

No. 53273*

**Canada
and
United States of America**

Exchange of notes constituting an agreement between the Government of Canada and the Government of the United States of America concerning the Canadian Periodical Advertising Services Market. Washington, 3 June 1999

Entry into force: *3 June 1999, in accordance with the provisions of the said notes*

Authentic texts: *English and French*

Registration with the Secretariat of the United Nations: *Canada, 10 December 2015*

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**Canada
et
États-Unis d'Amérique**

Échange de notes constituant un accord entre le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique concernant le marché canadien des services publicitaires dans les périodiques. Washington, 3 juin 1999

Entrée en vigueur : *3 juin 1999, conformément aux dispositions des dites notes*

Textes authentiques : *anglais et français*

Enregistrement auprès du Secrétariat des Nations Unies : *Canada, 10 décembre 2015*

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[ENGLISH TEXT - TEXTE ANGLAIS]

501 Pennsylvania Ave N.W.
Washington, D.C. 20001

June 3, 1999

Note No. 0198

The Honourable Charlene Barshefsky
United States Trade Representative
Executive Office of the President
Room 209
600 - 17th Street N.W.
Washington, D.C. 20506

Dear Ambassador Barshefsky,

I have the honour to refer to recent discussions with respect to Bill C-55, the *Foreign Publishers Advertising Services Act*. In this regard, the United States will take no action under the World Trade Organisation (WTO) Agreements, the North American Free Trade Agreement (NAFTA), or section 301 of the Trade Act of 1974, as amended, in response to Bill C-55.

Canada will amend the *Foreign Publishers Advertising Services Act* to permit foreign-owned publishers of periodicals to benefit from increased market access with respect to advertising directed primarily at the Canadian market. In addition, Canada will amend its foreign investment policy with respect to the publication, distribution and sale of periodicals by issuing foreign investment guidelines for the publication, distribution and sale of periodicals pursuant to section 38 of the *Investment Canada Act*. The *Income Tax Act* will also be amended so as to allow advertisers deductions in respect of periodicals irrespective of the nationality of the publisher or place of production. In addition, the allowable deduction will be amended under the *Income Tax Act*. These initiatives will provide for greater competition in the periodical publishing sector and are expected to ensure the creation of increased opportunity for Canadian cultural expression.

For the purposes of this Agreement, a periodical means a printed publication that appears in consecutively numbered or dated issues, published under a common title, usually at regular intervals, not more than once every week, excluding special issues, and at least twice every year. A periodical does not include a catalogue, a directory, a newsletter or a newspaper. A Canadian means a Canadian citizen or a permanent resident of Canada. Original editorial content means non-advertising content that is: (a) authored by a Canadian, including but not limited to writers, journalists, illustrators and photographers; or (b) created for the Canadian market and does not appear in any other edition of one or more periodicals published outside Canada.

Nothing in this Agreement may be invoked to prejudice either party's arguments regarding the nature of the *Foreign Publishers Advertising Services Act*, the *Investment Canada Act* or the *Income Tax Act* in the WTO or under the NAFTA.

Canada will amend Bill C-55, prior to it being passed by the Senate of Canada, to exempt from the application of the *Foreign Publishers Advertising Services Act*, those foreign-owned publishers whose investments in Canada with respect to the publication, distribution and sale of a periodical have been reviewed and approved under the *Investment Canada Act*. This exemption will continue unless a court determines by final order that the investor has not complied with the *Investment Canada Act*. In addition, Canada will allow under licensing arrangements any activity otherwise permitted under this Agreement.

Canada will further amend Bill C-55 to exempt those foreign publishers whose revenues from the sale of advertising primarily directed at the Canadian market represent 12 percent or less of the total revenues from the sale of advertising in an issue of the periodical that contains such advertising in Canada. Within 18 months after Bill C-55 comes into force, this percentage shall be increased to 15 percent, and within 36 months after Bill C-55 comes into force, this percentage shall be increased to 18 percent. The percentage of advertising space containing advertisements directed primarily at the Canadian market in the Canadian issue of the periodical will be deemed to represent the same percentage of advertising revenues earned in Canada by that issue of the periodical. In the event that this percentage is exceeded by the publisher, a demand letter will be issued by the responsible Minister prior to any further enforcement action being taken under the *Foreign Publishers Advertising Services Act*.

