

ANNEX I

Reservations for Existing Measures

Schedule of Canada – Explanatory Notes

1. Canada's Schedule to this Annex sets out, pursuant to Articles 8.9.1 and 9.6.1, Canada's existing measures that do not conform with some or all of the obligations imposed by:

- (a) Article 8.3 (National Treatment) or 9.2 (National Treatment);
- (b) Article 8.4 (Most-Favoured-Nation Treatment) or 9.3 (Most-Favoured-Nation Treatment);
- (c) Article 8.7 (Senior Management and Boards of Directors);
- (d) Article 8.8 (Performance Requirements);
- (e) Article 9.4 (Market Access); or
- (f) Article 9.5 (Local Presence).

2. Each reservation sets out the following elements:

- (a) **Sector** refers to the general sector in which the reservation is taken;
- (b) **Sub-sector** refers, where applicable, to the specific sector in which the reservation is taken;
- (c) **Industry Classification** refers, where applicable, to the activity covered by the reservation according to industry classification codes;
- (d) **Type of Reservation** specifies the obligation referred to in paragraph 1 for which a reservation is taken;

- (e) **Measures**¹ identifies the laws, regulations, or other measures, as qualified, where indicated, by the **Description** element, for which the reservation is taken. A measure cited in the **Measures** element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and
 - (ii) includes a subordinate measure adopted or maintained under the authority of and consistent with the measure; and
- (f) **Description** sets out the non-conforming aspects of the measure for which the reservation is taken.

3. In the interpretation of a reservation, all elements of the reservation, with the exception of Industry Classification, shall be considered. A reservation shall be interpreted in light of the relevant Articles of the Chapters against which the reservation is taken. To the extent that:

- (a) the **Measures** element is qualified by a liberalisation commitment from the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and
- (b) the **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless a discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Articles 8.9.1(a) and 9.6.1(a), and subject to Articles 8.9.1(c) and 9.6.1(c), the Articles of this Agreement specified in the **Type of Reservation** element of a reservation do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the **Measures** element of that reservation.

5. Where Canada maintains a measure that requires a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a reservation for that measure taken with respect to Article 9.2 (National Treatment), 9.3 (Most-Favoured-Nation Treatment), 9.4 (Market Access) or 9.5 (Local Presence) shall operate as a reservation with respect to Article 8.3 (National Treatment), 8.4 (Most-Favoured-Nation Treatment), or 8.8 (Performance Requirements) to the extent of that measure.

¹ For greater certainty, a change in the level of government at which a measure is administered or enforced does not, by itself, decrease the conformity of the measure with the obligations referred to in Articles 8.9.1 and 9.6.1.

6. For greater certainty, National Treatment (Article 9.2) and Local Presence (Article 9.5) are separate disciplines and a measure that is only inconsistent with Local Presence (Article 9.5) need not be reserved against National Treatment (Article 9.2).

7. For purposes of this Annex:

CPC means Central Product Classification (CPC) numbers as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No.77, Provisional Central Product Classification, 1991; and

SIC means Standard Industrial Classification numbers as set out in Statistics Canada, Standard Industrial Classification, fourth edition, 1980.

ANNEX I

Schedule of Canada

Sector:	All Sectors
Sub-sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 8.3) Senior Management and Boards of Directors (Article 8.7) Performance Requirements (Article 8.8)
Measures:	<i>Investment Canada Act</i> , R.S.C. 1985, c. 28 (1st Supp.) <i>Investment Canada Regulations</i> , SOR/85-611, as qualified by paragraphs 8 through 12 of the Description element
Description:	Investment 1. Under the <i>Investment Canada Act</i> , the following acquisitions of Canadian businesses by a non-Canadian are subject to review by the Director of Investments: (a) a direct acquisition of a Canadian business with assets of Can\$5 million or more; (b) an indirect acquisition of a Canadian business with assets of Can\$50 million or more; and

- (c) an indirect acquisition of a Canadian business with assets between Can\$5 million and Can\$50 million that represent more than 50 percent of the value of the assets of all the entities the control of which is being acquired, directly or indirectly, in the transaction in question.

2. For the purposes of this reservation:

“non-Canadian” means an individual, government or agency thereof or an entity that is not Canadian; and

“Canadian” means a Canadian citizen or permanent resident, a government in Canada or agency thereof, or a Canadian-controlled entity as described in the *Investment Canada Act*.

3. In addition, the specific acquisition or establishment of a new business in designated types of business activities relating to Canada’s cultural heritage or national identity, which are normally notifiable, may be subject to review if the Governor-in-Council authorises a review in the public interest.

4. An investment subject to review under the *Investment Canada Act* may not be implemented unless the Minister responsible for the *Investment Canada Act* advises the applicant that the investment is likely to be of net benefit to Canada. This determination is made in accordance with 6 factors described in the Act, summarised as follows:

- (a) the effect of the investment on the level and nature of economic activity in Canada, including the effect on employment, on the use of parts, components and services produced in Canada and on exports

- (b) the degree and significance of participation by Canadians in the investment;
- (c) the effect of the investment on productivity, industrial efficiency, technological development and product innovation in Canada;
- (d) the effect of the investment on competition within an industry or industries in Canada;
- (e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and
- (f) the contribution of the investment to Canada's ability to compete in world markets.

5. In making a net benefit determination, the Minister, through the Director of Investments, may review plans under which the applicant demonstrates the net benefit to Canada of the proposed acquisition. An applicant may also submit undertakings to the Minister in connection with a proposed acquisition that is the subject of review. In the event that an applicant fails to comply with an undertaking, the Minister may seek a court order directing compliance or any other remedy authorised under the *Investment Canada Act*.

6. A non-Canadian who establishes or acquires a Canadian business, other than those that are subject to review as described above must notify the Director of Investments.

