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Canadian Legal Developments

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I. Customs and Transportation

In 2000, the Canada Customs and Revenue Agency (CCRA) proceeded with the roll-out of a customs self-assessment (CSA) program designed specifically to simplify and accelerate the multi-modal transportation of low-risk/high-volume goods imported to Canada from the United States.[1] The plan's principal focus is risk management of goods imported from the United States to Canada. The risk is managed through the assessment and certification/approval of the driver and transporter responsible for moving goods from the United States to Canada and the importer responsible for payment of duties and taxes. The CCRA commenced the program by receiving applications from Canadian and U.S.-based motor carriers for CSA approval. Each carrier's approval depends on its past record of compliance with customs laws along with the carrier's ability to demonstrate through its

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1. *See generally* Canadian Customs and Review Agency, *at* www.ccra-adrc.gc.ca/sitemap-e.html. The various acts referred to in this article may be accessed at the Department of Justice Canada Web site, *Consolidated Statutes and Regulations*, *at* http://canada.justice.gc.ca/en/laws/index.html.

information system full compliance with its obligations as a carrier of export product to Canada. At the same time, drivers for such carriers are applying for CSA certification, which is based on the drivers' past compliance with Canadian customs and related laws as well as a clean record with respect to driving and criminal offenses.

Finally, the CCRA will invite Canadian importers to apply for CSA approval. Approval will be based on each importer's ability to demonstrate past compliance with Canadian customs laws and a record-keeping system. The system allows the CCRA to assure itself that all exported goods received by Canadian importers can be verified as having paid duty and tax in accordance with Canadian law.

The program is still awaiting development of legislation and regulations. An April 2001 implementation date had been deferred to October 2001. The program begins with the motor carrier industry but will expand to include goods entering Canada from the United States by rail, air, motor vessel, or through an intermodal system.

While motor carriers involved in moving less-than-truckload shipments from the United States to Canada see benefits from the program, a few major U.S.-based carriers (particularly those involved in truckload shipments) are uncertain about the benefits when contrasted with the costs that will be involved in re-engineering their information technology systems and transportation operations to comply with the CSA program.

On the transportation regulation side, the year 2000 was a time for now-you-see-it-now-you-don't legislative proposals. In mid-2000, Transport Canada introduced amendments to the Federal Motor Vehicle Transport Act to address safety issues generally and to establish a national safety-rating program for motor carriers specifically.[2] The bill was introduced in 1999 in a similar form and then withdrawn after initial public comment. In addition, the bill died at the time of the fall 2000 Canadian general election. The motor carrier safety proposals should be re-introduced again in 2001, and perhaps the bill will be adopted on this third try.

Transport Canada also introduced a proposal to create a new transportation appeal tribunal with specific jurisdiction over reviews and appeals provided under Canada's Aeronautics Act, Canada's Shipping Act, Maritime Transportation Security Act, Railway Safety Act, and any other transportation act (most notably the Canada Transportation Act).[3] The object of the legislation is to remove reviews and appeals from the jurisdiction of the office of the minister of transport (ostensibly a political appeal) and into the hands of a knowledgeable and independent tribunal. In addition, this proposal died when parliamentary sittings and the Canadian federal election ended in fall 2000. The proposal for the tribunal will again be before Parliament in 2001, although the timing of introduction and ultimate adoption is not yet fixed.

Finally, as 2000 ended, the Canada Transportation Act (CTA), which regulates the competitiveness of Canada's rail industry, was undergoing a quintuplicate annual review as prescribed by the act. A government-appointed review panel received hundreds of submissions from across Canada, most of which focused on rail competitiveness or lack thereof. The recurring theme of the submissions was that the pro-competitive enforcement procedures in the CTA—including final offer arbitration, competitive line rates, competitive access rates, and interswitching provisions—fell far short of ensuring competition in Can-

2. *See generally* Department of Transport Canada, *at* www.tc.gc.ca/en/site.htm.

3. *See id.*

ada's rail industry. The review panel was to present a final report to the minister of transport in mid-2001, and a legislative response to the review panel's recommendations may have reached Parliament by the end of 2001. The principal shipper demand for some form of enhanced open or managed access to Canada's major railways' infrastructures is unlikely to gain much ground. The review panel is not expected to risk the stability of Canada's rail industry by giving open access. The review panel fears open access will compromise rail safety and significantly prejudice the rail industry's financial viability.

II. Income Tax

The year 2000 was an eventful one from a Canadian income tax perspective because the federal government introduced two major packages of amendments to the Income Tax Act.[4] The Department of Finance was also busy releasing large volumes of draft legislation designed to give effect to previously announced initiatives.

Perhaps the most significant development in Canadian income tax law during 2000 was the federal government's decision to introduce a five-year, $100 billion tax reduction program. While these measures address many areas of the Canadian income tax system, the most important changes involve large-scale reductions in personal and corporate tax rates as well as the capital gains inclusion rate. Since January 1, 2001, the top federal marginal tax rate for individuals has been 29 percent for income in excess of $100,000. Previously, the 29-percent rate applied to an individual's income in excess of $60,000. More extensive reductions were announced for middle income Canadians. In addition, the 5-percent high-income surtax that had previously applied to personal incomes in excess of approximately $65,000 was eliminated. The federal government also proposed to re-index Canada's personal income tax system in order to offset the effects of inflation. Although personal income tax reductions were not featured to the same extent in most provincial income tax proposals due to the method by which provincial taxes are computed, the aforementioned federal measures will also generate tax savings for individuals at the provincial level.

The federal government proposes to reduce the general rate of corporate income tax from 28 percent to 21 percent by 2004. As of January 1, 2001, the general corporate income tax rate will be 27 percent. The federal government also announced a variety of tax reductions for small Canadian-controlled private corporations. In addition, many provinces have proposed significant corporate tax reductions over the next five years. For example, in Ontario (Canada's largest province), the general corporate income tax rate will fall from 15.5 percent (as of January 1, 2000) to 8 percent in 2005. The Ontario general corporate rate for the 2001 calendar year is fourteen percent. Assuming that all of these measures are implemented, by 2005, the combined federal and provincial tax rate for an Ontario corporation will be 30.12 percent (including the federal surtax). This rate compares favorably to those currently imposed on corporations in other G-7 countries.

With respect to capital gains taxes, as of October 18, 2000, only 50 percent of a taxpayer's capital gains is subject to federal income tax. This compares favorably with the 75-percent inclusion rate that existed prior to February 28, 2000, and the 66.67-percent inclusion rate that was effective between these two dates.

