



**HOUSE OF COMMONS  
CANADA**

**AN EXAMINATION OF SELECTED  
CANADA-US BORDER ISSUES**

**Report of the Standing Committee on  
International Trade**

**Lee Richardson, MP  
Chair**

**June 2009**

**40th PARLIAMENT, 2nd SESSION**

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# **THE STANDING COMMITTEE ON INTERNATIONAL TRADE**

has the honour to present its

## **FOURTH REPORT**

Pursuant to its mandate under Standing Order 108(2), and the motion adopted by the Committee on Thursday, March 5, 2009, the Committee has studied Canada-United States Trade Relations and has agreed to report the following:





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# AN EXAMINATION OF SELECTED CANADA-US BORDER ISSUES

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## INTRODUCTION

While the United States remains by far Canada's most important commercial partner, in recent years it has become increasingly difficult for goods, services and people to cross the border between the two countries. New regulations, security measures in response to the attacks of September 11, 2001, and other policy decisions in the United States have contributed to a "thickening" of the Canada-US border. This thickening holds considerable implications for Canada's most important trading relationship, as well as for the economic competitiveness of the North American market.

For this reason, the House of Commons Standing Committee on International Trade (hereinafter the Committee) undertook a study of current Canada-US border concerns with a specific focus on four issues—the Western Hemisphere Travel Initiative (WHTI); country-of-origin labelling (COOL); security, trade and "northern border" concerns; and border issues relating to the Vancouver 2010 Olympic Games. The Committee conducted hearings in Ottawa in March and April to gain insights into the perspectives of Canadian stakeholders on these issues before travelling to Washington, DC to meet with representatives of the US administration and US Congress. In order to see as many representatives and members as possible, the Committee divided in two groups for many of its meetings in Washington. Additional hearings on related subjects were held upon the Committee's return from Washington.

The nature of the Committee's visit to Washington was different from that of previous Committee travel. Typically, the Committee on International Trade travels in order to learn about economic opportunities in foreign markets and about the obstacles that stand in the way of closer economic ties between Canada and those markets. In this case, however, the Committee travelled to Washington not to seek out new trade and investment opportunities, but to raise awareness in the US of important Canada-US border issues; to promote Canadian interests on those issues; and to remind Americans of the value, to both Canada and the US, of what has been the longest undefended border in the world, and maintaining collaborative and harmonious relations and close cooperation within North America.

This report reflects the nature of the Committee's study. It provides information on each of the specific Canada-US issues examined by the Committee, and reports on the Committee's advocacy work in Washington.

## **BACKGROUND INFORMATION**

Canada and the United States have the single largest bilateral economic relationship in the world. Total merchandise trade between the two countries crossed the \$600 billion mark in 2008, including \$376 billion in Canadian exports to the US, and \$227 billion in US exports to Canada. The two countries also trade extensively in services and are major sources of mutual foreign direct investment (FDI).

Given the size difference (in terms of population and economy) between Canada and the US, it goes without saying that the US is more important to Canada's economic welfare than vice versa. The US is by far Canada's largest export destination and largest source of imports (both for goods and for services) and is the largest source of, and destination for, direct investment.

While Canada does not occupy the same market share in the US as the US does in Canada, bilateral trade between the two countries nevertheless matters a great deal to the US economy. In 2007, Canada was the leading export destination of 35 US states. It was a top-three export destination for 46 states. US exports to Canada are \$38 billion greater than US exports to Mexico and China combined.

In fact, it is almost misleading to characterize the Canada-US economic relationship in terms of trade. It is far more accurate to say that, in many industries, Canada and the US make things together. Approximately 70% of Canada-US trade takes place within one industrial sector and approximately 40% is intra-firm trade or between companies that are affiliated with one another. About one third of Canada's exports to the US are composed of goods that were previously imported from the US. In other words, Canada imports components from the US and exports finished goods to the US. The reverse is also true.

## **CANADA-US BORDER ISSUES**

### **A. The Border**

#### **1. The Issue**

The "thickening" of the Canada-US border is among the most pressing issues facing Canada-US trade relations today. This development is in large part a reflection of a series of measures introduced by the Department of Homeland Security (DHS) and the US Department of Agriculture (USDA), all in the name of enhanced national security and regulation. These measures include everything from supply chain security programs to new electronic means of submitting information to border agencies, to inspection fees for agricultural products and to the cost of multiple security cards for truck drivers.

On top of the increased security and regulatory requirements along the border is the issue of border infrastructure. There has been a longstanding need for increased capacity at border crossings, both in terms of border facilities, as well as transportation infrastructure leading up to crossing points. The existing road and rail linkages between the two countries were not designed to accommodate the present level of trade between Canada and the US.

In other words, there are two sets of border issues that need to be addressed. One is the actual bottlenecks at the border: the physical infrastructure and the need to have pre-clearance and other types of measures that will help facilitate trade at the border. The second is the new compliance requirements that companies must meet in order to cross the border.

As much as these issues are a present concern, the Committee heard that their full impact is being masked by a decrease in trade, transportation and passenger traffic across the border in recent years. This decrease, the result of a combination of factors including slower economic growth in the US and a high Canadian dollar, has not only veiled the complications arising from the thickening border, but has also granted a temporary reprieve from the unresolved physical infrastructure issues along the border. Once the economy begins to recover and traffic increases again, there will be a return to extended delays at the border.

Some witnesses in Ottawa expressed concern that the border will only continue to thicken. The Committee heard that the US continues to add layers of regulation and compliance requirements on traffic between the two countries as the emphasis on finding a balance between trade and security in the US continues to be tilted strongly towards security. For example, David Bradley (Chief Executive Officer, Canadian Trucking Alliance) noted that DHS Secretary Napolitano has stated that border measures should not “unduly” impact on trade and should avoid “unnecessary” divisions between security on the one hand, and trade and travel on the other. What is considered to be “undue” or “unnecessary” is unclear.

Further complicating this fact is that US Secretary of Homeland Security Janet Napolitano’s perspective on border issues is shaped by her experience with the Mexican border. We heard that Secretary Napolitano understands the southern border well, but a number of witnesses expressed concern that the same could not be said about the northern border. This concern has revealed itself in a number of statements made by Secretary Napolitano, which suggest that the US views the security issues along its northern border as being comparable to those on its southern border.<sup>1</sup>

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1 Subsequent to the drafting of this report, Secretary Napolitano visited Canada and met with Public Safety Minister Peter Van Loan. At that meeting, Secretary Napolitano had a much better understanding of the differences between northern and southern border issues in the US. Minister Van Loan and Secretary Napolitano made progress on a number of border issues and agreed to meet at least twice yearly to discuss matters of mutual security.

A border review released by the US DHS showed ongoing concerns about Canadian risk assessments and “very real” differences on immigration and visa policy. In an editorial in the *National Post*, Napolitano is quoted as saying:

One of the things that we need to be sensitive to is the very real feelings among southern Border States and in Mexico that if things are being done on the Mexican border, they should also be done on the Canadian border.

In other words, we shouldn't go light on one and heavy on the other... I don't mention this to suggest that everyone in this room will agree with that, I mention it to suggest it's something I have to deal with, and so I ask for your sympathy.<sup>2</sup>

As a result, a trilateral view of the border is emerging in the United States whereby the northern and southern borders are viewed as one. However, witnesses in Ottawa were adamant that the issues surrounding each border are completely different. Several argued that the problems of illegal migration, and drug wars and drug trafficking in Mexico do not exist in Canada, and that Americans need to be reminded of the differences between their two borders.

In terms of solutions to Canada-US border issues, the Committee heard that many of the specific concerns can be addressed in small, incremental steps. The Committee heard from the Canadian Trucking Alliance that measures like better traffic management, better staffing at peak periods, better signage, etc., resulted in a 20 to 25% improvement in border throughput at the Detroit-Windsor border crossing.<sup>3</sup> Their message was that small changes can make a big difference. Canada can work with the US to improve border efficiency without sacrificing security.

