U.S. DEPARTMENT OF STATE
DIPLOMACY IN ACTION

Executive Summary

Canada and the United States have one of the largest and most comprehensive investment relationships in the world. U.S. investors are attracted to Canada's strong economic fundamentals, its proximity to the U.S. market, its highly skilled work force, and abundant resources. The United States accounts for 52 percent of Canada’s total stock of foreign direct investment. U.S. stock of foreign direct investment in Canada reached $351 billion in 2012, while Canada’s foreign direct investment stock in the United States totaled more than $261 billion. The stock of global foreign direct investment in Canada stood at $637 billion in 2012, an increase of 8.5 percent from 2011.

U.S. foreign direct investment in Canada is subject to the provisions of the Investment Canada Act (ICA), the WTO, and the 1994 North American Free Trade Agreement (NAFTA). Chapter 11 of NAFTA contains provisions such as “national treatment” designed to protect cross-border investors and facilitate the settlement of investment disputes. NAFTA does not exempt American investors from review under the ICA, which has guided foreign investment policy in Canada since its implementation in 1985. The ICA provides for review of large acquisitions by non-Canadian investors and includes the requirement that these investments be of “net benefit” to Canada. Fewer than 10 percent of foreign acquisitions are subject to ICA review, and the Canadian government has only blocked investments on three occasions.

Canada announced in December 2012 that future acquisitions of Canadian oil sands businesses by a state-owned enterprise (SOE) will only be of net benefit to Canada in “exceptional circumstances” as part of the government’s new SOE guidelines. Canada’s 2013 Budget Implementation Bill brought into force other previously announced SOE measures including a separate monetary review threshold for SOE investments and a broader and clarified definition of an SOE. The rules were developed in response to a substantial increase in SOE investment in Canada since 2008, and followed Canada’s approval of two Asian-SOE acquisitions of Canadian oil sands businesses.

Although foreign investment is a key component of Canada’s economic development, restrictions remain in key sectors. Under the *Telecommunications Act*, Canada maintains a 46.7 percent limit on foreign ownership of voting shares for a Canadian telecomm services provider. Canada amended the *Telecommunications Act* in June 2012 to exempt foreign carriers with less than 10 percent market share from ownership restrictions in an attempt to increase competition in the sector. Canada limits foreign ownership of Canadian air carriers to 25 percent of voting equity. Investment in cultural industries also carries restrictions, including a provision under the ICA that foreign investment in book publishing and distribution must be compatible with Canada’s national cultural policies and be of net benefit to Canada. Canada is open to investment in the financial sector, but barriers remain in retail banking.

1. Openness To, and Restrictions Upon, Foreign Investment

With few exceptions, Canada offers full national treatment to foreign investors within the context of a developed open market economy operating with democratic principles and institutions. Canada reviews investments under the Investment Canada Act (ICA). Foreign investment is prohibited or restricted in several sectors of the economy.

The United States and Canada agree on important foreign investment principles, including right of establishment and national treatment. The 1989 Canada-United States Free Trade Agreement (CUFTA) and 1994 North America Free Trade Agreement (NAFTA) recognize that a hospitable and secure investment climate is necessary to achieve the full benefits of reduced barriers to trade in goods and services. The agreements establish a framework of investment principles sensitive to U.S., Canadian, and Mexican interests while assuring that investment flows freely and investors are treated in a fair and equitable manner. The NAFTA provides higher review thresholds for U.S. investment in Canada than for other foreign investors, but the agreement does not exempt all American investment from review nor does it override specific foreign investment prohibitions, notably in "cultural industries" (e.g., publishing, film, music). The NAFTA investor-state dispute settlement mechanism creates the right to binding arbitration in specific situations.

Legal Framework: The Investment Canada Act

Foreign investment policy in Canada has been guided by the Investment Canada Act (ICA) since 1985. The ICA liberalized policy on foreign investment by recognizing that investment is central to economic growth and key to technological advancement. The ICA provides for review of large acquisitions by non-Canadians and imposed a requirement that these investments be of "net benefit" to Canada. For the vast majority of small acquisitions and the establishment of new businesses, foreign investors need only notify the Canadian government of their investment. Fewer than 10 percent of foreign acquisitions are subject to ICA review. The threshold for investments subject to ICA review for 2014 is $354 million for WTO Members. (Indirect control acquisitions by WTO Members do not have to be reviewed.) For non-WTO Members, the threshold remains at $5 million for direct control and $50 million for indirect control acquisitions. Canada amended the ICA in 2009 to increase the threshold for review to $1 billion over a four-year period. This increase will take affect once regulations implementing the amendments come into force.

Canada announced new SOE guidelines in December 2012, which included the statement that future SOE bids to acquire control of a Canadian oil-sands business will only be approved on an “exceptional basis.” Canada altered the definition of an SOE in its 2013 Budget Implementation Bill to an entity or individual that is *influenced directly or indirectly* by a foreign government. The Bill also established a separate threshold review for SOE acquisitions of control, and allows Canada’s Industry Minister to review minority SOE investments for the first time. The new rules were developed in response to an increase in SOE investment from 2008 to 2011 and an increasing trend for these investors to seek to acquire control of Canadian businesses. Canada added SOE guidelines in 2007 to its net benefit test to ensure that SOEs adhere to North American market principles and Canadian standards of governance and accountability. The new rules supplement Canada’s 2007 SOE guidelines.