4. *See generally* Department of Finance Canada, *News Releases 2000, at* www.fin.gc.ca/access/sitemaptxt-e.html.

The federal government also proposes to eliminate the special rules for nonresident-owned investment corporations (NROs) by 2003. This will be achieved by prohibiting corporations from making new elections while allowing existing NROs to maintain their status, subject to certain conditions, until the end of their last taxation year that ends before 2003. Under the present legislation, foreign-owned Canadian corporations that elect to be taxed as NROs are subject to a 25-percent tax that is refunded to the corporation to the extent that it uses its income to pay dividends to its foreign parent. These dividends are then subject to the normal rules for Canadian withholding taxes as reduced by an applicable income tax treaty. While the intent of these rules was to place share-holders of NROs in the same position as nonresidents who directly invested in Canada, in recent years NROs have become a key component of aggressive inbound financing structures.

Another change of interest for nonresident investors will be Canada's amended thin-capitalization rules. In general terms, thin-capitalization rules are designed to restrict the deductibility of interest to a Canadian resident corporation in respect of the portion of its debt to certain nonresidents that exceeds a 3:1 debt to equity ratio. As a result of the amendments, the ratio of debt to equity used in connection with thin-capitalization rules will be reduced from 3:1 to 2:1. Other minor amendments have also been proposed that address the method by which a Canadian corporation's equity amount is determined for thin-capitalization purposes.

The minister of finance released draft legislation that provides tax-deferred treatment for Canadian shareholders of foreign corporations that undertake certain spin-off transactions that result in their shareholders receiving shares of another corporation (other corporation). Ordinarily, shares received by a taxpayer as a result of a foreign spin-off transaction would be characterized as a dividend-in-kind for Canadian income tax purposes. Under the proposed rules, should a foreign corporation (distributing corporation) undertake a spin-off transaction, its Canadian shareholders would be able to defer the recognition of tax by allocating to the shares of the other corporation a portion of their basis in the distributing corporation's shares. The proportion of the stock basis allocated to the shares of the other corporation would depend on their fair market value relative to the fair market value of the shares of the distributing corporation.

If enacted in its present form, this legislation will apply to Canadian-resident shareholders of distributing corporations that reside in the United States and certain other countries with which Canada has income tax treaties. In order for Canadian shareholders to be eligible for this deferral, the following requirements must be satisfied: (1) the distribution must be in respect of all of the common shares of the distributing corporation that are held by the Canadian resident taxpayer; (2) the distribution must consist solely of common shares of the other corporation that, prior to the distribution, were held by the distributing corporation; (3) both the distributing corporation and the other corporation must be residents of the same country and must have never been residents of Canada; (4) the class of shares of the distributing corporation that are held by the Canadian resident taxpayer must be widely held and publicly traded on a recognized stock exchange; and (5) the spin-off transaction must be one that is not subject to tax under the domestic legislation of the country in which the distributing corporation and the other corporation are resident. Additional requirements may be imposed if the distributing corporation and the other corporation are not residents of the United States. This deferral will be available on an elective basis for all

transactions occurring after 1997, provided that the above conditions as well as certain other administrative requirements are satisfied.

The Department of Finance was actively engaged in developing new rules for dealing with what it perceives to be aggressive planning structures involving nonresident trusts. In general terms, a nonresident trust will be subject to Canadian income tax on its worldwide income if it has either a resident contributor or a resident beneficiary. A *resident contributor* is a person who at that time is both resident in Canada and a contributor to a trust. A *resident beneficiary* refers to a person who at any time resides in Canada where, at that time, there is a *connected contributor* to the trust. A connected contributor to a trust refers to a person (including one who has died or has otherwise ceased to exist) who at that time is a contributor to a nonresident trust. In general terms, a contributor to a trust at any time refers to a person or partnership that at or before that time has made a contribution to the trust. A *contribution* refers to a direct or indirect transfer or loan of property to a trust by the particular person or partnership. Arm's length transfers to a nonresident trust are generally excluded from the definition of a contribution.

A contribution will also avoid the application of these rules if the person made the transfer or loan of property during a nonresident time. *Nonresident time* refers to a period of time in which all of the following conditions are satisfied: (1) the contributor was a nonresident of Canada at that particular time; (2) the contributor was a nonresident of Canada (or not in existence) for a sixty-month period *before* that particular time; and (3) the contributor was a nonresident of Canada (or not in existence) for a sixty-month period *after* that particular time. Nonresident trust rules will be effective for all taxation years of trusts that begin after December 31, 2001.

The Department of Finance introduced draft legislation designed to expand the scope of the rules that govern the taxation of offshore investment entities. This proved to be a challenge for Canadian taxation authorities, which have continuously found it necessary to amend the tax legislation in this area. The federal government's current attempt at taxing offshore investment entities was equally problematic because the draft legislation contained flaws and inconsistencies that had to be addressed before it could be enacted by Parliament. Given that changes to this legislation were anticipated in early 2001, only a brief overview of these rules (in their present form) is provided.

In general, a Canadian resident will be subject to these rules in a particular taxation year during which he or she holds a participating interest in a foreign investment entity (FIE) that had its latest fiscal yearend occur in a particular year. A participating interest in a nonresident corporation refers to a share or a right to acquire a share of that corporation. In the context of a nonresident trust, a participating entity means a beneficial interest in the trust or a right to acquire a beneficial interest in the trust. In cases where a nonresident entity is neither a corporation nor a trust, a participating interest is defined to refer to an interest in, or a right to acquire an interest in, the entity.

An FIE is a nonresident corporation, trust, or other entity (other than a partnership) in which more than 50 fifty percent of the carrying value of its assets qualifies as investment property. The carrying value of an FIE's assets must be determined in accordance with generally accepted Canadian accounting principles. Investment property is defined by the draft legislation to include: shares of other corporations, trust and partnership interests, debt securities, cash, commodities, derivatives and interests, and options and rights in respect of the earlier-described types of property. In determining whether a particular non-

resident entity is an FIE, a look-through rule is applied to determine the carrying value of the entity's interest in other entities.

In cases in which a nonresident entity holds a significant interest in another entity, the carrying values of the interests held by the first entity are disregarded. Instead, the nonresident entity's pro rata share of the carrying values of the second entity's assets will be used in the investment property valuation. A significant interest in an entity generally refers to an interest representing at least 25 percent of the fair market value of all interests in the entity. It is important to note that the proposed legislation attempts to remove the prospect of double taxation by exempting from the ambit of the FIE rules nonresident entities (such as controlled foreign affiliates) that are already subject to some form of current taxation under Canadian rules.