Indeed, at the Committee's Ottawa hearings, witnesses brought forward a number of suggestions and observations on how border operations and management might be improved. For example, Shirley-Ann George (Senior Vice President, Policy, Canadian Chamber of Commerce) offered three specific suggestions:

- **A single system for reporting imports and exports at the Canada-US border is needed.** Different shipments are regulated by different government departments and agencies. While Canada and US border agencies are moving towards electronic importing and exporting reporting mandates, other government departments are still using other systems.

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2 *National Post*, “The Wacky World of Janet Napolitano,” Friday, March 27 2009. The complete text of the article is available at: <http://www.nationalpost.com/related/topics/story.html?id=1436109>.

3 Committee Testimony, Meeting no. 10, March 31, 2009.

- **An effective border contingency and communications plan is required.** Such a system needs to be put in place so that the border can be re-opened for trusted travellers as soon as possible, should a pandemic, natural disaster or terrorist attack take place.
- **Border co-management should be considered.** Canada and the US should consider taking border co-operation to the next logical level by establishing a co-managed border made up of officials from Canadian and US border and infrastructure agencies, with potentially a rotating chair in the same spirit as the North Atlantic Region for Aerospace Defence (NORAD). This concept could be tested using a pilot project at an existing border crossing with low-risk, pre-screened trusted shippers and travellers. A co-managed border would provide uniform border planning, coordinating agency resources, linking cross-border infrastructure projects and strengthening port- and between-port security enhancement protocol and incident responses.

Additional recommendations offered by other witnesses included:

- **Employing a risk-based approach to border management.** Several witnesses, including David Bradley, suggested that Canada and the US need to return to a risk-based approach to dealing with the flow of goods, services and people across the border. Both countries need to enhance membership in trusted shipper and traveller programs and provide clear, measured and reported benefits for participating in those programs.
- **More border crossing lanes need to be open during peak commercial and travel times.** Randy Williams (President and Chief Executive Officer, Tourism Industry Association of Canada) among others, believed that Canada and the US should offer 24/7 border services at all major crossings, including the operation of border booths, secondary inspections and border-related support services.
- **Establishing a single point of authority within the government on border issues.** David Bradley suggested that the federal government should consider the creation of a cabinet committee on the border and/or a specific ministerial or senior bureaucratic position with authority for all aspects of the border.

## **2. The Committee's Message in Washington**

In addition to the ideas mentioned above, the Committee had several messages it wished to deliver in Washington on the subject of the Canada-US border. Among them was to remind Members of Congress and the US administration that there is an economic cost associated with border thickening measures. Because of the high degree of integration between the Canadian and US economies, the effect of increased compliance requirements at the border is to impede trade between the two countries and ultimately cost jobs in both countries. In a time of global economic downturn, effort should be placed on making the North American economy as competitive and efficient as possible, and not on adding new burdens and unnecessary costs. Doing otherwise could prolong the recession and delay or limit any economic recovery.

In balancing security risks and trade facilitation, the policy of the Bush administration was to pursue risk elimination rather than risk management on the security side. This policy was identified as being a major contributor to the thickening of the border. One participant at our meetings in Washington cited the US policy goal of scanning 100% of all sea cargo entering the country by 2012 as an example of a policy that imposes major costs on the US economy while offering relatively little in terms of security gains. The Committee heard that a more appropriate balance is required in US policy. Strong risk management principles are needed, but the current approach is expensive and often represents a heavy-handed response to security issues; border security policy should be employed in a manner that reflects where the risks are found and should not stifle cross-border trade in the process.

One of the main points the Committee wanted to stress in its meetings in Washington was that the issues surrounding the Canada-US border were significantly different from those on the US-Mexico border. As noted above, DHS Secretary Janet Napolitano had made a number of statements suggesting that the two borders should be treated in a like manner. Committee members disagreed with this point of view and sought to emphasize the differences between the two borders and to argue that the issues surrounding each should be dealt with separately.

We received a favourable hearing from Members of Congress on the importance of differentiating the issues facing the Canada-US border from those facing the US-Mexico border. Several Members suggested that the border measures being implemented in the US are intended to respond to issues with the southern border, but end up sending the wrong message to Canada. Indeed, in one of our meetings, the issue of border management in the US was likened to searching for a "needle in a haystack." The difference between the Canadian and the Mexican border is that there are far more needles in the Mexican haystack than in the Canadian one.



However, while Members of Congress were largely in agreement with the Canadian position, in a number of its meetings with academics, business leaders and members of the US administration, the Committee was advised that Canada should re-evaluate this strategy and instead consider working with Mexico to address border concerns cooperatively. It was suggested that, while specific problems such as drug trafficking and illegal border crossings make Mexican border issues appear very different from Canadian border issues, from a broader perspective, many of the overarching problems are similar. For example, both countries have concerns in areas such as softwood lumber, truck traffic at border crossings, balancing security and trade, and even the export of illegal drugs to the US.

The Committee heard that one of the benefits of cooperating with Mexico on US border issues is that it is easier to get the attention of the US administration if both Canada and Mexico are on the same page. It was suggested that Canada would be more likely to succeed in getting the US to accept a fair, rules-based approach to addressing border security and trade issues if there are three countries at the table rather than just two.

It was also suggested to the Committee that it can be more difficult for Canada to achieve satisfactory resolution on issue-specific concerns and disputes with the US than it is to reach consensus on wider, more comprehensive agreements. Specific disputes are often driven by small, but powerful, lobby groups in the US that put forward a narrow, constituent-focused position. It is difficult for Canada to counter the influence of these special interest groups. To do so requires demonstrating to the US administration that there is a compelling national interest inherent in the Canadian position, one that overrides the narrower concerns of domestic lobbyists in the US. It is easier to demonstrate such a national interest and to get the attention of the US administration when Canada's proposal is grander in size and scope.

One such proposal brought forward to the Committee was that the timing might be right to once again explore the concept of a North American security perimeter. The idea of a security perimeter was first raised by the US in response to the events of September 11, 2001. At that time, however, Canada was not interested in pursuing such an approach to border security. Although some cooperative measures were taken, we were told that, in the absence of a full security perimeter around North America, the US began to add security measures to its borders with Canada and Mexico. Indeed, some implied that the present thickening of the border could be related to Canada's decision not to move forward earlier on the North American security perimeter file.

It was suggested to the Committee that DHS Secretary Janet Napolitano is signalling an interest in revisiting the idea of a security perimeter. Some participants at our meetings in Washington argued that her statements on treating the Canadian and Mexican borders in a like manner were not intended to imply that the two borders are the same or required equal attention, but rather that the US is looking at a "concentric circles" approach to border management. This means that the US is looking to apply a single set of rules to address border management issues, even if the need for enforcement of those rules differs.

For this reason, the Committee heard from some witnesses that the US would be receptive to a renewed proposal on a perimeter-based approach to border security in North America. This would qualify as a “big idea” that would get the attention of the US administration; it could include Mexico; it would address US security concerns; and it has the potential to greatly reduce some of the frictions that are slowing the flow of people, goods and services across the Canada-US border.

Indeed, over the course of our trip to Washington, Committee members heard a number of proposals for major initiatives that would help to alleviate border problems between Canada and the US. These proposals include:

- **Revisiting the idea of Shared Border Management (SBM)** — Congresswoman Louise Slaughter stated that Secretary Napolitano was reconsidering the idea of SBM. Congresswoman Slaughter told Committee members that she would work with Secretary of State Hillary Clinton on this issue.
- **Exploring a North American Free Trade Agreement (NAFTA) Infrastructure Commission** — Since the NAFTA came into effect, a series of north-south trade corridors have evolved. However, the existing road and rail infrastructure does not reflect this reality. An infrastructure commission could work to overcome this problem.
- **Reexamining NAFTA’s Rules of Origin Requirements** — The Committee heard that some companies are choosing to forego their NAFTA advantages and pay higher Most-Favoured Nation (MFN) tariffs to avoid NAFTA’s cumbersome rules-of-origin requirements. One witness suggested that a customs union would eliminate the need for rules of origin between Canada and the United States.