7. The Director of Investments will review an “acquisition of control”, as defined in the *Investment Canada Act*, of a Canadian business by an investor of Korea if the value of the gross assets of the Canadian business is not less than the applicable threshold.

8. The higher review threshold, calculated as set out in paragraph 13, does not apply to an acquisition in the cultural businesses sector.

9. Notwithstanding the definition of “investor of a Party” in Article 8.45, only investors who are nationals of Korea or entities controlled by nationals of Korea as provided for in the *Investment Canada Act* may benefit from the higher review threshold.

10. An indirect “acquisition of control” of a Canadian business by an investor of Korea in a sector other than those sectors identified in paragraph 8 is not reviewable.

11. Notwithstanding Article 8.8 (Performance Requirements), Canada may impose requirements or enforce a commitment or undertaking in connection with the establishment, acquisition, expansion, conduct or operation of an investment of an investor of Korea or of a non-Party for the transfer of technology, production process or other proprietary knowledge to a national or enterprise, affiliated to the transferor, in Canada in connection with the review of an acquisition of an investment under the *Investment Canada Act*.

12. Except for requirements, commitments or undertakings relating to technology transfer as set out in paragraph 11 of this reservation, Article 8.8 (Performance Requirements) applies to requirements, commitments or undertakings imposed or enforced under the *Investment Canada Act*. Article 8.8 (Performance Requirements) shall not apply to any requirement, commitment or undertaking imposed or enforced in connection with a review under the *Investment Canada Act* to locate production, carry out research and development, employ or train workers, or construct or expand particular facilities, in Canada.

13. For an investor of Korea, the applicable threshold for review is Can\$354 million for 2014. In January of each subsequent year the amount will be determined by the Minister using the following formula:

$$\begin{array}{rcl} & \text{Annual Adjustment} = & \\ & \frac{\text{Current Nominal GDP at Market Prices}}{\text{Previous Year Nominal GDP at Market Prices}} & \times \text{amount determined for previous year} \end{array}$$

“Current Nominal GDP at Market Prices” means the average of the Nominal Gross Domestic Products at Market Prices for the most recent 4 consecutive quarters.

“Previous Year Nominal GDP at Market Prices” means the average of the Nominal Gross Domestic Products at Market Prices for the 4 consecutive quarters for the comparable period in the year preceding the year used in calculating the Current Nominal GDP at Market Prices.

For the above-mentioned purposes, the amounts will be rounded to the nearest million dollars.

Sector:	All Sectors
Sub-sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 8.3) Senior Management and Boards of Directors (Article 8.7)
Measures:	As set out in the Description element.
Description:	<p>Investment</p> <p>1. Canada or a province or territory, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets and on the ability of owners of such interests or assets to control a resulting enterprise by investors of Korea or of a non-party or their investments. With respect to such a sale or other disposition, Canada or a province or territory may adopt or maintain a measure relating to the nationality of senior management or members of the board of directors.</p> <p>2. For the purposes of this reservation:</p> <p>(a) a “measure” adopted or maintained after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes a limitation on the ownership of equity interests or assets or imposes a nationality requirement described in this reservation is an existing measure; and</p>

- (b) “state enterprise” means an enterprise owned or controlled through ownership interests by Canada or a province or territory, and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Sector:	All Sectors
Sub-sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 8.3)
Measures:	<i>Canada Business Corporations Act</i> , R.S.C. 1985, c. C-44 <i>Canada Business Corporations Regulations, 2001</i> , SOR/2001-512 <i>Canada Cooperatives Act</i> , S.C. 1998, c.1 <i>Canada Cooperatives Regulations</i> , SOR/99-256
Description:	Investment 1. A corporation may place constraints on the issue, transfer and ownership of shares in a federally incorporated corporation. The object of those constraints is to permit a corporation to meet Canadian ownership or control requirements, under certain laws set out in the <i>Canada Business Corporations Regulations, 2001</i> , in sectors where Canadian ownership or control is required as a condition to receive licences, permits, grants, payments or other benefits. In order to maintain certain Canadian ownership levels, a corporation is permitted to sell shareholders' shares without the consent of those shareholders, and to purchase its own shares on the open market.

2. The *Canada Cooperatives Act* provides that constraints may be placed on the issue or transfer of investment shares of a cooperative to a person not resident in Canada, to permit cooperatives to meet Canadian ownership requirements to obtain a licence to carry on a business, to become a publisher of a Canadian newspaper or periodical or to acquire investment shares of a financial intermediary and in sectors where Canadian ownership or control is a required condition to receive licences, permits, grants, payments and other benefits. Where the ownership or control of investment shares would adversely affect the ability of a cooperative to maintain a level of Canadian ownership or control, the *Canada Cooperatives Act* provides for the limitation of the number of investment shares that may be owned or for the prohibition of the ownership of investment shares.

3. For the purposes of this reservation Canadian means “Canadian” as defined in the *Canada Business Corporations Regulations, 2001* or in the *Canada Cooperatives Regulations*.

Sector:	All Sectors
Sub-sector:	
Industry Classification:	
Type of Reservation:	Senior Management and Boards of Directors (Article 8.7)
Measures:	<i>Canada Business Corporations Act</i> , R.S.C. 1985, c. C-44 <i>Canada Business Corporations Regulations</i> , 2001, SOR/2001-512 <i>Canada Cooperatives Act</i> , S.C. 1998, c.1 <i>Canada Cooperatives Regulations</i> , SOR/99-256 <i>Canada Corporations Act</i> , R.S.C. 1970, c. C-32 Special Acts of Parliament incorporating specific companies

Description:**Investment**

1. The *Canada Business Corporations Act* requires, for most federally incorporated corporations, that 25 percent of directors be resident Canadians and, if such corporations have fewer than four directors, at least one director must be a resident Canadian. As provided in the *Canada Business Corporations Regulations, 2001*, a simple majority of resident Canadian directors is required for corporations in the following sectors: uranium mining; book publishing or distribution; book sales, if the sale of books is the primary part of the corporation's business, and film or video distribution. Similarly, corporations that, by an Act of Parliament or Regulation, are individually subject to minimum Canadian ownership requirements are required to have a majority of resident Canadian directors.