Canada's 2013 budget bill also included measures to provide the Industry Minister with additional flexibility to extend the timelines for national security reviews. The new timelines will come into force once regulations are finalized. Canada added a national security review to the ICA in 2009 that permits the Industry Minister to review investments that could be "injurious to national security." National security reviews can take up to 130 days to complete under existing timelines.

Canada amended the ICA in June 2012 to allow the Industry Minister to publically disclose why an investment proposal failed to satisfy the net benefit test, so long as disclosure will not harm the Canadian business or investor. Another amendment allows the Industry Minister to accept security of payment from an investor when a court finds the investor to be in breach of its ICA undertakings. Canada also introduced guidelines that provide foreign investors with the option of a formal mediation process to resolve disputes when the Industry Minister believes a non-Canadian investor has failed to comply with a written undertaking.

Canada approved the acquisition of two Canadian energy companies by two Asian SOEs in tandem with the December 2012 SOE investment rule unveiling, but signaled their approval was "the end of a trend."

Canada has only turned down investment offers three times since the ICA came into force 25 years ago. Canada blocked a Cairo-based investment and management company's proposed $520 million acquisition of Manitoba Telecom Services' Allstream Division under the national security provisions of the ICA in October 2013. The Canadian government did not elaborate on the reasons behind its decision. Canada blocked a proposed $38.6 billion purchase of a potash producer in Saskatchewan by an Australian-based company in November 2010, claiming the hostile takeover failed to be of "net benefit" to Canada under the ICA. The third instance occurred in April 2008 when Canada denied the sale of Canadian communications company MacDonald Dettwiler's satellite operations to an American buyer over security concerns. Canada reviewed several other high-profile investment cases in recent years. The announced merger of Canada's largest stock exchange and a major London-based stock exchange in February 2011 sparked an ICA review. The deal failed to draw sufficient support from the Canadian stock exchange's shareholders and the deal was dropped before the ICA review process was completed. A rival bid for the Canadian stock exchange by a consortium of major Canadian banks, pension plans, and financial firms, was a significant factor in the merger's eventual failure.

Canada's Industry Minister sought an order in federal court in July 2009 against a U.S. steel producer alleging that the company had failed to fulfill its obligations under the ICA to maintain minimum Canadian employment levels in exchange for permission to acquire a Canadian steel mill. Under the ICA, Canada has authority to levy financial penalties against the producer for breach of these undertakings. Following an unsuccessful appeal by the company, Canada dropped its case in December 2011 in exchange for a company commitment to continue manufacturing steel in Canada until 2015 and a pledge to invest an additional $50 million in its Canadian facilities.

Investment in specific sectors is covered by special legislation. Foreign investment in the financial sector is administered by the Finance Department. Investment in any activity related to Canada's cultural heritage or national identity is administered by the Heritage Department. Foreign ownership of Canadian telecommunications firms is governed by the Telecommunications Act, while the Broadcast Act governs foreign investment in radio and television broadcasting.

Investment in Canada is also subject to provincial jurisdiction. Restrictions on foreign investment differ by province, but are largely confined to the purchase of land and to provincially-regulated financial services. Provincial government policies relating to, inter alia, culture, language, labor relations or the environment, can be a factor for foreign investors.
U.S. foreign direct investment in Canada is subject to provisions of the Investment Canada Act, the WTO, and the NAFTA. Chapter 11 of the NAFTA ensures that future regulation of U.S. investors in Canada and Canadian investors in the United States results in treatment no different than that extended to domestic investors within each country, i.e., "national treatment." Both governments are free to regulate the ongoing operation of business enterprises in their respective jurisdictions provided that the governments accord national treatment to both U.S. and Canadian investors.

Existing U.S. and Canadian laws, policies, and practices were "grandfathered" under the NAFTA except where specific changes were required. The "grandfathering" froze various exceptions to national treatment provided in Canadian and U.S. law, such as foreign ownership restrictions in the communications and transportation industries. Canada retains the right to review the acquisition of firms in Canada by U.S. investors at the levels applicable to other WTO members and has required changes before approving some investments.
Canada and the United States are free to tax foreign-owned companies on a different basis from domestic firms, provided this does not result in arbitrary or unjustifiable discrimination. The governments can also exempt the sale of Crown (government-owned) corporations from any national treatment obligations. The two governments retain some flexibility in the application of national treatment obligations. They need not extend identical treatment, as long as the treatment is "equivalent."

Services Trade

Canada-U.S. trade in services is largely free of restrictions and has doubled over the past decade. U.S. services exports to Canada totaled more than $64 billion in 2013, while Canada’s services exports to the United States totaled nearly $30 billion. The NAFTA ensures that restrictions on bilateral services trade will not be applied in the future. Preexisting restrictions, such as those in the financial sector, were not eliminated by the NAFTA. The NAFTA services agreement is primarily a code of principles that establishes national treatment, right of establishment, right of commercial presence, and transparency for a number of service sectors specifically enumerated in annexes to the NAFTA. The NAFTA also commits both governments to expand the list of covered service sectors, except for the financial services covered by NAFTA Chapter 14.

