CANADA
INVESTMENT CLIMATE STATEMENT
2015

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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 over 51 percent of Canada's total stock of foreign direct investment (FDI). U.S. stock of foreign direct investment in Canada reached USD 368 billion in 2013; while Canada's foreign direct investment stock in the United States totaled more than USD 280 billion. The stock of global foreign direct investment in Canada stood at USD 651 billion at the end of 2013, an increase of 2.2 percent from 2012

U.S. foreign direct investment in Canada is subject to the provisions of the Investment Canada Act (ICA), the World Trade Organization (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 blocked investments on only 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

Attitude toward Foreign Direct Investment

With few exceptions, Canada offers 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 United States has long been Canada's primary source for foreign investment, and Canada is the third largest source of foreign direct investment in the United States after the United Kingdom and Japan.

About 51 percent of Canada's foreign direct investment comes from the United States. At the end of 2013, Canada's stock of U.S. FDI was USD 368 billion, up from USD 346 billion in 2012. 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). U.S. retailers have had mixed results in Canada recently with Nordstrom and Whole Foods showing positive results from their expansion into the Canadian market and Best Buy announcing the closing of the majority of their Future Shop outlets, while Target closed all of their 133 stores in Canada. According to the UN Conference on Trade and Development, Canada attracted 4 percent of the world's FDI in 2013.

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 over 7.6 percent (USD 19.8 billion) in 2013 to USD 281 billion. The United States' share of CDIA in 2013 was 41 percent.

Other major destinations for Canadian FDI are the United Kingdom, Barbados, Cayman Islands, and other European Union countries.

Other Investment Policy Reviews

Canada has not conducted an investment Policy review through Organization of Economic Cooperation and Development (OECD), World Trade Organization (WTO), or United Nations Conference on Trade and Development (UNCTAD) in the past three years.

Laws/Regulations of Foreign Direct Investment

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 2015 is USD 369 million for WTO Members. (Indirect control acquisitions by WTO Members do not have to be reviewed.) New regulations that come into effect on April 24, 2015 will implement revised review thresholds for WTO investors, other than SOEs, and will increase the review threshold under the ICA to C$600 million, increasing to C$800 million in two years and ultimately, C$1 billion in four years. Thereafter the review amount will be subject to indexation. Additionally, the time periods for the security review process will be increased from 130 days to 200 days.

For non-WTO Members, the threshold remains at USD 5 million for direct control and USD 50 million for indirect control acquisitions. Canada amended the ICA in 2009 to increase the threshold for review to USD 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.

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 North America Free Trade Agreement (1994 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.

Under the NAFTA, Canada is 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 Canadian government retains some flexibility in the application of national treatment obligations and need not extend identical treatment, as long as the treatment is equivalent.

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 USD 63 billion in 2014, while Canada's services exports to the United States totaled over USD 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.

Industrial Promotion

The Canadian Trade Commissioner Service manages the Advanced Manufacturing Fund (AMF) and the Industrial Research Assistance Program (IRAP). The AMF promotes continued growth of Ontario's advanced manufacturing sector by supporting efforts to develop cutting-edge technologies and large-scale activities that will improve processes and increase productivity, establish clusters or global supply chains and collaborate with private sector, and research and post-secondary institutions. The IRAP program assists firms to develop, adopt and adapt technologies and incorporate them into competitive products and services to be commercialized in the global marketplace. IRAP provides advisory services and funding to help SMEs undertake innovation projects.

Limits on Foreign Control

Commercial Aviation: Canada limits foreign ownership of Canadian air carriers to a 25 percent share in the 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 (appointed by the Governor General) with authority to increase foreign ownership of Canadian airlines to a maximum of 49 percent. This power has not been exercised to date.

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 have 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 in July 2011 by a U.S-based renewable energy firm, claiming the program violates Canada's obligations under the NAFTA to provide investors with fair and equitable treatment. The case is ongoing.

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.

