	A	A	A	A	A
	Export Alert! ¹³⁵	regulatory transparency				A	
	Standards Alert! ¹³⁶	regulatory transparency				A	
BUSINESS MOBILITY	API/PNR ¹³⁷						
OTHER	principles for electronic authentication	e-commerce					A
	privacy law enforcement	e-commerce					A ¹³⁸
TRADE FACILITATION	APEC workshop	capacity building			A		
	SPP ¹³⁹	trade related		A	A		P ¹⁴⁰

¹³⁴ Advance commercial information.

¹³⁵ This Canadian initiative in 1999 continues as a free email notification service which, in 2006/07, increased its customer base by 20%.

¹³⁶ The Standards Council of Canada hosts this online service on changes to Canadian and international standards. In 2006/07, the number of subscribers increased by 31%.

¹³⁷ The program of advance passenger information and passenger name record has been implemented at eight airports.

¹³⁸ Active participant in international fora.

¹³⁹ Security and Prosperity Partnership: Canada/US (2004) and Canada/US/Mexico (2005).

¹⁴⁰ Planned completion date for a trilateral regulatory cooperation framework.

TABLE 3.15.B – TRADE FACILITATION: MENU OF ACTIONS AND MEASURES – IMPLEMENTATION PROGRESS

(Number of items)

Specific Action Area	APEC Menu	Canada's Selection	Commencement of Implementation	Completion of Implementation	Work-in-Progress for Completion
CUSTOMS PROCEDURES	60	39	39	30	9
STANDARDS	20	16	16	13	3
BUSINESS MOBILITY	6	6	6	5	1
OTHER (electronic commerce)	11	11	11	3	8
	97	72	72	51	21

TABLE 3.15.C - ACTIONS AND MEASURES BY BENEFIT TYPE

Benefit Type	Actions and Measures Implemented	Actions and Measures Ongoing/Up-dating (2007 Trade Facilitation Action Plan)
transparency in customs administration	√	
readily available and shared information		√
transparency of customs laws and regulations		√
streamlining/simplification of customs procedures	√	
simplification of data requirements		√
streamlining of processes and expediting goods clearance		√
facilitating trade in low-risk goods		√
reducing barriers and costs of trade		√
consistency for all traders	√	√
predictable customs procedures	√	
certainty in business transactions	√	
clarity in the process of moving goods	√	

ANNEX I

THE INITIAL QUESTIONNAIRE

Prepared by APEC Experts

**Mario D Tello
Kerrin M Vautier**

and

CANADA'S RESPONSES

for

APEC'S PEER REVIEW

of

CANADA'S 2007 INDIVIDUAL ACTION PLAN

Introduction

The Initial Questionnaire incorporated an initial set of questions on Canada's 2007 Individual Action Plan (IAP) as submitted by three member economies and the two APEC Experts. Also included were a few questions arising from issues identified by ABAC. Subsequently, questions were received from Japan and China which have also been included in the annexed document. Members' comments and ABAC's policy requests were not included in the questionnaire but formed part of the information base for the Study Report.

The questions were classified under three sections: Section I, an Overview section on broad economic and policy issues; Section II, a section covering the 18 specific action areas; and Section III, a section on Canada and APEC.

Australia's questions (Q) are covered in:

- Section II: IAP chapter 5. Q5
- Section II: IAP chapter 8. Q7,8,10,11

Chinese Taipei's questions are covered in:

- Section II: IAP chapter 3. Q7,12,18,19,20,29,30
- Section II: IAP chapter 8. Q13,14

Hong Kong, China's questions are covered in:

- Section II: IAP chapter 3. Q12,14,24,25
- Section II: IAP chapter 4. Q6
- Section II: IAP chapter 6. Q3,7
- Section II: IAP chapter 7. Q7

Japan's questions are covered in:

- Section II: IAP chapter 15. Q9,10
- Section II: IAP chapter 7. Q11

China's questions are covered in

- Section II: IAP chapter 4. Q8,9,10
- Section II: IAP chapter 6. Q12,13,14
- Section II: IAP chapter 3. Q33

Specific questions arising from ABAC's paper 'Issues and requests relating to foreign trade and investment' are covered in:

- Section I: Q5,6
- Section II: IAP chapter 9 Q13
- Section II: IAP chapter 10. Q11
- Section II: IAP chapter 13. Q6,7,8

ABAC's full submission is found in Annex 7.

SECTION I. OVERVIEW OF ECONOMIC AND POLICY ISSUES

In relation to the 2002-2007 period:

1. Please briefly describe economic developments in Canada with reference to relevant statistics. (Unless otherwise stated, \$ sign refers to Canadian dollars.)

CANADA'S RESPONSE: Canada's strong economic performance continued in 2006, with real gross domestic product (GDP) increasing by 2.7%—driven primarily by consumer spending and non-residential investment. The following trends in Canadian trade and investment took place in 2006:

- Exports of goods and services increased by 1.1% to top \$523.7 billion, accounting for about 36.4% of Canadian GDP. All major categories of exports increased in 2006, led by industrial goods and materials (11.9%), with the exception of forestry products, automotive products and energy products, which declined by 8.6%, 6.0% and 0.4% respectively.
- Imports outpaced exports, increasing by 4.2% to reach \$486.5 billion. As a result, the trade balance declined by \$13.9 billion, equivalent to about twice the reduction in the overall current account balance over the previous year.
- The annual surplus on goods accounted for most of this decline, falling by \$10.6 billion to \$54.3 billion. The goods surplus with the United States dropped by about 11% to \$96.9 billion but was still responsible for the entire trade surplus. Canada's goods trade deficit with non-U.S. destinations decreased slightly to \$42.7 billion, down from \$43.9 billion in 2005.
- Although services exports increased to \$65.1 billion in 2006, the services deficit rose to a record \$17.1 billion, up from \$13.7 billion in 2005, as imports topped \$82.2 billion. The \$3.4 billion increase in the deficit was largely due to higher travel costs (fares) and other trip expenses for Canadians travelling abroad and a widening in the deficit for transport services.
- Direct investment outflows reached \$47.8 billion, with acquisitions accounting for \$3.8 billion of this amount. More than three quarters of Canadian direct investment into foreign economies in 2006 went to the finance and insurance sectors (\$37.6 billion). On a geographic basis, the United States attracted most of this investment.
- At \$75.6 billion in 2006, foreign direct investment (FDI) flows into Canada were the second highest on record and were largely dominated by acquisitions. The United Kingdom and the United States were the main direct investors in Canada in 2006, with investments of \$22.2 billion and \$20.9 billion, respectively.

Key Economic Indicators for Canada between 1986 and 2006 can be found at this link:
http://www.international.gc.ca/eet/pdf/economic_indicators-en.pdf

2. Please briefly describe the major policy initiatives relating to trade and investment implemented by Canada and how these have impacted on trade and investment expansion in the specified period.
3. Please provide an overview of Canada's pattern of trade in terms of exports and imports (including trade volumes) while taking into account:
 - a. commodities (including oil/gas) traded, and
 - b. the source and destination of trade (including trade accounted for by NAFTA and other RTAs).

CANADA'S RESPONSE: A comprehensive overview and complete up to date statistics pertaining to Canada's pattern of trade in terms of exports and imports can be found at this site:

<http://www.international.gc.ca/eet/menu-en.asp#tradeneg-en>
more specifically:
<http://www.international.gc.ca/eet/balance-payments-en.asp>

as well as from Statistics Canada:

<http://www.statcan.ca/english/tradedata/tradedata.htm>

4. In relation to both the 1996-2002 and 2002-2007 periods, what has been the rate of growth in the value of services trade between:
 - a. Canada and other NAFTA economies

CANADA'S RESPONSE: Canada's trade in services with the United States and Mexico grew at an average annual compounded rate of 5.4% to reach \$82.7 billion in 2004, up from \$46.4 billion in 1994. Trade in services with the United States reached \$81.2 billion in 2005, up from \$42.3 billion in 1993. Two-way trade in services between Canada and Mexico has grown at an annual compounded rate of 9.0%, to reach over \$1.6 billion in 2004. Approximately 57% of Canada's services exports go to NAFTA partners.

- b. Canada and other APEC economies, and
 - c. Canada and non-APEC economies?

CANADA'S RESPONSE: Canada's other trading partners figure prominently in the services picture. In 2003, the European Union purchased about \$4.9 billion of Canadian services and at \$1.9 billion in 2005, Japan is the third largest purchaser of Canadian services. Japan accounts for about 25.6% of Canada's total service exports to the Asia-Pacific and is by far the largest purchaser of Canadian services in the region.

Between 1990 and 2004, commercial services exports to Brazil grew by 23.5 percent annually; and to China by 16 percent.

Source: Foreign Affairs and International Trade Canada website (Office of the Chief Economist webpage).

2005 data for United States and European Union are available. 2004 data were used because more recent data are not available for "Other Countries".

5. Does Canada have any plans to reform the following elements of company tax policy in the next three years:
 - a. The rate of business tax
 - b. Corporate capital tax on loans and capital
 - c. Thin capitalization taxation rules?
6. In relation to transfer pricing and taxation, could Canada please comment on:
 - a. the transparency of policy and procedures
 - b. the extent to which the procedure relating to the transfer pricing taxation examination could be simplified, and
 - c. the risk of double-taxation?

SECTION II. SPECIFIC ACTION AREAS

1. TARIFFS

1. To what extent has the economy progressively reduced tariffs?

CANADA'S RESPONSE: Between 1996 and 2006 the percentage of imports, by value of goods, that enters Canada duty-free under MFN, unilateral or negotiated preferential tariff treatments, has risen from 78% to 88%.

Over the same period, Canada's import-weighted average tariff applied to all imports has dropped to 0.9%.

2. What major tariff reductions has Canada recently undertaken?

CANADA'S RESPONSE: Canada continues to eliminate "nuisance tariffs" from MFN and preferential tariffs when they fell below the 2% threshold.

Canada continues to unilaterally reduce applied tariffs on certain goods used in the production of other goods (manufacturing inputs) or in the provision of services. For example, in 2005, Canada unilaterally eliminated the applied tariffs on a wide range of fibres, yarns and apparel fabrics used in the manufacture of apparel.

Canada continues to implement its tariff reduction commitments pursuant to the Canada-Costa Rica Free Trade Agreement.

3. How significant are these tariff reductions in the context of achieving the Bogor goals?

Please use the format of the 'APEC Individual Action Plan: Tariff Summary Report for 2006' (reported in Canada's APEC-IAP-2007) in order to show the tariff changes undertaken and to be undertaken (for example, the simple duty-free tariff lines as a percentage of all lines was ... in 1996; 52% in 2006; and is expected to be ... % in 2010).

It would be very useful if tariff changes (past and future) could be decomposed by developed (APEC Members and Non Members) and developing economies (APEC Members and Non Members).

CANADA'S RESPONSE: These tariff reduction initiatives coupled with a successful, timely and ambitious outcome in the WTO Doha Round of multilateral negotiations would contribute significantly to reaching the Bogor goals.

APEC INDIVIDUAL ACTION PLAN: EVOLUTION TARIFF SUMMARY 1996-2006															
	All Goods	Agriculture	Fish and Sea Products	Petroleum Oils	Wood, Pulp, Paper and Rubber	Textiles and Clothing	Leather, Rubber, Footwear	Metals	Chemical & Pharmaceuticals	Transport Equipment	Non-Electric Machinery	Electric Machinery	Mineral Products, Precious	Articles	Manufactured
Duty-free tariff lines as a % of all lines	1996: 31.9% 2006: 52% 2010: ?	1996: 33.7% 2006: 40% 2010: ?	1996: 83.3% 2006: 72% 2010: ?	1996: 57.1% 2006: 53% 2010: ?	1996: 41% 2006: 76% 2010: ?	1996: 6.4% 2006: 42% 2010: ?	1996: 23.9% 2006: 35% 2010: ?	1996: 22.6% 2006: 64% 2010: ?	1996: 40% 2006: 48% 2010: ?	1996: 28.3% 2006: 41% 2010: ?	1996: 38.7% 2006: 71% 2010: ?	1996: 25.9% 2006: 56% 2010: ?	1996: 59.6% 2006: 74% 2010: ?	1996: 37.1% 2006: 51% 2010: ?	
Simple average MFN applied tariff rate	1996: 6.7% 2006: 3.8% 2010: ?	1996: 5.6% 2006: 4% 2010: ?	1996: 1.1% 2006: 1.4% 2010: ?	1996: 6.9% 2006: 3.1% 2010: ?	1996: 4.6% 2006: 1.6% 2010: ?	1996: 16.9% 2006: 8.1% 2010: ?	1996: 9.8% 2006: 5.6% 2010: ?	1996: 5.4% 2006: 1.9% 2010: ?	1996: 5.3% 2006: 2.9% 2010: ?	1996: 7.9% 2006: 5.2% 2010: ?	1996: 4.1% 2006: 1.7% 2010: ?	1996: 5% 2006: 2.4% 2010: ?	1996: 3.3% 2006: 1.8% 2010: ?	1996: 5.4% 2006: 3.1% 2010: ?	
Simple average dutiable MFN applied tariff rate	1996: 10.1% 2006: 8.3% 2010: ?	1996: 11.3% 2006: 8.7% 2010: ?	1996: 6.3% 2006: 5.1% 2010: ?	1996: 10.3% 2006: 6.5% 2010: ?	1996: 7.9% 2006: 7.2% 2010: ?	1996: 18.1% 2006: 13.9% 2010: ?	1996: 12.9% 2006: 8.6% 2010: ?	1996: 7% 2006: 5.2% 2010: ?	1996: 8.8% 2006: 5.6% 2010: ?	1996: 11% 2006: 8.9% 2010: ?	1996: 6.6% 2006: 5.7% 2010: ?	1996: 6.8% 2006: 5.4% 2010: ?	1996: 8.4% 2006: 7.1% 2010: ?	1996: 8.6% 2006: 6.4% 2010: ?	
Import-weighted average applied tariff rate	1996: 1.6% 2006: 0.9% 2010: ?	1996: 3% 2006: 1.2% 2010: ?	1996: 0.2% 2006: 0.5% 2010: ?	1996: 0.1% 2006: 0% 2010: ?	1996: 1% 2006: 0.9% 2010: ?	1996: 11.8% 2006: 9.5% 2010: ?	1996: 6.8% 2006: 4.9% 2010: ?	1996: 1.9% 2006: 0.5% 2010: ?	1996: 1.4% 2006: 0.5% 2010: ?	1996: 0.8% 2006: 0.9% 2010: ?	1996: 0.5% 2006: 0.1% 2010: ?	1996: 1.2% 2006: 0.4% 2010: ?	1996: 1.2% 2006: 0.4% 2010: ?	1996: 1.5% 2006: 0.7% 2010: ?	

Due to the uncertainty regarding the timing and level of ambition of the WTO Doha Round, it is impossible at this stage to estimate with any satisfying level of accuracy the tariff values for 2010.

4. It is noted that Canada applied tariffs in sensitive sectors such as agriculture (including those related to APEC Food-System), textiles and clothing, leather and rubber, and transport equipment and other products (tariff lines) are higher than its respective sector average applied tariff:
 - a Will the Canadian government take a set of policies oriented to reduce these tariffs differences
 - b If so, what is the timetable for the implementation of these policies?

- c What factors, aspects or considerations may limit that reduction?
- d What kinds of aspects limit (in terms of the magnitude and speed of) the tariff reductions in those sensitive sectors?

CANADA'S RESPONSE: Canada is actively engaged in the WTO Doha Round of multilateral negotiations, as well as in regional and bilateral negotiations with Colombia, Peru, the Dominican Republic, the Caribbean Community and Common Market (CARICOM), Korea, Singapore, and the four Central American countries of El Salvador, Guatemala, Honduras and Nicaragua. Canada is committed to reach an ambitious outcome in each of these trade negotiations and remains hopeful that these can be concluded in a timely manner.

- 5. What initiatives does Canada have in place to ensure the transparency of its tariff regime?

CANADA'S RESPONSE: Canada provides annual updates of tariff and trade information to the WTO Integrated Database.

Canada's *Customs Tariff* is available to the public in viewing or downloadable format on the Canadian Border Services Agency's website.

- 6. In respect of the tariff exemption and concession schemes in place in Canada, what are the changes (if any) from those previously reported in the 2002 Canada IAP-Peer Review?

CANADA'S RESPONSE: The last staged tariff reductions pursuant to the Canada-Chile Free Trade Agreement were implemented in January 2003. Some additional duty-free benefits were extended to Chile on a number of agricultural products in November 2003.

The Canada-Costa Rica Free Trade Agreement came into force on 1 November 2002. Canadian tariffs on most goods from Costa Rica were eliminated at that time, and remaining staged tariff reductions will be fully implemented by January 2011.

The Least Developed Country (LDC) product coverage was expanded in 2003. All imports from LDCs (except for dairy products, poultry and eggs) may now enter Canada duty and quota free.

In April 2004, Canada passed legislation which extended the General Preferential Tariff (GPT) and Least Developed Country Tariff (LDCT) programs for an additional 10 years to 2014.

- 7. Does Canada intend to reform these changes in any way?

CANADA'S RESPONSE: In April 2004, Canada passed legislation which extended the General Preferential Tariff (GPT) and Least Developed Country Tariff (LDCT) programs for an additional 10 years to 2014.

Overall Assessment

- 8. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Tariffs area? Could you please rank progress using a scale from 1-5?

- 1=100% completion of goals
- 2=between 90% - less than 100% completion
- 3=between 75% - less than 90% completion
- 4=between 51% - less than 75% completion
- 5=less than 51% completion

CANADA'S RESPONSE: With an average import-weighted tariff of 0.9%, Canada is not far from meeting the Bogor goals. An ambitious and timely conclusion of the WTO Doha Round would bring Canada even closer to that goal.

9. What are Canada's future policy priorities for achieving the current Bogor goals in the Tariffs area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year ____

3=To achieve between 75% - less than 90% completion by year ____

4=To achieve between 51% - less than 75% completion by year ____

CANADA'S RESPONSE: As recently stated at the Fifteenth APEC Economic Leaders' Meeting, Canada remains committed to work together with other APEC member economies towards an early and successful conclusion of the WTO Doha Round, one that includes real and substantial improvements in market access, within a fair and equitable multilateral trading system.

Such an outcome would provide for further reductions to Canadian tariffs and contribute significantly to advance towards the Bogor goals.

2. NON-TARIFF MEASURES

1. In comparison with the NTMs reported in 1996, to what extent has Canada progressively reduced NTMs?

CANADA'S RESPONSE: Canada dismantled all its quantitative restrictions on textile and clothing imports at the end of 2004, as agreed in the WTO Agreement on Textiles and Clothing.

2. What NTMs have been removed and what new ones, if any, have been introduced?

CANADA'S RESPONSE: Canada dismantled all its quantitative restrictions on textile and clothing imports at the end of 2004, as agreed in the WTO Agreement on Textiles and Clothing. No new NTMs have been introduced.

3. How significant are these changes in the context of achieving the Bogor Goals?

As a way of showing the NTM changes undertaken and to be undertaken please use the format of 'Canada's Approach to Non-Tariff Measures' (reported in Canada's APEC-IAP-2007) and register the percentages of the tariff lines that are subject to each item of the NTMs in 2007 and the target goals in the year 2010.

It would be very useful if the figures are classified by sectors (or 'products') and by economies (if there are differences between developed APEC Members and Non Members and developing APEC Members and Non Members).

CANADA'S RESPONSE: On textiles, the ending of quantitative restrictions means that Canada has achieved 100% of the Bogor Goals in this sector.

4. What initiatives are being implemented to reduce NTMs? What initiatives are in place to ensure the transparency of remaining NTMs?

CANADA'S RESPONSE: Canada is an active participant in the Doha Round negotiations where a number of non-tariff proposals are being considered.

5. What changes (if any) have been introduced on the operation of the import licensing regime, particularly the discretionary import licensing regime since the 2002 Canada IPA-Peer Review?

CANADA'S RESPONSE: None.

6. Does Canada have any NTMs that are inconsistent with WTO agreements? If so, please provide a list of these NTMs.

CANADA'S RESPONSE: None.

7. What products are subject to TRQs? How are the TRQs allocated?

Please list the imports share of those products for each of the main trading partner economies.

CANADA'S RESPONSE: In Canada, TRQs are used for supply managed agricultural products and a few other agricultural goods such as wheat, barley, beef, and veal.

8. Please explain how the Transparency of the NTMs regime is ensured?

CANADA'S RESPONSE: As outlined in Canada's 2007 IAP

9. In what ways might Canada's approach to the NTMs regime affect the APEC goals on this chapter, in particular in sensitive sectors (such as those related to the APEC-Food System)?

CANADA'S RESPONSE: No effect.

10. What web resources register Canadian information on the trend in its use of antidumping measures over time - in particular: measures in force per year, new cases initiated per year, and new measures imposed?

CANADA'S RESPONSE: Information on investigations conducted and measures applied since the implementation of the Special Import Measures Act (1 December 1984), which is the legislative basis of Canada's antidumping regime, can be found on the Canada Border Services Agency (CBSA) Web site at: <http://www.cbsa-asfc.gc.ca/sima/menu-eng.html>. Also, pursuant to Article 16.4 of the WTO Antidumping Agreement, Canada notifies semi-annual reports of antidumping actions taken and antidumping measures applied. These reports can be found through the following WTO Web Site: http://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

11. Will Canada be seeking lesser recourse to the use of antidumping measures in the next three years?

CANADA'S RESPONSE: Canadian industries have the right to seek protection from injurious imports through trade remedy actions such as antidumping measures by submitting a properly documented complaint to the CBSA. The CBSA has no control over the timing of such complaints. In response to a properly documented complaint that is supported by evidence of dumping and related injury to a domestic industry, the CBSA is required by law to initiate a dumping investigation.

12. Please assess the impacts of the Canadian supply-managed agricultural products (dairy, poultry and eggs) schemes on the key APEC objectives on NTMs?

CANADA'S RESPONSE: There is no impact, as supply management is by no means a non-tariff measure (NTM). Canada's supply managed agricultural products, and the related federal and provincial measures associated with these products, are operated in full compliance with Canada's WTO rights and obligations.

13. What aspects/factors and considerations are affecting the reduction or elimination of these supply-managed schemes?

CANADA'S RESPONSE: N/A.

14. It is noted that Canada's NTMs are applied for reasons of public health, safety, security, the environment as well as to comply with obligations under international agreements. In terms of the trade facilitation objective, what measures and/or revisions does Canada regularly undertake to reduce the economy's NTMs?

CANADA'S RESPONSE No specific mechanism. Canada is an active participant in the Doha round of multilateral trade negotiations, which may have an effect on Canadian NTMs.

Overall Assessment

15. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the area of Non-Tariff Measures? Could you please rank progress using a scale from 1-5?

1=100% completion of goals [Canada's Response]

2=between 90% - less than 100% completion

3=between 75% - less than 90% completion

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: The Bogor goals call for “progressively reducing NTMs to the maximum extent possible” – Canada meets this by being fully engaged in all aspects of the Doha Development Round process, by looking forward to a positive outcome of the Doha Round, and by being committed to fully implementing the outcome of the Round. The Bogor goals also call on WTO members to eliminate all measures inconsistent with WTO agreements, and be in full compliance with WTO agreements and commitments, and Canada meets all of its WTO commitments. Lastly, on the Bogor goals’ call for transparency on NTMs, Canada’s NTMs are transparent, as demonstrated in the responses on transparency.

16. What are Canada’s future policy priorities for achieving the current Bogor goals in the area of Non-Tariff Measures? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year _____

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

3. SERVICES

Business Services: Legal

It is noted that from 1 May 2007 the Law Society of Upper Canada (Ontario) no longer requires that its members be Canadian citizens or permanent residents; and that Prince Edward Island and Quebec have removed, respectively, the permanent residency and citizenship requirement:

1. Is there any indication that the provincial law societies of Alberta, Ontario, Newfoundland and Labrador will drop their permanent residency requirements in the next three years?

CANADA'S RESPONSE: The Law Society of Newfoundland and Labrador confirmed that it does not have a citizenship or permanent residency requirement for applicants to the bar. Currently in practice, the student admission questionnaire asks applicants whether they are Canadian citizens, but as a matter of policy it is not a requirement. The Law Society is planning to remove the question as soon as practicable, likely later this year.

The Law Society of Alberta advises that in furtherance of meeting the requirements of the Trade, Investment and Labour Mobility Agreement (TILMA) with British Columbia, the Alberta Law Society must change its citizenship/permanent residency requirement to match the Law Society of British Columbia. Since British Columbia does not require citizenship or permanent residency, the Law Society of Alberta will remove this requirement. Under the terms of the TILMA, Alberta has until April 2009 to remove the requirement; however, it may remove the requirement sooner than this

Since 1 May 2007, the Law Society of Upper Canada (Ontario) no longer requires permanent residency for admission to the bar.