When a Canadian taxpayer holds a participating interest in an FIE, he or she will generally be taxed on an annual basis under a mark-to-market process. Under this system, a Canadian resident taxpayer will be subject to income tax on the annual increase or decrease in the fair market value of his or her FIE interest. In certain limited circumstances, a Canadian resident taxpayer may be able to elect to be taxed under an accrual system instead of the mark-to-market regime. Under the accrual system, a Canadian resident taxpayer will be subject to income tax on his or her proportionate share of the FIE's accrued income for the year. Subject to certain modifications, the computation of a taxpayer's income under an accrual system will parallel ordinary Canadian income tax rules. FIE rules will be effective for all for all taxation years that begin after December 31, 2001.

The 1999 year in review reported that Canadian revenue authorities were unsuccessful in their appeal of *Shell Canada v. The Queen* in the Supreme Court of Canada.[5] In *Shell*, the government attempted to limit a taxpayer's ability to deduct increased interest expenses associated with borrowings that had been denominated in a weak foreign currency. In response to this decision, the Department of Finance introduced legislation to override the Supreme Court of Canada's decision in *Shell*. In essence, these rules will limit a taxpayer's ability to claim an interest expense deduction in excess of the amount it would have claimed had the debt been denominated in the currency in which the proceeds of the debt were ultimately used. In addition, any foreign exchange gain or loss associated with a weak currency debt transaction will be deemed to occur on income account, regardless of whether the debt itself is considered (from the perspective of the taxpayer) to be on capital account. To provide some degree of symmetry for taxpayers, the legislation provides rules that effectively integrate the results of any related hedge contracts into the weak currency debt transaction. Furthermore, the amount of any interest expense that is denied through the operation of these rules will be applied to reduce the foreign exchange gain (or increase any foreign exchange loss) that would otherwise be computed under the legislation.

These rules will only apply in cases in which a taxpayer enters into a weak-currency debt transaction. In general terms, a weak-currency debt has three essential characteristics: (1) the proceeds of the debt are denominated in a currency other than the one in which the funds are ultimately applied; (2) the amount of the debt is in excess of $500,000; and (3) the interest rate associated with the debt is more than 2 percent higher than that which a taxpayer could have obtained if he or she had borrowed funds denominated in the same currency as that in which the proceeds were ultimately used.

5. *See* Stephen S. Heller, *Canadian Legal Developments*, 34 INT'L LAW. 849 (2000) (reviewing *Shell Canada v. The Queen*, [1993] 3 S.C.R. 622 (Can.)).

III. Antitrust

A. Competition Tribunal Considers Efficiencies Defense

In August 2000, the Competition Tribunal issued the much anticipated decision in *Commissioner of Competition v. Superior Propane Inc.*[6] This was the first decision to directly consider whether demonstrated efficiencies can offset an anti-competitive merger. *Superior Propane* contained the tribunal's clearest, most detailed analysis of this key feature of Canadian merger review.

The controversy arose in summer 1998 when Superior Propane sought the Competition Bureau's clearance of the company's proposed acquisition of all shares of the Chancellor Holdings Corporation, owner of ICG. Following formal inquiry and discussions between the bureau and the merging parties, the bureau sought from the tribunal an order enjoining the parties from closing. The tribunal dismissed the bureau's application, and the parties closed over the competition commissioner's objections. In response, the commissioner applied to the tribunal for a post-merger divestiture order.

In a split decision, the tribunal found that the merger would likely lessen competition in sixty-five local markets across Canada and in the national market for national account coordination services and prevent competition in Atlantic Canada's propane market. Although it found Superior's divestiture of ICG to be the only proper remedy under the circumstances, the tribunal did not order divestiture because of the parties' efficiency defense.

Under Canada's Competition Act, the Competition Tribunal may not make any order in respect of a merger in which it finds that the merger will likely bring about gains in efficiencies that are greater than, and offset the anti-competitive effects of, the merger. In *Superior Propane*, the tribunal found that the economic resources freed by the more efficient organization of the merging parties' two businesses would lead to some $29.2 million in efficiencies. The majority also concluded that the merger's substantial lessening of competition had caused a $3 million dead-weight loss to the Canadian economy.

The tribunal made several key rulings regarding the efficiency claim. First, it rejected the commissioner's position that as a matter of law, an efficiency claim could never save a "merger to monopoly." The tribunal also rejected "distributional considerations" in analyzing the trade-offs between efficiencies and dead-weight loss and "consumers' surplus" and "price standards" as the proper measure of the efficiencies. On the other hand, the tribunal did adopt the commissioner's view that the claimed efficiencies need only compensate for, rather than prevent or neutralize, anti-competitive effects to save a merger. Given the commissioner's almost immediate appeal, the tribunal's decision in *Superior Propane* clearly did not end the efficiency claim debate since the Federal Court of Appeal and possibly the Supreme Court of Canada remain to be heard.

B. Airline Consolidation and Industry Restructuring Legislation

1. *Bureau Keeps Hands off Airlines Merger*

At the end of 1999, the Competition Bureau announced that it would not oppose Air Canada's takeover of Canada's only other national airline, Canadian Airlines, even though

6. *See* Competition Tribunal, *Cases, at* www.ct-tc.gc.ca/ (Superior Propane Inc., CT-98/02, *decided* Aug. 30, 2000).

the merger would substantially lessen competition in a number of Canadian markets. The bureau concluded that approval of the merger with undertakings from the parties to mitigate anti-competitive effects was preferable to Canadian Airlines' almost certain failure without the merger.

The bureau's decision was somewhat surprising, considering its earlier public statements indicating that the merged Air Canada/Canadian Airlines' market share would exceed 80 percent of all passengers in the top 200 city pair markets. The bureau had also expressed serious competition concerns about a dominant carrier emerging in Canada.

2. *Government Passes Airline Restructuring Legislation*

Following its approval of the Air Canada/Canadian Airlines merger, the federal government passed legislation to restructure Canada's airline industry.[7] The legislation includes several amendments to the Competition Act, some of which authorize the commissioner to take unilateral enforcement action against Air Canada. For instance, the commissioner may enter a temporary order prohibiting a domestic air service carrier from doing anything that, in the commissioner's opinion, constitutes an anti-competitive act (to be defined by future amendment). Only once since then has the commissioner used these new and controversial powers. The amendments also exempt agreements among travel agents regarding the negotiation of commissions on ticket sales from domestic flights from the Competition Act's conspiracy and price maintenance provisions.