2. For the purposes of the *Canada Business Corporations Act*, "resident Canadian" means an individual who is a Canadian citizen ordinarily resident in Canada, a citizen who is a member of a class set out in the *Canada Business Corporations Regulations, 2001*, or a permanent resident as defined in the *Immigration and Refugee Protection Act* other than a permanent resident who has been ordinarily resident in Canada for more than 1 year after becoming eligible to apply for Canadian citizenship.

3. In the case of a holding corporation, not more than 1/3 of the directors need be resident Canadians if the earnings in Canada of the holding corporation and its subsidiaries are less than 5 percent of the gross earnings of the holding corporation and its subsidiaries.

4. The *Canada Cooperatives Act* requires that not less than two-thirds of the directors be members of the cooperative. At least 25 percent of directors of a cooperative must be resident in Canada; if a cooperative has only three directors, at least one director must be resident in Canada.

5. For the purposes of the *Canada Cooperatives Act*, a resident of Canada is defined in the *Canada Cooperatives Regulations* as an individual who is a Canadian citizen and who is ordinarily resident in Canada; a Canadian citizen who is ordinarily resident in Canada and who is a member of a class set out in the *Canada Cooperatives Regulations*, or a permanent resident as defined in the *Immigration and Refugee Protection Act* other than a permanent resident who has been ordinarily resident in Canada for more than one year after becoming eligible to apply for Canadian citizenship.

6. Under Part IV of the *Canada Corporations Act*, a simple majority of the elected directors of a Special Act corporation must be resident in Canada and citizens of a Commonwealth country. This requirement applies to every joint stock company incorporated subsequent to 22 June 1869 by any Special Act of Parliament.

Sector:	All Sectors
Sub-sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 8.3)
Measures:	<p><i>Citizenship Act</i>, R.S.C. 1985, c. C-29</p> <p><i>Foreign Ownership of Land Regulations</i>, SOR/79-416</p>
Description:	<p>Investment</p> <p>1. The <i>Foreign Ownership of Land Regulations</i> are made pursuant to the <i>Citizenship Act</i> and the <i>Agricultural and Recreational Land Ownership Act</i>, RSA 1980, c. A-9. In Alberta, an ineligible person or foreign-owned or -controlled corporation may only hold an interest in controlled land consisting of a maximum of 2 parcels containing, in the aggregate, a maximum of 20 acres.</p> <p>2. For the purposes of this reservation:</p> <p>“ineligible person” means:</p> <p>(a) a natural person who is not a Canadian citizen or permanent resident;</p> <p>(b) a foreign government or foreign government agency; or</p> <p>(c) a corporation incorporated in a country other than Canada;</p>

“controlled land” means land in Alberta but does not include:

- (a) land of the Crown in right of Alberta;
- (b) land within a city, town, new town, village or summer village; and
- (c) mines or minerals.

Sector:	All Sectors
Sub-sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 8.3)
Measures:	<p><i>Air Canada Public Participation Act</i>, R.S.C. 1985, c. 35 (4th Supp.)</p> <p><i>Canadian Arsenal Limited Divestiture Authorization Act</i>, S.C. 1986, c. 20</p> <p><i>Eldorado Nuclear Limited Reorganization and Divestiture Act</i>, S.C. 1988, c. 41</p> <p><i>Nordion and Theratronics Divestiture Authorization Act</i>, S.C. 1990, c. 4</p>
Description:	<p>Investment</p> <p>1. A “non-resident” or “non-residents” may not own more than a specified percentage of the voting shares of the corporation to which each Act applies. For some companies the restrictions apply to individual shareholders, while for others the restrictions may apply in the aggregate. If there are limits on the percentage that an individual Canadian investor can own, these limits also apply to non-residents. The restrictions are as follows:</p> <ul style="list-style-type: none">• Air Canada: 25 percent in the aggregate;• Cameco Limited (formerly Eldorado Nuclear Limited): 15 percent per non-resident natural person, 25 percent in the aggregate;• Nordion International Inc.: 25 percent in the aggregate;

- Theratronics International Limited: 49 percent in the aggregate; and
- Canadian Arsenals Limited: 25 percent in the aggregate.

2. For the purposes of this reservation, “non-resident” includes:

- (a) a natural person who is not a Canadian citizen and not ordinarily resident in Canada;
- (b) a corporation incorporated, formed or otherwise organised outside Canada;
- (c) the government of a foreign State or a political subdivision of a government or foreign State , or a person empowered to perform a function or duty on behalf of such a government;
- (d) a corporation that is controlled directly or indirectly by a person or an entity referred to in subparagraphs (a) through (c);
- (e) a trust:
 - (i) established by a person or an entity referred to in subparagraphs (b) through (d), other than a trust for the administration of a pension fund for the benefit of natural persons the majority of whom are resident in Canada, or
 - (ii) in which a person or an entity referred to in subparagraphs (a) through (d) has more than 50 percent of the beneficial interest; and
- (f) a corporation that is controlled directly or indirectly by a trust referred to in subparagraph (e).

