

Annex I – Colombia

Sector:

All Sectors

Subsector:

Industry Classification:

Type of Reservation:

Local Presence (Article 905)

Measures:

Código de Comercio, 1971 Art. 469, 471 and 474

Description:

Cross-Border Trade in Services

A juridical person organized under the laws of another country, and with its principal domicile in another country, must establish as a branch in Colombia in order to develop a concession obtained from the Colombian State.

Sector:

All Sector

Subsector:

Industry Classification:

Type of Reservation:

National Treatment (Article 902) Performance Requirements (Article 807)

Measures:

Código Sustantivo del Trabajo, 1993 Art. 74 and 75

Description:

Cross-Border Trade in Services and Investment

Any employer that has more than 10 workers shall employ Colombians as part of its ordinary workforce in a proportion of no less than 90 per cent of its ordinary workers and of no less than 80 per cent of its skilled, specialized or managerial personnel or persons in a position of trust.

At the employer's request, these proportions may be reduced when it involves essential and strictly technical workers and only for the time necessary to train Colombian workers.

Sector:

All Sector

Subsector:**Industry Classification:****Type of Reservation:**

National Treatment (Article 803)

Measures:

Decreto 2080 of 2000, Art. 26 and 27

Description:**Investment**

Foreign investors may make portfolio investments in securities in Colombia only through a foreign capital investment fund (fondo de inversión de capital extranjero).

Sector:

All Sectors

Subsector:**Industry Classification:****Type of Reservation:**

National Treatment (Article 803)

Senior Management and Boards of Directors (Article 808)

Measures:

As set out in the **Description** element, including Articles 3, 11 of Ley 226 of 1995.

Description:**Investment**

Colombia, 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 any resulting enterprise, by investors of Canada or of a non-Party or their investments. With respect to such a sale or other disposition, Colombia may adopt or maintain any measure relating to the nationality of senior management or members of the board of directors.

Relevant existing legislation concerning this non-conforming measure includes Ley 226 de 1995. In this respect, if Colombia decides to sell all or part of its interest in an enterprise to a person other than a Colombian state enterprise or other Colombian government entity, it shall

first offer such interest exclusively, and under the conditions established in article 11 of Ley 226 de 1995, to:

1. current, pensioned, and former employees (other than former employees terminated for just cause) of the enterprise and of other enterprises owned or controlled by the enterprise;
2. associations of employees and former employees of the enterprise;
3. employee unions;
4. federations and confederations of trade unions;
5. employee funds (“fondos de empleados”);
6. pension and severance funds; and
7. cooperative entities

However, once such interest has been transferred or sold, Colombia does not reserve the right to control any subsequent transfer or other disposal of such interest.

For purposes of this reservation:

- a. any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this reservation shall be deemed to be an existing measure; and
- b. “state enterprise” means an enterprise owned or controlled through ownership interests by Colombia 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

Subsector:

Industry Classification:

Type of Reservation:

Local Presence (Article 905)

Measures:

Ley 915 of 2004, Art. 5

Description:

Cross-Border Trade in Services

Only natural or juridical persons with their main office in the free port of San Andrés, Providencia, and Santa Catalina may supply services in this region.

For greater certainty, this measure does not affect the cross-border supply of services as defined in Article 913.

Sector:

Business services

Subsector:

Professional Services

Industry Classification:

CPC 862: Accounting, auditing and bookkeeping services

Type of Reservation:

National Treatment (Article 902) Local Presence (Article 905)

Measures:

Ley 43 of 1990, Art. 3 paragraph 1

Resolución No. 160 of 2004, Art. 2 paragraph, and Art. 6

Description:

Cross-Border Trade in Services

Only persons registered with the Junta Central de Contadores may practice as accountants. A foreign national must have been domiciled continuously in Colombia for at least three years prior to the registration request and demonstrate accounting experience carried out in Colombian territory for a period of not less than one year. This experience may be acquired while engaging in public accounting studies or thereafter.

For natural persons, the term "domiciled" means being a resident of Colombia and having the intention of remaining in Colombia.

Sector:

Business services

Subsector:

Research and Development Services

Industry Classification:

CPC 851: Research and Development Services on Natural Sciences

Type of Reservation:

National Treatment (Article 902)

Measures:

Decreto 309 of 2000, Art. 7

Description:**Cross-Border Trade in Services**

Any natural or juridical foreign person planning to undertake scientific research on biological diversity in the territory of Colombia must involve one or more Colombian researchers in the research or analysis of the results of such research.

For greater certainty, this measure does not require or prohibit foreign persons and Colombian researchers from reaching an agreement with respect to the rights in relation to the scientific research or analysis.

