

# Canada

## **1 Bilateral trade relations**

According to China's Customs, the bilateral trade volume between China and Canada in 2006 reached US \$ 23.18 billion, up by 20%, among which China's export to Canada was US \$ 15.52 billion, up 33.1%, while China's import from Canada was US \$ 7.67 billion, up 2.1%. China had a surplus of US \$ 7.85 billion. China mainly exported electromechanical products, electrical appliances, audio visual equipments and components and accessories thereof, clothing and accessories, furniture, iron and steel products, toy, plastics and products thereof, automotive vehicles and components thereof, footwear, etc. Major imported products of China from Canada included fertilizers, paper pulp, iron ore, cereals and cereal flour, nickel and products thereof, plastics and products thereof.

According to the Ministry of Commerce (MOFCOM), by the end of 2006, the aggregate turnover of engineering contracts completed by Chinese companies in Canada stood at US \$ 180 million, and the volume of the completed labor service contracts reached US \$ 84.33 million.

According to MOFCOM, China's direct investment in non financial sectors in Canada, approved by or registered with MOFCOM in 2006, totaled US \$ 20.2 million. Canadian investors invested in 888 projects in China in 2006, with a contractual volume of US \$ 2.5 billion and an actual utilization of US \$ 420 million. By the end of 2006, Canada had accumulatively invested in 9, 788 FDI projects in China with a contractual volume of US \$ 19.46 billion and an actual utilization of US \$ 5.4 billion.

## **2Introduction to trade and investment regime**

In Canada, laws related to Customs and tariff administration mainly include Customs Act 1985 and Customs Tariff Act 1997, and the Canada Border Services Agency (CBSA) is the primary authority that is responsible for enforcing the above laws.

Laws and regulations affecting import and export consist mainly of Export Act 1985, Export Development Act 1985, Export and Import Permits Act 1985, Special Import Measures Act 1985, International Trade Tribunal Act 1985, and Import Permits Regulations 1985. The major competent authority in this respect is Foreign Affairs and International Trade Canada (DFAIT) .

Canadian laws related to investment mainly include Investment Canada Act 1985, Investment Canada Regulations 1985, and Companies Act 1985. Industry Canada and Department of Canadian Heritage are responsible for implementing these laws

and regulations.

Laws and regulations affecting inspection and quarantine mainly consist of Food and Drugs Act, Marking of Imported Goods Order, Consumer Packaging and Labeling Act, Precious Metals Marking Act, Hazardous Products Act, Meat Inspection Act, Fish Inspection Act, Health of Animals Act, and Wild Animal and Plant Trade Regulations. Major related authorities are Health Canada and the Canadian Food Inspection Agency (CFIA) .

## 2.1 Trade administration and its development

### 2.1.1 Tariff policy

#### 2.1.1.1 Tariff administration

The Customs Tariff was made by the Canadian Department of Finance, based on the relevant multilateral and bilateral agreements. The CBSA is in charge of levying duties, a right to which all provinces are not entitled. To date, Canada imposes mainly the Most Favored Nations (MFN) tariff and the General Preferential Tariff (GPT). Besides, there are ordinary customs duties, the Least Developed Country Tariff (LDCT), the Caribbean Commonwealth Countries Tariff (CCCT), the Australia and New Zealand Tariffs, and tariffs under the preferential FTA tariff treatments such as the United States Tariff (UST), Mexico Tariff (MT), Chile Tariff (CT), Costa Rica Tariff (CRT), and the Canada Israel Tariff (CIAT) .

The domestic market of Canada is highly liberalized, average tariff level comparatively low. The import duties for most of the raw materials are either zero or very low. Nevertheless, tariff escalation still exists for certain imports. Besides, some agricultural products are subject to Tariff Quota (TRQ) administration in Canada.

On top of import duties, additional duties are levied on distilled beverages, fruit beverages (fermented), beer, and malt beverages.

#### 2.1.1.2 Amendments to the Customs Coding

In June 2004, the World Customs Organization (WCO) adopted amendments to the Harmonized Commodity Description and Coding System (HS) that became effective as of January 1, 2007. The amendments involve deleting, adding, and changing over one thousand subheadings. As a signatory to the HS Convention, Canada is obliged to implement the amendments as of January 1, 2007. Therefore, Canada has released the updated 2007 Customs Tariff.

## 2.1.2 Import administration

### 2.1.2.1 Import control

The Export and Import Permits Act serves as the major legal basis for Canada to monitor exports and imports. The Import Control List (ICL) of the Export and Import Permits Act consists of a list of products put under control, including military goods and firearms, Chemical Weapons Convention items, poultry, eggs and dairy products, meat products, textiles and clothing, certain iron and steel products, etc.

#### 2.1.2.2 Prohibited imports

Canada prohibits the importation of the following goods: any live specimen of the mongoose family, certain live birds of the starling family, and any non game bird other than used for purposes of public entertainment; aigrettes, egret plumes, and certain other feathers; base or counterfeit coins; reprints of Canadian copyrighted works; goods manufactured or produced wholly or in part by prison labour; smoke screen apparatus for use on motor vehicles; used or second hand motor vehicles (other than imported from the United States); white phosphorus matches; firearms, prohibited or restricted weapons, prohibited devices and components or parts; materials which are deemed to be obscene, treasonable, seditious, or written materials, film, video or other visual representations that are pornographic and depict scenes of violence. Besides, the importation of any species of puffer fish of the family Tetraodontidae or live freshwater mitten crab of the genus Eriocheir is prohibited in Canada.