C. New Bureau Immunity Guidelines Released

Early in 2000, the Competition Bureau released a new draft immunity program to replace its earlier Cooperating Parties Bulletin.[8] The immunity program is intended to establish a clearer, more transparent immunity process. Under the new program, the bureau will recommend that the attorney general grant immunity to parties (meeting certain conditions) who are first to disclose to the bureau an offense about which the bureau knew nothing. In cases in which the bureau already knows about an offense, immunity may be recommended for the parties who first present to the bureau sufficient information to refer the case to the attorney general. Conditions for a grant of immunity include, among others, that the party will immediately stop its illegal activity and will fully and timely cooperate with the bureau. Moreover, immunity is not available to any party who led or instigated the activity or who was the sole beneficiary in Canada. Those seeking immunity in multijurisdictional matters must be aware that, under the immunity program, Canada will afford favorable treatment only to parties that first report in Canada.

D. Bureau Issues New Pre-Merger Notification Rules

Changes to the pre-merger notification regime also came into force in 2000. Among other modifications, the new rules double the no-close waiting periods (during which merging parties may not complete their transaction) to fourteen or forty-two days, depending on whether a short- or long-form filing is made. The rules also significantly increase the amount of information parties must provide in a long-form filing, arguably giving the com-

7. *See id.* at *Legislation.*

8. *See generally Immunity Program under the Competition Act*, Competition Bureau Info. Bull., *at* http://stragegis.ic.gc.ca.

missioner greater incentive to exercise its statutory power to reject a short-form filing and require a long form in cases raising serious competition concerns.

E. Bureau Proceeds with Private Members' Bills

Four private members bills were introduced in 2000, proposing major amendments to the Competition Act. Finding the proposals consistent with changes that the Competition Bureau had advocated in the past and had intended to pursue in the next round of consultations, the bureau took the lead in organizing and implementing the consultation process. Although the bills died after the federal election in the fall, public consultation continues. The bills are expected to resurface in a government bill when stakeholder consultation concludes.

Among the bill's highlights is a proposed expansion of an individual's private rights of action to cases involving a refusal to deal, tied selling, territorial restrictions, and exclusive dealing. The bureau would retain authority to investigate these matters. To control potential litigation abuse, the proposed amendment would require the tribunal's leave to bring a private action, allow cost awards, and preclude plaintiffs from recovering damages. Another key proposal would split the Competition Act's conspiracy provisions into a *per se* criminal offense and a new non-criminal reviewable practice. Basically, in cases involving agreements to fix prices, allocate markets, boycott competitors or suppliers, or limit a product's production or supply, the bureau would no longer need to prove that the agreement would unduly lessen competition.

The private members' bills also introduced a broad non-criminal reviewable practice to address competitor agreements, under which parties could seek remedial orders for agreements that are likely to prevent or substantially lessen competition. Although it would have no power to impose penalties, the bureau would be able to issue prohibition orders and orders to restore competition. A related provision would also create a voluntary preclearance procedure for competitor agreements that would grant the commissioner discretion to issue certificates that would render agreements immune to challenge.

The bills also would extend the definition of anti-competitive acts to arguably bring certain retailer and supplier practices into the current abuse of dominance regime. The commissioner would have authority to make temporary orders prohibiting any activity that could be anti-competitive and take steps to prevent injury to competition or another market participant. The bills also propose granting the minister of industry authority to enter competition enforcement agreements with other countries' enforcement agencies, thereby permitting the exchange of information in both civil and criminal competition matters.

IV. Environment

The two main developments in environmental law in Canada in 2000 were largely in regulatory activity rather than new legislation. Largely in response to public concerns, there has been a significant increase in emphasis on enforcement in a number of jurisdictions. Concerns with water quality were also a major influence that largely resulted from a significant incident in Walkerton, Ontario. The regulation of the environment appears once again to be front and center with the government.

Led by the federal government and Ontario, Canada has seen a renewed emphasis on enforcement activities from a variety of regulators. Environment Canada received substantial additional funding in budgets presented in 2000 for policy development (particularly

toxic assessment, discussed later) and enforcement. This has resulted in the hiring and training of a number of new enforcement officers, additional legal staff, and other resources. This presence is already being felt with increased enforcement activities across the country.

In Ontario, after lower levels of enforcement since 1995, the year 2000 saw a significant upswing in enforcement statistics. The Toughest Environmental Penalties Act, passed in November 2000, raised maximum penalties to $10 million per day for some environmental offenses.[9] In addition, the government made good on a 1999 campaign promise by introducing SWAT teams dedicated to enforcement on a sector-by-sector basis. This initiative involves analysts, inspectors, and investigators (some with special uniforms) that will target industry sectors based on environmental performance as reported to the Ministry of Environment. While the initiative is still developing, the first sector targeted in 2000 was the waste-hauling industry. As the initiative gathers steam, targeted sectors will be added to a list that already includes the metal-plating industry.

Water quality is another main area of regulatory attention across the country. Early in the year in what later seemed a prescient move, Saskatchewan released its water management framework, which emphasized assured access to safe and reliable drinking water and the prevention of the bulk export of water.

In what now appears to be a watershed event, an outbreak of *E. coli* occurred in the water supply of the small town of Walkerton, Ontario, resulting in at least seven deaths. This has galvanized regulatory action across the country, particularly in Ontario, as allegations were made that reductions in funding for environmental regulation, particularly enforcement, had a direct contributing effect on the tragedy. Many provinces have begun reforming water protection legislation and reviewing the effects of large-scale farming, particularly livestock operations, exemplified by Ontario's Operation Clean Water. Regulatory reforms began in 2000 and are expected to continue in 2001.

The new Canadian Environmental Protection Act (CEPA), passed in 1999, is now in the implementation stage, particularly with respect to the assessment of toxic substances. Some twenty-five substances are being reviewed under the priority substances assessment program, which was included in 2000 with recommendations to list many substances as toxic, including road salt, breathable particulate matter less than or equal to ten microns, a number of chemicals, and releases from some particular industries. Some assessments resulted in recommendations that the substances not be listed (for example, phenols). Funding for approximately 21,000 assessments required under the CEPA has begun, and approximately $300 million is budgeted thus far. The proposed federal Species at Risk Act died with the fall federal election and will have to be reintroduced in the new Parliament.[10]

Other areas of focus across the country included hazardous wastes and contaminated sites. Ontario has amended its hazardous waste regulation to bring it into accord with U.S. regulations in an attempt to slow the import of hazardous waste to Ontario for disposal. Industry throughout Ontario must now reevaluate waste streams to determine whether current disposal arrangements will continue to be in compliance. Waste disposal remains controversial as reflected by Toronto's search for disposal of municipal solid waste, new headlines, significant public attention, and the lack of no new initiatives.

