



# Canada-U.S. Relations

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## Summary

Relations between the United States and Canada, though generally close, have undergone changes in tenor over the past three decades. During the 1980s, the two countries generally enjoyed very good relations. The early 1990s brought new governments to Ottawa and Washington, and although Canada's Liberal Party emphasized its determination to act independently of the United States when necessary, relations continued to be cordial. In early 2006, a minority Conservative government assumed power in Ottawa. It was regarded as being more philosophically in tune with the Bush Administration than the Liberals were; some observers believe that this compatibility has helped facilitate bilateral cooperation. The election of President Obama November 2008 signaled a new chapter in U.S.-Canada relations; unlike President Bush, Obama is quite popular in Canada.

The two North American countries continue to cooperate widely in international security and political issues, both bilaterally and through numerous international organizations. Canada's foreign and defense policies are usually in harmony with those of the United States. Areas of contention are relatively few, but sometimes sharp, as was the case in policy toward Iraq. Since September 11, the United States and Canada have cooperated extensively on efforts to combat terrorism, particularly in Afghanistan.

The United States and Canada maintain the world's largest trading relationship, one that has been strengthened over the past two decades by the approval of two multilateral free trade agreements. Although commercial disputes may not be quite as prominent now as they have been in the past, the two countries in recent years have engaged in difficult negotiations over items in several trade sectors, including natural resources, agricultural commodities, and the cultural/entertainment industry. However, these disputes affect but a small percentage of the total goods and services exchanged. In recent years, energy has increasingly emerged as a key component of the trade relationship. In addition, the United States and Canada work together closely on environmental matters, including monitoring air quality and solid waste transfers, and protecting and maintaining the quality of border waterways.

Many Members of Congress follow U.S.-Canada environmental, trade, and transborder issues that affect their states and districts. In addition, because the countries are similar in many ways, lawmakers in both countries study solutions proposed in the other to such issues as federal fiscal policy and federal-provincial power sharing.

This report provides a short overview of Canada's political scene, its economic conditions, and its recent security and foreign policy, focusing particularly on issues that may be relevant to U.S. policymakers. This brief country survey is followed by several summaries of current bilateral issues in the political, trade, and environmental arenas. The report is updated annually.

# Contents

Overview .....	1
Canada's Domestic Scene .....	2
Background and Current Political Situation .....	2
Budget Policy .....	5
National Unity .....	6
Foreign and Security Policy Issues .....	7
Canadian Foreign Policy .....	7
Canadian Security Issues .....	8
U.S.-Canada Security and Foreign Policy Issues .....	10
Economic and Trade Issues .....	17
Bilateral Trade Issues .....	18
Environmental Issues .....	21
Canada's Arctic Sovereignty Claim .....	22
Issue Definition .....	22
Background and Analysis .....	23
Status of the Issue .....	24
Questions .....	24
Border Security Issues .....	24
Issue Definition .....	24
Background and Analysis .....	25
Questions .....	26
Border Security: Trade and Commercial Concerns .....	27
Issue Definition .....	27
Background and Analysis .....	27
Status of the Issue .....	28
Questions .....	29
Immigration and Refugee Policies .....	29
Issue Definition .....	29
Background and Analysis .....	29
Status of the Issue .....	32
Questions .....	32
Canada and NAFTA .....	32
Issue Definition .....	32
Background and Analysis .....	33
Status of the Issue .....	34
Questions .....	34
Security and Prosperity Partnership of North America .....	34
Issue Definition .....	34
Background and Analysis .....	34
Status of the Issue .....	36
Questions .....	36
Canada's Financial System .....	36
Issue Definition .....	36
Background and Analysis .....	36

Questions .....	38
Buy American Provisions .....	38
Issue Definition.....	38
Background and Analysis .....	39
Status of the Issue .....	40
Questions .....	40
U.S. Imports of Canadian Softwood Lumber .....	41
Issue Definition.....	41
Background and Analysis .....	41
Status of the Issue .....	42
Questions .....	43
U.S. Agricultural Support Dispute .....	43
Issue Definition.....	43
Background and Analysis .....	44
Status of the Issues .....	45
Questions .....	45
Country of Origin Labeling .....	46
Issue Definition.....	46
Background and Analysis .....	46
Status of the Issue .....	47
Questions .....	48
The Canadian Auto Sector.....	48
Issue Definition.....	48
Background and Analysis .....	48
Status of the Issue .....	50
Questions:.....	50
Intellectual Property Rights .....	51
Issue Definition.....	51
Background and Analysis .....	51
Questions .....	53
Electric Reliability, Trade, and Access to Renewable Power .....	54
Issue Definition.....	54
Background and Analysis .....	54
Status of the Issues .....	56
Questions .....	56
U.S. Energy Security and Canadian Oil Sands .....	57
Issue Definition.....	57
Background and Analysis .....	57
Status of the Issue .....	58
Questions .....	58
Natural Gas Pipeline from Alaska.....	59
Issue Definition.....	59
Background and Analysis .....	59
Status of the Issue .....	61
Questions .....	61
Northern Energy Development .....	61

Issue Definition..... 61  
Background and Analysis ..... 61  
Status of the Issue ..... 63  
Questions ..... 63  
Global Climate Change ..... 64  
    Issue Definition..... 64  
    Background and Analysis ..... 64  
    Status of the Issue ..... 65  
    Questions ..... 66  
Great Lakes Restoration ..... 67  
    Issue Definition..... 67  
    Background and Analysis ..... 67  
    Status of the Issue ..... 69  
    Questions ..... 69  
Great Lakes Water Levels..... 70  
    Issue Definition..... 70  
    Background and Analysis ..... 70  
    Status of Issue..... 72  
    Questions ..... 72  
Status of Polar Bears ..... 72  
    Issue Definition..... 72  
    Background and Analysis ..... 73  
    Status of the Issue ..... 73  
    Questions ..... 73

**Contacts**

Author Contact Information ..... 74

## Overview<sup>1</sup>

Relations between the United States and Canada, though generally cordial, have undergone several changes in tenor over the past three decades. The 1980s and early 1990s were marked by an increasingly close partnership, whose milestones included the mid-1980s “Shamrock Summits” (named after the Irish heritage shared by the two countries’ leaders, Brian Mulroney and Ronald Reagan), the 1988 U.S.-Canada Free Trade Agreement, and the 1993 North American Free Trade Agreement (NAFTA). To many Canadians, however, Ottawa seemed at times to have drawn a bit *too* close to Washington, D.C., with Canada casting itself too willingly in a secondary role.

In 1994, one Canada watcher observed that in the foreign policy arena, Canada “politely distances itself from the United States” in certain ways.<sup>2</sup> In an interview that year, the newly elected Liberal Prime Minister Jean Chrétien summed up his view of the bilateral relationship: “We like each other. I just don’t want Canada to be perceived as being the 51<sup>st</sup> state of America.... With me, a more mature relation will exist between us and the United States.”<sup>3</sup> Some believe, however, that this initial show of mild reserve was intended for domestic consumption, particularly during election campaigns, and that Canada and the United States in fact continued to enjoy excellent relations. Chrétien and Clinton are said to have had congenial meetings; they focused on areas where the two countries were able to reach agreement, including environmental issues, cooperation on border measures and technology projects.

In February 2001, President George W. Bush met with Chrétien. The two leaders discussed energy, missile defense, and trade. After September 11, however, economic and environmental issues often took a back seat to joint efforts to improve security, both at home and abroad. Canada became involved in the crisis at the outset, and has cooperated closely with the United States in efforts to combat international terrorism. In the immediate aftermath of the 9/11 attacks, U.S. airspace was temporarily closed and Canada allowed more than 200 flights to American destinations to be diverted to Canadian airports.

Nevertheless, Chrétien did not establish with President Bush the same rapport that he had enjoyed with Clinton. Differences over a number of issues tended to strain relations. The Bush administration inherited some long-standing trade disputes, most notably over wheat and softwood lumber, and Canada and the United States were on different sides of several international issues, including the U.S. withdrawal from the ABM treaty and the International Criminal Court. In addition, the Liberal government’s plan to decriminalize marijuana raised concerns in Washington. But it was over security-related matters, particularly defense spending, Iraq, and missile defense, that the two governments had their sharpest differences. Notwithstanding these controversies, Canada and the United States have continued to work together on a number of fronts to thwart terrorism, including strengthening border security, sharing intelligence and expanding law enforcement cooperation. The Canadian government passed a new anti-terrorism act, and Canada has contributed significant military assets to the

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<sup>1</sup> Prepared by Carl Ek, Specialist in International Relations; and Ian F. Fergusson, Specialist in International Trade and Finance, Foreign Affairs, Defense, and Trade Division.

<sup>2</sup> “Canada Narrows Its Foreign Policy Goals to Focus on Trade.” By Charles Trueheart. *Washington Post*. November 17, 1994. p. A44.

<sup>3</sup> “Don’t Take Canada For Granted.” By Tad Szulc. *Parade Magazine*. February 20, 1994.

coalition in Afghanistan. Although bilateral tensions heated up in 2005 over the issues of missile defense and softwood lumber, Canada's government and private citizens responded promptly and generously to assist the United States after hurricane Katrina.

Paul Martin, who became prime minister in December 2003, met several times with President Bush. At the January 2004 Summit of the Americas, the two leaders discussed several topics and came to agreement on Canadian eligibility to bid on reconstruction contracts in Iraq and on the ground rules for U.S. deportation of Canadian citizens. In April 2004 in Washington, D.C., Martin and Bush met once more and talked about a variety of issues, from terrorism to the "mad cow" crisis. In November 2004, during President Bush's first official visit to Canada, missile defense, border security, and global "hot spots" were on the agenda.<sup>4</sup>

In February 2006, after a come-from-behind election victory, the Conservative Party assumed power as a minority government, and Stephen Harper became Canada's 22<sup>nd</sup> Prime Minister, the first Conservative to lead the country in 12 years. Observers believe that Harper's government is somewhat more politically compatible with the Bush administration in many areas. However, although the policy orientation of Harper's Conservatives may be similar to that of the Republicans in Washington, differences have still arisen on certain issues, particularly those that touch upon matters of perceived sovereignty. For example, on January 26, 2006, days before his inauguration, Harper sharply took exception to comments made earlier by U.S. Ambassador to Canada David Wilkins and asserted Canada's sovereignty over the so-called Northwest Passage, the frozen arctic region that global warming may turn into a waterway linking Asia and Europe.<sup>5</sup>

The election of Barack Obama as America's President in November 2008 signaled a new chapter in U.S.-Canada relations. Unlike President Bush, Obama is quite popular in Canada—one public opinion poll put the new American president's approval rating in Canada at 86%. This favorable view may facilitate the Harper government's cooperative efforts with the United States. In addition, although Harper has a somewhat more conservative orientation than Obama, both leaders are pragmatic in their approach to solving public policy problems, and observers believe the bilateral relationship will continue to be collaborative and productive. On February 19, 2009, renewing a tradition broken in 2001 by President Bush, Obama made Canada his first official foreign visit. He and Harper focused on trade, climate change, and Afghanistan, among other issues.<sup>6</sup>

## Canada's Domestic Scene

### Background and Current Political Situation

In August 2002, Jean Chrétien, who had served as Prime Minister since 1993, announced that he would retire from politics when the Liberals held their next leadership vote. Paul Martin, the former Finance Minister, became Prime Minister in December 2003. Although elections need not have been held until late 2005, Martin called for a vote in spring 2004. Maintaining a Liberal

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<sup>4</sup> *Bush Welcomes Canadian Prime Minister to the White House*. State Department Press Release. April 30, 2004. "Bush Launches Bid To Repair US-Canada Ties." *Agence France-Presse*. November 30, 2004.

<sup>5</sup> "Harper Tells U.S. To Butt Out On Plans For Defending Canada's Arctic." *The Canadian Press*. January 26, 2006.

<sup>6</sup> "US President-Elect Obama Has More Than 80% Approval In Canada." *Dow Jones International News*. January 29, 2009. "Obama Makes Overtures to Canada Prime Minister." *New York Times*. February 20, 2009.



majority appeared to be a safe bet when Martin took office, but such an outcome became doubtful in February 2004, when the “sponsorship scandal” erupted. Canada’s Auditor General published a report stating that, under a program intended to build support for Canadian unity, the Chrétien government had funneled C\$100 million in public funds for dubious contracts to Québec advertising firms associated with the Liberal party.<sup>7</sup>

The Liberals’ standing in the polls plummeted, and the opposition parties gained strength. To the right of the Liberals, two conservative parties had merged under a popular new leader, Albertan Stephen Harper. And to the left, the New Democratic Party (NDP) likewise had recently elected a dynamic party chief, Jack Layton. In the June 2004 elections, the Liberals won 135 out of 308 seats in the House of Commons—a loss of 33 seats—and chose to govern as a minority.

In May 2005, the Liberals survived—by one vote—a proxy confidence vote and avoided spring elections. But in November they lost a second confidence vote, and federal elections were held on January 23, 2006. This time, the Conservatives won a plurality. They took 127 out of 308 seats in the House of Commons, and have been governing as a minority (the Liberals captured 96 seats, the Bloc Québécois 48, and the NDP 30. Four members were seated as independents, and there were three vacancies.)<sup>8</sup>

Some analysts cautioned that the Tory victory did not necessarily represent a “paradigm shift” to the right in Canadian politics; they noted that the Conservative party won only 37% of the popular vote. Because minority governments only last an average of about 18 months in Canada, Prime Minister Harper has been keeping one eye on the next elections.<sup>9</sup> In addition, Harper has relied upon the *ad hoc* support of the other three parties to ensure passage of the various items on his legislative agenda. Many therefore believe that is why he has advocated fairly centrist policies, by, for example, seeking legislative approval of the five priorities on which he campaigned: 1) greater government accountability; 2) shorter health care wait times; 3) tax cuts; 4) child care assistance; and 5) criminal law reform.<sup>10</sup>

Harper immediately began to work on these items. The first bill his government introduced in parliament was the Federal Accountability Act, intended to “change the way business is done in Ottawa forever” by addressing such issues as whistleblower protection, political contributions, lobbying reform, and government contracts and appointments. Some critics charge that the new law is selective, while others maintain that it represents overkill. Supporters praise the measure as an effort to bring about long-overdue changes.<sup>11</sup> During his tenure as prime minister, Harper has dealt with several other issues, including the environment, crime, Senate reform, and health care. For the most part, he has not forcefully advocated controversial social issues.

However, Harper has been willing to challenge public opinion over Canada’s participation in the international stabilization effort in Afghanistan, where the Liberal government deployed troops in

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<sup>7</sup> “Canada: Martin on the Ropes in Funding Scandal.” *Oxford Analytica*. February 25, 2004. February 23, 2004.

<sup>8</sup> “Canada’s Premier Acts to Counter Scandal.” By DeNeen L. Brown. *Washington Post*. February 17, 2004.

<sup>9</sup> For a description of the campaign, see “Inside Story.” By Paul Wells. *Maclean’s*. February 6, 2006.

<sup>10</sup> See “Interview: Stephen Harper.” *Maclean’s*. March 6, 2006.

<sup>11</sup> See “Conservatives To Govern From Political Center.” *Oxford Analytica*. January 24, 2006. “Harper’s Five Easy Pieces.” *Economist*. April 8, 2006.

<sup>12</sup> “Harper Rolls Out His Ethics Act.” *CanWest News Service*. April 12, 2006. “Clean Doesn’t Get Any Squeaker.” By John Ibbotson. *Globe and Mail*. April 12, 2006.

2002. In 2006, he won a narrow vote in parliament to keep Canadian troops in Afghanistan for two additional years. Harper initially characterized the mission as humanitarian in nature and also asserted that it was in Canada's national interest to demonstrate its ability to play a leadership role internationally. Over the past three years, however, Canadian operations have shifted from peacekeeping to counter-insurgency, and public support for Canada's presence in Afghanistan has diminished. The government has been banking on approval of an approach that emphasizes training Afghan troops to replace departing Canadians. In the fall of 2007, Harper appointed an advisory panel to review options on the mission. The commission found that the troop presence was justifiable and that the mission should be maintained until 2011, but recommended that Canadian forces be withdrawn unless NATO allies stepped up their contributions. This became the basis of a March 2008 compromise between the Liberals and Conservatives. Harper declared that Canadian troops would be withdrawn in 2009 unless other NATO countries provided an additional 1,000 troops. At the April 2008 NATO summit in Bucharest, France announced it would commit 800 additional troops, and the United States was expected to add to that number. Canadian troops are now scheduled to be pulled out by the end of 2011. At the April 2009 NATO summit, Canada reportedly pledged to send an additional 100 civilian specialists to Afghanistan.<sup>12</sup>

Canada's most recent elections, held on October 14, 2008, did little to change the makeup of parliament. The Conservatives, who reportedly anticipated a weakening in future support, called the elections in hopes of capturing a majority. However, the Tories emerged only with a somewhat stronger plurality of 143 seats—a gain of 19, but still 12 shy of a majority. Currently, the Liberals hold 77 seats, the BQ 49, and the NDP 36, with one independent and two vacancies.<sup>13</sup> Canada has now had three minority governments in a row.

One casualty of the election was the Liberal party—which lost 19 seats—and its leader. In December 2006, after a months-long campaign, the Liberals had elected Stéphane Dion to lead them. A former academic, Dion had spearheaded Chrétien's federalist policies toward Québec and also served as Paul Martin's environment minister. A native of Québec, Dion came from behind to defeat the two front-runners for the party leadership post, Michael Ignatieff and Bob Rae. Dion had some difficulty gaining traction with voters. Even though he pressed hard on the environment—an issue of importance to Canadian voters, and not a strong point for the Harper government—he was perceived as ineffectual, and announced one week after the elections that he would be stepping down.

In November 2008, a budget bill put forward by the Conservatives precipitated a political crisis; the spending plan proposed, among other things, the elimination of federal funding for political parties. The opposition parties, which would have been severely affected by the plan, rebelled and were poised to vote down the government—ostensibly because Harper had failed to put forward a stimulus package that would respond to the economic downturn. Harper withdrew his proposals

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<sup>12</sup> "Harper's Mission Statement." By Andrew Coyne. *National Post*. March 15, 2006. "Bring Troops Home In 2009, Majority Says." *Ottawa Citizen*. April 24, 2007. "Manley Urges Renewed Commitment." *Oxford Analytica*. January 25, 2008. "North America: Canada." *Hemisphere Highlights*. Center for Strategic and International Studies. Vol. VII, No. 4. April 2008. NATO Summit: the Truth Behind the Troops Heading To Afghanistan. *The Times* (London). April 6, 2009.

<sup>13</sup> Canada: An Early Appointment With Electoral Destiny. *The Economist*. September 6, 2008. For current standings, see the Canadian Parliament's website, updated May 1, 2009: <http://www.parl.gc.ca/information/about/process/house/partystandings/standings-e.htm>

and, to avoid the no-confidence motion, prorogued (suspended or recessed) the session of parliament until January 2009; the shutdown was sharply criticized by many.<sup>14</sup>

During this time, Stéphane Dion resigned and the Liberals named Michael Ignatieff as their interim leader, and ratified that choice at the May 2 party convention. Some believed that when Parliament returned in January, Ignatieff would seek to bring down the government and force new elections. However, he declined to do so, reportedly choosing instead to consolidate the party's strength rather than challenge the Conservatives immediately. Many observers now believe that he will challenge the Harper government with a no-confidence vote in the fall of 2009, which will likely result in Canadians returning to the voting booths in October. Currently, the Liberals are slightly ahead in the polls, particularly in Ontario. However, an uptick in the economy could help Harper. In addition, many argue that Canadians are weary of elections; at 59.1%, turnout for the last vote was the lowest in history. Voter participation may therefore play a key role in the next election.<sup>15</sup>

## Budget Policy

Canada entered into recession in the 4<sup>th</sup> quarter of 2008. While Canada is heavily dependent on the world economy, and thus easily affected by it, some Canadian policymakers believed that the country was in a relatively better position to ride out the economic downturn. After all, Canada had profited handsomely from the resources boom that only began to wind down the summer of 2008. Also, Canadians were reassured by its comparatively more regulated banking system, which was able to avoid the worst excesses of the U.S. financial meltdown. However, Canada could not long avoid the effects of the collapse of the U.S. housing market, the woes of the U.S. automotive sector, and the seizing up of credit markets worldwide.