#### 2.1.3 Export administration

##### 2.1.3.1 Export control

The Canadian Government exercises export control over certain products, which are listed in the Export Control List (ECL) and the Area Control List (ACL). Under a bilateral arrangement with the United States, export permits are not required for most ECL items when shipped to a final destination in the U.S. or its territories. However, all items listed in Groups 3 and 4 as well as some other items listed in the ECL require individual export permits.

In August 2006, amendments were made to the Canada's Export Control List, resulting in a number of additions, deletions, and clarifications and changes to some technical parameters. Additions of controls include: specially designed components of machine tools; numerically controlled machine tools using a magnetorheological finishing (MRF) process; spray cooling; physics based simulation software; direction finding equipment; inertial equipment for azimuth, heading or north pointing, fuse setting devices for ammunition; military lighter than air vehicles; Global Navigation Satellite Systems jamming equipment; a Nuclear Technology Note and a General Software Note; radial ball bearings; hydrazinium nitroformate; the list of Australian Group materials; spraying and fogging systems; plant pathogens. Hybrid computers have been removed of control.

In July 2006, the Government of Canada issued an order amending the Area Control List (ACL), deciding to add Belarus to the ACL. Once the order is formally adopted, export permits must be obtained for goods to be exported to Belarus.

#### 2.1.4 Trade remedy measures

Special Import Measures Act is the major legal basis for Canada to take anti dumping and countervailing measures. The CBSA and the Canadian International Trade Tribunal (CITT) are jointly responsible for anti dumping and countervailing investigations. The CBSA mainly accepts applications for anti dumping or countervailing investigations and decide if a case should be established or not. Then it is in charge of investigating the case to determine if the alleged dumping or subsidizing exists, and the margin of such dumping or subsidizing if it exists, based on which the CBSA then imposes an anti dumping or a countervailing duty. The CBSA is also in charge of initiating anti dumping and countervailing reinvestigations. The CITT assumes the responsibility for establishing if the dumping or subsidizing of imported goods is causing material injury or threat of material injury to the Canadian industry, or material obstruction to the establishment of the domestic industry of Canada. The tribunal is responsible for conducting public interest investigations and for initiating sunset reviews.

Made in 1984, the Canadian law on safeguard measures is contained in the International Trade Tribunal Act. The CITT is responsible for safeguard investigations where the Tribunal conducts investigations based on the applications filed by domestic manufacturers of similar products or products in direct competition with the imported goods, and then reports the results of the investigations to the Cabinet meeting through the Department of Finance. It is the Cabinet meeting that makes the final determination as to whether safeguard measures are to be taken and what measures are to be taken to protect the domestic industry.

#### 2.2 Investment administration and its development

Investment Canada Act is the major law governing foreign investment. Any foreign investment in Canada falls under either cultural businesses or non cultural businesses. Industry Canada is responsible for promoting and reviewing foreign investment in non cultural businesses while the Department of Canadian Heritage is responsible for reviewing investment in cultural businesses.

With very few exceptions, foreign investors enjoy full National Treatment status in Canada. For the establishment of a new Canadian business that is not reviewable, a prior notification is to be made to the Government of Canada, no later than 30 days after the implementation of the investment. Nevertheless, the investment may be reviewed if an Order in Council directing a review is made and a notice is sent to

the investor within 21 days following the receipt of a certified complete notification.

The relevant authority, usually the Minister, has 45 days to determine whether or not to allow the investment, but the Minister can unilaterally extend the 45 day period by an additional 30 days. Further extensions are permitted if both the investor and the Minister agree to the extension. Pursuant to the Investment Canada Act, a foreign investment is reviewable if it reaches or exceeds the specified threshold. The threshold is CAN \$ 5 million for a direct acquisition, and over CAN \$ 50 million for an indirect acquisition. However, the threshold for WTO member investors has been relaxed. The threshold for 2006 has been increased to CAN \$ 265 million, which means any direct acquisition of a Canadian business by WTO member investors below the new threshold is not reviewable and only requires filing with the Government of Canada. The exception for the four policy sectors which are governed by the CAN \$ 5 million and CAN \$ 50 million thresholds remains unchanged for all investors. Those sectors are uranium, financial services, transportation services and cultural businesses.

Investments in Canadian cultural undertakings which may result in foreign ownership or a controlling stake in these undertakings are reviewed by the Department of Canadian Heritage. These cultural undertakings include: publishing, distributing, and selling books, magazines, newspapers and periodicals; making, distributing, selling or exhibiting films or video products; making, distributing, selling or exhibiting musical records or audio visual products; direct or indirect publishing, distributing, or selling magazines or reader dependent periodicals, that are invested by non Canadian investors.

## 2.3 Legislation on trade and investment and its development

### 2.3.1 Amendment to Radio Standards Specification

In April 2006, Industry Canada adopted the Amendment to Radio Standards Specification 119 (RSS 119). The revised RSS is Radio Standards Specification 119, Issue 7, Land Mobile and Fixed Radio Transmitters and Receivers Operating in the Frequency Range 27.41—960MHz. RSS 119 was updated to include requirements for land mobile and fixed equipment operating in the 220—222 MHz band, revising the emission mask for the 800—900 MHz range and the spurious emission limits (using the radiated measurement method) for receivers, removing the requirements for Data Modem Certification, and reformat and update RSS 119.

### 2.3.2 Proposed Amendments to the Seeds Regulations

In September 2006, Canada introduced a bill to amend the Seeds Regulations. The proposed legislation has prescribed for detailed requirements for the testing, inspection, quality and sale of seeds, and it also included changes to the seed standards within the grade tables in Schedule I of the Regulations as well as changes to specific packaging and labeling requirements for seeds. The amendment is expected to take effect within the next five to eight months after the bill is introduced.