It is noted that within NAFTA implementation of joint recommendations for facilitating mutual recognition of licenses and certification is ongoing:

2. What specific progress towards mutual recognition has been made over the past three years?

CANADA'S RESPONSE: No specific progress towards mutual recognition has been made over the past three years between the relevant legal authorities of the NAFTA Parties.

Business Services: Accounting

Noting the recent elimination of several restrictions on the provision of auditing services in different parts of Canada, as well as improvements in Canada's commitments in its GATS offers:

3. What is the likelihood that remaining restrictions on the provision of auditing services across all modes of supply will be eliminated over the next three years?

CANADA'S RESPONSE: Remaining restrictions on the provision of auditing services are unlikely to be removed in the next three years given that the residency and commercial presence requirements are mandated by provincial legislation. The Canadian Institute of Chartered Accountants (CICA) informed the Government of Canada that it is working with the provincial governments and the self-regulating provincial accounting bodies with a view to eliminating some of the restrictions, however, it cannot determine whether or not these requirements will be removed from provincial legislation in the next three years.

Noting encouragement from the three NAFTA Governments:

4. What timeframe is envisaged for implementation within NAFTA of the mutual recognition agreement signed by national accounting bodies?

CANADA'S RESPONSE: The Canadian Institute of Chartered Accountants (CICA) has informed that the mutual recognition agreement (MRA) between the national accounting bodies for the Chartered Accountant (CA) designation in Canada, Mexico and the United

States has now been fully ratified and implemented by the relevant bodies in the three NAFTA Governments.

Business Services: Architectural

5. What timeframe is envisaged for implementation within NAFTA of the mutual recognition agreement signed by national professional associations?
6. When is it expected that provincial/state regulatory bodies in NAFTA economies will ratify this mutual recognition agreement?

CANADA'S RESPONSE: With respect to implementation of the mutual recognition agreement (MRA) in Canada - as of July 2007, the Committee of Canadian Architectural Councils (CCAC) has informed that eight of the eleven Canadian jurisdictions that fall under the mandate of the CCAC have ratified the agreement. The three remaining jurisdictions – Ontario, Manitoba, and New Brunswick – are anticipated to finish their review by late fall of 2007, and the MRA is expected to be ratified and implemented in all jurisdictions by January 2008 or the first quarter of 2008. The Trinational Council that was established to oversee the administration process in implementing the MRA is expected to meet again in January 2008 to finalize the implementation of the agreement.

Under the 'Discriminatory Treatment / MFN' heading for the Architectural Business Services, the IAP states that with regard to the accreditation of architects, New Brunswick Province has eliminated the residency requirement, and that the provinces that preserve this requirement are Nova Scotia, Newfoundland and Labrador:

7. Could Canada please advise whether there are any plans to further reduce or eliminate this residency requirement in the future?

CANADA'S RESPONSE: The architectural associations in the provinces of Nova Scotia and Newfoundland and Labrador have advised that these residency requirements no longer apply in practice. As such, Canada is currently considering removing these requirements from its GATS schedule in its second revised services offer.

Business Services: Engineering

8. Allowing for Canada's improvements to its GATS commitments, what accreditation restrictions remain?

CANADA'S RESPONSE: Permanent residency continues to be a requirement for full licensing and membership into the engineering associations in the provinces of Alberta, Ontario, British Columbia and New Brunswick. A residency requirement also continues to apply in the province of Saskatchewan. However, all twelve sub-federal jurisdictions in Canada operate a temporary licensing regime, in which non-resident engineers can apply for recognition on a temporary basis.

Business Services: Other Services – Computer Services

9. What is the rationale for and significance of the excluded computer services (financial and communications) from Canada's GATS Schedule?

CANADA'S RESPONSE: During the Uruguay Round, Canada included asterisks on three of the subsectors under Computer and Related Services, indicating that these subsectors did not include those services listed under Financial Services and Telecommunication Services. Canada considers itself to have taken full commitments in this sector. These asterisks were not intended to limit Canada's commitments, but rather to provide clarification in the case of overlap with other sectors. Given the evolution of understanding of the scope of this sector, and the relation with other sectors, Canada is currently considering favourably removing these asterisks.

Communication Services: Postal

Noting that postal services related to letters and parcels are provided to all areas of Canada on a monopoly basis; that Canada has not undertaken specific GATS commitments for these services; and that Canada reserves its right to adopt or maintain measures related to postal services:

10. What is the current rationale for maintaining Canada Post Corporation's monopoly?

CANADA'S RESPONSE: The Government of Canada is maintaining Canada Post's monopoly in order to provide affordable, universal postal service to all Canadians. The removal of the postal monopoly in Canada would mean that current levels of postal service to Canadians would decline.

Canada Post is mandated to operate Canada's postal service on a self-sustaining basis with a standard of service that meets the needs of Canadians. In addition, in keeping with its international obligations, Canada Post ensures the delivery of mail entering Canada from abroad.

Since Canada Post was made into a Crown corporation in 1981, it has largely been profitable and the Corporation is self-financing.

Canada Post's exclusive privilege is defined in Section 5(2)(b) of the Canada Post Corporation Act (CPCA) which states that "while maintaining basic customary service... Canada Post must provide a standard of service that will meet the needs of the people of Canada and that is similar with respect to communities of the same size".

Given the monopoly, the Government has directed Canada Post to maintain traditional rural mail service. In addition, the Government has upheld the moratorium on the closure of rural post offices, as well as policies or government expectations that the Corporation participate in the delivery of public policy programs.

In a vast sparsely populated country like Canada, there is more incentive to maintain the postal monopoly than in smaller countries of high population density where there are fewer challenges to providing universal service. Without a postal monopoly in Canada, remote and rural populations would not be as well served since it would not be profitable for private-sector postal or courier companies to provide such a service.

11. Has a regulatory impact assessment been conducted of the costs/benefits of the *status quo* and of the costs/benefits of promoting competition?

CANADA'S RESPONSE: No.

Communication Services: Telecommunications Transport Services: Maritime

It is noted that the information provided for 'Foreign Entry' and 'Discriminatory Treatment/MFN' in most Annexes to the Services chapter is limited to Canada's specific commitments under GATS; and there is no information about Canada's existing regime in those respects:

12. In terms of 'Foreign Entry' and 'Discriminatory Treatment/MFN', please advise on the existing regime (laws, rules, regulations) for:

- a. Communication Services: Telecommunications, and
- b. Transport Services: Maritime

a. CANADA'S RESPONSE: Telecommunications

Our GATS commitments reflect the current domestic regime for ownership and control requirements in the telecommunications sector, as set out in the Telecommunications and Radiocommunications Act and the Canadian Ownership and Control Regulations, which

are accessible via the internet.

b. CANADA'S RESPONSE: Maritime Transport Services

While Canada has no discriminatory measures that restrict the provision of international maritime transport services, the Shipping Conferences Exemption Act requires members of a conference to maintain jointly an office in that region of Canada where they operate. In addition, the Canada Shipping Act provides that:

1. To register a ship in Canada, the owner of that ship or the person who has exclusive posesión of that ship must be:

(a) a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act;

(b) a corporation incorporated under the laws of Canada or a province; or

(c) if the ship is not already registered in another country, a corporation incorporated under the laws of a country other than Canada if one of the following is actino with respect to all matters relating to the ship; namely:

(i) a subsidiary of the corporation that is incorporated Under the laws of Canada or a province;

(ii) an employee or director in Canada of any branch office of the corporation that is carrying on business in Canada; or

(iii) a ship management company incorporated under the laws of Canada or a province.

2. A ship registered in a foreign country which has been bareboat chartered may be listed in Canada for the duration of the charter while the ship's registration is suspended in its country of registry, if the charterer is:

(a) a Canadian citizen or permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act; or

(b) a corporation incorporated Under the laws of Canada or a province.

With regard to domestic maritime transport, the Coasting Trade Act reserves the carriage of goods and passengers, as well as any other marine activity of a commercial nature in Canadian waters to Canadian registered, duty-paid ships. This reservation extends to waters above the continental shelf, when those activities are related to the exploration, exploitation or transportation of the mineral or non-living resources of the continental shelf. The Coasting Trade Act allows for the temporary importation of foreign-registered or duty-paid vessels, when no Canadian vessel is available or suitable to carry out the activity.

13. Where is this information available?

CANADA'S RESPONSE: Telecommunications

This information is publicly available through the following links:

Telecommunications Act

<http://laws.justice.gc.ca/en/T-3.4/index.html>

Radiocommunication Act
<http://laws.justice.gc.ca/en/R-2/index.html>

Radiocommunications Regulations
[www.strategis.gc.ca/epic/site/smt-gst.nsf/vwapj/rre.pdf/\\$FILE/rre.pdf](http://www.strategis.gc.ca/epic/site/smt-gst.nsf/vwapj/rre.pdf/$FILE/rre.pdf)

Canadian Telecommunications Common Ownership and Control Regulations
<http://laws.justice.gc.ca/en/T-3.4/SOR-94-667/index.html>

CANADA'S RESPONSE: Maritime Transport Services

Shipping Conferences Exemption Act:
<http://www.tc.gc.ca/acts-regulations/GENERAL/s/scea/act/scea.html>

Canada Shipping Act:
<http://www.tc.gc.ca/acts-regulations/GENERAL/C/csa2001/act/csa2001-menu.htm>

Coasting Trade Act:
<http://www.tc.gc.ca/acts-regulations/GENERAL/c/cta/act/cta.htm>

14. Should there be a gap in the level of liberalization in these sectors between Canada's existing regime and its GATS commitments, would Canada consider binding its *de facto* liberal regime in this round of WTO services negotiations so as to increase the predictability of the regime?

CANADA'S RESPONSE: Telecommunications

Canada has bound its existing regime in the GATS.

CANADA'S RESPONSE: Maritime Transport Services

In its revised GATS offer, Canada has offered to bind its liberal regime governing international maritime transport services. Moreover, unlike other Members, Canada offered to exceed the level of liberalization suggested in the Model Maritime Schedule by offering to provide access to and use of port and onward transport services on a national treatment basis.

Like many other WTO Members, Canada is of the view that domestic maritime transport services are not under negotiation in the Doha Development Round.

It is noted that no improvements in Telecommunications Services have been implemented since Canada's last IAP and that no further improvements are planned:

15. To what extent does Canada consider that it has met the Bogor objective for Telecommunications services in particular?

CANADA'S RESPONSE: Canada has been an early, consistent, and active supporter of the GATS, including the agreements relating to telecommunications. Canada will continue to support the Bogor goals, consistent with its GATS commitments.

16. What other improvements by Canada would contribute to the Bogor objective on Telecommunications?

CANADA'S RESPONSE: Canada will continue to participate actively in the WTO work on telecommunications. Canada is also taking a leadership role on telecommunications liberalization in the APEC region, working on further collaborative initiatives in support of the Bogor goals.

Please include specific reference to:

I. the relevant provisions in the Cancun Declaration

CANADA'S RESPONSE: Canada has fully adopted the APEC Principles of Interconnection and is very active on work underway within APEC TEL to consider the implications emerging technologies have on policy and regulatory frameworks for interconnection.

II. the WTO Telecommunications Regulatory Principles Reference Paper

CANADA'S RESPONSE: Canada is already fully compliant with the WTO Reference Paper. In addition, through APEC TEL, Canada leads an annual study benchmarking APEC member economies' progress towards adopting and implementing the WTO Reference Paper.

III. The Information Technology Agreement; and

IV. The Guidelines for Trade in International Value-Added Network Services

CANADA'S RESPONSE: Canada is a signatory to the Information Technology Agreement.

17. What are the main constraints on planning Canada's further improvements in respect of Telecommunications services?

CANADA'S RESPONSE: Canada retains limitations which are currently still in force.

Audio-Visual Services

18. Could Canada please identify the laws, rules and regulations that apply to the current entry requirements (as listed in the IAP) for audio-visual services?

CANADA'S RESPONSE: The Canadian Radio-Television and Telecommunications Commission Broadcasting Act, the Investment Canada Act, the Radio-Communication Act, and the national Film Act all contain provisions relating to audio-visual services.

19. Where is this information available?

CANADA'S RESPONSE: Canadian policies are fully transparent and further information on specific rules and regulations are on the Canadian Radio-Television and Telecommunications Commission website at <http://www.crtc.gc.ca>, which issues separate decisions for each case, and on the Canadian Heritage website at http://www.pch.gc.ca/pch/legislation/index_e.cfm

Noting that Canada's IAP annual sector report on audio-visual services could not be found on the e-IAP website:

20. Is this report available for members' review?

CANADA'S RESPONSE: The information provided in Canada's 2004 IAP Annual Report on Audio-visual services is still accurate.

Construction, Distribution, Environment, Tourism, Air Services

It is noted that no further improvements are planned for these services.

21. To what extent does Canada consider that it has met the Bogor objective for these services in particular?

CANADA'S RESPONSE:

Construction: Canada considers that it has substantially met the Bogor objective with regard to Construction Services. In the context of the WTO GATS, Canada's services offer reflects a largely open market. Canada has made commitments in two sub-sectors –

General Construction Work for Civil Engineering (CPC 513) and Pre-erection work at construction sites (CPC 511). Since 1994, Canada has eliminated many Mode 3 residency and deposit requirements. In respect of sectoral limitations, Canada has only one market access Mode 3 limitation remaining in the province of Ontario for General Construction Work for Buildings (CPC 512) which is non-discriminatory as it applies to Canadian nationals as well, and commitments for Mode 1 are open with the exception of cabotage.

Distribution: Canada considers that it has substantially met the Bogor objective with regard to Distribution Services. Relative to other WTO Members, Canada has a high level of commitments in the GATS for distribution services, covering all 4 sub-sectors identified in the CPC and additional commitments for the retail sale of motor fuel. Canada has committed all relevant CPC numbers related to Distribution Services since the Uruguay Round. Canada has also full commitments under modes 1, 2 and 3 in Commission Agents' Services as well as commitments covering all modes of supply in Wholesale Trade Services, Retailing Services, Franchising Services and Retail sale of motor fuel. In addition, Canada's Doha Round offers to date have removed two limitations. However, Canada has excluded a number of sensitive products in its schedule as have done many other Members; and maintains a number of limitations pertaining to measures maintained at both levels of government.

Environmental Services: Canada considers that it has fully met the Bogor objective with respect to Environmental Services, given that Canada's GATS commitments in environmental services are completely open for all three modes of supply.

Tourism: In respect of tourism services, Canada has not achieved the Bogor objective. It should be noted that the tourism industry is not regulated at the federal government level. In the context of Canada's commitments in the WTO, some provinces still maintain some modal limitations in respect of hotels and restaurant services (including catering), and travel agencies and tour operators. Consultations are ongoing on the possible removal of provincial limitations and potential further improvements in other areas as Canada prepares for the submission of its second revised services offer in the context of the GATS.

Air Services: In 2006 Canada announced a new policy for international air transport - the Blue Sky policy. This policy indicates that Canada will proactively seek to negotiate liberalized air transport agreements. Announcement of this policy has clearly demonstrated Canada's commitment to meeting the Bogor objective with regard to air services. Over the last decade or so, Canada has met with 17 partners within APEC to negotiate further liberalized agreements. Canada currently has agreements with 18 of the 21 APEC economies, including an open skies agreement with both the United States and New Zealand. In addition, we have recently negotiated an expanded agreement with Japan and negotiations have been confirmed with Singapore for October 2007.

22. What other improvements by Canada would contribute to the Bogor objective in respect of these services?

CANADA'S RESPONSE:

Construction: In order to continue to contribute to the Bogor objective, further consultation is required to ascertain our ability to fully bind General Construction Work for Civil Engineering (CPC 513) and Pre-erection work at construction sites (CPC 511) in the GATS.

Distribution: Regarding certain areas of domestic regulatory control (ie. alcohol and tobacco), our ability to improve our GATS commitments and further contribute to the Bogor objective is somewhat limited. With respect to some other excluded products, we are currently doing a thorough assessment to see where improved GATS commitments could be taken. Consultations so far have found that there have been domestic changes in the sector and we are hoping to be able to narrow or remove other limitations listed in our GATS schedule.

Environmental services: Given that Canada's environmental services sector is already open, no further improvements are possible.

Tourism: We will be in a position to disclose Canadian contributions to the Bogor objective once we have finalized Canada's second revised services offer.

Air Services: Canada is striving to secure commitments from other countries to further liberalize additional bilateral agreements. The Asia-Pacific region has been identified as a priority under Canada's bilateral air agreement negotiating strategy, which will further support the Bogor objectives.

23. What are the main constraints on planning such further improvements?

CANADA'S RESPONSE:

Construction: Seeking improvements from other WTO members in these categories.

Distribution: Measures listed as limitations are still in force. Alcohol and tobacco are regulated among other things for public health purposes.

Environmental services: N/A given responses above.

Tourism: As the federal government does not regulate the tourism industry, consultations with provincial and territorial governments are necessary when planning further market access improvements.

Air Services: Ability to secure meeting dates; competing priorities with bilateral partners from other global regions; reluctance by some partners to liberalize to the extent that Canada is prepared to liberalize.

Financial services

It is noted that the Canadian Government is expected to announce soon possible changes to (a) its foreign bank branch deposit taking policy, including the limitations on foreign bank branch retail deposit taking, and (b) its policy on mergers:

24. If the announcement has yet to be made, please advise the current timetable for the announcement and the expected timeframe for the implementation of any revised/new policy; or

25. If the announcement has already been made, please advise any policy changes that are to be introduced and the timeframe for their implementation.

CANADA'S RESPONSE: The Canadian government does not consider making changes to its policies regarding foreign branch deposit taking or bank mergers to be priorities. No announcement is expected on either issue.

It is noted that no further improvements are planned for Financial Services:

26. To what extent does Canada consider that it has met the Bogor objective for these services?

27. What other improvements by Canada would contribute to the Bogor objective?

28. What are the main constraints on planning such further improvements?

CANADA'S RESPONSE: The Bogor objective calls for "free and open trade and investment in the Asia-Pacific region by 2010 for industrialized APEC economies and 2020 for developing APEC economies".

Canada has as open a financial sector framework as any country, and more open than most. As a result, we feel that Canada has fully met the Bogor objective for financial services.

Canada's foreign entry policy encourages the entry of foreign financial institutions into Canada as a means of promoting competition in the financial services sector. Foreign financial institutions have a wide range of options for doing business in Canada and are given the same opportunities to offer financial services in Canada as domestic institutions.

With respect to ownership of Canadian financial institutions, Canada has no foreign ownership restrictions – the size-based ownership regime does not distinguish between foreign and domestic investors.

The Government of Canada is responsible for ensuring that the regulatory framework allows financial sector participants to operate as efficiently and effectively as possible in serving consumers and businesses, while maintaining the safety and soundness of the sector. The mandatory five-year review of the financial sector framework is an important tool in meeting these responsibilities and ensuring that the framework is continually kept up to date with changes in international fora. Any future improvements or changes would be undertaken during these review cycles.

Energy Services

As indicated in the Annual Sector Report, the provincial governments own and manage the natural resources within their jurisdiction and empower regulation independently. The Federal Government is responsible for the national policy framework as well as trans-boundary environmental impacts and policies of national interest. Noting that there is a cooperative mechanism between the federal, provincial and territorial governments on energy issues that take place formally and annually:

29. Have conflicts ever occurred among any of these bodies, especially on the promotion of further development of the sector and the encouragement of private investment and competition?
30. If so, what are the principles of dispute settlement that apply?

CANADA'S RESPONSE: Energy issues in Canada can be raised through the Federal-Provincial-Territorial Council of Energy Ministers (CEM) either during their annual meeting or in writing. During their annual meeting, CEM energy ministers can discuss the issue in question and if they deem it necessary, direct officials to work on the issue and report back to the Council in the future. Officials may elect to establish a Task Force (e.g. Pipeline Jurisdiction) or establish a senior officials working group (e.g. Assistant Deputy Ministers' Electricity Working Group on mandatory reliability standards) to examine the issue and develop recommendations for Council's review and approval.

Other questions on Services

31. Does Canada consider that it has made 'high quality services offers' in the WTO's Doha Round?

CANADA'S RESPONSE: Yes, Canada considers that it has made two high quality services offers in the context of the WTO Doha Round through the submission of both its initial GATS offer in 2003 and revised GATS offer in 2005. Canada's initial and revised services offers in the WTO propose improved market access commitments in sectors such as accounting, engineering and legal services; real estate services; management consulting services; financial services; courier services; telecommunications services; construction services; distribution services; tourism and related services; transport services; the temporary movement of business people; commercial presence; and exemptions to the "most favoured nation" principle.

32. Over the past five years, what specific contribution to services liberalization has Canada made through RTAs/FTAs?

CANADA'S RESPONSE: In respect to its current FTAs (NAFTA, Canada-Chile FTA) Canada has undertaken autonomous liberalization in a number of sectors many of which are evidenced in Canada's revised GATS offer. Through the benefit of the ratchet mechanism, this liberalization has been bound under these two agreements. In the past two years, Canada has initiated free trade agreement negotiations with a number of APEC and non-APEC Members. These negotiations and eventual negotiations will include negotiations on a services chapter with substantive rights and obligations including the ratchet mechanism.

33. What measures has Canada taken to facilitate the international mobility of foreign students, including mutual recognition of academic diplomas and degrees? What are the legal regulations and requirements for foreign entities to set up foreign language teaching institutions or examination centres in Canada? What facilitation measures can be provided by Canada? What are the restrictions and requirements on education services conducted by foreign providers (e.g. legal entities and foreign language teachers) in Canada?

Overall Assessment¹

34. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Services area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion

3=between 75% - less than 90% completion [Canada's response]

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: Since 1996, Canada has been actively pursuing services liberalization at the multilateral level in the context of the WTO Doha Round by negotiating our offensive market access interests [i.e., Canada's requests for other countries to liberalize and make increased commitments] as well as reflecting our current level of liberalization in several services sectors in both our initial and revised GATS offers. Canada's services offers in the context of the WTO Doha Round reflect a rather liberal regime, by and large, in particular as compared to several other industrialized countries.

Canada's services sector regime has undergone progressive liberalization in several services sectors over the past five years since the last APEC IAP Review in 2002, much of which has been reflected in both our GATS offers and which are bound in our regional/bilateral FTAs (currently: United States, Mexico, Chile - with a number of additional FTAs pending conclusion shortly) through the benefit of the "ratchet mechanism". Furthermore, Canada's overall approach to its international trade agreements has been to bind the level of its domestic regulatory status quo in services, with the exception of a few specific sectors that remain sensitive.

However, since 1996, Canada has only concluded one new bilateral free trade agreement that includes substantive services market access provisions (Chile). Over the course of the past year (2006-2007), Canada has negotiated a number of regional and bilateral trade agreements which will contribute significantly to furthering Canada's work in meeting the Bogor goals for services liberalization.

35. What are Canada's future policy priorities for achieving the current Bogor goals in the Services area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year 2010 [Canada's Response]

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

¹Please also refer to questions 15-17, 21-23 and 26-28 in the Services area

CANADA'S RESPONSE: Canada intends to continue active involvement in services liberalization in the multilateral context, and is working to make an improved second revised GATS offer in order to continue to reflect our current domestic regulatory regime in several services sectors. While Canada considers that it has fully met the Bogor goals in the Services area from a multilateral perspective, Canada's contribution to the overall Bogor goals from a regional/bilateral perspective has been limited given that Canada has concluded regional/bilateral FTAs with only three APEC members to date that include substantial market access provisions (United States, Mexico, and Chile).

However, over the course of the past year, Canada has been actively negotiating substantive chapters for cross-border trade in services as part of free trade negotiations with a number of APEC Members and non-APEC Members, and will continue to be actively engaged in these negotiations with the view toward finalizing these agreements.

4. INVESTMENT

1. Please assess the changes in Canada's investment regime between 2002-2007 vis-à-vis the 'APEC Non-Binding Investment Principles' and the 'Menu of Options for Investment Liberalization and Business Facilitation'.

You may use a rank scale. For example:

1. The principle's goal has been completed;
2. The principle's goal is close to being completed;
3. Investment regime has not changed since ____).

If possible, could this ranking be applied for each item in both the 'Principles' and the 'Menu of Options for Investment Liberalization and Business Facilitation'.

CANADA'S RESPONSE: Canada's investment regime is in line with the principles in both the Non-Binding Investment Principles and the Menu of Options for Investment Liberalization and Business Facilitation. Canada maintains a transparent investment regime with clear rules and only limited restrictions to foreign investment.

2. What factors, aspects or considerations are affecting the achievement of the various investment goals?

CANADA'S RESPONSE: Canada doesn't have "specific" investment goals. While Canada's FDI strategy calls for proactive FDI promotion in selected industry sectors where Canada has clear competitive advantages, our key mission is to attract and expand overall FDI in Canada.