Federal Procurement

Canada is a signatory of the WTO Government Procurement Agreement, and has made government procurement market access commitments through NAFTA and the U.S.-Canada Agreement on Government Procurement. The U.S.–Canada Agreement on Government Procurement, which came into effect in February 2010, provides permanent U.S. access to Canadian provincial and territorial procurement contracts in accordance with the WTO Government Procurement Agreement (GPA). The U.S.-Canada Agreement provided Canadian companies with reciprocal access to 37 states subject to the GPA, as well as a limited number of projects under the *American Recovery and Reinvestment Act of 2009*.

These three agreements provide U.S. businesses with access to most Canadian federal departments and some provincial and municipal entities, but procurement by only ten of Canada's Crown corporations are covered. Federal departments can delegate purchasing authorities to Crown corporations that are not bound by international procurement rules.
In February 2014, Canada announced a new defense procurement strategy designed to give the federal government more flexibility to improve economic outcomes from defense procurement projects. Under the new strategy, Canada's Industrial and Regional Benefits (IRBs) policies will be transformed into Industrial Technological Benefits (ITBs). A core element of the new approach is rated and weighted Value Propositions (VP) for defense and major Canadian Coast Guard procurement projects. Bidders will be asked to put forward their best industrial plan for Canada, as these plans will be scored on the quality of their Value Propositions. Industrial considerations will factor into determining who wins the contract. One component that has not changed is that the ITB must have a value equal to 100 percent of the contract.

Canada has taken measures to address interprovincial trade barriers that can restrict U.S. firms established in one province from bidding on another province's procurement opportunities. The Agreement on Internal Trade (AIT), which came into force in July 1995, provides a framework for dealing with intra-Canada trade in ten specific sectors and establishes a formal process for resolving trade disputes. Over the past two decades, the AIT has been expanded to include improvements in labor mobility, agriculture access, dispute resolution and other areas. Regional agreements have also emerged to enhance interprovincial trade. The provinces of British Columbia and Alberta signed a Trade, Investment, and Labor Mobility Agreement (TILMA) in 2006 to ensure that any provincial measures will not "operate to impair or restrict trade between or through the territory of the Parties, or investment or labor mobility between the Parties." The Agreement came into force in April 2009. Alberta, British Columbia, and Saskatchewan signed the New West Partnership Trade Agreement (NWPTA) in 2010, which further liberalized trade, investment, and labor mobility between the three provinces. Ontario and Quebec signed a Trade Cooperation Agreement (TCA) in 2009, while Nova Scotia and New Brunswick signed a Partnership Agreement on Regulation and Economy (PARE) the same year. Both agreements aim to enhance interprovincial economic activity through regulatory harmonization and measures to address trade barriers.

The NAFTA includes provisions that enhance the ability of U.S. investors to enforce their rights through international arbitration; prohibit a broad range of performance requirements, including forced technology transfer, and expand coverage of the NAFTA investment chapter to include portfolio and intangible investments, as well as direct investment.

Investment in Cultural Industries

Canada defines cultural industries to include: the publication, distribution or sale of books, magazines, periodicals or newspapers, other than the sole activity of printing or typesetting; the production, distribution, sale or exhibition of film or video recording, or audio or video music recordings; the publication, distribution or sale of music in print or machine-readable form; and any radio, television and cable television broadcasting undertakings and any satellite programming and broadcast network services.

The Investment Canada Act requires that foreign investment in the book publishing and distribution sector be compatible with Canadian national cultural policies and be of "net benefit" to Canada. Takeovers of Canadian-owned and controlled distribution businesses are not allowed. The establishment of new film distribution companies in Canada is permitted only for importation and distribution of proprietary products. Direct and indirect takeovers of foreign distribution businesses operating in Canada are permitted only if the investor undertakes to reinvest a portion of its Canadian earnings in Canada.

The Broadcasting Act sets out the policy objectives of enriching and strengthening the cultural, political, social, and economic fabric of Canada. The Canadian Radio-television and Telecommunications Commission (CRTC) administers broadcasting policy. When a Canadian service is licensed in a format competitive with that of an authorized non-Canadian service, the commission can drop the non-Canadian service if a new Canadian applicant requests it to do so. Licenses will not be granted or renewed to firms that do not have at least 80 percent Canadian control, represented both by shareholding and by representation on the firms' board of directors. The CRTC denied a major Canadian broadcaster’s bid to acquire a leading Canadian media company in October 2012. The CRTC maintained that it did not believe the transaction would provide significant benefits to the Canadian broadcasting system and said the deal raised competitiveness concerns. The Canadian broadcaster submitted a revised application of its acquisition proposal to the CRTC in November 2012.

Canada allows up to 100 percent foreign equity in an enterprise to publish, distribute and sell periodicals but all foreign investments in this industry are subject to review by the Minister for Canadian Heritage, and investments may not occur through acquisition of a Canadian-owned enterprise. No more than 18 percent of the total advertising space in foreign periodicals exported to Canada may be aimed primarily at the Canadian market. Canadian advertisers may place advertisements in foreign-owned periodicals, and may claim a tax deduction for the advertising costs, including in cases where the periodical is a Canadian issue of foreign-owned periodical. One-half of advertising costs may be deducted in the case of publications with zero to 79 percent original editorial content, and the full cost of advertising may be deducted in the case of publications with advertising may be deducted in the case of publications with 80 percent or more original editorial content.