### 2.3.3 Proposed Amendment to the Transportation of Dangerous Goods Regulations

In October 2006, the Canadian Government published the Proposed Amendment to the Transportation of Dangerous Goods Regulations, further expounding relevant requirements for the transportation of dangerous goods. The Proposed Amendment is intended to bring Canada's TDG Regulations into line with internationally recommended standards and current requirements.

### 2.3.4 Regulations to reduce air emissions and greenhouse gases (GHGs)

On November 3, 2006, Canada published a Notice of Intent to Develop and Implement Regulations and Other Measures to Reduce Air Emissions. The Notice of Intent describes the plan the government has regarding the development and implementation of measures to control both air pollutants and GHGs from human activities (including industrial, transportation, and product sources), regulations and other measures on indoor air quality, and Energy Efficiency Act. Besides, different action plans are to be made regarding the transportation and industrial sectors, and indoor air quality.

### 2.3.5 Amendment to the Energy Efficiency Regulations

On November 15, 2006, the Canadian Government formally announced the Amendment to the Energy Efficiency Regulations. The Amendment mainly includes the improvement of energy efficiency test method for central air conditioners and heat pumps (lower than 19kW), raising the bar on the energy efficiency standards for three types of industrial and commercial air conditioners, requirements for adjusting the energy efficiency standards for beverage vending machines and commercial freezers and refrigerators, and enhancing relevant administration, including the efforts to ensure the consistency between the English version and French version of the Regulations.

The Amendment has clearly specified that the new energy efficiency standards shall come into force on January 1 and April 1, 2007 for beverage vending machines and commercial freezers and refrigerators respectively and other changes shall become

effective as of the date when they are published.

### 2.3.6 Proposed amendment to the Ozone Depleting Substances Regulations

In December 2006, Canada published the Proposed Amendment to the Ozone Depleting Substances Regulations 1998. According to the Proposed Amendment, transfer of bromomethane is allowable within a specified time period between companies that are exempt from the prescribed requirements, under circumstances that are deemed necessary or urgent. The Proposed Amendment also encourages the use of alternatives and allows sectors to make efficient use of bromomethane under the above circumstances granted as an exemption by the Canadian Government. By doing so, the amendment seeks compliance with the international obligations under the Montreal Protocol.

### 2.3.7 Notice of revision of the requirements for low speed vehicles

In December 2006, Canada issued the Notice of Publication of Revision 1 of Technical Standards Document No.500, Low Speed Vehicles. Pursuant to section 12 of the Motor Vehicle Safety Act and sections 16 and 17 of the Motor Vehicle Safety Regulations, the Department of Transport has revised Technical Standards Document (TSD) No.500, Low Speed Vehicles, which specifies general requirements for slow moving vehicles. TSD No. 500, Low Speed Vehicles, reproduces U.S.Federal Motor Vehicle Safety Standard No.500 of the same title and is incorporated by reference in section 500 of the Motor Vehicle Safety Regulations.

Revision 1 of TSD No. 500 was registered on December 9, 2006 and will become enforceable as of June 9, 2007.

### 2.3.8 Updated wood packaging import requirements

As of July 2006, the CBSA has started the full implementation of the new wood packaging import requirements known as the Guidelines for Regulating Wood Packaging Material in International Trade (the International Standard for Phytosanitary Measures (ISPM) No.15). The ISPM No.15 requires that wood packaging be either heat treated or fumigated with methyl bromide and marked with an internationally recognized International Plant Protection Convention (IPPC) mark before entry into Canada. Shipments found to contain wood packaging that do not meet Canadian import requirements will be ordered removed from Canada and are the responsibility of the importer or person in care and control of the regulated article (s).

### 2.3.9 Plants such as Nerium being put under regulatory control

In August 2006, the Government of Canada adopted Phytosanitary Requirements to Prevent the Entry of *Phytophthora ramorum* to prevent the introduction of sudden oak death into Canada. Included in the List of Plant Genera regulated for *Phytophthora ramorum* are Nerium, Distylium, Manglietia, Parakmeria, and Ilex, etc.

### 2.3.10 Amending the Egg Regulations

In September 2006, the CFIA amended the Egg Regulations on the Canada Gazette, making necessary requirements for an egg station operating under a Hazard Analysis and Critical Control Points (HACCP) system. The amendments include the grading, packing, marking and inspection requirements for shell eggs, the requirements for the registration and operation of egg stations and the inter provincial and import/export requirements for the trade of shell eggs.

### 2.3.11 Chemical Residue Sampling Program

Pursuant to the Canada Agricultural Products Act and Food and Drugs Act, the CFIA conducts a national Chemical Residue Sampling Program to monitor chemical residue levels on domestic and imported fresh fruits and vegetables. The Pest Management Regulatory Agency at Health Canada registers the use of agricultural chemicals and establishes acceptable levels in food by setting maximum residue limits (MRL). On October 3, 2006, the CFIA published the Compliance List of products and companies where violations of chemical residues were detected.

### 2.3.12 Proposed Import Conditions for TSE in Small Ruminants

In October 2006, the Government of Canada issued the Proposed Import Conditions for TSE in Small Ruminants, separating Canada's import policies, conditions and procedures pertaining to bovines, small ruminants and cervids.