Canada was relatively late in responding to the economic downturn. Following the re-election of the Conservatives on October 14, 2008, the government issued its autumn economic statement, which maintained a balanced budget, did not include new stimulus measures, but, as noted above, did include such politically divisive measures as the end of subsidies for political parties.<sup>16</sup>

Following the reconvening of parliament in January 2009, the government introduced a C\$258.6 billion budget, which calls for C\$40 billion in stimulus over the next two years. The stimulus consists of a package of income tax cuts, extending employment insurance (EI) benefit extensions, job retraining, 'hard' infrastructure spending, tax credits for home renovation, retrofits for social housing, and investments in First Nation's health programs.<sup>17</sup> In all, the C\$40 billion represents a stimulus of about 1.5% of GDP in the first year and 1.1% in the second year. Increased spending represents approximately 72% of this package and tax cuts contribute the remaining 28%. While a general consensus developed on the need for government stimulus spending, some criticized the budget proposals as a 'mish-mash' of proposals that did not address

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<sup>14</sup> Canadian Leader Shuts Parliament To Avoid No-Confidence Vote, Angering Many. *New York Times*. December 5, 2008. A Most Un-Canadian Caper. *The Economist*. December 6, 2008.

<sup>15</sup> North America – Canada. *Hemisphere Highlights*. Vol. VII, No. 9. Center for Strategic and International Studies. October, 2008. The Liberals Try a New Leader. *The Economist*. December 13, 2008. Liberals Make Gains In Key Regions, Poll Says. *Canadian Press*. April 23, 2009.

<sup>16</sup> The economic statement serves as a mid-year budget update and is subject to a no confidence vote.

<sup>17</sup> "Tories to Aggressively Implement Budget Spending Measures," *The Hill Times*, February 2, 2009.

what is perceived to be Canada's long-term structural problems of lagging productivity and competitiveness.<sup>18</sup>

The budget also marked a return to deficit spending for Canada after 12 successive budgets in balance or surplus. The budget contemplates a deficit of C\$34 billion the first year, and a total of C\$81 billion in borrowing over five years before the budget returns to surplus in 2013. The return to deficit spending, while acknowledged as necessary by most of the political spectrum to combat the severe economic recession, was not undertaken lightly. Prior to the 'austerity' budget of 1995, Canada had wracked up 27 straight years of deficit spending. At its peak in 1996, Canada's public debt represented 101.6% of GDP, and government sector spending reached 53.6% of GDP in 1993. Realizing this course was unsustainable, the Liberal government of then Prime Minister Jean Chretien and his Finance Minister Paul Martin embarked on a financial austerity plan using such politically risky measures as cutting federal funding for health and education transfers, applying a means test to those eligible for Seniors Benefits, and cuts in defense. A nationwide goods and services tax was introduced to help close the gap. Under this budget discipline, the government submitted a balanced budget in 1998 and a political consensus emerged not to resort to deficit spending, at least until now.

## National Unity

For four decades, an emotional debate has raged over the status of French-speaking Québec, Canada's second largest province geographically and home to about one-quarter of its population. Many Québécois are concerned that their language and culture will be overwhelmed by the rest of English-speaking Canada. Some believe that their society may only be preserved if Québec separates from the rest of Canada and forms an independent country. A 1980 referendum on "sovereignty-association" for Québec was defeated 60%-40%.

In October 1994 elections, after the provincial Liberals had governed Québec for several years, the province once more elected the separatist Parti Québécois (PQ). The victorious PQ held a referendum on sovereignty on October 30, 1995. Québeckers essentially voted on whether they wished to continue to remain a part of Canada, or strike off on their own. The question was decided by the narrowest of margins; the vote went 50.6% to 49.4% in favor of keeping the country whole. The wafer-thin margin shocked federalists and separatists alike. More than a decade later, the country is still affected by the impact of what has been called a "near-death experience."

Québec held provincial elections once again in October 1998, and the PQ retained a comfortable majority in the provincial legislature. In 2003, however, Québec voters turned out the *Péquistes* and replaced them with the Liberals, led by Jean Charest. A former leader of the Progressive Conservatives at the national level, Charest is a committed federalist, which rules out another sovereignty referendum during his tenure. In the early part of his first term, Charest lost popularity when he attempted to reduce the economic role of the provincial government; those efforts prompted strong protests from the powerful public service unions. Some Québec-watchers assert that Charest learned from this experience and changed his tactics.

Charest was said to have been encouraged by the victory of Harper, who favors greater government decentralization. The two also share an opposition to sovereignty, and, for pragmatic

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<sup>18</sup> See, for example, "A Tale of Two Stimulus Packages," by Jeremy Leonard, *Policy Options*, March 2009.

political reasons, cooperated with one another in several areas.<sup>19</sup> Many believe that Harper (and, by association, Charest) won favor in the province in November 2006 by gaining parliamentary approval in Ottawa of a measure recognizing Québec as a “nation” within a united Canada. Some observers believe that Charest’s standing received a boost by Harper’s 2007 budget, which provided generous transfers from Ottawa to the province.

Québec held elections in March 2007, and the Liberals won a plurality (33%) of the vote. Charest remained premier, but he led the first minority government the province had had in more than a century. The PQ was knocked down to third place. Mario Dumont’s Action Démocratique du Québec (ADQ), which took 31% of the votes. A relatively new party, the moderate ADQ espoused a vaguely defined “autonomy” over outright independence for Quebec. It was believed to reflect the views of small towns and rural areas whose residents are proud Quebeckers, but do not wish to hold another referendum. Subsequently, however, Dumont’s ADQ fell sharply in the polls. In December 2008, Charest, sensing victory, called a snap election and won a narrow majority.<sup>20</sup> The PQ came in second and will be the official opposition; the ADQ failed to pass the 20% electoral threshold for official party status, and Mario Dumont announced his resignation.<sup>21</sup>

Since the debate began in the 1960s, the United States government has assiduously sought to remain officially neutral on the issue of Québec, continually repeating the three-point “mantra” that the United States enjoys excellent relations with a strong and united Canada; that the Québec question is an internal issue that is for Canadians to decide; and that the United States does not wish to interfere with Canada’s domestic matters. However, some analysts detected a slight “tilt” on the part of Clinton Administration toward the federalists during the 1995 referendum campaign. If, at some future date, Québec eventually *does* leave the confederation, the U.S. government will be faced with difficult political and economic questions.

## Foreign and Security Policy Issues

### Canadian Foreign Policy

After Jean Chrétien became prime minister in 1993, some analysts concluded that he had “tilted Canada’s foreign policy towards the more explicit pursuit of economic self-interest and away from concerns about human rights abroad.”<sup>22</sup> Under Lloyd Axworthy’s leadership beginning in 1996, however, many observers detected a swing in attitude at the Foreign Affairs Ministry back toward Canada assuming the role of “soft power,” relying on its reputation as an honest broker to help effect consensus through negotiation and moral suasion rather than military force or economic sanctions.<sup>23</sup> In the most significant example of this approach, Axworthy launched the “Ottawa process” to reach agreement on a treaty banning the manufacture, trade, and use of

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<sup>19</sup> “Unpopular Charest Needs Harper’s Help To Gain Re-election.” By Rhéal Séguin. *Globe and Mail*. April 15, 2006.

<sup>20</sup> “Au Revoir Separatism, Bonjour ‘Autonomy.’” *The Economist*. March 31, 2007. “Mario Dumont’s Decline Started On Election Night.” *Montreal Gazette*. May 5, 2008. “Charest’s Stunning Turnaround.” *Toronto Star*. May 4, 2008.

<sup>21</sup> Charest Struggles To Slim Majority. *The Globe and Mail*. December 9, 2008.

<sup>22</sup> “Canada Bows Out As ‘Boy Scout’ To the World.” By Jeffrey Simpson. *Hemisfile: Perspectives on Political and Economic Trends in the America*. July/August 1995.

<sup>23</sup> “Canada to Play Global Role as ‘Soft Power.’” By Mike Trickey. *Ottawa Citizen*. March 3, 1998. “Ottawa’s New-Age Diplomacy Ruffles Many Feathers in Washington.” By Steven Pearlstein. *International Herald Tribune*. February 22, 1999.

antipersonnel land mines; the effort culminated in a December 1997 conference at which more than 100 nations signed the accord. The United States did not sign the pact.

John Manley replaced Axworthy in 2000; in January 2002, when Manley became Deputy Prime Minister, Bill Graham, chairman of the parliamentary committee on foreign affairs and international trade, took over. According to one writer, Graham “can often sound like Axworthy,” while others believe he placed more emphasis on pragmatism.<sup>24</sup> In July 2004, Martin reshuffled his cabinet, moving Graham to Defense and replacing him with Pierre Pettigrew, a Québecker. In February 2006, Harper named Nova Scotian Peter MacKay Foreign Minister. In August 2007, MacKay assumed the Defense portfolio, and Maxime Bernier became the new Foreign Minister; he served until May 2008, when he was replaced by fellow Quebecker Lawrence Cannon.

As a middle power, Canada has exercised a somewhat disproportionate influence in world affairs, chiefly through its active participation in international organizations, including the G-8, and the Asia-Pacific Economic Cooperation forum. From 1998-2006, Canadian diplomat Louise Frechette served as Deputy Secretary General of the United Nations, and from 1996-2006 Canadian Donald Johnston was Secretary General of the Organization for Economic Cooperation and Development. The president of the International Criminal Court is Judge Philippe Kirsch from Canada. The first head of the U.N. War Crimes Tribunal was Canadian Louise Arbour. In June 2005, Canadian Air Force General Ray Henault was named head of NATO’s military committee.

## **Canadian Security Issues**

Canadians are proud of the active role played by their military as international peacekeepers. Since the United Nations first dispatched an armed peacekeeping contingent to help defuse the Suez Crisis in 1956, Canada has participated in nearly every U.N. peacekeeping operation, from Cyprus and the Sinai, to Bosnia, Rwanda, Somalia, and Afghanistan. As of April 2009, over 2,900 Canadian Forces personnel were participating in international operations in Afghanistan, the Balkans, the Middle East, and Africa.<sup>25</sup>

As with other countries in the 1990s, Canada’s military was subject to dual pressures. In Ottawa’s view, the collapse of the Soviet Union and the Warsaw Pact reduced the military threat, making it more difficult for the government to justify sustaining historic spending levels on defense. Leaders believed that the country’s large debt early in the decade necessitated funding cutbacks in most areas of government, including defense. However, relative to its NATO allies, Canada had devoted only a modest share, about 2% of GDP, of its budget to defense spending during the 1980s and 1990s. That percentage declined even further, from 2.01% in 1990 to 1.1% in 2005; among the 26 NATO members, only Luxembourg and Iceland (which has no armed forces) spent a lower percentage. Canada’s meager military budget irked some within the alliance, particularly the United States; former U.S. Ambassador Paul Cellucci repeatedly urged the Canadian government to devote greater resources to its military.<sup>26</sup>

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<sup>24</sup> “Out of Africa: The Perils For A PM.” By Anthony Wilson-Smith. *Maclean’s*. March 25, 2002.

<sup>25</sup> *Canada and International Peacekeeping*. By Joseph T. Jockel. Center for Strategic and International Studies/Canadian Institute of Strategic Studies. Washington, DC, 1994. Current Operations. Canadian Expeditionary Force Command website. Updated April 9, 2009. <http://www.comfec-cefcom.forces.gc.ca/pa-ap/ops/index-eng.asp>

<sup>26</sup> “Spend More On Military, U.S. Envoy Urges Ottawa.” *Toronto Star*. February 25, 2004.

After the round of cutbacks in the 1990s, the number of active personnel in Canada's armed forces tumbled from 87,000 in 1989 to 52,000 in 2004, the 56<sup>th</sup> largest in the world. The Canadian forces also have been strapped for resources to replace aging equipment. This trend disturbed many, and there were numerous warnings published. In March 2002, a Canadian Senate committee called for increased defense spending to counter the threat of international terrorism; it also recommended that personnel levels be increased and that more resources be provided to the Canadian Security Intelligence Service. A November 2002 Senate report recommended boosting troop levels to 75,000 and restructuring the armed forces. A brace of studies in the fall of 2003 likewise called for changes in force restructure and procurement practices and for increases in manpower and budgets. A news report characterized one of the studies as concluding that "Canadian Forces are teetering on the edge of irrelevance." In September 2005 the Senate published yet another report, which called for a doubling of spending on defense.<sup>27</sup>

Recent Canadian governments appear to have heeded these messages. As of February 2009, there were approximately 64,000 regular force members and 30,000 reserves. In addition, Canada's defense spending has been trending upward. The budget tabled in February 2005 contained the largest military spending increase in two decades: C\$12.8 billion—roughly equal to the entire 2005 military budget—spread over five years. The Harper government's first budget boosted added C\$5.4 billion in military spending over the next four years. The 2007 budget confirmed the previous year's spending increase, and the 2008 budget seeks to ensure continuity through the Canada First Defence Strategy, which will provide for yearly increases of 2% beginning in 2011-12. The government budget for the armed forces in 2008-2012 will average around C\$20 billion annually.<sup>28</sup>

In April 2005, the Martin government released the long-anticipated International Policy Statement, of which defense is one part (the last such defense policy overhaul took place in 1994.) The new security plan aims to make Canada's military "more effective, relevant and responsive." Among other things, it calls for a change in the command structure; the addition of 5,000 regular troops and 3,000 reserves; the expansion of Canada's special forces, including tactical support equipment; the creation of an anti-nuclear, biological, and chemical weapons unit and a rapid-reaction force; and the acquisition of a wide range of materiel, particularly of air, land, and sea transport. The Harper government plans to procure both tactical as well as strategic transport aircraft as well as land and sea transport. However, some observers have argued that insufficient funding is being devoted to acquiring replacements for aging major weapons systems.<sup>29</sup>

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<sup>27</sup> "Canada's Security At Risk." By Jim Bronskill. *Ottawa Citizen*. March 2, 2002. "Pull Troops From Overseas, Senators Say." *Globe and Mail*. November 12, 2002. "Armed Forces Hobbled, Report Says." By Daniel LeBlanc. *Globe and Mail*. December 3, 2003. "Senators Sounding Alarm On Defence." *The Gazette*. October 3, 2005.

<sup>28</sup> *The Military Balance, 2009*. International Institute for Strategic Studies. London. February, 2009. Defence and Budget 2005—Highlights. DND website. [http://www.forces.gc.ca/site/reports/budget05/summ05\\_e.asp](http://www.forces.gc.ca/site/reports/budget05/summ05_e.asp). The Canadian Forces: Stuck In Neutral. *National Post*. April 3, 2009.

<sup>29</sup> "'Canada First' Defence Procurement." DND website. Updated August 15, 2007. [http://www.forces.gc.ca/site/Focus/first/index\\_e.asp](http://www.forces.gc.ca/site/Focus/first/index_e.asp) "Canada's Forces In the 21<sup>st</sup> Century." CBC News. April 21, 2008. <http://www.cbc.ca/news/background/cdnmilitary/>.

## U.S.-Canada Security and Foreign Policy Issues

According to the U.S. State Department, “U.S. defense arrangements with Canada are more extensive than with any other country.” Former Canadian Ambassador Michael Kergin referred to the defense relationship as being “intermestic” in nature.<sup>30</sup>

Over the past century, U.S.-Canadian defense cooperation has been close. In 1940, President Roosevelt and Prime Minister McKenzie King established the Permanent Joint Board on Defense (PJBD), which formalized bilateral consultation on military matters and is still in operation. In 1949, the two countries were founding members of NATO. During peacetime, military cooperation has occurred chiefly in the context of bi- and multinational organizations.

### NORAD

In 1958, Canada and the United States signed the North American Aerospace Defense Command (NORAD) agreement. The continental air defense pact monitors U.S. and Canadian airspace and encourages joint efforts in aerospace technologies. The pact, which had been subject to five-year renewals, was made permanent (subject to review) in May 2006. In the wake of the September 11 terrorist attacks, there were discussions of deepening military cooperation along the NORAD model, in the context of the newly created U.S. Northern Command, to include land and sea forces. But some Canadians were concerned that such a move might impinge upon Canada’s sovereignty, and in August 2002, the Canadian government announced that its land and sea forces would not be participating in the command. In December 2002, however, the two countries signed a new accord creating a binational planning group (BPG) based at NORAD to coordinate responses to terrorist attacks and other crises. The BPG issued its final report in March 2006; the panel put forward numerous recommendations, including that the two countries develop a common security vision and improve interoperability through joint military planning, training, exercises, and information sharing. In August 2004, Canada and the United States amended NORAD to permit it to share information on incoming ballistic missiles. Ottawa and Washington also agreed to expand the scope of the agreement to encompass nautical surveillance. In mid-April 2008, Canadian Defense Minister Peter MacKay visited NORAD headquarters in Colorado.<sup>31</sup>

On February 14, 2008, the commanding generals of U.S. Northern Command and of its Canadian counterpart, Canada Command, signed a binational Civil Assistance Plan. Under the plan, the armed forces of each country, after appropriate consultation with civilian authorities on both sides of the border, may come to the support of the other country’s military in the event of civil emergencies such as floods, earthquakes, or the effects of a terrorist attack.<sup>32</sup>

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<sup>30</sup> United States Department of State. Bureau of Western Hemisphere Affairs. *Background Note: Canada*. November 2008. “Remarks to the Center for Strategic and International Studies.” February 28, 2005.

<sup>31</sup> “Continental Divides.” By Sydney J. Freedberg, Jr. *National Journal*. March 23, 2002. “Leading academics Examine Risks Inherent In Closer Military Co-operation With the United States.” *Canada NewsWire*. April 26, 2002. “Canada Won’t Join Norad-Like Land-Sea Force. By Rick Mofina.” *Ottawa Citizen*. August 15, 2002. “All For One?” By Luiza Ch. Savage. *Maclean’s*. September 12, 2005. Binational Planning Group. Final Report. March 13, 2006. <http://www.canadianally.com/BPGFinalReport.pdf> “Tory NORAD Agreement Wins Approval of House.” *Globe and Mail*. May 9, 2006.

<sup>32</sup> U.S. Northern Command website: <http://www.northcom.mil/news/2008/021408.html>



## *Missile Defense*

Ottawa also long debated whether it should participate in the U.S. missile defense (MD) system. Some analysts expressed reservations over the plan, in the belief that it might spark a new arms race, while others reportedly preferred to keep Canada's options open. Parliament held hearings on the issue, but no official policy was enunciated. Finally, in May 2003, Canada said that it would enter into discussions with the United States; a Canadian military affairs journalist described Canada's likely negotiating goals:

Canada wants the anti-missile shield run by NORAD—in effect, giving Canada equal status in protecting North America and a finger on the trigger. Ottawa wants a share of the industrial benefits and access to secret technologies, all while paying little or nothing. And it continues to insist that space not be weaponized.<sup>33</sup>

On February 24, 2005, the Canadian government said that it would not participate in MD. However, Canada's ambassador to the United States had pointed out earlier that the two countries had already agreed to allow NORAD to share information with U.S. MD commands. U.S. officials expressed puzzlement and disappointment with the announcement, noting that Canada had sent signals that it would likely sign on. Polls showed that a majority of Canadians, particularly Québeckers, opposed MD, leading some analysts to suggest that domestic political pressures may have guided the decision. In late February 2006, Canada's Defense Minister said that the Harper government likely would review the missile defense issue if asked to do so by Washington. Any final decision on participation, he added, would be subject to a parliamentary vote. In April 2008, U.S. General Gene Renuart, head of NORAD, was quoted as having said that all incoming intelligence concerning missile threats was shared with Canada.<sup>34</sup>

## *Joint Strike Fighter*

In February 2002, Canada agreed to participate in the further development of the U.S.-led multinational Joint Strike Fighter program, contributing \$150 million over a 10-year period. In December 2006, it was announced that the Canadian government had committed an additional C\$500 million for the development of the aircraft. Canada has reportedly agreed to consider the purchase 80 of the new fighters to replace its own fleet of CF-18 planes when they are retired in 2017, and has earmarked nearly C\$4 billion for the new planes. In June 2007, the Department of National Defense announced plans to form a new office to evaluate Canada's future air defense requirements. Canada appears to be reaping rewards from its participation; as of June 2007, Canadian firms had won 150 JSF contracts worth about \$160 million. In addition, Canadian defense companies stand to benefit from the Pentagon's plans to purchase additional F-35s.<sup>35</sup>

<sup>33</sup> "Shoot Down Defence Dreamers." By Paul Koring. *Globe and Mail*. June 25, 2003.

<sup>34</sup> "Canada and the U.S. Missile Defense System." Dwight M. Mason. *CSIS Hemisphere Focus*. January 9, 2004. "Martin and the Politics of Missile Defense." *Globe and Mail*. May 1, 2004. "Missile Defence Won't Work." *Ottawa Citizen*. December 15, 2004. "Martin's Move Irritates U.S." By Sean Gordon. *Toronto Star*. February 24, 2005. "Minister Backs U.S. Missile Plan." *Toronto Star*. February 24, 2006. "Canada Kept In Loop At NORAD About All Missile Threats." *Ottawa Citizen*. April 10, 2008.