This regime is the result of a 1999 U.S.-Canada agreement, which balanced U.S. publishers' desire for access to the Canadian market against Canada's desire to ensure that Canadian advertising expenditures support the production of Canadian editorial content. Canada’s decision in April 2010 to allow online retailer Amazon to open a Canadian distribution center suggests a willingness to allow foreign investors greater access to cultural industries in exchange for commitments to promote Canadian content.

Investment in the Financial Sector

Canada is open to foreign investment in the banking, insurance, and securities brokerage sectors, but there are barriers to foreign investment in retail banking. Foreign financial firms interested in investing submit their applications to the Office of the Superintendent of Financial Institutions (OSFI) for approval by the Finance Minister. U.S. firms are present in all three sectors, but play secondary roles. Canadian banks have been much more aggressive in entering the U.S. retail banking market because there are no barriers that limit access. U.S. and other foreign banks have long been able to establish banking subsidiaries in Canada, but no U.S. banks have retail banking operations in Canada, which is regarded as a fairly "saturated" market. Several U.S. financial institutions have established branches in Canada, chiefly targeting commercial lending, investment banking, and niche markets such as credit card issuance. A major U.S. bank announced plans to expand its wholesale banking capabilities throughout Canada in November 2012. The bank received regulatory approval to offer commercial and corporate banking capabilities in Canada in September 2012, leading to the announced expansion. Canada also gave regulatory approval to a Pittsburgh-based U.S. bank in February 2013 to expand its commercial banking services across Canada.

Chapter 14 of the NAFTA deals specifically with the financial services sector, and eliminates discriminatory asset and capital restrictions on U.S. bank subsidiaries in Canada. The NAFTA also exempts U.S. firms and investors from the federal "10/25" rule so that they will be treated the same as Canadian firms. The "10/25" rule prevents any non-NAFTA, nonresident entity from acquiring more than ten percent of the shares (and all such entities collectively from acquiring more than 25 percent of the shares) of a federally regulated, Canadian-controlled financial institution. Canada raised the 10-percent limit for single, non-NAFTA shareholders to 20 percent in 2001. Several provinces, however, including Ontario and Quebec, have similar "10/25" rules for provincially chartered trust and insurance companies that were not waived under the NAFTA.

The requirement that bank ownership be "widely held" with no more than 25 percent of its shares owned by a single shareholder is said to prevent ownership concentration without discriminating against foreign investors; however, Canadian influence is still exerted through certain requirements of the Bank Act:

- the head office of a bank must be located in Canada;
- shareholders’ meetings are required to be held in Canada;
- two-thirds of the directors must be resident Canadians;
- the chief executive officer of the bank must ordinarily be resident in Canada;
- important corporate and transactional documents must be kept in Canada;
- certain administrative changes require ministerial approval.

Investment in Other Sectors

Commercial Aviation: Canada limits foreign ownership of Canadian air carriers to 25 percent of voting equity. Foreigners may own nonvoting equity subject to the overall requirement that they are not permitted to control a Canadian air carrier. The Canada-EU Aviation Agreement envisions changes to Canadian legislation that will allow up to a 49 percent foreign stake in Canadian airlines. Canada passed an amendment to the Canada Transportation Act in March 2009 that provides the Governor in Council with authority to increase foreign ownership of Canadian airlines to a maximum of 49 percent. This power has not been exercised to date.
General Aviation: No non-Canadian (other than permanent residents) may register a general aviation aircraft for commercial or personal use in Canada.
Mining: Generally foreigners cannot be majority owners of uranium mines.
Energy: Canada continues to encourage additional foreign investment in its energy sector to develop its vast oil and gas resources.

Canada has faced several investment disputes involving energy in recent years. An American oil and gas company filed a notice of arbitration under NAFTA Chapter 11 in September 2013, following the government of Quebec's announced suspension of oil and gas exploration beneath the Saint Lawrence River in June 2011. The American company claims the suspension breached NAFTA expropriation and minimum standard of treatment provisions.

A NAFTA tribunal sided with two international energy companies' claim against Canada in May 2012. At issue was whether the province of Newfoundland and Labrador's policy requiring offshore petroleum investors to contribute financially to provincial research and development initiatives violated NAFTA's minimum standard of treatment and performance requirements. The tribunal ruled that the provincial policy breached NAFTA's performance requirements, but not its minimum standard of treatment provisions. In a separate case, an international energy company agreed to pay the government of Newfoundland and Labrador $150 million dollars in October 2012 for amending its original commitment to construct three modules in the province for the Hebron offshore oil project. The settlement allowed two of the three modules to be constructed in Newfoundland and Labrador with the third to be built out of province.

Telecommunications: Under provisions of Canada's Telecommunications Act, foreign ownership of transmission facilities is limited to 20 percent direct ownership and 33 percent through a holding company, for an effective limit of 46.7 percent total foreign ownership. Canada also requires that at least 80 percent of the members of the board of directors of facilities-based telecommunications service suppliers be Canadian citizens.

Canada amended the Telecommunications Act in June 2012 to rescind foreign ownership restrictions to carriers with less than 10 percent share of the total Canadian telecommunications market. Foreign-owned carriers are permitted to continue operating if their market share grows beyond 10 percent provided the increase does not result from the acquisition or merger with another Canadian carrier. The policy change was part of the Canadian government's strategy to facilitate more competition in the telecom sector. Canada announced the results of its 700 Mhz spectrum auction February 18, 2014. Canada's three largest telecomm providers acquired the majority of spectrum licenses sold, and the auction did not feature any new foreign buyers.