The key consideration behind this more focused and targeted FDI strategy is that production around the world is increasingly specialized and countries are now engaged in a competition to win their place in global supply chains and improve competitiveness.

3. To what extent has Canada provided MFN and national treatment in investment?

CANADA'S RESPONSE: Canada provides MFN and national treatment in investment, with only limited and specific exceptions.

4. To what extent does Canada allow for any use of performance requirements that distort or limit the expansion of trade and investment?

CANADA'S RESPONSE: Canada has minimized the use of performance requirements to only limited areas, and is in compliance with obligations under the WTO TRIMS Agreement.

5. What other (internal or external) factors, policies, aspects or considerations may be discouraging investment in Canada?

- **Investment restrictions in certain industries, such as telecommunications, impede investment in Canada**
- **Appreciating dollar is eroding our cost advantages**
- **Canada competes against the US, the world's most attractive investment location**
- **Emerging markets are capturing higher shares of FDI**
- **Competitors are rapidly improving their business climate**
- **Competitors are increasing efforts to attract investment**

It is noted that under the Investment Canada Act, a 'net benefit test' is included on acquisitions of existing Canadian businesses valued over specific thresholds as well as investments in certain cultural industries:

6. Does Canada have any plan to progressively relax this requirement?

CANADA'S RESPONSE: On 12 July 2007, the Ministers of Finance and Industry announced the creation of a Competition Policy Review Panel to review key elements of Canada's competition and investment policies to ensure that they are working effectively, allowing Canada to encourage even greater foreign investment and create more and better jobs for Canadians.

The Panel's core mandate is to review two key pieces of Canadian legislation, the *Competition Act* and the *Investment Canada Act*. The Panel will report to the Minister of Industry, on behalf of the Government of Canada, by 30 June 2008 with concrete recommendations to further enhance competition in Canada.

Within this context, it will be important to ensure that the *Investment Canada Act* remains current with the emerging appreciation of the long-term factors for success, since Canada's ability to compete in a knowledge-driven global economy will increasingly depend on attracting highly qualified personnel, increasing investment in research and development and building world-class centres of expertise. Accordingly, the Panel will examine whether the Act's "net benefit" test is designed appropriately to capture the range of benefits that are crucial to Canada's economic success.

7. Does Canada have any plan to change the criteria for assessing 'net benefit'?

CANADA'S RESPONSE: As explained above, the Competition Policy Review Panel will examine whether the *Investment Canada's Act* "net benefit" test is designed appropriately to capture the range of benefits that are crucial to Canada's economic success. The Panel will report to the Minister of Industry, on behalf of the Government of Canada, by 30 June 2008 with concrete recommendations to further enhance competition in Canada.

Canada [2007] IAP states "foreign investment in facilities-based services is permitted up to a cumulative total of 46.7 percent (based on 20 percent direct investment and 33 and one-third percent indirect investment):

8. Could Canada clarify how to define the *indirect investment* and the *direct investment*?
9. Could Canada also provide more detailed information on the telecommunication licences issued to foreign investors, including quantity of the licenses and the percentage of foreign investment?

CANADA'S RESPONSE: The foreign ownership constraints for Canadian telecommunications carriers, established in the Canadian Telecommunications Common Carrier Ownership and Control Regulations (the 'Regulations') of 1994 enacted under the Federal Telecommunications Act, effectively raised the permitted level of foreign voting interest in a Canadian carrier from 20% to 33 1/3%.

Although the Act restricts non-Canadians from holding more than 20% of the voting shares of an eligible carrier, under the Regulations it was effectively increased by defining 'Canadian' to include a corporation or other entity which has 33 1/3% of its voting shares owned by non-Canadians. Therefore, one must view ownership (investment) in terms of the definition of Canadian and non-Canadian and voting shares under their definitions in the Act to be precise, rather than indirect or direct investment.

Most importantly however, these constraints apply only to voting shares and are subject to the over-riding restriction that non-Canadians must not have effective control of the carrier.

The Canadian Radio-Television and Communications Commission (CRTC) maintains a public list of Basic International Telecommunications License Holders which can be accessed by the following link: <http://www.crtc.gc.ca/eng/public/8190.htm> This link directs you to lists of licensees that hold either of the categories of license that the CRTC currently issues. With respect to percentage of foreign ownership, the CRTC does not require this as a condition of license and BITS license holders do not necessarily fall under the Regulations. Therefore, we do not have any details on the percentage of foreign

ownership for those companies that are not defined as Canadian carriers. The CRTC treats any information on foreign ownership as confidential.

It is known that the Canadian Government is considering modifying the Investment Canada Act and adopting more strict review measures on acquisitions and mergers of Canadian assets by foreign state-owned enterprises:

10. Please update the latest development of the modification and please explain the consistency between the modification and Canada's favourable policies for foreign investments and investment facilitation.

CANADA'S RESPONSE: The establishment of the Competition Policy Review Panel was announced in July, 2007. In the context of global economy, the Panel will examine whether Canada's competition and investment policies are working well to ensure a strong, resilient and adaptable economy. Its core mandate is to review two key pieces of legislation, the Competition Act and the Investment Canada Act.

The Panel will also examine Canada's sectoral restrictions on foreign direct investment and the competition and investment regimes of other jurisdictions to assess reciprocity between their rules and Canada's. Separately, the Panel will also assess how Canada's policies may further encourage outward investment. The Panel will report to the Minister of Industry, on behalf of the Government of Canada, by end- 2008, with concrete recommendations to further enhance competition in Canada.

The treatment of state-owned enterprises and the possibility of a national security review clause will be assessed separately by the Government (Department of Industry) this fall.

Transactions that are already in the works will be subject to the terms of the current legislation.

Overall Assessment

11. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Investment area? Could you please rank progress using a scale from 1-5?

- 1=100% completion of goals
- 2=between 90% - less than 100% completion
- 3=between 75% - less than 90% completion
- 4=between 51% - less than 75% completion
- 5=less than 51% completion

CANADA'S RESPONSE: Canada has taken steps to meet the current Bogor goals in the Investment area, including expanding its Foreign Investment Promotion and Protection Agreement (FIPA) work program with APEC members; restricting review of foreign investments to limited, large-scale acquisitions in most sectors; and promoting clear, transparent rules in the investment regime. Canada has co-sponsored quality projects such as the United States capacity-building initiative on international investment agreements; and, as well, participates in seminars, etc. where we can add value. We plan to continue this engagement.

12. What are Canada's future policy priorities for achieving the current Bogor goals in the Investment area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

- 1=To complete the goals by year 2010
- 2=To achieve between 90% - less than 100% completion by year _____
- 3=To achieve between 75% - less than 90% completion by year _____
- 4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: Canada is committed to continuing its efforts to achieve the Bogor goals in the investment area, and will evaluate policy priorities on an ongoing basis. In 2006, Canada signed ICSID and work is underway to complete domestic process for ratification. The establishment of the Competition Policy Review Panel was announced in July 2007. Its core mandate is to review two key pieces of legislation, the Competition Act and the Investment Canada Act.

5. STANDARDS AND CONFORMANCE

1. What aspects, factors or any other consideration limit or affect:

(a) the alignment of Canada's standards with international standards

CANADA'S RESPONSE: Canada is one of only a few countries which incorporates language in regulatory policy which mandates compliance with international trade rules. Canada's new regulatory policy strengthens and reinforces these obligations. Canada's Cabinet Directive on Streamlining Regulation (2007) directs regulators to comply with the WTO TBT (Agreement on Technical Barriers to Trade) and SPS (Agreement on the Application of Sanitary and Phytosanitary Measures) obligations to adopt international standards whenever possible and appropriate.

http://www.regulation.gc.ca/default.asp@language=e&page=thegovernmentdirectiveon2.htm#_Toc162687250.

In addition, the Standards Council of Canada (SCC) has developed a guide to provide assistance to standards development communities and regulatory authorities in developing standards for reference in legislative instruments (http://www.scc.ca/Asset/iu_files/NSSGuideStandardsLegislative_-_Dec06en.pdf).

Standards which are adopted as National Standards of Canada are required to incorporate international standards where relevant. The SCC is responsible for reviewing standards submitted by domestic standards development organizations, and following the completion of any recommended revisions, approving them as National Standards of Canada. These standards should be consistent with or should incorporate appropriate international standards and pertinent national standards, and must be made available for public review during their development. Canada's four accredited standards development organizations have accepted the TBT Code of Good Practice (Annex 3 of the TBT Agreement). For fiscal year 2006/2007, there were a total of 196 standards approved as National Standards of Canada. Of this total, 134, or 68.37%, were adopted or based on ISO/IEC standards.

Although it is Canada's policy to adopt international standards whenever possible and appropriate, there are occasions when Canada does not adopt international standards. For example, in order to meet the purchasing requirements of other countries, it is often necessary to use their standards. Canada's close economic relationship with its largest trading partner, the United States, necessitates the use of a number of American standards. Stakeholder input in the standards development process also results in the use of a number of Canadian (e.g., CSA standards). Also, it is sometimes the case that the Canadian government or provincial/territorial governments have specific regulatory requirements that necessitate the use of Canadian standards. Many Canadian and F/P/T governments and industries use a mixture of ISO, IEC, Canadian and US standards to meet market or regulatory requirements.

(b) the economy's participation in international standardization activities

CANADA'S RESPONSE: Canada is an active participant in international standardization activities due to its strong participation in ISO and IEC. In order to maximize the impact of Canadian input in international standards development, the Standards Council of Canada (SCC) took steps toward the realization of its objective to increase the proportion of ISO/IEC national committees that are harmonized with Standards Development Organization committees, including the updating of the procedural documents concerning harmonization. As of the end of fiscal year, 2006-2007, 177 Canadian advisory committees and subcommittees had been harmonized with international standards development committees. Canada (SCC), holds Participation (P)-Status on 400 technical committees and subcommittees (TC/SC) and Observer (O-Status) on 103 committees. Also, Canadians are Chairs of 26 international committees (TC) and subcommittees (SC). Canada provides the

Secretariat for 26 TCs and SCs and is responsible for convening 103 Working Groups (WGs). Canada holds the Chair and Secretariat positions for ISO TC 176 (Quality Management and Quality Assurance) and TC 207 (Environmental Management), which are responsible for the development of the ISO 9000 and ISO 14000 series of standards. Canada is involved as a member of IEC's Asia-Pacific steering group, which provides a forum for developed and developing economies in the region to establish common positions for issues before IEC's policy and management committees. The SCC participates in the three policy development committees of ISO - CASCO, COPOLCO and DEVCO. The SCC participates in six CASCO WGs. The SCC participates in eight COPOLCO WGs.

(c) MRAs in both regulated and voluntary sectors?

CANADA'S RESPONSE: Canada is an active participant in MRAs in both the regulated and voluntary sectors. In the regulated sector Canada has endorsed and is participating in the APEC MRA on Conformity Assessment of Telecommunications Equipment. Canada also has an MRA with Australia on Conformity Assessment in Relation to Medicines-Good Manufacturing Practice Inspection and Certification. As recognized in the report of the third triennial review of the TBT agreement, Canada agrees with the following criteria as a means of determining effective MRAs in the regulated sector: a sound regulatory infrastructure; a sufficient volume of trade to justify the costs of negotiation and implementation; tangible economic benefits; interest of stakeholders; support from key players; underlying regulatory compatibility between the partners; sufficient resources for negotiation and implementation; step by step approach particularly where the competence of the parties is not equivalent (WTO document G/TBT/13 November 2003, paragraph 39). Canada will continue to pursue MRAs in the regulated sector, where appropriate to do so.

MRAs in the voluntary sector between various national accreditation bodies are widely recognized as an effective means to facilitate the mutual acceptance of conformity assessment results produced by accredited conformity assessment bodies. As such, Canada's national accreditation body, the Standards Council of Canada (SCC), is a participant in the following multilateral mutual recognition arrangements:

PAC (Pacific Accreditation Cooperation) MLA for quality management systems (QMS) (1998), environmental management systems (2003 (EMS) and product certification (2004)

IAF (International Accreditation Forum) MRA for QMS (1998), EMS (2004) and Product (2004)

NORAMET (North American Metrology Cooperation) MRA (1999) for recognition of national measurement standards and service systems of each country

IAAC (Interamerican Accreditation Cooperation) MRA for Mutual recognition of laboratory, QMS, and EMS (2002)

ILAC (International Laboratory Accreditation Cooperation) MRA for laboratory accreditation (2000)

APLAC (Asia-Pacific Laboratory Accreditation Cooperation) MRA for laboratory accreditation (2000)

In 2005, Canada (SCC), the US (ANAB), Australia-New Zealand (JAS-ANZ), Japan (JAB), and Mexico (EMA) signed a Cooperative Accreditation Arrangement (MCAA) for QMS and EMS registrars.

International product certification schemes are used with respect to electrical equipment; three certification bodies in Canada are members of the IEC System for Conformity Testing and Certification of Electrical Equipment (IECEE CB Scheme). Suppliers' declaration of conformity is used in the area of electromagnetic compatibility and telecommunication terminal attachment equipment. (WTO document G/TBT/W/210, 20 June 2003.)

Where appropriate, Canada (SCC) will continue to pursue bilateral and multilateral MRAs , MLAs and MoUs in the voluntary sector.

2. How is the Canadian economy dealing with those aspects/factors/considerations?

CANADA'S RESPONSE: Canada participates in both phases of the APEC telecommunications MRA, phase one - Procedures for Mutual Recognition of Testing Laboratories as Conformity Assessment Bodies and Mutual Acceptance of Test Reports and Phase Two - Procedures for Mutual Recognition of Certification Bodies as Conformity Assessment Bodies and Mutual Acceptance of Equipment Certifications. This means that Canadian regulators accept the test reports and equipment certifications of telecommunications equipment from fellow members of each phase of the MRA.

It is up to Canadian regulators as to whether they chose to recognize the voluntary MLAs. The SCC encourages Canadian regulators to accept these voluntary MRAs for regulatory, trade and business transactions whenever it is feasible to do so. Furthermore, federal regulators and other officials may participate as part of the stakeholder matrix in technical committees managed by standards development organizations.

3. Please assess the changes (if any) and effects of Canada's Agreement on Internal Trade (AIT) on:

- (a) market access for foreign and out-of-province suppliers-

CANADA'S RESPONSE: The Agreement on Internal Trade (AIT) requires any government proposing to adopt or modify a measure that may have trade implications to provide advance notification of its intention to the other governments with an interest in the matter. Other governments are provided with an opportunity to comment on the measure. Their comments must be taken into consideration before the implementation of the measure. Under Annex 405.1, section 17, of chapter 4 of the AIT, parties are required to "where appropriate and to the extent practicable, base its standards on relevant National Standards, de facto national standards or international standards." (<http://strategis.ic.gc.ca/epic/site/ait-aci.nsf/en/il00005e.html#l>)

The AIT discourages governments from adopting measures that restrict or prevent the movement of persons, goods, investments or services across provincial boundaries or create an obstacle to internal trade. Governments also agreed to cooperate with a view to reducing and eliminating differences, duplications or overlaps in regulatory measures or regulatory regimes which create an obstacle to internal trade.

- (b) the differences in standards between the provinces-

CANADA'S RESPONSE: Parties to the AIT are negotiating principles for regulations and standards that affect inter-provincial trade. This is an ongoing process. There exist very few difference in standards between the provinces, but where they do exist, efforts are made to ensure that the different standards do not serve as trade barriers. Also, the provinces have a consistent approach to accreditation-based conformity assessment as they all rely on the SCC's accreditation of conformity assessment bodies.

- (c) the differences between the provincial standards and the international standards?

CANADA'S RESPONSE: There are very few provincial standards. Provinces are active participants in Canada's National Standards System (NSS). Provincial regulations, where they reference standards, will use national, foreign (mostly US, sometimes European norms), or international standards.

4. How is the Canadian economy dealing with the differences between the provincial standards and the international standards? –

CANADA'S RESPONSE: There are only minor differences, and those that do exist, take into account legitimate differences between provinces, such as differences in climate. Canada has a harmonized system embodied in its national building, fire, electrical and plumbing codes.

5. It is noted that the Codex Alimentarius standards that deal with the issue of cheese labelling and composition (CODEX STAN A-6-1978, Rev.1-1999, Amended 2006; CODEX STAN 206-1999; and CODEX STAN 1-1985 (Rev. 1-1991)) do not provide for the reduction of, limit the use of, or require declaration of imported ingredients: On this basis, what is Canada's justification for proposing to amend the Food and Drug Regulations and Dairy Products Regulations (by amending existing cheese identity and compositional standards) such that they are more prescriptive than the Codex Alimentarius standards?

CANADA'S RESPONSE: The proposed amendments to the compositional standards for cheese would harmonize two existing - and inconsistent - sets of regulations (the Food and Drug Regulations and the Dairy Products Regulations) which currently govern the composition of cheese, and thus provide clarification on the ingredients which may be used to manufacture cheese sold in the Canadian market.

Overall Assessment

6. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Standards and Conformance area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion [Canada's Response]

3=between 75% - less than 90% completion -

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: Since its starting position in 1996, up to the present day, Canada has made substantial progress towards the current Bogor goals in the Standards and Conformance area. Canada has made great strides in aligning its standards with international standards. Canada is a signatory to the WTO-TBT agreement, and Canada's regulatory policy requires regulators to comply with WTO TBT (Agreement on Technical Barriers to Trade) and SPS (Agreement on the Application of Sanitary and Phytosanitary Measures) obligations to use international standards whenever possible or appropriate. Canada is an active participant in the international standardization activities of international standards bodies, and is also a member of four of the Asia-Pacific specialist regional bodies (SRBs). Canada is also a member of a number of plurilateral and bilateral recognition arrangements of conformity assessment in both the regulated and voluntary sectors.

Canada has a highly developed technical infrastructure and has been extremely active in providing technical assistance to developing countries. Canada also has a highly transparent regulatory system and has been a leader in developing the principles of Good Regulatory Practice. A challenge for Canada is the fact that its technical regulations are developed and implemented at both the federal and provincial level with some standards differing among the provinces. Canada has taken steps to ensure that these differences do not serve as trade barriers through the passage of the AIT, as well as bilateral initiatives between the provinces such as the TILMA between British Columbia and Alberta. In sum, Canada has advanced very far toward the completion of the Bogor goals in the standards and conformance area.

7. What are Canada's future policy priorities for achieving the current Bogor goals in the Standards and Conformance area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by 2010 [Canada's Response]

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: Where appropriate, Canada will continue to encourage further alignment of its standards with international standards. Canada's new Cabinet Directive on Streamlining Regulation continues to encourage trade facilitation by keeping with previous policy to adhere to WTO-TBT obligations to use international standards where possible and appropriate. The Directive also takes a lifecycle approach to regulation by mandating ongoing reviews of technical regulations to ensure that they are still relevant and are not trade restrictive. The Directive makes Canada's regulatory regime even more transparent, as does the recently completed Canadian Standards Database Project, which provides database-driven search capabilities for Canadian Standards. Canada will continue to be actively involved in the Asia-Pacific SRBs, and is fully committed to helping foster closer links between the SRBs and the APEC-SCSC. Technical assistance to developing countries, including those within APEC, will remain a priority for Canada. The Canadian government indicated in its recent speech from the throne that the reduction of internal trade barriers between provinces will be a top priority in the coming parliamentary session. Factors that may limit Canada's ability to fully adopt international standards include the economic necessity for Canada to use some American and Canadian standards, as well as a small number of differences in standards between provinces.

6. CUSTOMS PROCEDURES

Advance Commercial Information (ACI) and Advance Trade Data

Noting the successful implementation by the Canada Border Services Agency (CBSA) of the marine and air components of the ACI initiative:

1. What is the timeframe for planning and implementation of Phase III of ACI ('eManifest')?

CANADA'S RESPONSE: CBSA is currently undertaking the planning of Phase III of eManifest, which will require the electronic transmission of advance cargo and conveyance information from carriers for all highway and rail shipments. In addition, the electronic transmission of advance secondary data will be required from freight forwarders and the electronic transmission of advance importer data will be required from importers or their brokers. Implementation dates have not yet been determined.

2. When is it expected that Canada will have harmonized its targeting processes (in respect of risk scoring of trade data) with World Customs Organization standards?

CANADA'S RESPONSE: Current schedules indicate a Summer 2009 completion for advance trade data and Fall 2010 for pattern-related WCO risk indicators.

Advance Interdepartmental Reporting Initiative

It is noted that CBSA is currently implementing the Advance Interdepartmental Reporting Initiative (AIRI) for a single window reporting system for the trading community:

3. Is it intended that this electronic reporting of advance commercial information will be featured in future IAPs so that Customs Administrations will be able to keep track of the development for future reference?

CANADA'S RESPONSE: Given this project's close linkages with APEC's paperless trading, common data elements and single window work, this approach is recommended.

Processing times

Noting improvements in inventory processing times:

4. What has been the trend over the past five years in actual processing times for the main categories of inventory?

CANADA'S RESPONSE: CBSA allows traders to use one of the following three methods to obtain the release of goods:

- release with full accounting and payment (paper option);
- release on minimum documentation (RMD) (paper or EDI (electronic data interchange) option); or
- G7 import one step release on full documentation (RFD) (EDI option).

Using RMD allows for the release of goods, by accounting for and paying for shipments after they are released. To take advantage of this privilege, the trader must post an approved amount of security with CBSA.

CBSA has set out the following processing times as goals for each method of processing, under the RMD option. These times are for those shipments that do not require examination of goods or review of permits.

- EDI - 45 minutes
- EDI machine release - 5 minutes

- **Paper – 2 hours**

5. Do information exchanges within NAFTA and within APEC allow comparisons of these processing statistics?

CANADA'S RESPONSE: The MOU regarding the exchange of information under NAFTA between Canada and the US allows for the exchange of NAFTA rulings and is not used to exchange information regarding processing times. The information is exchanged for purposes of evaluating the merit and consistency of NAFTA origin decisions and for compliance and targeting purposes.

Dispute settlement

Noting clients' legislative right to contest CBSA decisions concerning tariff classification, value for duty, origin and all duty and tax assessments:

6. What has been the trend over the past five years in the number of contested decisions as a proportion of the total number of CBSA decisions?

Pirated/counterfeit goods

7. If CBSA encounters suspected pirated or counterfeit goods, does it presently have the authority to pass the information to the Customs Administration of the port in the place of export for corresponding check/follow-up investigation into the exporters?

CANADA'S RESPONSE: Under subsection 107(8) of the Customs Act, CBSA may relay customs information to a foreign government only where an international convention, agreement or other written arrangement between the government of Canada and the government of the foreign state exists and the arrangement specifies the situation and the use of the information. However, since CBSA does not have the authority to make a determination on what is counterfeit or pirated, it is not in a position to pass information to another Customs Administration. Information regarding shipments which may constitute criminal activity is passed to the RCMP for further investigation.

8. If CBSA does not presently have such authority, will it be considered as part of the current review of legislative authorities?

CANADA'S RESPONSE: CBSA recognizes the importance of such legislative authority, and may look at it in the future.

Customs Procedures - Collective Actions

Noting Canada's various implemented and planned improvements:

9. Overall, to what extent does Canada consider it has implemented the Collective Action Plan for Customs Procedures? (over 90%? 76-90%? 50-75%?)

CANADA'S RESPONSE: Canada has progressed well in most areas of the IAP. Although some progress is difficult to quantitatively evaluate, CBSA would estimate that it has implemented in the 76-90% range.

10. Over the next three years, what is Canada's top priority for further progressing each of the following:
 - a. simplification of procedures
 - b. electronic systems
 - c. promotion of secure trade

CANADA'S RESPONSE: CBSA continues to make effective delivery of programs and services its top priority to aid in advancing the Government of Canada's commitment to provide a fair and reliable marketplace while tackling crime to ensure safe and secure communities for all Canadians. In order to advance this strategic priority CBSA has committed to three new strategic goals:

1. Build and maintain program expertise and understanding across the Agency.
2. Develop an integrated framework for effective program delivery.
3. Improve border security by beginning the process of providing duty firearms to CBSA officers who work at land border crossings and marine commercial operations, as well as to officers who performs inland enforcement functions.

The operating environment of CBSA is one of ever shifting challenges and opportunities. To prepare for the future, CBSA will employ more evidence-based decision making, modern technology and innovative approaches. We will improve our ability to provide analysis and advice on domestic and international issues and continue to seek new and creative solutions to the challenges we face by using approaches that increase our presence abroad and 'push the borders out'. To further advance our innovation agenda in 2007-2008, CBSA has developed two new strategic goals in support of this priority:

1. Delivering on our major funded innovation commitments.
2. Advancing and shaping the next generation of innovation, science and technology.