<sup>35</sup> "Canadian Firms Big Winners In U.S. Jet Project." *National Post*. April 21, 2006. "Canada Commits Up To \$500 Million to the Development of CF-18 Replacement." *The Canadian Press*. December 13, 2006. "New Office To Assess Canada's Fighter Needs." *Defense News*. June 18, 2007. Forces Tag \$3.8B To Buy Advanced Jets. *Ottawa Citizen*. June 27, 2007. Canada To Gain From U.S. Defense Budget. *National Post*. April 8, 2009.

## NATO

Canada has been engaged in the debate over NATO's future. It supported the 1999 and 2004 rounds of enlargement and has announced that it will participate in the NATO Response Force, which the alliance agreed to at its November 2002 Prague summit. At the April 2008 Bucharest summit, Canada endorsed the addition of Croatia, Albania, and Macedonia; in addition it supported the proposal to offer Membership Action Plans to Georgia and Ukraine. Finally, as noted above, Ottawa has maintained troops in Afghanistan since 2002, and its military leaders have served in a command capacity. In April 2003, then Foreign Minister Graham, along with the Dutch and German governments, requested that NATO take over command of ISAF.<sup>36</sup> In a February 2009 speech in the UK, Canadian Defense Minister Peter MacKay cautioned that NATO was being tested in the crucible of Afghanistan, and urged more equitable burden sharing.<sup>37</sup>

Although it has no troops stationed in NATO territory in Europe, Canada in recent years contributed several hundred troops to the NATO-led Stabilization Force (SFOR) in the Balkans. Canada also supplied 200 troops to NATO's mission in Macedonia. Canada cooperated "wing-to-wing" with the United States in *Operation Allied Force*, the NATO campaign of air strikes against targets in Serbia and Kosovo, contributing 18 CF-18 fighter aircraft and providing two rotations of approximately 1500 troops each to KFOR. In addition Canada has supported non-NATO peacekeeping operations; it has provided 600 to the initial U.N. peacekeeping mission in East Timor and has also contributed 500 troops to maintain stability in Haiti.<sup>38</sup>

## Afghanistan

Canada was one of the first countries to join the military operation in Afghanistan. In October, 2001 the government launched *Operation Apollo*, in support of U.S. *Operation Enduring Freedom*. Nearly 900 infantry troops and approximately 40 members of Canada's special forces unit, Joint Task Force 2, served in the initial combat in Afghanistan. Their main task was to provide airbase security, but they were also involved in delivering humanitarian aid and in combat missions, including *Operation Anaconda*. Other Canadian military assets supporting *Operation Enduring Freedom* have included a naval task force group and transport and surveillance aircraft. Along with British, Dutch and U.S. troops, Canadian forces are currently serving on the front line in the combat operations to counter attacks by al Qaeda and Taliban fighters. A total of 119 Canadians, including one diplomat, have died in Afghanistan.<sup>39</sup>

In August 2005, Canada launched a Provincial Reconstruction Team mission in Kandahar. Canada has been maintaining approximately 2,500 troops in the country. Ottawa also has provided humanitarian and reconstruction assistance to Afghanistan. Canada is among the top five donors to the country, and has pledged C\$1.2 billion through 2011 in reconstruction and development assistance.<sup>40</sup>

<sup>36</sup> "NATO Umbrella Sought." By Allan Thompson. *Toronto Star*. April 4, 2003. "NATO Sees Key Role For Canada In Afghan Security." *Reuters*. May 6, 2003. CRS interview of Canadian government official, May 7, 2008.

<sup>37</sup> NATO's Future At Stake In Afghanistan: MacKay. *Ottawa Citizen*. February 16, 2009.

<sup>38</sup> Current Operations. Canadian Expeditionary Force Command website. Updated April, 2009. <http://www.comfec-cefcom.forces.gc.ca/pa-ap/ops/index-eng.asp>

<sup>39</sup> Coalition Military Casualties by Country. Operation Enduring Freedom. May 5, 2009. <http://www.icasualties.org/OEF/Default.aspx>

<sup>40</sup> "Backgrounder: Canadian Forces Operations in Afghanistan." August 14, 2007. DND website: (continued...)

As noted above, Canada's recent political scene has been plagued by uncertainties over whether the country will once more hold early parliamentary elections; many observers believe the answer is yes, and that the vote will be held in October 2009. A recent poll showed the opposition Liberals with a slight edge over the ruling Conservatives. If the Liberals should win a majority or plurality, their interim leader, Michael Ignatieff, would likely become Prime Minister. In a March 22, 2009 speech, he accused Prime Minister Harper of permitting Canada's Afghanistan strategy "to be defined by Washington." He stated that "once [Canada's] military mission ends in 2011, we will continue to support the Afghan people. With humanitarian aid, we will build schools, dig wells, and teach human rights." However, observers note that the same approach would likely be taken by a Conservative government. Recent public opinion surveys indicate that slightly more than half of Canadians oppose the Afghanistan mission.<sup>41</sup>

### *Haiti*

Canada and the United States have worked closely together over the past fifteen years with the U.N. mission in Haiti, where a contingent of the Canadian armed forces, along with members of the Royal Canadian Mounted Police, took the reins from departing U.S. forces who had helped restore the democratically elected government in Haiti in 1994. In 2004, after the Aristide government stepped down in the face of armed rebellion, Canada joined the United States and France in providing peacekeepers to the U.N.-authorized Multinational Interim Force sent to the troubled island; Canada dispatched 6 helicopters and nearly 500 troops. In February 2008, Canadian Foreign Minister Maxime Bernier traveled to the island nation, where he announced that Ottawa's total aid package would be raised to C\$555 million. In the wake of the turmoil over food shortages, he called for international donors to harmonize their assistance during an April 2008 donor conference. Haiti is the second-largest recipient (after Afghanistan) of Canadian development assistance. Canada's Governor General, Michaëlle Jean, who was born in Haiti, traveled to the island in January 2009; she visited several development projects, and met with government and civil society leaders.<sup>42</sup>

### *Iraq*

Canada was disinclined to expand the war on terrorism beyond Afghanistan to Iraq. In September 2002, during a meeting in Detroit with President Bush, Chrétien reaffirmed Canada's preference for a U.N. mandate, a stance that strongly reflected Canadian public opinion. Washington later requested of Ottawa specific military commitments in the event of a conflict with Iraq, but no definitive answer was given. Over the following months, the government's statements on Iraq were characterized by the media as imprecise and at times contradictory, an apparent attempt to keep options open. But in the House of Commons on March 18 2003, Chrétien stated unequivocally that "Canada will not participate." One week later in Toronto, U.S. Ambassador

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(...continued)

[http://www.forces.gc.ca/site/newsroom/view\\_news\\_e.asp?id=1703](http://www.forces.gc.ca/site/newsroom/view_news_e.asp?id=1703). "Canadian Development Assistance In Afghanistan: Current Projects." Government of Canada website. Updated January 31, 2008. [http://www.canada-afghanistan.gc.ca/cip-pic/afghanistan/library/afgh\\_security-en.asp](http://www.canada-afghanistan.gc.ca/cip-pic/afghanistan/library/afgh_security-en.asp)

<sup>41</sup> The Afghan Mission. *Globe and Mail*. March 23, 2009. Rape Law Saps Support For Afghan Mission: Poll. *The Canadian Press*. April 8, 2009.

<sup>42</sup> "Canada Pledges \$555 Million In Aid To Haiti." *Reuters*. February 24, 2008. Canada Participates In Harmonization Efforts In Haiti. News Release. Foreign Affairs and International Trade Canada. April 23, 2008.

Cellucci delivered a speech in which he expressed the Bush Administration's disappointment with the Canadian government's decision.<sup>43</sup>

Washington subsequently requested that Canada assist in the reconstruction of Iraq by sending troops or military police. Ottawa responded by offering 150 members of its Disaster Assistance Response Team, a non-traditional military unit consisting of security, engineering, and medical personnel. Since then, Canada has provided funding in a number of areas, including humanitarian and reconstruction aid, support for elections, and police training. Altogether, the Canadian International Development Agency has pledged C\$300 million (2003-2010) in assistance to Iraq. In January 2004, Canada announced that it would cancel Iraq's \$564 million debt.<sup>44</sup>

## Cuba

Cuba has been another issue where the two countries have not seen eye-to-eye. For decades, Canada and Cuba has maintained normal diplomatic relations with Cuba, and has maintained relatively extensive business links. Because of this ongoing commercial relationship, Canadian government officials publicly criticized a U.S. law (the Cuban Liberty and Democratic Solidarity Act, P.L. 104-114) that seeks to apply indirect pressure on the Castro regime by permitting Cuban-Americans to file lawsuits against foreign firms that use Cuban property that was expropriated by the Castro regime. U.S. supporters of the Cuba embargo have been critical of Canadian mining companies and hotel chains that do business with the island nation. Canadians, who are sensitive to being perceived as America's "junior partner," object that the law amounts to the United States forcing its foreign and commercial policies upon other countries. In 2003, after the Castro government handed down Draconian prison terms to several political dissidents, Ottawa expressed official disapproval. The transfer of Cuba's presidency from Fidel to Raul (temporary in 2006, permanent in 2008) prompted vigorous debate in the Canadian press over what policy Ottawa should adopt toward Cuba.<sup>45</sup> On April 13, 2009, the Obama Administration announced that it would ease certain restrictions on travel to and trade and communications with Cuba. The decision was welcomed by Ottawa; Peter Kent, Minister of State of Foreign Affairs for the Americas, commented that "the election of the Obama Administration has given real momentum to the sort of change that Canada has been encouraging for a long time." Kent plans to visit Havana in May in an attempt to persuade the government to release political prisoners.<sup>46</sup>

## International Criminal Court

The International Criminal Court (ICC) is another issue on which the two countries differ. Canada has long been a leading advocate of the U.N.-sponsored tribunal, while some U.S. policymakers

<sup>43</sup> "Well, Maybe ... ." *Economist*. September 28, 2002. "PM Scolds McCallum On Canada's Role In Iraq." By Shawn McCarthy and Daniel Leblanc. *Globe and Mail*. January 16, 2003. "Bravos Greet Chrétien." By Tim Harper. *Toronto Star*. March 18, 2003.

<sup>44</sup> "Iraq: Canada's Commitment." Canadian International Development Agency web page: <http://www.acdi-cida.gc.ca/iraq#1> Updated May 24, 2007.

<sup>45</sup> See, for example: "Castro's Resignation Unlikely To Change Canadian-Cuban Relations, Experts Say." *The Canadian Press*. February 19, 2008. "Don't Support Castro's Island Prison." *National Post*. February 19, 2008. "With Fidel Castro Gone, U.S. Hawks Will Look North." *Toronto Star*. February 20, 2008. "The Autumn Of the Patriarch." *Ottawa Citizen*. February 23, 2008.

<sup>46</sup> CRS Report R40193, *Cuba: Issues for the 111th Congress*, by Mark P. Sullivan. Canadian Cabinet Minister To Visit Cuba Next Month. *Montreal Gazette*. April 27, 2009.

have opposed U.S. participation on the grounds that it might make U.S. military personnel vulnerable to politically motivated prosecution by hostile regimes. In May 2002, the Bush administration declared that the United States would not support the ICC; the same day, Canadian Foreign Minister Bill Graham declared that he was “extremely disappointed” with the U.S. decision. In a U.N. speech four months later, Graham faulted the United States “for its ‘ad hoc and unilateral pursuit’ of the prosecution of crimes against humanity.”<sup>47</sup>

### ***Border Security***

In the wake of the attacks on New York and Washington, U.S.-Canadian relations came to the fore. In particular, the issue of U.S.-Canada border security was brought into sharp focus. The issue first became a matter of urgent concern in December 1999, when U.S. border officials, acting on a tip from Canadian authorities, stopped Ahmed Ressaym at the U.S.-Canadian border as he was attempting to smuggle explosives into the United States; it was later discovered that Ressaym had planned to bomb the Los Angeles airport, and that he had received terrorist training from Al-Qaeda in Afghanistan.

Despite the fact that none of the 19 September 11 hijackers entered from Canada, the attacks sparked renewed debate over Canadian laws regarding the treatment of immigrants seeking refugee status or political asylum.<sup>48</sup> By February 2002, Ottawa had already made “steps to tighten immigration and refugee policies, including more rigorous screening of people who claim refugee status and stepped up detentions and deportations of claimants suspected of being security risks.”<sup>49</sup>

Some American policymakers pointed to the Ressaym case as proof that the United States must tighten its borders with Canada. Skeptics, however, note that such measures might seriously impede commerce by creating long delays at border crossings, and that determined terrorists and criminals would at best be inconvenienced, not stopped, in traversing the two countries’ 5,500-mile border. About 70% of U.S.-Canada merchandise trade crosses the border by truck; many of these shipments are “just-in-time” deliveries; their delay at border crossings can seriously disrupt manufacturing in the United States and Canada.<sup>50</sup> Both sides have strong incentives to strengthen security but keep goods flowing.

Since the September 11, 2001, attacks, Ottawa and Washington have taken numerous steps, separately and jointly, to improve border control. In December 2001, they signed the Smart Border declaration that aims at improving security and efficiency at border crossings; the agreement lays out a 30-point (since increased to 32-point) list of areas of joint activity, ranging from pre-clearance of goods (the FAST program) and people (NEXUS), to biometric identifiers, to infrastructure improvements. The cooperation covers crossings by air, land, and sea traffic. In

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<sup>47</sup> “Canada Raps U.S. Rejection Of World Criminal Court.” By David Ljunggren. *Reuters*. May 6, 2002. “U.S. Rift With Allies On World Court Widens.” By Julia Preston. *New York Times*. September 10, 2002.

<sup>48</sup> In April 2009, U.S. Department of Homeland Security Secretary Janet Napolitano raised concerns when she averred that some of the 9/11 terrorists had crossed over from Canada. “Napolitano’s Comments About Canada’s Border Spark Diplomatic Kerfuffle.” *The Canadian Press*. April 21, 2009.

<sup>49</sup> “Al-Qaida In Canada?” CBSNEWS.com. April 25, 2002. “Canada Alters Security Policy To Ease Concerns of U.S.” By Clifford Krauss. *New York Times*. February 18, 2002.

<sup>50</sup> “Delays at the Canadian Border Eat Up Trade.” By John Stark. *AP*. February 1, 2003.

December 2002, the two nations signed the Safe Third Country agreement, intended to permit coordination of refugee and asylum policy.

Ottawa and Washington are currently working to resolve implementation issues surrounding the Western Hemisphere Travel Initiative, a provision of a 2004 U.S. law that will require travelers passing between the two countries to present a passport, a NEXUS card, or an equivalent secure, approved document, at the border by June 1, 2009. Travel-dependent businesses, particularly in Canada, have voiced concerns that the cost of acquiring either a passport (only about 25% of Americans and 40% of Canadians hold passports) or similar ID may inhibit travel; other critics are worried that the requirement could indirectly discourage Asian and European investment in both countries. The Department of Homeland Security (DHS) will require that Canadian citizens present a passport or document confirming identity and citizenship to enter the United States by land, sea, or air on June 1, 2009. DHS has been working with the Canadian government to develop an alternative document that is secure, inexpensive, and would be carried anyway—for example, a driver’s license containing enhanced biometric information; U.S. state and Canadian provincial governments have been actively working to develop such documents.<sup>51</sup>

Canada’s custom service stepped up the purchase of high-tech X-ray equipment, and U.S. and Canadian customs agents are working together, inspecting containers at several Canadian and U.S. seaports. Border security personnel levels have also been beefed up, and Integrated Border Enforcement Teams have been established in high-priority regions. Canada also has set up an Air Transport Security Authority, which, among other activities, is responsible for pre-board screening.

In 2004, the Canadian government created a Department of Public Safety and Emergency Preparedness, a counterpart to the U.S. Department of Security (DHS), and a Border Services Agency. Recent Canadian federal budgets have contained new monies for security-related priorities such as intelligence, maritime and cyber security, threat assessment, and emergency response.

Canada has taken other actions beyond the realm of border security, including freezing terrorists’ assets, broadening the scope of terrorist activities punishable by law, extending police investigative powers, introducing legislation that would put restraints on fund-raising activities by extremist organizations, expanding cooperation between the FBI and the Royal Canadian Mounted Police, and increasing outlays for countering nuclear, biological, and chemical weapons attacks.<sup>52</sup>

In early June 2006, Canadian police conducted a series of raids in the Toronto area, arresting 17 individuals. The arrests were made in accordance with the Anti-Terrorism Act passed late in 2001. The group reportedly had discussed attacking several possible targets, including power plants, a Canadian military base, the Toronto Stock Exchange, and other prominent sites. The plan involved having some members of the group detonate truck bombs while another group reportedly would storm the parliament and capture hostages. Prime Minister Harper was said to have been a key target. Most of the 17 were in their teens or early 20s. All were either Canadian-

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<sup>51</sup> “A Tightening Border Has Canadians Worried.” By Ian Austen. *New York Times*. April 15, 2006.

<sup>52</sup> For another brief overview of efforts to secure the U.S.-Canada border, see: Joint Counter-Terrorism Initiatives. By Melissa Radford. *Border Facilitation: Products and People*. By June Dewetering. Both in *Canada and the United States: Shared Interests and Concerns*. Canadian Library of Parliament. January, 2009. [http://www.parl.gc.ca/information/library/PRBpubs/prb0834\\_00-e.htm](http://www.parl.gc.ca/information/library/PRBpubs/prb0834_00-e.htm)

born or had immigrated to the country at an early age. The suspects had a variety of backgrounds; some were students, some held jobs, and some were unemployed. Many were from middle class backgrounds, and few of them had criminal records.

U.S. officials claimed that the arrests proved that Canada's law enforcement and intelligence services were doing an excellent job of ensuring security. An FBI spokesperson said there was "no imminent threat" to the United States stemming from the Toronto operation. However, some U.S. Members of Congress claimed that Canada maintains lax immigration and asylum policies, and that the arrests demonstrated that stricter controls over the U.S.-Canada border are in order. The incident prompted close consultations between U.S. and Canadian policymakers and law enforcement officials. The operation has not arisen as a domestic political issue in Canada, but it has renewed debate about Canada's immigration practices, its commitment to a multicultural environment, its security measures, and the presence of its troops in Afghanistan.<sup>53</sup>

### *Security and Prosperity Partnership*

During a March 2005 summit meeting in Texas, President Bush, Mexican President Vicente Fox, and Prime Minister Paul Martin agreed to a Security and Prosperity Partnership (SPP) of North America. The initiative is intended to provide security for the continent against criminal activities and external threats, while easing the flow of goods and travelers who cross the borders between the three countries. It also aims to improve prosperity in all three countries through promoting cooperation in a number of areas, including health, food safety, environmental protection, transportation, energy, and financial services. Government officials from all three countries meet in working groups to discuss ways to eliminate duplication and harmonize regulations. Presidents Bush and Fox, joined Prime Minister Stephen Harper, met again in March 2006 and agreed to five priority areas: 1) competitiveness and regulatory cooperation, 2) emergency management, 3) avian and pandemic influenza, 4) energy security, and 5) smart, secure borders. Bush, Harper and Mexican President Felipe Calderon meet in August 2007 in Montebello, Quebec, and in New Orleans, Louisiana in April 2008 where they reviewed progress and planned the next phase of cooperation on issues such as regulatory cooperation, intellectual property rights enforcement, and secure borders. A leadership meeting has not yet been scheduled for this year.<sup>54</sup>

## **Economic and Trade Issues**

After several years of steady growth, Canada entered recession in the fall of 2008. Canada managed to eke out an annual growth rate of 0.5% in 2008, however, the *Economist Intelligence Unit* expects the economy to contract by 2.4% in 2009. Canada has been hard-hit by the weakening of the U.S. economy as the United States is by far the chief customer for export-dependent Canada. Annual consumer price inflation in 2008 registered at 1.2% and is expected to remain minimal in 2009. The unemployment rate, which hit a generational low of 5.8% in January 2008, had climbed to 7.7% by February 2009.<sup>55</sup> In 2008, Canada recorded an overall \$10

<sup>53</sup> "Canada's Terror Sweep Grabs Spotlight in U.S." *Canadian Press*. June 3, 2006. "U.S. Praises Canada On Terror Arrests But Critics Blast Immigration Laws." *Canadian Press*. June 4, 2006. "Terrorists In Toronto: Is Canada Safe? Are We?" By Tanya Primiani and Christopher Sands. *CSIS Commentary*. Center for Strategic and International Studies. June 20, 2006. "The Toronto Terror Plot." *Economist*. June 10, 2006.