In 2013, a U.S-owned wind power company filed a NAFTA Chapter 11 a notice of arbitration against Canada 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 by expropriating without proper compensation.

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. In 2013, a U.S oil and gas company filed a claim under NAFTA, following the government of Quebec's 2011 announced suspension of oil and gas exploration beneath the Saint Lawrence River. The U.S 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.

Fishing: Foreigners can own up to 49 percent of companies that hold Canadian commercial fishing licenses.

Financial Services: 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. The limit for single, non-NAFTA shareholders is 20 percent. 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.

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. On March 17th, the NAFTA tribunal found Canada unfairly treated Bilcon of Delaware, the parent company of Bilcon of Nova Scotia, for rejecting a project in part because it didn't meet "community core values." The company argued it was treated unfairly when it was forced to go before a federal-provincial environmental review panel that ultimately recommended rejecting the company's planned basalt quarry and marine terminal development project in White Point (near Digby Nova Scotia). Bilcon will seek damages during a NAFTA hearing expected to take place next year which could be as much as $300 million.

Real Estate: Primary responsibility for property law rests with the provinces. Prince Edward Island, Saskatchewan, and Nova Scotia all put limitations on real estate sales to out-of-province parties. Government authorities can expropriate property after paying appropriate compensation.

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. In March 2015, Canada announced results of an AWS-3 spectrum auction in which 60 percent of the spectrum was set aside for new entrants. No foreign companies received spectrum in this auction. Canada plans to hold a 2500MHz spectrum auction on April 14, 2015.

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 broadcast 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.

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.

Privatization Program

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 Ministry of Transport did not impose any limitations in the 1995 privatization of Canadian National Railway, whose majority shareholders are now U.S. persons.

Screening of FDI

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 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.

Competition Law

The Bureau of Competition Policy and the Competition Tribunal, a quasi-judicial body, enforce Canada's antitrust legislation.

Investment Trends

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	10 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	16 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	12 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 52,200	data.worldbank.org/indicator/NY.GNP.PCAP.CD

2. Conversion and Transfer Policies

Foreign Exchange

The Bank of Canada is the nation's central bank. Its principal role is "to promote the economic and financial welfare of Canada," as defined in the Bank of Canada Act. The Bank's four main areas of responsibility are monetary policy, promoting a safe, sound and efficient financial system, issuing and distributing currency, and being the fiscal agent for Canada.

Remittance Policies

The Canadian dollar is fully convertible. Canada provides some incentives for Canadian investment in developing countries through Canadian International Development Agency (CIDA) programs.

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, after reaching agreement with the former owners.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

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 signed the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (known as the Mauritius Convention on Transparency) in March 2015.

Bankruptcy

Bankruptcy in Canada is governed by the Bankruptcy and Insolvency Act and is not criminalized. Creditors must deliver claims to the trustee and the trustee must examine every proof of claim. The trustee may disallow, in whole or in part, any claim of right to a priority under the BIA or security. Generally, the test of proving the claim before the trustee in bankruptcy is very low and a claim is proved unless it is too "remote and speculative." Provision is also made for dealing with cross-border insolvencies and the recognition of foreign proceedings. Canada is ranked number 6 for ease of “resolving insolvency.”

Investment Disputes

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.

International Arbitration

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.

ICSID Convention and New York Convention

Canada ratified the ICSID Convention on December 1, 2013 and is a signatory to the 1958 New York Convention, ratified on 12 May 1986

Duration of Dispute Resolution

In Canada, arbitration is regulated by statute. Every province and territory has its own separate arbitration legislation. At the federal level, commercial arbitration is governed by the Commercial Arbitration Act (CAA), which came into force on August 10, 1986. The CAA is a short statute which serves principally to introduce the Commercial Arbitration Code, which is a Schedule to the CAA and which provides a basic procedural framework for commercial arbitration. It applies to all commercial arbitrations where at least one of the parties is a federal department or Crown corporation or in relation to admiralty or maritime law issues where the place of arbitration is Canada.