Sector:	All Sectors
Sub-sector:	
Industry Classification:	
Type of Reservation:	Local Presence (Article 9.5)
Measure:	<i>Export and Import Permits Act</i> , R.S.C. 1985, c. E-19
Description:	<p>Cross-Border Trade in Services</p> <p>Only a natural person ordinarily resident in Canada, an enterprise with its head office in Canada or a branch office in Canada of a foreign enterprise may apply for and be issued an import or export permit or transit authorisation certificate for a good or related service subject to controls under the <i>Export and Import Permits Act</i>.</p>

Sector:	Business Service Industries
Sub-sector:	Customs Brokers
Industry Classification:	SIC 7794 Customs Brokers CPC 749 Other supporting and auxiliary transport services
Type of Reservation:	National Treatment (Article 9.2) Local Presence (Article 9.5) Senior Management and Boards of Directors (Article 8.7)
Measures:	<i>Customs Act</i> , R.S.C. 1985, c. 1 (2 nd Supp.) <i>Customs Brokers Licensing Regulations</i> , SOR/86-1067
Description:	Cross-Border Trade in Services and Investment To be a licensed customs broker in Canada: (a) a natural person must be a Canadian national; (b) a corporation must be incorporated in Canada with a majority of its directors being Canadian nationals; and (c) a partnership must be composed of persons who are Canadian nationals, or corporations incorporated in Canada with a majority of their directors being Canadian nationals.

Sector:	Business Service Industries
Sub-sector:	Duty Free Shops
Industry Classification:	SIC 6599 Other Retail Stores, Not Elsewhere Classified (limited to duty free shops) CPC 631, 632 (limited to duty-free shops)
Type of Reservation:	National Treatment (Articles 8.3 and 9.2) Local Presence (Article 9.5)
Measures:	<i>Customs Act</i> , R.S.C. 1985, c. 1 (2nd Supp.) <i>Duty Free Shop Regulations</i> , SOR/86-1072
Description:	<p>Cross-Border Trade in Services and Investment</p> <ol style="list-style-type: none"> 1. To be a licensed duty free shop operator at a land border crossing in Canada, a natural person must: <ol style="list-style-type: none"> (a) be a Canadian national; (b) be of good character; (c) be principally resident in Canada; and (d) have resided in Canada for at least 183 days of the year preceding the year of application for the licence. 2. To be a licensed duty free shop operator at a land border crossing in Canada, a corporation must: <ol style="list-style-type: none"> (a) be incorporated in Canada; and

- (b) have all of its shares beneficially owned by Canadian nationals who meet the requirements of paragraph 1.

Sector:	Business Service Industries
Sub-sector:	Examination Services relating to the Export and Import of Cultural Property
Industry Classification:	<p>SIC 999 Other Services, Not Elsewhere Classified (limited to cultural property examination services)</p> <p>CPC 96321 Museum services except for historical sites and buildings (limited to cultural property examination services)</p> <p>CPC 87909 Other business services n.e.c. (limited to cultural property examination services)</p>
Type of Reservation:	Local Presence (Article 9.5)
Measure:	<i>Cultural Property Export and Import Act</i> , R.S.C. 1985, c. C-51
Description:	<p>Cross-Border Trade in Services</p> <p>1. Only a resident of Canada or an institution in Canada may be designated as an expert examiner of cultural property for the purposes of the <i>Cultural Property Export and Import Act</i>.</p> <p>2. For the purposes of this reservation:</p> <p>“institution” means an entity that is publicly owned and operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them;</p> <p>“resident of Canada” means a natural person who is ordinarily resident in Canada, or a corporation that has its head office in Canada or maintains an establishment in Canada to which employees employed in connection with the business of the corporation ordinarily report for work.</p>

Sector:	Business Service Industries
Sub-sector:	Patent Agents
Industry Classification:	SIC 999 Other Services, Not Elsewhere Classified (limited to patent agency) CPC 8921 Patents
Type of Reservation:	National Treatment (Article 9.2) Local Presence (Article 9.5)
Measures:	<i>Patent Act</i> , R.S.C. 1985, c. P-4 <i>Patent Rules</i> , SOR/96-423
Description:	Cross-Border Trade in Services To represent a person in the prosecution of a patent application or in other business before the Patent Office, a patent agent must be resident in Canada and registered by the Patent Office.

Sector:	Business Service Industries
Sub-sector:	Trade-mark Agents
Industry Classification:	SIC 999 Other Services, Not Elsewhere Classified (limited to trade-mark agency) CPC 8922 Trademarks
Type of Reservation:	National Treatment (Article 9.2) Local Presence (Article 9.5)
Measures:	<i>Trade-marks Act</i> , R.S.C. 1985, c. T-13 <i>Trade-marks Regulations</i> , SOR/96-195; SOR/2007-91, s.1
Description:	Cross-Border Trade in Services To represent a person in the prosecution of an application for a trade-mark or in other business before the Trade-Mark Office, a trade-mark agent must be resident in Canada and registered by the Trade-marks Office.

Sector:	Energy
Sub-sector:	Oil and Gas
Industry Classification:	SIC 071 Crude Petroleum and Natural Gas Industries CPC 883 Services incidental to mining
Type of Reservation:	National Treatment (Article 8.3)
Measures:	<i>Canada Petroleum Resources Act</i> , R.S.C. 1985, c. 36 (2 nd Supp.) <i>Territorial Lands Act</i> , R.S.C. 1985, c. T-7 <i>Federal Real Property and Federal Immovables Act</i> , S.C. 1991, c. 50 <i>Canada-Newfoundland Atlantic Accord Implementation Act</i> , S.C. 1987, c. 3 <i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i> , S.C. 1988, c. 28
Description:	Investment 1. This reservation applies to production licences issued for “frontier lands” and “offshore areas” (areas not under provincial jurisdiction) as defined in the applicable measures. 2. A person who holds an oil and gas production licence or shares therein must be a corporation incorporated in Canada.