<sup>54</sup> See SPP website: <http://www.spp.gov/>.

<sup>55</sup> Economic data are from Economist Intelligence Unit, wire service reports, and "The Economy In Brief, April 2007." Website of Department of Finance Canada. Updated April 2008. <http://www.fin.gc.ca/ECONBR/ecbr07-04e.html>

billion current account (CA) surplus, however the collapse in trade led to CA deficit of \$6 billion in the fourth quarter, the first CA deficit in nine years and the largest since 1993.<sup>56</sup>

Canada is the United States' largest supplier of energy—including oil, uranium, natural gas, and electricity—and the energy relationship has been growing. Canada is the world's seventh largest petroleum producer, and its reserves are believed by some to be second only to those of Saudi Arabia; Canada's sources of oil include traditional and offshore wells and, increasingly, Alberta's tar sands. In 2008, U.S. energy imports from Canada were \$111 billion. Canada provides 18% of U.S. oil imports and supplies 16% of U.S. natural gas demand. Canada is particularly valued because it is a reliable source of energy, a key factor contributing to U.S. economic security—it is not a member of OPEC. The two countries are cooperating on the development of pipeline construction projects. China has shown interest in Canada's oil sector, a development that is believed to have "caused some consternation in Washington." Canada also a net exporter of electricity to the United States, and the North American electricity grid is closely interconnected. Following the August 2003 blackout, the two sides have worked to develop improved standards for electricity transmission reliability.<sup>57</sup>

### **Bilateral Trade Issues**

The United States and Canada enjoy the largest bilateral commercial relationship in the world; total two-way cross-border trade amounted to over \$1.5 billion per day in 2008. Over the past twenty years, U.S.-Canada trade relations have been governed first by the 1988 U.S.-Canada Free Trade Agreement and, subsequently, by the 1993 North American Free Trade Agreement. These agreements, along with the conclusion of the Uruguay Round of multilateral trade negotiations and the creation of the World Trade Organization, contained mutual concessions on commercial trade barriers, and, more importantly perhaps, established binding dispute settlement mechanisms. While these agreements have resolved some of the sharp differences from the past, questions regarding the effectiveness of dispute resolution mechanism remain.

Meanwhile, several trade issues—some old, some new—have yet to be completely resolved. Many of these disputes involve long-running battles over agricultural commodities or natural resources, including softwood lumber and farm goods. Some analysts attribute the longevity of these conflicts to the inherent incompatibility of the two countries' different natural resource and agricultural programs, others to the political sensitivity of the commodities under negotiation.

### ***Softwood Lumber***

This is particularly true of the long-running dispute over softwood lumber. A 1996 agreement restricting Canadian lumber exports to the United States expired in March 2001. Shortly thereafter, the U.S. Commerce Department launched countervailing duty and anti-dumping investigations; in May 2002, the International Trade Commission (ITC) found that Canadian

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<sup>56</sup> RBC Financial Group, Daily Forex Fundamentals, February 27, 2009. [ <http://www.actionforex.com/fundamental-analysis/daily-forex-fundamentals/canada%27s-fourth%11quarter-current-account-moves-into-deficit-after-nine-years-of-surpluses-2009022780264/> ]

<sup>57</sup> Canada-U.S. Energy Relations. Updated April 14, 2009. Canadian Embassy website: [http://www.canadainternational.gc.ca/washington/bilat\\_can/energy-energie.aspx?lang=eng&menu\\_id=341&menu=L](http://www.canadainternational.gc.ca/washington/bilat_can/energy-energie.aspx?lang=eng&menu_id=341&menu=L). Country Analysis Briefs: Canada. U.S. Energy Information Administration website. Updated May 2009. <http://www.eia.doe.gov/emeu/cabs/Canada/Background.html>.



imports threatened to injure U.S. industry, and Commerce applied 27% (later reduced) duties on Canadian softwood. Canada challenged the agency decisions under NAFTA and in the WTO.

After several years of inconclusive and sometimes conflicting litigation, the two sides announced that they had struck a seven-year agreement on softwood on April 26, 2006. As part of a complicated formula, the United States will allow unlimited imports of Canadian timber when market prices remain above a specified level; when prices fall below that level, Canada will impose export taxes and/or quotas. In addition, the United States will return to Canada a large majority of the duties it had collected.<sup>58</sup>

The implementation of the softwood lumber agreement has not been without controversy. As the depressed housing market has reduced demand for softwood lumber, the market price always been under the level (\$355 thousand board feet) in which export taxes must be charged. The United States and Canada resorted to arbitration over the use of adjustment mechanisms to calculate the quotas used for eastern Canadian lumber. The arbitral panel sided with the United States, and after Canada did not implement the panel's recommendation, the United States levied a 10% tariff on the affected lumber to recoup the compensation awarded by the arbitral panel.

### ***Black Liquor***

The U.S. pulp and paper industry has been utilizing a tax expenditure intended to increase the use of renewable energy to supplement fossil fuel use. The industry has long produced energy (for internal consumption) from "black liquor" —the liquid waste from pulping liquors used to dissolve the lignin in wood and release the fibers needed to produce paper. The tax program provides a renewable energy tax credit for energy production where renewable sources are added to fossil fuels to reduce the use of fossil fuels in energy production. The pulp and paper industry has found that firms can qualify for the tax credit by adding diesel to their black liquors in producing energy. It is estimated that the industry will benefit by as much as \$6 billion from this tax program.<sup>59</sup> Canadian firms see this as an unfair subsidy to the U.S. pulp and paper industry, although the program was clearly not created or intended as an industry-specific subsidy.

### ***Country of Origin Labeling***

The 2002 Farm Bill required retailers to provide country-of-origin labeling (COOL) for fresh produce, red meats, seafood, and peanuts. The requirements for seafood were implemented on September 30, 2004, but COOL requirements for other products were delayed until September 30, 2008. The 2008 Farm Bill, The Food, Conservation, and Energy Act of 2008 (P.L. 110-246), reaffirmed this timetable and added goat meat, chicken, ginseng, pecans, and macadamia nuts as covered commodities. A final rule was issued on January 15, 2009, effective March 16, 2009. On May 7, 2009, Canada sought consultations under WTO dispute settlement concerning the rule. Canada claims the rule is a non-tariff barrier that has led to a steep drop in beef and hog shipments to U.S. processors.

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<sup>58</sup> "U.S. Gets a Lift In Lumber Fight With Canada." By Ian Austen and Clifford Krauss. *New York Times*. August 31, 2005. "Conservative Government Wins Softwood Truce." *Globe and Mail*. April 28, 2006.

<sup>59</sup> Lawmakers May Limit Paper Mills' Windfall. *New York Times*. April 18, 2009.

### *Buy American Stimulus Provisions*

The Buy American provision of the American Recovery and Reinvestment Act of 2009 (ARRA, Sec. 1605, P.L. 111-5) states that no funds shall be appropriated for building projects or public works projects unless all the iron, steel, and manufactured goods are made in the United States. This provision was subject to three discrete waivers: (a) applying this policy would not be in the public interest, (b) the iron, steel or manufactured products are not produced in sufficient quantities or of a satisfactory quantity in the United States, or (C) the inclusion of the applicable U.S. products would increase the cost of the overall project by more than 25%. The Senate added language to ensure that the provisions are applied in a manner consistent with U.S. trade obligations.

With regard to Canada, the United States has undertaken government procurement obligations under the World Trade Organization's (WTO) Agreement on Government Procurement (AGP) and under the North American Free Trade Agreement (NAFTA). The AGP is a plurilateral agreement that only binds those WTO members that agreed to undertake obligations under it. Furthermore, the AGP only applies to the sectors and the procurement agencies that the national government and sub-national agencies includes in its schedule of national commitments. NAFTA contains similar commitments on the national level, but excluded sub-national entities.

Both the United States and Canada have undertaken extensive obligations to open their government procurements at the national level under both agreements. Thus Canada firms may bid on ARRA-related federal procurement under the provisions of the AGP. Under the AGP, 37 U.S. states as well as other government entities such as the Tennessee Valley Authority and the Port Authority of New York and New Jersey have made commitments under the AGP. By contrast, Canada has not undertaken any government procurement obligations on behalf of its provinces. Likely for this reason, guidance from the Office of Management Budget implementing the Buy American provisions excluded Canadian firms from bidding on ARRA-financed contracts that are tendered by the states that are party to the agreement.<sup>60</sup> International Trade Minister Stockwell Day has criticized this exclusion claiming, "there are provisions being put in place which are effectively closing the door to procurement from Canadian companies, suppliers and producers...where people at the municipal level feel they have no choice but to go with U.S. only products and services."<sup>61</sup>

### *Intellectual Property Rights*

In 2009, the U.S. Trade Representative elevated Canada on its Special 301 report on intellectual property rights protections to the priority watch list for intellectual property rights protections for the first time.<sup>62</sup> The priority watch list indicates that the listed trading partner has problems with respect to IPR protection, enforcement, or market access for persons relying on intellectual property and that these problems merit "increased bilateral attention." In this designation, Canada

<sup>60</sup> Office of Management and Budget, "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, April 3, 2009. pp. 160-166.

<sup>61</sup> "U.S. protectionism a threat to North America: Stockwell Day," *Financial Post*, April 29, 2009.

<sup>62</sup> United States Trade Representative, 2009 Special 301 Report, p. 17. Available at [[http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2009/2009\\_Special\\_301\\_Report/asset\\_upload\\_file500\\_15612.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2009/2009_Special_301_Report/asset_upload_file500_15612.pdf)]

joins such notorious IPR violators as China and Russia. The United States again urged Canada to implement the World Intellectual Property Organization's Copyright treaty, which has been signed but not ratified by Canada.<sup>63</sup> The United States also expressed concern about trade in pirated and counterfeit goods in Canada, as well as the transshipment and transiting of such goods. The United States urged Canada to adopt tougher border security measures to crack down on this trade, including allowing for the seizure of pirated and counterfeit goods by customs agents without a court order. However, USTR commended Canada for cooperation on bilateral and multilateral IPR initiatives, including the proposed Anti-Counterfeiting Trade Agreement (ACTA).

## Environmental Issues

The United States and Canada, which share a common border that stretches 5,500 miles, cooperate extensively on environmental matters. Since they signed the Boundary Waters Treaty in 1909, the two countries have, through the International Joint Commission, worked together on protecting and maintaining border waterways, especially the Great Lakes. In 1978, the two signed the Great Lakes Water Quality Agreement.

In 2002, Canada ratified the Kyoto Agreement; in 2006, however, the government announced that emission targets had been exceeded. The Harper government has established a goal of cutting greenhouse gas emissions 20% by 2020. To do so, the government proposes numerous measures, including increased reliance on hydro- and nuclear power, and revised regulations for the oil sands industry.

The long feud over Pacific salmon—one of the more prominent bilateral disputes in recent years—had both environmental and commercial aspects. Canada contended that American fishermen were taking more than their equitable share of the migratory fish; the United States, on the other hand, maintained that its fishing was in accordance with the 1985 Pacific Salmon Treaty (PST) and with sound conservation practices. After a pause, talks resumed in 1997, and the two sides finally reached an accord in 1999; both countries are monitoring implementation of the agreement.<sup>64</sup> The so-called Annex IV fisheries regimes of the PST were renegotiated in 2008.

One area of contention concerns the diversion of the naturally overflowing waters of Devils Lake, in North Dakota. For flood-control purposes, the state has constructed a channel that diverts excess water ultimately to the Red River, which flows northward. Manitobans have objected to this solution, arguing that the lake water contains toxic chemicals from agricultural runoff; they are also concerned that the introduction of alien species of aquatic life may disturb the ecological balance and endanger recreational fishing in Lake Winnipeg, into which the Red River empties. The Canadian government has requested that the case be referred to the International Joint Commission. In April 2006, after meetings between senior environmental officials of the two governments, the United States agreed to install a permanent filtration system at the Devils Lake outlet. However, this filtration system, estimated to cost \$15 million, has not been installed. In February 2008, the North Dakota Supreme Court found that the state had acted improperly in changing certain environmental standards for the water released from the Lake's outlet. At this time, the channel operates intermittently, subject to North Dakota health regulations. Meanwhile,

<sup>63</sup> The WIPO Copyright treaty updates existing copyright protections for Internet and other electronic media.

<sup>64</sup> CRS Report RL30234, *The Pacific Salmon Treaty: The 1999 Agreement and Renegotiated Annex IV*, by Eugene H. Buck.

Manitoba has offered to address the issue of a 30 mile border road that acts as a dike, trapping water in northeastern North Dakota, if North Dakota installs the filtration system at the Devil's Lake Channel. North Dakota's governor demurred, maintaining that the two issues are unrelated.<sup>65</sup>

Other environmental problems the two countries have dealt with in recent years include secondary wastewater treatment, control of predator fish and other invasive species introduced into the Lakes by ocean-going vessels, and sustainability of the St. Lawrence Seaway. In addition, the United States and Canada concluded a hazardous waste trade agreement in 1986; more recently, transboundary shipments of solid waste, particularly from Ontario to Ohio, Michigan, and other U.S. states, have been under review, and have been the subject of legislation in the U.S. Congress. The two countries have continued the long-standing debate over the ecological impact of possible development in Alaska's Arctic National Wildlife Refuge. Finally, the two sides continue to monitor the progress of the 1991 Canada-United States Air Quality Agreement. On January 7, 2003, Canadian and U.S. officials announced a new Joint Border Air Quality Strategy; under the initiative, pilot programs to reduce air pollution will be developed involving stakeholders at the state, provincial and local levels.

## Canada's Arctic Sovereignty Claim<sup>66</sup>

### Issue Definition

Scientists have forecast that, by 2030 or earlier, global warming will reduce the Arctic ice pack in Canada's northern archipelago sufficiently to create a "northwest passage" that will permit commercial ship traffic through the summer months. If created, a northwest passage would significantly reduce transit distances for commercial ships operating between certain ports. It could also be used by commercial fishing or cruise ships, ships supporting Arctic scientific research or resource exploration, or military ships. The presence of ships in the passage could require the establishment and enforcement of shipping lanes and other rules for ensuring safe ship operations while in the passage, add to existing demands for maritime search and rescue capabilities, and create a risk of environmental damage to the Arctic due to engine exhaust, fuel spills, dumping of waste, or release of ballast water containing contaminants or non-native marine organisms. The use of the passage by foreign military ships might be viewed as creating potential security risks to Canada (and the United States). Successive Canadian governments have maintained that such a passage would be an inland waterway, and would therefore be sovereign Canadian territory, subject to Ottawa's surveillance and regulation. The United States, the European Union, Japan, and others assert that the passage would constitute an international strait between two high seas.

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<sup>65</sup> "Devil Down South." *The Economist*. July 16, 2005. "Little-Known White House Office Negotiates Devils Lake Dispute." *AP*. September 5, 2005. "U.S. Promises Devils Lake Filter, But Water May Flow Before Installation." *Canadian Press*. April 25, 2006. Manitoba Scores Partial victory In Water Dispute With North Dakota. *The Canadian Press*. February 22, 2008; "ND governor to Manitoba: No deal on water dispute," *Fargo Forum*, May 8, 2009.

<sup>66</sup> Prepared by Carl Ek, Specialist in International Relations; Foreign Affairs, Defense, and Trade Division.

## Background and Analysis

Arctic sovereignty has been an issue for Canada for decades. In 1985, a U.S. icebreaker, the *Polar Sea*, caused an uproar in Canada when it traversed the waters of the northern archipelago without first seeking permission. Afterward, Washington and Ottawa came to an agreement in 1988 under which the United States pledged to notify Canada when its ships would transit the region, and Canada agreed to grant its consent. In recent years, however, the question over who, if anyone, would have control over the regional waters has intensified as scientific consensus has grown that the melting of the polar icecap will open up a Northwest Passage during the summer months.

The debate over the Northwest Passage has commercial, environmental, and security considerations. The opening of a channel of water during the summer months through Canada's 36,000-island arctic archipelago would cut shipping routes between Europe and Asia by 3,000-4,000 miles, saving time and fuel costs. However, many Canadians are concerned that unfettered maritime traffic through the region could result in serious environmental hazards ranging from the catastrophe of an oil spill, to more cumulative pollution caused by ocean dumping of ballast and garbage by transiting vessels. In terms of security, the Canadians are concerned that recognition of the passage as international waters would result in free access to naval warships and submarines, including, for example, those of Russia and China.

Canada seeks recognition of its sovereignty over the entire area, among other reasons, because of a strong national identification with its northern regions. Ottawa argues that it has a historical claim based on centuries of Inuit inhabitation—of the islands and of the ice extending from them. From a practical standpoint, Canada wishes to have the ability to enforce protection of the fragile arctic ecosystem and to ensure sustainable commercial fishing practices. In addition, the Canadians want there to be no doubt that they have rights to the region's abundant natural resources, including oil, natural gas, minerals, and precious metals.

The Harper government has been seeking to bolster Canada's sovereignty claim by establishing a stronger military presence. In July 2007, Harper announced plans for the construction of 6-8 armed, medium-sized icebreakers to patrol the north. The following month, he traveled to Resolute Bay, Nunavut and announced plans to construct a winter warfare training center and deep-water port in the region. He declared that "Canada's new government understands that the first principle of Arctic sovereignty is: Use it or lose it." Some Canadians, however, have criticized Harper for seeking to militarize the debate.

The prospective passage raises jurisdictional questions. Canadians maintain that it would be an internal waterway and would likely require all vessels to register with their coast guard's vessel traffic reporting system. They contend that this would facilitate possible search-and-rescue missions, and would dissuade ships bearing contraband from sailing through the region. There is general agreement that the natural resources in the region are Canadian; the debate concerns free transit rights. Analysts note that the UN Convention on the Law of the Seas calls for the right of transit passage "between one part of the high seas ... and another part of the high seas ... ." In addition, some analysts believe that the recognition of the Northwest Passage as a Canadian inland waterway would set an international precedent that might be viewed as applicable elsewhere in the world. Other governments could echo Canada's sovereignty claim and prohibit the passage of U.S. naval ships, as well as of oil tankers bound for the United States; the Straits of Malacca and Hormuz have been cited as examples. Others, however, such as former U.S. Ambassador to Canada Paul Cellucci, argue that it would be in the interests of U.S. national security if Canada were to manage and police shipping through the straits.

Several possible solutions have been put forward. Some argue that Canada could achieve its objectives through regulations approved by the UN International Maritime Organization. Also, it has suggested that NORAD and the Arctic Council might be able to coordinate cooperative patrolling of the passage. Others—though not the United States—have proposed that the countries bordering the Arctic adopt an agreement prohibiting military, residential, or commercial use of the region, as was done for Antarctica in 1959. Finally, some believe that a renewed and updated version of the 1988 U.S.-Canada agreement would suffice.

### **Status of the Issue**

The Bush Administration did not make a major issue of the future northwest passage. On January 9, 2009, the White House issued National Security Presidential Directive 66, entitled Arctic Region Policy. The document reiterated the Administration's stance regarding Canada's sovereignty claim, stating that "the Northwest Passage is a strait used for international navigation." Many observers believe that it is unlikely that the Obama Administration will reverse this stance, and that, for the time being, the Ottawa and Washington will continue to "agree to disagree." However, Canadian analysts have argued that the debate over who should manage the straits will intensify if ships carrying hazardous materials or illegal immigrants are discovered in the region. Because it has been highlighted as a priority area for the Harper government, this issue will likely continue to be the subject of bilateral discussions between U.S. and Canadian policymakers.

### **Questions**

1. Several governments have taken issue with Canada's assertion of sovereignty over the Arctic waters. Do any foreign countries support Canada on this question? Has the Canadian government offered a legal precedent for its claim?
2. If Canada were to win recognition of its sovereignty over the passage, how might it regulate shipping traffic through the straits?
3. What might be the security, economic and environmental consequences for the United States if Canada were to win its sovereignty claim? If the passage were to be declared international waters?

## **Border Security Issues<sup>67</sup>**

### **Issue Definition**

Border security has emerged as an area of public concern, particularly after the September 11, 2001 terrorist attacks. Since the terrorist attacks, the United States and Canada have been striving to balance adequate border security with the facilitation of legitimate cross-border travel and commerce. As Congress passes legislation to enhance border security and the Administration puts into place procedures to tighten border enforcement, concerns persist with respect to the potential

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<sup>67</sup> Prepared by Chad C. Haddal, Analyst in Immigration Policy, Domestic Social Policy Division.

for terrorists to exploit the border. Congress previously passed significant border security-related legislation as discussed below, and issues pertaining to the oversight of such legislation and their possible policy implications for U.S.-Canada border relations continue to be of interest to Congress. These issues include (1) the new requirement that U.S. Citizens, Canadian nationals, and other foreign nationals from countries in the Western Hemisphere, will soon need a travel document to enter the United States; and (2) improvements to infrastructure at the border and ports of entry.

