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Canada's International Trade and Investment Agreements: A Variety of Options

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(In Brief)

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CANADA'S INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS: A VARIETY OF OPTIONS

1 INTRODUCTION

In recent years, the value of Canada's global merchandise and services trade has grown substantially, as have Canadian direct investment abroad and foreign direct investment in Canada.

In 1990, Canada's total merchandise exports and imports were valued at $149.0 billion and $136.2 billion respectively. By 2011, these values had grown to $447.8 billion and $446.0 billion respectively.[1] The value of Canada's exports and imports of services increased from $22.4 billion and $33.0 billion respectively in 1990 to $74.8 billion and $99.5 billion respectively in 2011.[2]

Likewise, Canadian direct investment abroad and foreign direct investment in Canada have grown over the past 20 years. In 1990, the stock of Canadian direct investment abroad totalled $98.4 billion; by 2011, this stock had increased to $684.5 billion. The stock of foreign direct investment in Canada grew from $130.9 billion in 1990 to $607.5 billion in 2011.[3]

Concurrently with this growth, attempts have been made to promote trade further and to protect investments by Canadians abroad. A variety of agreements – including foreign investment promotion and protection agreements (FIPAs), free trade agreements (FTAs) and other forms of "comprehensive" agreements – aim to advance these goals, but they do so in unique ways.

2 THE WORLD TRADE ORGANIZATION

Canada's bilateral and regional trade agreements have been framed and are governed by the overarching rules of the World Trade Organization (WTO), which provides a forum for international trade negotiations, a framework for implementing and monitoring the resulting agreements, and a dispute-resolution mechanism.[4] Canada has been a member of the WTO since the organization was established in 1995.[5]

All 153 WTO members are parties to 16 multilateral WTO trade agreements that cover trade in goods and services, the protection of intellectual property, dispute resolution and reviews of trade policy. Some members, including Canada, are also parties to two plurilateral trade agreements that cover civil aircraft and government procurement.[6]

Some countries choose to go further than the requirements in WTO agreements by negotiating bilateral or regional trade agreements with additional commitments and rules. While doing so would seemingly violate the WTO's principle of equal treatment of trading partners, or what is known as "most-favoured-nation" treatment, bilateral or regional trade agreements are allowed as long as the criteria set out in article 24 of the *General Agreement on Tariffs and Trade* (GATT) and article 5 of the *General Agreement on Trade in Services* (GATS) are met.[7] These articles specify that the agreement must eliminate duties, tariffs or discrimination on substantially all trade between or among the parties; it also must not increase barriers for countries that are not party to the agreement.[8]

Since the early 1990s, bilateral and regional trade agreements, including FTAs and customs unions, have proliferated. As of 15 January 2012, the WTO had been notified about 511 such agreements, 319 of which were in force.[9]

3 FOREIGN INVESTMENT PROMOTION AND PROTECTION AGREEMENTS

A FIPA is designed to protect companies from the risks involved in undertaking direct investment abroad. While it is not an instrument of further trade liberalization, a FIPA creates "binding obligations on host governments regarding their treatment of foreign investors and investments"[10] by outlining clear rules and implementing an enforcement mechanism. A FIPA usually protects a wide range of investments, including tangible and intangible assets, portfolio investments and intellectual property rights, and may include guarantees by the host government related to "non-discriminatory treatment, expropriation, transfer of funds, transparency, due process and dispute settlement,"[11] without which an investor would only be protected to the extent stipulated in the host country's laws. If these guarantees are contravened, the investor can bring the case to an international tribunal to seek redress.[12]

A country selects a partner for a FIPA based on a variety of criteria, such as economic interests, current and future prospects for direct investment, existing investor protection in the host country, the likelihood of reaching an appropriate agreement, and other trade or foreign policy factors.[13]

Canada began to negotiate FIPAs in 1989, and updated its FIPA model in 2003 based on its experience in implementing the investment components of the *North American Free Trade Agreement* (NAFTA).[14] Canada has 24 bilateral FIPAs in force, with a number of negotiations for additional FIPAs either recently concluded or under way.[15]

4 FREE TRADE AGREEMENTS

FTAs seek to achieve economic benefits and growth in commercial relationships with one or more countries by facilitating an increased flow of trade and investment. While individual FTAs may vary, they often include provisions related to the elimination of tariff or non-tariff barriers to merchandise trade, measures to promote cross-border services trade, and expanded protection for or access to investment.[16] For example, an FTA might outline tariff-elimination commitments to be implemented in selected sectors in accordance with an agreed timeline. In respect of investment, FTAs differ from FIPAs, in that a FIPA is not an instrument of liberalization and does not eliminate restrictions to invest in a foreign country.[17]

Some FTAs are bilateral, such as the Canada–Israel FTA, while others are regional, such as the NAFTA. In some cases, FTA negotiations can include a large number of countries. This was the situation with the Free Trade Area of the Americas and is the case with the Trans-Pacific Partnership[18] negotiations that Canada has recently been invited to join.[19]

FTAs range in their scope. Some agreements are relatively limited; this is the case with the Canada–European Free Trade Association[20] agreement, which is focused almost exclusively on tariff elimination.[21] Other agreements, like the Canada–Chile FTA, go further and include investment protection, or they address the environment and labour, as do Canada's FTAs with Peru and Colombia.