9. *See Bill 124, Toughest Environmental Penalties Act, 2000*, Ontario Legislative Library, *at* www.ontla.on.ca/library/bills/billshome.htm (status and background of S.O. 2000, c.22).

10. *See generally Bill C-5, An Act Respecting the Protection of Wildlife Species at Risk in Canada*, First Session, 37th Parliament (2000), *at* Environment Canada, *Proposed Legislation, at* www.speciesatrisk.gc.ca.

British Columbia continues its initiatives on contaminated site regulation through a regulation review process. Ontario has followed suit, striking a task force to examine Brownfields Initiatives, in an attempt to stimulate development on old industrial lands, particularly within existing major municipalities. Countering these initiatives toward greater certainty, however, were a number of cases imposing significant liability on property owners for contaminating adjacent properties.

Finally, the effect of the North American Free Trade Agreement (NAFTA) on environmental regulation is being felt. In *S.D. Myers, Inc. v. Government of Canada*, an arbitration panel found that Canada had taken S.D. Myers's investment in building a business of disposal of Canadian PCBs at its U.S. facilities by ignoring regulations that had closed the Canada-U.S. border to PCB export.[11] This case, the settlement of the *Ethyl Corp.* case regarding MMT, and other cases developing in California and Mexico suggest a growing influence of matters of trade on domestic environmental regulation.[12] The emphasis in 2001 is likely to remain on enforcement and perhaps a renewed focus on air quality (already seen in Ontario with re-implementation for the energy sector).

V. Communications

A. Canadian Radio-Television and Telecommunications Commission (CRTC) Revamps Service Standards for Telephone Companies

On January 20, 2000, the commission finalized the existing standards for quality of service indicators for telephone companies and also imposed three new indicators for measuring service quality.[13] Although some telephone companies had asked to have certain quality standards made less stringent, they will be required to maintain the same standards the commission adopted on an interim basis in July 1997. Originally developed in 1982, these standards are intended to ensure that all telephone consumers receive an acceptable level of service. Telephone companies identify service quality issues through self-reporting and subscriber complaints. Each telephone company is required to file a quarterly report to the commission on sixteen indicators.

The three new quality-of-service indicators announced by the commission are (1) the time it takes to field customer requests and inquiries, (2) the number of customer complaints that have not been satisfied within ten working days, and (3) the speed and accuracy of directory assistance. The standards for these three indicators have not been established. Telephone companies that must provide quarterly quality-of-service reports are those with more than 25,000 access lines.

B. SaskTel Falls under CRTC Jurisdiction and Joins Canada's Major Telephone Companies

In a May 9, 2000 decision, the CRTC agreed to a transitional approach to regulation for Saskatchewan Telecommunications (SaskTel), which became subject to CRTC jurisdiction

11. *See* S.D. Myers, Inc. v. Canada, NAFTA Trib. Arb., Doc. 742416:01, *at* www.mindfully.org/ (providing the text of the arbitration panel's ruling).

12. *See* Heller, *supra* note 5.

13. *See* Canadian Radio-Television and Telecommunications Commission Publications, *Landmark Decisions*, at www.crtc.gc.ca/eng/publications/landmarkd_e.htm (Decision CRTC 2000-24 and 2000-24-1).

on June 30, 2000.[14] The decision thus provided the parameters for an eighteen-month transitional regulatory framework to allow SaskTel to align itself with the current federal regulatory framework of Canada's major telephone companies.

SaskTel has committed to not increasing residential and business telephone rates during this transition period. However, that commitment does not preclude the commission from conducting a review of certain tariffs that require examination. Similar to other telephone companies, the CRTC will forbear from regulating many of SaskTel's competitive services, such as long distance and wireless services, as long as SaskTel aligns the terms and conditions of its services with those of other major telephone companies in Canada.

C. Changes to the Contribution to Subsidize Local Telephone Service in High Cost Areas

On November 30, 2000, the CRTC introduced major changes to the Canadian telecommunications contribution regime, the universal service system that subsidizes the high cost of local residential telephone service in Canada's rural and remote areas.[15] Effective January 1, 2001, all telecommunications service providers are required to contribute a percentage of their eligible revenues to a national subsidy fund. This revenue-based approach replaces the previous method of collecting a contribution rate exclusively from long distance service providers on a per-minute basis. Revenues from paging services, terminal equipment, and retail Internet service are excluded while telecommunications service providers with revenues of less than $10 million will not be required to pay into the national fund.

Effective April 1, 2001, all telecommunications service providers must contribute to the national fund a portion of their eligible revenues based on an interim charge of 4.5 percent. As a result, basic local telephone service rates may be affected. A final revenue percentage rate was determined by mid-2001 and is retroactive to January 1, 2001.

D. Plan to Reduce Long Distance Rates and Improve Phone Service for the Canadian North

Following a comprehensive public process, the CRTC approved on November 30, 2000, a four-year service improvement plan intended to extend and improve telecommunications services in Canada's far north, the territory served by Northwestel, Inc.[16] As part of Northwestel's plan to improve service to its customers, the commission approved extending single-line service to over 500 homes currently unserved, upgrading service to over 2,600 customers, and eliminating mileage charges. The CRTC also approved Northwestel's plans to upgrade its long distance network from analog to digital technology, which is expected to improve the quality of its long distance service. Effective January 1, 2001, the long distance market is open to competition in the northern portion of the country served by Northwestel, which includes the Northwest Territories, Yukon, Nunavut, and Northern British Columbia.

The proposed service improvements and long distance rate reductions will be financed through an increase in monthly residential and business telephone rates, carrier access fees paid by long distance competitors entering Northwestel's territory, and a subsidy from

14. *See id.* (Decision CRTC 2000–150).
15. *See id.* (Decision CRTC 2000–745).
16. *See id.* (Decision CRTC 2000–746).

telecommunications service providers in southern Canada. As a result of the improvements outlined in the commission's decision, most customers' combined monthly long distance and local telephone bills are expected to decrease.