Sector:	Energy
Sub-sector:	Oil and Gas
Industry Classification:	SIC 071 Crude Petroleum and Natural Gas Industries CPC 883 Services incidental to mining
Type of Reservation:	Performance Requirements (Article 8.8) Local Presence (Article 9.5)
Measures:	<i>Canada Oil and Gas Production and Conservation Act</i> , R.S.C. 1985, c. O-7, as amended by the <i>Canada Oil and Gas Operations Act</i> , S.C. 1992, c. 35 <i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i> , S.C. 1988, c. 28 <i>Canada-Newfoundland Atlantic Accord Implementation Act</i> , S.C. 1987, c. 3 Measures implementing the Canada-Yukon Oil and Gas Accord, including the <i>Canada-Yukon Oil and Gas Accord Implementation Act</i> , 1998, c.5, s. 20 and the <i>Oil and Gas Act</i> , RSY 2002, c. 162 Measures implementing the Northwest Territories Oil and Gas Accord, including implementing measures that apply to or are adopted by Nunavut as the successor territories to the former Northwest Territories Measures implementing the Canada-Quebec Gulf of St. Lawrence Petroleum Resources Accord

Description:

Cross-Border Trade in Services and Investment

1. Under the *Canada Oil and Gas Operations Act*, a “benefits plan” must be approved by the Minister in order to be authorised to proceed with an oil and gas development project.
2. A “benefits plan” is a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in proposed work or activity referred to in the benefits plan.
3. The benefits plan contemplated by the *Canada Oil and Gas Operations Act* permits the Minister to impose on the applicant an additional requirement to ensure that disadvantaged individuals or groups have access to training and employment opportunities or can participate in the supply of goods and services used in proposed work referred to in the benefits plan.
4. Provisions continuing those set out in the *Canada Oil and Gas Operations Act* are included in laws which implement the *Canada-Yukon Oil and Gas Accord*.
5. Provisions continuing those set out in the *Canada Oil and Gas Operations Act* will be included in laws or regulations to implement the Northwest Territories Oil and Gas Accord and the Canada-Quebec Gulf of St. Lawrence Petroleum Resources Accord. For the purposes of this reservation these accords shall be deemed, once concluded, to be existing measures.

6. The *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* and the *Canada-Newfoundland Atlantic Accord Implementation Act* have the same requirement for a benefits plan but also require that the benefits plan ensures that:

- (a) the corporation or other body submitting the plan establishes in the applicable province an office where appropriate levels of decision-making are to take place, prior to carrying out work or an activity in the offshore area;
- (b) expenditures be made for research and development to be carried out in the province, and for education and training to be provided in the province; and
- (c) first consideration be given to goods produced or services provided from within the province, where those goods or services are competitive in terms of fair market price, quality and delivery.

7. The Boards administering the benefits plan under these Acts may also require that the plan include provisions to ensure that disadvantaged individuals or groups, or corporations owned or cooperatives operated by them, participate in the supply of goods and services used in proposed work or activity referred to in the plan.

8. In addition, Canada may impose a requirement or enforce a commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a person of Canada in connection with the approval of development projects under the applicable Acts.

Sector:	Energy
Sub-sector:	Oil and Gas
Industry Classification:	SIC 071 Crude Petroleum and Natural Gas Industries CPC 883 Services incidental to mining
Type of Reservation:	Performance Requirements (Article 8.8)
Measures:	<i>Canada-Newfoundland Atlantic Accord Implementation Act</i> , S.C. 1987, c. 3 <i>Hibernia Development Project Act</i> , S.C. 1990, c. 41
Description:	Investment 1. Under the <i>Hibernia Development Project Act</i> , Canada and the Hibernia Project Owners may enter into agreements. Those agreements may require the Project Owners to undertake to perform certain work in Canada and Newfoundland and to use their best efforts to achieve specific Canadian and Newfoundland target levels in relation to the provisions of a “benefits plan” required under the <i>Canada-Newfoundland Atlantic Accord Implementation Act</i> . “Benefits plans” are further described in the Schedule of Canada, Annex I at pages I-CA-25-27. 2. In addition, Canada may impose in connection with the Hibernia project a requirement or enforce a commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada.

Sector:	Energy
Sub-sector:	Uranium
Industry Classification:	SIC 0616 Uranium Mines CPC 883 Services incidental to mining
Type of Reservation:	National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4)
Measures:	<i>Investment Canada Act</i> , R.S.C. 1985, c. 28 (1 st Supp.) <i>Investment Canada Regulations</i> , SOR/85-611 <i>Non-Resident Ownership Policy in the Uranium Mining Sector</i> , 1987
Description:	Investment 1. Ownership by “non-Canadians”, as defined in the <i>Investment Canada Act</i> , of a uranium mining property is limited to 49 percent at the stage of first production. Exceptions to this limit may be permitted if it can be established that the property is in fact “Canadian controlled” as defined in the <i>Investment Canada Act</i> . 2. Exemptions from the policy are permitted, subject to approval of the Governor-in-Council, only in cases where Canadian participants in the ownership of the property are not available. Investments in properties by non-Canadians, made prior to December 23, 1987 and that are beyond the permitted ownership level, may remain in place. An increase in non-Canadian ownership is not permitted.

Sector:	Professional, Technical and Specialized Services
Sub-sector:	Professional Services
Industry Classification:	CPC 862 Auditing Services
Type of Reservation:	National Treatment (Article 9.2) Most-Favoured-Nation Treatment (Article 9.3) Local Presence (Article 9.5)
Measures:	<i>Bank Act</i> , S.C. 1991, c. 46 <i>Insurance Companies Act</i> , S.C. 1991, c. 47 <i>Cooperative Credit Associations Act</i> , S.C. 1991, c. 48 <i>Trust and Loan Companies Act</i> , S.C. 1991, c. 45
Description:	Cross-Border Trade in Services 1. Banks are required to have a firm of accountants to be auditors of the bank. A firm of accountants must be qualified as set out in the <i>Bank Act</i> . Among the qualifications required is that two or more members of the firm must be ordinarily resident in Canada and that the member of the firm jointly designated by the firm and the bank to conduct the audit must be ordinarily resident in Canada.