### 2.3.13 Regulations Amending the Patented Medicines (Notice of Compliance) Regulations ("PM (NOC) Regulations") and Regulations Amending the Food and Drug Regulations

The Government of Canada adopted Regulations Amending the Patented Medicines (Notice of Compliance) Regulations ("PM(NOC) Regulations") and Regulations



Amending the Food and Drug Regulations, which came into force on October 5, 2006. Regulations Amending the PM (NOC) enables low cost, generic versions of innovative drugs to enter the market immediately following the expiry of relevant patents, while also providing due protection to these drugs. Under Regulations Amending the Food and Drug Regulations, new and innovative drugs will receive a guaranteed minimum period of market exclusivity of eight years. These regulations will also provide a further six months of market exclusivity to innovative drugs that are the subject of pediatric studies.

## 2.4 Product specific administrative measures

### 2.4.1 The importation of tropical lumber

Starting from October 24, 2006, no license is needed for the importation of tropical lumber, and lumber with a tropical status is exempt from treatment, though a valid plant health certificate or plant hygiene certificate for re-exportation must be attached. In addition, the status of six wood species has been changed from tropical into non-tropical, involving *Cedrela mexicana*, *Cocos nucifera*, *Intsia bijuga*, *Pterocarpus rohrii*, etc. When importing any of the above non-tropical lumber, a valid import license together with a plant health certificate or a plant health certificate for re-exportation is required to make sure that the lumber has undergone heat treatment where each piece of wood has attained a minimum core temperature of 56 °C for at least 30 minutes and achieved a moisture content of less than 20%.

### 2.4.2 Import requirements for agricultural products

In Canada, major regulations governing the importation of agricultural products are Processed Products Regulations, Fresh Fruit and Vegetable Regulations, Licensing and Arbitration Regulations, etc. Certain agricultural commodities are subject to regulatory requirements, such as import documentation, licensing, etc. For the importation of certain fruits and vegetables such as apples, apricots, blueberries, cabbage, cantaloupes, carrots with tops removed, cauliflower, a license should be obtained, and the minimum grade must be complied with for the products falling under the jurisdiction of the Fresh Fruit and Vegetable Regulations.

For certain products, an inspection certificate is necessary, indicating Canadian minimum requirements for quality, labeling, and packaging are met. These products include: 1) apples, onions, and potatoes from the United States, which require a USDA inspection certificate; 2) apples, onions, and potatoes from other countries, which require an inspection certificate issued by the Canadian Food and Inspection Agency.

#### 2.4.3 Export requirements for certain agricultural products

There is no grade requirement for the exportation for most fresh vegetables and fruits with the exception of apples, onions and tomatoes which shall meet different grade requirements when shipped to the United States and other countries.

The following products must be inspected and accompanied by an inspection certificate, including onions, potatoes, and field tomatoes to the United States and Puerto Rico.

#### 2.4.4 Requirements for the outer label of cosmetics

In order to minimize risks related to the use of cosmetics, Health Canada tabled new regulations regarding cosmetics that as of November 18, 2006, the outer label of cosmetic products sold in Canada must list all the ingredients in the product. Besides, each ingredient must be listed only by its INCI name, a system that is adopted by many countries such as the United States, the European Union, and Japan. The new requirements are to be phased in over a two year period.

#### 2.4.5 Proposed Regulations on Asbestos Products

In November 2006, Canada published the Proposed Regulations on Asbestos Products. The new regulations are to put together 5 separate items dealing with asbestos and asbestos products that currently fall under Part I of Schedule I to the Hazardous Products Act and the contents of the items will remain the same.

#### 2.4.6 Proposed amendment to the Motor Vehicle Safety Regulations and Motor Vehicle Tire Safety Regulations

On December 13, 2006, the Government of Canada announced the proposed amendment to the Motor Vehicle Safety Regulations and Motor Vehicle Tire Safety Regulations 1995. Under the proposed amendment, Technical Standard Documents 110 and 120 are to be introduced into Items 110 and 120 of the Motor Vehicle Safety Regulations, regarding the tire selection and rims for vehicles with GVWR equal to or under 4,350 kg (10,000 pounds) and for vehicles with GVWR above 4,350 kg (10,000 pounds) respectively. Apart from that, amendments have also been made to Standard 101 of Schedule IV of the Regulations, Location and Identification of Controls and Displays to add two signal apparatuses for the tire pressure monitor

system and one indicator. At the same time, the proposed amendment also includes relevant revisions to the Motor Vehicle Tire Safety Regulations 1995. Mandatory enforcement of the amendment will start from 1 September 2008.

#### 2.4.7 Organic Products Regulations

In January 2007, Canada rolled out the new Organic Products Regulations, which are intended to govern the use of a new logo for organic products sold in Canada. Under the new regulations, products sold in Canada with the Canada Organic logo, be they domestically made or imported, will have to meet the new regulatory requirements. The Canada Organic logo will be permitted for use only on those food products certified as meeting the revised Canadian standard for organic production and that must contain at least 95% of organic ingredients. For food products containing over 70% of organic ingredients, the percentage will have to appear on the label.

#### 2.4.8 Resumption of China's Ya pear exports to Canadian

On March 22, 2006, the Canadian Food Inspection Agency (CFIA) decided to resume the importation of Ya pear (*Pyrus bretschneideri*) from Hebei Province of China, putting an end to the two year suspension on Ya pear imports from China.

In the beginning of 2004, following the suspension of Ya pear imports from China by the United States, Canada also suspended the importation of all pears from China including Ya Pear and Asian Pear (*Pyrus pyrifolia*), based on the discovery of an exotic fungal disease (*Alteraria* sp.). As a result, the Chinese Ya pear farmers and exporters incurred heavy economic losses. After the resumption of China's exports of Asian pear in October 2004, the Workplan between the CFIA and AQSIQ on Export Phytosanitary Requirements for Ya Pears was signed, lifting the suspension of the importation of Ya pears from the provinces of Hebei and Shangdong.