11. Are there any residual harmonization issues that Canada needs to address?

CANADA'S RESPONSE: CBSA is seeking to address means to further its secure facilitation of international trade through the use of programs such as eManifest and the expansion of NEXUS Air.

Subsidy Re-Investigation

12. It would be appreciated if Canada could describe the jurisdiction of CBSA on the subsidy re-investigation.
13. Is there any criterion for initiation of the re-investigation?
14. How does CBSA ensure that the initiation of re-investigation would be predictable and non-discriminatory?

CANADA'S RESPONSE: With regards to the questions above, please refer to the following website link: <http://www.cbsa-asfc.gc.ca/sima/menu-eng.html>. In particular, the 'frequently asked questions' section (<http://www.cbsa-asfc.gc.ca/sima/brochure-eng.html>) should address these questions. In addition to the links above, please refer to CBSA's Departmental Memorandum (D-Memorandum) on our Special Import Measures Act. CBSA's D-Memorandum lists the legislation, regulations, policies, and procedures that CBSA uses to administer customs programs: D14 - Special Import Measures Act (<http://www.cbsa-asfc.gc.ca/menu/D14-e.html>); D15 - Special Import Measures Act / Investigations (<http://www.cbsa-asfc.gc.ca/menu/D15-e.html>).

Overall Assessment

15. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Customs Procedures area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion

3=between 75% - less than 90% completion [Canada's Response]

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: CBSA estimates Canada has advanced between 75% - less than 90% completion towards the current Bogor Goals. While Canada has made strides in areas such as harmonized data elements with initiatives such as harmonized risk scoring/advance trade data, it is working towards establishing other key programs, such as its other government department single window interface.

16. What are Canada's future policy priorities for achieving the current Bogor goals in the Customs Procedures area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year 2010 [Canada's Response]

3=To achieve between 75% - less than 90% completion by year ____

4=To achieve between 51% - less than 75% completion by year ____

CANADA'S RESPONSE: CBSA's future policy priorities for achieving the current Bogor goals include advancing and developing facilitated trade programs (e.g., CBSA's eManifest, harmonized risk scoring/advance trade data).

7. INTELLECTUAL PROPERTY RIGHTS

Expeditious granting of IP rights

It is noted that Canada's Intellectual Property Office (CIPO) is now offering the majority² of its services/products online and that it will continue to expand this online offering:

1. What is the timeframe for completing this online plan?

CANADA'S RESPONSE: While no end date has been established for having all services/electronic transactions online, CIPO is moving forward. CIPO has recently modernized its Electronic Commerce Architecture to allow for easy re-use of the various components that will allow for more transactions to be put online in a shorter timeframe. In addition, CIPO is currently implementing various high volume transactions in the patent and trademark areas as well as implementing the Patent Cooperation Treaty (PCT)-SAFE system developed by the World Intellectual Property Organization (WIPO) for the filing of International Applications under the PCT. Also, the Copyright and Industrial Design Branch launched the industrial design back-capture project which will provide online access to the complete collection of Canadian industrial design registrations dating from December 1861 to present. By March 2008 when the project is completed, there will also be capabilities for bulk export of the data.

Within the context of CIPO's strategic direction to improve client services, as outlined in the 2007-08 Business Plan, CIPO is also planning a multiyear business transformation initiative. As a result, operational processes and systems are being evaluated with the intent to modernize both. CIPO will be in a position to identify and prioritize new online services upon successful implementation of these new processes and systems.

2. What are the principal measures employed by CIPO for determining whether or not the increased volume of applications is in fact being handled expeditiously?

Patents

CANADA'S RESPONSE: There has been a relatively stable volume of applications over the last four years (under 2% yearly). This has allowed the organization to focus recruitment in those areas where the need is greatest in order to respect commitments made to clients. A variety of measures are used to determine our capacity to handle both national and international workloads while focusing on meeting client needs for quality and timeliness. This balance is arrived at through careful monitoring of inventories and turn around times (TATs) in each of the five disciplines (Electrical, Mechanical, Organic Chemistry, General Chemistry and Biotechnology) and supported by a peer review process.

Other measures include (but are not limited to):

- Inventory of Request for Examination (RE);
- Establishing production targets (goals) by individual discipline and examiner;
- Monitoring input vs output (weekly, monthly, quarterly, yearly);
- TAT to first substantive action;
- Hours/actions, hours per first action, hours per disposal;
- Trend analysis (national & international);
- Comparison against other IP offices.

Trademark

CANADA'S RESPONSE: With the exception of last year, there has been a steady but small increase in trademark filings over the last several years (4%). However in 2006/07, the rate of increase was slightly higher and this trend is expected to continue. The Trademark

² This question relied on the IAP language. However, Canada has responded that 'a variety' (instead of 'the majority') better reflects the position. The revised terminology has therefore been adopted.

Branch undertook aggressive recruitment in 2006 by hiring 27 new examiners. This year, the branch will be hiring at least 16 new examiners in order to maintain established service standards. It constantly monitors its inventory and TATs to first action. Production targets are established for each examiner and their performance against these targets is monitored on a monthly basis.

Copyright and Industrial Design

CANADA'S RESPONSE: Over the past four years there has been a significant increase in demand in industrial designs (28% increase in filings overall). An analysis for forecasting future demand and consultation with the USPTO (55% of demand comes from the US) have permitted us to determine a yearly 5% increase over the next few years. As a result, CIPO's Copyright and Industrial Design Branch has recruited additional resources within the operational units to handle the workload and to continue to decrease inventories and TATs while continuing to provide quality services. We are monitoring closely through production plans and monthly outputs the inventories and TATs throughout the registration process (in particular research, examination first actions, and disposals).

Other measures include:

- inventory at each stage of the registration process (to avoid bottlenecking)
- establishing production targets by processes
- monitoring input vs output on a monthly basis
- trends/analysis

Effective enforcement

3. Could Canada please confirm that it has fully implemented APEC's collective actions of:
 - a. Establishment of enforcement guidelines

CANADA'S RESPONSE: Canada has endorsed the five sets of Model Guidelines developed under the APEC Anti-Counterfeiting and Piracy Initiative and is considering them as reference tools in developing domestic policies and measures related to trademark counterfeiting and copyright piracy.

- b. Exchange of information concerning IPR infringement

CANADA'S RESPONSE: Canada has shared with the other APEC economies key Canadian contacts within our law enforcement agencies in order to facilitate information exchange concerning counterfeiting and piracy.

4. What measures is Canada currently using for judging the effectiveness of its enforcement regime, particularly in relation to piracy and counterfeiting?

CANADA'S RESPONSE: This is one of the issues that the federal Inter-Departmental Working Group on IPR Enforcement is currently examining.

5. What progress does Canada consider it has made over the past five years in:
 - a. Reducing international trade in counterfeit/pirated goods
 - b. Reducing online piracy
 - c. Reducing internet sale of counterfeit/pirated goods?

CANADA'S RESPONSE: Given the underground nature of counterfeiting and piracy activities, it is difficult for Canada, as well as for other economies, to determine the scope and magnitude of the problem, both domestically and internationally, and therefore to develop indicators to evaluate the effectiveness of measures in place. However, major progress has been achieved at the international level in multilateral organizations, including in APEC, in raising awareness of the global problem and increasing the profile of

the issue with senior government officials and Leaders, thereby increasing international cooperation to address the problem.

Noting the International Law Enforcement conference (IP crime) co-hosted by the Royal Canadian Mounted Police in June 2007:

6. How does Canada consider it ranks against the 'best practices and leading edge strategies to combat intellectual property crime' that were discussed at that conference?

CANADA'S RESPONSE: While Canada's system for the enforcement of IPR is balanced and consistent with our international obligations, Canada has become increasingly aware that some of its international partners, including other APEC economies, have put in place measures to address counterfeiting and piracy which more effectively respond to the current challenges posed by globalization and rapid technological developments. In this context, an Inter-Departmental Working Group has been reviewing the functioning of the various systems in place in other countries in order to develop recommendations to respond to the specific challenges faced by Canada and which are in line with Canada's legal regime.

As a further planned action, a federal inter-departmental working group – established in 2005 - will continue to examine options aimed at enhancing Canada's approach to the enforcement of intellectual property rights, particularly at the borders:

7. Could Canada please supply more information about these options, including any evaluation of them to date? **(Canada's Response: See response under 9)**
8. When is this inter-departmental working group due to report? **(Canada's Response: See response under 9)**
9. And when might proposed changes be available for public comment?

CANADA'S RESPONSE: The Inter-Departmental Working Group has been reviewing how systems in other jurisdictions have been implemented and how effective they are in combating counterfeiting and piracy, more specifically, how enforcement at the border is addressed. Analysis to date has identified several mechanisms to deal with suspected counterfeit trademark and pirated copyright goods at the border. These mechanisms are being considered and reviewed in the context of Canada's overall legal system and approach vis-à-vis IPR, as well as administrative system (e.g., customs). This work continues and the timing for the working group's submission of recommendations is still undetermined. However, in the October 16 *Speech from the Throne*, which outlines the Government key priorities, the Government reiterated its commitment to protect IPR in Canada. Furthermore, in its responses to reports of Parliamentary Committees dealing with counterfeiting and piracy, the Government outlined its strategy with respect to IPR, which include legislation criminalizing the unauthorized recording of a film in a movie theatre (which came into force in June 2007), options to strengthen and modernize Canada's IPR enforcement regime, and reform of the Canadian copyright regime to bring it into conformity with the WIPO internet treaties.

With respect to public comment, Canada's process for legislative and regulatory changes (when and should there be any) is very transparent and provides opportunities for public consultations.

Appropriate protection of IPR in new fields

10. Could Canada please provide information on the current situation, as well as on recent and planned improvements, in relation to each of the following collective actions:
 - a. Protection for biotechnology and computer-related inventions

CANADA'S RESPONSE: In Canada, the protection of IPR related to biotechnologies is

administered through our general patent system and Canada's *Patent Act* – there is no specific IPR regime for biotechnologies. With respect to computer-related inventions, our general patent system applies to such inventions, and copyright associated with software and hardware is protected through the Canadian *Copyright Act*.

b. Protection for geographical indications

CANADA'S RESPONSE: The WTO's TRIPS Agreement allows the flexibility for each Member to use their own legal mechanism or system of choice to provide protection for geographical indications (GIs) in their own country. Canada protects GIs in accordance with its international obligations. The Canadian Trademarks Act provides Canada's legislative authority on GIs. In 1996, the Act was amended so that Canada could implement its TRIPS obligations, including those relating to wine and spirit GIs. GIs for non-wine and non-spirit products are generally protected by certification marks. Certification marks are a type of trademark. While ordinary trademarks distinguish the goods or services of a specific person or organization, certification marks identify goods or services that meet a defined standard. One type of standard covered by certification marks is for the geographical area within which goods or services have been produced.

c. Electronic commerce?

CANADA'S RESPONSE: Canada's legislation concerning intellectual property rights is technologically neutral and therefore applies to electronic commerce as a means of conducting business.

11. Many developed countries introduced 70 years as the term of copyright protection for some reasons such as promotion of smooth distribution in market. Is there any discussion in Canada that the term of copyright protection should be extended from 50 years to 70 years? If yes, could you provide any information (schedule etc.) about the discussion? If no, what is the merit of continuing the term of 50 years?

CANADA'S RESPONSE: From Canada's perspective, the copyright term of life plus 50 years included in the relevant multilateral treaties provides a balanced framework which can both foster creativity and promote smooth distribution in the market.

Overall Assessment

12. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Intellectual Property area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals
2=between 90% - less than 100% completion
3=between 75% - less than 90% completion
4=between 51% - less than 75% completion
5=less than 51% completion

13. What are Canada's future policy priorities for achieving the current Bogor goals in the Intellectual Property area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010
2=To achieve between 90% - less than 100% completion by year 2010 [Canada's Response]
3=To achieve between 75% - less than 90% completion by year ____
4=To achieve between 51% - less than 75% completion by year ____

8. COMPETITION POLICY

The IAP notes that the Competition Bureau participates in the Government of Canada's deregulation and privatization initiatives to ensure that the provision of goods and services in Canada is more efficient; and the IAP notes that recent initiatives have been in such sectors as telecommunications, electricity, energy and financial services:

1. What does the Bureau regard as the current competition and efficiency issues in each of these particular sectors?

CANADA'S RESPONSE:

Telecom³:

As elsewhere, the Canadian telecommunications sector has undergone a profound transformation in recent years. This has been characterized by increasing competition, industry consolidation, price wars, and the introduction, growth and bundling of products and services. Numerous companies have both entered and exited the market during that time.

In the policy area, in April 2005 the federal government appointed a panel of Canadian experts to undertake a comprehensive review of Canada's telecommunications policy framework. The Telecommunications Policy Review Panel issued its final report in March 2006. Underlying the Panel's 127 recommendations was the fundamental conclusion that Canada's telecommunications markets have now evolved to a point that justifies replacing the current legislative presumption that favours regulation with one that favours reliance on market forces. While it recognized that there would be an ongoing need for regulation in certain specific circumstances, the Panel concluded "the legislative framework should specify the circumstances in which regulation is still warranted and that it should provide clear direction on the use of regulatory powers so regulation does not unnecessarily impede the development of market forces." In November 2006, the Minister of Industry adopted one of the Panel's key recommendations and formally directed the CRTC to adopt a policy of placing greater reliance on market forces whenever possible when making decisions.

In light of the recommendations of the Telecommunications Policy Review Panel and the announcements by the Minister of Industry, the Competition Bureau has been preparing for what it anticipates will be an increasingly active role in the telecommunications sector. The Bureau recently published a draft document entitled: Information Bulletin on the Abuse of Dominance Provisions as applied to the Telecommunications Industry (the "draft Bulletin"). The draft Bulletin is part of the Bureau's continuing effort to maintain a transparent and predictable enforcement policy. It describes the Bureau's approach under the abuse of dominance provisions (sections 78 and 79 of the Competition Act (the "Act")) with respect to conduct in the telecommunications industry to the extent that the CRTC has made a determination to refrain from regulating such conduct. The Bureau received 14 submissions from interested parties providing comments on its approach, including comments from the American Bar Association Sections of Antitrust and International Law. The Bureau is currently reviewing and revising the draft Bulletin in response to the submissions and hopes to be able to finalize the document by later this spring.

Electricity:

In the past two years, the Competition Bureau has not completed any new work in the electricity sector.

Energy:

³ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2301&lg=e>

Since 1990, the Competition Bureau has conducted six major investigations into allegations of collusion in the gasoline industry. It has consistently found no evidence to suggest that periodic price increases resulted from a conspiracy to limit competition in gasoline supply. Instead, it has always found that market forces such as supply and demand and rising crude oil prices caused the price spikes. In fact, after each increase prices fell to normal levels.

The Bureau does not possess up-to-the-minute information on all developments in the worldwide petroleum industry. It is not the Bureau's mandate to conduct ongoing economic research and analysis of developments in the petroleum sector of the economy.⁴

Financial Services:

In the past two years, the Bureau has not completed any new work in the financial services sector.

Noting that the Commissioner is authorized to make representations to federal boards/commissions/other tribunals, as well as to provincial agencies if requested:

2. Has the Commissioner been involved in any recent review of:

a. competition in the postal sector

CANADA'S RESPONSE: *United Parcel Service of Canada, Inc. v. Government of Canada* NAFTA Tribunal (Washington, D.C.)

Nature of Matter: arbitration under ch. 11 of NAFTA served on Government of Canada by United Parcel Services involving allegations that Canada has not taken measures to prevent anticompetitive activities by a government monopoly (Canada Post) contrary to ch. 15 of NAFTA.

Status: hearing took place 12-17 December 2005. On 12 June 2007, the NAFTA arbitration Tribunal released its decision, rejecting all claims brought by UPS. UPS has three months from the date of release to file an application in the US District Court for the District of Columbia to have the award set aside.⁵

b. federal and provincial subsidies?

CANADA'S RESPONSE: The Commissioner has not been invited to make representations before any federal or provincial boards, commissions or other tribunals regarding federal or provincial subsidies.

In its *Economic Survey of Canada 2006*, the OECD expressed concern over a rising trend in government transfers to business. It referred to a wide range of federal and provincial subsidies, special programmes and policies, which it considered were discriminatory and competition distorting in a number of sectors:

3. Could the Bureau please comment on the OECD's concern and point to any measures designed to alleviate it?

CANADA'S RESPONSE: The Bureau's role is to encourage regulators to adopt approaches that rely to the greatest extent possible on market forces. Where regulation is necessary, the Bureau has advocated that the regulation be the minimal degree necessary to achieve the objectives of the regulator. Over this period of time, the Bureau has advanced several guiding principles that we believe provide an effective framework for deregulation:

⁴ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemid=1906&lg=e>

⁵ <http://www.dfait-maeci.gc.ca/common/search/results-en.asp?qu=United+Parcel&lg=en>

- a. Where competition in an industry is feasible, that is, it is not a “natural” or governmental monopoly, one should move to reliance on market forces as soon as possible.
- b. Where continued regulatory oversight is required, one should adopt the regulatory model that emulates market outcomes as closely as possible.
- c. Where regulation has distorted prices, regulators should move quickly to ensure that prices reflect the costs of providing the service.
- d. If new entrants do not have market power, they should not be regulated.
- e. Former monopolies should be deregulated as soon as market conditions are such that you have sustainable and effective competition to protect consumers.
- f. The period of transition, where some market participants are regulated while others are not, should be no longer than necessary.⁶

Noting the Competition Bureau’s forthcoming study on regulated professions:

4. Will this have regard to APEC’s business mobility objectives?

CANADA’S RESPONSE: The Bureau’s study on self-regulated professions is not yet publicly available but is due to be released later this year. Many professional services are subject to rules and regulations that have emerged over time, often to protect consumers and ensure service delivery standards. The question is whether these rules and regulations are still relevant, and whether we could get similar results with less cost to competition.

The role of APEC’s Business Mobility group is:
to enhance the mobility of business people to facilitate trade and investment activity in the APEC region. It achieves its aim by building the capacity of members to implement transparent, streamlined short stay and temporary residence arrangements, and immigration and related border systems to ensure the safe and secure movement of people.⁷

Noting Canada’s expanded open skies agreement with the United States, negotiated in November 2005:

5. Is it envisaged that there is likely to be further liberalization in respect of air travel and cargo - between Canada and other countries - in the next three years?

CANADA’S RESPONSE: Transport Canada is responsible for negotiating all international air transportation and air cargo agreements.

Noting the statutory provisions relating to the use of misleading representations and deceptive marketing practices:

6. Does the Bureau keep a record of the number and proportion of cases involving foreign parties?

CANADA’S RESPONSE: No we do not.

Telecommunications

In noting that the telecommunications sector in Canada is in transition from being governed by sector-specific competition regulation to laws of general application:

7. Please elaborate on the policy rationale for this change.

CANADA’S RESPONSE: The move from a regulated to a competitive environment will have a significant impact for many in the industry, requiring all parties to adjust to the general competition framework of the Act. Given the complex relationships that exist within the

⁶ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2275&lg=e>

⁷ <http://www.businessmobility.org/about/index.html>

industry and the history of competitive disputes that the CRTC has considered, the Bureau may receive a significant number of complaints within this sector. Where one firm, or group of firms, has market power, careful scrutiny needs to be given to the conduct of such firm or firms which may substantially lessen or prevent competition, e.g., impeding or preventing effective competition in a market by existing or potential competitors.

8. What telecommunications-specific provisions in the current arrangements may be absorbed by the new general competition regime?

CANADA'S RESPONSE: To the extent that the CRTC has forborne [refrained] from regulating conduct related to a telecommunications service or class of services, complaints that a firm with market power has engaged or is engaging in a practice of anti-competitive acts can be dealt with under the abuse of dominance provisions contained in sections 78 and 79 of the Act.

Under the Act, where the Commissioner is satisfied, on the evidence obtained through an investigation, that the elements of the abuse of dominance provisions are met, the Commissioner may make an application to the Competition Tribunal (the "Tribunal") for adjudication of the matter. Only the Tribunal can issue a remedial order(s) to address a Part VIII reviewable practice under the Act.

Subsection 79(1) of the Act sets out the three elements that must exist for the Tribunal to make a finding that a firm (or group of firms) has abused its dominant position and issue a remedial order(s):

- (a) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business;
- (b) that person or those persons have engaged, or are engaging, in a practice of anti-competitive acts; and
- (c) the practice has had, is having, or is likely to have the effect of preventing or lessening competition substantially in a market.

The first element requires the definition of a relevant product market(s) (i.e., a "class or species of business") and a relevant geographic market(s) (i.e., "throughout Canada or any area thereof"). It also requires a finding of market power or dominance (i.e., that "one or more persons substantially or completely control" the relevant market). The second element requires a practice of anti-competitive acts (i.e., an act "...whose purpose is an intended negative effect on a competitor that is predatory, exclusionary or disciplinary"). The third element places the focus of the inquiry squarely on the effects, or likely effects, of the act(s) on competition, rather than on individual competitors. Appendix A contains the full text of sections 78 and 79 of the Act.

9. How if at all will the abuse of dominance test applicable in telecommunications markets differ from the present general test in the Competition Act?

CANADA'S RESPONSE: Certain characteristics of the telecommunications industry warrant special consideration in determining whether abuse of dominance has occurred. Generally, the telecommunications industry is a network industry with large sunk costs and significant economies of scale, density, and scope, implying that some firms are likely to have larger market shares than might be typical in non-network industries. Interconnection, both among competitors in the same market (e.g., local telephone service) and across market boundaries (e.g., long distance call termination), is widespread and in many respects necessary for firms to compete. Proper definition of the relevant market in the telecommunications industry poses particular challenges because the sector is dynamic, shaped by constant and rapid technological change. Finally, certain acts are more likely to be the subject of an abuse of dominance complaint in the telecommunications industry, given the nature of the sector.

The text of the “Draft Information Bulletin on the Abuse of Dominance Provisions as applied to the Telecommunications Industry” can be found here:

<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2180&lg=e>

10. Will the change from sector-specific competition regulation have any impact on Canada's ability to fulfill its commitment to the Telecommunications Reference Paper?

CANADA'S RESPONSE: No.

11. Are there any moves to liberalize foreign investment restrictions for supplying telecommunications services in Canada as a result of the new competition regime, or as a result of any other changes?

CANADA'S RESPONSE: Under many current trade agreements, parties have committed to maintaining measures to control or prevent traditional issues of dominance in telecom markets (e.g., mandating access to "essential facilities" and broadly defined interconnection obligations) and to provide for recourse to domestic regulators for dispute resolution. A question arises as to how these existing obligations affect the future telecommunications regulatory environment.

A legal analysis of the obligations themselves and how they would or should be interpreted is necessary before one can determine more precisely what impact parties' international commitments will have on the future telecommunications regulatory environment. However, a high-level view suggests some potential general effects of these obligations on the domestic telecom regime and the interplay between the sector-specific regulator and the competition authority. For instance, these obligations may mean that regulation will have to persist (in order for parties to meet their commitments) in telecom service markets in which forbearance would otherwise be justified by the level of competition in the market. These obligations may also, in some respects, dictate or delineate the institutional framework for the oversight of telecommunications markets.

In Canada, there has been recent public debate on the appropriate institutional framework for telecommunications regulation and telecom market oversight. These international obligations suggest that a sector-specific regulator may have to maintain its regulatory function over certain aspects of telecom markets. Alternatively, framework competition legislation may need to be amended to ensure that those regulatory functions persist. This could mean a fundamental change to the role of the competition authority. At this point, we have not examined this issue closely and it is too early to state definitively whether these obligations will have a bearing on future telecommunications regulatory reform.

Noting the statement that a telecommunications service provider that contravenes an order to pay an administrative monetary penalty under a new provision of the Competition Act 'is not guilty of an offence':

12. Could Canada please comment on the reason for this?

CANADA'S RESPONSE: Bill C-41 was not passed and died on the order paper at the prorogation of the 1st Session of the 39th Parliament on 14 September 2007. It has not been reintroduced for the 2nd Session that began on 16 October 2007.

Bank mergers/acquisitions

It is noted that the Competition Act provides that an amalgamation or acquisition involving banks is exempt from the prohibitions relating to mergers if the Minister of Finance certifies that such amalgamation/acquisition would be desirable in the interest of the financial system:

13. Is it the Bureau's view that the financial industry is still highly regulated?

CANADA'S RESPONSE: In the past two years, the Bureau has not completed any new work in the financial services sector.

14. And is that why the scope for the competition authorities to intervene has been limited?

CANADA'S RESPONSE: Section 94 of the Competition Act states:

94. The Tribunal shall not make an order under section 92 in respect of

(a) a merger substantially completed before the coming into force of this section;

(b) a merger or proposed merger under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act or the Trust and Loan Companies Act in respect of which the Minister of Finance has certified to the Commissioner the names of the parties and that the merger is in the public interest — or that it would be in the public interest, taking into account any terms and conditions that may be imposed under those Acts; or

(c) a merger or proposed merger approved under subsection 53.2(7) of the Canada Transportation Act and in respect of which the Minister of Transport has certified to the Commissioner the names of the parties.