While the Committee was presented with several “big ideas” as to how border issues could be addressed, there were an equal number of meetings in which Members of Congress of other stakeholders suggested that even small steps could make a big difference in improving the operation of the Canada-US border. These proposals fell into one of two general categories. The first was practical measures that could improve the efficient functioning of the border itself. Many of these ideas were the same as those proposed by witnesses in Ottawa: offering 24/7 border services at all crossings; increasing the capacity for secondary inspections and border-related support services; increasing the use of pre-clearance authorities at the time of loading to assist with the cross-border trade of specific goods; and better use of electronic data management and coordination at crossings by the various government departments and agencies involved in border issues.

The second category of measures are those that fall under the category of regulatory cooperation. There is a desire to address what has been called the “tyranny of small differences” that impedes trade and a well-functioning Canada-US border. Bringing forward a list of “easy-win” regulatory differences where Canada and the US could adopt the same regulations (or agree to mutually recognize one another’s regulations), in such a way that does not result in the adoption of lower standards, could help lower the cost of doing business and reduce some of the friction associated with cross-border trade. The Security and Prosperity Partnership (SPP) was motivated by a desire to address many of these issues, but over time the process became controversial as it expanded beyond its original intent.

## **B. The Western Hemisphere Travel Initiative**

### **1. The Issue**

The Western Hemisphere Travel Initiative is a US law requiring all travellers to present a valid passport or other approved security document denoting citizenship and identity before entering the United States. The law applies to US citizens and foreigners alike and is being implemented in stages by mode of transportation. The new requirements were implemented for air travel in January 2007 and were implemented for travel by land and water on June 1, 2009.

The primary issue regarding the implementation of the WHTI for land travel is the relatively low percentage of US residents that have the necessary travel documentation. According to Randy Williams:

Just 28% of Americans currently hold a passport, as compared to 53% of Canadians. There are 700,000 Americans who currently hold a passcard. The NEXUS card is currently held by 300,000 Canadians and Americans. Enhanced drivers licences have been put forth over the past few years as a viable option, and we have seen several American states and Canadian provinces move forward on offering these as an option for a secure document. However, adoption rates for these driver’s licences, incorporating proof of citizenship, have been modest at best to this point.<sup>4</sup>

The lack of awareness in the US about the documentation requirements for foreign travel is a major concern for Canadian businesses and stakeholders. One specific issue relates to casual cross-border traffic. Land travel between Canada and the US has been in decline for a number of years already; same-day automobile traffic from the US to Canada has fallen by 57% from 1999 to 2007. It was suggested that adding new documentation requirements to cross-border travel will further drive down the number of visits, especially

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4 Committee Testimony, Meeting no. 9, March 12, 2009.

in cases of spontaneous, same-day travel. This development has the potential to cause considerable damage to communities and tourism industries on both sides of the border.

Another concern over the implementation of the WHTI is that if the public is not prepared for the new requirements, border traffic could become clogged by unprepared motorists. The WHTI could thus lead to substantial border delays for transportation trucks which may have the necessary documentation but will be stuck in traffic, unable to reach the commercial lanes and border compounds. Border delays could result in more lost jobs in Canada and in the United States; many industries in the two countries are closely integrated and rely on just-in-time delivery to operate successfully.

In an effort to address concerns over the WHTI and the rate of passport applications, a number of alternative, WHTI-compliant travel documents are being considered. For example, several provinces and states are exploring enhanced driver's licences (that contain information about the holder's citizenship). It was suggested that these licences are a less expensive and more practical form of documentation than a passport for the many Americans and Canadians whose travel interests are limited to land crossings.

It was also suggested that Canada and the US work together to establish a fast lane at airport security for NEXUS card holders (NEXUS is designed to expedite the border clearance process for low-risk, pre-approved travellers into Canada and the United States). Doing so would make the benefits of the NEXUS card, as seen at land crossings, more immediately obvious and, it was argued, could encourage more Canadians and Americans to apply for the card.

Some witnesses believed that Canada should have lobbied the US for a delay in implementing the WHTI for land travel. However, the Committee also heard that because there has already been one such delay (WHTI for land travel was originally to be implemented in January 2009), most witnesses did not expect another delay, but instead were working to adjust to the June 1 deadline.

Indeed, Randy Williams cautioned against lobbying for another delay in implementing the WHTI:

The challenge with another delay is that there's no urgency for Americans to get documents, when they keep believing it will be delayed and delayed. The transition time has been as hurtful as the actual implementation. We need to get Americans informed about what documents they need to cross the border, and that requires a penetration of their awareness levels by communicating to them through an advertising campaign.<sup>5</sup>

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5      Ibid.

The Committee heard that Americans need to be better informed about the documents required in order to travel to Canada. There is an opportunity for the Canadian Border Services Agency (CBSA) and the US Department of Homeland Security to work together on a common communications plan to create more awareness. It was further suggested by officials from the Department of Foreign Affairs and International Trade (DFAIT) that, if it appeared necessary, Canada would lobby for an adjustment or transition period for the full implementation of the WHTI for land and water travel.

## **2. The Committee's Message in Washington**

One of the Committee's objectives in Washington was to voice its concerns regarding the implementation of the WHTI. Based on earlier research and testimony, the Committee was of the view that citizens in both countries were simply not ready for WHTI requirements for land-based travel. Too few Canadians and, especially, Americans do not have the necessary travel documents or are unaware of the present need for those documents. This view was echoed by some Members of Congress, who also questioned whether or not all border crossings were in a position to implement the WHTI.

As such, at its meetings with the Department of Homeland Security and Members of Congress, the Committee lobbied for a six month delay in implementing the WHTI for land-based travel. While Committee members did receive support from some Members of Congress for the idea of delaying WHTI implementation, the general message we received was that the process was too far advanced for a delay to be legislated in time. Even its strongest opponents in Congress were resigned to the fact that the WHTI would be in place for land-based travel by June 1, 2009.

At the same time, however, the Committee did receive assurances from officials at the DHS that there would be flexibility in the enforcement of the WHTI at the border, and that the US would be pragmatic in its approach to implementing WHTI rules. In one of our meetings, it was suggested that the WHTI will be implemented gradually, with border officials issuing warnings but allowing most traffic through, possibly for as long a period of time as 18 months. Moreover, the Committee received commitments from a number of Members of Congress to draft and sign on to an open letter to DHS Secretary Janet Napolitano expressing their concern about the WHTI and its potential impact on cross-border traffic between the two countries.

The Committee also heard that while the US has every intention of running a "soft" implementation of the WHTI, it cannot practically advertise this fact. In the long term, the US administration wants Americans to have WHTI-compliant travel documentation. Issuing a statement that suggests that the rules are in place but can safely be ignored for as long as 18 months will not help with long-term compliance. Finally, we heard that border officials retain their discretionary authority at all times to admit or reject entry into the United States regardless of the presence or absence of required documentation.

It was also suggested that the WHTI travel document requirements could actually simplify border crossings. DHS officials stated that previously there were over 8,000 eligible documents that could be used to gain entry into the United States. The WHTI brings this number down to six. In their view, the WHTI will thus make border crossings more efficient and easier to operate.

On the issue of readiness, in some of its meetings, the Committee was told that there was an important distinction to be made between the number of US citizens with a passport or other WHTI-compliant document, and the number of US travellers with the required documentation. We heard that a certain segment of the US population, especially in southern parts of the country, is unlikely to ever travel outside the United States. For this reason, statistics on the number of US citizens with passports suggest a lower level of readiness for the WHTI than may actually be the case. According to the DHS, an estimated 80% of US travellers should have acquired WHTI-compliant documents by June 1.