#### 2.4.9 New measures respecting live birds and avian influenza

On May 3, 2006, the CFIA adopted new measures respecting live birds and avian influenza, adjusting import policies regarding live poultry, live birds and hatching eggs so that they are in line with Terrestrial Animal Health Code (2005) published by the World Organization for Animal Health (OIE).

The enhanced import measures include: 1) The live poultry must have been inspected by a certified veterinarian within 24 hours of shipment; 2) There must be

evidence that the imported poultry were kept in a country or zone free from Highly Pathogenic Notifiable Avian Influenza since they were hatched or for the past 21 days before shipment; 3) the bird being imported must not have been vaccinated against avian influenza. Under normal circumstances, Canada allows for a quarantine period of 30 days for imported animals. However, under the new measures, a representative sample of the shipment (60 birds) will be tested 21 days after entering the approved quarantine location and negative results must be available prior to the release of the birds.

#### 2.4.10 Guidelines for the Use of Food Additives and/or Processing Aids Intended for Fresh Fruits and Vegetable

In June 2006, the CFIA published the Guidelines for the Use of Food Additives and/or Processing Aids Intended for Fresh Fruits and Vegetable. The document also provides guidance on the labeling of pre packaged fresh fruit and vegetable products. Permitted food additives and their allowable areas of use and maximum levels of use are listed in the Tables of Division 16 of the Food and Drug Regulations.

As food additives are considered to be ingredients in a final pre packaged product, added ingredients must be included in the list of ingredients and accompanied by nutrition facts table (with the exception of wax coating compounds) .

#### 2.4.11 Wine standard

According to the amendments made to the Food and Drug Regulations in June 2006, definitions of wine are revised, maximum levels of use for new ingredients and food additives are laid down, and there is an increase in the maximum level of volatile acidity in wine from the current 0.13% to 0.24%.

#### 2.4.12 Interim Marketing Authorization regarding orange juice fortified with calcium, with or without vitamin D

In October 2006, Health Canada issued an Interim Marketing Authorization regarding orange juice fortified with calcium, with or without vitamin D, permitting the addition of calcium, with or without vitamin D, to orange juice, or orange and tangerine juice sold, in fluid, concentrated, or reconstituted forms.

#### 2.4.13 Tough inspection and quarantine measures respecting salted duck eggs and egg products

The CFIA announced in December 2006 that the Agency would take steps to subject

imported salted duck eggs and egg products to strict examination. Up to now, there has been no discovery of Sudan dyes in salted duck eggs that were domestically produced.

According to relevant policies, salted duck eggs may be imported if a person produces a certificate signed by a government of the country of origin, stating that all eggs in the shipment have been inspected and found to be free from avian influenza and visible surface dirt prior to processing.

#### 2.4.14 Interim Marketing Authorization for the use of calcium disodium EDTA or disodium EDTA in canned food products

In January 2007, Canada issued the Interim Marketing Authorization for the use of calcium disodium EDTA or disodium EDTA as a sequestering agent in a variety of standardized canned food. Under the Authorization, the maximum level of use of calcium disodium EDTA is 365 p.p.m. while the maximum level of use of disodium EDTA is 165 p.p.m.

### **3 Trade barriers**

#### 3.1 Tariff and tariff administrative measures

##### 3.1.1 Tariff peak

Canada still maintains high tariff rates over certain products and this has proved to be a major obstacle to the export of textiles, especially clothing, to Canada. For instance, the tariff rate for wool and artificial fiber is 16% while tariff rates for clothing range from 17.5% to 21%. Besides, the Government of Canada also maintains quite high tariff rates on ice hockey protective devices, such as helmets, shin guards, shoulder pads, elbow pads, face protectors, and belts. Helmets are subject to a tariff rate of 8.5%; skates, including related protective devices, 18%; and shin guards, shoulder pads, elbow pads (other than used in football), and protective devices covering thighs and bottoms, 15.5%.

##### 3.1.2 Tariff escalation

In Canada, tariff escalation is quite prominent in food, beverages, tobacco, textiles and leather products. Though coco beans are duty free, import duty on coco powder is around 6%. Natural mineral water is subject to a zero tariff rate, but an 11

% import duty is imposed on mineral water added with sugar or flavor. While unprocessed tobacco is duty free, rolled cigars with tobacco and cigarettes are subject to import duties ranging from 4% to 12.5%. Wool and animal hair when not carded or combed enjoy the zero tariff rate, but an import duty of 8% is levied on semi processed products such as yarn of wool or of fine animal hair (carded or combed). Tariff rates on some woven fabrics rise to a level between 12% and 14%. For raw hides and skins of bovine or equine animal, while most of the products are subject to a zero tariff rate and some are subject to the maximum rate of 3%, the tariff rates on articles of leather escalate to a level between 7% and 15%.

### 3.1.3 Tariff quota

Tariff quota administration is maintained by Canada over some agricultural products, mainly including eggs and egg products, natural dairy products, ice cream, yogurt, turkey and turkey products, beef, chicken and chicken products, etc. The tariff rate over access commitment on imported milk is 243% with the collected tariff not lower than CAN \$ 2.82 per kilo. For other dairy foods for smearing, the tariff over access commitment is as high as 313.5% and that on meat and edible offal of the poultry (fresh, chilled or frozen) as high as 154.5% and 238% respectively.

### 3.2 Import restriction

The Government of Canada exercises certain import restrictions on the importation of alcoholic beverages. The importation and inter provincial distribution of alcoholic beverages are governed by the Importation of Intoxicating Liquors Act, which vests the provinces with the discretion to regulate the sale, importation and inter provincial distribution of liquors. At present, the provincial liquor boards (PLB) in the 10 provinces of Canada are the sole authority to exercise that right.