Fishing: Foreigners can own up to 49 percent of companies that hold Canadian commercial fishing licenses.
Electric Power Generation and Distribution: Regulatory reform in electricity continues in Canada in expectation that increased competition will lower costs of electricity supply. Province-owned power firms are interested in gaining greater access to the U.S. power market. Since power markets fall under the jurisdiction of the Canadian provinces, they are at the forefront of the reform effort. Several Canadian provinces have introduced initiatives to encourage the development and implementation of renewable sources of electricity.
Ontario's efforts to implement a feed in-tariff renewable energy program as part of the *Green Energy and Green Economy Act of 2009* has been opposed by U.S. suppliers of equipment and services. Under the program, the Ontario Power Authority provides a guaranteed tariff for energy produced through renewable means (including wind, solar/photovoltaic) on the condition that suppliers use a provincially-mandated percentage of local content (equipment, services, etc.) in their generating activity. U.S. companies contend that the program's domestic content requirement is a disincentive to purchase from U.S. suppliers. An investor-state claim was filed under NAFTA Chapter 11 against Canada in July 2011 by a Texas-based renewable energy firm, claiming the program violates Canada's obligations under NAFTA to provide investors with fair and equitable treatment.

Japan and the European Union filed requests for consultations with the WTO Dispute Settlement Body regarding the domestic content requirements included in the *Green Economy Act*. A WTO dispute settlement panel ruled in December 2012 that the Act's domestic content rules violated Canada's obligations under the General Agreement on Tariffs and Trade. Canada appealed the ruling to the WTO Appellate Body. The Appellate Body upheld the WTO panel's prior ruling in a decision issued May 6, 2013. Ontario's Minister of Energy issued a directive to the Ontario Power Authority (OPA) in August 2013, instructing the OPA to reduce domestic content requirements for new FIT programs as an interim step to comply with the WTO's ruling.
A wind power company owned by a New York-based investment group filed a NAFTA Chapter 11 a notice of arbitration against Canada in January 2013 in response to Ontario's February 2011 moratorium on all new offshore wind projects. The company maintains that the moratorium breached Canada's obligations under NAFTA to protect U.S. investors from expropriation without compensation and violates NAFTA's minimum standard of treatment provision.

Real Estate: Primary responsibility for property law rests with the provinces. Prince Edward Island, Saskatchewan, and Nova Scotia all limit real estate sales to out-of-province parties. Government authorities can expropriate property after paying appropriate compensation.
Privatization: Federal and provincial privatizations are considered on a case-by-case basis, and there are no overall limitations with regard to foreign ownership. As an example, the federal Department of Transport did not impose any limitations in the 1995 privatization of Canadian National Railway, whose majority shareholders are now U.S. persons.

Investment Incentives

Federal and provincial governments in Canada offer a wide array of investment incentives that municipalities are generally prohibited from doing. None of the federal incentives are specifically aimed at promoting or discouraging foreign investment in Canada. The incentives are designed to advance broader policy goals, such as boosting research and development or promoting regional economies. The funds are available to any qualified Canadian or foreign investor who agrees to use the monies for the stated purpose. For example, Export Development Canada can support inbound investment under certain specific conditions (e.g., investment must be export-focused; export contracts must be in hand or companies have a track record; there is a world or regional product mandate for the product to be produced).

Several provinces have developed initiatives aimed at attracting foreign investment. The Province of Quebec launched its "Plan Nord" (Northern Plan) in May 2011, now called "Le Nord pour tous" (the North for Everyone) under the government that was elected in September 2012. The plan is a 25 year, $80 billion investment initiative aimed at developing a 1.2 million square-kilometer territory in Northern Quebec. Much of this investment will go toward renewable energy, infrastructure, and natural resource development projects. Quebec's government has instructed its main investment arm, Investissement Quebec, to attract and partner with foreign investors to develop projects under the initiative. Provincial incentives tend to be more investor-specific and are conditioned on applying the funds to an investment in the granting province. As an example, AdvantageBC operates a provincial incentive program that registers foreign companies in British Columbia's International Business Activity program, and assists them in obtaining a full refund of provincial corporate income tax. Specific sectors and foreign banks are eligible, as are some employees of the registered company.

Provincial incentives may also be restricted to firms established in the province or that agree to establish a facility in the province. Government officials at both the federal and provincial levels expect investors who receive investment incentives to use them for the agreed purpose, but no enforcement mechanism exists.

Incentives for investment in cultural industries, at both the federal and provincial level, are generally available only to Canadian-controlled firms. Incentives may take the form of grants, loans, loan guarantees, venture capital, or tax credits. Incentive programs in Canada generally are not oriented toward export promotion. Provincial incentive programs for film production in Canada are available to foreign filmmakers.