Planned improvements

Noting the plan to revise predatory pricing guidelines:

15. What are the main features of this revision?

CANADA'S RESPONSE: These revised guidelines bring together several documents to ensure that our approach to aggressive pricing in the marketplace is consistent and is clearly rooted in economic principles, so that the pro-competitive effects of such behaviour is not chilled. The draft guidelines adopt the widely accepted avoidable cost and recoupment standards that will ensure that firms competing vigorously with rivals will not be deterred.⁸

Three principal enforcement policy changes have been adopted in these guidelines, as described below⁹.

First, complaints regarding predatory conduct will be initially examined under the abuse of dominance provisions. Examinations and inquiries of predatory conduct involve complex considerations of market structure and conduct, as well as an evaluation of how pricing practices may impact competition. Generally, these requirements are better suited to the non-criminal abuse of dominance provisions and adjudication by the Competition Tribunal. Preliminary examinations and inquiries under the criminal predatory pricing provisions are generally reserved for egregious conduct. In the past, criminal predatory pricing inquiries have been relatively few in number and only a handful of cases have been prosecuted before the courts

Secondly, in carrying out the price-cost analysis, the Bureau will use average avoidable cost instead of average variable cost and average total cost, as used in the previous guidelines, to determine whether prices are “unreasonably low” under the criminal predatory pricing provisions. In the Bureau’s view, applying an average avoidable cost standard is more appropriate and will also ensure consistency with respect to the price-cost analysis in both civil and criminal examinations and inquiries of predatory conduct.

Finally, “price matching” has been added as a reasonable business justification for pricing below average avoidable costs.

⁸ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2492&lg=e>

⁹ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2469&lg=e>

Noting the proposal to add a definition of 'product' in section 75 of the Competition Act:

16. Is the proposed positive obligation to supply information limited to technical information?

CANADA'S RESPONSE: Private Members' Bill C-425 received its first reading in the 2nd session of the 39th Parliament on 16 October 2007 and has not yet been debated. The purpose of Bill C-425 is to add a definition of "product" in section 75 of the Competition Act to make it clear that the term includes technical information that is required by a person in order to provide a service to a customer. This ensures that the Competition Tribunal is able to require a supplier to provide this information to a customer in accordance with section 75 in cases where the supplier has previously refused to do so.

The current proposed definition of "product" is: "product" includes technical information that is required by a person in order to provide a service to a customer.

At this point, the definition of "product" is not limited to technical information only.

The enactment also amends the Canadian Environmental Protection Act, 1999 to provide that companies that manufacture motor vehicles in Canada or that import motor vehicles into Canada are required to make available to Canadian motor vehicle owners and repair facilities the information and diagnostic tools and capabilities necessary to diagnose, service and repair those motor vehicles.

Noting the proposed amendment to the Canadian Environmental Protection Act:

17. Is this likely to assist, *inter alia*, purchasers of parallel car imports?

CANADA'S RESPONSE: See response to Question 16, paragraphs 1 and 3.

Until the Bill is debated and passed into law, it is difficult to determine what the final text of the legislation will be and if the proposed changes will assist purchasers of parallel car imports.

Noting the possible reform of section 45 of the Competition Act:

18. What is the main issue here? Is it the competition test, or the coverage of the provision, or exemptions, or another issue?

CANADA'S RESPONSE: Section 45 of the Act contains provisions against criminal conspiracy. The Bureau is considering various models that we could use when applying section 45. Both internal and external working groups were created and were tasked with formulating a proposal regarding the reform of section 45.

Committee members agreed on criteria for evaluating the potential models and assessed them in the context of a number of case scenarios, all with a view to determining what behaviour the provisions should cover and whether the provisions should ultimately be criminal or civil ones. Work was completed in June 2006, and the Bureau began its review of both working groups.

We appreciate that today's complex markets often require firms to make strategic alliances with other firms. And we understand that these legitimate alliances can often be pro-competitive. That is why we are asking ourselves how we can act against conspiracies in a way that will not harm legitimate alliances.

Public technical roundtables to discuss the proposals have not yet been scheduled.

Noting the opportunity for parties to have direct private access to the Competition Tribunal:

19. Is it sufficient that the parties are directly and substantially affected by the conduct of another party, as distinct from competition in a market being substantially affected?

CANADA'S RESPONSE: Private access to the Tribunal is only available for conduct reviewable under sections 75 (refusal to deal) and 77 (exclusive dealing, tied selling and market restriction) of the Act. The private access provisions were added to the Act to complement the Bureau's public enforcement and increase the deterrent effect of the Act.¹⁰

Section 103.1 of the Competition Act states:

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 75 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under section 75 or 77.

Notice

(2) The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order under section 75 or 77 is sought.

Certification by Commissioner

(3) The Commissioner shall, within 48 hours after receiving a copy of an application for leave, certify to the Tribunal whether or not the matter in respect of which leave is sought

(a) is the subject of an inquiry by the Commissioner; or

(b) was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order under section 75 or 77 is sought.

Application discontinued

(4) The Tribunal shall not consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 75 or 77.

Notice by Tribunal

(5) The Tribunal shall as soon as practicable after receiving the Commissioner's certification under subsection (3) notify the applicant and any person against whom the order is sought as to whether it can hear the application for leave.

Representations

(6) A person served with an application for leave may, within 15 days after receiving notice under subsection (5), make representations in writing to the Tribunal and shall serve a copy of the representations on any other person referred to in subsection (2).

Granting leave to make application under section 75 or 77

(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

Time and conditions for making application

(8) The Tribunal may set the time within which and the conditions subject to which an application under section 75 or 77 must be made. The application must be made no more than one year after the practice that is the subject of the application has ceased.

Decision

(9) The Tribunal must give written reasons for its decision to grant or refuse leave and send copies to the applicant, the Commissioner and any other person referred to in subsection (2).

Limitation

¹⁰ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1392&lg=e>

(10) The Commissioner may not make an application for an order under section 75, 77 or 79 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (7), if the person granted leave has already applied to the Tribunal under section 75 or 77.

Inferences

(11) In considering an application for leave, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by it.

Inquiry by Commissioner

(12) If the Commissioner has certified under subsection (3) that a matter in respect of which leave was sought by a person is under inquiry and the Commissioner subsequently discontinues the inquiry other than by way of settlement, the Commissioner shall, as soon as practicable, notify that person that the inquiry is discontinued.

Noting the proposed *ex-post* merger reviews:

20. Could the Bureau please elaborate on the proposed focus and methodology for these reviews?

CANADA'S RESPONSE: In October 2007, the Competition Bureau published a post-merger review study that it commissioned last year from CRA International, an economic and financial consulting firm. Consistent with the Bureau's priority to enhance performance management and transparency, the study evaluates whether the Bureau applied appropriate analytical approaches and took reasonable decisions in certain merger reviews by examining, in particular, whether any of the markets in question in those reviews are substantially less competitive today than they were pre-merger. CRA found that, in general, the Bureau's analyses accurately assessed market conditions, and reasonably predicted outcomes (accounting for the information that was available at the time). In addition, the report does identify areas where the Bureau could make incremental improvements. These include a greater use of quantitative analysis, and more critical consideration before accepting claims of 'countervailing power' from buyers.

Three merger reviews were selected as part of this study: the 2000 acquisition by Corus Media of the assets of WIC Broadcasting; the 2003 merger of a number of coal companies based in Western Canada, collectively referred to at the time as the Fording Group; and a 1998 joint venture between 506062 New Brunswick Ltd. (Carmeuse) and Lafarge S.A., both suppliers of building materials.

The objective of the study was to consider mergers that had raised material competition concerns, but where the Bureau ultimately decided the merger did not merit a challenge before the Competition Tribunal. In addition, to be eligible for CRA to select the merger for this study, sufficient time had to have passed since the closing of the transaction to allow for the market to have adjusted to the merger, and the three-year period during which the Commissioner may challenge the merger before the Competition Tribunal had to have passed.

The key questions explored include:

- Have the competitive effects anticipated by the Bureau at the time of its conclusions come about, post-merger?
- Is the market more or less competitive and why?
- Were any relevant factors overlooked at the time of the original review?
- Did the original conclusions prove, over time, to be correct?
- Were the correct techniques used in applying the Bureau's analytical framework?

As detailed in its report, CRA consulted with a number of industry participants and reviewed other relevant sources of information as part of this study.¹¹

21. When is completion of this work anticipated?

CANADA'S RESPONSE: The post-merger review study was published in October 2007 – the text of the document can be found here:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2447&lg=e>

Promoting cooperation within APEC

Noting that the 1995 Cooperation Agreement between Canada and the United States 'has proven successful in a number of international prosecutions':

22. Could Canada please be more specific on which aspects of the Agreement have led to this outcome?

CANADA'S RESPONSE: Cooperation agreements promote more effective relations between competition authorities. There is no one specific aspect that leads to success in international prosecutions; it is the agreement as a whole.

Noting the 2004 positive comity agreement between Canada and the United States:

23. Are there any examples to date where this agreement has proven successful?

CANADA'S RESPONSE: All procedures carried out through positive comity agreements are confidential – we cannot provide examples.

Noting the 2003 Canada-Mexico Cooperation Agreement:

24. Is it foreseen that Canada and Mexico will also enter a positive comity agreement?

CANADA'S RESPONSE: The Competition Bureau is not currently negotiating a positive comity agreement with Mexico.

Noting Canada's extensive participation in bilateral Mutual Legal Assistance Treaties:

25. Can it point to examples of where these agreements have assisted in cross-border competition issues?

CANADA'S RESPONSE: All procedures carried out through MLATs are confidential – we cannot provide examples.

Overall Assessment

26. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Competition Policy area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals [Canada's Response]

2=between 90% - less than 100% completion

3=between 75% - less than 90% completion

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: Canada has fully met the Bogor goals for Competition Policy.

¹¹ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2468&lg=e>

27. What are Canada's future policy priorities for achieving the current Bogor goals in the Competition Policy area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year _____

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: Canada will continue to promote the Bogor goals and will take additional steps to ensure that Canadian competition legislation remains relevant and effective.

9. GOVERNMENT PROCUREMENT

Transparency

Noting the current transparency measures applied pursuant to APEC Leaders' Transparency Standards on Government Procurement, and noting Canada's implementation of APEC's area-specific transparency standards:

1. Could Canada please advise if any further improvements are required for full compliance with the transparency standards?

CANADA'S RESPONSE: Canada meets all of the APEC Leaders' Transparency Standards on Government Procurement.

Open and effective competition

Noting that Government procurement opportunities in Canada may be electronically accessed throughout the world:

2. What has been the trend over the past five years in the number of foreign bidders?

CANADA'S RESPONSE: The Government of Canada does not have information on trends in the number of foreign bidders. For example, although the federal government collects contractors' addresses for billing purposes, this information is not a reliable indicator of whether the bidder is foreign owned.

3. In respect of procurement covered by the WTO Government Procurement Agreement and NAFTA Chapter 10, are there any remaining barriers to suppliers entering the bidding process?

CANADA'S RESPONSE: Canada is fully compliant with its international government procurement commitments.

Non-discrimination and fair dealing

Noting that Canada seeks to ensure equal access to procurement to all suppliers (unless, as APEC's principles on government procurement provide, it is necessary to protect essential security interests):

4. Could Canada please confirm that this equal access objective now includes suppliers from all APEC economies and not just 'Canadian suppliers' (i.e. those with a place of business in Canada)?

CANADA'S RESPONSE: Canada is fully compliant with its international government procurement commitments. For procurement where such commitments do not apply, Canada reserves the right to pursue domestic benefits. In the very limited circumstances where provisions in support of domestic benefits are sought, the information is clearly indicated in the bid documents.

In Canada, procurement practices generally require that:

- The same information on procurement opportunities is available to potential suppliers;
- Bids are evaluated according to the specified criteria included in tender documents;
- Contract award information is made publicly available.

5. Could Canada please advise of any elements in the current bid evaluation criteria that might have the effect of discriminating against foreign suppliers?

CANADA'S RESPONSE: Bid evaluation criteria are developed based on the specific requirements of a particular procurement. Canada is fully compliant with its international

commitments on government procurement. Where Canada has no commitments, Canada reserves the right to implement provisions in support of domestic benefits. In the limited circumstances where such provisions are sought, these are normally clearly indicated in the bid documents.

6. Could Canada please advise any other federal measures/practices that may discriminate against potential foreign suppliers?

CANADA'S RESPONSE: It should be noted that neither the federal or provincial governments have broad-based small business set-asides or preferential price programs of general applicability. Further information on how the federal government addresses domestic benefits is available from the following Web site:
http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/tbm_122/pr_e.asp

7. Are there any indications of the extent to which the objective of encouraging competition in relation to federal Government procurement has conflicted with national 'best value' objectives such as regional and industrial development?

CANADA'S RESPONSE: In Canada, government procurement opportunities of sufficient size are generally advertised using electronic means, ensuring a maximum number of suppliers have an opportunity to bid. We have no known indication of any conflict as described in the question.

8. Over the past five years, has there been any change in the small proportion of complaints (alleging federal breaches, e.g. of NAFTA or the GPA) accounted for by foreign suppliers?

CANADA'S RESPONSE: The Canadian International Trade Tribunal receives on average 68 new complaints a year. There are typically two or three complaints per year from foreign suppliers. Most determinations with respect to the validity of a complaint are related to breaches of the Agreement on Internal Trade (internal to Canada only), followed by the NAFTA and then the GPA.

Government purchases

Noting that the Government of Canada procures about Can\$20 billion of goods and services per annum:

9. What are Canada's observations in relation to the extent of foreign participation in federal contracts over the past five years?

CANADA'S RESPONSE: Canada does not collect data that would answer this question.

10. In relation to standing offers by federal departments/agencies, are there any pre-qualified foreign suppliers?

CANADA'S RESPONSE: Canada does not collect data that would answer this question.

11. If so, to what extent have pre-qualified foreign suppliers succeeded in competitions for such standing offers?

CANADA'S RESPONSE: Canada does not collect data that would answer this question.

Noting that procurement by Canadian provinces and territories is close to half the amount of federal procurement; and notwithstanding that sub-federal procurement is not covered by the WTO Government Procurement Agreement:

12. What are the main barriers to foreign participation in provincial procurement processes in Canada?

CANADA'S RESPONSE: Provincial and territorial governments do not have broad-based small business set-aside or price preferential programs of general applicability. Although not obligated to open procurement to foreign suppliers, Canada's provinces and territories generally have open and transparent procurement practices. Procurements of sufficient size to be of interest to foreign suppliers are advertised publicly, generally using electronic means.

13. What is Canada's response: to the ABAC view that provincial procurement is 'highly discriminatory in favour of domestic bidders'?

CANADA'S RESPONSE: No evidence of "highly discriminatory in favour of domestic bidders" has been provided to Canada. The statement is therefore unsupported and Canada has responded accordingly in its WTO Trade Policy Review in February 2007. Provincial procurements of sufficient size to be of interest to foreign suppliers are generally advertised publicly using electronic tendering. Although benefits are not commonly sought, any conditions or domestic benefits that are sought are normally described in the notice of intended procurement or in the bid documents.

Canada has not made any commitments for sub-federal procurement in its international trade agreements on government procurement, therefore Canada has no obligation to provide national treatment to other countries with respect to its sub-federal procurement. Although not obligated to open procurement to foreign suppliers, Canada's provinces and territories generally have open and transparent procurement practices. No province or territory has a broad-based small business set aside or price program of general applicability.

14. Does any offer by Canada to increase foreign access to provincial procurement processes now solely depend on reciprocity within the WTO, and reciprocal offers by the United States in particular?

CANADA'S RESPONSE: Canada continues to seek substantial improvements in market access in the current review of the GPA in sectors of priority interest to Canadian suppliers, and in the certainty of access by circumscribing the use of small business set-asides and other exceptions under the Agreement. Until an acceptable balance of concessions can be achieved, Canada's coverage is not likely to increase from the current GPA coverage.

RTAs/FTAs

In relation to Canada's participation in current or prospective RTAs and FTAs (excluding NAFTA's Chapter 10):

- a. The existence or otherwise of a government procurement chapter
- b. The date at which the chapter came (or is expected to come) into force
- c. Any improvements, in such chapter(s), on Canada's current procurement measures and practices?

CANADA'S RESPONSE: The Canada-Chile Free Trade Agreement (CCFTA) celebrates its 10th anniversary in 2007. On 15 November 2006 Canada and Chile signed an agreement to amend the CCFTA to add a chapter on government procurement carried out at the federal level. Both countries are now undertaking the steps necessary to bring the chapter into force, which is expected to take place in late 2007. The chapter's procedural obligations require Canada to treat Chilean suppliers in the same manner as domestic suppliers for procurements that are covered by the agreement. The same will be true for Canadian suppliers seeking to participate in the government procurement market in Chile. Canada and Chile also agreed on extended transparency commitments for certain procurements for which no market access commitments were made.

Overall Assessment

15. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Government Procurement area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals [Canada's Response]

2=between 90% - less than 100% completion

3=between 75% - less than 90% completion

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: Since 1997, Canada has fully completed the Bogor goals in the Government Procurement area.

16. What are Canada's future policy priorities for achieving the current Bogor goals in the Government Procurement area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year ____

3=To achieve between 75% - less than 90% completion by year ____

4=To achieve between 51% - less than 75% completion by year ____

CANADA'S RESPONSE: Canada fully meets the Bogor goals in the area of government procurement and these principles are part of Canada's procurement systems and Canada seeks to continuously make improvements in the manner procurement activities are carried out.

10. DEREGULATION/REGULATORY REVIEW AND REFORM

Canada's current regulatory review policies/arrangements, along with recent and planned improvements, are noted. Could Canada please provide some further information:

1. To what extent are review dates already built in to Canada's regulatory regime?

CANADA'S RESPONSE: Currently, review dates are built into specific legislative regimes. The sponsoring department is to conduct extensive consultations with stakeholders on its legislative and regulatory framework to ensure that the regime continues to align with government priorities and function effectively and efficiently in the ever-evolving operating environment. When legislative frameworks require streamlining and modernization, new regulations or amendments to corresponding regulations are triggered as a result. When submitting a high impact proposal package to implement a new regulation, departments and agencies are required to indicate how it will be reviewed.

Certain statutes are subject to a predetermined review cycle, depending on their scope and purpose. For example, the Canada Marine Act and the statutes that govern Canada's financial institutions (e.g., the Bank Act) are subject to a five-year review cycle.

With the Cabinet Directive on Streamlining Regulation (the Directive), which came into force on 1 April 2007, replacing Canada's Regulatory Policy, 1999, Canada has moved to a performance-based regulatory system. Pursuant to this Directive, regulatory departments and agencies are to regularly assess the results of performance measurement and evaluation to identify regulatory frameworks in need of renewal. Once identified, departments and agencies are to examine the regulation with a focus on: the effectiveness of the current regulation in meeting the policy objective; the current instrument selection, level of intervention, and degree of prescriptiveness; clarity and accessibility of the regulation to users; and the overall impact on competitiveness, including trade, investment, and innovation.

Planning, priority and timeline-setting, and the measuring and reporting of outcomes of regulatory review should be determined by departments and agencies in collaboration with affected parties:

2. What is the timeframe for the development of the guidelines/tools to support the April 2007 Cabinet Directive on Streamlining Regulation Directive?

CANADA'S RESPONSE: Guidelines and tools that support the Directive were made public the week of 8 October 2007. They can be found at www.regulation.gc.ca.

These guidelines and tools are the product of thorough consultation with external experts, international comparisons and extensive interdepartmental consultations.

3. What 'key sectors and areas' are being, or are likely to be, targeted under the new Directive?

CANADA'S RESPONSE: The Directive is part of a Government regulatory reform framework announced in the 2007 Federal Budget that also contained initiatives to reduce the paper burden on small business by 20% and streamline the approval process for major natural resource projects.

Whereas the paper burden reduction initiative and the streamlined approval process for major natural resource projects are sector-specific, the Directive provides a broad policy framework that applies to all departments and agencies involved in the federal regulatory process. Government officials are responsible for abiding by the Directive at all stages of the regulatory life-cycle: development, implementation, evaluation, and review.

4. Which, if any, key sectors and areas - at federal and provincial levels - are, or are likely to be, exempted from the scrutiny required by the Cabinet's 'lifecycle approach to regulating'?

CANADA'S RESPONSE: No sectors are exempted from the Directive as it applies to all departments and agencies over whom the federal Cabinet has authority relating to regulation-making. Provincial entities are not subject to federal regulatory policy. However, the federal government works closely with provinces and territories, within the Constitution framework, to promote and strengthen regulatory reform in the country, through mechanisms such as the Federal-Provincial-Territorial Working Group on Regulatory Reform, the Federal-Provincial-Territorial Mines Ministers' Conference and the Canadian Council of Ministers of the Environment.

5. Is remaining occupational regulation at provincial/territorial level covered by the Cabinet Directive?

CANADA'S RESPONSE: No. The Directive only applies to federal regulations.

6. Is 'minimum distortion to competition' an explicit requirement for implementing regulatory measures?

CANADA'S RESPONSE: One of the key principles of the Directive is to promote a fair and competitive market economy that encourages entrepreneurship, investment, and innovation. As part of the regulatory process, the Directive requires regulators to analyze the benefits and costs of regulating by identifying and assessing economic impacts of whether to or how to regulate.

7. In the past five years, are there specific examples of where regulatory distortions to the openness and efficiency of markets (product, labour, capital) have been removed as a result of Canada's renewed and performance-based approach to regulation?

CANADA'S RESPONSE: As the Directive was recently implemented on 1 April 2007, there has not been sufficient time to assess any impacts of the new revised approach to regulation with respect to specific market distortions.

8. In the past five years, are there specific examples of sectors/industries where reduced regulatory impediments/costs have contributed to trade/investment/business facilitation?

CANADA'S RESPONSE: Canada is working with its trading partners to reduce regulatory impediments and costs to industries by engaging in regulatory cooperation dialogues. Some key examples of these dialogues include the Security and Prosperity Partnership which, for example, includes measures related to increased regulatory cooperation in the chemicals industry that should facilitate trade in this sector. Another example is the Canada-EU Roadmap for Regulatory Cooperation where sector specific areas for regulatory cooperation are identified in a work plan in order to facilitate greater market access through regulatory cooperation initiatives.

9. As part of development cooperation, does Canada intend to share its learning from its various regulatory policy assessments with other APEC economies?

CANADA'S RESPONSE: Canada is keenly following the Sub-Committee on Standards and Conformance (SCSC) projects on various regulatory measures. As a co-sponsor of projects, such as the *Seminar and Training Course on Legal Metrology*, Canada hopes to further its goals of broader cooperation and contribution to the APEC community.

10. To what extent does Canada consider that its performance-based and life-cycle approach to regulation is transferable to other APEC economies?

CANADA'S RESPONSE: Canada is not alone in its performance-based approach to regulation. Article 2.8 of the WTO TBT agreement requires members to specify technical

regulations in terms of performance. This being said, Canada's approach is likely already similar to the approach taken by most other APEC economies.

With regards to the life-cycle approach, Canada does not see obstacles to the adoption of this approach by other APEC economies. Canada considers that its life-cycle approach is simply a recognition of the fact that regulations are adopted within a specific context and that this context may evolve, change or disappear over time. The life-cycle approach to regulation exists to help to keep regulations relevant and prevents obsolete or ineffective regulations from remaining in force. As such, other economies should be able to develop an approach similar to Canada's with little difficulty.

Provincial/metropolitan environmental regulations

Noting the variations in provincial/metropolitan legislative requirements on wastewater/hazardous waste disposal:

11. What is the likelihood of these being harmonized throughout Canada?

CANADA'S RESPONSE: Federal, provincial and territorial governments are currently finalizing a Canada-wide strategy for the management of municipal wastewater effluents under the auspices of the Canadian Council of the Ministers of the Environment (CCME). The proposed strategy includes performance and governance elements to support a renewed and harmonized regulatory framework. It is expected that the strategy will be accepted by CCME Ministers in spring 2008. Each jurisdiction will take measures to implement the strategy in the context of their respective legislative authorities. The principal federal instrument to implement the strategy will be a regulation under the authority of the Fisheries Act.

Federal, provincial and territorial governments have also done significant work under the auspices of the CCME to work toward a consistent Canada-wide approach to the disposal and management of hazardous wastes (HW) and hazardous recyclable (HR) materials. Starting in the early 1990s, the CCME has published several documents in the form of guidelines and codes of practice related to hazardous waste and recyclables as a result of this work (e.g., revised updated National Guidelines for Hazardous Waste Landfills), recognizing that these guidelines set the minimum benchmark for provinces to meet but are not legally binding on the parties. Exchanges between all jurisdictions continue to take place as required to deliver on existing obligations and to address any remaining differences in the approach to HW and HR. With regard to the harmonization at the metropolitan level, this would typically be handled within each province, taking into consideration the outcomes of federal, provincial and territorial work.