Arbitration is voluntary, private, informal, confidential, and binding. The rules of procedure are established by the adoption of existing rules, by a negotiated arbitration agreement between the parties, or by the parties and the arbitrator. All federal arbitration under the Commercial Arbitration Act is binding. The parties also determine the timeframe for the arbitration, allowing them to bypass delays inherent in litigation.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Canada has been a World Trade Organization (WTO) member since January 1, 1995. Canada does not maintain measures that are inconsistent with WTO Trade Related Investment Measures (TRIMs) requirements.

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 offer an array of incentive programs and services aimed at attracting foreign investment that lower corporate taxes and incentivize research and development. The Province of Quebec officially launched its Plan Nord (Northern Plan) in April 2015, a 20-year sustainable development investment initiative that is intended to harness the economic, mineral, energy, and tourism potential of Quebec’s northern territory. Quebec’s government has created the Société du Plan Nord (Northern Plan Company) to attract investors and work with local communities to implement the plan.

Provincial incentives tend to be more investor-specific and are conditioned on applying the funds to an investment in the granting province. For example, Ontario’s Jobs and Prosperity Fund provides USD 2.5 billion over 10 years to enhance productivity, bolster innovation and grow Ontario’s exports. Alberta offers companies a 10 percent refundable provincial tax credit worth up to USD 400,000 annually for scientific research and experimental development encouraging research and development in Alberta as well as Alberta Innovation Vouchers worth USD 15,000 to USD 50,000 to help small early-stage technology and knowledge-driven businesses in Alberta get their ideas and products to market faster.

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. Provincial incentive programs for film production in Canada are available to foreign filmmakers.

Research and Development

Canada supports private-sector innovation through the federal Scientific Research and Experimental Development (SR&ED) program and related provincial tax incentives, targeted supports to the auto and aerospace sectors, and various support programs for innovation in small- and medium-sized businesses. Canada has the lowest R&D costs for companies in the G-7. Individual provinces also provide incentives for companies to relocate their R&D efforts. The Canadian Centre for Clean Coal/Carbon and Mineral Processing Technologies in Alberta is a research and education center that supports sustainable and responsible energy and mineral development. Manitoba is home to a biomedical technology cluster that develops innovative medical devices. Ontario is the third-largest food-manufacturing region in North America and is home to one of the top five photonics clusters in the world that also encompasses healthcare,

energy (solid-state lighting and solar energy), and numerous sensor applications. Quebec is a major aviation hub and is home to a fast-growing aluminum-processing sector.

Performance Requirements

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.

Data Storage

The Canadian federal government is consolidating information technology services across 63 Canadian federal government email systems under a single platform. The request for proposals for this project invokes national security as a basis for prohibiting the contracted company from allowing data to go outside of Canada. This policy could preclude some new technologies such as cloud computing providers from participating in the procurement process. The public sector represents approximately one-third of the Canadian economy, and is a major consumer of U.S. services.

Privacy rules in two Canadian provinces, British Columbia, and Nova Scotia mandate that personal information in the custody of a public body must be stored and accessed only in Canada unless one of a few limited exceptions applies. These laws prevent public bodies such as primary and secondary schools, universities, hospitals, government-owned utilities, and public agencies from using non-Canadian hosting services.

The Canada Revenue Agency stipulates that tax records must be kept at a filer’s place of business or residence in Canada. Current regulations were written over 30 years ago and do not take into account current technical realities concerning data storage.

6. Right to Private Ownership and Establishment

Investors have full rights to private ownership.

7. Protection of Property Rights

Real Property

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. The recording system for mortgages and liens is reliable. Canada is ranked number 55 for 2015 in the World Bank’s, Ease of Registering Property rankings. About 89 percent of Canada's land area is Crown Land

owned by federal (41 percent) or provincial (48 percent) governments; the remaining 11 percent is privately owned.