The PLBs adopt discriminatory measures against imported beverages. These measures include mandatory markups on imported beverages higher than those on domestic products of the same kind, differential listing and delisting measures (under which the PLBs determine the brand names of the imported beverages or the distribution channels of various kinds of distilled liquor and beer), restricting private delivery and retail outlets, and minimum and maximum price requirements. The Chinese side is of the opinion that the above measures adopted by the Government of Canada are not in conformity with the MFN Principle of the WTO and have constituted an obstacle to the entry of foreign alcoholic beverages into the Canadian market.

### 3.3 Technical barriers to trade

### 3.3.1 Packaging requirements for fresh fruit and vegetables

For the importation of fresh fruits and vegetables in packages exceeding certain standard package sizes, the Canadian importers are required to demonstrate that there is an insufficient supply of the product in the domestic market to obtain an exemption from the requirements. The restriction has a negative impact on the export of bulk apples and potatoes to Canada.

Detailed requirements for the size of the container are laid down in the Fresh Fruit and Vegetable Regulations. For apples, apricots, peaches and pears to be sold in the Canadian market, they shall be packaged in a container where the net weight of fruits in the container shall not exceed 200 kg net weight, and for apples of mixed kinds, container shall not exceed 20 kg. Besides, for pre packaged beets, carrots, onions, potatoes and rutabagas, re packaging containers will have to comply with the container requirements before they are allowed to be sold. The Regulations also prescribe for detailed container weight and label requirements regarding fruits and vegetables marketed in combination with other kinds of fruits and vegetables. The above requirements, far too complicated, have caused unnecessary trouble for the exporters in the arrangement of packaging for the products.

### 3.3.2 Labels and marks

#### 3.3.2.1 Basic labeling requirements

For imported products to be sold in Canada, the information stating country of origin is required to appear in either English or French on the principal display surface of the package. There are different standards regarding consumer packages and wholesale packages, and the use of recyclable materials for packaging is encouraged. Pursuant to the requirements of the Consumer Packaging and Labeling Act, weight and volume of the products shall be indicated on the label. For pre packaged food, the labeling policy of Canada requires that such information as product identity, net weight, dealer's name and principal place of business, list of ingredients be clearly marked on the container of pre packaged food. If the shelf life of the product is no more than 90 days, date of expiry shall be clearly indicated. Regarding fresh fruits and vegetables, product identity, weight, place of origin, name and address of the packaging company shall appear on the container and the produce must comply with the standards on pesticide and sterilization prescribed in the relevant Canadian regulations. Furthermore, the Canadian Government has issued a notice of the legislative initiative to enhance nutrition labeling regulations, requiring not only the content of calories but also 13 key nutrients such as calcium and iron be indicated

on the container of the food.

### 3.3.2.2 Labels and tags for filled products

According to the Textile Labeling Act and relevant requirements dealing with labels, each label shall show in either English or French the following four categories of information, including the identity of the dealer or the code of the Canadian importer, country of origin, fiber content, and care instructions. In addition, there are special labeling requirements for filled textile products such as cotton and down filled coats. Though no requirements are made under the Textile Labeling Act regarding fiber content of the fillings, Quebec, Ontario, and Manitoba have special provincial labeling requirements for each filled clothing or stuffed toy. Besides, manufacturers of the said products are also required by provincial regulations to register with relevant provincial authorities with a registration fee of CAN \$400. To comply with the provincial requirements, the producers find it difficult to finish registration during the production process or prior to shipment. It could also lead to a delay in shipment, which would increase the cost of exporters.

### 3.3.2.3 Emission standards

On November 3, 2006, Canada published a Notice of Intent to Develop and Implement Regulations and Other Measures to Reduce Air Emissions. The Notice of Intent describes the plan the government has regarding the development and implementation of measures to control both air pollutants and GHGs. While the Chinese Government applauds the measures Canada has taken for the purpose of environmental protection, the Chinese side suggests that relevant technical standards and regulations be made based on international standards and due consideration be given to the realities of the developing countries so as to avoid unnecessary restrictions on normal trade activities.

## 3.4 Sanitary and Phytosanitary measures

### 3.4.1 The inspection of meat

The importation of meat products is subjected to strict inspection in Canada. First, meat products may only be imported from countries where the meat standards are recognized by Canada; second, an additional label is required under the Meat Inspection Act for containers carrying imported meat; third, a certificate of origin as required by the Animal Disease and Protection Act and a certificate of inspection as



required by the Meat Inspection Act should also be provided, in addition to the compliance with the labeling requirements as specified in the Meat Inspection Act. Meat and meat products, aquatic products, plants and seeds, fresh fruits and vegetables are also subjected to Customs inspection to see whether they comply with other hygiene and grading standards.

#### 3.4.2 The inspection of fish products

Pursuant to the Fish Inspection Regulations, all exports of fish and fish products are subject to free sampling for sensory, content, label, and container integrity evaluation. When an imported fish product fails to pass certain inspection, the name of the product and the kind of inspection will be listed by the inspector on the Import Alert List, and all subsequent importation of this product from the same producer will be subject to the same kind of inspection.

For canned fish, documentation must precede or accompany the first shipment from each processor for each type of canned fish, and a copy is maintained in Canada by the importer. For subsequent shipments of the same product, such documentation must be available to the importer and to CFIA on request. This documentation must show an adequate thermal process approved by a recognized thermal process authority, and it must also show adherence to seam specifications required.