2. An insurance company, a cooperative credit association, and a trust or loan company require an auditor who can either be a natural person or a firm of accountants. An auditor of such an institution must be qualified as set out in the *Insurance Companies Act*, the *Cooperative Credit Associations Act* or the *Trust and Loan Companies Act*, as the case may be. In the case where a natural person is appointed to be the auditor of such a financial institution, among the qualifications required is that the person must be ordinarily resident in Canada. In the case where a firm of accountants is appointed to be the auditor of such a financial institution, the member of the firm jointly designated by the firm and the financial institution to conduct the audit must be ordinarily resident in Canada.

Sector:	Transportation
Sub-sector:	Air Transportation
Industry Classification:	CPC 73 Air Transport Services (passenger and freight) Specialty air services, as set out in the Description section below CPC 7512 Courier Services
Type of Reservation:	National Treatment (Article 9.3)
Measures:	<i>Canada Transportation Act</i> , S.C. 1996, c. 10 <i>Aeronautics Act</i> , R.S.C. 1985, c. A-2 <i>Canadian Aviation Regulations</i> , SOR/96-433: Part II, Subpart 2 “Aircraft Markings & Registration”; Part IV “Personnel Licensing & Training”; and Part VII “Commercial Air Services”.
Description:	Investment The <i>Canada Transportation Act</i> , in Section 55, defines “Canadian” in the following manner: “... ‘Canadian’ means a Canadian citizen or a permanent resident within the meaning of the <i>Immigration and Refugee Protection Act</i> , a government in Canada or an agent of such a government or a corporation or other entity that is incorporated or formed under the laws of Canada or a province or territory, that is controlled in fact by Canadians and of which at least seventy-five per cent, or such lesser percentage as the Governor in Council may by regulation specify, of the voting interests are owned and controlled by Canadians...”

Regulations made under the *Aeronautics Act* incorporate by reference the definition of “Canadian” found in the *Canada Transportation Act*. These Regulations require that a Canadian operator of commercial air services operate Canadian-registered aircraft. These regulations require an operator to be Canadian in order to obtain a Canadian Air Operator Certificate and to qualify to register aircraft as “Canadian”.

Only “Canadians” may provide the following commercial air transportation services:

- (a) “domestic services” (air services between points, or from and to the same point, in the territory of Canada, or between a point in the territory of Canada and a point not in the territory of another country);
- (b) “scheduled international services” (scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under existing or future air services agreements;
- (c) “non-scheduled international services” (non-scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under the *Canada Transportation Act*;

- (d) “specialty air services” (include, but are not limited to: aerial mapping, aerial surveying, aerial photography, forest fire management, fire-fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, aerial sightseeing and aerial crop spraying).

No foreign individual is qualified to be the registered owner of a Canadian-registered aircraft.

Further to the *Canadian Aviation Regulations*, a corporation incorporated in Canada, but that does not meet the Canadian ownership and control requirements, may only register an aircraft for private use where a significant majority of use of the aircraft (at least 60 percent) is in Canada.

The *Canadian Aviation Regulations* also have the effect of limiting foreign-registered private aircraft registered to “non-Canadian” corporations to be present in Canada for a maximum of 90 days per twelve-month period. Such foreign-registered private aircraft would be limited to private use, as would be the case for Canadian-registered aircraft requiring a private operating certificate.

Sector:	Transportation
Sub-sector:	Air Transportation
Industry Classification:	Not CPC defined. Aircraft repair and maintenance services , as defined in Article 9.12 (Definitions)
Type of Reservation:	Local Presence (Article 9.5)
Measures:	<i>Aeronautics Act</i> , R.S.C. 1985, c. A-2 <i>Canadian Aviation Regulations</i> , SOR/96-433: Part IV “Personnel Licensing & Training”; Part V “Airworthiness”; Part VI “General Operating & Flight Rules”; and Part VII “Commercial Air Services”.
Description:	Cross-Border Trade in Services Aircraft and other aeronautical product repair, overhaul or maintenance activities required to maintain the airworthiness of Canadian-registered aircraft and other aeronautical products must be performed by persons meeting Canadian aviation regulatory requirements (that is, approved maintenance organisations and aircraft maintenance engineers). Certifications are not provided for persons located outside Canada, except sub-organisations of approved maintenance organisations that are themselves located in Canada.

Sector:	Transportation
Sub-sector:	Land Transportation
Industry Classification:	<p>SIC 456 Truck Transport Industries</p> <p>SIC 4572 Interurban and Rural Transit Systems Industry</p> <p>SIC 4573 School Bus Operations Industry</p> <p>SIC 4574 Charter and Sightseeing Bus Services Industry</p> <p>CPC 7121 Other scheduled passenger transportation by land other than by railway</p> <p>CPC 7122 Other non-scheduled passenger transportation by land other than by railway</p> <p>CPC 7123 Freight transportation by land other than by railway</p> <p>CPC 7512 Courier Services</p>
Type of Reservation:	<p>National Treatment (Article 9.2)</p> <p>Local Presence (Article 9.5)</p>
Measures:	<p><i>Motor Vehicle Transport Act</i>, R.S.C. 1985, c. 29 (3rd Supp.), as amended by S.C. 2001, c. 13</p> <p><i>Canada Transportation Act</i>, S.C. 1996, c. 10</p> <p><i>Customs Tariff</i>, 1997, c. 36</p>
Description:	<p>Cross-Border Trade in Services</p> <p>Only persons of Canada using Canadian-registered and either Canadian built or duty-paid trucks or buses, may provide truck or bus services between points in the territory of Canada.</p>