Committee members also discussed the issue of alternative, WHTI-compliant travel documents. While passports are the most common such form of documentation, alternatives such as enhanced driver's licences (EDLs) and NEXUS cards are also viable options, and can usually be obtained more quickly and at a lower cost than a passport. The Committee encouraged Members of Congress from border states to lobby their respective state governments to take a closer look at EDLs and to suggest that they be offered as quickly as possible. This suggestion was generally well received, although some Members raised the issue of privacy and security concerns regarding the information stored on the chips inside EDLs.

## **C. Vancouver 2010 Olympics**

### **1. The Issue**

There is a common assumption that there will be high US interest in attending the Vancouver 2010 Olympic Games (to be held February 12 to 28, 2010) and Paralympic Games (to be held March 12 to 21, 2010), and that there will be a concurrent short-term spike in cross-border truck traffic generated by higher demand for food and other products that the British Columbia market imports from the US. Many of the issues surrounding the Vancouver 2010 Olympics and the Canada-US border relate to the WHTI and the effect that the need for approved security documentation to cross the border will have on the number of US citizens that visit Vancouver during the Olympic Games.

The Committee heard that Canada must succeed in getting potential visitors across the border and into Canada in a seamless and welcoming manner if it is to truly prosper and thrive as a competitive tourism destination. At a time when Canada is showcasing its country, it would be devastating to the Canadian tourism industry if the international media were to pick up the story of lengthy delays at the BC-Washington State border.

Witnesses in Ottawa identified two major issues in addition to the WHTI that should be addressed with regard to border crossing in advance of and during the Vancouver 2010 Olympics. First, Amtrak operates a train that services Vancouver and is adding a second in the run-up to the Olympics. The Canadian Border Services Agency has implemented a cost-recovery policy for its inspection services. This policy will affect the second Amtrak train (the first is grandfathered under the previous CBSA policy). Amtrak and other US agencies are concerned that this policy will deter people from using the train and contribute to border delays. The US would like to see the second train grandfathered and treated the same as the first. Second, it will be critical that construction at the Peace Bridge crossing be completed on time, and that CBSA deploy the staff necessary to process increased traffic volumes and maintain the same degree of scrutiny of people crossing the border.

## **2. The Committee's Message in Washington**

Committee members raised the issue of the Vancouver 2010 Olympics on numerous occasions while in Washington. Members expressed their concerns that WHTI documentation requirements would act as a deterrent to US citizens wishing to come to Vancouver and Whistler to experience the 2010 Olympic Games. For this reason, Committee members lobbied for an extension up to the conclusion of the Olympics, or possibly an exemption window for the enforcement of WHTI rules during the Games themselves.

As mentioned above, the Committee heard that there is not enough time to pass legislation to delay WHTI implementation, but that there will be a period of leniency in the enforcement of WHTI rules. We received assurances from Members of Congress as well as the DHS that the time period for this "soft" implementation of the WHTI would extend through to the end of the 2010 Olympics. Moreover, the Committee was reminded that US border officials do have the right at all times to exercise discretion in allowing entry into the country.

DHS officials also noted that a special communications campaign is planned for the Western US states in the run-up to the Olympics. The DHS has earmarked \$2 million for this campaign to inform would-be travellers of the documentation requirements in advance of their travel to Canada.

Finally, the Committee also heard that, in spite of the WHTI rules, all US citizens retain the constitutional right to re-enter their country regardless of whether they have the required travel documents or not. In other words, US travellers are unlikely to have problems returning to the US should they visit Vancouver without appropriate documentation.

## D. Country-of-Origin Labelling

### 1. The Issue

In 2002, the United States passed the *Farm Security and Rural Investment Act*, enacting COOL which requires that beef, lamb, pork, fish, peanuts and perishable agricultural commodities be labelled to show the country in which they originated.

After a number of amendments and delays, COOL labelling requirements came into force in October 2008 with the passing of the 2008 US Farm Bill (*The Food, Conservation, and Energy Act of 2008*). Among the COOL requirements were provisions that allowed beef from animals born, raised and slaughtered in the United States to be labelled as *US-origin meat*. Meat from animals born in Canada but raised or slaughtered in the US would not be eligible for that distinction. Because of the added cost and difficulty of handling and segregating Canadian cattle created by these COOL provisions, some US slaughterhouses announced that they would no longer purchase animals born outside the US, while others stated they would only purchase Canadian animals on specified days.

In December 2008, Canada requested consultations at the World Trade Organization (WTO) with the United States on the matter, alleging that these mandatory COOL provisions are inconsistent with the US obligations under WTO Agreements.<sup>6</sup> However, in January 2009, the US Department of Agriculture, under the Bush administration, eased the labelling requirements, prompting Canada to drop its request for consultations at the WTO.

In February 2009, the US Secretary of Agriculture under the new Obama administration, Tom Vilsack, announced that, while he will not revisit the January 2009 decision, he is asking US processors to “voluntarily” include information about what production step occurred in each country when multiple countries appear on the label; to extend COOL to processed products; and to reduce the inventory allowance for ground meat from 60 to 10 days.

It is unclear to what extent these measures are “voluntary.” Secretary Vilsack released a letter to industry stakeholders stating: “The Department of Agriculture will be closely reviewing industry compliance with the regulation and its performance in relation to these suggestions for voluntary action. Depending on this performance, I will carefully consider whether modifications to the rule will be necessary to achieve the intent of Congress.”<sup>7</sup>

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6 WTO Dispute Settlement: DS384 “United States — Certain Country-of-Origin Labelling (COOL) Requirements” Available at: [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds384\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm); DFAIT Press Release of December 1, 2008, available at: [http://w01.international.gc.ca/MinPub/Publication.aspx?isRedirect=True&Language=E&publication\\_id=386637&docnumber=232](http://w01.international.gc.ca/MinPub/Publication.aspx?isRedirect=True&Language=E&publication_id=386637&docnumber=232).

7 The letter is available at: [http://www.usda.gov/documents/0220\\_IndustryLetterCOOL.pdf](http://www.usda.gov/documents/0220_IndustryLetterCOOL.pdf).



Secretary Vilsack's suggestions would make COOL as restrictive for live animals as was originally intended in the 2002 bill. This more restrictive version of COOL was rejected by the US Congress in the 2008 Farm Bill as being too costly to implement. Regulating the narrative history of an animal for labelling processes requires that the animal be tracked from the time of birth onwards.

COOL has been portrayed by its proponents as a consumer marketing initiative, and sometimes even represented as a food safety measure. Canadian stakeholders argue that it is purely a trade protectionist measure. As a result of the January ruling and the February call for "voluntary" compliance to a stricter set of rules, it is no longer clear what country-of-origin labelling actually means or how it is to be enforced.

The potential implications of COOL on agricultural production in both Canada and the US are considerable. The USDA has formally acknowledged the benefits of interdependence between the Canadian and US hog industries in terms of value added and employment in the US. The Committee heard that COOL creates an enormous inventory management problem for all distributors and retailers in the US rather than adding some perceived benefit. It is estimated that implementing COOL will cost the US economy \$3.9 billion. If the additional practices announced by Secretary Vilsack are followed and enforced, the impact on small US farms, especially in Minnesota and Iowa, will be even more severe.

The Committee heard that, given the global economic slowdown, this is the worst possible time for the US to impose such a cost on the American economy. Small independent hog farms in the US rely on Canadian feeder pigs because of insufficient supply in the US. Jurgen Preugschas (Chair, Canadian Pork Council) noted that agricultural research analysts estimate that about 1,375 independent US farm operations are vulnerable as a result of the loss of Canadian feeder pigs due to COOL. Application of COOL could result in the loss of 2,500 US farm jobs and over \$100 million in farm income. The majority of these losses will be in Minnesota and Iowa. Moreover, five US packers employing approximately 4,000 US workers would be vulnerable to closure if Canadian feeder pigs were no longer shipped to US finishers because of COOL.