Overall Assessment

12. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the area of Deregulation/Regulatory Review and Reform? Could you please rank progress using a scale from 1-5?

1=100% completion of goals
2=between 90% - less than 100% completion
3=between 75% - less than 90% completion
4=between 51% - less than 75% completion
5=less than 51% completion

CANADA'S RESPONSE: In accordance with the Bogor goals, Canada is constantly working to achieve the most transparent, effective, efficient and accountable regulatory system possible. The Government of Canada Regulatory Policy of 1999 introduced several key improvements to the existing regulatory process in place at the time, including a more comprehensive management approach with specific requirements for the development, implementation, evaluation and review of regulations.

The Directive goes even further to ensure that new regulations will offer high levels of protection while being easier to comply with, aligned with key trading partners, and supported by timely and transparent approval processes. The Directive also integrates performance, evaluation and review of regulatory effectiveness.

13. What are Canada's future policy priorities for achieving the current Bogor goals in the area of Deregulation/Regulatory Review and Reform? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year _____

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: The implementation of the Directive over the next years will bring Canada one step closer to the completion of the Bogor goals by asking departments and agencies, amongst other things, to:

- **Take part in open, meaningful, and balanced consultations at all stages of the regulatory process as well as taking advantage of opportunities for cooperation, either bilaterally or through multilateral fora;**
- **Limit the number of specific Canadian regulatory requirements or approaches to instances when they are warranted by specific Canadian circumstances (rationale to be provided in these cases);**
- **Seek independent review of risk assessments and preparing an accounting statement to report on the quantifiable and non-quantifiable costs and benefits of significant proposals;**
- **Develop regulatory plans and priorities for the coming year(s); and report publicly on plans, priorities, performance, and regulatory review in accordance with Treasury Board guidelines;**
- **Ensure compliance with Canada's international obligations in such areas as human rights, health, safety, security, international trade, and the environment.**

11. IMPLEMENTATION OF WTO OBLIGATIONS

1. Please assess Canada's achievements on each of its commitments (including the Rule of Origin) as listed in the WTO Agreements Annex 1A and 1B. (See also <http://www.wto.org/english/tratop e/schedules e/goods schedules e.htm>)

It would be very useful if you could use a scale ranking - if possible by sector and by (developed and developing) economies. (1. 100% of the commitments completed; ... 4. Less than 60% of the commitments completed).

Note (1) Although WTO does not define developing economies, the suggested list of these economies is usually reported in several webs of UNCTAD, for example paper: UNCTAD/ITCD/TSB/Misc.62/Rev.1

Note (2) The ranking in questions 1, 9, and 10 could draw upon the overall assessment of the advances made by the Canadian economy in the items (WTO Commitments and Bogor Goals) or alternatively could be divided by specific assessments of the advances according to some classification of those items.

WTO COMMITMENT	SCALE RANKING
WTO Agreement, Annex 1A (Goods)	1 (100% completed as of 1 January 1995)
WTO Agreement, Annex 1B (Services)	1 (100% completed as of January 1, 1995)
WTO Agreement, Annex 1C (IPR)	1 (100% completed as of January 1, 1996)
WTO Plurilateral Agreements Agreement on Government Procurement	1 (100% completed as of January 1, 1996)
WTO Ministerial Decisions and Declaration	ongoing
Other WTO Obligations	ongoing
Voluntary action to accelerate Implementation of WTO Agreement	ongoing
Rules of Origin	1 (100% completed as of 1 January 1995)

2. What aspects, factors or any other considerations are affecting completion of each of these WTO commitments?

CANADA'S RESPONSE: Canada will continue to participate actively in the work of the WTO, including those areas specifically directed by Ministerial Decisions and Declarations.

Canada participates in all Trade Policy Reviews at the WTO. Canada is itself on a 4-year review cycle at the WTO.

3. Since the 2002 IAP-Peer Review, what specific measures has Canada taken to ensure the impartial, transparent and neutral preparation and application of rules of origin?

CANADA'S RESPONSE: In preparing its preferential rules of origin, Canada has always undertaken consultations with industry representatives and worked closely with them to ensure that the preparation of rules of origin is impartial, transparent and neutral. Canada Border Services Agency (CBSA) is responsible for administering Canada's preferential rules of origin regime. To ensure impartial, transparent and neutral application of rules of origin, among other measures, CBSA publishes notices (D-Memoranda) to inform importers and exporters of newly adopted rules of origin or changes to existing rules of origin. All of these can be accessed on the CBSA website. As well, all classification and advance rulings are sent to the involved parties who have recourse if they do not agree with the decisions.

4. Are Canada's local content requirements at the federal and provincial level consistent with multilateral rules?

CANADA'S RESPONSE: Canada's preferential rules of origin include a tariff shift requirement and, for certain goods, an alternative rule of origin, in addition to a lesser tariff shift requirement, also may include a regional content requirement.

5. Which sectors face the most difficulties in respect of these local content requirements?

CANADA'S RESPONSE: Canada's preferential rules of origin are based on the tariff shift concept, however, in some instances, some rules include a regional content requirement that must be met in order for the good to be eligible to receive preferential treatment under an FTA.

6. Please assess Canada's federal and provincial export assistance programs in relation to WTO agreements (in particular the Agreement on Subsidies and Countervailing Measures)? It would be appreciated if some indicators could be used to show the trends in these assistance programs since 2002.
7. What measures has the economy taken to ensure the impartial, transparent and neutral preparation and application of rules of origin?
Please refer to response in #3.
8. How are the Canadian FTAs/RTAs affecting these features of rules of origin?

CANADA'S RESPONSE: Canada's preferential rules of origin are based on the tariff shift concept and all of our rules of origin are developed in an impartial, transparent and consistent fashion.

Overall Assessment

9. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the area of Implementation of WTO Obligations? Could you please rank progress using a scale from 1-5?

1=100% completion of goals
2=between 90% - less than 100% completion
3=between 75% - less than 90% completion
4=between 51% - less than 75% completion
5=less than 51% completion

COMMITMENTS	PROGRESS
OBJECTIVES	
<p>On Rules of Origin:</p> <p>a. ensure full compliance with internationally harmonized rules of origin to be adopted in relevant international fora;</p> <p>b. ensure that their respective rules of origin are prepared and applied in an impartial, transparent and neutral manner.</p>	1
GUIDELINES	
<p>On WTO Agreements:</p> <p>a. <i>Each APEC economy which is a WTO member will fully and faithfully implement its respective Uruguay Round commitments.</i></p>	1
<p>b. Each APEC economy which is in the process of acceding to the WTO Agreement may participate in APEC Uruguay Round implementation actions through voluntary steps to liberalize its respective trade and investment regimes consistent with the WTO Agreement.</p>	N/A (Canada is a WTO member)
<p>c. Each APEC economy will, on a voluntary basis, accelerate the implementation of Uruguay Round outcomes and deepen and broaden these.</p>	1
<p>On Rules of Origin:</p> <p>a. align its respective non-preferential rules of origin with internationally harmonized rules of origin to be adopted as a result of the WTO/WCO process; and</p> <p>b. ensure predictable and consistent application of rules of origin.</p>	1
COLLECTIVE ACTIONS	
<p>a. <i>utilize on an on-going basis Uruguay Round implementation seminars and other appropriate means to:</i></p> <p>i. improve APEC economies' understanding of provisions in the WTO Agreement and obligations thereunder;</p> <p>ii. identify operational problems encountered in implementation of the WTO Agreement and areas in which APEC economies may require technical assistance; and</p> <p>iii. explore cooperative efforts to provide such technical assistance in implementation</p> <p>b. consider implementation of suggestions for follow-on work from Uruguay Round implementation seminars; and</p> <p>c. undertake technical assistance based on discussion at the above seminars, including cooperative training projects targeted at prevalent implementation problems to be undertaken in conjunction with the WTO Secretariat and other relevant international institutions.</p>	(100% completed up to 2007 and will continue to be ongoing)
<p>On Rules of Origin:</p> <p>a. gather information on APEC economies' respective rules of origin, both non-preferential and preferential, and operation thereof without duplicating WTO work in this area, exchange views and develop a compendium of rules of origin for the use of the business/private sector;</p>	ongoing
<p>b. facilitate, complement and accelerate, in the short term, WTO/WCO work on harmonization of non-preferential rules of origin;</p>	1

c. study in due course the implication of rules of origin on the free flow of trade and investment, with a view to identifying, in the longer term, both positive and negative aspects and effects of rules of origin related practices.	ongoing
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10. What are Canada's future policy priorities for achieving the current Bogor goals in the area of Implementation of WTO Obligations? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year ____

3=To achieve between 75% - less than 90% completion by year ____

4=To achieve between 51% - less than 75% completion by year ____

CANADA'S RESPONSE: Membership in the WTO will continue to underpin Canadian trade policy. Canada will continue to conduct regular and effective consultations with Canadians during the development and implementation of all significant international trade policies and initiatives. It is our priority to ensure that the views, priorities and interests of Canadians, other levels of government, industry, non-governmental organizations and public interest groups are taken into account in the development of Canada's trade agenda.

The Bogor goals are free and open trade and investment in the Asia-Pacific by 2010 for industrialized economies and 2020 for developing economies. Canada believes that through its WTO membership, it has made significant strides toward its completion of the Bogor goals.

By remaining fully engaged with the WTO and the Doha Round negotiations, Canada helps ensure that all APEC economies can achieve these Bogor Goals. Canada will work together with APEC economies towards a successful WTO Doha Round that includes real and substantial improvements in market access, within a fair and equitable multilateral trading system.

12. DISPUTE MEDIATION

1. Based upon Canadian experience on Dispute Mediation (private and official) cases reported in Canada's IAP-2007 (and in previous reports), what aspects, factors or considerations need to be addressed in order to improve and apply efficiently the APEC objectives in this chapter?

CANADA'S RESPONSE: The APEC Objectives for the IAP in Dispute Mediation are:

- a. *encourage members to address disputes cooperatively at an early stage with a view to resolving their differences in a manner which will help avoid confrontation and escalation, without prejudice to rights and obligations under the WTO Agreement and other international agreements and without duplicating or detracting from WTO dispute settlement procedures;*
- b. *facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments and disputes between private parties in the Asia-Pacific region; and*
- c. *ensure increased transparency of government laws, regulations and administrative procedures with a view to reducing and avoiding disputes regarding trade and investment matters in order to promote a secure and predictable business environment*

Canada believes that APEC Member Economies should continue to focus on the following aspects to ensure the efficient application of these objectives in dispute settlement:

- encourage APEC Member Economies to continue to resolve their trade disputes through alternative dispute resolution procedures, such as under by the WTO;
- ensure that APEC Member Economies negotiate free trade agreements (FTAs) that provide for appropriate dispute settlement mechanisms, that include consultations and other methods of alternative dispute resolution;
- promote transparency in investor-state and state-to-state dispute settlement procedures.

Overall Assessment

2. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Dispute Mediation area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion

3=between 75% - less than 90% completion

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: The Bogor Goals are free and open trade and investment in the Asia-Pacific by 2010 for industrialized economies and 2020 for developing economies. There is consensus among APEC Member Economies that FTAs are contributing to the momentum of APEC's achievement of the Bogor Goals. Canada is negotiating FTAs with several other APEC economies, which provide for effective and appropriate investor-state and state-to-state dispute settlement procedures. Canada believes that through its FTA negotiations and through its WTO membership, it has made significant strides toward its completion of the Bogor goals. Canada does not believe that it is possible to rank its progress in dispute mediation according to the scale above.

3. What are Canada's future policy priorities for achieving the current Bogor goals in the Dispute Mediation area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year _____

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: Canada's future policy priorities in dispute mediation are to continue to encourage conciliation and transparency in investor-state and state-to-state dispute mediation. Canada does not believe that it is possible to rank its progress according to the scale above.

13. MOBILITY OF BUSINESS PEOPLE

Noting Canada's improvements in respect of implementing transparency standards on business mobility:

1. Has any survey been undertaken or proposed on the level of 'user satisfaction' with the transparency achieved to date?

CANADA'S RESPONSE: Canada has improved its website and added a separate section for business people. No survey was undertaken over the last year. However, Canada is considering a strategy for feedback which will include surveys.

In respect of implementing the Advance Passenger Information and Passenger Name Record program, it is noted that the current focus of the Canadian Border Services Agency is on air travel:

2. What is the timeframe for implementing this program for all modes of transportation?

CANADA'S RESPONSE: API for air has been in place since 7 October 2002, and PNR for air since 8 July 2003, but definitive timelines for the remaining modes of transportation have not yet been established.

Canadian statistics indicate that 81% of temporary resident visas are processed in 7 days or less and 62% in 2 days or less:

3. Is any improvement in these statistics envisaged over the next three years?

CANADA'S RESPONSE: We do not engage in forecasting processing times. However, we believe that our current processing times are exemplary and our goal is to maintain these standards.

4. Do information exchanges within NAFTA and within APEC allow comparisons of processing statistics?

CANADA'S RESPONSE: There is a provision in NAFTA (Article 1604 (2)) that provides for the exchange of information between the Parties, and data respecting the granting of temporary entry under the Agreement. However, processing times are not exchanged. CIC processing times are made publicly available on our website www.cic.gc.ca and members of APEC are welcome to view them.

5. If so, how do the present Canadian statistics rank?

CANADA'S RESPONSE: Under the NAFTA, the data exchange does not address the types of statistics that one would "rank" (e.g., does not include processing times).

In respect of the procedural basis for the issuance and renewal of visas:

6. Could this please be defined more clearly, with particular reference to:
 - a. The length of time required for issuance, and
 - b. The issuance of visas to accompanying family members on arrival.

CANADA'S RESPONSE: a. The length of time required for issuance varies depending on the mission. For instance, 99% of cases are processed in 7 days or less in Taipei, 93% in 14 days or less in Beijing, and 92% in 7 days or less in Kuala Lumpur.

CANADA'S RESPONSE: b. Temporary Resident Visas cannot be renewed. Once expired, a new application is required. Extensions are possible within Canada. Family members are free to apply overseas for visas to accompany the business person, but visas are never issued on arrival as indicated in question 6b.

7. Further, to what extent can standardized treatment of visa applicants be assured?

CANADA'S RESPONSE: Natural justice / procedural fairness and the principles of administrative law/common law mean that all visa applicants receive equitable services.

It is understood that, in the absence of working visas, permanent residence rights are seldom granted:

8. How therefore can a permanent residence right be obtained (being a prerequisite, for example, for Japanese graduates from Canadian colleges/vocational schools seeking to work at Canadian hotels as bilingual employees) unless a working visa is first granted?

CANADA'S RESPONSE: A foreign national who wishes to become a permanent resident must apply for a permanent resident visa. Application may be made under one of four classes: Federal Skilled Worker, Provincial/Territorial Nominee, Quebec Skilled Worker, or Business Immigrant. None of these classes requires the applicant to hold a work permit although it is to the advantage of the Federal Skilled Worker applicant to have worked or studied in Canada as those activities are awarded points on the selection grid.

It is noted that at the January 2007 meeting of the APEC Business Mobility Group, the four members not participating in the APEC Business Travel Card scheme (ABTC) 'indicated that they were exploring options to fully participate in the scheme':

9. What options is Canada exploring and over what timeframe?

CANADA'S RESPONSE: Canada has made a commitment to recognize the APEC Business Travel Card (ABTC) starting 1 January 2008. Given this new commitment, Canada will seek to join the ABTC scheme with a phased approach. The first phase will facilitate the entry to Canada of APEC cardholders using special services lanes at eight major international airports although economies that currently require a visa to enter Canada will continue to require one, as well as a valid passport. The second phase will see Canada work to further explore the potential to participate as a transitional member. In addition, Canada is currently reviewing its legislation to see how the ABTC scheme could fit within our current visa framework for full participation.

Canada's reason for not participating in the ABTC to date is that 'existing immigration rules and regulations on the temporary entry of business visitors are already very generous':

10. Nonetheless, how might Canada's participation in the ABTC

- a. improve the speed and efficiency of travel for business people
- b. enhance border integrity and security?

CANADA'S RESPONSE: a. The entry of ABTC holders will be expedited through special services lanes at Canada's eight major international airports located in Vancouver, Calgary, Edmonton, Winnipeg, Ottawa, Toronto, Montreal and Halifax. By participating in the ABTC scheme, Canada will work with other APEC economies to ensure that genuine business travellers are quickly identified through the visa process. This will allow visa officers to better focus their efforts on other client groups.

b. From what Canada understands, the ABTC is not meant to enhance border integrity and security. It is meant to facilitate travel of bona fide business people from APEC economies as a trade facilitation measure.

In its 2002 IAP, Canada noted its participation in preparing a survey on business women mobility:

11. What was the outcome of this exercise?

CANADA'S RESPONSE: The outcome of this exercise was a publication of a report entitled: Engendering Canadian Trade Policy: A Case Study of Labour Mobility in Trade

Agreements, which contains the results of the survey. The complete report can be found at this link:
http://www.swc-cfc.gc.ca/pubs/pubspr/0662367138/200406_0662367138_1_e.html

Overall Assessment

12. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Mobility of Business People area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion [Canada's response]

3=between 75% - less than 90% completion

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: Canada's immigration regime was restructured in 2002 with the new *Immigration and Refugee Protection Act* that further liberalized the temporary entry of foreign nationals including business persons. There is continued room for improvement.

13. What are Canada's future policy priorities for achieving the current Bogor goals in the Mobility of Business People area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by 2008 [Canada's response]

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: As there are always ways to further streamline processes and consultative mechanisms, we do not view ourselves as fully reaching the goal and will continue to enhance our policies and increase our transparency.

From a visa policy perspective, Canada continues to conduct country-by-country assessments to determine whether a visa can be exempted or should be imposed on a country. The decision to lift or impose a visa is based on a number of factors, including, socio-economic indicators, border management, and safety and security issues, not on the principle of reciprocity or on the basis of a country's membership in a political or economic union. Canada does not set targets for visa exemptions – these are case-by-case decisions.

With respect to whether Canada will sign-on to the APEC Business Travel Card Scheme, Canada is exploring the ways in which it could participate. As a start, ABTC holders will be permitted to use faster service lanes at eight international airports starting 1 January 2008. Ranking: 2 by 2008.

Additional Information: Canada has visa requirements on 10 APEC economies: China, Chile, Indonesia, Malaysia, Peru, Philippines, The Russian Federation, Chinese Taipei, Thailand and Viet Nam.

Canada has exempted 10 APEC economies from visa requirements: Australia, Brunei Darussalam, Hong Kong, China¹², Japan, Mexico, New Zealand, Papua New Guinea, Singapore, Korea and the United States.

Canada has visa exemptions for more countries than Australia and United States.

¹² People from Hong Kong, China do not require a visa to visit Canada, if they hold:

- a British National (Overseas) Passport issued by the Government of the United Kingdom to persons born, naturalized or registered in Hong Kong, China;
- a valid and subsisting Special Administrative Region passport issued by Hong Kong, China.

14. FREE AND REGIONAL TRADE AGREEMENTS

Canada's 2007 IAP reports an average tariff difference of 2.5% (up to 5.2% in Textile and Clothing) between the simple applied tariff rate and that of the GPT (general preferential) tariff rates (which include tariffs from 10 preferential trade agreements):

1. To what extent have these tariff differences affected (increased or decreased) trade between Canada and those economies (developing APEC Members and Non Members, and developed APEC Members and Non Members) which still face the non-preferential higher tariff?

If possible, please address this question including sensitive sectors and APEC Food Systems products.

2. How is Canada's participation in FTAs and RTAs consistent with and/or helping to achieve:
 - a. the APEC Best Practices RTAs/FTAs objectives
 - b. the suggested Model Measures for RTAs/FTAs (reported in the 2006 APEC CTI Annual Report)
 - c. the Busan Road Map Towards the Bogor goals on RTAs/FTAs, and
 - d. the Bogor goals?

Please assess this question for each of the relevant chapters of the Canadian FTAs and RTAs.

CANADA'S RESPONSE: As a trade-oriented and globally-integrated economy, Canada benefits from a healthy, open, transparent, rules-based international trading system. At the same time as Canada maintains its focus on the WTO, Canada also recognizes the importance of bilateral and regional trade initiatives in further liberalizing trade in goods and services. Canada's multilateral and bilateral initiatives are designed to be mutually supportive. Rather than detract from multilateral efforts, bilateral agreements allow us to explore new commitments and disciplines in areas such as investment, services, and trade facilitation, making them broader than existing multilateral rules. In this sense, Canada believes that FTAs/RTAs can help place new issues on the global agenda and provide innovative solutions to the challenges posed by trade integration.

With APEC economies accounting for 56% of world GDP and approximately 44% of world trade, Canada believes that members have an interest in building a strategic approach to free trade issues. Canada values APEC's important role in promoting FTAs/RTAs that are comprehensive, high-quality, transparent and that are designed to be compliant with World Trade Organization (WTO) rights and obligations. To this end, Canada has been supportive of APEC's initiatives in promoting Policy Dialogue on FTAs/RTAs, developing Best Practices principles for free trade and in developing Model Measures on a wide range of trade issues. Canada has endorsed the APEC Best Practices, which are helping APEC members negotiate high-quality free trade agreements designed to promote regional economic integration.

Canada has been an active participant in the FTAs/RTAs process within APEC. For example, Canada has been a strong supporter of the Busan Road Map instructions to develop and agree on as many FTA/RTA model measures as possible by 2008. In this context, Canada took a leading role in the development of the Model Measure on Transparency provisions in FTAs/RTAs, geared towards ensuring the long-term success of agreements by providing prompt and frequent sharing of information and the quick settlement of disputes.

Canada's existing FTAs as well as the FTAs currently under negotiation reflect Canada's continued commitment to the FTAs/RTAs principles endorsed by APEC leaders. By reducing or eliminating tariffs and other trade and investment barriers, Canada's comprehensive and WTO-consistent FTAs/RTAs support the trade and investment liberalization and facilitation objectives of the Osaka Action Agenda and its General Principles. Canada remains a strong proponent of trade and investment liberalization as a means to sustain its economic prosperity as well as to promote international development goals through economic integration.

Canada remains committed to work towards the Bogor Goals of free and open trade and investment in the Asia-Pacific region. Canada will continue to be fully engaged in enhancing its trade and investment opportunities in the region, including through bilateral and regional initiatives.

Overall Assessment

3. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the area of FTAs and RTAs? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion

3=between 75% - less than 90% completion

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: Canada is working to advance open and free trade and investment with other APEC members through various trade policy instruments, including FTAs/RTAs. In terms of APEC members, Canada currently has FTAs with the United States, Mexico, Chile, and is negotiating FTAs with Singapore, Korea and Peru.

The North American Free Trade Agreement (NAFTA), which governs Canada's largest trading relationship with the United States and Mexico, entered into force in 1994 and the Canada-Chile FTA (CCFTA) in 1997. Both are high-quality comprehensive Agreements covering, inter alia, trade in goods, services, and investment. These Agreements, as with all of Canada's FTAs/RTAs, are not static. Rather, they evolve with the bilateral commercial relationship in a way that is responsive to business. For example, work continues amongst NAFTA partners to improve rules of origin in order to enhance competitiveness by reducing transaction costs and further facilitate the flow of goods. In the context of the CCFTA, which celebrated its 10th anniversary in July 2007, Canada and Chile signed in November 2006 a new Government Procurement chapter and in July 2007, negotiations of a Financial Services chapter were concluded.

Since 1996, Canada has also launched FTA negotiations with partners in the region. Negotiations towards a comprehensive and high-quality FTA with Singapore were launched in 2001 and with Korea in 2005. More recently, on 7 June of this year, Canada initiated FTA negotiations with Peru.

In addition to FTAs/RTAs, Canada has also moved forward with Foreign Investment Promotion and Protection Agreements (FIPAs) with key partners in the region. Canada's FIPAs contribute to establishing a stable and predictable business environment for investors. Canada has concluded FIPAs with the Philippines in 1996 and with Thailand in 1998. Furthermore, FIPA negotiations were re-launched with China in 2004, and in September 2007, Canada and Viet Nam agreed to launch negotiations towards a FIPA.

At the September 2007 APEC meetings in Australia, APEC Leaders agreed to "examine the options and prospects for a Free Trade Area of the Asia-Pacific (FTAAP) [...] through a range of practical and incremental steps". As an APEC member, Canada is supportive of efforts towards further economic integration in the region, including the concept of the FTAAP as a long-term objective.