Sector:

Business Services

Fishing

Subsector:

Other Business Services

Fishing, aquaculture and service activities incidental to fishing

Industry Classification:

CPC 882: Services incidental to fishing

ISIC Rev.3.1: 0501 - Fishing

Type of Reservation:

National Treatment (Articles 803 and 902) Most Favored Nation Treatment (Article 903) Market Access (Article 904)

Measures:

Decreto 2256 of 1991, Art. 27, 28 and 67

Acuerdo 005 of 2003, Sección II and VII

Description:**Investment and Cross-Border Trade in Services**

Only Colombian nationals may engage in artisanal fishing. A foreign flagged vessel may obtain a permit and engage in commercial fishing and related activities in Colombian territorial waters only in association with a Colombian enterprise that owns a permit. In this case, the costs of the permit and fishing license are higher for foreign-flagged vessels than for Colombian-flagged vessels.

If the flag of a foreign-flagged vessel is that of a country that is a party to another bilateral agreement with Colombia, the terms of that other bilateral agreement shall determine whether or not the requirement to associate with a Colombian enterprise that owns a permit applies.

Sector:

Services Directly Incidental to the Exploration and Exploitation of Minerals and Hydrocarbons

Subsector:**Industry Classification:****Type of Reservation:**

Local Presence (Article 905)

Measures:

Ley 685 of 2001, Art. 19 and 20

Decreto legislativo 1056 of 1953, Art. 10

Código de Comercio of 1971, Art. 471 and 474

Description:**Cross-Border Trade in Services**

To supply services directly related to the exploration and exploitation of minerals and hydrocarbons in Colombia, a juridical person organized under the laws of a foreign country must establish a branch, affiliate company, or subsidiary in Colombia.

These requirements do not apply to service suppliers engaged in those services for less than one year.

Sector:

Business Services

Subsector:

Other Business Services

Industry Classification:

CPC 873: Investigation and security

Type of Reservation:

National Treatment (Articles 803 and 902)

Market Access (Article 904)

Local Presence (Article 905)

Measures:

Decreto 356 of 1994, Art. 8, 12, 23 and 25

Description:**Investment and Cross-Border Trade in Services**

Only an enterprise organized under Colombian law as a limited liability company or a private security and surveillance services cooperative^{Footnote1} may provide private security and surveillance

services in Colombia. Partners or members of such enterprises must be Colombian nationals.

Enterprises established prior to February 11, 1994 with foreign members or foreign capital may not increase the participation of foreign members. Cooperatives organized before that date may retain their juridical form.

Sector:

Business Services

Subsector:

Professional Services – Travel agents and Tourism

Industry Classification:

Type of Reservation:

National Treatment (Article 902) Local Presence (Article 905)

Measures:

Ley 32 of 1990, Art. 5

Decreto 502 of 1997, Art. 1-7

Description:

Cross-Border Trade in Services

Foreign nationals must be domiciled in Colombia to provide travel and tourism agent services within the territory of Colombia.

For greater certainty, this reservation does not apply to tour guide services, nor does it affect the cross-border supply of services as defined in Article 913.

Sector:

Notary and Registrar Public Services

Subsector:

Industry Classification:

Type of Reservation:

National Treatment (Article 902) Market Access (Article 904)

Measures:

Decreto ley 960 of 1970, Art. 123, 124, 126, 127 and 132

Decreto ley 1250 of 1970, Art. 60

Description:

Cross-Border Trade in Services

Only Colombian nationals may be notaries and/or registrars. The establishment of new notaries is subject to an economic

needs test that takes into account the population of the area of interest, the necessity of the services, and access to means of communication facilities, among other factors.

Sector:

Domiciliary Public Services

Subsector:

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Market Access (Article 904)

Local Presence (Article 905)

Measures:

Ley 142 of 1994, Artículos 1, 17, 18, 19 and 23

Código de comercio, Art. 471 and 472

Description:

Investment and Cross-Border Trade in Services

A domiciliary public service enterprise, must be organized under the Empresas de Servicios Públicos (E.S.P.) regime, must be domiciled in Colombia and organized under Colombian law as a share company (sociedad por acciones). The requirement to be organized as a share company does not apply to a decentralized entity that takes the form of a commercial and industrial enterprise of the State.

For purposes of this entry, domiciliary public services include the provision of water, sewage, refuse disposal, electric power, combustible gas distribution, and basic public-switched telephone services (PSTN) and any activities supplemental thereto. Activities supplemental to basic public-switched telephone services means long-distance public telephone and fixed wireless local loop telephone services in rural areas, but does not include commercial mobile telephone services.

An enterprise in which a locally organized community holds a controlling interest shall be given a preference over enterprises with otherwise equivalent bids in the granting of a concession or license for the provision of domiciliary public services to that community.

Sector:

Electrical Power

Subsector:

Industry Classification:

Type of Reservation:

Market Access (Article 904)

Measures:

Ley 143 of 1994, Art. 74

Description:**Cross-Border Trade in Services**

Only enterprises organized under Colombian law, on or after

12 July 1994, to supply electrical power may engage in marketing of electrical power (comercialización) and any of the following activities:

- 1. generation,
- 2. distribution, or
- 3. transmission of electrical power; except that no enterprise may engage in more than one of these three activities at the same time.