Canada will amend its foreign investment policy with respect to the publication, distribution and sale of periodicals in Canada by issuing foreign investment guidelines for the publication, distribution and sale of periodicals pursuant to section 38

of the *Investment Canada Act*. Under such guidelines, the establishment and expansion of foreign businesses, and the acquisition, direct or indirect, of existing foreign businesses to publish, distribute and sell periodicals in Canada will be permitted on the condition that such investments are of net benefit to Canada.

Effective 90 days after the entry into force of this Agreement, and subject to net benefit review under the *Investment Canada Act*, Canada will permit up to and including 51 percent foreign ownership in the establishment and acquisition of businesses to publish; distribute and sell periodicals except for the acquisition of Canadian-owned businesses.

Effective one year after the entry into force of this Agreement, and subject to net benefit review under the *Investment Canada Act*, Canada will permit up to and including 100 percent foreign ownership in the establishment and acquisition of businesses to publish, distribute and sell periodicals except for the acquisition of Canadian-owned businesses.

Partnerships of foreign investors with majority Canadian ownership will be permitted.

Foreign investments with respect to the publication, distribution and sale of a periodical are subject to review for net benefit to Canada pursuant to Part IV of the *Investment Canada Act*, including the investment's compatibility with Canada's cultural policy. In its net benefits review of an investment under Part IV of the *Investment Canada Act*, Canada will consider a combination of undertakings as compatible with Canadian cultural policy.

Net benefits review will include undertakings from foreign investors that result in a substantial level of original editorial content for the Canadian market contained in each periodical title. The amount of original editorial content for the Canadian market will be determined as a percentage of the total space occupied by the total editorial content contained in the periodical.

Net benefits review may also include undertakings by the foreign investor that:

- i) create an employment infrastructure by directly employing an editorial staff and support staff composed of people resident in Canada with respect to each periodical title in Canada and establish or expand a place of business in Canada; or
- ii) support the infrastructure in the publishing sector by having their titles edited, typeset and printed in Canada.

Under the *Investment Canada Act* and the Related Business Guidelines, an investment by a non-Canadian in a periodical title is deemed to be a new Canadian business and is subject to notification and review under the Act. Investors may submit a single application under the *Investment Canada Act* covering one or more titles concerning the publication, distribution and sale of periodicals. Investors will be required to report quarterly on their performance in relation to their undertakings, which will be reviewed on an annual basis.

Within one year of the entry into force of this Agreement, Canada will amend section 19 of the *Income Tax Act* so as to allow advertisers deductions in respect of periodicals containing the requisite levels of original editorial content irrespective of the nationality of the publisher or place of production.

Canada will also amend the definition of "Canadian issue" in section 19(5) of the *Income Tax Act* to conform with the definition of original editorial content as set forth in this Agreement. Canada will further amend the definition of "Canadian issue" in section 19(5) to remove exclusions on issues of a periodical published under a licence granted by a person who produces or publishes issues of a periodical that are printed, edited or published outside Canada.

Canada will further amend the *Income Tax Act* to modify the amount of the allowable deduction and original editorial content requirement to permit: a) half the deduction of advertising costs for advertisers in publications with zero to 79 percent original editorial content; and b) a full deduction of advertising costs for advertisers in publications with 80 percent or more original editorial content.

Canada and the United States agree to consult annually upon request within 20 days on any matter relating to this Agreement.

If either party considers that the other party is not in compliance with this Agreement, that party may withdraw from the Agreement by written notification to the other party. The Agreement shall become null and void 90 days after such notification and, at that time, the parties' respective rights and obligations will return to those that existed immediately prior to the entry into force of this Agreement.

I have the honour to propose that if the proposal contained in this letter is acceptable to the Government of the United States of America, this letter, in the English and French languages, each text being equally authentic, and your reply to that effect, shall constitute an Agreement between our two Governments, which shall enter into force on the date of your reply.

Accept, Excellency, the renewed assurances of my highest consideration.

Yours sincerely,

A handwritten signature in cursive script, reading "Raymond Chrétien". The signature is written in dark ink and is positioned to the right of the typed name.