Measure	**Year**	**Rank or value**	**Website Address**
TI Corruption Perceptions index	2013	(9 of 177)	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom index	2014	(6 of 177)	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease of Doing Business"	2013	(19 of 189)	http//doingbusiness.org/rankings

Global Innovation Index	2013	(11 of 142)	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	$50,970	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

2. Conversion and Transfer Policies

The Canadian dollar is fully convertible. Canada provides some incentives for Canadian investment in developing countries through Canadian International Development Agency (CIDA) programs. Canada's official export credit agency, the Export Development Corporation (EDC), provides political risk insurance to Canadian companies with investments in foreign countries and to lenders who finance transactions pursued by Canadian companies abroad.

3. Expropriation and Compensation

Canadian federal and provincial laws recognize both the right of the government to expropriate private property for a public purpose, and the obligation to pay compensation. The federal government has not nationalized any foreign firm since the nationalization of Axis property during World War II. Both the federal and provincial governments have assumed control of private firms, usually financially distressed ones after reaching agreement with the former owners.

4. Dispute Settlement

Canada is a member of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Canada has made a decision in principle to become a member of the International Center for the Settlement of Investment Disputes (ICSID). However, since the ICSID legal enforcement mechanism requires provincial legislation, the federal government must also obtain agreement from the provinces that they will enforce ICSID decisions. Although most provinces have endorsed the agreement, full agreement is unlikely in the foreseeable future. Canada accepts binding arbitration of investment disputes to which it is a party only when it has specifically agreed to do so through a bilateral or multilateral agreement, such as a Foreign Investment Protection Agreement (see below). The provisions of Chapter 11 of the NAFTA guide the resolution of investment disputes between NAFTA persons and the NAFTA member governments. The NAFTA encourages parties to settle disputes through consultation or negotiation. It also establishes special arbitration procedures for investment disputes separate from the NAFTA's general dispute settlement provisions. Under the NAFTA, a narrow range of disputes dealing with government monopolies and expropriation between an investor from a NAFTA country and a NAFTA government may be settled, at the investor's option, by binding international arbitration. An investor who seeks binding arbitration in a dispute with a NAFTA party gives up his right to seek redress through the court system of the NAFTA party, except for proceedings seeking nonmonetary damages.

5. Performance Requirements and Investment Incentives

The NAFTA prohibits the United States or Canada from imposing export or domestic content performance requirements, and Canada does not explicitly negotiate performance requirements with foreign investors. For investments subject to review, however, the investor's intentions regarding employment, resource processing, domestic content, exports, and technology development or transfer can be examined by the Canadian government. Investment reviews often lead to negotiation of a package of specific "undertakings," such as agreement to promote Canadian products.

6. Right to Private Ownership and Establishment

Investors have full rights to private ownership.

7. Protection of Property Rights

Foreign investors have full and fair access to Canada's legal system, with private property rights limited only by the rights of governments to establish monopolies and to expropriate for public purposes. Investors from NAFTA countries have mechanisms available to them for dispute resolution regarding property expropriation by the Government of Canada.
USTR moved Canada from the U.S. Special 301 Report's Priority Watch List to the Watch List in 2013. The move reflects Canada's passage of the Copyright Modernization Act in June 2012. The Act is designed to implement Canada's obligations under the WIPO Internet Treaties and to address the challenges of copyright piracy in the digital age. In March 2013, Canada also introduced the Combating Counterfeit Products Act to strengthen IPR enforcement, which included provisions that would provide ex officio authority to Canadian customs officials to seize pirated and counterfeit goods at the border. The Special 301 Report notes that the United States supports Canada's efforts to address pirated and counterfeit goods, but urged Canada to expand the legislation to also provide authority for its customs officials to take action against goods in-transit.

The United States has expressed strong concerns about the availability of rights of appeal in Canada's administrative process for reviewing the regulatory approval of pharmaceutical products, and has also expressed concerns regarding the heightened utility requirements for patents that Canadian courts have been adopting recently. One U.S. pharmaceutical company filed a Notice of Intent under NAFTA Chapter 11 in September 2013 after its patent was invalidated on two of its drugs. Another pharmaceutical patent was voided in November 2012 by a Supreme Court decision.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Embassy point of contact: David Henry, HenryDA@state.gov

Local lawyers list: http://canada.usembassy.gov/consulates/ottawa/ottawa-attorneys.html

8. Transparency of the Regulatory System

The transparency of Canada's regulatory system is similar to that of the United States. Proposed legislation is subject to parliamentary debate and public hearings, and regulations are issued in draft form for public comment prior to implementation. While federal and/or provincial licenses or permits may be needed to engage in economic activities, regulation of these activities is generally for statistical or tax compliance reasons. The Bureau of Competition Policy and the Competition Tribunal, a quasi-judicial body, enforce Canada's antitrust legislation.

Canada and the United States announced the creation of the Canada-U.S. Regulatory Cooperation Council (RCC) on February 4, 2011. The RCC will increase regulatory transparency and cooperation between the United States and Canada and eliminate unnecessary regulatory differences and duplication that hinder cross-border trade and investment. The RCC Joint Action Plan sets out 29 initiatives where Canada and the United States will seek greater regulatory alignment. All 29 Work Plans were final by July 2012 and cover sector initiatives such as automotive, agricultural, and consumer product sectors, and future technologies, including nanotechnology. Agency work plans include a host of regulatory cooperation activities including technical/scientific collaboration, pilot programs, information sharing, mutual recognition, harmonized testing procedures, joint standards, and collaboration on common approaches to regulations.