Sector:

Custom Services

Subsector:**Industry Classification:****Type of Reservation:**

Local Presence (Article 905)

Measures:

Decreto 2685 of 1999, Art. 74 and 76

Description:**Cross-Border Trade in Services**

In order to perform customs intermediation, intermediation for postal services (“intermediación para servicios postales”) and mensajería especializada^{Footnote2} (including express delivery), deposit of merchandise, transportation of merchandise under the customs control, or international cargo services, or to act as Permanent Customs Users (“Usuarios Aduaneros Permanentes”) or Highly Exporting Users (“Usuarios Altamente Exportadores”), a person must be domiciled in Colombia or have a domiciled representative legally responsible for their activities in Colombia.

Sector:

Postal and Mensajería Especializada Services

Subsector:

Industry Classification:

Type of Reservation:

Local Presence (Article 905)

Measures:

Decreto 229 of 1995, Art. 14 and Art. 17 numeral 2

Description:

Cross-Border Trade in Services

Only juridical persons organized under Colombian law may supply postal services and “mensajería especializada” (as defined in I-COL-16) in Colombia.

Sector:

Communication Services

Subsector:

Telecommunication Services

Industry Classification:

Type of Reservation:

National Treatment (Article 902) Market Access (Article 904) Local Presence (Article 905)

Measures:

Ley 671 of 2001

Decreto 1616 of 2003, Art. 13 and 16

Decreto 2542 of 1997, Art. 2

Decreto 2926 of 2005, Art. 2

Decreto 2870 de 2007, Título II (Art. 3-7)

Description:

Cross-Border Trade in Services

Only enterprises organized under Colombian law may receive concessions for the supply of telecommunications services within Colombia.

For greater certainty, Colombia may grant licenses to enterprises to provide long distance basic switched telecommunications services on less favorable terms, with respect only to payment and duration, than those provided to Colombia Telecomunicaciones S.A. E.S.P. under article 2 of Decreto 2542 de 1997, articles 13 and 16 of Decreto 1616 de 2003 and Decreto 2926 de 2005.

Sector:

Waste-Related Services

Subsector:

Industry Classification

Type of Reservation:

National Treatment (Article 803)

Measures:

Decreto 2080 of 2000, Art. 6

Description:

Investment

Foreign investment is not permitted in activities related to the processing, disposition, and disposal of toxic, hazardous or radioactive waste not produced in Colombia.

Sector:

Transport Services

Subsector:

Industry Classification:

Type of Reservation:

Local Presence (Article 905)

Measures:

Ley 336 of 1996, Art. 9 and 10

Decreto 149 of 1999, Art. 5

Description:

Cross-Border Trade in Services

Suppliers of public transportation services within the territory of Colombia must be enterprises organized under Colombian law and domiciled in Colombia.

Only foreign enterprises with an agent or representative domiciled in Colombia and legally responsible for their activities in Colombia may supply multimodal transportation of cargo within and from the territory of Colombia.

Sector:

Transport Services

Subsector:

Maritime Transportation

Fluvial Transportation

Industry Classification:

CPC 72: Water transport services

Type of Reservation:

National Treatment (Article 902) Local Presence (Article 905)

Measures:

Decreto 804 of 2001, Art. 2 and 4 numeral 4

Código de Comercio of 1971, Art. 1455

Decreto Ley 2324 of 1984, Art. 99, 101 and 124

Ley 658 of 2001, Art. 11

Decreto 1597 of 1998, Art. 23

Description:**Cross-Border Trade in Services**

Only enterprises organized under Colombian law using Colombian flag vessels may supply maritime and fluvial transport services between two points within the territory of Colombia (cabotage).

All foreign-flagged vessels entering a Colombian port must have a representative legally responsible for their activities in Colombia and domiciled in Colombia.

The maritime and fluvial public service of pilotage on Colombian territorial waters may only be performed by Colombian nationals.

In Colombian flag vessels and foreign-flagged vessels (except those relating to fishing) that operate in Colombian jurisdictional waters for a period of time longer than six months, continuous or discontinuous, from the date of the issuing of the respective permit, the captain, officials and at least 80 per cent of the rest of the crew must be Colombians.

Sector:

Port Services

Subsector:**Industry Classification:****Type of Reservation:**

National Treatment (Article 902) Market Access (Article 904) Local Presence (Article 905)

Measures:

Ley 1 of 1991, Art. 5.20 and Art. 6

Decreto 1423 of 1989, Art. 38

Description:**Cross-Border Trade in Services**

The holders of a concession to supply port services must be organized under Colombian law as a corporation (sociedad anónima) whose corporate objective is the construction, and maintenance of ports, and their administration.

Only Colombian flag vessels may supply port services in maritime areas under the jurisdiction of Colombia. However, in exceptional cases, the Dirección General Marítima may authorize supply of such services by foreign flag vessels if no Colombian flag vessels have the capacity to supply such service. The authorization will be issued for a period of six months, but may be extended to a maximum total period of one year.