Although the all aluminum pop top can, commonly used in the world, does ensure the container integrity and quality, it is not as strong as alloy aluminum can. Therefore, the all aluminum pop top can, when going through container integrity inspection by the CFIA, tend to crack and fail the inspection as it can't bear the same kind of strength as the alloy can. As a result, producers of food contained in the all aluminum pop top can got listed in the Import Alert List and their exports to Canada affected.

#### 3.4.3 Caffeine containing beverages

Pursuant to the Food and Drug Regulations, the addition of caffeine to cola type beverages is restricted in Canada. As a result, some of the carbonated drinks have no access to the Canadian market, and only decaffeinated drinks are allowed to be sold. It is said that the restriction was made based on the assumption that caffeine has ill health effect on children. However, the review made by Health Canada in 2003 of the potential health effect of caffeine on children hasn't drawn a final conclusion. The Chinese side holds the opinion that such restriction is not in line with the WTO/SPS Agreement and suggests that new standard regarding the use of caffeine be made.

### 3.4.4 Wood packaging

On August 1, 2006, Canada adopted D 98 08 ( 6th Revision ) : Entry Requirements for Wood Packaging Materials Produced in All Areas Other Than the Continental United States. This directive requires wood packaging entering Canada from all areas except the continental US must be treated and certified in accordance with the International Standard for Phytosanitary Measures (ISPM) #15. While appreciating Canada's adoption of international standards, the Chinese side hopes that Canada can explain the reasons for granting special treatment to the US so as to avoid discrimination among trading partners.

### 3.5 Government procurement

Although Canada is one of the signatories to the Government Procurement Agreement (GPA), it is also one of the signatories that have very limited commitments under the Agreement. Canada has not yet covered any portion of its provincial procurement market. Besides, sectors involving communication devices, transportation equipment, basic telecommunication services, fishing and maintenance are also excluded from Canada's commitments under the GPA.

The provincial governments of Canada give priority to small businesses regarding government procurement. Besides, there are also preferential policies for small businesses, such as favorable prices, special procurement programs reserved for small businesses, or certain percentage of bonus for small businesses channeled through quota system. Therefore, priority is often given to small businesses even though the prices they bid are relatively high.

In addition, most of the provinces offer various kinds of favorable terms to local or provincial manufacturers and service providers by giving them favorable prices or by limiting bidding opportunities. The Canadian Space Agency (CSA) requires that a maximum of 70% of the purchase of satellite be made by Canadians.

### 3.6 Trade remedy measures

Canada has initiated altogether 13 anti dumping investigations against Chinese exports since 1995 and there was one new investigation in 2006. On June 8, 2006, the CBSA initiated an anti dumping and countervailing investigation respecting certain copper pipe fittings from China, the fourth anti dumping and countervailing investigation against Chinese exports following outdoor barbeques, carbon steel and stainless steel fasteners, and laminate flooring. On October 20,

2006, a preliminary determination was made by the CBSA, imposing a provisional anti dumping duty of 39% and a countervailing duty of 17% on two Chinese enterprises from Zhejiang, and an anti dumping duty of 116% and a countervailing duty of 67% on non cooperative companies.

### 3.7 Subsidies

#### 3.7.1 Agriculture Policy Framework

The Canadian Government developed a comprehensive agricultural strategy in 2003, cited as the Agricultural Policy Framework (APF). The APF is made up of the following five elements: Business Risk Management, Food Safety and Quality, Science and Innovation, Environment, and Renewal. Under Business Risk Management, there are two programs, namely, the Canadian Agricultural Income Stabilization (CAIS) Program, and Production Insurance. The two programs are intended to provide the farmers with various kinds of protection and subsidies when they incur losses. While Production Insurance offers financial protection against crop losses due to uncontrollable weather such as hailstone, drought, flood, and diseases, the CAIS Program offers protection against losses not covered by Production Insurance, such as low prices, plummeting prices or a comprehensive drop in farmers income due to an increase in input cost. CAIS is delivered federally in some provinces including British Columbia and Saskatchewan, and provincially in Alberta, Ontario, Quebec, and Prince Edward Island.

#### 3.7.2 Wheat board

Authorized by the Federal Government of Canada, the Canadian Wheat Board (CWB) is a state owned marketing agency for western Canadian wheat and barley growers. All export credits of CWB are guaranteed by the federal government through different programs. Besides, the federal government provides guarantee to CWB's operation on loans at an interest rate lower than that of private companies.

Although CWB's monopoly over the export and pricing of wheat and barley in western Canada does not violate the relevant WTO rules, the Canadian side hasn't treated imported grain products as equal to domestic products. For instance, the CWB has been receiving favorable charges respecting rail transportation. The Chinese side expresses concern over the inconsistency of the above policy with the WTO rules.

### 3.8 Barriers to trade in services

Despite a comparatively long history of trade in services, Canada still imposes restrictions on the market access to service sectors like telecommunications, financial services, and educational services.

### 3.8.1 Telecommunications

According to the Telecommunications Act, a direct acquisition of a business that owns or operates a transmission facility by a foreign investor shall not exceed 20%, and an indirect acquisition shall not exceed 33%, with aggregate foreign ownership not exceeding 46.7%.

### 3.8.2 Banking

According to the relevant Canadian regulations, no less than 75% of the banking sector shall be owned by Canadians. Besides, Canada still imposes restrictions on foreign access to retail banking. In this case, a foreign financial institution needs to file an application with the Office of the Superintendent of Financial Institutions and is only allowed to operate upon approval.