## **2. The Committee's Message in Washington**

In its hearings in Ottawa, the general message the Committee received on the subject of COOL was that the Canadian industry is not necessarily happy with the labelling requirements, but is willing to accept US regulations that would require Canadian products to be labelled as such when shipped to the US. For Canadian producers, the bigger issue is the "voluntary" requirement that, at the retail level, beef, pork and other products be labelled with the animal's country of birth. Canadian stakeholders were looking to the Committee to push back on COOL generally, but especially on the voluntary guidelines as issued in February 2009.

The Canadian industry believes that labelling requirements violate the WTO and the NAFTA in two ways. First, when an animal is processed into meat, under trade rules, the meat is considered to originate in the country where it was processed.<sup>8</sup> Second, the Committee heard that there is a provision in NAFTA that finished goods should not be labelled with information on where the inputs came from.<sup>9</sup> Ultimately, the Canadian industry wants the United States to acknowledge that the location where animals are slaughtered confers origin on the meat. The Committee relayed this message to the US administration and to Members of Congress in Washington. It also expressed its concerns that it appears as if US legislation has implemented one set of labelling requirements, but at the same time, the USDA is trying to circumvent those rules by imposing stricter “voluntary” labelling requirements that appear to have consequences for non-compliance.

The Committee received a mixed response to this message, and its meetings with Members of Congress showed the varying level of knowledge and interest in COOL. Some American industry representatives and Members of Congress confirmed their support for Canada’s position on COOL. Others were either opposed or unaware of the issue altogether.

Committee members also took the opportunity to remind their US counterparts of the system of mandatory animal identification in Quebec and asked Members of Congress what steps Canada might take to improve US public confidence in Canadian meat products. In response, many Members of Congress agreed with the Committee’s view that Canadian meat and other agricultural products are safe and that COOL is not a food safety issue. They noted that the negative impact of COOL on the Canadian industry is the unintended collateral damage of a measure that was not implemented with Canada in mind.

The concept of the integrated “North American herd” was also acknowledged by several Members of Congress. For example, it was brought to the attention of the Committee that two-thirds of the (six million) pigs in Iowa are feeder pigs from Canada. Under the COOL requirements, there are 400,000 empty finishing spaces in Iowa which become lost capacity for the slaughter of over a million pigs each year. Concerns were raised about the potential increase in slaughter capacity in Canada, at the expense of the slaughter industry in the US. Another Member of Congress stated that the US producers largely find the COOL requirements overly burdensome.

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8 Provisions to this effect are found in Chapter 4 of NAFTA.

9 Annex 311 paragraph 5(b) of the agreement states that: “Each Party shall exempt from a country of origin marking requirement a good of another Party that is to undergo production in the territory of the importing Party by the importer, or on its behalf, in a manner that would result in the good becoming a good of the importing Party under the Marking Rules.” The slaughter of animals is considered to result in the good becoming a good of the importing party.

While many Members of Congress were concerned about COOL, others defended it. One Congressman stated that, because of a number of issues, US meat has a bad reputation in major international markets such as the EU, making it difficult to export to those parts of the world. Since the term “Product of USA” still held some cachet in the US market, COOL was necessary to help US producers capitalize on that advantage and compensate for the disadvantages they faced elsewhere.

In its meeting with representatives of the USDA, the Committee heard that, following the implementation of COOL and the letter outlining the voluntary measures, the USDA is conducting a six to nine month review of the impact of these measures on the industry, and will monitor how businesses and consumers respond (for example, observing which segments of the industry take the voluntary measures).<sup>10</sup> This review process implies that there will be no additional COOL-related measures or conditions imposed during that period. Members of the Committee asked the USDA how Canadian stakeholders could get involved in this information-gathering process. We were told that the information flow system had not yet been worked out, but that Max Holtzman, Trade Advisor to Secretary Vilsack, was willing to serve as a point of contact in that regard.

Committee members were harshly critical of the execution of this review and made their opinions known to USDA representatives. Members argued that the review process did not appear to have a specific plan or methodology, and that it was far from clear what, exactly, the focus of the review was: the COOL legislation as implemented, or the “voluntary” measures imposed thereafter. The Committee was told that Secretary Vilsack believes in science-based solutions to agriculture issues and problems. However, in our view, in the absence of a clear question, this COOL review process violated the most basic principles of scientific methodology.

## **OTHER CANADA-US ISSUES**

The Committee’s intent in exploring Canada-US trade issues was to limit the scope of its study to the four border-related issues described above. However, in the process of our study, other issues affecting Canada’s trading relationship with the United States were brought to our attention, both in witness testimony and during our travel in Washington. Two such issues, black liquor and the “Buy American” provisions of the US stimulus package, are discussed below.

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10 On behalf of the Committee, Claude Guimond requested that the USDA provide the Government of Canada with the results of this study as soon as they are made available.

## A. Black Liquor

### 1. The Issue

Produced during the pulping process of transforming wood chips into kraft pulp, black liquor is a co-generation by-product of the pulp and paper industry. As a renewable fuel, black liquor has been used as a source of energy by the pulp and paper industry for decades, for purposes such as providing heating and lighting to processing plants.

In 2005, the United States introduced a tax credit for alternative renewable energy under the *Surface Transportation Authorization Bill* (named the “Highway Bill”), primarily targeted to fuel consumption in cars and trucks. Because of amendments made to the bill two years later, the pulp and paper industry discovered that by adding at least 0.5% fossil fuel (usually diesel) to the black liquor it already produces, it becomes eligible for the tax credit; equivalent to a 50-cent-per-gallon subsidy. Through this “loophole” in the American tax system, the US pulp and paper industry is receiving a subsidy valued at an average of \$200 to \$250 per tonne of pulp produced. According to Guy Caron (Communications, Energy and Paperworkers Union of Canada): “The production costs of this same tonne of pulp is about \$500 per tonne, which means that the subsidy allocated by the alternative fuel tax credit represents half the total production costs.”<sup>11</sup>

The tax credit is arguably intended to promote the increased use of biofuels. However, in this instance it is having the opposite effect, as the pulp and paper industry are now adding diesel to the renewable energy source they have been burning for decades, negating any environmental aim the tax credit once held.

The Committee heard that this tax credit will cost the American treasury between \$5 and \$10 billion in 2009. Set to expire on December 31, 2009, the tax credit has proven to be extremely costly and will soon exceed the original amount allocated to fund the tax credit in its entirety. Moreover, the response of the American pulp and paper industry has been essentially to flood the market with pulp products in order to maximize the benefit it receives from this tax credit. This overproduction has resulted in depressed world prices, further putting Canadian producers at a disadvantage. The Canadian industry sees this tax credit as an unfair advantage to the US industry at a time when the pulp and paper industry across North America is struggling with slowing demand resulting in major layoffs and plant closures.

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11 Committee Testimony, Meeting no. 19, May 14, 2009.

## **2. The Committee's Message in Washington**

The Canadian Embassy staff in Washington was well versed on the issue of black liquor. They informed the Committee that it was unlikely that the US Senate would create legislation that effectively ends the subsidy to the pulp and paper industry before the tax credit is set to expire on December 31, 2009.

The Committee raised the issue of the black liquor subsidy in the various meetings with Members of Congress. For many of these visits, the Committee's role was educational. However, a few Members informed the Committee that the subsidy to the pulp and paper industry was indeed an unintended consequence of the tax credit. These Members expressed their concerns over the excessive costs and reassured the Committee that the tax credit was not likely to be renewed in 2010.

### **B. "Buy American" Provisions of the US Stimulus Package**

#### **1. The Issue**

On February 17, 2009, President Barack Obama signed into law the *American Recovery and Reinvestment Act of 2009* (ARRA), commonly referred to as the economic stimulus package. Providing US\$787 billion in funds for a wide range of projects and initiatives, the "Buy American" provisions are of concern to Canadians as they appear to embody a general trend of rising US protectionism. These provisions require that any iron, steel and manufactured goods to be used in a project financed by the stimulus package be produced in the United States. The Act also states that "Buy American" provisions must be consistent with US trade obligations and cannot, therefore, violate the terms of treaties such as NAFTA or US commitments at the WTO.