Footnotes

Footnote 1

Article 23 of Decreto 356 de 1994 defines a “private security and surveillance services cooperative” as an employee-owned and employee-run non-profit associative enterprise created to provide private security and surveillance services, for remuneration.

[Return to footnote¹referrer](#)

Footnote 2

“Servicio de mensajería especializada” means the class of postal services that is supplied independently of the official postal networks for national and international mail, and that requires the application and adoption of special procedures for the receipt, collection, and personal delivery of mail and other postal objects transported by land or air within or from the territory of Colombia.

Annex 1 – Headnote

1. The Schedule of a Party sets out, pursuant to Article 809 (Investment - Non-Conforming Measures) and Article 906 (Cross-Border Trade in Services - Non-Conforming Measures), the reservations taken by that Party with respect to existing measures by a Party that do not conform with obligations imposed by:

- (a) Articles 803, 902 (Investment, Cross-Border Trade in Services - National Treatment);
- (b) Articles 804, 903 (Investment, Cross-Border Trade in Services - Most-Favoured-Nation Treatment);
- (c) Article 905 (Cross-Border Trade in Services - Local Presence);
- (d) Article 807 (Investment - Performance Requirements);
- (e) Article 808 (Investment - Senior Management and Boards of Directors);
- (f) Article 904 (Cross-Border Trade in Services - Market Access);

and, in certain cases, sets out commitments for immediate or future liberalization.

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 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 domestic industry classification codes;
- (d) **Type of Reservation** specifies the obligation referred to in paragraph 1 for which a reservation is taken;
- (e) **Measures** 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 any subordinate measure adopted or maintained under the authority of and consistent with the measure;
- (f) **Description** sets out commitments, if any, for liberalization on the date of entry into force of this Agreement, and the remaining non-conforming aspects of the existing measures 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 the light of the relevant provisions of the Articles against which the reservation is taken. To the extent that:

- (a) the **Measures** element is qualified by a liberalization 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 any 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. Where a Party 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 902, 903 or 905 (Cross-Border Trade in Services – National Treatment, Most-Favoured Nation Treatment or Local Presence) shall operate as a reservation with respect to Article 803, 804 or 807 (Investment - National Treatment, Most-Favoured Nation Treatment or Performance Requirements) to the extent of that measure.

5. The listing of a measure in this Annex is without prejudice to a future claim that Annex II may apply to the measure or some application of the measure.

6. 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 (SIC) 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 803)

Performance Requirements (Article 807)

Senior Management and Boards of Directors (Article 808)

Measures:

Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611, as qualified by paragraphs 8 through 12 of the **Description** element

Description:**Investment**

1. Under the Investment Canada Act, the following acquisitions of Canadian businesses by “non-Canadians” are subject to review by the Director of Investments:

a. All direct acquisitions of Canadian businesses with assets of C\$5 million or more;

b. All indirect acquisitions of Canadian businesses with assets of C\$50 million or more; and

c. Indirect acquisitions of Canadian businesses with assets between C\$5 million and C\$50 million that represent more than 50 per cent 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. A “non-Canadian” is an individual, government or agency thereof or an entity that is not “Canadian”. “Canadian” means a Canadian citizen or permanent resident, government in Canada or agency thereof or Canadian-controlled entity as provided for in the Investment Canada Act.

3. In addition, specific acquisitions or establishment of new businesses in designated types of business activities relating to Canada’s cultural heritage or national identity, which are normally notifiable, may be

reviewed if the Governor-in-Council authorizes 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. Such a determination is made in accordance with six factors described in the Act, summarized 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 utilization of parts, components and services produced in Canada, and on exports from Canada;
- 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 any 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 any proposed acquisition which is the subject of review. In the event of noncompliance with an undertaking by an applicant, the Minister may seek a court order directing compliance or any other remedy authorized under the Act.

6. Non-Canadians who establish or acquire Canadian businesses, 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 Colombia 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 acquisitions in the following sectors: uranium production and ownership of uranium producing properties; financial services; transportation services; and cultural businesses.

9. Notwithstanding the definition of “investor of a party” in Article 838, only investors who are nationals, or entities controlled by nationals as provided for in the Investment Canada Act, of Colombia may benefit from the higher review threshold.

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

11. Notwithstanding Article 807, Canada may impose requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, conduct or operation of an investment of an investor of Colombia 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, Article 807 shall apply to requirements, commitments or undertakings imposed or enforced under the Investment Canada Act. Article 807 shall not be construed to 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 to construct or expand particular facilities, in Canada.