Sector:	Transportation
Sub-sector:	Water Transportation
Industry Classification:	SIC 4541 Freight and Passenger Water Transport Industry SIC 4542 Ferry Industry SIC 4543 Marine Towing Industry SIC 4549 Other Water Transport Industries SIC 4553 Marine Salvage Industry SIC 4559 Other Service Industries Incidental to Water Transport CPC 721 Transport services (passenger and freight) by sea-going vessels CPC 722 Transport services (passenger and freight) by non-sea-going vessels CPC 745 Supporting services for water transport CPC 5133/5223 Construction for waterways, harbours, dams and other water works Any other commercial marine activity undertaken from a vessel
Type of Reservation:	National Treatment (Articles 8.3 and 9.2) Local Presence (Article 9.5)
Measure:	<i>Canada Shipping Act, 2001</i> , S.C. 2001, c. 26

Description:

Cross-Border Trade in Services and Investment

1. To register a vessel in Canada, the owner of that vessel or the person who has exclusive possession of that vessel must be:

- (a) a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*;
- (b) a corporation incorporated under the domestic law of Canada or a province or territory; or
- (c) when the vessel is not already registered in another country, a corporation incorporated under the laws of a country other than Canada if one of the following is acting with respect to all matters relating to the vessel, namely:
 - (i) a subsidiary of the corporation that is incorporated under the domestic law of Canada or a province or territory,
 - (ii) an employee or director in Canada of a branch office of the corporation that is carrying on business in Canada, or
 - (iii) a ship management company incorporated under the domestic law of Canada or a province or territory.

2. A vessel registered in a foreign country which has been bareboat chartered may be listed in Canada for the duration of the charter while the vessel's registration is suspended in its country of registry, if the charterer is:

- (a) a Canadian citizen or permanent resident as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*; or
- (b) a corporation incorporated under the domestic law of Canada or a province or territory.

Sector:	Transportation
Sub-sector:	Water Transportation
Industry Classification:	<p>SIC 4541 Freight and Passenger Water Transport Industry</p> <p>SIC 4542 Ferry Industry</p> <p>SIC 4543 Marine Towing Industry</p> <p>SIC 4549 Other Water Transport Industries</p> <p>SIC 4553 Marine Salvage Industry</p> <p>SIC 4554 Piloting Service, Water Transport Industry</p> <p>SIC 4559 Other Service Industries Incidental to Water Transport</p> <p>CPC 721 Transport services by sea-going vessels</p> <p>CPC 722 Transport services by non-sea-going vessels</p> <p>CPC 745 Supporting services for water transport</p> <p>CPC 5133/5223 Construction for waterways, harbours, dams and other water works</p> <p>Any other commercial marine activity undertaken from a vessel</p>
Type of Reservation:	<p>National Treatment (Article 9.2)</p> <p>Local Presence (Article 9.5)</p>
Measures:	<p><i>Canada Shipping Act, 2001</i>, S.C. 2001, c. 26</p> <p><i>Marine Personnel Regulations</i>, SOR/2007-115</p>

Description:

Cross-Border Trade in Services

Masters, mates, engineers and certain other seafarers must hold certificates granted by the Minister of Transport as a requirement of service on Canadian-registered vessels. Such certificates may be granted only to Canadian citizens or permanent residents.

Sector:	Transportation
Sub-sector:	Water Transportation
Industry Classification:	SIC 4554 Piloting Service, Water Transport Industry CPC 74520 Pilotage and berthing services
Type of Reservation:	National Treatment (Article 9.2) Local Presence (Article 9.5)
Measures:	<i>Pilotage Act</i> , R.S.C. 1985, c. P-14 <i>General Pilotage Regulations</i> , SOR/2000-132 <i>Atlantic Pilotage Authority Regulations</i> , C.R.C., c. 1264 <i>Laurentian Pilotage Authority Regulations</i> , C.R.C., c. 1268 <i>Great Lakes Pilotage Regulations</i> , C.R.C., c. 1266 <i>Pacific Pilotage Regulations</i> , C.R.C., c. 1270
Description:	Cross-Border Trade in Services Subject to the Schedule of Canada, Annex II, at pages II-CA-12-13, a licence or a pilotage certificate issued by the relevant regional Pilotage Authority is required to provide pilotage services in the compulsory pilotage waters of the territory of Canada. Only a Canadian citizens or permanent residents may obtain such a licence or pilotage certificate. A permanent resident of Canada who has been issued a pilot’s licence or pilotage certificate must become a Canadian citizen within 5 years of receipt of such licence or pilotage certificate in order to retain it.

Sector:	Transportation
Sub-sector:	Water Transportation
Industry Classification:	SIC 454 Water Transport Industry CPC 721 Transportation services by sea-going vessels CPC 722 Transportation services by non-sea-going vessels
Type of Reservation:	Local Presence (Article 9.5)
Measure:	<i>Shipping Conferences Exemption Act, 1987</i> , R.S.C. 1985, c. 17 (3 rd Supp.)
Description:	Cross-Border Trade in Services Members of a shipping conference must maintain jointly an office or agency in the region of Canada where they operate. A shipping conference is an association of ocean carriers that has the purpose or effect of regulating rates and conditions for the transportation by those carriers of goods by water.

Sector:	Transportation
Sub-sector:	Water Transportation
Industry Classification:	SIC 4541 Freight and Passenger Water Transport Industry SIC 4542 Ferry Industry SIC 4543 Marine Towing Industry CPC 721 Transportation services by sea-going vessels CPC 722 Transportation services by non-sea-going vessels
Type of Reservation:	Most-Favoured-Nation Treatment (Article 9.3)
Measure:	<i>Coasting Trade Act</i> , S.C. 1992, c. 31
Description:	Cross-Border Trade in Services The prohibitions under the <i>Coasting Trade Act</i> , set out in Schedule of Canada, Annex II, at pages II-CA-9-11, do not apply to a vessel that is owned by the U.S. Government when used solely for the purpose of transporting goods owned by the U.S. Government from the territory of Canada to supply Distant Early Warning sites.