The "Buy American" provisions remain a concern to Canadian industries because procurement undertaken by a sub-national government is not included in Chapter 10 of NAFTA. This means that any mandated expenditures under the ARRA made by state or local governments, which represent the majority of infrastructure spending, will not be subject to open competition for the supply of made-in-Canada goods under NAFTA. Already, the Committee has heard reports of US contractors who have been refusing any goods made in Canada. The Committee further heard that one Canadian thermoplastic pipe manufacturing company had its pipes ripped out of the ground by a contractor "...simply because the contractors themselves don't want to be put in the position to have to remove the equipment after the fact if these provisions are actually employed."<sup>12</sup>

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12      Ibid.

The “Buy American” provisions of the ARRA overlap with two existing American domestic content laws: the “Buy American Act” and the “Buy America” statute.<sup>13</sup> These domestic content requirements have been challenged, and upheld, under the NAFTA. Therefore, from a historical perspective, it appears likely that the “Buy American” provisions in the ARRA will also be maintained under the international trade agreements between Canada and the United States.

In addition, there are several other pieces of legislation currently under consideration in the 111<sup>th</sup> Congress<sup>14</sup> that appear to limit the ability of Canadians to bid on US government procurement contracts. These include, for example, the Water Quality Investment Act which would provide \$13.5 billion over the next five years for clean drinking water and municipal wastewater improvement projects, directly affecting Canadian industry currently involved in existing US wastewater projects.

Moreover, the Committee heard that the WTO has counted 137 instances of cases around the world of either increased tariffs or new non-tariff barriers, or new procurement restrictions enabled since the G-20 leaders committed in November 2008 not to do those very things. Specifically, Jayson Myers (President, Canadian Manufacturers and Exporters) told the Committee that “[i]n spite of President Obama's commitment not to restrict market access, these Buy American provisions actually do provide quite a substantive and far more extensive restriction on market access, particularly on the part of Canadian exporters into municipal and state procurement markets.”<sup>15</sup>

## 2. The Committee’s Message in Washington

The Committee expressed its concerns over the rise in protectionism and the perceived anti-free trade sentiments in current US legislation. Committee members told their American counterparts that, as a result of the “Buy American” provisions, Canadian

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13 The Buy American Act was enacted in 1933 and, in its current state, applies only to government procurement and construction projects covered by the Federal Acquisition Regulation. This Act requires that 51% of the components of supplies and construction materials be made in the United States in order for the final product to satisfy the domestic content requirement. The second statute, the Buy America law, was first enacted in 1964 and currently applies principally to Federal Transit Administration (FTA) grants provided to states and localities. Under this law, 100% of the components and supplies of the manufactured goods and construction materials must be made in the United States for the final manufactured good or construction material to satisfy the requirements[...] For more information, refer to Foley & Lardner LLP, “Buy American Provision in Stimulus Legislation Poses Serious Compliance Challenges for Public Works Contractors and DHS Suppliers,” available at: [http://www.foley.com/publications/pub\\_detail.aspx?pubid=5720](http://www.foley.com/publications/pub_detail.aspx?pubid=5720).

14 Such examples include: HR 629 Energy and Commerce Reinvestment Act; HR689 Air Force One Built in America Act; HR580 Purchasing Low Emission Vehicles for Use in Government Act; HR 595 American Steel First Act of 2009; HR 861 Strategic Targeted American Recovery and Transition Act of 2009; HR 2187 21st Century Green High-Performing Public School Facilities Act. These examples were provided by the Canadian Manufacturers and Exporters at the Committee's meeting of May 14, 2009.

15 Committee Testimony, Meeting no. 19, May 14, 2009.

municipalities are in the process of passing resolutions that provide some form of reciprocal access to their markets for suppliers from countries who have granted Canadian industries access to their markets. Halton Hills was the first such municipality, passing a resolution on April 15, 2009 which was presented to, and passed by, the Federation of Canadian Municipalities at their annual conference on June 5 to 8, 2009:

[T]he Town of Halton Hills pass a resolution requesting all municipalities in Canada “to adopt a procurement policy that future Canadian Infrastructure projects at the municipal level including environmental projects, such as water and wastewater treatment projects require that any goods and materials required for the projects be bought only from Companies whose countries of origin do not impose local trade restrictions against goods and materials manufactured in Canada to better ensure open, fair and competitive practices across the globe.”<sup>16</sup>

Although the Committee heard testimony that such retaliatory measures were not in Canada's long term best interests, we were also told that these actions may be useful as a negotiating tool with the United States. Should US businesses find their access to Canadian provincial and municipal procurement contracts limited, support for “Buy America” provisions in the US might erode. The Committee took this message to Washington, reminding Members of Congress that should Canadian provinces and municipalities take such steps, US companies could find themselves shut out of procurement contract opportunities in Canada and will certainly face increasing barriers to trade in the Canadian market.

## **CONCLUSION**

Canada and the US share the world's largest and most comprehensive trading relationship. Over \$1.6 billion in goods crosses the Canada-US border every day. Much of this trade takes place not in finished products, but in the exchange of inputs and components — evidence of the closely-integrated nature of the two economies. Millions of jobs on both sides of the border depend on the seamless exchange of goods and services between the two countries.

In recent years, however, the US has implemented a number of policies, regulations and initiatives aimed primarily at addressing safety and security concerns in that country. These measures, along with unresolved border infrastructure issues, are gradually transforming the Canada-US border from a series of relatively seamless crossing points to a genuine impediment to the free flow of goods, services and people.

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16 Town of Halton Hills. Report 15 April 2009. Available at: <http://www.haltonhills.ca/calendars/2009/ADMIN-2009-0024.pdf>

It is for this reason that the House of Commons Standing Committee on International Trade undertook this study of Canada-US border issues. There is a balance to be struck between addressing safety and security concerns on the one hand, and maintaining an open trading relationship that creates jobs in both countries and enhances North American economic competitiveness on the other. In our view, the balance has shifted too far toward safety and security concerns. While respecting the genuine concerns of Americans with regard to health and safety, our objective with this study was to remind our counterparts in the US of the importance of the Canada-US trading relationship and of the economic costs of putting up barriers to trade and investment.

Several witnesses in our Ottawa hearings observed that Canada needs to be unflinching in its lobbying efforts in Washington. We heard that some US Members of Congress are unaware of Canada-US border issues and, more importantly, are unaware of the impact that measures which serve to impede the free flow of goods, services and people across the border have on the US economy. While the Government of Canada and Members of Parliament have increased their efforts to engage the US on trade and border issues in recent months, these efforts must be sustained if the two countries are to make progress in addressing the concerns outlined in this report.

**Recommendation 1:**

**The Government of Canada should increase its lobbying and advocacy efforts in Washington in order to better inform the US government and Members of Congress of the issues surrounding the Canada-US border, and the consequences to both countries of “thickening” the border.**

**Recommendation 2:**

**The Government of Canada should take a proactive approach to identifying and proposing solutions to issues affecting the Canada-US border, such as exploring ways in which to facilitate commercial activity across the border without compromising security and sovereignty concerns in the process.**

On the issue of COOL, we believe that Canada needs to take an active role in cataloguing the impacts of the recently-imposed measures on affected industries in both Canada and the US. The current six- to nine-month review period offers Canada the opportunity to demonstrate to the US administration the negative consequences of COOL to producers on both sides of the border.