## **Background and Analysis**

Both the United States and Canada have taken various measures to better secure the shared border while simultaneously preventing disruption to the flow of people and trade. While such efforts date back to 1995, recent efforts include a 30-point plan, commonly referred to as the “Smart Border Accord” (signed on December 12, 2001). The declaration includes a 30-point (now 32-point) plan to secure the border and facilitate the flow of low-risk travelers and goods through coordinated law enforcement operations, intelligence sharing, infrastructure improvements, improvement of compatible immigration databases, visa policy coordination, common biometric identifiers in travel documents, prescreening of air passengers, joint passenger analysis units, and improved processing of refugee and asylum claims, among other things. Previously, on December 3, 2001 the two countries signed a joint statement of cooperation on border security and migration that focuses on detection and prosecution of security threats, the disruption of illegal migration, and the efficient management of legitimate travel. Other efforts to increase border security between the U.S. and Canadian government include the 1999 *Canada-U.S. Partnership Forum* (CUSP) and the February 24, 1995, joint accord, *Our Shared Border*.

Congress also took action to better secure the border by passing the USA PATRIOT Act (P.L. 107-56). The act authorized the Attorney General to triple the number of border patrol personnel and immigration inspectors along the northern border and authorized \$50 million for the former INS to make technological improvements and to acquire additional equipment for the northern border. The Enhanced Border Security and Visa Reform Act of 2002 (the Border Security Act; P.L. 107-173) similarly authorized additional personnel and technological and infrastructure improvements at the borders. The Border Security Act contained a provision that required the development of technology to track the entry and exit of foreign nationals (referred to as the US-VISIT program). Both the USA PATRIOT Act and the Border Security Act required travel documents to be tamper resistant and contain a biometric identifier that is unique to the card holder.

### ***Western Hemisphere Travel Initiative***

More recently, Congress passed legislation that requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, “deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship,” for all travelers entering the United States. Commonly referred to as the Western Hemisphere Travel Initiative (WHTI), this provision in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) requires American and Canadian nationals (and other foreign nationals) to present some form of approved travel document to enter the United States by January 1, 2008. On November 24, 2006, DHS published a Final Rule concerning the acceptable WHTI travel documents for entry into the United States through airports. The DHS final rule required all U.S.

citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico to present a valid passport in order to be allowed entry into the United States at airports starting on January 23, 2007. The Consolidated Appropriations Act of fiscal year (FY) 2008 (P.L. 110-161) included language modifying the WHTI deadlines that were enacted by P.L. 108-458 and subsequently extended by P.L. 109-295. The new deadline for implementation of WHTI is June 1, 2009.

Despite this legislation, as of January 31, 2008, DHS has ended the practice of accepting oral declarations of citizenship at the land border and is currently requiring U.S. citizens to present a passport, some other accepted biometric document, or the combination of a driver's license and a birth certificate, in order to reenter the country. On March 27, DHS and the Department of State (DOS) announced the final rule for WHTI. The WHTI final rule will require that U.S. citizens present an approved secure document that denotes identity *and* citizenship at the land border starting June 1, 2009. This would end the current practice of accepting driver's licenses and birth certificates as proof of identity and citizenship at the border. Approved documents will include passport books, passport cards, and frequent traveler cards (such as SENTRI, NEXUS, and FAST). Additionally, some states have entered into agreements with DHS and have developed (or are developing) enhanced driver's licenses (EDL) that include citizenship information and are valid for WHTI purposes. DHS has also stated that they are working with the Canadian government and several Canadian provinces to develop EDLs or other similar documents for Canadian citizens that would be valid for WHTI purposes. Yet, the WHTI has fostered much debate in Canada as well as the United States, as some observers voice concerns that the increased documentation that will be required at the border may suppress travel between the two nations.

### *Status of the Issue*

The U.S. and Canadian governments continue to implement the provisions in the Smart Border Accord. For example, both countries have expanded the NEXUS program to twelve land border crossings. Both countries continue to explore the feasibility of creating additional joint facilities at agreed upon ports of entry and sharing of information through interoperable technology. Additionally, both countries have begun to take steps to share passenger information on high-risk travelers en route to either country through a risk-scoring scheme that was jointly developed; and in 2004, an automated process to share "lookout" data between both countries was developed. However, negotiations between the U.S. and Canada over two proposed pre-clearance pilot programs were reportedly recently abandoned by DHS due to sovereignty issues, the right of individuals to withdraw from inspections, and concerns about Canadian legal restrictions on Customs and Border Protection officers' authorities relating to arrests, fingerprinting, and other activities.

### **Questions**

1. When fully implemented, the WHTI will make significant changes to the current documentary requirements needed to enter the United States. What steps will the Canadian government be taking to ensure that Canadian citizens are aware of these changes? Will the Canadian government consider imposing similar requirements on American citizens entering Canada? Will Canada develop its own version of the passport card for Canadian citizens? Will Canadian provinces develop their own EDLs for WHTI?



2. In recent years, a number of different technologies, including the US-VISIT program, have been implemented at northern ports of entry. With the advent of the WHTI, the demand for improved infrastructure will continue to be critical. What measures have been taken by the Canadian government to mitigate the impact of such a demand at its border crossings? Are there collaborative efforts that could be undertaken to alleviate some of the pressure on busy POE?

3. The Smart Border Accord calls on the two countries to develop approaches to move customs and immigration inspection activities away from the border. While such an approach is already present at Canadian airports, there has been interest in expanding it to areas away from land ports of entry. What is the Canadian government doing to facilitate this objective? What was the reason that negotiations over the land-border pilot program failed? Are there any potential solutions for the problems that led to the pre-clearance pilots to be scrapped?

## **Border Security: Trade and Commercial Concerns<sup>68</sup>**

### **Issue Definition**

The aftermath of the terrorist attacks on the United States on September 11, 2001 increased scrutiny of the Canadian border as a possible point of entry for terrorists or for weapons of mass destruction. The potential for economic disruption that closing the border would cause has spurred cooperation between the United States and Canada to improve border security in an atmosphere conducive to continued and expanded commerce. This brief details commercial considerations in U.S.-Canadian border security discussions.

### **Background and Analysis**

The issue of border security is linked to the increased integration of the United States and Canadian economies. This integration has been aided by several trade agreements, culminating in the North American Free Trade Agreement of 1994 (NAFTA). These trade agreements not only eliminated tariff barriers between the two nations, but also reoriented Canada's industrial structure towards the United States. Industries in each country are now able to produce goods for a larger continent-wide market, and productivity has increased through increased economies of scale and specialization. Such specialization led to increased bilateral trade, much of it in intermediate products. This integration has, in turn, led to industrial practices such as "just in time" parts procurement that depend on a relatively open border.

The volume of economic activity across the border underscores the extent of economic integration between the United States and Canada. Today, the United States and Canada have the largest trading relationship in the world with over \$1.5 billion per day in goods and services crossing the border in 2008. Canada purchases 20% of U.S. exports and supplies 16% of all U.S. imports. The United States supplied 53% of Canada's imports of goods in 2008 and purchased 78% of Canada's merchandise exports; two-way trade with the United States represents nearly 38% of Canadian GDP. The Ambassador Bridge that links Detroit, Michigan and Windsor,

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<sup>68</sup> Prepared by Ian F. Fergusson, Specialist in International Trade and Finance, Foreign Affairs, Defense, and Trade Division.

Ontario is the largest trade link in the world with more than 7,000 daily truck crossings totaling more than \$120 billion per year.

### *Action Programs and Initiatives*

New initiatives to increase security of the border without impeding the flow of commerce are being developed under the Security and Prosperity Partnership (SPP), which was launched by the leaders of the United States, Canada, and Mexico in March 2005. Many of these initiatives expand upon previous bilateral efforts by the United States and Canada, including the Smart Border Action Plan of December 2001 consisting of 4 pillars: the secure flow of people, the secure flow of goods, a secure infrastructure, and coordinated enforcement and information sharing. The pillar concerned with the flow of goods consists of initiatives on harmonized commercial processing, supply chain management, clearance away from the border, joint or shared facilities, enhancement of information sharing, and infrastructure improvements.

The U.S. Bureau of Customs and Border Protection's *Customs-Trade Partnership Against Terrorism (C-TPAT)* and the Canadian Border Security Agency's *Partners in Protection Program* are supply-chain security initiatives in which companies undertake audit-based compliance measures to enhance security along the supply chain. Goods shipped under these programs are eligible for preclearance away from the border. The SPP calls for the two programs to be harmonized within two years.

The *Free and Secure Trade (FAST)* is a joint harmonized commercial processing initiative at 21 border locations, which provides for dedicated inspection lanes to goods carried by approved lower-risk shippers, to goods purchased from pre-authorized importers such as C-TPAT, and to goods transported by pre-authorized drivers and carriers. A complementary program (NEXUS) to expedite the secure movement of people has also been established for frequent travelers who have undergone security clearances on both sides of the border.

Another objective of the border security efforts has been the screening of goods entering North America. The ongoing U.S. *Container Security Initiative (CSI)* is designed to pre-screen high risk containers entering the United States at overseas ports of departure. Under the SPP, the three countries will develop common screening methods and technology, establish criteria to identify high risk cargo, and harmonize cargo information technology. Preclearance and prescreening is a possible first step in the creation of a North American security perimeter, a concept whereby clearance occurs at the first point of entrance rather than at the final border.

### **Status of the Issue**

Land preclearance away from the border by U.S. and Canadian customs agents working in each other's territory is an issue that has proven controversial, primarily due to concerns about sovereignty. Joint U.S.-Canada customs teams already operate in the CSI ports of Halifax, Montreal, and Vancouver, as well as Newark and Seattle-Tacoma, although the visiting agent serves only an advisory role with no enforcement powers. The SPP calls for negotiations on a U.S.-Canada preclearance agreement with implementation of two pilot sites, the Peace Bridge (Buffalo, NY-Fort Erie, ON) and the Thousand Islands Bridge (Alexandria Bay, NY-Landsdowne, ON). However, these negotiations were suspended on April 26, 2007, over the issue of fingerprinting Canadian citizens crossing the border. Canadian law does not provide for fingerprinting Canadian citizens that have not been charged with a crime.

A second issue is the ability of the transportation infrastructure to cope with increased security measures. The aging condition and limited capacity of the land border infrastructure preceded the terrorist attacks. For example, the Ambassador Bridge and the Detroit-Windsor Tunnel, which together carry 25% of total U.S.-Canada cross-border traffic, both opened in 1930. Approaches to the crossings, often city streets, have been criticized as inadequate to the commercial needs of the 21<sup>st</sup> century. This issue affects the efficient implementation of security measures. The FAST system provides for dedicated lanes at land border ports for expedited preclearance. However, these lanes will not save time if the FAST participant cannot access this lane due to congestion or delays at the points of access. The SPP completed a pilot program that attained a 25% improvement in border crossing times at the Detroit-Windsor gateway in December 2005, yet the aging and adequacy of the border infrastructure may affect whether such improvements are sustainable. A binational partnership to construct additional crossing capacity at the Detroit-Windsor gateway is engaged in technical and environmental assessments of potential new crossing sites; however, the opening of new bridge or tunnel capacity is not envisioned before 2013.

### **Questions**

1. Is Canada doing enough to secure the border against the transit of terrorists or weapons of mass destruction? Do Canadians think that the United States has placed too much emphasis on securing the northern border against terrorists to the detriment of efficient trade relations?
2. Is Canadian sovereignty threatened by having U.S. customs agents with enforcement powers active on Canadian soil? Do you believe the fingerprinting issue is a make-or-break issue concerning land preclearance? What are the elements of sovereignty that most concern you? Is legislative action necessary to permit this cooperation?
3. Are Canadian business and government officials concerned that another terrorist-related border shutdown could cause the relocation of business to the United States or dampen the attractiveness of Canada as a recipient of foreign investment?

## **Immigration and Refugee Policies<sup>69</sup>**

### **Issue Definition**

Should the United States be concerned that Canada's immigration and refugee laws and policies pose a threat to its national security?

### **Background and Analysis**

Although Canada does not have country or worldwide immigration quotas, the government does establish annual targets. Between 2004 and 2008, Canada accepted between 235,000 and 262,000 new permanent residents annually. In this same period, an average of between 90,000 and 100,000 persons were accepted annually as temporary workers. New arrivals as permanent and

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<sup>69</sup> Prepared by Stephen F. Clarke, Senior Foreign Law Specialist, Western Law Division, Law Library of Congress, May 2008.

temporary residents total more than 1% of the entire Canadian population. Asian countries, such as China, India, Pakistan, and the Philippines, are heavily represented at the top of the list of countries from which Canada's immigrants come, but no one nation dominates. Iran is the only country adjacent to the Middle East that recently has been in the top ten. Security checks are conducted by federal authorities. Because Quebec, however, has an agreement with the federal government that allows it to select immigrants intending to settle in that province, Quebec's system adds a second screening process for its applicants. Quebec also has addressed security concerns by adjusting its programs for recruiting immigrants. The federal government and Quebec use point systems for assessing independent applicants that were changed ten years ago to attract more highly skilled and educated immigrants, regardless of whether they had arranged employment or not. Under this system, Canada has long accepted a much higher percentage of independent immigrants and a much lower percentage of family class immigrants than the United States. A decision to give priority to the processing of certain applicants who have arranged employment drove the balance of the skilled worker category even higher relative to family class immigrants, to a ratio of approximately 2.3:1 in 2008. This change was strongly opposed by immigration groups who favor stronger family reunification policies.

One notable feature of Canadian immigration is that nearly three-quarters of the persons accepted settle in the three largest cities: Toronto, Montreal, and Vancouver. This tendency, combined with the high rate of immigration, has raised some concerns about destructive "diaspora nationalism" emerging in these concentrated communities. The 2006 arrests of a group of Muslims who had been raised in Canada and had planned attacks in southern Ontario fueled this concern. However, this problem is not unique to Canada and opposition to immigration has not been voiced nearly as loudly or as forcefully in Canada as it recently has been in parts of Western Europe. In fact, immigration is still generally viewed as an opportunity for growth in what would otherwise be a declining population.

The Canadian policy for asylum applicants is a far more contentious issue within the country than immigration, not so much for its negative effects within Canada, but because it generally is believed to invite fraud and abuse. Between 1998 and 2004, refugee claims began at around 25,000, rose to a high of about 45,000, and ended back down at approximately 25,000. In 2007, the number of refugee claims was approximately 28,500. The acceptance rate has consistently been somewhat higher than in the United States. In 2006, 47% of the refugee applications processed were accepted. Of particular concern to Canadian officials prior to 2005 was the fact that approximately 40% of the overall total claimants and some 70% of port-of-entry claimants had entered Canada through the United States. There was significant evidence that illegal migrants were abusing the U.S. Non-Immigrant Visa system to access North America, and the Canadian asylum system to stay in Canada. Canada is attractive to these persons because it detains few undocumented refugee claimants pending independent identification and because the federal and provincial governments grant immediate assistance to applicants who have yet to substantiate their claims. The result has been that the majority of Canada's refugee claimants arrive in Canada without any documents and are allowed free entry into the country, even though it is clear that many disposed of the documents they had before coming to Canada. Canada is also attractive to refugee claimants because it does not often detain undocumented arrivals. However, facilities for the detention for persons who may be viewed as posing a security or flight risk have been prepared.

A number of U.S. television programs that have portrayed the Canadian refugee system as extremely liberal have received considerable attention in Canada. Most of these segments have mentioned cases of terrorists from the Middle East who did or may have entered Canada as

refugees with the intention of launching attacks against U.S. targets. The most prominent of these cases is that of the “millennium bomber.” Ahmed Ressam was captured in 1999 while crossing the border with explosives that he planned to set off at Los Angeles International Airport on January 1, 2000. Also highlighted have been the cases of suspected terrorists who have remained in the country for many years while fighting their way through a very lengthy appeal process. In 2002, the Supreme Court of Canada ruled that two persons linked to terrorist organizations could be deported to countries where they might face torture, when security concerns so require. One of these individuals was returned to Iran fairly quickly, but the other continued fighting his extradition to Sri Lanka.

American media coverage of the Canadian refugee system has elicited a wide range of responses. While a number of Canadian commentators agree that the United States has good reason to fear that Canada’s refugee policies can be easily employed by terrorists to enter North America, others contend that terrorists are more likely to use other means to enter both Canada and the United States. Many analysts point out that there is no evidence that any of the September 11 hijackers had a Canadian connection and that the refugee system essentially has been used for “queue jumping” by enterprising persons who might not qualify under Canada’s immigration laws. Proponents of this view are exasperated by repetitions of the well-refuted myth that the September 11 hijackers came from Canada and question how great the security risk to the United States can be if a significant number of claimants are coming to Canada from this country.

In December 2002, the United States and Canada signed a Safe Third Country Agreement to allow immigration officials in both countries to require most persons seeking asylum at a border crossing to go back and present the claims in their respective countries. This type of Agreement had been called for in the Action Plan to the Smart Border Declaration signed in the aftermath of the September 11 attacks in the United States. Implementation of the Agreement was delayed by the lengthy and complicated process for drafting and approving appropriate regulations in the United States, but it finally went into force at the beginning of 2005. In 2007, a judge of the Federal Court of Canada held that the law implementing the agreement was unconstitutional, based on his finding that the United States does not fully comply with international conventions on refugees. This action followed two other court decisions in which part of the definition of “terrorism” in the Anti-Terrorism Act and the procedure for detaining suspected terrorists under the immigration laws were both struck down. However, the Federal Court of Appeals upheld the Safe Third Country Agreement in a decision the Supreme Court of Canada decided not to review in February 2009.

Although the Safe Third Country Agreement aims to limit asylum shopping and the filing of multiple claims, it is limited in scope and subject to several major exceptions. One major limitation is that it only covers the presentation of claims at land border crossings. Airport and marine facilities are not covered except in very limited circumstances. Critics contend that this will simply encourage a would-be refugee claimant to sneak into his or her country of choice illegally or fly into a country of choice in order to present a claim. The Agreement also contains very broad exceptions for relatives, including relatives of other asylum seekers, and it allows the parties to “examine any refugee status claim made to that party where it determines that it is in the public interest to do so.” Because the Safe Third Country Agreement generally is opposed by refugee groups in both countries, it is likely that internal pressure will be put on both countries to invoke this reserved right in particular cases.

Statistics show that the number of refugee claims presented at border crossings in Canada declined by approximately 40% in the first half of 2005, and fewer than 20,000 total claims were

filed for the entire year. In 2006, the number of refugees admitted for permanent residence was down about 3,000 from 2005. Although the data would suggest that the Safe Third Country Agreement had a dramatic immediate impact, it also has been noted that claims presented at airports, which are not subject to the Agreement, initially were down about 25%. Thus, the Safe Third Country Agreement appears to have gone into effect during a period in which the number of refugee claims already was declining. Since then, increased enforcement in the United States has helped offset some of the immediate benefits to Canada of the Safe Third Country Agreement by encouraging more persons to seek refuge in Canada.

### **Status of the Issue**

One longstanding problem in Canada is that deportation is a very complicated and lengthy process. The number of persons deported has been growing, but Canada's Auditor-General recently found in May 2008 that the government did not know the whereabouts of approximately two-thirds of the over 60,000 persons who were subject to deportation or removal orders. Included in this group are persons who were found to be inadmissible on the grounds of criminality. While the Auditor-General was critical of the situation, she did not find that the missing persons constituted a clear national security risk.

### **Questions**

1. Could the Safe Third Country Agreement have had a broader application and apply to persons making applications for refugee status within the country?
2. Are the reported cases of terrorists and high-risk persons entering North America through legal means a sign of a potentially much greater threat?
3. Why do Canadian and U.S. officials maintain different detention policies in the case of undocumented refugee claimants?
4. What steps does the Canadian government intend to take to keep track of persons subject to deportation or removal orders?

## **Canada and NAFTA<sup>70</sup>**

### **Issue Definition**

During the 2008 U.S. election campaign, there were calls by some candidates, including President Barack Obama, to reopen or renegotiate the North American Free Trade Agreement (NAFTA). For many Canadians, such calls proved worrisome- especially when unaccompanied by details. Although some Canadians have their own issues with NAFTA, the agreement is the cornerstone of their economic relationship with the United States, by far its most important. Subsequent clarifications by the new administration about the scope of the changes, perhaps to incorporate

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<sup>70</sup> This section was written by Ian F. Fergusson, Specialist in International Trade and Finance; Foreign Affairs, Defense, and Trade Division.

some of the environment and labor side letters to the body of the agreement with reopening itself have been welcomed by the leaders of Canada and Mexico.