13. For direct acquisitions of control by investors of Colombia or for investors of a non-Party where the Canadian business is controlled by an investor of Colombia, the applicable threshold for review is C\$295 million for the year 2008 and for each year thereafter the amount determined by the Minister in January of that year arrived at by using the following formula:

$$\text{Annual Adjustment} = \frac{\text{Current Nominal GDP at Market Prices}}{\text{Previous Year Nominal GDP}}$$

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

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

The amounts determined in this manner will be rounded to the nearest million dollars.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Senior Management and Boards of Directors (Article 808)

Measures:

As set out in the **Description** element

Description:

Investment

Canada or any province, 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 any resulting enterprise, by investors of Colombia or of a non-Party or their investments. With respect to such a sale or other disposition, Canada or any province may adopt or maintain any measure relating to the nationality of senior management or members of the board of directors.

For purposes of this reservation:

any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this reservation shall be deemed to be an existing measure; and

“state enterprise” means an enterprise owned or controlled through ownership interests by Canada or any province 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.

Phase-Out:

None

Sector:

All sectors

Sub-Sector:**Industry Classification:****Type of Reservation:**

National Treatment (Article 803)

Measures:

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Corporations Act, R.S.C. 1970, c. C-32

Canada Business Corporations Act Regulations, SOR/79-316

Description:**Investment**

“Constraints” may be placed on the issue, transfer and ownership of shares in federally incorporated corporations. The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where ownership is required as a condition to operate or to receive licenses, 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. “Canadian” is defined in the Canada Business Corporations Act Regulations.

Phase-Out:

None

Sector:

All sectors

Sub-Sector:**Industry Classification:****Type of Reservation:**

Senior Management and Boards of Directors (Article 808)

Measures:

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Business Corporations Act Regulations, SOR/79-316

Canada Corporations Act, R.S.C. 1970, c. C-32

Special Acts of Parliament incorporating specific companies

Description:**Investment**

The Canada Business Corporations Act requires, for most federally-incorporated corporations, that 25 per cent of directors be resident Canadians. A simple majority of resident Canadian directors is required for corporations in prescribed sectors.

These sectors are: uranium mining; book publishing or distribution; book sales, where 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.

For purposes of the 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 Act Regulations, or a permanent resident as defined in the Immigration and Refugee Protection Act other than one who has been ordinarily resident in Canada for more than one year after he or she became eligible to apply for Canadian citizenship.

In the case of a holding corporation, not more than one-third of the directors need be resident Canadians if the earnings in Canada of the holding corporation and its subsidiaries are less than five per cent of the gross earnings of the holding corporation and its subsidiaries.

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.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:**Industry Classification:****Type of Reservation:**

National Treatment (Article 803)

Measures:

Citizenship Act, R.S.C. 1985, c. C-29

Foreign Ownership of Land Regulations, SOR/79-416

Description:**Investment**

The Foreign Ownership of Land Regulations are made pursuant to the Citizenship Act and the Alberta Agricultural and Recreational Land Ownership Act. In Alberta, an ineligible person or foreign-owned or controlled corporation may only hold an interest in controlled land consisting of not more than two parcels containing, in the aggregate, not more than 20 acres. An “ineligible person” is:

- a. an individual who is not a Canadian citizen or permanent resident;
- b. a foreign government or agency thereof; or
- c. a corporation incorporated elsewhere than in Canada.

“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.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:**Industry Classification:****Type of Reservation:**

National Treatment (Article 803)

Measures:

Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.)

Canadian Arsenal Limited Divestiture Authorization Act, S.C. 1986, c. 20

Eldorado Nuclear Limited Reorganization and Divestiture Act, S.C. 1988, c. 41

Nordion and Theratronics Divestiture Authorization Act, S.C. 1990, c. 4

Description:**Investment**

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. Where 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:

- a. Air Canada: 25 per cent in the aggregate;
- b. Cameco Limited (formerly Eldorado Nuclear Limited): 15 per cent per individual non-resident, 25 per cent in the aggregate;
- c. Nordion International Inc.: 25 per cent in the aggregate;
- d. Theratronics International Limited: 49 per cent in the aggregate;
- e. Canadian Arsenals Limited: 25 per cent in the aggregate.

“Non-resident” generally means:

- 1. an individual, other than a Canadian citizen, who is not ordinarily resident in Canada;
- 2. a corporation incorporated, formed or otherwise organized outside Canada;
- 3. the government of a foreign state or any political subdivision thereof, or a person empowered to perform a function or duty on behalf of such a government;
- 4. a corporation that is controlled directly or indirectly by non-residents as defined in any of subparagraphs (a) through (c);
- 5. a trust:
 - a. established by a non-resident as defined in any of subparagraphs (b) through (d), other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or
 - b. in which non-residents as defined in any of subparagraphs (a) through (d) have more than 50 per cent of the beneficial interest;
- 6. a corporation that is controlled directly or indirectly by a trust referred to in subparagraph (e).

Phase-Out:

None

Sector:

All sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

Local Presence (Article 905)

Measures:

Export and Import Permits Act, R.S.C. 1985, c. E-19

Description:**Cross-Border Trade in Services**

Only individuals ordinarily resident in Canada, enterprises having their head offices in Canada or branch offices in Canada of foreign enterprises may apply for and be issued import or export permits or transit authorization certificates for goods and related services subject to controls under the Export and Import Permits Act.