Sector:	Communications
Sub-sector:	Telecommunications Transport Networks and Services Radiocommunication
Industry Classification:	CPC 752 Telecommunications Services
Type of Reservation:	National Treatment (Article 8.3) Senior Management and Boards of Directors (Article 8.7)
Measures:	<i>Telecommunications Act</i> , S.C. 1993, c. 38 <i>Canadian Telecommunications Common Carrier Ownership and Control Regulations</i> , SOR/94-667 <i>Radiocommunication Act</i> , R.S.C., 1985, c. R-2 <i>Radiocommunication Regulations</i> , SOR/96-484
Description:	Investment 1. Canada reserves the right to adopt or maintain a measure: (a) limiting foreign investment in facilities-based telecommunications service suppliers, provided that the measure adopted or maintained by Canada does not limit foreign investment to less than a cumulative total of 46.7 percent of voting interest, based on 20 percent direct investment and 33.3 percent indirect investment; (b) requiring that facilities-based telecommunications service suppliers be controlled in fact by a Canadian; (c) requiring that at least 80 percent of the members of the board of directors of facilities-based telecommunications service suppliers be Canadian; and

2. The following exceptions apply to this reservation:
- (a) foreign investment is allowed up to 100 percent for suppliers conducting operations under an international submarine cable licence;
 - (b) mobile satellite systems of a foreign service supplier may be used by a Canadian service provider to provide services in Canada;
 - (c) fixed satellite systems of a foreign service supplier may be used to provide services between points in Canada and all points outside Canada;
 - (d) foreign investment is allowed up to 100 percent for suppliers conducting operations under a satellite authorisation; and
 - (e) foreign investment is allowed up to 100 percent for facilities-based telecommunications service suppliers that have revenues, including those of its affiliates, from the provision of telecommunications services in Canada representing less than 10 percent of the total telecommunications services annual revenues in Canada.

Sector:	All Sectors
Sub-sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Articles 8.3 and 9.2) Most-Favoured Nation Treatment (Articles 8.4 and 9.3) Local Presence (Article 9.5) Senior Management and Boards of Directors (Article 8.7) Performance Requirements (Article 8.8)
Measure:	All existing non-conforming measures of all provinces and territories.
Description:	Cross-Border Trade in Services and Investment For purposes of transparency only, Appendix I-A sets out an illustrative, non-binding list of non-conforming measures maintained at the sub-national level of government.

Appendix I-A

Illustrative List of Canada’s Sub-National Non-conforming Measures¹

Sector	Non-conforming measure by jurisdiction
Accounting, auditing and bookkeeping services	<u>Residency</u> : Saskatchewan, British Columbia, Ontario, Nova Scotia, Quebec, Prince Edward Island, Newfoundland & Labrador, Manitoba, Alberta <u>Local Presence</u> : Saskatchewan, Newfoundland & Labrador, Manitoba, Ontario
Architectural services	<u>Residency</u> : Nova Scotia, Newfoundland & Labrador <u>Corporate Form</u> : Prince Edward Island requires non-resident firms to maintain a higher percentage of practitioners in a partnership
Engineering services and integrated engineering services	<u>Residency</u> : Saskatchewan, British Columbia, Ontario, New Brunswick, Alberta
Urban planning and landscape architecture services	<u>Residency</u> : Newfoundland & Labrador, Saskatchewan
Real estate services	<u>Residency</u> : Alberta, Quebec, Yukon, Manitoba, British Columbia, Nova Scotia, Prince Edward Island, Newfoundland & Labrador <u>Local Presence</u> : Saskatchewan, Ontario, Nova Scotia, Prince Edward Island, Newfoundland & Labrador, Alberta
Management consulting services	<u>Residency</u> : Newfoundland & Labrador

¹ This document is provided for transparency purposes only, and is neither exhaustive nor binding. The information contained in this document is drawn from Canada’s May 2005 Revised Conditional Offer on Services (TN/S/O/CAN/Rev.1, 23 May 2005).

Sector	Non-conforming measure by jurisdiction
Toll refining	<u>Performance Requirement</u> : Ontario requires treatment or refinement of base metals in Canada
Placement and supply services of personnel	<u>Local Presence</u> : Ontario
Investigation and security services	<u>Senior Managers and Board of Directors</u> : Newfoundland & Labrador <u>Local Presence</u> : Ontario
Related scientific and technical consulting services	<u>Residency</u> : Ontario, British Columbia, Newfoundland & Labrador <u>Citizenship</u> : British Columbia, Manitoba. <u>Local Presence</u> : Saskatchewan <u>Training Requirement</u> : Ontario requires training to be completed in province for accreditation for land surveyors
Other business services	<u>Residency</u> : Saskatchewan, Ontario, Nova Scotia <u>Local Presence</u> : Saskatchewan, Newfoundland & Labrador, Nova Scotia, Prince Edward Island
Distribution services	<u>Citizenship</u> : Quebec. <u>Local Presence</u> : Quebec, Saskatchewan, Newfoundland & Labrador, Nova Scotia, British Columbia, Ontario <u>Economic Needs Test</u> : Prince Edward Island
Tourism and travel related services	<u>Residency</u> : Alberta, British Columbia, Ontario

Sector	Non-conforming measure by jurisdiction
	<u>Residency/Citizenship</u> : Alberta, Saskatchewan, Nova Scotia, Newfoundland & Labrador, Quebec <u>Local Presence</u> : Ontario, Quebec <u>Taxation</u> : Ontario requires non-residents to pay 20 percent land transfer tax
Road transport services (Passenger transportation)	<u>Economic Need Test</u> : British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland & Labrador, Nunavut, Northwest Territories
Road transport services (Freight transportation)	<u>Local Presence</u> : Quebec <u>Economic Need Test</u> : Saskatchewan, Newfoundland & Labrador