Canada and the United States announced in December 2012 the first joint review and approval of a veterinary drug as part of an RCC initiative to better align the approval process for these products. The RCC's Marine Transport Working group launched a pilot project in September 2012 for joint Port State Control inspections on a limited number of non-Canadian and non-U.S. flagged vessels entering the Great Lakes St. Lawrence Seaway. The pilot project will look for efficiencies to reduce duplicate inspections and remove impediments to trade. Pilot projects are also underway to better align Canada's standards and reviews of pest control products. Collaborative work to develop aligned regulations and testing procedures under the New Motor Vehicle Safety Standards Working Plan for electric vehicle safety, hydrogen vehicle safety, quiet electric, and hybrid vehicles is underway. Canada and the United States continue to make strides to align their emissions standards for light and heavy vehicles.

Other areas of engagement include efforts to develop a common approach to food safety, developing joint rail safety standards, instituting common policy principles for regulatory oversight of nanotechnology and nanomaterials, fostering greater symmetry and access with respect to agriculture production, increasing fairness and effectiveness of agricultural trade, and aligning marine transportation security requirements to facilitate more secure and efficient cross-border trade.

9. Efficient Capital Markets and Portfolio Investment

Canada's capital markets are open, accessible, and without onerous regulatory requirements. Foreign investors are able to get credit in the local market. The World Economic Forum ranked Canada's banking system as the "most sound" in the world in 2012. Canadian banking stability is linked to high capitalization rates that are well above the norms set by the Bank for International Settlements.

The Canadian banking industry includes 22 domestic banks, 25 foreign bank subsidiaries, 23 full-service foreign bank branches and seven foreign bank lending branches operating in Canada. These institutions manage close to $3.1 trillion in assets. Many large international banks have a presence in Canada through a subsidiary, representative office or branch of the parent bank.
In Canada, the regulation of defensive tactics against hostile takeovers is handled by provincial securities regulators rather than the courts. Provincial authorities refer to the Canadian Securities Administrators' National Policy 62-202 regarding takeovers that seeks to encourage open and unrestricted auctions to maximize target company shareholder value and choice between competing alternatives. The nationality of the bidding entity is not considered by the provincial securities regulators but trigger a federal review under the Investment Canada Act.

While cross-shareholding arrangements are permitted in Canada, the extent of foreign investment and cross-border merger and acquisition activity suggests that they do not pose any practical barriers.

10. Competition from State-Owned Enterprises

Canada has more than 40 state-owned enterprises (SOEs) at the federal level, with the majority of assets held by three federal crown corporations: Export Development Canada; Farm Credit Canada; and Business Development Bank of Canada. Canada also has over 100 SOEs at the provincial level that contribute to a variety of sectors including, finance; power, electricity, and utilities; and transportation. The Treasury Board Secretariat provides an annual report to Parliament regarding the governance and performance of Canada's federal crown corporations and other corporate interests.

There are no restrictions on the ability of private enterprises to compete with SOEs. The functions of most Canadian crown corporations have limited appeal to the private sector, e.g. the Canadian Space Agency. The activities of some SOEs such as VIA Rail and Canada Post do overlap with private enterprise. As such, they are subject to the rules of the Competition Act to prevent abuse of dominance and other anti-competitive practices. Foreign investors are also able to challenge SOEs under the NAFTA and WTO.

Canada does not have a sovereign wealth fund but the province of Alberta has the Heritage Savings Trust Fund established through province's share of petroleum royalties. The fund's value was nearly $17 billion in 2013. It is invested in a globally diversified portfolio of public and private equity, fixed income and real assets.

11. Corporate Social Responsibility

Canada encourages Canadian companies to observe the OECD Guidelines for Multinational Enterprises in their operations abroad and provides a National Contact Point for dealing with issues that arise in relation to Canadian companies. Despite the increased level of official attention paid to CSR, the activities of Canadian mining companies abroad remain the subject of critical attention and have prompted calls for the government to move beyond voluntary measures.

12. Political Violence

Political violence occurs in Canada to about the same extent as in the United States. For example, student protests over proposed tuition increases in Quebec led to confrontation between police and protesters in May 2012.

13. Corruption

On an international scale, corruption in Canada is low and similar to that found in the United States. In general, the type of due diligence that would be required in the United States to avoid corrupt practices would be appropriate in Canada. Canada is a party to the UN Convention Against Corruption. Canada is a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as well as the Inter-American Convention Against Corruption.

14. Bilateral Investment Agreements

The FTA and NAFTA guide investment relations between Canada and the United States. Investment relations with other states are governed by Foreign Investment Protection Agreements (FIPAs). These are bilateral treaties that promote and protect foreign investment through a system of legally binding rights and obligation based on the same principles found in the NAFTA. Canada has negotiated FIPAs with countries in Central Europe, Latin America, Africa, and Asia. Canada is actively pursuing FIPA’s with ten countries, including India. Canada signed a FIPA with China in September 2012, after nearly two decades of negotiations, but has yet to ratify the agreement. Canada views China as an increasingly important trade and investment partner. Canada concluded FIPA negotiations with Albania, Benin, Cameroon, Cote d’Ivoire, Guinea, Moldova, Nigeria, Serbia, and Zambia in 2013.

15. OPIC and Other Investment Insurance Programs

Because Canada is a developed country, the U.S. Overseas Private Investment Corporation does not operate in Canada.