**Recommendation 3:**

**The Government of Canada should implement a system to monitor and evaluate the effects of the COOL requirements on Canadian agriculture and industries. These results should be submitted to USDA officials as**



**part of their current review. Once the review process is complete, the Government of Canada must ensure that it has access to the findings as soon as possible, and it must take the opportunity to discuss the findings with the USDA.**

It is worth noting that over the course of our examination of border issues, witnesses in Ottawa raised a number of other subjects related to the Canada-US economic relationship, and NAFTA in particular, they thought merited further study. These included recent investor-state disputes under Chapter 11; the possibility of renegotiating NAFTA's labour and environmental provisions; the dispute settlement mechanism contained in Chapters 19 and 20; the relationship between NAFTA and the longstanding dispute over softwood lumber; and the possibility of exploring a new economic treaty between Canada and the US—one that might replace or supersede NAFTA and which effectively addresses current economic, social and environmental issues between the two countries. While these issues were outside the scope of the present study, they are certainly worthy of consideration by the Government of Canada, and may be the subject of future Committee deliberations.



## **LIST OF RECOMMENDATIONS**

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### **Recommendation 1:**

**The Government of Canada should increase its lobbying and advocacy efforts in Washington in order to better inform the US government and Members of Congress of the issues surrounding the Canada-US border, and the consequences to both countries of “thickening” the border.**

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# APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p><b>Department of Foreign Affairs and International Trade</b></p> <p>Deborah Lyons, Director General, North America Commercial Affairs</p> <p>Martin Moen, Director, North America Commercial Affairs</p> <p>Don Stephenson, Assistant Deputy Minister, Trade Policy and Negotiations</p> <p>Callie Stewart, Deputy Director, Technical Barriers and Regulations</p>	2009/03/10	8
<p><b>Canadian Chamber of Commerce</b></p> <p>Shirley-Ann George, Senior Vice-President, Policy</p> <p>Ryan Stein, Director, International and Trade Policy</p> <p><b>Tourism Industry Association of Canada</b></p> <p>Christopher Jones, Vice-President, Public Affairs</p> <p>Randy Williams, President and Chief Executive Officer</p>	2009/03/12	9
<p><b>Canadian Council of Chief Executives</b></p> <p>Sam Boutziouvis, Vice-President, Economics and International Trade</p> <p>David Stewart-Patterson, Executive Vice-President</p> <p><b>Canadian Manufacturers &amp; Exporters</b></p> <p>Jean-Michel Laurin, Vice-President, Global Business Policy</p> <p><b>Canadian Trucking Alliance</b></p> <p>David Bradley, Chief Executive Officer</p> <p>Ron Lennox, Vice-President, Trade and Security</p>	2009/03/31	12
<p><b>Canada Beef Export Federation</b></p> <p>Ted Haney, President</p> <p><b>Canadian Cattlemen's Association</b></p> <p>Dennis Laycraft, Executive Vice-President</p> <p>John Masswohl, Director , Governmental and International Relations</p>	2009/04/02	13

**Canadian Pork Council**

Jurgen Preugschas, Chair

Martin Rice, Executive Director

**Agri-Traçabilité Québec Inc.**

2009/04/23

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Linda Marchand, Executive Director

**Canadian Meat Council**

James M. Laws, Executive Director

**Levinoff-Colbex S.E.C.**

Brian Read, General Manager

**As an individual**

2009/05/14

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Elliot Feldman, Trade Lawyer,  
Baker & Hostetler LLP

**Canadian Manufacturers & Exporters**

Jayson Myers, President

**Communications, Energy and Paperworkers Union of  
Canada**

Guy Caron, National Representative,  
Special Projects

**United Steelworkers**

Erin Weir, Economist

## **APPENDIX B LIST OF BRIEFS**

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### **Organizations and Individuals**

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**Canada Beef Export Federation**

**Canadian Chamber of Commerce**

**Saskatchewan Association of Rural Municipalities**

**Union des producteurs agricoles**





# MINUTES OF PROCEEDINGS

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A copy of the relevant Minutes of Proceedings ([Meetings Nos. 8, 9, 12, 13, 15, 19, 21, 22 and 23](#)) is tabled.

Respectfully submitted,

Lee Richardson, MP  
Chair



# Canada-US Relations

Peter Julian, MP

## Supplementary & Dissenting Opinion – NDP

June 10, 2009

### Supplementary Opinion: CANADA-US BORDER ISSUES AND BLACK LIQUOR

The report of the Standing Committee lacks vision for the trading relationship between Canada and the United States. The NDP proposes a better relationship between the two countries, based on fair trade, so that the huge volume of business going back and forth across the border is to the benefit of all Canadians and Americans, and that it respects strong labour and social rights and environmental standards. The legacy of NAFTA and unregulated free trade is clear and unequivocal most Canadians are poorer. The report is too animated by the philosophy of the Security and Prosperity Partnership that ultimately aims to lower Canadian standards and continue the disastrous legacy of NAFTA.

The NDP would like to add its own suggestions and solutions regarding the border issue between Canada and the United States. With regards to the **Western Hemisphere Travel Initiative**, the NDP has proposed that the Government reduce passport fees to a level of cost recovery only, that passport life be extended from five years to ten years, and that a coordinated advertising and marketing strategy be put in place for border towns as a counterweight to any drop in cross-border day-tripping. These easy to adopt measures would go a long way to address some of the frustration experienced by Canadians under the new border rules.

In order to make our border more efficient and effective, the Government should also create a mechanism for monitoring border traffic and establish protocols and policy to relieve excessive wait times. The NDP believes that the Windsor-Detroit border in particular, the busiest crossing in North America, should have a public authority created to provide oversight and governance over the border in the public interest.

Finally, with regards to the militarization of the border, the NDP stresses that US border agents operating in Canada must not be allowed to carry or use any arms that Canadian agents do not use. Furthermore, the Government must ensure that only Canadian border agents arrest and detain Canadians in Canada.

The report of the Standing Committee expressed concern that unfair **black liquor** loophole which constitutes a to the U.S. forestry industry will not be closed before it is set to expire in December 2009. However, Guy Caron (National Representative, Special Projects, Communications, Energy and Paperworkers Union of Canada) made a strong case that the tax credit could be renewed for a few more years. The NDP feels the Government should establish a contingency plan in the event that it is renewed this December.

### Dissenting Opinion: CHAPTERS 11 AND CHAPTER 19 of NAFTA, ENERGY, THE SECURITY AND PROSPERITY PARTNERSHIP, AND A FAIR TRADE VISION FOR CANADA-US TRADE

One of the single most egregious chapters in the NAFTA, **Chapter 11** gives incredible investor right privileges to corporations to sue democratically elected governments for legitimate regulation and policy-implementation in the public interest. The record of this model is one of object failure for the

citizens of Canada; it has resulted in a variety of past and ongoing cases against the Governments of Canada and the Provinces that severely restrict the ability of sovereign, democratic governments and parliaments to act in the public interest and uphold the most basic principles of democracy.

The Dow Chemical case currently making headlines is the latest attempt by corporations to undermine the work of democratically elected governments through Chapter 11. Dow Chemical Company has launched a Chapter 11 case against the Government for \$2 million in compensation due to a Government of Quebec ban on pesticides. Dow claims that the banning of a pesticide ingredient, 2,4-D, considered dangerous by the Quebec government, will hurt its profits. This type of challenge against a policy so clearly in the public interest is exactly why Chapter 11 is a blight on our democracy.

Though the United States has moved away from these extreme investor-state provisions, they are still used by the Government in all bilateral free trade agreements negotiated by Canada with countries around the world.

The dispute resolution mechanism in NAFTA has been the subject of criticism for some time; in fact, in 2005, the predecessor to this Standing Committee submitted a report to Parliament on its dysfunctional and the urgent need for a resolution.<sup>1</sup> Interestingly, this was even *before* the final Softwood Lumber Agreement came into effect in 2006.