Phase-Out:

None

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 902)

Local Presence (Article 905)

Senior Management and Boards of Directors (Article 808)

Measures:

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs Brokers Licensing Regulations, SOR/86-1067

Description:**Cross-Border Trade in Services and Investment**

To be a licensed customs broker in Canada:

- 1. an individual must be a Canadian citizen or permanent resident;
- 2. a corporation must be incorporated in Canada with a majority of its directors being Canadian citizens or permanent residents; and
- 3. a partnership must be composed of persons who are Canadian citizens or permanent residents, or corporations incorporated in Canada with a majority of their directors being Canadian citizens or permanent residents.

Phase-Out:

None

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 (Article 803)

National Treatment (Article 902)

Local Presence (Article 905)

Measures:

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Duty Free Shop Regulations, SOR/86-1072

Description:**Cross-Border Trade in Services and Investment**

1. To be a licensed duty free shop operator at a land border crossing in Canada, an individual must:

- 1. be a Canadian citizen or permanent resident;
- 2. be of good character;
- 3. be principally resident in Canada; and
- 4. have resided in Canada for at least 183 days of the year preceding the year of application for the license.

2. To be a licensed duty free shop operator at a land border crossing in Canada, a corporation must:

- 1. be incorporated in Canada; and
- 2. have all of its shares beneficially owned by Canadian citizens or permanent residents who meet the requirements of paragraph 1.

Phase-Out:

None

Sector:

Business Service Industries

Sub-Sector:

Examination Services relating to the Export and Import of Cultural Property

Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to cultural property examination services)

CPC 96321 Museum services except for historical sites and buildings (limited to cultural property examination services)

CPC 87909 Other business services n.e.c. (limited to cultural property examination services)

Type of Reservation:

Local Presence (Article 905)

Measures:

Cultural Property Export and Import Act, R.S.C. 1985, c. C-51

Description:**Cross-Border Trade in Services**

Only a “resident of Canada” or an “institution” in Canada may be designated as an “expert examiner” of cultural property for purposes of the Cultural Property Export and Import Act. A “resident of Canada” is an individual who is ordinarily resident in Canada, or a corporation that has its head office in Canada or maintains one or more establishments in Canada to which employees employed in connection with the business of the corporation ordinarily report for work. An “institution” is an institution 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.

Phase-Out:

None

Sector:

Business Service Industries

Sub-Sector:

Patent Agents and Agencies

Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to patent agency)

CPC 86120 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc. (limited to patent agency)

Type of Reservation:

National Treatment (Article 902)

Local Presence (Article 905)

Measures:

Patent Act, R.S.C. 1985, c. P-4

Patent Rules, C.R.C. 1978, c. 1250

Patent Cooperation Treaty Regulations, SOR/89-453

Description:**Cross-Border Trade in Services**

To represent persons in the presentation and prosecution of applications for patents or in other business before the Patent Office, a patent agent must be resident in Canada and registered by the Patent Office.

A registered patent agent who is not resident in Canada must appoint a registered patent agent who is resident in Canada as an associate to prosecute an application for a patent.

An enterprise may be added to the patent register provided that it has at least one member who is also on the register.

Phase-Out:

None

Sector:

Business Service Industries

Sub-Sector:

Trade-Mark Agents

Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to trade-mark agency)

CPC 86120 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc. (limited to copyright/trademark agency)

Type of Reservation:

National Treatment (Article 902)

Local Presence (Article 905)

Measures:

Trade-Marks Act, R.S.C. 1985, c. T-13

Trade-mark Regulations (1996), SOR/96-195

Description:**Cross-Border Trade in Services**

To represent persons in the presentation and prosecution of applications for trade-marks or in other business before the Trade-Mark Office, a trade-mark agent must be resident in Canada and registered by the Trade-Mark Office.

A registered trade-mark agent who is not resident in Canada must appoint a registered trade-mark agent who is resident in Canada as an associate to prosecute an application for a trade-mark.

A firm may be added to the list of trade-marks agents provided that it has at least one member who is also on the register.

Phase-Out:

None

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 803)

Measures:

Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.)

Territorial Lands Act, R.S.C. 1985, c. T-7

Federal Real Property and Federal Immovables Act, S.C. 1991, c. 50

Canada-Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Canada Oil and Gas Land Regulations, C.R.C. 1978, c. 1518

Description:

Investment

This reservation applies to production licenses issued with respect to “frontier lands” and “offshore areas” (areas not under provincial jurisdiction) as defined in the applicable measures.

Persons who hold oil and gas production licenses or shares therein for discoveries made after 5 March 1982 must be corporations incorporated in Canada.

The Canadian ownership requirements for oil and gas production licenses for discoveries made prior to 5 March 1982, are set out in the Canada Oil and Gas Land Regulations.