The commission will continue to regulate Northwestel on a total company rate-of-return basis (approved at a rate of return on equity of 10.5 percent), but it will require an imputation test of the company to be applied for future rate changes to its toll services. In addition, to ensure the orderly introduction and roll-out of long-distance competition as well as to monitor the implementation of Northwestel's approved service improvement plan, the commission intends to conduct a limited annual review of the impact of its decision.

E. Renewal of CBC and Radio Canada Licenses

On January 6, 2000, the commission renewed for a seven-year period the licenses for the English and French-language radio and television networks of the Canadian Broadcasting Corporation (CBC), its owned and operated television stations, and its specialty services, le Réseau de l'Information (RDI) and Newsworld.[17]

The CBC's basic over-the-air television and radio services are received free of charge by most Canadians. The commission urged the network to continue to provide a general interest broadcasting service that would consist of a variety of programming that expresses the concerns and diversity of all Canadians and would more accurately reflect the reality of the entire country. The commission also indicated that in a time of budgetary constraints, the CBC could devote all available resources to its existing services in order to reach the most listeners and viewers possible. The CBC was thus directed to focus on preserving and reinforcing its existing radio and television services with the aim of strengthening representation from all regions of the country.

Among other things, the CBC was directed to place more emphasis in peak times on regional programs (that is, those produced outside of Toronto) such as dramas, music, dance and variety shows, long-form documentaries, and entertainment magazine programs; reduce the total number of hours of professional sports programming; and provide regional weekend newscasts at its affiliated stations. On the radio front, CBC's request to broadcast short messages from sponsors was refused. The commission noted, "Of all the qualities that have earned for CBC radio the public's unshakeable loyalty, the most important is its non-commercial nature."[18]

F. New Licensing Framework Policy for Digital Pay and Specialty Services

On January 13, 2000, the CRTC issued a framework for licensing new digital Canadian programming services.[19] Intended to facilitate the roll-out of digital distribution technology, the new framework also seeks to provide a balance between the commission's traditional licensing approach and a more open-entry, competitive environment. The framework provides for two categories of licences for new digital services. Category 1 services consist of

17. *See id.* News Release, The CRTC Renews Radio Canada and CBC's Radio and Television Licenses (Jan. 6, 2000).

18. *Id.*

19. *See id.* News Release, New CRTC Licensing Framework for Digital Pay and Specialty Television Services Will Bridge Changeover from Analog to Digital Distribution (Jan. 13, 2000).

a limited number of specialty services determined by the commission. The commission selects services that make a strong contribution to the development, diversity, and distribution of Canadian programming. These are considered the most attractive services for early digital distribution and are granted digital access privileges (that is, they must be made available to subscribers by all digital distributors). Category 2 services are licensed on a more open-entry basis. All proposed services that meet basic licensing criteria are licensed under Category 2 even if they are competitive with one another. However, unlike Category 1 services, Category 2 services are not assured digital access by distributors.

The commission implemented the new digital framework policy on November 24, 2000, when it approved sixteen English and five French Category 1 services and 262 Category 2 services.[20] The commission described its approval of the Women's Sports Network (a service devoted entirely to women's sports) and PrideVision (a new service designed to meet the needs and concerns of the gay and lesbian community) as "a couple of world firsts."[21] Other Category 1 services approved by the commission include the Biography Channel, BookTelevision: The Channel, the Canadian Documentary Channel, FashionTelevision: The Channel, Health Network Canada, Land & Sea, and Travel TV.

G. CRTC Grants Shaw Communications, Inc., Effective Control of Cancom

On June 30, 2000, the commission approved an application by Shaw Communications, Inc., that resulted in Shaw acquiring effective control of Canadian Satellite Communications, Inc. (Cancom).[22] Shaw also acquired 21.18-percent voting interest in Cancom via shares previously held by WIC Television Ltd., thereby increasing Shaw's ownership to more than 50 percent of the voting interest in the company.

Cancom is the licensee of a national satellite relay distribution undertaking (SRDU) that provides signals to broadcast distribution undertakings such as cable systems, which, in turn, distribute these signals to their customers. Cancom's subsidiary, StarChoice Television Network, Inc., is also licensed to operate an SRDU and additionally offers broadcasting services directly to individual Canadian subscribers through a licensed direct-to-home (DTH) satellite service.

The commission considered the approval of Shaw's application to be in the public interest because it would strengthen the development of sustainable competition between integrated providers of satellite services, including SRDU, DTH, and other non-regulated services. This would in turn ensure that retail customers had the widest possible choice of distribution alternatives.

H. CRTC Approves Acquisition of CTV by BCE

In a decision issued on December 7, 2000, the commission approved the acquisition by BCE, Inc., of the CTV private English-language television network, one of Canada's largest television broadcasters.[23] This transaction created the biggest corporation in the Canadian

20. *See id.* News Release, CRTC Approves New Digital Pay and Specialty Television Services—More Choice for Consumers (Nov. 24, 2000).

21. *Id.*

22. *See id.* News Release, The CRTC Authorizes the Sale of WIC Western International to CanWest Global and that of WIC Premium to Corus (Jul. 6, 2000).

23. *See id.* News Release, CRTC Approves Acquisition of CTV by BCE (Dec. 7, 2000).

communications landscape and represented the largest investment ever of additional funds for Canadian priority programming. It also raised important issues concerning cross-ownership and potential anti-competitive behavior.

The commission emphasized that a fundamental reason for approving the transaction was BCE's commitment and its financial capacity to provide long-term stability to the CTV television network and the popular, conventional, over-the-air general interest programming service it offered Canadians. Accordingly, as part of its decision, the commission imposed a series of requirements that BCE must comply with, including a $230 million investment (10 percent of the $2.3 billion cost of the transaction) in the Canadian broadcasting system over the next seven years. Almost $140 million of the investments were to be devoted to developing and producing priority programs such as dramas and documentaries by independent producers. To ensure that BCE's financial contribution would be clearly incremental to the CTV network's existing and outstanding expenditures over the seven-year period, the commission required BCE to meet strict and detailed annual reporting requirements that would allow the commission and the general public to evaluate how the company respected its own commitments and complied with the imposed requirements. The commission also required BCE to develop and implement a code of conduct, to be approved by the commission, prohibiting any practices that might disadvantage consumers or prevent healthy competition.