A 2014 Supreme Court decision recognized the existence of aboriginal title on land in British Columbia, which has ramifications for aboriginal land claims across Canada. While stopping short of giving aboriginals a veto on projects, the decision gives them increased influence on the economic development of any land with a colorable aboriginal title claim.

Intellectual Property Rights

Canada remained on USTR’s Watch List in 2014; changes to Canada’s IPR regime were primarily legislative. Canada’s implementing legislation for the World Intellectual Property Organization (WIPO) treaties and implementation of “Notice and Notice” provisions brought the Copyright Modernization Act (passed into law in 2012) completely into force. Canada’s Combating Counterfeit Goods Act (Bill C-8) became law December 9, although the final legislation included an exception preventing authorities from detaining counterfeit goods transiting Canada including those headed for the US. The United States has expressed concern about this in-transit exception. There are ongoing concerns with respect to Canada’s protection of pharmaceutical patents and lack of law enforcement resources devoted to IPR enforcement. Canada is also listed in USTR's Notorious Market Report for several online sites that provide access to copyright infringing sites and infringing activities. Changes to Canada's Copyright Act that went into effect January 2015 contain notice and notice provisions that require ISPs to notify users of alleged copyright infringement taking place at their Internet address.

The Combatting Counterfeit Goods Act came into effect January 1, 2015 and amended the Copyright Act, the Trade-marks Act, and the Customs Act, to give the Canadian Border Services Agency CBSA) and rights-holders new tools to stop counterfeit goods into and out of Canada. As of January 1, 2015 Canadian customs officers have ex officio authority to target and detain counterfeit goods for up to 20 days. Rights holders may formally request CBSA assistance by filing a Request for Assistance (RFA). RFAs are valid for two years and may be renewed.

The Canadian government does not regularly report on seizures of counterfeit goods. However, the RCMP publishes periodic totals for counterfeit goods seizures. The last report Feb 20, 2013 noted that “the total retail value of seizures of counterfeit and pirated goods has increased from over USD24 million in 2010 to over USD38 million in 2012. Provided counterfeit goods are not needed to be held as evidence by the government for criminal proceedings, rights holders are responsible for storage, handling, and destruction of counterfeit goods. If a court proceeding finds the counterfeit goods claim to be invalid, the rights holder is also responsible for any damages sustained by the owner of the goods due to continued detention. Counterfeit goods are not prevalent, but are present in Canada.

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.

Resources for Rights Holders

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. This regulatory cooperation does not encompass all regulatory activities within all agencies. Rather, the RCC is focused on areas where benefits can be realized by regulated parties, consumers, and/or regulators without sacrificing outcomes such as protecting public health, safety and the environment. The initial RCC Joint Action Plan set out 29 initiatives where Canada and the United States sought greater regulatory alignment. The Joint Forward Plan, released in August 2014, built on the initial Joint Action Plan and introduced new partnership arrangements and more institutionalized commitments by U.S. and Canadian regulators. The long-term goal is to have bilateral regulatory cooperation within the regular planning and operational activities of regulatory agencies.

The U.S. Department of Agriculture and the Canadian Food Inspection Agency are working together on changes and updates to their slaughter and processed meat inspection policies and procedures in an effort to achieve closer alignment between inspection system requirements and eliminate unnecessary or duplicative requirements. They will also work together to identify areas of mutual interest and collaboration based on the best available science and technological advances in our respective meat inspection systems and modernization approaches. On plant health, the Canadian Food Inspection Agency and U.S. Department of Agriculture's Animal and Plant Health Inspection Service are collaborating to facilitate safe bilateral trade and protect Canada and the United States from risks posed by plants and plant products arriving from third countries. This will include aligning phytosanitary import requirements and allow countries to utilize information from phytosanitary inspections conducted by one country to the other.