In our current FTAs/RTAs agenda, which includes several APEC members, our aim is to focus on the quality of these agreements and not their quantity.

4. What are Canada's future policy priorities for achieving the current Bogor goals in the area of FTAs and RTAs? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year _____

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: Canada has recently reinvigorated its FTA agenda, having launched a series of FTA negotiations with several countries. Canada's main focus, at this time, is to conclude ongoing FTA negotiations, including those with Singapore, Korea and Peru. Moving forward, Canada's FTA agenda will be predicated on ensuring Canada's competitive position in markets and improving opportunities for Canadian businesses. Other factors include a partner's readiness for comprehensive liberalization, a partner's general compatibility with Canadian interests and the availability of negotiating resources.

Canada will continue to support APEC efforts to ensure that FTAs negotiated by APEC members are high-quality, comprehensive and consistent with WTO rules. And in this regard, Canada will remain an active participant within the APEC FTA/RTA Policy Dialogue, including through ongoing work on Model Measures.

15. TRADE FACILITATION

A point of clarification arises from page 29 of Canada's Trade Facilitation Plan:

1. What is the date by which Canada currently expects to achieve its selected action items relating to:
 - a. Customs procedures **90% less than 100% by 2010 [Canada's response]**
 - b. Standards **90% less than 100% by 2010 [Canada's response]**
 - c. Business mobility **90% less than 100% by 2010 [Canada's response]**
 - d. Electronic commerce?

A point of clarification arises from the last section of Canada's plan:

2. Were items 6 and 7 of Canada's planned 'Actions and Measures' intentionally omitted from this section?

CANADA'S RESPONSE: Based upon the IAP records, it is unclear as to why items 6 and 7 of Canada's planned 'Actions and Measures' have been omitted, given they are not present at all in the last three submissions.

Noting that in relation to customs procedures Canada has selected and commenced action on 39 of 60 items listed in APEC's menu of concrete actions/measures:

3. What is Canada's position in relation to the unselected items relating to customs procedures?

CANADA'S RESPONSE: It is currently unclear why only 39 of the 60 items listed in APEC's menu of concrete actions/measures were selected.

Noting that the overall effect of Canada's trade facilitation initiatives has not yet been measured and that APEC has yet to establish a common methodology:

4. What progress has in fact been made on the Busan aim of setting some objective criteria to assess progress with the facilitation agenda, in the context of lowering costs and increasing efficiency?
5. To what extent have Canada's selected trade facilitation initiatives specifically targeted key transaction costs?
6. Could Canada please re-classify all of its cumulative improvements, including those achieved in 2007, in accordance with the following ABAC priority transaction cost categories:
 - a. Cutting red tape/administrative burden
 - b. Automation
 - c. Electronic commerce/paperless trading
 - d. Harmonizing standards
 - e. Eliminating unnecessary barriers to trade
 - f. Other streamlining improvements/cost reductions

CANADA'S RESPONSE: Canada continues to support APEC's work on trade facilitation. Complex customs procedures and red tape at the border are some of the biggest concerns for our business community, and especially for small businesses.

7. Can Canada provide a qualitative assessment of its contribution to reducing trade transaction costs in:
 - a. the 2001-2006 period
 - b. the 2007-2010 period?

8. Could Canada please comment on how its involvement with RTAs/FTAs is likely to affect its efforts to reduce trade transaction costs?

CANADA'S RESPONSE: Canada supports development of RTA/FTA model measures and sees them as a capacity building tool that will ultimately lead to higher quality agreements in the region and therefore ultimately reduce trade transaction costs.

9. Among three members (Canada, USA and Mexico), the SPP (Security and Prosperity Partnership) functions as an initiative to reduce costs and burdens on exporters, importers and travelers. Please describe how costs and burdens on travelers are reduced?
10. With regard to cargoes towards the US, how will they be affected by 100% cargo inspections by the US?

Overall Assessment

11. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Trade Facilitation area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion

3=between 75% - less than 90% completion [Canada's response]

4=between 51% - less than 75% completion

5=less than 51% completion

12. What are Canada's future policy priorities for achieving the current Bogor goals in the Trade Facilitation area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010

2=To achieve between 90% - less than 100% completion by year _____

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: Canada is taking concrete steps towards travel facilitation by Canada will allow business people from APEC economies who hold this card to use faster service lanes at Canada's international airports, provided they meet Canada's visa requirements commencing 1 January 2008.

16. INFORMATION GATHERING AND ANALYSIS

Overall Assessment

1. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Information Gathering and Analysis area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion [Canada's response]

3=between 75% - less than 90% completion

4=between 51% - less than 75% completion

5=less than 51% completion

CANADA'S RESPONSE: Canada is far advanced towards the current Bogor goals in the Information Gathering and Analysis area by regularly updating the various databases (links listed in the IAP Submission). Various government departments gather and analyze statistics on an up to quarterly basis.

2. What are Canada's future policy priorities for achieving the current Bogor goals in the Information Gathering and Analysis area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010 [Canada's response]

2=To achieve between 90% - less than 100% completion by year _____

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: Canada is committed to continuing its efforts to achieve the Bogor goals in the Information Gathering and Analysis area, and will evaluate policy priorities on an ongoing basis.

17. THE APEC FOOD SYSTEM

1. What have been Canadian improvements towards the APEC Food Systems goals, since the 2002 IAP Peer review?
2. What measures does Canada plan to undertake in this regard in the next three years?
3. What factors, aspects or considerations are affecting the achievement of those goals?

Overall Assessment

4. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the APEC Food System area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals
2=between 90% - less than 100% completion
3=between 75% - less than 90% completion
4=between 51% - less than 75% completion
5=less than 51% completion

5. What are Canada's future policy priorities for achieving the current Bogor goals in the APEC Food System area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010
2=To achieve between 90% - less than 100% completion by year ____
3=To achieve between 75% - less than 90% completion by year ____
4=To achieve between 51% - less than 75% completion by year ____

18. TRANSPARENCY

1. Please review the areas wherein have been the most important progress in implementing the APEC Transparency Standards, specifying how Canadian specific actions have contributed to progress towards the Bogor Goals.

CANADA'S RESPONSE: Canada has fully implemented many of the APEC Transparency Standards (i.e. Competition Law, Regulatory Reform, Customs Procedures, Trade and Investment Liberalization and Facilitation, Monetary, Financial and Fiscal Policies and the Dissemination of Macroeconomic Policy Data, Government Procurement, IP, Market Access) fully contributing to the Bogor Goals.

2. What measures does Canada plan to undertake in the next three years in respect of those areas where there has been the least progress on transparency?

CANADA'S RESPONSE: Canada plans to implement measures to ensure progress is made in the area of transparency, to reach goals by 2010. However, there are only a very few areas where we have not fully implemented all measures to reach goals.

3. What factors, aspects or considerations are affecting the achievement of transparency goals in areas of least progress?

CANADA'S RESPONSE: Most areas have seen great progress, and where full implementation has not occurred, the main factor in not achieving 100% implementation – in the case of Standards and Conformance for example, where the goal is to maintain one centrally located website it is a case of logistics and practicality.

Overall Assessment

4. Since its starting position in 1996, up to 2007, how far has Canada advanced towards the current Bogor goals in the Transparency area? Could you please rank progress using a scale from 1-5?

1=100% completion of goals

2=between 90% - less than 100% completion [Canada's response]

3=between 75% - less than 90% completion

4=between 51% - less than 75% completion

5=less than 51% completion

5. What are Canada's future policy priorities for achieving the current Bogor goals in the Transparency area? Could you please assess this set of priorities against the following scale to reflect the degree of future advance/s?

1=To complete the goals by year 2010 [Canada's response]

2=To achieve between 90% - less than 100% completion by year _____

3=To achieve between 75% - less than 90% completion by year _____

4=To achieve between 51% - less than 75% completion by year _____

CANADA'S RESPONSE: Canada is committed to continuing its efforts to achieve the Bogor goals in the Transparency area, and will evaluate policy priorities on an ongoing basis.

SECTION III. CANADA AND APEC – STRENGTHENING OF IAP

1. Looking at its action plans overall, what does Canada regard as its most significant improvements to trade and investment liberalization:
 - a. in the 1996-2002 period
 - b. in the 2002-2007 period
 - c. in the next three years?
2. What does Canada consider are its key contributions to the strengthening of markets through competition and efficiency:
 - a. in the 2002-2007 period
 - b. in the next three years?
3. What, if any, measures has Canada introduced since 2002 which have had the effect of increasing levels of protection to domestic firms?
4. Overall, what is Canada's evaluation of its concrete contributions to commercially relevant and comprehensive business facilitation:
 - a. in the 2002-2007 period
 - b. in the next three years?
5. Overall, what is Canada's evaluation of concrete cost reductions for business as a result of its action plans?
6. How does Canada rate its level of economic and technical cooperation within APEC over the past five years?

CANADA'S RESPONSE: Canada would rank its level of economic and technical cooperation within APEC very highly and considers it a leader in providing cooperation during that period.

7. What are the most important institutional constraints on Canada achieving further improvements in its individual and collective actions over the next three years?
8. Are there recent or prospective improvements in policy and implementation areas not explicitly covered by Canada's IAP which Canada would like to draw to the experts' attention in the context of their review?

CANADA'S RESPONSE: Not at this time

9. Does Canada have any suggestions for improving the quality of its IAP or for strengthening its IAP implementation and review processes?

CANADA'S RESPONSE: Not at this time

ANNEX 2

THE PEER REVIEW TEAM

PhD. Mario D Tello¹³
Kerrin M Vautier CMG¹⁴

Moderator
Dato Paduka LIM Jock Hoi
Permanent Secretary
Ministry of Foreign Affairs and Trade
Brunei Darussalam

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November 2007

-
- 1 Senior researcher and professor of Centrum Catolica and the Department of Economics at the Pontificia, Universidad Catolica del Peru
 - 2 Research economist; company director; Chair of New Zealand Asia Institute and senior part-time lecturer in Department of Commercial Law, University of Auckland

ANNEX 3

LIST OF PARTICIPANTS AT IN-ECONOMY MEETINGS

OTTAWA AND TORONTO

29 October-2 November 2007

29-31 October 2007, Ottawa

Liaison Officer

Harkiran Rajasansi - Economic Policy Officer (APEC)
Foreign Affairs and International Trade Canada

Welcome and Program Overview

Karen Garner – Deputy Director (APEC)
International Economic Relations and Summits Division
Foreign Affairs and International Trade Canada

Harkiran Rajasansi – Economic Policy Officer (APEC)
International Economic Relations and Summits Division
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Overview: Economic and Policy Issues

Patricia Fuller – Director
Office of the Chief Economist
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Kathleen Mackay – Director
Policy and Market Strategies
Foreign Affairs and International Trade Canada

*Non-Government Experts: Charles Barrett - Advisor, Conference Board of Canada
Ann Weston, Vice President and Research Coordinator, The North South Institute*

1 Tariffs

Maxime Lavoie - International Economist
Trade in Goods International Trade Policy Division
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Dean Beyea - Chief, Trade in Goods
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Diane Kelloway - Statistical Analyst
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James Eaton – Trade Policy Officer
Multilateral Market Access Division
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Rosalind Smith – Trade Policy Officer
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2 Non-Tariff Measures

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James Eaton – Trade Policy Officer
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Rosalind Smith – Trade Policy Officer
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3 Services

Danielle Bieber - Trade Policy Officer
Services Trade Policy Division
Foreign Affairs and International Trade Canada

Vincent Sacchetti - Deputy Director
Services Trade Policy Division
Foreign Affairs and International Trade Canada

Anne Marie Leclerc - Trade Policy Officer (Culture)
Intellectual Property, Information and Technology Trade Policy Division
Foreign Affairs and International Trade Canada

Catherine Beaumont - Senior Trade Policy Officer
Trade Policy and Negotiations Division
Canadian Heritage

Bonnie Penfold – Acting Trade Policy Analyst
Trade Policy Division
Transport Canada

Veronique Fortin - Trade Policy Analyst
Trade Policy Division
Transport Canada

Non-Government Expert: Charles Barrett - Advisor, Conference Board of Canada

4 Investment

Jeanette Patell - Trade Policy Officer
Investment Trade Policy Division
Foreign Affairs and International Trade Canada

Vernon Mackay - Deputy Director
Investment Trade Policy Division
Foreign Affairs and International Trade Canada

Bonnie Penfold - Acting Trade Policy Analyst
Trade Policy Division
Transport Canada

Veronique Fortin - Trade Policy Analyst
Trade Policy Division
Transport Canada

Trudy Dickie - Senior Policy Analyst
Investment Policy and Strategic Planning Directorate
Industry Canada

Non-Government Expert: Charles Barrett - Advisor, Conference Board of Canada

5 Standards and Conformance

Stephen Head - Policy Analyst
International Trade
Standards Council of Canada

Jo-Ann Julien - Manager
International Trade
Standards Council of Canada

Callie Stewart - Deputy Director
Technical Barriers and Regulations
Foreign Affairs and International Trade Canada

Cory Olishansky - Trade Policy Officer
Technical Barriers and Regulations
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*Non-Government Experts: Charles Barrett - Advisor, Conference Board of Canada
David Shortall - Consultant*

6 Customs Procedures

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Lisa Foerstner
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Lucinda Sammie
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7 Intellectual Property Rights

Douglas George – Director
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Manuel Mulas - Trade Policy Officer
Intellectual Property, Information and Technology Trade Policy Division
Foreign Affairs and International Trade Canada

Goldie Shea-Green - Policy Officer
Intellectual Property, Information and Technology Trade Policy Division
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Raquel Fragoso Peteres – Senior Project Leader
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Industry Canada

Michel Patenaude – Acting Chief
International Affairs
Canadian Intellectual Property Office
An Agency of Industry Canada

Vishva Ramlall - Acting Senior Project Leader
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Copyright Policy Branch
Canadian Heritage

Non-Government Experts: Janet M Fuhrer and Michel Gerin - Intellectual Property Institute of Canada

8 Competition Policy

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Susan Matthews - Economist,
International Affairs Division External Relations and Public Affairs Branch
Competition Bureau

Gwilym Allen - Senior Economist and Major Case Advisor
Criminal Matters Branch
Competition Bureau

Non-Government Expert: Charles Barrett - Advisor, Conference Board of Canada

9 Government Procurement

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Susan Sheehan - Deputy Director
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ANNEX 4

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ANNEX 5

ABBREVIATIONS

ABTC	APEC Business Travel Card
AIT	Agreement on Internal Trade
ADR	Alternative Dispute Resolution
APEC	Asia-Pacific Economic Cooperation

ATC	Agreement on Textiles and Clothing
BMG	Business Mobility Group
CAP	Collective Action Plan
CBSA	Canada Border Services Agency
CCCE	Canadian Council of Chief Executives
CCRA	Canada Customs and Revenue Agency
CIPO	Canadian Intellectual Property Office
CITT	Canadian International Trade Tribunal
CRTC	Canadian Radio-Television and Telecommunications Commission
CTA	Canadian Transportation Agency
CWB	Canadian Wheat Board
DDR	Doha Development Round
DDA	Doha Development Agenda
DFAIT	Department of Foreign Affairs and International Trade
DM	Dispute Mediation
DSU	Dispute Settlement Understanding
EFTA	The European Free Trade Association
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GPA	WTO Agreement on Government Procurement
GPT	General Preferential Tariff
IAP	Individual Action Plan
IQ	Initial Questionnaire
ICSID	International Centre for the Settlement of Investment Disputes Convention
LDC	Least Developed Country
MFN	Most Favored Nation
MLI	Member Liberalization Index
MRAs	Multilateral Recognition Agreements
MLATs	Mutual Legal Assistance Treaties
MOU	Memorandum of Understanding
MRA	Mutual Recognition Arrangements
NAFTA	North American Free Trade Agreement
NICD	New International Instrument on Cultural Diversity
NTM	Non-Tariff Measure
OAA	Osaka Action Agenda
OECD	Organization for Economic Co-operation and Development
OSFI	Office of the Superintendent of Financial Institutions
PCT	Patent Cooperation Treaty
RIAS	Regulatory Impact Analysis Statements
RTA	Regional Trade Agreement
SCC	Standards Council of Canada
SCCP	Sub-Committee on Customs Procedures
SOM	Senior Officials Meeting
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	WTO Agreement on Technical Barriers to Trade
TILF	Trade and Investment Liberalization and Facilitation
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
UNICITRAL	United Nations Commissions on International Trade Law
US	United States
USTR	United States Trade Representative
WCO	World Customs Organization
WIPO	World Intellectual Property Office
WTO	World Trade Organization

ANNEX 6

ANNEX TABLES

TABLE A1
Member liberalizations Index of Canada, 1996-2006

Weights	APEC AREAS	CANADA		
		1996/1998	2003	2007
0.500	I. Merchandise Trade	0.2275	0.2488	0.2488
0.140	I.1 Standards and Conformance, and Sanitary and Phytosanitary Measures	0.0910	0.0980	0.0980
0.070	Standards and Conformance	0.0420	0.0490	0.0490
0.00	No provisions	0	0	0
0.10	Initiatives to Promote The Harmonization of Standards	0	0	0
0.15	Provisions that require notification to a committee. review and/or examination	0	0	0
0.30	National Treatment of Standards	0	0	0
0.50	Voluntary Recognition of Test Results	0	0	0
0.60	Less than 50% National Standards comply International Standards	1	0	0
0.70	Between 50% and 70% National Standards comply International Standards	0	1	1
0.80	Between 71% and 90% National comply International Standards	0	0	0
0.90	Between 91% and less than 100% National Standards comply International Standards	0	0	0
0.25	<i>Subtract this score if compliance is discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
1.00	Completed and Non Discriminatory Harmonization of standards	0	0	0
0.070	Sanitary and Phytosanitary Measures	0.0490	0.0490	0.0490
0.00	No provisions	0	0	0
0.25	Recognition of SPS measures	0	0	0
0.50	Provisions require the adoption of international standards, but permit the implementation of more stringent science-based measures	0	0	0
0.70	More than 40 notifications to WTO in the last 4 years	1	1	1
0.80	Between 20 and 39 notifications to WTO in the last 4 years	0	0	0
0.90	Less than 20 notifications to WTO in the last 4 years	0	0	0
0.25	<i>Subtract this score if notifications are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
1.00	Completed and Non Discriminatory Harmonization of standards	0	0	0
0.150	I.2 Non-Tariff Measures	0.0255	0.0255	0.0255
0.030	NTM on Exports (NTMEXs)	0.0030	0.0030	0.0030
0.00	No provisions	0	0	0
0.10	Existence of NTMEXs only on some Specific Agricultural and/or Other Products	1	1	1
0.20	Existence of NTMEXs only on some Specific Non Agricultural products including Textiles and Apparel Products	0	0	0

TABLE A1
Member liberalizations Index of Canada, 1996-2006

Weights	APEC AREAS	CANADA		
		1996/1998	2003	2007
0.50	Existence of NTMEXs only on some Specific Non Agricultural products and Non-Textiles and Apparel Products	0	0	0
0.10	<i>Subtract this score if NTMEXs are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
1.00	Provisions that prohibit NTMEXs	0	0	0
0.030	Domestic Support	0.0000	0.0000	0.0000
0.00	Spending on at least two WTO "Boxes" (Blue and Amber and/or Green) measures	1	1	1
0.10	Spending on two WTO "Boxes" (Amber and Green) measures	0	0	0
0.30	Spending only one WTO "Green or Amber" measures	0	0	0
0.90	No Spending on WTO Boxes in the last 4 years	0	0	0
1.00	Domestic support is prohibited	0	0	0
0.030	Non-Tariff Measures on Imports (NTMI)	0.0030	0.0030	0.0030
0.00	No provisions	0	0	0
0.10	Existence of NTMI on Specific Agricultural and Other Products	1	1	1
0.20	Existence of NTMI on Specific Non Agricultural products including Textiles and Apparel Products	0	0	0
0.50	Existence of NTMI on Specific Non Agricultural products and Non Textiles and Apparel Products	0	0	0
0.10	<i>Subtract this score if NTMI are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
1.00	Provisions that prohibit NTM on Imports	0	0	0
0.030	Safeguards	0.0000	0.0000	0.0000
0.00	Safeguards provisions	1	1	1
0.50	No provisions	0	0	0
1.00	Safeguards provisions are prohibited	0	0	0
0.030	Antidumping and Countervailing Measures	0.0195	0.0195	0.0195
0.00	No restriction in the use of antidumping and countervailing measures	0	0	0
0.50	Requires consultations with other WTO members before antidumping and countervailing measures can be imposed	0	0	0
0.75	Antidumping and countervailing measures can be imposed provided they are consistent with WTO rules	1	1	1
0.10	<i>Subtract this score if Antidumping and Countervailing measures are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	1	1	1
1.00	Antidumping and countervailing measures are prohibited	0	0	0

TABLE A1
Member liberalizations Index of Canada, 1996-2006

Weights	APEC AREAS	CANADA		
		1996/1998	2003	2007
0.150	I.3 Tariffs	0.0826	0.0938	0.0938
0.075	MFN Tariff Rates	0.0263	0.0375	0.0375
0.00	No provisions to reduce tariffs. MFN Average rate higher than 40%	0	0	0
0.30	Simple Average MFN applied Tariff between 20% and less than 40%	0	0	0
0.50	Simple Average MFN applied Tariff between 10% and less than 20%	0	0	0
0.75	Simple Average MFN applied Tariff between 5% and less than 10%	1	0	0
0.90	Simple Average MFN Tariff between 1% and less than 5%	0	1	1
0.25	<i>Subtract this score if MFN Simple average MFN applied Tariff is higher than the Preferential Average Tariffs due to FTAs/RTA. Place 1 if this is the case, otherwise place 0</i>	1	1	1
0.15	<i>Subtract this score if there are Tariff lines with average tariff 1.5 higher than this Simple average MFN applied tariff. Place 1 if this is the case, otherwise place 0</i>	1	1	1
1.00	0% Simple Average MFN applied Tariff Rate	0	0	0
0.075	Tariff Quotas	0.0563	0.0563	0.0563
0.00	No provisions to liberalize trade	0	0	0
0.25	More than 20% of Tariff lines are subject to Tariff Quotas	0	0	0
0.50	Between 5% and 10% of tariff lines are subject to Tariff Quotas	0	0	0
0.75	Between 1% and 5% tariff lines are subject to Tariff Quotas	1	1	1
0.25	<i>Subtract this score if there are discriminatory Tariff quotas due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
1.00	Tariff quotas are prohibited	0	0	0
0.060	I.4 Implementations of WTO Obligations	0.0285	0.0315	0.0315
0.030	Number of Different Types of Rules of Origin Available	0.0225	0.0255	0.0255
0.00	An average of one rule is available in FTAs/RTAs	0	0	0
0.25	An Average of Two rules are available in the FTAs/RTAs	0	0	0
0.50	An Average of Three rules are available in the FTAs/RTAs	0	0	0
0.75	An average of Four rules are available in FTAs/RTAs	1	1	1
1	No rules of origin are applied in FTAs/RTAs	0	0	0
0.030	Restrictiveness of the Rules of Origin	0.0060	0.0090	0.0090
0.00	An average of 60% value added component or the equivalent change in tariff heading. Substantial transformation or specific process in the FTAs/RTAs	0	0	0

TABLE A1
Member liberalizations Index of Canada, 1996-2006

Weights	APEC AREAS	CANADA		
		1996/1998	2003	2007
0.10	An average of 55% value added component or the equivalent change in tariff heading. Substantial transformation or specific process in the FTAs/RTAs	0	0	0
0.20	An average of 50% value added component or the equivalent change in tariff heading. Substantial transformation or specific process in the FTAs/RTAs	1	0	0
0.30	An average of 45% value added component or the equivalent change in tariff heading. Substantial transformation or specific process in the FTAs/RTAs	0	1	1
0.40	An average of 40% value added component or the equivalent change in tariff heading. Substantial transformation or specific process in the FTAs/RTAs	0	0	0
0.50	An average of 35% value added component or the equivalent change in tariff heading. Substantial transformation or specific process in the FTA	0	0	0
0.60	An Average of 30% value added component or the equivalent change in tariff heading. Substantial transformation or specific process in the FTAs/RTAs	0	0	0
1.00	No rules of origin	0	0	0
0.080	II. Measures Covering Trade in Services	0.0440	0.0440	0.0440
0.080	Services	0.0440	0.0440	0.0440
0.00	No provisions	0	0	0
0.10	Initiatives to promote services	0	0	0
0.25	Provisions only for national treatment	0	0	0
0.35	Provisions only for market access	0	0	0
1.00	Provisions for national treatment and market access	1	1	1
0.0375	<i>Subtract this score if services are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
0.0375	<i>This score is subtracted for specified service sectors where there exist trade barriers. Number of services sectors with trade barriers</i>	12	12	12
0.420	III. General Measures Covering Non Merchandise Trade	0.3240	0.3540	0.3600
0.060	Investment Rule	0.0240	0.0240	0.0240
0.00	No provisions	0	0	0
0.25	Initiatives to reduce restrictions and facilitate investment	0	0	0
0.75	National treatment for investment	1	1	1
0.05	<i>Subtract this score if services are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0.</i>	0	0	0
0.05	<i>This score is subtracted for specified sectors where there exist investment barriers. Number of sectors with FDI barriers</i>	7	7	7
1.00	Provisions that prohibit restrictions	0	0	0

Continuation...