### 3.8.3 Insurance

There are certain restrictions regarding foreign access to the insurance sector in Canada. Foreign capital owners are subject to the investment threshold review. Some provinces of Canada still maintain the examination of foreign companies that wish to invest in these provinces. Life insurance companies are not allowed to conduct business other than life insurance. Foreign insurance companies are limited to commercial insurance, re insurance, and re transfer services. In British Columbia, Saskatchewan, and Manitoba, consumers are required to buy the minimum auto insurance from provincial underwriters. Additional insurance is taken out with government and private underwriters. In Quebec, personal accident is underwritten by the provincial government while auto and property insurance are underwritten by private insurers. In provinces other than Quebec, the above insurance is underwritten by private insurance companies, which are subject to strict regulatory control regarding premium and the term of the insurance policy.

### 3.8.4 Legal services

In Canada, there are specific requirements for foreign counselors and lawyers, and the legal profession is subject to stringent regulatory control. Foreign counselors (only limited to the practice of foreign laws and public international laws) should indicate the nature of the business in the form of sole proprietorship or partnership. In Prince Edward Island, Ontario, Alberta, and Newfoundland, permanent residence status is one of the registration requirements for lawyers. However, in Quebec, a lawyer must be a Canadian citizen. The legal profession in Canada is governed by the laws, rules and regulations of the provincial and regional authorities or law societies under provincial legislative bodies. The 13 provinces and territories of Canada have their own rules and codes of conduct. To conduct legal affairs in Canada, one must register in one of the 10 provinces or 3 territories.

### 3.8.5 Construction services

Construction services are subject to licensing control in Canada. The profession of architecture is regulated by the provincial governments, and an architect is required to be licensed with the architectural association of the province or territory. Licensing requirements differ between the provinces (territories), and it is the responsibility of the Committee of Canadian Architectural Councils (CCAC) to coordinate provincial associations and regulations including licensing. First of all, applicants of a license must obtain a certificate of certification. Permanent license holders are required to be local residents in New Brunswick, Newfoundland, and Nova Scotia.

Foreign architects may practice with a one year project license.

### 3.8.6 Cultural sectors

Pursuant to the Investment Canada Act, the publication, distribution, and sale of books invested by foreigners shall be consistent with the Canadian national cultural policies, and bring “net benefit” to Canada. Besides, direct acquisition of an existing Canadian book company by a foreign investor is prohibited in Canada.

Canadian policies prohibit foreign acquisitions of Canadian controlled or Canadian owned film distribution firms. Foreign investors are not allowed to establish a new film distribution company unless the Canadian importer has the global distribution right or is the major investor of the company. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings.

### 3.8.7 Broadcasting services

The Canadian Radio television and Telecommunications Commission (CRTC) is not only responsible for implementing the Broadcasting Act, but also vested with the authority to draft relevant rules and regulations. The CRTC requires that for Canadian conventional, over the air broadcasters, Canadian programs must make up 60% of television broadcast time overall and 50% during prime hours (6 p.m. to midnight). It also requires that 35% of popular musical selections broadcast on radio should qualify as "Canadian" under a Canadian government determined point system. For direct to home (DTH) broadcast services, a preponderance (more than 50%) of the channels received by subscribers must be Canadian programming services.

Under present CRTC policy, in cases where a Canadian service was licensed in a format competing with that of an authorized non Canadian service, the CRTC could revoke the license of the non Canadian service, if the new Canadian applicant so requested. To ensure "Canadian control", the CRTC further prescribes that a company is not allowed to have the operational license or have the license renewed unless the Canadian ownership of the company is above 80% or more than 4/5 of the members of the Board are Canadians.

### 3.8.8 Commercial air services

Foreign acquisition of a Canadian airline is limited to 25%.

### 3.8.9 Fishery

Foreign acquisition of a Canadian firm with a commercial fishing license is limited to 49%.

### 3.8.10 Real estate

There are restrictions in Prince Edward Island, Saskatchewan, and Nova Scotia on the sale of real estate to any person or any organization outside the province.

## 3.9 Other barriers

### 3.9.1 Protracted process for the approval of new drugs

The Biologics and Genetic Therapies Directorate (BGTD) under Health Canada has been rather slow in approving new drugs. The protracted review process has obstructed new drugs from entering the market.

### 3.9.2 Lengthy period for the approval of veterinary drugs

In Canada, the approval process for veterinary drugs is conducted by the Health Product and Food Agency under Health Canada, through the Veterinary Drugs Directorate (VDD). New veterinary drugs are subject to stringent examination of VDD. According to the VDD policy, manufacturers have to accept a review period of 180 days after the submission. As the review period is too long, manufacturers are unable to keep in pace with other markets when they launch new drugs in Canada.

## **4 Barriers to investment**

Though Canada gives national treatment to foreign investors with few exceptions, it is also one of the few OECD members that still conduct reviews regarding investment. While recognizing the importance of foreign investment to economic growth, the Government of Canada still puts in place quite a few restrictions on non Canadian investors, requiring that foreign investment bring net benefit to Canada.

Different provinces tend to have different restrictions on foreign investment, but the restricted sectors mainly cover the purchase of land and financial services under provincial regulation. Provincial government policies respecting culture, labor relationship, and environmental protection may become elements restricting foreign investment.

In 2006, the Federal Conservative Government of Canada came up with a plan to prevent foreign acquisitions and foreign national investment that will pose potential threats to Canada. It was commented that this policy was mainly intended for the acquisitions made by Chinese enterprises. Though the Canadian side has emphasized that the policy was not made against China, the Chinese side holds the view that the policy runs counter to the spirit of the WTO and will have negative impact on the economic and trade relations between the two countries.