Other areas of engagement include efforts to develop a common approach to marine safety and security; energy efficiency standards and labeling; natural gas transportation; locomotive, vehicle, and engine emissions; chemicals management; crop protection products (pesticides);

food safety; pharmaceutical and biological products; aquaculture; connected (self-driven) vehicles; dangerous goods transportation; developing joint rail, aviation, and motor vehicle safety standards; 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 for the seventh year in a row in 2014. Canadian banking stability is linked to high capitalization rates that are well above the norms set by the Bank for International Settlements.

Money and Banking System, Hostile Takeovers

Canada is open to foreign investment in the banking, insurance, and securities brokerage sectors, but there are barriers to foreign investment in retail banking (see below). 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. 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.

The total assets of Canada's banks are USD 369.3 billion. The Canadian banking industry is dominated by five major banks, but includes a total of 29 domestic banks, 24 foreign bank subsidiaries, 27 full-service foreign bank branches and seven foreign bank lending branches operating in Canada. These institutions manage close to USD 4 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.

OECD Guidelines on Corporate Governance of SOEs

In Canada, SOEs must submit corporate plans, which set broad objectives to be achieved covering a period from 3 to 5 years. These corporate plans include the information contained in the Statement of Corporate Intent (SCI) and are designed as accountability mechanisms in the relationship between the SOE boards and the ownership entities. They are also required to provide progress against these plans.

Sovereign Wealth Funds

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 USD 17.2 billion on December 31, 2014. 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 corporate social responsibility, the activities of Canadian mining companies abroad remain the subject of some critical attention and have prompted calls for the government to move beyond voluntary measures.

OECD Guidelines for Multinational Enterprises

Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises
International Trade Portfolio Division
Foreign Affairs, Trade and Development Canada
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Tel: (1-343) 203-2341
Fax: (1-613) 944-1574
Email: ncp.pcn@international.gc.ca
Web: www.ncp.gc.ca / www.pcn.gc.ca

12. Political Violence

Political violence occurs in Canada to about the same extent as in the United States. For example, student protests over proposed budget austerity measures in the Quebec budget led to generally peaceful confrontations between police and protesters in March 2015.

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.

Canada's Criminal Code prohibits corruption, bribery, influence peddling, extortion and abuse of office. The 1998 the Corruption of Foreign Public Officials Act prohibits individuals and businesses from bribing foreign-government officials to obtain influence and prohibits destruction or falsification of books and records to conceal corrupt payments. The law's extended jurisdiction permits Canadian courts to prosecute corruption committed by companies and individuals abroad. Canada's anti-corruption legislation is vigorously enforced, and companies and officials guilty of violating Canadian law are being effectively investigated, prosecuted and convicted of corruption-related crimes. In March 2014, Public Works and Government Services Canada revised its Integrity Framework for government procurement to ban companies or their foreign affiliates for 10 years from winning government contracts if they have been convicted of corruption. In September 2014, the Canadian government required Canadian firms operating abroad to declare whether they or an affiliate are under charge or have been convicted under Canada's anti-corruption laws during the past five years in order to receive help from the Trade Commissioner Service. U.S. firms have not identified corruption as an obstacle to foreign direct investment in Canada.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Canada signed the UN Anti-corruption Convention 21 May 2004 and ratified it on 2 Oct 2007.

The OECD Anti-Bribery Convention went into force in Canada on 15 February 1999.

Resources to Report Corruption

Mary Dawson
Conflict of Interest and Ethics Commissioner (for appointed and elected officials, House of Commons)
Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
66 Slater Street, 22nd Floor
Ottawa, Ontario

(Mailing address)
Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
Centre Block, P.O. Box 16
Ottawa, Ontario
K1A 0A6

14. Bilateral Investment Agreements

The CUSFTA and the 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 eleven countries. Canada views China as an increasingly important trade and investment partner. In 2014, Canada concluded FIPA negotiations with Burkina Faso and signed FIPAs with Cameroon, Cote d'Ivoire, Mali, Nigeria, Senegal, and Serbia. Canada also ratified a FIPA with China in September 2014.

Bilateral Taxation Treaties

See above.