TABLE A1
Member liberalizations Index of Canada, 1996-2006

Weights	APEC AREAS	CANADA		
		1996/1998	2003	2007
0.060	Domestic Competition Policy	0.0540	0.0540	0.0540
0.00	No provisions	0	0	0
0.25	Initiatives to promote adequate competition policy	0	0	0
0.75	Competition policy provisions for the public sector	0	0	0
0.75	Competition policy provisions for the private sector	0	0	0
1.00	Competition policy provision for both public and private sector	1	1	1
0.10	<i>Subtract this score if competition policy is discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
0.10	<i>This score is subtracted if there exist at least one international complaint on Canadian Domestic Competition Policy in the last 4 years. Place 1 if this is the case, otherwise place 0</i>	1	1	1
0.060	Deregulation and Regulatory Review and Reform	0.0600	0.0600	0.0600
0.00	No provisions	0	0	0
0.25	Initiatives to promote adequate Deregulation and Regulatory Review and Reform	0	0	0
0.75	Deregulations and Regulatory Review and Reform only for the public sector	0	0	0
0.75	Deregulations and Regulatory Review and Reform only for the private sector	0	0	0
1.00	Deregulations and Regulatory Review and Reform for both private and public sector	1	1	1
0.10	<i>Subtract this score if deregulation and regulation are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
0.10	<i>This score is subtracted if there is at least one international complaint on Canadian Domestic Deregulation and Regulatory Review and Reform in the last 4 years. Place 1 if this is the case, otherwise 0</i>	0	0	0
0.060	Government Procurement	0.0540	0.0540	0.0540
0.00	No provisions	0	0	0
0.25	Initiatives to promote best practice government procurement	0	0	0
0.75	Initiatives to allow 'fair' competition in the government procurement market	0	0	0
1.00	National treatment for government procurement	1	1	1
0.10	<i>Subtract this score if government procurements are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
0.10	<i>This score is subtracted if there exist at least one international complaint on Canadian Government Procurement Laws in the last 4 years Place 1 if this is the case, otherwise place 0</i>	1	1	1
0.060	Intellectual Property Rights	0.0240	0.0540	0.0600
0.00	No provisions	0	0	0

Continuation...

TABLE A1

Member liberalizations Index of Canada, 1996-2006

Weights	APEC AREAS	CANADA		
		1996/1998	2003	2007
0.50	National treatment for intellectual property rights	1	0	0
1.00	Provisions for adequate and effective protection	0	1	1
0.10	<i>Subtract this score if intellectual property rights are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
0.10	<i>This score is subtracted if there exist at least one international complaint on Canadian IPR Laws in the last 4 years. Place 1 if this is the case, otherwise place 0</i>	1	1	0
0.060	Permanent Movement of Business	0.0540	0.0540	0.0540
0.00	No provisions	0	0	0
0.50	Initiatives to promote the permanent movement of people	0	0	0
1.00	Provisions for free permanent movement of people	1	1	1
0.10	<i>Subtract this score if permanent movement is discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
0.10	<i>This score is subtracted if permanent visas are granted on a discriminatory basis. Place 1 if this is the case, otherwise place 0</i>	1	1	1
0.060	Temporary Movement of Business	0.0540	0.0540	0.0540
0.00	No provisions	0	0	0
0.50	Initiatives to promote the temporary movement of people	0	0	0
1.00	Provisions for free temporary movement of people	1	1	1
0.10	<i>Subtract this score if temporary movements are discriminatory due to FTAs/RTAs. Place 1 if this is the case, otherwise place 0</i>	0	0	0
0.10	<i>This score is subtracted if temporary visas are granted on a discriminatory basis. Place 1 if this is the case, otherwise place 0</i>	1	1	1
1.000	Total Weight for MLI			
Multi-score Index of Goods and Services		0.2715	0.2928	0.2928
Multi-score Index Non-Trade Issues		0.3240	0.3540	0.3600
Multi-score Index		0.5955	0.6468	0.6528

Source: Author elaboration. Modified from Adams *et al* (2003) and Tello (2007).

TABLE A2
Sources of Information for the Member Liberalization Index

APEC AREAS	SOURCES OF INFORMATION
I. Merchandise Trade	
I.1 Standards and Conformance, and Sanitary and Phytosanitary Measures	
Standards and Conformance	APEC, (2007a, Chapter 5 / pp. 5). APEC, (2003a, Chapter 5 / pp. 3). WTO, (1998a, PARTEIV).
Sanitary and Phytosanitary Measures	WTO, (2006a, pp. 50, Table III.7). WTO, (1998a, pp.77).
I.2 Non-Tariff Measures	
NTM on Exports	Department of Justice Canada, 2007, Export Control List. APEC, (2003a, Chapter 2 / pp. 1). WTO, (1998a, PARTEIV, Cuadro III.6).
Domestic Support	OECD, (2006e, pp. 45I).
Non-Tariff Measures on Imports	APEC, 2007a, Chapter 2 / pp. 2. IAP Canada 2007. APEC, 2003a, Chapter 2 / pp.1. IAP Canada 2003 WTO, (1998a, PARTEIV, Cuadro III.5).
Safeguards	WTO, 2007c, Economic Research and Statistics Division: Trade Remedy Provisions in Regional Trade Agreements, Staff Working Paper ERSD-2007-03, pp.73 Tabla7B. WTO, (2003a, pp. 52). WTO, (1998a, PART IV).
Antidumping and Countervailing Measures	WTO, 2007c, Economic Research and Statistics Division: Trade Remedy Provisions in Regional Trade Agreements, Staff Working Paper ERSD-2007-03, pp.12. WTO, (2003a, pp. 55). WTO, (1998a, PART IV).
I.3 Tariffs	
MFN Tariff Rates	APEC, (2007a, Chapter 1 / pp. 2). APEC, (2003a, Chapter 1/ pp.3). WTO, (2007a, pp.21 Tabla AIII.1). WTO, (2003a, Tabla III.2). WTO, (1998a, PART IV).
Tariff Quotas	APEC, (2007a, Chapter 1 /pp.2). APEC, (2003a, Chapter 1 /pp.4). APEC, (2000a, Chapter 1).
I.4 Implementations of WTO Obligations	
Number of Different Types of Rules of Origin Available	Foreign Affairs and International trade Canada, Canada-Costa Rica Free Trade Agreement, 2003. Foreign Affairs and International trade Canada, Free Trade Agreement between the Government of Canada and the Government of the State of Israel, 1997. Foreign Affairs and International trade Canada, Canada - Chile Free Trade Agreement, 1997. Foreign Affairs and International trade Canada, NAFTA, 1994.
Restrictiveness of the Rules of Origin	Foreign Affairs and International trade Canada, Canada-Costa Rica Free Trade Agreement, 2003. Foreign Affairs and International trade Canada, Free Trade Agreement between the Government of Canada and the Government of the State of Israel, 1997. Foreign Affairs and International trade Canada, Canada - Chile Free Trade Agreement, 1997. Foreign Affairs and International trade Canada, NAFTA, 1994.

TABLE A2
Sources of Information for the Member Liberalization Index

APEC AREAS	SOURCES OF INFORMATION
II. Measures Covering Trade in Services	
Services	APEC, (2007a, Chapter 3 /pp.9). APEC, (2003a, Chapter 3 /pp.3). APEC, (2000a, Chapter 4).
III. General Measures Covering Non Merchandise Trade	
Investment Rule	APEC, (2007a, Chapter 4 /pp. 5 y 9). APEC, (2003a, Chapter 4 /pp. 5 y 7). WTO, (2000a, pp.14 Table II.1). WTO, (1998a, PARTEIV pp.19).
Domestic Competition Policy	APEC, (2007a, Chapter 8 /pp.4). APEC, (2003a, Chapter 8 /pp. 3). WTO, (1998a, pp.8 y 110). Competition Bureau Canada, 2006, Annual Report of the Commissioner of Competition for the Year Ending. Competition Bureau Canada, 2002, Annual Report of Preventing Anti-Competitive Activity. WTO, (1996a, PART IV).
Deregulation and Regulatory Review and Reform	APEC, (2007a, Chapter 10 /pp.7). APEC, (2003a, Chapter 10 /pp. 5). WTO, (1998a, pp.83).
Government Procurement	APEC, (2007a, Chapter 9 /pp. 3 y 9). APEC, (2003a, Chapter 9 / pp. 3). WTO (2007a, pp. 74), WTO (2003, pp. 80), WTO (1998a, pp. 75).
Intellectual Property Rights	APEC, (2007a, Chapter 7 / pp. 5, 6 y 7). APEC, (2003a, Chapter 7 /pp. 3). WTO, (2007a, pp.80). WTO, (2003a, pp.83). WTO, (1998a, Table II.2, pp. 36).
Permanent Movement of Business	APEC, (2007a, Chapter 13 /pp.4). APEC, (2003a, Chapter 13/ pp. 3). APEC, (2000a, Chapter 13 /pp.3). Citizenship and Immigration Canada, 2005, Audit of the Buenos Aires Immigration Program. Citizenship and Immigration Canada, 2003, Statement of Mutual Understanding on Information Sharing.
Temporary Movement of Business	APEC, (2007a, Chapter 13/pp.4). APEC, (2003a, Chapter 13 /pp. 3). APEC, (2000a, Chapter 13 /pp. 3).

ANNEX 7

ABAC SUBMISSION

Issues and Requests Relating to Foreign Trade and Investment – CANADA

Issues and requests relating to foreign trade and investment – CANADA

	Category	No	Issue	Issue Details	Requests	Governing Laws
1	Tariffs	(1)	High tariffs	<ul style="list-style-type: none"> - The import duty rate on photographic sensitive material is high compared to other countries. Since October 1994, it has been reduced in stages at the rate of 0.3%~0.4% per annum but is still higher than others in absolute terms. Since the market price of the imported product approximates that of the U.S. the difference in the tariff rate is negatively affecting the profitability. - The MFN duty rate on finished car is too high. --1997 7.3% □ 1999 6.1% (compared to 2.5% of U.S. and 0% of Japan) - While nothing is imposed on DVD Player, Canada imposes 6% import duty on DVD Recorder by finding that it is classifiable under “Other Video Equipment”, not “Laser Video Disc Player”. DVD Recorder is nothing but a derivative of DVD Disc Player. There is no ground for Canada to impose duty only on DVD Recorder, even for the sake of protecting the domestic industry. 	<ul style="list-style-type: none"> - It is requested that GOC repeals as soon as possible the import duty rate on color films and color photographic paper. - It is requested that GOC reduces the MFN duty rate on finished cars. - It is requested that GOC classifies DVD Recorder under the same category as “Laser Video Disc Player”. 	- Customs Act
			(Actions)	- During the course of the APEC Individual Action, Canada declared that it would implement staged tariff reductions over 714 items by 1999 and over 64 items by 2004, apart from the concession tariff rates.		
		(2)	Imposition of Antidumping duty	- Canada continues to impose antidumping duties on stainless steel bars (originating from Japan, Taiwan, Germany, Spain, Italy, France, U.K., Sweden and India) since 3 September 2003.		
2	Non-tariff measures	(1)	Deduction of royalties	<ul style="list-style-type: none"> - While the total amount of royalties paid to the U.S. is deductible, only two-thirds deduction is allowed for royalty payment made to Japan. 		- Ontario Provincial Taxation System
			(Reference)	- In the Japan-Canada Economic Framework of November 2005, the parties agreed to include the exchange of dialogs between Canada and Japan on Japan-Canada Tax Treaty in the Priority Areas of Cooperation.		
		(2)	High business tax rate	- Canadian business tax of 45% is excessively high, for example, compared to 35% of the U.S.		

Category	No	Issue	Issue Details	Requests	Governing Laws																		
			<p>(Improvement)</p> <p>- By elimination of the Federal Corporate Capital Tax in 2008, and the staged reduction in the General Federal Corporate Income Tax (from 28% in 2000 down to 21% in 2004), the Corporate Tax (including corporate capital tax) in total of both federal and provincial tax will become lower than those imposed in the U.S.. The following provisional estimate is prepared by Department of Finance to compare the corporate tax between Canada and the U.S. (inclusive of corporate capital tax, in total of both federal and provincial taxes):</p> <table border="1"> <thead> <tr> <th></th> <th>2003</th> <th>2004</th> </tr> </thead> <tbody> <tr> <td>Canada</td> <td>39.4%</td> <td>33.8%</td> </tr> <tr> <td>U.S.</td> <td>40.0%</td> <td>40.0%</td> </tr> </tbody> </table>		2003	2004	Canada	39.4%	33.8%	U.S.	40.0%	40.0%											
	2003	2004																					
Canada	39.4%	33.8%																					
U.S.	40.0%	40.0%																					
	(3)	Capital tax	<p>- Corporate capital tax imposed on loans and capital slashes profitability of business operations. In Canada, corporate capital tax (of 0.225% over the taxable capital in excess of C\$10 million) is levied at both federal and provincial levels for a large business entity having a Permanent Establishment in Canada. Provincial capital tax varies in the range of 0.25% to 0.64% from one province to another, and that of Quebec is 0.52%.</p> <p>- Currently tax payments are made to both Federal and Provincial Governments and the tax will shortly become no longer payable to the Federal Government. Ontario remains the only Government that imposes the Provincial tax.</p>	<p>- It is requested that capital tax is repealed.</p> <p>- It is requested that Ontario will also jump on the bandwagon by discontinuing imposition of the capital tax, in line with the remaining Provinces that are heading toward discontinuation of the provincial capital tax.</p>	<p>- Federal tax</p> <p>- Provincial tax (British Columbia, Ontario, Manitoba, Quebec, Saskatchewan, Nova Scotia, New Brunswick)</p>																		
			<p>(Improvement)</p> <p>- Toward elimination of the federal corporate capital tax ("CCT") in 2008, Canada will reduce its rates in stages as follows, beginning the year, 2004:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>2003</th> <th>2004</th> <th>2005</th> <th>2006</th> <th>2007</th> </tr> </thead> <tbody> <tr> <td>Federal Corporate Capital Tax (%)</td> <td>0.225</td> <td>0.200</td> <td>0.175</td> <td>0.125</td> <td>0.0625</td> </tr> <tr> <td>Tax Exemption Limit (\$million)</td> <td>10</td> <td>50</td> <td>50</td> <td>50</td> <td>50</td> </tr> </tbody> </table>	Year	2003	2004	2005	2006	2007	Federal Corporate Capital Tax (%)	0.225	0.200	0.175	0.125	0.0625	Tax Exemption Limit (\$million)	10	50	50	50	50		
Year	2003	2004	2005	2006	2007																		
Federal Corporate Capital Tax (%)	0.225	0.200	0.175	0.125	0.0625																		
Tax Exemption Limit (\$million)	10	50	50	50	50																		
	(4)	Transfer pricing taxation system	<p>- Business entities are forced to expend heavily to prepare for and deal with this taxation system among others by conducting researches and preparing documents in the circumstances where no clear policy or indication is made public concerning the transfer pricing system.</p> <p>- Investigation concerning the transfer pricing system is being reinforced with a possibility of double-taxation. Business entities are forced to expend much time and resources in giving an explanation to examination by governmental authorities.</p>	<p>- It is requested that Canada avoids or eliminates the double-taxation as soon as possible in the context of the transfer pricing taxation system.</p> <p>- It is requested that GOC simplifies the whole procedure concerning the</p>																			

Category	No	Issue	Issue Details	Requests	Governing Laws
			<ul style="list-style-type: none"> - Transactions must always be governed by the transfer pricing taxation system with all its legislative revisions, as regards the transaction between the related parties for purchase and sale of products manufactured in an overseas factory in which the parent in Japan has made a direct investment. 	transfer pricing taxation examination, for example, by reducing the number of items included in the questionnaire.	
	(5)	Taxation system for business entities with thin capitalization	<ul style="list-style-type: none"> - Where a Canadian subsidiary's borrowing from its parent exceeds double the amount of its capital, the interest payable on the excess portion is considered practically as dividends, hence not deductible as expenses. In addition, the debt amount to which the thin capital provision applies is considered to be the maximum debt amount during the tax year. - Local foreign-funded bank are facing a competitive disadvantage against the domestic banks, because they are unable to procure funds at low interest rates from their parents with their strong fund procurement strength in Japan, the withholding tax being levied on the interest accrued on the borrowed principal. 	- It is requested that GOC eliminates the barrier arising from the thin capitalization taxation system against the borrowing from a parent group of banks by foreign-funded banks in Canada.	
	(6)	Inadequate or absence of consolidated tax payment system	<ul style="list-style-type: none"> - Consolidated tax payment system between the related business entities is not permitted, and this is disenchanting the foreign capital's desire to enter the market. Normally, it is extremely difficult for the new business to operate profitably during the start up period of 2 to 3 years and the absence of consolidation in tax accounting makes it difficult to obtain financial assistance of the parent entity. 		
	(7)	Discriminatory preferential tax treatment due to capital formation	<ul style="list-style-type: none"> - Reduction in tax rates for small-scale industries up to C\$200,000 in annual business income is less favorable for Japanese affiliated business entities in which Japanese investors own the majority equity interest compared to Canadian controlled private corporations ("CCPC"). 	- It is requested that GOC grants to Japanese affiliated business entities the equal tax treatment as it does to CCPC, as regards the reduction in tax rates for small-scale industries.	

	Category	No	Issue	Issue Details	Requests	Governing Laws
3	Investment	(1)	Protective policy on Canada's cultural heritage or national identity	<ul style="list-style-type: none"> - Investment into Canada in the cultural industry sector (books, periodicals, films, videos, music, broadcast, etc.) by foreign entities is restricted and subjected to the review by Industry Canada Investment Review Division. - As from June 1996, the review of investment in the abovementioned sector has been transferred to the Department of Canadian Heritage. 	<ul style="list-style-type: none"> - It is requested that GOC (Government of Canada) repeals or deregulates the restrictions imposed on foreign investments as a protective policy for the cultural. - It is requested that GOC approves as soon as possible opening of a Japanese bookshop by foreign investment. 	- The Investment Canada Act
		(2)	Lack of preferential treatment for foreign investments	<ul style="list-style-type: none"> - No incentive is granted to foreign-funded enterprises operating in Canada. <p>(Actions)</p> <ul style="list-style-type: none"> - While no specific incentive per se is provided to foreign investments, both at the federal and provincial levels, a variety of general incentive programs for a beneficial tax treatment are available to all business entities, regardless of whether foreign or domestic, such as fund assistance, business expansion, personnel, training. Provincial incentives are generally negotiated between the governmental agencies and private business entities. 		
4	Standards and Conformance	(1)	Differences in safety standards	<ul style="list-style-type: none"> - The differences in the safety standards, i.e. Canada Standard Association ("CSA") vs. Japanese Industrial Standards ("JIS") necessitate an additional work on machinery and equipment used for local production. Further more, inspection by the CSA personnel may result in costly damage to such machinery and equipment. Vacuum deposition coating device, cleaning equipment, and hard coating equipment are such examples. - Upon introducing production facilities into Canada from abroad, approvals by CSA (Canada Standard Association) and Ministry of Labor (Canadian Centre for Occupational Health and Safety) are required. - During the course of obtaining such approvals, applicants found that the use of certain materials and parts were designated by CSA concerning the control portion of the production facilities. It was found that such designated materials and parts were extremely difficult to procure. <p>(Improvement)</p> <ul style="list-style-type: none"> - Ontario Hydro (Ontario Electric Power Company) approval was successfully obtained without problems by modifying the production facilities using materials and parts equivalent to those designated by CSA. 	<ul style="list-style-type: none"> - It is requested that CSA will admit the interchangeability of the Japanese Safety Standards with CSA and will simplify its inspection methods upon introduction of materials and parts into the production facilities. 	<ul style="list-style-type: none"> - CSA Standard C.22.2 No.14 - CSA

	Category	No	Issue	Issue Details	Requests	Governing Laws
		(2)	Safety standard approvals	- While CSA has its liaison office in Japan, the latter is not equipped to conduct inspection for such production facilities as are employed for local production in Canada. Practically for such facilities, CSA conducts its inspection for approval in Canada, after they are landed in Canada. In the event certain parts are found to be requiring replacement, the applicants are compelled to incur additional cost and time to rectify the problem.	- It is requested that the resident liaison office in Japan will conduct inspection in Japan for such industrial equipment, as well.	
		(3)	The PE (Professional Engineer Stamp)	- Outside Ontario in any other provinces, production facilities can be installed if only PE stamp is obtained. Ontario is the only province, which insists on its own PE stamp, which burdens financially the business entities in concern.	- It is requested that Ontario Province approves the PE stamp issued by any other province(s).	
		(4)	Nonintegrated standards	- Because safety standards vary according to each province, modification is required locally in each province by calling for assistance of local parties fully versed with the local requirements. This however can be quite costly.		
		(5)	Bilingual requirements on products	- The requirements for use of bilingual statements on products in English and French are adding to the cost of the product. Furthermore, such requirements are getting to be even more stringent.	- It is requested that the bilingual requirements on products are deregulated.	
5	Government Procurement	(1)	Provincial governmental procurements	- Highly discriminatory regulations (with Buy Canadian flavor) exist, at the provincial level, favouring domestic bidders.	- It is requested that the discriminatory regulations favouring domestic interests are repealed.	
6	Deregulation/Regulatory Review	(1)	Undefined basis for issuance and renewal of visa	- The procedural basis concerning the issuance and renewal of visa is not defined clearly. 1) The basis of the length of time required for issuance of visa is undefined. 2) In some cases visas were not issued to the accompanying family members at the arrival airport but a fresh application procedure had to be made subsequent to the entry. 3) Applicants are treated differently depending upon who the immigration officer is.		
		(2)	Work visa and the right to permanent residence	- Upon exceeding 5 years of residence in Canada, such foreign resident is treated as an immigrant. - Working visas are denied to Japanese graduates from Canadian colleges or vocational schools wishing to work at Canadian hotels as bilingual employees, for a reason that they do not possess permanent residence right. On the other hand, in the absence of working visas, permanent residence rights are seldom granted.		

	Category	No	Issue	Issue Details	Requests	Governing Laws
				<p>(Actions)</p> <ul style="list-style-type: none"> - Under the new Immigration Act which became effective in June 2002, the pass mark system applied only to the specified work types was discontinued, while as regards the skilled worker class, the selection criteria was tightened from a pass mark of 70 (where 110 are full marks) to a pass mark of 75 (where 100 are full marks). However, since September 2003, the selection criterion has been substantially reduced to a pass mark of 67 (where 100 are full marks). 		
		(3)	Nationality of directors restricted	<ul style="list-style-type: none"> - In 2001, the federal Canada Business Corporations Act was amended to the effect that at least 25% of the directors of a corporation must be resident Canadians, rather than the majority resident Canadians required before the amendment. However, the majority requirement is retained in the Provincial Business Corporations Acts as of today. - On 24 November 2001, the Canada Business Corporations Act (federal act) was amended reducing the minimum requirement from 50% to 25%, as regards the Canadian resident directors. However, Business Corporations Act R.S.O. 1990 (Ontario) prescribes: "A majority of the directors of every corporation other than a non-resident corporation shall be resident Canadians". Thus, the majority requirement for the Canadian resident directors remains intact, when incorporating under Business Corporations Act R.S.O. 1990 (Ontario). 	- It is requested that the residency requirement provision is repealed.	- Canada Business Corporation Act 105
		(4)	Environmental regulations	<ul style="list-style-type: none"> - The legislative requirements on wastewater vary by location at provincial or metropolitan level in precise details, necessitating provision of drainage facilities corresponding to each of these minute requirements. - Because the regulatory measures, etc. have been made more stringent than they were at the initial entry by Japanese affiliated business entities, additional investment and expenses are incurred to take the requisite actions. 	- It is requested that the legislative requirements on hazardous waste disposal, among others, the drainage facilities are harmonized throughout Canada.	- Hazardous Waste Regulation
		(5)	Blocking of illegal imports	- There is no legislative provision, which can block the illegal imports by unauthorized parties as such illegal actions can be a cause for a serious problem on product liability issues, etc.	- It is requested that a new legislative provision is created which will allow institution of proceedings, similar to those under the Section 337 of the Tariff Act of 1930 by the U.S. ITC (International Trade Commission).	