## **Background and Analysis**

Over the past twenty years, U.S.-Canada trade relations have been governed first by the 1988 U.S.-Canada Free Trade Agreement, which was incorporated into the subsequent 1993 North American Free Trade Agreement that included Mexico. These agreements have removed tariffs on all goods between the three countries, provided market access opportunities for investors, financial service providers, and other cross-border services, opened certain government procurement opportunities for firms of each nation in the other, set ground rules for intellectual property protection, and provided a mechanism to resolve disputes among the parties. These agreements provide the foundation for the North American economic space.

The U.S. interest in renegotiating or revising NAFTA center around the side agreements on labor and on the environment. These agreements were added following the election of Bill Clinton in order to win political support for the agreement during congressional consideration in 1993. Each agreement provides for the establishment of a commission to investigate matters of concern and to promote cooperative activities in labor and environmental protections. The agreements also obligate each party to enforce their own laws with regard to labor and the environment and to provide private parties the right of action under national laws. A NAFTA party can pursue a complaint against another NAFTA party if it believes the other party is not enforcing its domestic laws and a dispute settlement process is available for cases that are not resolved between governments. Critics of the process believe that their status apart from the agreement marginalizes their effectiveness and that governments have shown little desire to file complaints against each other over labor or environmental matters. According to proponents of inclusion, putting the labor and environmental provisions into the text of the agreement would serve to elevate those issues on par with other disputes in NAFTA.

However, some policymakers are concerned that reopening of NAFTA could open a ‘pandora’s box’ of pent-up issues resulting from the operation of the agreements for the past 15 years. For Canada, these issues may include:

- **Chapter 6 Energy and Petrochemical Provisions.** Critics say that this chapter, and particularly the ‘proportionality’ provision, creates a supply obligation to the United States causing Canada to lose sovereignty over its own energy resources. These critics note that Mexico opted out of many of the Chapter’s provisions.
- **Dispute Settlement.** Some Canadians have been disenchanted with the workings of the Dispute Settlement system under NAFTA. Much of this feeling may be due to the softwood lumber dispute, in which some Canadians believed their position was upheld by NAFTA panels, only to have those decisions evaded or ignored by the United States. This had led some to question the legitimacy of the dispute system and may encourage the government to take future disputes to the WTO instead.
- **The Border.** While not specifically governed by NAFTA provisions, some Canadian business and policymakers are claiming that the NAFTA promise of free trade is being undermined by increased security at the border and what they consider to be the increasing tendency of U.S. policymakers not to differentiate between the concerns of the Canadian and Mexican borders.

## **Status of the Issue**

Although President Obama has suggested that the labor and environmental provisions should be incorporated into the text of the agreement, U.S. Trade Representative Ron Kirk announced on April 20, 2009 that those efforts could be accomplished without reopening the core text of the agreement. According to USTR Kirk, all three leaders agreed to look at opportunities to review and strengthen NAFTA.

## **Questions**

1. How would you strengthen NAFTA? What problems do you see with the agreement? What problems do you think Americans have with the agreement?
2. On balance, has NAFTA and free trade been good for your constituency? Why or why not?
3. Do you think the operation of NAFTA is being hampered by security at the border? How can the needs of commerce be reconciled with security concerns on both sides of the border?

# **Security and Prosperity Partnership of North America<sup>71</sup>**

## **Issue Definition**

How can the United States cooperate with its North American neighbors on issues related to trade, transportation, and security? What has been the impact of the Security and Prosperity Partnership of North America in improving security and competitiveness in North America?

## **Background and Analysis**

The Security and Prosperity Partnership of North America (SPP) is a trilateral initiative, launched in March 2005, that is intended to increase cooperation and information sharing in an effort to increase and enhance prosperity in the United States, Canada, and Mexico. The SPP is a government initiative that was endorsed by the leaders of the three countries, but it is not a signed agreement or treaty and, therefore, contains no legally binding commitments or obligations. It can, at best, be characterized as an endeavor by the three countries to facilitate communication and cooperation across several key policy areas of mutual interest. Although the SPP builds upon the existing trade and economic relationship of the three countries, it is not a trade agreement and is distinct from the existing North American Free Trade Agreement (NAFTA). The SPP working groups are not contemplating further market integration in North America. Such a move would require a government approval process within each of the three countries. In the United States, such an agreement would require the approval of the U.S. Congress. Some key issues for Congress regarding the SPP concern possible implications related to national sovereignty,

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<sup>71</sup> Prepared by Angeles Villarreal, Specialist in International Trade and Finance, Foreign Affairs, Defense, and Trade Division.



transportation corridors, cargo security, and border security. These issues are discussed in various sections of the report.

Since 2005, the SPP working groups have made annual recommendations to the North American leaders on how to accomplish the goals of the SPP. In 2008, the working groups agreed to continue to advance the agenda of the SPP by identifying and focusing on a set of high priority initiatives. They decided to: 1) increase the competitiveness of North American businesses and economies through more compatible regulations; 2) make borders smarter and more secure by coordinating long-term infrastructure plans, enhancing services, and reducing bottlenecks and congestion at major border crossings; 3) strengthen energy security and protect the environment by developing a framework for harmonization of energy efficiency standards and sharing technical information; 4) improve access to safe food, and health and consumer products by increasing cooperation and information sharing on the safety of food and products; and 5) improve North American response to emergencies by updating bilateral agreements to enable government authorities from the three countries help each other more quickly and efficiently during times of crisis. At the North American Leaders Summit in April 2008, the three leaders of North America directed their ministers to renew and focus the work of the SPP in competitiveness; smarter and more secure borders; energy security and environmental protection; food and product safety; and emergency response.

Goals of the SPP in the area of prosperity are to increase cooperation and sharing of information in order to improve productivity, reduce the costs of trade, and enhance the quality of life. Leaders from the three countries have highlighted the need to enhance North American competitiveness through compatible regulations and standards that would help the three countries protect health, safety and the environment, as well as to facilitate trade in goods and services across their borders.

The goal of the security components of the SPP is to coordinate the security efforts undertaken by each of the three participating nations to better protect citizens from terrorist threats and transnational crime while promoting the safe and efficient movement of legitimate people and goods. Working groups were established to address the security aspects of the SPP and are grouped by three broad themes: 1) external threats to North America; 2) streamlined and secured shared borders; and 3) prevention and response within North America.

One of the stated goals of the SPP is to improve the safety, security, and efficiency of the flow goods between the three countries. The majority of trade between the United States, Canada and Mexico is transported by land modes (truck, rail, and pipeline). One of the central tensions in border management policy concerns how to design policies that facilitate the efficient entry of legitimate cargo while simultaneously ensuring that a sufficient level of security and scrutiny is applied to deny the entry of illegitimate cargo. Since 9/11, the U.S. government has undertaken a number of initiatives aimed at improving cargo security and the facilitation of legitimate or low-risk cargo. Two SPP security working groups are devoted to cargo security and border facilitation.

Some critics of the SPP believe that it may be more than an initiative to increase cooperation and that it could lead to the creation of a common market or economic union in North America. Others contend that it may ultimately lead to a so-called “NAFTA Superhighway” that would link the United States, Canada, and Mexico with a ‘super-corridor’. However, if the United States were to potentially consider the formation of a customs union or common market with its North American neighbors, it would require approval by the U.S. Congress. The federal government has stated that there are no plans to build a “NAFTA Superhighway,” and that no super-corridor

initiative of any sort is a part of the SPP. Further, no legal authority exists and no funds have been appropriated to construct such a superhighway, nor are there current plans to seek such authority or funding.

### **Status of the Issue**

The United States, Canada, and Mexico have made progress in recent years in addressing issues related to North American competitiveness and security through the SPP. The SPP serves as a mechanism to increase communications among North American trading partners on issues of mutual concern, but because it is not a binding agreement, its role in improving prosperity and security may be limited.

### **Questions**

1. How effective has the SPP been in improving North American competitiveness through its focus on intellectual property rights protection and regulation harmonization? What other steps can be taken within the SPP to improve competitiveness and is this the appropriate mechanism to do so?
2. How effective has the SPP been in improving safety, security, and the flow of goods and services among the North American partners? What other steps could be taken in these areas?

## **Canada's Financial System**

### **Issue Definition**

Canadian banks on the whole have weathered the current financial crisis better than banks in the United States and Europe. Nevertheless, Canada's financial system has been buffeted by the financial crisis as equity and housing prices have fallen and as economic growth has decreased as a result of the downturn in global trade. Are there lessons to be learned from Canada's banking system, which has proven to be somewhat more immune to the financial troubles that have brought down better known banks?

### **Background and Analysis**

Canada's financial system has proven to be more resistant to the failures and bailout that have marked systems in the United States and Europe. Nevertheless, the financial crisis and global economic recession are battering the Canadian economy in ways that are similar to those in the United States and in Europe. The International Monetary Fund (IMF) recently forecast that the Canadian economy could contract by 2.5% in 2009 before rebounding with a positive rate of economic growth of 1.2% in 2010. In comparison, the US economy is forecast to decline by 2.8% in 2009 and remain flat in 2010.

Canadian banks suffered a loss of 50% in the value of their equities and the Canadian Imperial Bank of Commerce lost \$2.1 billion in derivatives in 2008, but the Bank of Canada so far has not had to inject capital into any Canadian bank. The drop in commodity prices, however, has caused the Canadian dollar to fall relative to the U.S. dollar, which should improve the cost competitive

position of Canada's exports. However, the slowdown in global trade and the shake-out in the auto industry are having far-reaching negative effects on the Canadian economy. On April 21, 2009, the Bank of Canada lowered the nation's key interest rate to 0.25%, and the Canadian Government announced in January 2009 a US \$33 billion fiscal stimulus package over two years in infrastructure spending, tax decreases, worker retraining, housing, and aid to struggling industries to spur the Canadian economy.

In a recent assessment of Canada's financial system, the IMF concluded that Canada's system is highly mature, sophisticated, and well-managed. In addition, the system is characterized by strong prudential regulation and supervision and a well-designed system of deposit insurance and arrangements for crisis management and resolution of failed banks. Supervisory responsibility for the financial sector in Canada is divided among the federal government, the provincial governments, and among a group of agencies within the federal government. The federal government is responsible for supervising all banks, federally incorporated insurance companies, trust and loan companies, cooperative credit associations and federal pension plans. Provincial governments are responsible for supervising securities dealers, mutual fund and investment advisors, credit unions, and provincially incorporated trust, loan, and insurance companies. As a result, there are 13 regulatory authorities, each administering a separate set of securities laws and regulations.

Within the federal government, the Financial Institutions Supervisory Committee (FISC) acts as the chief coordinating body that sets regulatory policy and supervises financial institutions. The Committee is comprised of the Department of Finance of the Ministry of Finance and four independent government agencies: the Office of the Superintendent of Financial Institutions (OSFI); the Bank of Canada; the Canada Deposit Insurance Corporation; and the Financial Consumer Agency of Canada (FCAC). All of these agencies report to the Minister of Finance, who is responsible to the Canadian Parliament. The Bank of Canada is responsible primarily for conducting monetary policy by setting interest rate targets and adjusting the supply of credit. The Bank also serves as the key component in the payments system by providing a check clearing function, and it serves as the traditional lender of last resort. The Office of the Superintendent of Financial Institutions plays a key role in Canada's financial supervisory scheme by supervising all domestic banks, branches of foreign banks operating in Canada, trust and loan companies, cooperative credit companies, life insurance companies, and property and casualty insurance companies.

The financial system is dominated by five large banking groups (Royal Bank of Canada, TD Canada Trust, Bank of Nova Scotia, Bank of Montreal, and Canadian Imperial Bank) that account for about 60% of total assets. In comparison, foreign banks account for about 4% of assets. The low representation by foreign banks is attributed to the "widely-held" rule for large banks that limits the concentration of bank share ownership and, therefore, reduces the scope for mergers and for foreign entry through acquisition. Canada's financial legal framework has allowed Canadian banks to concentrate on their low-risk, profitable domestic retail banking activities (services provided to individuals including: deposits, savings accounts, mortgages, credit cards, etc.), leaving large domestic borrowers to conduct their wholesale banking activities (services provided to corporations, governments, and other entities) abroad. Canada's insurance sector is dominated by three large domestic groups, which account for over 80% of the assets in this sector. The securities sector is marked by large Canadian, as well as US. and UK. securities firms.

Unlike the United States and some European countries, subprime mortgages account for less than 5% of Canadian mortgages, which sharply limited Canada's direct exposure to the meltdown that

occurred in the subprime mortgage market. In addition, Canadian law requires that all bank-held mortgages above a loan-to-value ratio above 80% be insured, which has curtailed the securitization of mortgages by banks in Canada. In addition, prepayment penalties and the lack of interest deductibility reduces the demand for long-term mortgages, so the maturity of most mortgages does not exceed 5 to 10 years.

Canada's financial supervisory system and regulatory structure have proven to be less susceptible to the bank failures that have loomed in the United States and Europe. Nevertheless, Canada's approach has a number of drawbacks. Canada's system of regulating securities markets at the provincial level means that regulations regarding market participants and investor protection differ by province and that the nature, structure, and powers of the provincial regulators also vary. In addition, the conservative, risk-averse approach employed by Canada's banks shielded the banks from some of the current financial turmoil, the approach also reduces efficiency in the market and reduces competition. Acquisitions of Canadian banks is significantly impeded by the rule that bank stocks be widely held and mergers are effectively prohibited. With reduced competitiveness pressures, Canadian banks maintain low-risk balance sheets at the expense of greater innovation and more efficient capital allocation. This approach also means that financing for small firms and venture capital for potentially high-growth companies is sharply reduced.

## Questions

1. There is much to admire about the Canadian banking system, but do the differences in the size and the scope of the U.S. and Canadian financial markets reduce the importance of the Canadian system as a model for the United States to follow?
2. Are there aspects of Canada's federal supervision of its banking system that could serve as a model for bank supervision by the United States?
3. Canada's approach to financial supervision concentrates the majority of that responsibility in an authority that is separate from the central bank. Is this an approach that the United States should consider at it examines changes to its own regulatory structure?

## Buy American Provisions<sup>72</sup>

### Issue Definition

The Buy American provision of the economic stimulus package, officially known as the American Recovery and Reinvestment Act (P.L. 111-5), requires that iron, steel, and manufactured goods used in the construction of public works projects funded by the Act be made in the United States. This provision was widely criticized by U.S. trading partners, including Canada, based on the fear that the Act, if not outright inconsistent with our international trade obligations, would set a precedent that could provide the excuse for a cycle of "creeping protectionism" by other nations. However, some analysts note that the relationship between government procurement and the world trading system has always been tenuous, and that

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<sup>72</sup> This section was written by Ian F. Fergusson, Specialist in International Trade and Finance; Foreign Affairs, Defense, and Trade Division.

disciplines on government procurement have not been as rigorous as those on other trade practices.

## Background and Analysis

The Buy American provision of the ARRA states that no funds may be appropriated for building projects or public works projects unless all the iron, steel, and manufactured goods are made in the United States. The Act provides three discrete exceptions for cases in which a Federal agency administrator finds that (a) applying this policy would not be in the public interest, (b) the iron, steel or manufactured products are not produced in sufficient quantities or of a satisfactory quantity in the United States, or (c) the inclusion of the applicable U.S. products would increase the cost of the overall project by more than 25%. In the case of (a), the public interest waiver has been used to invoke the authority granted to the President to waive discriminatory purchasing requirements for signatories of the WTO Agreement on Government Procurement (AGP) contained in the Trade Agreement Act of 1979 (Sec.301, P.L. 96-39). In the case of (c), this cost differential is at variance with the general differential of 6% applicable to most Federal contracts, 12% in cases of small business or minority set-asides, or 50% for most Department of Defense procurements. If any of these provisions are waived, the agency head must publish a justification for the waiver in the *Federal Register*. Finally, the Senate added language to insure that the provisions are applied in a manner consistent with U.S. trade obligations.

The United States and Canada both are signatories to the World Trade Organization's Agreement on Government Procurement (AGP), which came into effect in 1996. Unlike most of the Uruguay Round agreements which make up the WTO system, the AGP is plurilateral in that it only binds those nations that have accepted it. Currently, there are 39 signatories to the agreement, predominantly developed and middle- income countries.<sup>73</sup>

The AGP commits signatories to practice the principles of national treatment and most-favored-nation treatment in the laws, regulations, practices, and procedures concerning government procurement. In this context, national treatment means that a signatory will provide no less favorable treatment to another party's products, goods, and suppliers than its own in its government procurement process, nor will the signatory discriminate between the products, services and suppliers of other parties under most-favored -nation principles. The agreement also provides procedures to insure transparency, including detailed operating rules on the procurement process of the signatory, a challenge procedure by which a rejected bid can be independently and impartially reviewed, and recourse to WTO dispute settlement provisions in cases where the parties cannot resolve their differences.

The AGP only applies to the sectors and the procurement agencies that each government includes in its schedule of national commitments. Each member's schedule lists the national and sub-national agencies as well as other entities that participate, exceptions within those units, and the threshold value for procurement tendered under its obligations. Both the United States and Canada have undertaken extensive obligations to open their government procurements at the national level under both agreements. Thus Canadian firms may bid on ARRA-related federal procurement under the provisions of the AGP. Thirty-seven U.S. states as well as other government entities such as the Tennessee Valley Authority and the Port Authority of New York and New Jersey have made commitments under the AGP. While Canada has undertaken

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obligations for several of its crown corporations such as Canada Post and the St. Lawrence Seaway Authority, the ten provincial governments and three territorial governments have not undertaken any obligations under the AGP. In addition, the United States, Canada, and Mexico have undertaken government procurement obligations under NAFTA, however, NAFTA obligations do not extend to sub-national governments such as states or provinces.

The threshold values are denominated in Special Drawing Rights (SDR), an International Monetary Fund (IMF) unit of account. On March 13, 2009, a U.S. dollar was worth approximately 0.678 SDRs. The threshold for U.S. federal agencies is SDR 130,000 ( \$191,740) for supplies and services and SDR 5 million (\$7,374,631) for construction services; for states the corresponding thresholds are SDR 355,000 (\$523,599) and SDR 5 million (\$7,374,631). Although the AGP does not specify threshold values, the U.S. federal threshold figures are common ones in the schedules of signatories.

Each schedule also contains interpretations and exceptions. For example, Federal funds distributed to the states for mass transit and highway projects are excluded. This reflects the Buy American provisions of the Surface Transportation Act of 1982 (P.L. 97-427) and the Urban Mass Transit Act of 1964 (P.L. 88-365). In addition, twelve states exclude the procurement of construction-grade steel, motor vehicles and coal from their obligations under the AGP and states have excluded other products and services as well. Canada has exempted certain of its procurement activities from coverage under the AGP such as shipbuilding and repair, and urban rail and urban transportation equipment, including specifically all project related materials of iron or steel.

### **Status of the Issue**

On April 3, 2009, the Office Of Management and Budget (OMB) provided guidance on implementing the Buy American provisions of the ARRA. Likely because Canadian provinces and territories have not undertaken any obligations under the AGP, OMB excluded Canada from the list of countries to which U.S. states participating in the AGP have international obligations. This means that for state and local projects funded by federal money from the stimulus bill, there is no obligation to treat Canadian firms in a manner consistent with U.S. obligations under the AGP. Thus, Canadian firms would be ineligible to bid on contracts for iron, steel, and manufactured products procured for public works projects undertaken by state and local governments using federal stimulus money. However, U.S. obligations under the AGP do extend to Canadian firms bidding on federal procurement funded by the ARRA, and Canadian firms would be able to bid for those contracts. Nonetheless, there have been several anecdotal reports in the Canadian press that U.S. contractors and suppliers are increasingly choosing to source domestically in order not to be hassled with complying with Buy American provisions in certain procurements.

### **Questions**

1. The Buy American provisions in the stimulus package were criticized by many foreign governments as being protectionist. However, the language of the Act and the subsequent implementing regulations were written to be consistent with U.S. obligations under the WTO Agreement on Government Procurement and U.S. free trade agreements including NAFTA. What is the basis for calling these provisions protectionist?

2. Is free trade in government procurement resulting from economic stimulus measures realistic? Should taxpayers have the expectation that money spent on economic stimulus measures be used to bolster the domestic economy?
3. What are the reasons that Canadian provinces have not signed on to the AGP? Will the exclusion of Canadian firms from consideration for state and local procurement funded by federal stimulus money put pressure on the provinces to undertake obligations under the AGP?