16. Labor

The federal government and provincial/territorial governments share jurisdiction for labor regulation and standards. Federal employees and those employed in the railroad, airline, and banking sector are covered under the federally administered Canada Labor Code. Employees in most other sectors come under provincial labor codes. As the laws vary somewhat from one jurisdiction to another, it is advisable to contact a federal or provincial labor office for specifics, such as minimum wage and benefit requirements. Canada is slowly recovering from the economic crisis of 2008-2009 which triggered job losses across the country particularly in manufacturing and construction. Canada's unemployment rate stood at 7 percent in January 2014, which is still higher than pre-recession rates of between 6 and 6.5 percent. Newfoundland

and Labrador recorded the highest provincial unemployment rate in the country in January 2014 at 12.0 percent, while Saskatchewan recorded the lowest at 4.3 percent.

Canada's labor unions have clashed with the federal government on several occasions in recent years. Eighteen unions and labor organizations announced their intention in December 2013 to take legal action against the Canadian federal government over provisions included in the government's 2013 budget bill (Bill C-4). The unions maintain that Bill C-4 undermines their right to collective bargaining by allowing the federal government to determine which federal workers will be permitted to strike and which collective agreements will be settled through arbitration. Canada passed "back-to-work" legislation in March 2012 and May 2012 to end labor disputes involving a Canadian airline and rail company. Canada justified introducing the legislation on both occasions as a necessary action to protect the Canadian economy.

17. Foreign Trade Zones/Free Ports

Under the NAFTA, Canada operated as a free trade zone for products made in the United States. U.S. made goods enter Canada duty free.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

The United States has long been Canada's primary source for foreign investment, and Canada is the fourth largest source of foreign direct investment in the United States after the United Kingdom, Japan, and Germany respectively.

About 52 percent of Canada's foreign direct investment comes from the United States. At the end of 2012, Canada's stock of U.S. FDI was $351 billion. U.S. investors with large direct investments in Canada include major automakers (GM, Ford, Chrysler), integrated energy, chemical and mineral producers (e.g., ExxonMobil, ChevronTexaco, ConocoPhillips), financial services firms (e.g., Citibank), and retailers (e.g., Wal-Mart). Target and Nordstrom are among several U.S. retailers that have announced expansion plans into Canada over the past three years. Canada attracted 2.8 percent of the world's FDI in 2012.

Canadian residents have become increasingly active as worldwide investors, and their net international liabilities have been shrinking over the past decade relative to national income. The United States is the top destination for Canadian direct investment abroad (CDIA). CDIA stocks in the United States rose 7 percent ($17.1 billion) in 2012 to $261 billion. The United States' share of CDIA in 2012 was 41 percent.

Other major destinations for Canadian FDI are the United Kingdom, other European Union countries, Brazil, Australia, and Chile.

TABLE 2: Key Macroeconomic data, U.S. FDI in host country/economy

	Host Country Statistical source* Source: Stats Canada	USG or international statistical source	USG or international Source of data (Source of Data: BEA; IMF; Eurostat; UNCTAD, Other)

Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (*Billions U.S. Dollars)*	2012	$1,750	2012	$1,821	International Source: World Bank
Foreign Direct Investment	Host Country Statistical Source: Stats Canada		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (*Thousands U.S. Dollars, stock positions)*	2012	$313,968,000	2012	$351,460,000	International source: U.S. Bureau of Economic Analysis
Host country's FDI in the United States (*Thousands U.S. Dollars, stock positions)*	2012	$278,294,000	2012	$261,133,000	International source: U.S. Bureau of Economic Analysis *by Ultimate Beneficial Owner
Total inbound stock of FDI as % host GDP	2012	35%	2012	36%	International source: OECD Report

* Note: Canadian sourced data converted to U.S. dollars using 2012 Yearly Average Exchange Rate of 1.040, source: http://www.irs.gov/Individuals/International-Taxpayers/Yearly-Average-Currency-Exchange-Rates

TABLE 3: Sources and Destination of FDI
Source: International Monetary Fund (2012 Figures)

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	636,972	100%	Total Outward	715,053	100%
United States	328,102	52%	United States	290,822	41%
Netherlands	61,744	10%	United Kingdom	87,232	12%
United Kingdom	54,821	9%	Barbados	59,591	8%
Luxembourg	24,761	4%	Cayman Islands	30,316	4%
Switzerland	21,501	3%	Australia	27,025	4%
"0" reflects amounts rounded to +/- USD 500,000.					

Results are consistent with host country data.

TABLE 4: Sources of Portfolio Investment
Source: International Monetary Fund (2012 Figures)

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			Equity Securities			Total Debt Securities		
All Countries	867,775	100%	All Countries	683,975	100%	All Countries	183,800	100%
United States	496,117	57%	United States	369,522	54%	United States	126,596	69%
United Kingdom	70,523	8%	United Kingdom	61,573	9%	United Kingdom	8,950	5%
Japan	42,004	5%	Japan	38,290	6%	Australia	5,977	3%
France	26,077	3%	France	21,067	3%	France	5,010	3%
Australia	21,845	3%	Switzerland	17,583	3%	Germany	4,668	3%

* The data is based on partial 2012 data from Canada with final 2012 figures derived by the IMF's Statistical Information Division.

19. Contact Point at Post

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