Raymond Chrétien
Ambassador

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

His Excellency Raymond Chrétien
Ambassador of Canada
501 Pennsylvania Ave. NW
Washington DC 20001

Dear Mr. Ambassador:

I have the honor to confirm receipt of your letter dated June 3, 1999, outlining a proposal concerning Bill C-55 which reads as follows:

"I have the honour to refer to recent discussions with respect to Bill C-55, the *Foreign Publishers Advertising Services Act*. In this regard, the United States will take no action under the World Trade Organisation (WTO) Agreements, the North American Free Trade Agreement (NAFTA), or section 301 of the Trade Act of 1974, as amended, in response to Bill C-55.

Canada will amend the *Foreign Publishers Advertising Services Act* to permit foreign-owned publishers of periodicals to benefit from increased market access with respect to advertising directed primarily at the Canadian market. In addition, Canada will amend its foreign investment policy with respect to the publication, distribution and sale of periodicals by issuing foreign investment guidelines for the publication, distribution and sale of periodicals pursuant to section 38 of the *Investment Canada Act*. The *Income Tax Act* will also be amended so as to allow advertisers deductions in respect of periodicals irrespective of the nationality of the publisher or place of production. In addition, the allowable deduction will be amended under the *Income Tax Act*. These initiatives will provide for greater competition in the periodical publishing sector and are expected to ensure the creation of increased opportunity for Canadian cultural expression.

For the purposes of this Agreement, a periodical means a printed publication that appears in consecutively numbered or dated issues, published under a common title, usually at regular intervals, not more than once every week, excluding special issues, and at least twice every year. A periodical does not include a catalogue, a directory, a newsletter or a newspaper. A Canadian means a Canadian citizen or a permanent resident of Canada. Original editorial content means non-advertising content that is: (a) authored by a Canadian, including but not limited to writers, journalists, illustrators and photographers; or (b) created for the Canadian market and does not appear in any other edition of one or more periodicals published outside Canada.

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Canada will further amend Bill C-55 to exempt those foreign publishers whose revenues from the sale of advertising primarily directed at the Canadian market represent 12 percent or less of the total revenues from the sale of advertising in an issue of the periodical that contains such advertising in Canada. Within 18 months after Bill C-55 comes into force, this percentage shall be increased to 15 percent, and within 36 months after Bill C-55 comes into force, this percentage shall be increased to 18 percent. The percentage of advertising space containing advertisements directed primarily at the Canadian market in the Canadian issue of the periodical will be deemed to represent the same percentage of advertising revenues earned in Canada by that issue of the periodical. In the event that this percentage is exceeded by the publisher, a demand letter will be issued by the responsible Minister prior to any further enforcement action being taken under the *Foreign Publishers Advertising Services Act*.

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Effective 90 days after the entry into force of this Agreement, and subject to net benefit review under the *Investment Canada Act*, Canada will permit up to and including 51 percent foreign ownership in the establishment and acquisition of businesses to publish, distribute and sell periodicals except for the acquisition of Canadian-owned businesses.

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- ii) support the infrastructure in the publishing sector by having their titles edited, typeset and printed in Canada.

Under the *Investment Canada Act* and the Related Business Guidelines, an investment by a non-Canadian in a periodical title is deemed to be a new Canadian business and is subject to notification and review under the *Act*. Investors may submit a single application under the *Investment Canada Act* covering one or more titles concerning the publication, distribution and sale of periodicals. Investors will be required to report quarterly on their performance in relation to their undertakings, which will be reviewed on an annual basis.

Within one year of the entry into force of this Agreement, Canada will amend section 19 of the *Income Tax Act* so as to allow advertisers deductions in respect of periodicals containing the requisite levels of original editorial content irrespective of the nationality of the publisher or place of production.

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If either party considers that the other party is not in compliance with this Agreement, that party may withdraw from the Agreement by written notification to the other party. The Agreement shall become null and void 90 days after such notification and, at that time, the parties' respective rights and obligations will return to those that existed immediately prior to the entry into force of this Agreement.

I have the honour to propose that if the proposal contained in this letter is acceptable to the Government of the United States of America, this letter, in the English and French languages, each text being equally authentic, and your reply to that effect, shall constitute an Agreement between our two Governments, which shall enter into force on the date of your reply.

Accept, Excellency, the renewed assurances of my highest consideration."

I have the honor to inform you that the proposal contained in your letter dated June 3, 1999, is acceptable to my Government and to confirm that the letter and this reply shall constitute an Agreement between our two Governments, which shall enter into force on this date.

Sincerely,


Charlene Barshefsky