## **U.S. Imports of Canadian Softwood Lumber<sup>74</sup>**

### **Issue Definition**

The U.S. lumber industry has long argued that imports of subsidized Canadian lumber were injuring U.S. producers. In May 2002, after the U.S. lumber industry filed antidumping and countervailing petitions to restrict imports, agency determinations of Canadian subsidies, dumping, and injury to the U.S. industry led to a duty of 29% on most Canadian softwood lumber imported into the United States. Canada challenged these findings under NAFTA and before the WTO. Negotiations led to a seven-year Softwood Lumber Agreement in 2006 with Canadian export charges depending on U.S. lumber prices, and the United States revoked the countervailing and antidumping orders. On February 26, 2009, a tribunal found that four Canadian provinces had violated the Agreement in calculating 2007 quotas; the United States rejected the Canadian offer of compensation, and on April 15, the United States began collecting 10% *ad valorem* duties from the four provinces to compensate for the 2007 breach.

### **Background and Analysis**

U.S. lumber producers have long expressed concerns about imports of subsidized Canadian lumber. The current lumber agreement is termed Lumber IV, because it is the result of the fourth dispute since 1981, with various findings of subsidy levels and agreements in the previous disputes.

Tension between the United States and Canada over softwood lumber trade may be inevitable. Both countries have extensive forest resources, but vastly different population levels and development pressures; vast stretches of Canada are still largely undeveloped, while less area in the United States (outside Alaska) remains relatively pristine. These differences have led to divergent forest policies. In Canada, 90% of the forests are owned by the provincial governments, which have allocated and priced timber to encourage development of the extensive timber reserves and settlement of unpopulated areas. In the United States, 58% of timberlands are privately owned, and private markets dominate the allocation and pricing of timber. U.S. federal and other government-owned forests are regionally important, but the timber is typically sold in a competitive market.

U.S. lumber producers assert that subsidies have given Canadian producers an unfair advantage in the U.S. market. Canadian provincial stumpage fees (for the right to harvest trees) are asserted to

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<sup>74</sup> Prepared by Ross W. Gorte, Natural Resource Economist and Senior Policy Specialist, Resources, Science, and Industry Division, and Jeanne J. Grimm, Legislative Attorney, American Law Division.

be subsidized, leading to lumber prices that are less than their fair market value. The provinces generally use leases and administered fees to allocate and price timber. Administered fees are unlikely to match market values, but determining whether the fees are below market values has been controversial, because of differences in tree species, sizes, and grades; in measurement systems; in requirements on harvesters; in environmental protection; and in other factors.

Log export restrictions in British Columbia are also alleged to be subsidies, because they assure more supply (less competition for timber and thus lower costs) for Canadian producers. Evidence from the U.S. Pacific Northwest, where private logs can be exported but public timber cannot, indicates substantially higher prices for exported logs.

Injuries to U.S. lumber producers are difficult to establish decisively, although the U.S. International Trade Commission (ITC) has found injury every time it has examined the issue. Canada's share of the U.S. lumber market has risen substantially, from less than 7% in the early 1950s to more than 33% since the mid-1990s. Under the 1996 agreement, the quantity of imports continued to rise, but the market share was relatively stable. The impact of restrictions on U.S. lumber prices is not easily estimated, but restrictions have probably put upward pressure on prices.

### **Status of the Issue**

In 2001, after the 1996 U.S.-Canada softwood lumber agreement expired, the U.S. Coalition for Fair Lumber Imports filed countervailing duty and antidumping petitions, asking the DOC to investigate Canadian imports again. The Department of Commerce issued final determinations of subsidies on March 22, 2002. On May 3, 2002, the ITC determined that the U.S. lumber industry was threatened with material injury by Canadian imports. A duty averaging 27% was imposed on May 22, 2002.

Canada challenged each of the agency determinations under the North America Free Trade Agreement (NAFTA) and in the World Trade Organization (WTO). The NAFTA panels largely supported the Canadian positions. The WTO proceedings resulted in mixed decisions. Canada was also concerned that the US\$5 billion in estimated duties on softwood lumber collected by the United States would eventually be distributed to U.S. lumber producers under the Continued Dumping and Subsidy Offset Act (Byrd Amendment). Canada obtained a U.S. court decision, however, holding that the Byrd Amendment did not apply to Canadian imports.

On April 26, 2006, a tentative 7-year Softwood Lumber Agreement, with an optional two-year renewal, to resolve the dispute was announced. The United States revoked the countervailing and antidumping duty orders and returned about US\$4 billion to the importers of record. The remaining deposits (about US\$1 billion) were split evenly between the members of the Coalition for Fair Lumber Imports and jointly agreed-upon initiatives. Canada is collecting export charges ranging up to 15%, depending on a weighted average lumber price, or up to 5% with volume restraints. A surge mechanism would raise export charges if a Canadian region's exports exceed its allocated share. Lumber from logs harvested in the Atlantic Provinces, Yukon, Northwest Territories, or Nunavut is exempt from the export charges. Disputes are to be resolved through bilateral consultations, non-binding mediation, or binding arbitration in the London Court of International Arbitration (now LCIA).

U.S. interest groups have questioned whether Canada is faithfully implementing the agreement. The 2008 Farm Bill (P.L. 110-246) included a provision (§3301) establishing a softwood lumber



importer declaration program to verify and reconcile data on softwood lumber imports. In August 2007, U.S. officials requested a ruling from the London Court on export quota volumes and export tax levels. In March 2008, the Court ruled that Canada had violated the export quota volumes for Manitoba, Ontario, Quebec, and Saskatchewan for the first six months of 2007, but was not required to collect taxes related to export surges from Alberta and British Columbia during that period. On February 26, 2009, an LCIA tribunal issued a decision that Canada must collect an additional 10% *ad valorem* export charges from the four provinces until C\$68.26 million (US\$54.8 million) had been collected. The U.S. Trade Representative rejected the Canadian offer of a compensation payment of US\$36.66 million, and on April 15, 2009 began collecting 10% duties on lumber from the four provinces.

## Questions

1. The dispute over U.S. imports of Canadian lumber has persisted for nearly 30 years. Do Canadian producers have a significant cost advantage because of Canadian timber practices and/or subsidies? Should Canadian practices be modified to enhance competition for timber? Do the systems and situations vary sufficiently to warrant different responses to each Canadian province? What might be the environmental consequences of various possible changes?
2. The 2006 agreement terminated the duties, returned most of the money collected, and established price-dependent export charges on Canadian lumber. What changes are needed by 2013 to assure that the recent duties, challenges, and litigation is not repeated when the agreement expires? What happens if some of the provinces make appropriate changes and others do not?
3. Are the current oversight mechanisms sufficient to assure implementation of the agreement that is acceptable to all parties? Are there ways to provide adequate and timely data to identify possible violations (deliberate or unintentional) and thus the delay and cost of arbitration and subsequent remedies? What approaches are feasible to compensate communities and workers for injury from weak lumber markets without providing subsidies to the lumber industry? What unilateral U.S. enforcement measures might be acceptable to Canada under the agreement?

## U.S. Agricultural Support Dispute<sup>75</sup>

### Issue Definition

In January 2007, Canada initiated a World Trade Organization (WTO) dispute settlement case (DS357) involving three specific charges against certain aspects of U.S. farm programs: (1) U.S. farm support resulted in serious prejudice against Canadian corn producers, (2) U.S. domestic support exceeded its WTO commitments; and (3) U.S. export credit guarantee programs contained implicit WTO-illegal subsidies. In June 2007 the first charge was dropped, but the second and third charges retained, when Canada requested the formation of a WTO panel to review its case against the United States. In late 2007, Brazil initiated its own similar case against U.S. farm support based on the latter two allegations. On December 17, 2007, the WTO's Dispute Settlement Body (DSB) announced the establishment of a single panel to hear both Canada's and Brazil's cases against U.S. farm programs.

<sup>75</sup> Prepared by Randy Schnepf, Specialist in Agricultural Policy, Resources, Science and Industry Division.

In late April 2008, Canada and Brazil informally agreed to postpone proceeding with their joint WTO dispute settlement case against U.S. agricultural subsidies. At the time of the postponement the three parties involved in the dispute had been unable to agree on panel membership. It is not clear how long the postponement will persist. If resumed, the first order of business will be the formation of a panel. Despite the postponement, the importance of the case has not been diminished to the U.S. agricultural community. U.S. agriculture depends heavily on international markets to sell its surpluses. In FY2007, U.S. agricultural exports were a record \$81.9 billion and represented 24% of gross farm income.

## **Background and Analysis**

Canada and the United States have a history of commodity trade disputes, traditionally focused on various wheat support programs and trade practices. In 2005, after several years of wrangling over wheat trade issues, Canada extended its disagreement with U.S. farm programs to the corn sector when Canadian corn producers sought legal action for alleged unfair subsidization and dumping of U.S. corn in Canadian markets. Canada's International Trade Tribunal ultimately ruled on the 2005 anti-dumping and countervailing duty case in favor of the United States. However, Canadian corn producers continued to press their concerns upon the Canadian government about perceived unfair subsidization of U.S. corn. In response, in early 2007 the Canadian government requested consultations with the United States to discuss several allegations against U.S. commodity subsidies under the auspices of the WTO's dispute settlement process. Three specific charges (listed above) against U.S. farm programs were identified in Canada's request for consultations including a charge that U.S. farm subsidies resulted in serious prejudice against Canadian corn producers. However, the serious prejudice charge was eventually dropped by Canada from its WTO case, in large part because of substantial increases in U.S. and international corn prices starting in mid-2007 and continuing through mid-2008

The remaining two charges in Canada's WTO case allege that, first, the United States has exceeded its annual WTO commitment levels for total Aggregate Measurement of Support (AMS) for agriculture in each of the years 1999, 2000, 2001, 2002, 2004, and 2005, and second, that the U.S. export credit guarantee program for agricultural commodities operates as a WTO-illegal export subsidy. These charges stem, in large part, from a previous negative ruling against U.S. farm programs in an earlier case (DS267) brought by Brazil against the U.S. cotton program. In that case, a WTO panel ruled (and subsequently was upheld by a WTO Appellate Body) that first, direct payments made under U.S. farm programs do not qualify for green box exemption status because of a restriction prohibiting the planting of fruits, vegetables, or wild rice on payment acres; and second, the U.S. export credit guarantee program operates as a prohibited export subsidy program because the financial benefits returned by these programs failed to cover their long-run operating costs. As a result, export credit guarantees should be subject to previously scheduled export subsidy commitments.

Canada claims that, since they fail to qualify for inclusion in the green box, U.S. direct payments should be added to its AMS when calculating total domestic support. In addition, they also charge that the United States has improperly notified several of its farm support programs as exempt from the AMS limit, while several other programs were improperly excluded from U.S. notifications. Canada also claims that when all of the outlays from these allegedly mis-notified programs are included, then the U.S. AMS total exceeds its WTO commitment level.

In response to Canada's charges, then-U.S. Secretary of Agriculture Mike Johanns declared in early 2007 that the United States would vigorously defend U.S. farm programs against any

possible WTO challenge by Canada. A spokesman for the U.S. Trade Representative (USTR) said that this dispute was an unnecessary diversion of resources and time from the Doha Round negotiations. The official also stated that U.S. farm programs were designed to be in compliance with its WTO obligations and believed that the panel would agree. Furthermore, U.S. officials claim that changes to U.S. farm programs made under the 2008 farm bill (P.L. 110-246) have resolved outstanding issues related to both the AMS and export credit programs.

### **Status of the Issues**

On December 17, the WTO's Dispute Settlement Body (DSB) announced the establishment of a single panel to jointly hear both cases brought by Canada (DS357) and Brazil (DS365) against U.S. farm programs. In their requests, Brazil and Canada asked for a single panel to be established to consider both cases jointly. The United States did not object to this proposal. All three countries involved—the United States, Canada, and Brazil—have agreed that the meeting of the panel would be open to the public.

However, in late April 2008, Brazil and Canada informally agreed to postpone proceeding with their joint WTO dispute settlement case against U.S. agricultural subsidies. It is not clear how long the postponement will persist. If resumed, the first order of business will be the formation of a panel. In accordance with the Understanding on Rules and Procedures Governing the Settlement of Disputes, once the establishment of a panel has been announced the DSB has up to 45 days for a panel to be appointed, plus 6 months for the panel to conclude its work. As a result, it is not likely that the panel, once appointed, would finish its work and issue a final ruling before 2010. Subsequent appeals of any negative ruling and disagreement over appropriate retaliatory levels, etc., could push resolution of the dispute well into the future.

Should a panel be formed and eventually rule on this case, any changes in U.S. farm policy needed to comply with a WTO ruling against the United States would likely involve action by Congress to produce new legislation. For more information see CRS Report RL34351, *Brazil's and Canada's WTO Cases Against U.S. Agricultural Support*, by Randy Schnepf.

### **Questions**

1. To what extent would completion of the ongoing Doha Round help to resolve Canada's and Brazil's dispute settlement case against U.S. farm programs?
2. To what extent has the global financial crisis and economic recession diminished Canada's interest in pursuing this WTO case?

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## Country of Origin Labeling<sup>76</sup>

### Issue Definition

Mandatory country-of-origin labeling (COOL) for specified agricultural products took effect on March 16, 2009. This is the culmination of a near decade-long legislative effort to arrive at an accommodation that addresses the concerns of competing interests. Food retailers are now required to label the country of origin for fresh produce (fruits and vegetables), meats, nuts, and seafood, among other products. Since Canada and Mexico are major suppliers of live cattle and hogs that are fed in U.S. facilities and/or processed into beef and pork in U.S. meat packing plants, both countries have expressed concerns that COOL would adversely affect their livestock sectors' sales into the U.S. market. Last minute "suggested" changes by the new Secretary of Agriculture to the final COOL rule led the Canadian Government on May 7, 2009, to renew its request that the United States enter into formal consultations on its concerns under the World Trade Organization's (WTO) dispute resolution process.

### Background and Analysis

Under the Tariff Act of 1930, as amended, most unprocessed agricultural commodities have long been exempt from requirements that every import be clearly marked to indicate country of origin for the "ultimate purchaser." However, provisions in the 2002 farm bill (section 10816 of P.L. 107-171) require that retailers covered by the Perishable Agricultural Commodities Act, (i.e., those which deal in at least \$230,000 per year in produce—fresh and fresh-frozen fruits and vegetables), begin to provide such information. Covered commodities specified then were : ground and muscle cuts of beef, lamb and pork; seafood; peanuts; and produce. Labeling is not required if these commodities are ingredients in processed foods, or if they are sold in dining out settings.

Passage of the initial COOL provisions in 2002 did not end debate over the value and efficacy of mandatory COOL, particularly with regard to meats. COOL opponents argued that record-keeping and verification costs will far exceed any perceived economic benefits to producers; that smaller-sized farms and firms will have the most difficulty with compliance; that there is little evidence consumers actually want labeling; and that COOL is a protectionist policy that undermines free trade. Supporters countered that compliance would not be nearly as burdensome as some large industry groups and USDA have attempted to portray it; that studies show U.S. consumers, if offered a clear choice, will pay extra for fresh foods of domestic origin, thereby strengthening demand and prices for them; and that consumers have a right to know where their foods were produced. They pointed out that all but two of the North American cases of "mad cow" disease (*bovine spongiform encephalopathy*, or BSE) occurred in Canadian-born cattle, yet the United States is permitting the import of large quantities of Canadian beef and cattle. (COOL opponents argue that country of origin labeling is a matter of marketing, not food safety, and that food safety concerns are best addressed through science-based regulation.)

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<sup>76</sup> Prepared by Remy Jurenas, Specialist in Agricultural Policy, Resources, Science and Industry Division, Congressional Research Service.

Initially scheduled to take effect on September 30, 2004, Congress postponed COOL implementation until September 30, 2008 for all but seafood because of ongoing debate. Some issues were addressed in talks held among key players during consideration of the 2008 farm bill. Compromises struck were incorporated into section 11002 of P.L. 110-246. These retained the implementation schedule, and added other commodities (chicken, goat meat, ginseng, pecans, and macadamia nuts) to its coverage. However, several new types of label categories were created that are intended to facilitate and simplify compliance in specifying the country or countries of red meat products. For all covered commodities, the amended law also seeks to ease recordkeeping and verification requirements, and to lower non-compliance penalties.

Canada is by far the leading source of U.S. food and agricultural imports, accounting for about 20% of total import value. Its importance as a source reflects the close and growing economic integration of the two countries' markets. Many of these imported products are now covered by mandatory COOL. The Canadian government has argued for some time that COOL is a protectionist measure, and more recently, that its implementation would be challenged as trade distorting under existing trade agreements.

### **Status of the Issue**

Enactment of the amended COOL provisions allowed USDA to proceed to issue rules to implement them. The August 2008 interim rule's meat labeling requirements generated the most controversy, in large part because of the steps that U.S. feeding operations and packing plants would have to adopt to segregate, hold, and slaughter foreign-origin livestock from U.S. livestock. Concerned with apparent changes in normal livestock trade flows in reaction to the proposed rules and questioning COOL's legality under trade rules, Canada and Mexico in December 2008 filed requests for formal WTO consultations on COOL with the United States. This is the first step of a process that could lead to the formal filing of a case to be considered under WTO's dispute settlement process.

Both countries in their filings asserted that COOL is inconsistent with several WTO-related trade commitments, including those providing that imports must be treated no less favorably than products of domestic origin; that laws on marks of origin should not damage imports, reduce their value, or unreasonably increase their cost; and that laws, rules, and procedures on country of origin should not "themselves" create or disrupt international trade. However, once USDA issued the final COOL rules in mid-January 2009 with some changes that appear to have addressed its concerns, Canada suspended its challenge until it could determine whether the rules will in fact allow for more flexibility and ease financial impacts on Canadian producers.

The new Secretary of Agriculture, after his review of the final COOL rules issued by the Bush Administration, announced that they would take effect as planned on March 16, 2009, but urged affected industries to voluntarily adopt changes that he asserted would provide more useful origin information to consumers and would more closely adhere to COOL's intent. Expressing concern that these "suggestions" would add to the challenges the Canadian livestock sector already is experiencing (e.g., U.S. processors choosing not to buy Canadian animals or trying to purchase them at a reduced price), the Canadian Government on May 7, 2009, formally requested that consultations resume under WTO auspices.

## Questions

1. Canada has announced that it will challenge the COOL law and implementing regulations as trade distorting under WTO rules. What, specifically, will be its arguments?
2. Reports in meat trade publications have suggested that the uncertainties caused by how the final COOL requirements are implemented have strained marketing relationships between Canadian and U.S. livestock producers and processors. How much has this tension altered trade between the United States and Canada, and, if so, in what way? What policy and economic adjustments if any are being considered in light of the current situation?
3. In general, how will COOL likely affect the composition and economic viability of both the cattle/beef and hog/pork sectors in North America?
4. Does Canada have its own country of origin labeling programs? How do they compare to those now implemented under COOL in the United States?

## The Canadian Auto Sector<sup>77</sup>

### Issue Definition

The U.S. and Canadian automotive industries have been highly integrated for decades. Before the Automotive Agreement of 1965 (also known as the Auto Pact) between the two countries, each country's auto industry produced motor vehicles for its own market. The Auto Pact established a two-way managed trade system by eliminating tariffs on shipments of autos and auto parts between the two nations. This arrangement guaranteed that for every five cars sold in Canada, three would be assembled there. The elimination of tariffs allowed U.S. auto companies to build plants on both sides of the border that were large enough to serve both countries efficiently.

### Background and Analysis

Canada, whose population was 23 million in 1976 and is estimated at 33 million in 2009, has been able to build an auto industry that provides nearly 500,000 direct and indirect jobs in 2009 and gives Canadian consumers with a much larger and lower cost selection of vehicles than would have otherwise been possible, given Canada's small population. Coordinated production on both sides of the border increased significantly, as did bilateral automotive trade. The economic integration between the two countries was further accelerated by the bilateral U.S.-Canada Free Trade Agreement (CUSFTA), which took effect January 1, 1989, and the North American Free Trade Agreement (NAFTA), which entered into effect on January 1, 1994.

The auto industry produces 14% of Canada's manufacturing output and accounts for 23% of its manufactured exports. It is by far Canada's largest industrial sector. Nearly a fifth of General Motors (GM), Ford, and Chrysler's North American production capacity is in Canada, principally in Ontario. In 2008, of the two million light vehicles produced in Canada, the Detroit Three

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<sup>77</sup> Prepared by Rachel Tang, Analyst in Industrial Organization & Business; Resources, Science, and Industry Division

accounted for just over 61%—approximately 23% by GM, 15% Ford, and 23% Chrysler. Moreover, the automotive aftermarket is reportedly the largest retail sector in Canada, ahead of clothing, food, furniture, and pharmaceuticals. The auto industry in Canada employs 150,000 people directly, and 340,000 indirectly, including parts suppliers and auto dealers.