Phase-Out:

None

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 807) Local Presence (Article 905)

Measures:

Canada Oil and Gas Production and Conservation Act, R.S.C. 1985, c. 0-7,
as amended by Canada Oil and Gas Operations Act, S.C. 1992, c. 35

Canada – Nova Scotia Offshore Petroleum Resources

Accord Implementation Act, S.C. 1988, c. 28

Canada – Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c.
3

Measures implementing Yukon Oil and Gas Accord Measures
implementing Northwest Territories Oil and Gas Accord

Description:**Cross-Border Trade in Services and Investment**

1. Under the Canada Oil and Gas Operations Act, the approval of the Minister of Energy, Mines and Resources of a “benefits plan” is required to receive authorization to proceed with any 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 any proposed work or activity referred to in the benefits plan.

The Act permits the Minister to impose an additional requirement on the applicant, as part of the benefits plan, 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 any proposed work referred to in the benefits plan.

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 ensure that:

- a. prior to carrying out any work or activity in the offshore area, the corporation or other body submitting the plan establish in the applicable province an office where appropriate levels of decision-making are to take place;
- 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
- 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.

4. 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 any proposed work or activity referred to in the plan.

5. In addition, Canada may impose any requirement or enforce any 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.

6. Provisions similar to those set out above will be included in laws or regulations to implement the Yukon Oil and Gas Accord and Northwest Territories Oil and Gas Accord which for purposes of this reservation shall be deemed, once concluded, to be existing measures.

Phase-Out:

None

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 807)

Measures:

Canada – Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c.

Description:**Investment**

Pursuant to the Hibernia Development Project Act, Canada and the “Hibernia Project Owners” may enter into agreements whereby the Project Owners 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 any “benefit plan” required under the Canada–Newfoundland Atlantic Accord Implementation Act. “Benefits plans” are further described in the Schedule of Canada, Annex I at pages I-C-23-25

In addition, Canada may impose in connection with the Hibernia project any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada.

Phase-Out:

None

Sector:

Energy

Sub-Sector:

Uranium

Industry Classification:

SIC 0616 Uranium Mines

CPC 883 Services incidental to mining

Type of Reservation:

National Treatment (Article 803)

Most Favoured– Nation Treatment (Article 804)

Measures:

Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611

Policy on Non Resident Ownership in the Uranium Mining Sector, 1987

Description:**Investment**

Ownership by “non-Canadians”, as defined in the Investment Canada Act, of a uranium mining property is limited to 49 per cent 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 Investment Canada Act.

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 23 December 1987 and that are beyond the permitted ownership level, may remain in place. No increase in non-Canadian ownership is permitted.

Phase-Out:

None

Sector:

Fisheries

Sub-Sector:

Fish Harvesting and Processing

Industry Classification:

SIC 031 Fishing Industry

CPC 882 Services Incidental to Fishing

Type of Reservation:;

National Treatment (Article 803)

Measures:

Policy on Foreign Investment in the Canadian Fisheries Sector, 1985

Commercial Fisheries Licensing Policy

Fisheries Act, R.S.C. 1985, c. F-14

Description:

Investment

Fish processing enterprises that have a foreign ownership level of more than 49 per cent are prohibited from holding Canadian commercial fishing licenses.

Phase-Out:

None

Sector:

Professional, Technical and Specialized Services

Sub-Sector:

Professional Services

Industry Classification:

CPC 862 Auditing Services

Type of Reservation:

National Treatment (Article 902)

Most-Favoured-Nation Treatment (Article 903)

Local Presence (Article 905)

Measures:

Bank Act, S.C. 1991, c. 46

Insurance Companies Act, S.C. 1991, c. 47

Cooperative Credit Associations Act, 1991, c. 48

Trust and Loan Companies Act, 1991, c. 45

Description:

Cross-Border Trade in Services

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 Bank Act. 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.

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.

Phase-Out: None

Sector:

Transportation

Sub-Sector:

Air Transportation

Industry Classification:

SIC 451 Air Transport Industries

CPC 731 Passenger transportation by air

CPC 732 Freight transportation by air

Specialty air services, as set out in the **Description** section below

Type of Reservation:

National Treatment (Article 803)

Measures:

Canada Transportation Act, S.C. 1996, c. 10

Aeronautics Act, R.S.C. 1985, c. A-2

Canadian Aviation Regulations, SOR/96-433:

Part II “Aircraft Markings & Registration” ;

Part IV “Personnel Licensing & Training” ; and

Part VII “Commercial Air Services”

Description:**Investment**

The Canada Transportation Act, in Section 55, defines

“Canadian” in the following manner:

“... ‘Canadian’ means a Canadian citizen or a permanent resident within the meaning of the Immigration and Refugee Protection Act, 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, 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:

1. “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);

“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;

“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.

“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 may own a Canadian-registered aircraft for private use.