15. OPIC and Other Investment Insurance Programs

Canada is not eligible for Overseas Private Investment Corporation (OPIC) programs therefore it 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.

Unemployment in Canada averaged 6.9 percent in 2014. Provincial unemployment rates varied from 3.8 percent in Saskatchewan to 11.9 percent in Newfoundland and Labrador. Territorial unemployment rates range from 4.5 percent in Yukon to 12.9 percent in Nunavut. Canada faces a labor shortage in skilled trades professions, such as carpenters, engineers, and electricians. The skills shortage is particularly severe the western provinces, but is an issue across the country. Canada is attempting to address its skilled labor shortage through immigration reform, the inclusion of labor mobility provisions in free trade agreements, including the Canada-EU CETA agreement, and the Temporary Foreign Worker Program (TFWP).

The Canadian government announced an overhaul of the TFWP program on June 20, 2014. The changes divided the TFWP into two distinct categories: The new International Mobility Program (IMP) primarily includes high skill\high wage professions, while the TFWP will now only refer to streams of primarily low skilled workers. The majority of U.S. temporary workers now fall under the more highly skilled IMP stream. Other changes to the TFWP include raising the program's fee from USD 275 to USD 1000, a cap on the number of TFW's a business can employ, and refusing applications for TFW's in areas of the country with an unemployment rate at or above six percent.

Canadian labor unions are independent of the government. Canada has labor dispute mechanisms in place and unions practice collective bargaining. In Canada about one in three employees (31.5 percent) belonged to a union or were covered by a collective agreement in 2012. Canadian union participation rate has been stable since the 1970s. Canadian union organizing rules are largely overseen by the provinces.

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 maintained 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. When railroad unions threatened a work stoppage during December 2014 contract negotiations, parliament pre-emptively introduced back to work legislation; however, an agreement was reached before the bill was required.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

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

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2013	1,768	2013	1,894	www.worldbank.org/en/country

Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country ($M USD, stock positions)	2013	328,781	2013	368,297	http://bea.gov/international/factsheet/factsheet.cfm?Area=100
Host country's FDI in the United States ($M USD, stock positions)	2013	297,241	2013	280,536	http://bea.gov/international/factsheet/factsheet.cfm?Area=100
Total inbound stock of FDI as % host GDP	2013	36%	2013	36%	International source: OECD Report

*Note: Canadian sourced data converted to U.S. dollars using 2012 Yearly Average Exchange Rate of 1.071, source: http://www.irs.gov/Individuals/International-Taxpayers/Yearly-Average-Currency-Exchange-Rates

Table 3: Sources and Destination of FDI

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	644,977	100%	Total Outward	732,417	100%
United States	330,945	51%	United States	299,197	41%
Netherlands	63,727	10%	United Kingdom	80,909	11%
United Kingdom	53,332	8%	Barbados	59,166	8%
Luxembourg	26,832	4%	Cayman Islands	29,022	4%
Switzerland	17,538	3%	Luxembourg	28,406	4%
"0" reflects amounts rounded to +/- USD 500,000.					

Source: IMF Coordinated Direct Investment Survey, 2013

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			**Equity Securities**			**Total Debt Securities**		
All Countries	1,136,134	100%	All Countries	911,877	100%	All Countries	224,257	100%
United States	655,975	58%	United States	516,257	57%	United States	139,718	62%
United Kingdom	98,373	9%	United Kingdom	75,373	8%	United Kingdom	23,000	10%
Japan	49,576	4%	Japan	45,609	5%	Australia	9,474	4%
France	37,094	3%	France	30,746	3%	France	6,348	3%
Australia	27,514	2%	Switzerland	24,357	3%	Germany	4,618	2%

Source: IMF Coordinated Portfolio Investment Survey, 2013

19. Contact for More Information

Chris Ausdenmoore, Economic Officer
490 Sussex Drive, Ottawa, Ontario
Email: ausdenmoorecm@state.gov