The NAFTA is one of Canada's most comprehensive FTAs. This agreement – which was signed by Canada, the United States and Mexico, and came into force in 1994 – has led to the elimination of most tariff and non-tariff barriers to trade and investment among the three signatories. The NAFTA is broad in scope, encompassing provisions related to market access for goods and services, protection for investments and intellectual property, the facilitation of travel for business, access to government procurement, and provisions regarding rules of origin.[22] It also includes dispute-resolution provisions administered by the NAFTA Secretariat.[23] Additionally, the NAFTA partners have negotiated side agreements related to environmental and labour cooperation.[24]

Canada currently has 10 FTAs, seven of which are in force and three of which are awaiting signature or ratification. Canada is also in the process of negotiating or undertaking exploratory discussions related to 16 FTAs with such countries or groups of countries as India and the European Union (EU). These FTAs would incorporate nearly 50 countries in total.[25]

5 OTHER TYPES OF AGREEMENTS

In recent years, some countries have focused on negotiating agreements that are referred to as "comprehensive" or "ambitious" in scope. The name that is given to the expected agreement in any given case may reflect the broad nature of the agreement, as with the comprehensive economic and trade agreement (CETA) currently being negotiated by Canada and the EU. This agreement, which both parties have expressed a desire to complete in 2012, would include provisions related to goods and services trade, investment, and government procurement, among others.[26] The negotiating agenda for this CETA encompasses not only trade liberalization, but also other forms of economic integration between the parties, such as mutual recognition of professional qualifications, regulatory cooperation, agreements on sanitary and phytosanitary measures, reduced barriers to labour mobility and provisions related to sustainable development.[27]

In other cases, however, a name that suggests a broad agreement may not actually reflect a wide-ranging scope. For example, the comprehensive economic partnership agreement (CEPA) that Canada is currently negotiating with India could cover "substantially all trade in goods and services; investment; trade facilitation; and other areas of economic cooperation, as a 'single undertaking,' leading to additional trade flows and economic gains."[28] That said, if successful, these negotiations are expected to lead to an agreement that is similar to a traditional FTA, and the CEPA title reflects predominantly the terminology used in India, rather than an exceptionally broad agreement.[29] Similarly, in Canada's economic partnership agreement (EPA) negotiations with Japan, the terms EPA and FTA are used interchangeably, "reflecting normal terminology in Japan and Canada respectively."[30]

Customs unions, which refer to "the substitution of a single customs territory for two or more customs territories,"[31] are another form of economic integration through which duties and restrictions on trade can be eliminated between and among countries. Canada is not a member of a customs union; however, a well-known example of such a union is the European Union. Customs unions are governed by WTO rules as well as by the terms of the agreement establishing the union.

6 CONCLUSION

A number of options for promoting trade and investment are available. They include a variety of agreements that range in scope from foreign investment promotion and protection agreements, whose purpose is relatively narrow, to the broader comprehensive economic and trade agreements. As a small, open economy that benefits from its worldwide trade, Canada will likely continue to make the negotiation of such trade and investment agreements, in their various forms, a priority in future years.

NOTES

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2. Department of Foreign Affairs and International Trade [DFAIT], *Balance of Payments: Transactions between Canada and its main trading partners, including imports and exports of goods and services, direct investment inflows and outflows, and the current account balance.*
3. Statistics Canada, Table 376-0051, "International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by country, annual (dollars)," CANSIM (database), accessed 22 May 2012.
4. World Trade Organization [WTO], *About the WTO – a statement by the Director-General*.
5. DFAIT, *Canada and the World Trade Organization (WTO)*.
6. WTO, "Overview: a navigational guide," *Understanding the WTO: The Agreements*.
7. WTO, "Regionalism: friends or rivals," *Understanding the WTO: Cross-Cutting and New Issues*.

8. WTO, "The basic rules for goods," *Regional Trade Agreements: Goods Rules*; and WTO, "General Agreement on Trade in Services," *Uruguay Round Agreement*.

9. WTO, *Regional trade agreements*.

10. DFAIT, *Canada's FIPA Program: Its Purpose, Objectives and Content*.

11. Ibid.

12. Ibid.

13. Ibid.

14. DFAIT, *Canada's Foreign Investment Promotion and Protection Agreements (FIPAs)*.

15. DFAIT, *Negotiations and Agreements*.

16. See, for example, DFAIT, *Canada–Panama Free Trade Agreement*.

17. DFAIT, *Canada's FIPA Program: Its Purpose, Objective and Content*.

18. The Trans-Pacific Partnership's other members include countries in Asia, North and South America, and Oceania.

19. DFAIT, *Canada and the Trans-Pacific Partnership Negotiations*; and Prime Minister of Canada, "PM welcomes all-member support for entry into Trans-Pacific Partnership," News release, 19 June 2012.

20. European Free Trade Association members are Iceland, Liechtenstein, Norway and Switzerland.

21. DFAIT, *Canada–European Free Trade Association (EFTA)*.

22. See NAFTANOW.ORG.

23. NAFTA Secretariat, *Dispute Settlement*.

24. NAFTANOW.ORG, *North American Free Trade Agreement*.

25. DFAIT, *Negotiations and Agreements*.

26. DFAIT, *Canada–EU Trade Agreement*.

27. Joint Scoping Group of the Government of Canada and the European Commission, *Joint Report on the EU–Canada Scoping Exercise*, Ottawa and Brussels, 5 March 2009.

28. DFAIT, *Additional Information: Background*, *Negotiations and Agreements*.

29. Governments of Canada and India, *Canada–India Joint Study Group Report: Exploring the Feasibility of a Comprehensive Economic Partnership Agreement*.

30. Governments of Canada and Japan, *Report of the Joint Study on the Possibility of a Canada–Japan Economic Partnership Agreement*, 7 March 2012.

31. WTO, "The basic rules for goods."