VI. U.S. Legal Developments

A. U.S.-Canada Trade Remedy Actions

1. *Wheat 301*

The year 2000 saw new developments in several ongoing U.S. cases against Canada. After threatening a variety of trade actions, the North Dakota Wheat Commission (NDWC) filed a section 301 petition with the Office of the U.S. Trade Representative (USTR) against Canada in September 2000.[24] Section 301 of the Trade Act of 1974 is a controversial U.S. law that allows the U.S. government to take unilateral action, such as imposing retaliatory import restraints, against trading partners found to be violating a trade agreement or engaging in certain other actionable practices. The wheat petitioner claimed that monopolistic and anti-competitive practices by the Canadian Wheat Board were driving down the price of durum and hard red spring wheat in the United States and causing the loss of American market share in the world's wheat market. The petitioner's stated aim was to involve the USTR without bringing the dispute to the WTO. The NDWC was requesting quotas, tariff rate quotas, or a voluntary restraint on Canadian exports to the United States.

The USTR initiated an investigation at the end of October 2000.[25] Once this investigation is concluded, section 301 sets out the framework for how to decide whether the

24. *See* Section 301 Petition of North Dakota Wheat Commission, submitted Sept. 8, 2000. This petition is available at the U.S. Trade Representative's Office Reading Room, 600 17th Street, NW, Washington, DC 20508. To make an appointment to view the petition, call (202) 395–6186. *See also* Trade Act of 1974 § 301, 19 U.S.C. § 2411 (1974).

25. *See* Initiation of Section 302 Investigation and Request for Public Comment, 65 Fed. Reg. 69,362 (Nov. 16, 2000).

CWB's practices are actionable, and if so, how to respond. Because the investigation involves practices that are allegedly "unreasonable or discriminatory" and that allegedly "burden or restrict U.S. commerce," the statute gives the USTR discretion to take retaliatory action if there is an affirmative determination of actionable practices.

2. *Wheat Gluten 301*

In December 2000, following the receipt of a petition requesting extension of the relief action currently in place on imports of wheat gluten, the International Trade Commission (ITC) instituted an investigation into whether U.S. safeguarded action continued to be necessary to prevent or remedy serious injury.[26] Section 301 of the Trade Act of 1974, in line with the WTO Agreement on Safeguards, permits the United States to impose import restrictions on a product when increased imports of that product are found to cause or threaten to cause "serious injury" to the domestic industry.

The Wheat Gluten 301 safeguard was also the subject of WTO activity in 2000.[27] A dispute settlement panel ruled that the ITC's methodology was faulty because it had not ruled out other factors that imports were the cause of injury. In December, an appellate body upheld the panel's ruling that the U.S. quota imposed on wheat gluten imports violated WTO rules but found other deficiencies in the ITC's injury analysis. One of the deficiencies was that the safeguard provided to Canada under the NAFTA was exempted while it was included in the injury determination. However, the appellate body reversed the panel on the issue of causation.

3. *Sunset Decisions*

To implement WTO agreements, U.S. section 301 was amended to provide for a five-year sunset review of anti-dumping and countervailing duty orders. Under those provisions, anti-dumping and countervailing duty orders must be revoked and suspended investigations must be terminated after five years unless revocation or termination would be likely to lead to a continuation or recurrence of dumping or a countervailing subsidy and material injury to the domestic industry. In the United States, the first batch of sunset reviews is ongoing, reviewing the so-called transition orders issued before January 1, 1995. Many of these orders have been revoked, although the majority of orders against Canada have not.

a. Brass Sheet and Strip

The anti-dumping order on brass sheet and strip continued.[28] At the ITC, Canada's imports were cumulated with those from Brazil, France, Germany, Italy, and Japan. The investigation showed that the cumulated import volume in 1984 of 148 million pounds was reduced to 8.1 million pounds by 1999. The ITC concluded that the orders were primarily responsible for this reduction.[29]

26. *See* Wheat Gluten; Extension of Action, 65 Fed. Reg. 80,455 (Dec. 21, 2000).

27. *See United States—Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, Report of the Appellate Body, WT/DS166/AB/R (Dec. 22, 2000).

28. *See* Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Brass Sheet and Strip From Brazil, Canada, France, Italy, Germany, and Japan, 65 Fed. Reg. 25,304 (May 1, 2000).

29. *See* Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, USITC Pub. No. 3290 (Apr. 2000), *at* www.usitc.gov/webpub.htm.

b. Color Picture Tubes

This order was revoked. While the Department of Commerce found that the anti-dumping duty orders should have been continued for color picture tubes, the ITC determined that revoking the order would not likely lead to continuation or recurrence of material injury to an industry in the United States. Commerce accordingly revoked the order.[30]

c. Magnesium

The anti-dumping duty order on pure magnesium and the countervailing duty orders on pure and alloy magnesium continued.[31] The Department of Commerce found that revoking the anti-dumping and countervailing duty orders would likely lead to the continuation or recurrence of dumping and a countervailing subsidy. Following the decision to continue the orders, the Gouvernment du Quebec filed a request for a NAFTA binational panel to review the ITC's methodology in upholding the countervailing duty order.[32]

d. Oil Country Tubular Goods

This order was revoked. The Department of Commerce determined in December 1999 that revoking the anti-dumping order on Oil Country Tubular Goods would likely lead to continuation or recurrence of dumping. However, the ITC decided to revoke. The ITC decision noted that it was not likely that revoking the order would lead to significant changes in volume or would damage an improved domestic industry. The Department of Commerce accordingly revoked the dumping order in August 2000.[33]

e. Corrosion-Resistant Carbon Steel Flat Products

The anti-dumping and countervailing duty orders on corrosion resistant carbon steel flat products (that is, galvanized steel) were continued. The Department of Commerce and the ITC respectively determined that revoking the order would be likely to lead to continuation or recurrence of dumping or subsidization and material injury to an industry in the United States.[34]

B. Investor-State Disputes under NAFTA Chapter 11

Chapter 11 of the NAFTA establishes a mechanism for private investors to sue state-owned institutions of the United States, Canada, and Mexico through international arbitration. Three claims were brought by U.S. investors in Canada.

1. *S.D. Myers*

In a case involving Canada's temporary ban on the export of PCB waste between November 1995 and February 1997, a tribunal established under Chapter 11 ruled that Canada

30. *See* Revocation of Antidumping Duty Orders: Color Picture Tubes From Canada, Japan, the Republic of Korea, and Singapore, 65 Fed. Reg. 20,799 (Apr. 18, 2000).