A corporation incorporated in Canada but that does not meet the Canadian ownership and control requirements may only register an aircraft for private use when the corporation is the sole owner of the aircraft. The Canadian Aviation Regulations also have the effect of limiting “non-Canadian” corporations operating foreign-registered private aircraft within Canada to the carriage of their own employees.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Air Transportation

Industry Classification:

SIC 4523 Aircraft Servicing Industry

SIC 3211 Aircraft and Aircraft Parts Industry

Not CPC defined: Aircraft repair and maintenance services, as defined in the Cross-Border Trade in Services chapter.

Type of Reservation:

Local Presence (Article 905)

Measures:

Aeronautics Act, R.S.C. 1985, c. A-2

Canadian Aviation Regulations, 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 Canadian-certified persons (i. e., approved maintenance organizations and aircraft maintenance engineers). Certifications are not provided for persons

located outside Canada, except sub- organizations of approved maintenance organizations that are themselves located in Canada.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Land Transportation

Industry Classification:

SIC 456 Truck Transport Industries

SIC 4572 Interurban and Rural Transit Systems Industry

SIC 4573 School Bus Operations Industry

SIC 4574 Charter and Sightseeing Bus Services Industry

CPC 7121 Other scheduled passenger transportation by land other than by railway

CPC 7122 Other non-scheduled passenger transportation by land other than by railway

CPC 7123 Freight transportation by land other than by railway

Type of Reservation:

National Treatment (Article 902)

Local Presence (Article 905)

Measures:

Motor Vehicle Transport Act, R.S.C. 1985, c. 28 (3rd Supp.), as amended by S.C. 2001, c. 13.

Canada Transportation Act, S.C. 1996, c. 10 Customs Tariff, 1997, c. 36

Description:

Cross-Border Trade in Services

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.

Phase-Out:

None

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 Salvage Industry
SIC 4559 Other Service Industries Incidental to Water Transport

CPC 721 Transport services by sea-going vessels
CPC 722 Transport services by non-seagoing vessels
CPC 74540 Vessel salvage and refloating services
CPC 74590 Other supporting services for water transport

Type of Reservation:

National Treatment (Article 803) National Treatment (Article 902) Local Presence (Article 905)

Measures:

Canada Shipping Act, R.S.C. 1985, c. S-9, Part I

Description:

Cross-Border Trade in Services and Investment

1. To register a ship in Canada, the owner of that ship or the person who has exclusive possession of that ship 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 laws of Canada or a province; or
- c. when the ship 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 ship, namely:
 - i. a subsidiary of the corporation that is incorporated under the laws of Canada or a province,
 - ii. an employee or director in Canada of any branch office of the corporation that is carrying on business in Canada, or
 - iii. a ship management company incorporated under the laws of Canada or a province.

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

- 1. a Canadian citizen or permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act; or

- 2. a corporation incorporated under the laws of Canada or a province.

Phase-Out:

None

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 4554 Piloting Service, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport

CPC 721 Transport services by sea-going vessels

CPC 722 Transport services by non-seagoing vessels

CPC 74520 Pilotage and berthing services

CPC 74540 Vessel salvage and refloating services

CPC 74590 Other supporting services for water transport

Type of Reservation:

National Treatment (Article 902)

Local Presence (Article 905)

Measures:

Canada Shipping Act, R.S.C. 1985, c. S-9, Part II

Marine Certification Regulations, SOR 97-391

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 ships. Such certificates may be granted only to Canadian citizens or permanent residents.

Phase-Out:

None

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 902)

Local Presence (Article 905)

Measures:

Pilotage Act, R.S.C., 1985, c. P-14

General Pilotage Regulations, SOR/2000-132

Atlantic Pilotage Authority Regulations, C.R.C. 1978, c. 1264

Laurentian Pilotage Authority Regulations, C.R.C. 1978, c1268

Great Lakes Pilotage Regulations, C.R.C. 1978, c. 1266

Pacific Pilotage Regulations, C.R.C. 1978, c. 1270

Description:**Cross-Border Trade in Services**

Subject to the Schedule of Canada, Annex II, at pages II-C-17-18, 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 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 five years of receipt of such licence or pilotage certificate in order to retain it.

Phase-Out:

None

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 905)

Measures:

Shipping Conferences Exemption Act, 1987, R.S.C. 1985, c. 17 (3rd 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.

Phase-Out:

None

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 903)

Measures:

Coasting Trade Act, S.C. 1992, c. 31

Description:**Cross-Border Trade in Services**

The prohibitions under the Coasting Trade Act, set out in Schedule of Canada, Annex II, at pages II-C-14-16, do not apply to any 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.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:**Industry Classification:**

Type of Reservation:

National Treatment (Articles 803, 902)

Most-Favoured Nation (Articles 804, 903)

Local Presence (Article 905)

Performance Requirements (Article 807)

Senior Management and Boards of Directors (Article 808)

Measures:

All existing non-conforming measures of all provinces and territories.

Description:

Cross-Border Trade in Services and Investment

Phase-Out:

None