At the time, the Subcommittee remarked, among other things, that **Chapter 19** lacked clear criteria, was stuck hearing the same cases over and over, was taking far too long to consider cases, was abusing the extraordinary challenges committee as a court of appeal, was stacked with biased US-appointees, and was generally being subverted by the United States. As Dr. Elliot Feldman (who testified before this Committee again before the publication of this report) said in 2005:

“U.S. private interests believe they would have fared better in U.S. courts [than under Chapter 19].” As a result, he added, “the United States has refused to negotiate anything like [Chapter 19] with anyone else and regrets having negotiated it with Canada and having extended it to Mexico.” Instead, “(t)he United States, therefore, wants to destroy Chapter 19 and has been trying to do so for the last ten years.”<sup>2</sup>

The disastrous **Softwood Lumber Agreement** that came into effect in 2006 and left almost \$1 billion in retained illegally levied tariffs in the United States, is proof enough that Chapter 19 has been rendered irrelevant, which is costing Canada billions of dollars and countless jobs. Recently, witnesses before this Committee testified that in addition to already having been forced to pay \$68 million in damages under the arbitration system of the Agreement, further cases could soon see damages upwards of \$1 billion going to the United States- right out of the pockets of Canadian taxpayers. This, at a time when the forestry industry is in crisis thanks to the economic recession.

Under the **proportionality clause of NAFTA**, Canada is forced to supply oil to the United States in proportion to its domestic supply. This would mean that in the case of an energy shortage, Canada would have to continue supplying oil proportionally to the United States, even if the lights were going out across the country. This severe constraint on our national sovereignty has left Canada without a national energy policy- the only NAFTA country without one. This is a serious blind spot in Canada’s energy and sovereignty policy that urgently requires attention- before an energy shortage or crisis rocks

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<sup>1</sup> “Dispute Settlement In The NAFTA: Fixing An Agreement Under Siege,” *Report of the Standing Committee on Foreign Affairs and International Trade, Subcommittee on International Trade, Trade Disputes and Investment, Chair John Cannis, MP, May 2005.*

<sup>2</sup> *Ibid.*, p 6.

the country and we are left scrambling.

The report of the Standing Committee makes ambiguous reference to the **Security and Prosperity Partnership (SPP)**- the NAFTA plus attempt by corporate CEOs to collude, behind closed doors, with the government to lower Canadian standards by merging them with US standards in a myriad of areas of legitimate public interest. The overwhelming public opposition and outcry to the undemocratic process of the SPP, which was never submitted to Parliament, provides lessons that this Committee ought to consider. An undemocratic, corporate-driven race to the bottom was the intent of the SPP and Canadians from the grassroots and civil society rejected it in a broad coalition. The SPP was the wrong way to approach Canada-US-Mexico trade relations and closer cooperation needs to aim to *raise* standards, not lower or discard them altogether.

The simple fact is the United States is a much larger market than Canada and the danger is always that the larger market dictates standards and practices to the smaller one. The NDP stands for a fair trade solution, one that uses trade in a cooperative model to boost the standards of living in both countries, not lower them. NAFTA has failed; it is time to envision a better relationship between Canada and the United States.

The NDP advocates a race to the top- not to the bottom. A clear, negotiated framework of high standards and regulation for trade and commerce between the two nations is the only way to reverse the tarnished history of NAFTA. When it comes to workers' rights, a living wage, environmental standards, cap and trade markets or energy issues, Canada needs to sit at the table with the United States and work together to arrive at higher, superior standards that raise both countries and are sustainable. It is time to end the dogmatic deregulation and lowering of standards that has led to a financial meltdown and the worst recession since World War II. The fact is the weak environmental and labour sides agreements to NAFTA have done nothing to improve the environment or ameliorate workers' lives and are effectively useless. Stronger standards, in the core text of an agreement, are needed. However, the record of the Conservative Government on standards, safety and the environment, especially when it comes to trade, is appalling. It continually negotiates bilateral free trade agreements that place labour and environmental rights in neutered side-agreements that have no teeth or effect.

The European Union is providing us with a better model for higher standards- there, a ``California`` effect has occurred within the EU to export higher environmental standards to EU members, *not through the market, but through political initiative*. High standards in countries like Germany, for instance, have served as unilateral trade barriers to other EU states, prompting them to raise their own standards- all through the supranational body of the EU.<sup>3</sup>

**Fair trade** means new trade rules and agreements that promote sustainable practices, domestic job creation, and healthy working conditions while allowing us to manage the supply of goods, promote democratic rights abroad, and maintain democratic sovereignty at home. There is no better place to start than with our largest and most important trading partner- the well-being of the future generations of Canada and the United States depend on it, especially since the new Obama administration in Washington provides a hopeful opportunity for change.

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<sup>3</sup> David Vogel and Robert A. Kagan eds., *Dynamics of Regulatory Change: How Globalization Affects National Regulatory Politics*, Los Angeles: University of California Press, 2004, p 12.

A bilateral fair trade relationship between Canada and the United States must therefore address more than just the problem areas like the legacies of NAFTA. It must rely first and foremost on a fair sharing of added value produced by trade, within a context of sustainable development. This cannot be left to the whims of the market- in this case, a few dozen corporations that control the bulk of our trade with the United States. High and fair standards for labour, the environment, and consumer and health protection lead to fair trade. These are, of course, a direct result of government policy- it requires, as has been illustrated forcefully by James Galbraith, planning.<sup>4</sup> The need is for a democratic framework and institutions that can bring those positive changes- not NAFTA, or the Security and Prosperity Partnership- but a transparent set of cooperative institutions that do not abandon the sectoral approach, and which are accountable to our respective legislative bodies.

Such Canada-US commissions working on cap-and-trade, the border, the auto-sector, and other issues, would be independent of the executive branch, so as to eliminate the possibility for abuse, but also *accountable* to Parliament, to keep them as democratic and transparent as possible. Some fair trade institutions actually already exist within Canada- look at the Canadian Wheat Board, for example.

The other major area for work is procurement, an issue that affects tens of billions of dollars of trade between Canada and the United States.

The report notes concerns about “rising US protectionism” with respect to the “**Buy America**” provisions in recent stimulus spending, but then documents a few pages later that this trend is worldwide. In fact, 17 members of the G-20 have enacted some form of legislation to safeguard their markets in the face of the current economic downturn.<sup>5</sup> The NDP believes that a “Buy America,” “**Buy Canadian**,” and a joint “Buy North American” program will help Canada and the U.S. ensure that their spending and stimulus legislation go to the right targets. Erin Weir of the United Steelworkers and Progressive Economics Forum advocated before the committee that a “Buy Canada” policy, with an exception for the U.S. in exchange for a Canadian exception in any “Buy America” legislation, would be a way to ensure that procurement money is spent wisely.<sup>6</sup>

We need a **procurement policy** that is not mutually exclusive. There are three dimensions in Canada however: local, provincial, and national. Therefore, it is not only about the WTO, but also about agreements between municipalities, provinces, American States, and other levels of government. For example, Australia has negotiated procurement agreements with some 33 American states (Canada has agreements with none). The federal government in Canada needs to convene meetings to allow similar agreements to be concluded. The NDP believes that proportions of locally made versus foreign made procurement need to be established, negotiated, and enshrined between jurisdictions in order to strike the right balance between our economies.

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<sup>4</sup> James K. Galbraith, *Predator State: How Conservatives Abandoned the Free Market and Why Liberals Should Too*, Toronto: Free Press, 2008, pp 164-175.

<sup>5</sup> Elisa Gamberoni and Richard Newfarmer, “Trade Protection: Incipient but Worrisome Trends,” *TradeNotes*, The World Bank, March 2<sup>nd</sup>, 2009.

<sup>6</sup> Committee Testimony, Meeting #19, 14 May 2009.

All of this is in contrast to the Security and Prosperity Partnership, which was a cloaked, undemocratic process of bureaucracy controlled by corporate interests and never submitted to the public for consideration. Years of conservative economics have undermined the public sector and eroded many of the most important public institutions of Canadian society. We are proposing a renewal of the public sphere through a partnership for fair trade and sustainable development.

It is a new way of doing business, because more of the same will not help us anymore.