31. *See* Pure Magnesium From Canada; Final Results of Full Sunset Review, 65 Fed. Reg. 41,436 (July 5, 2000); Pure Magnesium and Alloy Magnesium From Canada; Final Results of Full Sunset Reviews of Countervailing Duty Order, 65 Fed. Reg. 41,444 (July 5, 2000).

32. *See* North American Free Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review, 65 Fed. Reg. 52,408 (Aug. 29, 2000).

33. *See* Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods From Canada and From Taiwan, 64 Fed. Reg. 67,248 (Dec. 1, 1999).

34. 65 Fed. Reg. 78,569 (2000).

had breached its obligations with respect to NAFTA article 1102 (national treatment) and article 1105 (minimum standard of treatment). The tribunal also ruled that Canada had not breached Chapter 11 with respect to articles 1106 and 1110 (performance requirements and expropriation). Since this ban was only temporary, the ruling did not require Canada to change its regulations on PCB or on its other environmental laws. The next stage of this arbitration will determine the amount of damages that S.D. Myers, the complainant, has suffered. S.D. Myers has claimed damages of $20 million or more.[35]

2. *Pope & Talbot, Inc.*

In a case involving Canada's implementation of the Softwood Lumber Agreement, a NAFTA tribunal ruled that Canada had met its obligations under NAFTA chapter 11 with respect to articles 1106 and 1110 (performance requirements and expropriation).[36] The next phase of the arbitration will be to examine the allegation that Canada failed to meet its obligations under articles 1105 and 1102 (minimum standard of treatment and national treatment). The allegations were brought by Pope & Talbot, Inc. of Portland, Oregon, an investor that owns Pope & Talbot, Ltd., which is a Canadian company with three sawmills in British Columbia that exports most of its production to the United States. The claim is for nearly $382 million.

3. *United Parcel Service*

In April 2000, United Parcel Service (UPS) submitted a formal dispute settlement claim against Canada for its allegedly failing to protect the company's investment through ineffective regulation of UPS's competitor, Canada Post.[37] UPS claimed that Canada Post was able to use its monopoly power (such as state-owned letter mailboxes, a state-run transportation network, and courier services partially paid for by stamp sales) unfairly to dominate the competition. The claim was made with respect to article 1102 (national treatment), which states that governments must accord to other NAFTA countries' investors no less favorable treatment than it accords its own investors. The claim is for $160 million.

C. U.S.-Canada Dispute Settlement at the WTO

1. *U.S. Subsidy Treatment of Export Restraints*

Additional jostling occurred in 2000 between the United States and Canada in a WTO dispute settlement. With one exception, the year's claims were brought by the United States against Canada. The exception was a challenge brought by Canada.[38] In September 2000, the WTO established a panel to rule on a challenge by Canada to the U.S. practice of treating export restraints on raw materials as subsidies to the downstream product for purposes of countervailing duty cases. The case had the potential to affect any future counter-

35. *See Myers*, *supra* note 11. *See also* Trade Negotiations and Agreements: Dispute Settlement, Dep't Foreign Affairs and Int'l Trade, *at* www.dfait-maeci.gc.ca/tna-nac/ (NAFTA Chapter 11, Investment) [hereinafter NAFTA Dispute Settlement].

36. *See* NAFTA Dispute Settlement, *supra* note 35. Pope & Talbot, Inc. v. Canada, NAFTA Trib. Arb. (decision of Sept. 6, 2000).

37. *See id.* United Parcel Service of America (UPS) v. Canada (decision of Apr. 19, 2000).

38. *See* United States – Measures Treating Export Restraints as Subsidies, complaint by Canada, WT/DS194/1 (May 19, 2000), at Overview of the State-of-Play of WTO Disputes, *at* www.wto.org/english/tratop_e/dispu_e/stplay_e.doc [hereinafter State of Play].

vailing duty cases brought against Canadian lumber exports if the U.S.-Canada Softwood Lumber Agreement had expired at the end of March 2000 without a successor agreement. Canada argued that the United States was prohibited from treating export restraints as subsidies by the WTO Agreement on Subsidies and Countervailing Measures (SCM agreement), which defines policies and practices that can be considered countervailing subsidies. Export restraints are not included in the definitions under article 1.1 of the agreement.

2. *Canadian Patents*

In September 2000, an appellate body upheld the ruling of a WTO panel in the U.S. challenge of Canada's term for patents, determining that Canada's patent term for certain pre-1989 patents was inconsistent with obligations under the TRIPs.[39] Under Canada's Patent Act, the term of protection of patents based on applications filed before October 1, 1989 is seventeen years from the date the patent is granted. The WTO panel determined that a minimum of twenty years from the date the patent application was filed had to be available. This decision only affected pre-October 1989 patents that had been granted within three years from the date that the application was filed. As of January 1, 2000, there were 66,936 patents that would be affected, 77 percent of which had terms of protection greater than nineteen years.

3. *Implementation of Dairy and Autos*

At the Dispute Settlement Body (DSB) meeting of November 19, 1999, Canada stated its intention to comply with the DSB's recommendations and rulings regarding measures that affected the importation of milk and the exportation of dairy products. On December 11, 2000, Canada, the United States, and New Zealand informed the DSB that they had agreed to extend the reasonable period for Canada to complete the last state of the implementation process until January 31, 2001.[40]

In a dispute brought by Japan and the European Union but affecting U.S. auto producers, a WTO appellate body ruled that Canada's auto-pact measures were inconsistent with WTO obligations under the General Agreement on Tariffs and Trade and the SCM agreement. Upon request from the complainants, an arbitrator determined that the reasonable period of time for Canada to implement the recommendations and rulings would expire on February 19, 2001.[41]

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39. *See* Canada - Term of Patent Protection, Report of the Panel, WT/DS170/R (May 5, 2001), *and* Report of the Appellate Body, WT/DS170/AB/R, Sept. 18, 2000), *at* Dispute Settlement: List of Panel and Appellate Body Reports, www.wto.org/english/tratop_e/dispu_e/distab_e.htm [hereinafter WTO Dispute Settlement].

40. *See* State of Play, *supra* note 38, Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products, WT/DS103/1.

41. *See* WTO Dispute Settlement, *supra* note 39, Canada – Certain Measures Affecting the Automotive Industry, Report of the Appellate Body, WT/DS139/AB/R, WT/DS142/AB/R (May 31, 2000), and Canada – Certain Measures Affecting the Automotive Industry, Arbitration Panel Report, WT/DS139/R, WT/DS142/R (Oct. 4, 2000).