In addition to the Detroit Three's Canadian facilities, which are unionized, Toyota and Honda have assembly plants in Ontario that are non-union. A number of parts makers that supply original equipment manufacturers (OEMs) throughout North America have also located in proximity to the assemblers on both sides of the border. For U.S. automakers, the Canadian health care system may be less expensive than company-provided healthcare in the United States, although recent GM and Chrysler restructuring negotiations with the Canadian Auto Workers (CAW) resulted in health-related benefits reductions. For example, Canadian Chrysler workers saw the elimination of semi-private health care coverage, an increase in the waiting period for sickness and accident benefits, and a reduction in the maximum dispensing fee for prescription drugs. This latter is intended to reduce drug costs by reducing Chrysler's contribution to dispensing fees that exceed the maximum. With the agreement that the United Auto Workers (UAW) would be responsible for future retiree health care costs, and with further health care reductions in new UAW contracts negotiated in 2009, any apparent health care-related comparative advantage of Canadian auto production costs over U.S. costs should, therefore, be substantially reduced going forward.

In late 2008, the entire U.S. auto industry was caught in the global economic recession. Auto sales fell precipitously, and the difficult situation was further dampened by the credit crunch in financial markets. The situation became so dire that General Motors, Ford, and Chrysler LLC (the Detroit 3) turned to the U.S. government for assistance in November 2008. The Detroit 3 also asked the Canadian authorities and the provincial government of Ontario for nearly \$6 billion in loans and loan guarantees. It was reported that the U.S. automakers had dropped strong hints that, without such aid, they would move some operations from Canada to the United States.

On December 19, 2008, President George W. Bush announced a plan to loan \$17.4 billion to GM and Chrysler LLC to prevent any near-term bankruptcy and to help them restructure as more viable and competitive companies in the long run. On the following day, the Canadian government and province of Ontario responded to the U.S. auto bailout by pledging C\$4 billion in emergency loans to the local subsidiaries of GM and Chrysler, even though Prime Minister Stephen Harper had previously resisted such a bailout. Ford has not asked for loans, but was reported to have urged the Canadian government in March 2009 to introduce a program that would give car buyers financial incentives for scrapping a 10-year old or older car for a new vehicle.

On March 30, 2009, President Barack Obama announced that the Administration's Auto Task Force had decided that GM and Chrysler plans were not viable and gave the two companies 60 and 30 days, respectively, to revise their plans and undertake additional actions. An hour later, officials from the Canadian and Ontario governments also rejected the automakers' plans—their comments mirrored the ones delivered in Washington, DC, as did the outline for what must come next.

The actions of both government, almost in tandem, demonstrated not only how interconnected their auto industries have become but also the collateral consequences of domestic rescue plans or packages. In the fallout of the global economic downturn, large government assistance may force other nations to act in order to protect the competitiveness and viability of their auto sectors.

On April 30, 2009, Chrysler filed for bankruptcy in New York and President Obama announced that the governments of Canada and the United States would offer a US\$10.5 billion loan to Chrysler. The U.S. Treasury will provide a total of \$8.08 billion; the Canadian government will provide US\$2.42 billion in financing to Chrysler, based on a 3:1 contribution. The Canadian and Ontario governments will receive a 2% stake in the restructured Chrysler, while the U.S. government will hold 8%. Canada will also have the right to appoint one independent director to a new 9-person Chrysler board, while the United States will select four independent directors.

Starting May 4, 2009, Chrysler plants ceased production until the company emerges from bankruptcy, which has been projected to take approximately 30 to 60 days. Chrysler's bankruptcy filing, combined with GM's announced summer shutdown of its U.S. plants, poses a potentially severe threat to the auto parts suppliers across North America, who are already struggling in the wake of the auto industry crisis. This could potentially disrupt production at other auto manufacturers and send the shock waves, or so-called systemic risk, throughout the highly interconnected industry. The U.S. government has allocated \$5 billion to support suppliers, in addition to providing government-backed vehicle warranties. Canada's Automotive Parts Manufacturers' Association is preparing to ask the Canadian government to provide bridge financing to tide its members over for the next few months.

### **Status of the Issue**

GM has until the end of May 2009 to revise its restructuring plan and to reach money-saving agreements with major stakeholders. In North America, GM produces almost twice as many vehicles as Chrysler, and is served by a bigger network of parts suppliers and dealers. According to General Motors of Canada Limited (GMCL, with headquarters in Oshawa, Ontario), it has 12,000 employees and 700 dealerships across Canada. While the absolute timeframe and outcome of the Chrysler bankruptcy process remains unclear at this moment, the historic filing triggers an increasing concern that the same could happen to GM, unless its bondholders and UAW agree to concessions before the end-of-May deadline.

### **Questions:**

1. What are the prospects of a restructured and more competitive auto sector (with GM, Chrysler/Fiat, and Ford)?
2. What are the prospects of job creation in Canada, especially in Ontario, amid the auto plant closures?
3. How and to what extent would the 2% stake and the right to select one Chrysler/Fiat board director help to assert Canada's interest and influence in building a new Chrysler?
4. Would the Canadian and Ontario governments offer assistance in the future if asked by Chrysler, GM, or Ford?



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# Intellectual Property Rights<sup>78</sup>

## Issue Definition

The United States has expressed concern that Canada's protection and enforcement of intellectual property rights (IPR) are not adequate and do not meet internationally agreed upon standards. Although Canada has signed the World Intellectual Property Organization (WIPO) Internet treaties, the treaties have not been implemented through Canada's domestic legislation. Canada is the only member of the G-8 country grouping that has not implemented the treaties.

## Background and Analysis

IPR infringement is a growing problem internationally due to increased level of trade in goods and services and the development of advanced technologies. Protection and enforcement of IPR is important to U.S.-Canada relations because of the high levels of bilateral trade between the United States and Canada. As members of the World Trade Organization (WTO), both countries are signatories to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which set minimum standards for IPR protection and enforcement. IPR provisions also exist in the North American Free Trade Agreement (NAFTA). Some estimate that IPR infringement costs the Canadian economy about \$22 billion a year.

## *Special 301 Watch List*

In 2009, the Office of the U.S. Trade Representative (USTR) elevated Canada to its Special 301 "Priority Watch List," a designation of criticism for a country's inadequate IPR protection and enforcement. The USTR cited ongoing issues with Canada's copyright reform and border enforcement efforts for combating trade in IPR-infringing products. Previously, from 1995 to 2008, the USTR had placed Canada on its "Watch List," the mildest category of criticism for a country's IPR regime. Canada has raised concern about the Special 301 process in its bilateral discussions with the United States, claiming that the process is industry-driven and not objective. Some Canadian industry groups maintain that USTR's identification of Canada on its Special 301 list is a genuine signal of the inadequacies of Canada's IPR regime, while others argue that Canada's piracy rates are significantly lower than those of other countries cited on the Priority Watch List.

## *Copyright Legislation Reform*

Canada and the United States are both signatories to the 1996 World Intellectual Property Organization (WIPO) Copyright Treaty and the Performance and Phonograms Treaty (the "WIPO Internet treaties"), which address IPR protection and enforcement issues related to the Internet and other forms of digital media. However, Canada has not implemented either of the WIPO Internet treaties. Some critics assert that Canada does not adequately prevent the circumvention of technological measures that protect copyrighted works. Concerns also have been raised that

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<sup>78</sup> Prepared by Shayerah Ilias, Analyst in International Trade and Finance, Foreign Affairs, Defense, and Trade Division, CRS, May 6, 2008.

Canada does not sufficiently protect against online piracy. In addition, some maintain that, in addition to focusing on commercial piracy, Canada also should prosecute retail piracy, which takes place on a smaller scale but can still contribute to significant copyright losses. Others express the need to reform copyright law in a way that balances the interests of both copyright holders and users.

In June 2008, a Copyright Amendment Act (C-61) was introduced in the House of Commons, although it was not acted on before the dissolution of the 39<sup>th</sup> Parliament later that year. The bill would have implemented the WIPO Internet treaties. Among its provisions, the bill would have updated the rights and protections of copyright owners to better address the Internet in line with international standards, and would have clarify the liability of Internet service providers. Although the bill is expected to be reintroduced in the 40th Parliament which began in February 2009, that has not as yet happened.

In contrast, the United States implemented the WIPO Internet treaties in 1998 through the Digital Millennium Copyright Act (DCMA). The United States has pressured Canada extensively to implement an equivalent of the DCMA. In 2007, Canadian government officials stated that copyright reform was a top national priority, and some industry groups had high hopes of significant copyright change in Canada.

### *Border Enforcement*

There is significant trade in counterfeit and pirated goods within Canada and through Canada. According to the 2008 U.S. National Trade Estimate Report on Foreign Trade Barriers, most pirated goods entering Canada are “high quality, factory produced” goods from Asia, including pirated software and circumvention devices. There also has been concern about grey market goods, i.e., the diversion of prescription drugs from Canada into the United States in cases where the drugs may be sold legally in Canada but are not approved for sale in the United States by the U.S. Food and Drug Administration (FDA).

A second issue is that the Canada Border Services Agency (CBSA) is not authorized to seize products at the border that are believed to be pirated or counterfeit without a court order, which requires detailed information. Some contend that this lack of authority limits the effectiveness of IPR enforcement in Canada.

### *Domestic IPR Enforcement*

Enforcement within Canada is led by the Royal Canadian Mounted Police (RCMP) and local police, which do not have sufficient IPR resources, expertise, and staff, according to the Canadian Anti-Counterfeiting Network. In addition, IPR enforcement competes with many priorities for the RCMP. IPR-infringement prosecutions are believed to be rare because of a lack of legal professionals dedicated to IPR and a lack of technical expertise. The United States contends that the enforcement penalties imposed by Canada do not serve as sufficient deterrents for future IPR infringement.

### *Recent International IPR Efforts*

Canada and the United States are part of regional and multilateral efforts to protect and enforce IPR. As part of the Security and Prosperity Partnership (SPP) of North America, Canada, the

United States, and Mexico developed an Intellectual Property Action Strategy, an overall plan to combat piracy and counterfeiting. Under the plan, the three countries agreed to improve IPR protection and enforcement by combating trade in IPR-infringing goods, increasing public awareness and outreach, and engaging in activities to better measure IPR infringement levels. In addition, Canada and the United States are among the states working on a new international IPR trade agreement, the Anti-Counterfeiting Trade Agreement (ACTA), which would focus on international cooperation, best practices for IPR enforcement, and an IPR legal framework. ACTA would set enforcement standards higher than that of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

### *Access to Medicines*

Through Canada's Access to Medicines Regime (CAMR), Canada was one of the first countries to adopt a WTO framework that allows eligible developing countries with insufficient manufacturing capacity to import generic versions of patented drugs or medical devices, subject to various WTO notification, quantity, and safeguard requirements. Since its implementation in 2004, Canada has utilized the CAMR once, in 2007, to issue a compulsory for the production of an anti-retroviral HIV/AIDS drug combination by a Canadian-based generic drug manufacturer for export to Rwanda. While some contend that the CAMR is an effective, efficient framework for increasing access to medicines in developing countries, others criticize the notification and other regulatory requirements as excessively burdensome.

Another issue related to access to medicines is the recent U.S. proposal to allow the parallel importation of prescription drugs into the United States in order to increase U.S. access to more affordably-priced medicines. In the 111<sup>th</sup> Congress, two bills (H.R. 163, S. 80) have been introduced that would allow Americans to import prescription drugs from foreign countries. Canada likely would be a leading source of such imports. While some in the United States applaud this legislation as a way to promote access to medicines for the United States by allowing access to less expensive drugs, others raise concerns that this is a way of importing Canada's price controls and does not address U.S. pricing issues. Still others raise concerns about the health and safety implications of importing potentially counterfeit drugs. From the Canadian perspective, some argue that U.S. importation of Canadian drugs may reduce the supply of medicines, leading to higher prices in Canada.

### **Questions**

1. What issues have arisen in developing legislation to implement the WIPO Internet treaties? What is Canada's vision of fair and balanced copyright law? How would Canada's implementation of the WIPO Internet treaties differ from the U.S. DCMA?
2. What measures is Canada currently taking to address trade and transshipment of pirated and counterfeit goods? What steps can Canada undertake to improve IPR border and domestic enforcement? What can the United States do to assist Canada in improving IPR enforcement?
3. How does Canada view the U.S. Special 301 process? How does the Special 301 list and the elevation of Canada to the Priority Watch List in 2009 affect U.S.-Canadian relations? Does identification on the list affect Canadian IPR policy and future U.S.-Canadian engagement on IPR-related initiatives, such as the ACTA?

4. What steps has Canada taken to promote international protection and enforcement of IPR? What are the opportunities and challenges that Canada sees in the SPP and ACTA?
5. How does Canada view the legislation proposed by the United States to allow the importation of drugs from Canada?

## **Electric Reliability, Trade, and Access to Renewable Power<sup>79</sup>**

### **Issue Definition**

The electric power grids of the United States and Canada are physically connected. Consequently, electric power reliability problems can easily cross the international border. This was demonstrated by the 2003 power blackout, which originated in Ohio and eventually spread into eastern Canada and the northeastern United States. The United States and Canada are therefore mutually dependent for the reliable operation of their common electric power systems. The interconnected grid also creates opportunities for trade and joint expansion of the use of renewable power.

### **Background and Analysis**

There are three components of electric power delivery: generation by power plants, transmission over long-distances by high voltage power lines, and final delivery at low voltage by distribution lines. The transmission lines that constitute the North American power grid cross state and international boundaries. The U.S. and Canadian grids are, in fact, inextricably linked:

- At the broadest level of organization, the North American grid is divided into regional “interconnections” within which power moves freely (the links between the regions are very limited). The large Eastern and Western Interconnections cover most of the contiguous United States and the heavily populated regions of Canada.
- At the level of major transmission lines, the Canadian grid has evolved by building south from heavily populated areas to connect with U.S. generation and load. Consequently, while the grid in the United States is a web crisscrossing the lower 48 states, the Canadian backbone system consists of north-south lines closely linked to the United States.
- In terms of system reliability, as discussed further below, the North American Electric Reliability Corp. (NERC) has responsibilities for the reliable operation of the power grid in both countries. Three of the eight regional reliability entities through which NERC performs much of its work extend from the United States into Canada and cover that nation’s entire southern tier.

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<sup>79</sup> Prepared by Stan Kaplan, Specialist in Energy and Environmental Policy.

## ***Reliability***

In reaction to the 2003 blackout, the Energy Policy Act of 2005 (P.L. 109-58) required the Federal Energy Regulatory Commission (FERC) to designate an Electric Reliability Organization (ERO) charged with ensuring the reliability of the bulk power system, largely by issuing mandatory reliability standards. In 2006 FERC selected NERC for this role (NERC is an industry organization whose reliability recommendations had been voluntary prior to its designation as the ERO). NERC's members include Canadian power companies and it has memoranda of understanding (MOU) with Canadian provinces and the Canadian federal government to help coordinate reliability activities. However, NERC does not have the same statutory authority in Canada as in the United States. The MOU between the Canadian National Energy Board (NEB) and NERC recognized NERC as the ERO for the Canadian part of international transmission lines but not for lines located entirely within Canada's borders (which are under provincial, not federal, regulation). NERC's reliability standards are currently mandatory and enforceable in two Canadian provinces, Ontario and New Brunswick.

Transmission capacity and congestion issues that can impair reliability exist in the United States and Canada, and the solution is often to construct new transmission capacity or enhance existing facilities. Many transmission projects are under construction or planned in both nations. However, transmission planning and construction in the United States and Canada face similar challenges, particularly for long-distance projects. These challenges include permitting and siting approvals that often involve multiple jurisdictions, and finding the funding for the large investments in transmission (and power generation) that will be needed to meet demand growth.

## ***Trade and Renewable Energy Development***

The North American grid is used to move power between the United States and Canada. The United States is a net importer of electricity from Canada and the imports have recently been increasing, from 17.7 terawatt-hours (Twh) of net revenue purchases in 2006 to 32.2 Twh in 2008. From the U.S. perspective, while these imports can be locally important (e.g., as in New York and New England), on a national basis they are very small, equivalent to 0.8% of total U.S. electric power generation (4,114.9 Twh) in 2008.

Electricity trade is more significant from Canada's standpoint. Canada generated 603 Twh of electricity in 2008. Total revenue sales of power to the United States in 2008 of 55.7 Twh were therefore equivalent to 9% of domestic supply, and revenue purchases from the United States of 23.5 Twh were equivalent to 4% of domestic supply. A conceptual outline for new Canadian transmission corridors includes more links with the United States and the prospect of increased trade. The Canadian power industry has expressed concern that the concept of an energy independent United States might be extended to electricity trade with Canada.

Electricity trade between the countries is likely to become intertwined with renewable energy development and transmission planning issues. Both nations currently have policies for the increased use of renewable power. However, these resources tend to be remote from load centers. For example, in the United States, some of the areas with the best wind resources are in the northern plains. In Canada, many of the projected hydropower developments are in remote locations and will require large investments in transmission.

In the United States, the intersecting issues of renewable power development, transmission system expansion and reliability, and long-standing difficulties in multi-state permitting of new projects, has spurred suggestions for new regulatory and planning processes. The planning piece

of these proposals envision creating transmission “master-plans” on a wide geographic scope to facilitate renewable energy development and other purposes. While these proposals are limited to planning within the United States, they will inevitably have an impact on Canada because of the grid connections and the much larger size of the U.S. power system.

In Canada, the electric power industry is seeking better regulatory coordination and planning by the provinces and federal agencies. One objective of the Canadian power industry is construction of additional east-west transmission lines. In addition to facilitating transfers of renewable and other power within Canada, these lines would reportedly also facilitate additional trade with the United States.

Canadian sources of renewable power may have the potential to reduce the need to build new transmission projects (which can take up to a decade or more to permit and construct) in the United States. For example, imports of hydropower from Quebec into New England and New York, using new but relatively short power lines, have been suggested by the transmission system authorities in those regions as an alternative to building power lines to Midwestern wind farms. Because of these interactions across what has been characterized as a “borderless” electricity market, optimal transmission planning and construction in the United States and Canada may be difficult to accomplish without international coordination.

### **Status of the Issues**

*Reliability:* NERC and FERC are continuing a process of developing and implementing mandatory reliability standards for the grid, with cybersecurity a growing concern. In Canada, the National Energy Board is reportedly working with provincial authorities on implementation of mandatory reliability standards, although it is not clear if in all cases these will be the same as the NERC standards or whether NERC will function as the ERO in every province.

*Trade and Renewable Energy Development:* The 111<sup>th</sup> Congress is considering legislation that would create transmission planning and expedited permitting processes, aimed in large part at renewable energy development. The proposals could facilitate transmission development for enhancing reliability. In Canada, current efforts appear to be more focused on regulatory coordination than regional transmission planning.

### **Questions**

1. Will Canadian federal and provincial regulators approve and enforce NERC electric reliability standards? Without identical standards in the United States and Canada, the reliability of the electric power system could be reduced.
2. Given that the United States and Canadian power grids are integrated, what steps should be taken to coordinate transmission planning (particularly if Congress enacts a new, federally mandated planning process)?
3. To what degree is Canada interested in exporting renewable power to the United States, or importing renewable energy from this country, rather than reserving these resources for domestic consumption?

## **U.S. Energy Security and Canadian Oil Sands<sup>80</sup>**

### **Issue Definition**

Canada now ranks as the United States' number one source of imported petroleum and thus plays an increasing role in U.S. energy security. Canada's oil sands make up an increasing proportion of its petroleum production, and Canada's oil sands producers continue to look to the United States as the major market for their heavy oil exports. Of the nearly 2.5 million barrels per day (mbd) of petroleum Canada exports to the United States, approximately 50% is delivered to the Midwest. This region's current capacity and planned refinery expansion places it in a position to receive increased heavy oil exports from Canada.

Overall U.S. refinery capacity is forecast to increase from 17.6 mbd in 2008 to nearly 19.3 mbd in 2030—a 1.7 mbd increase. Several announced refinery expansions will come online by 2015. The expanded capacity may not be enough to keep up with Canada's projected increase in oil sand production, especially if the investment climate does not warrant expansions to include upgrades for heavy oil processing. Canada is also pursuing additional refinery capacity for its heavier oil. Refinery expansions based on the use of heavy oils will have environmental effects, and Congress will continue to face controversy over the balance between energy security and the environment. In addition, investment and production plans are likely to be altered by the reduced demand for petroleum products associated with the ongoing economic recession that began in the last quarter of 2007.

Another possible impediment to expanded heavy oil use is Section 526 of the Energy Independence and Security Act of 2007 (P.L. 110-140) that prohibits federal procurement of an alternative or synthetic fuel “unless the contract specifies that the lifecycle GHG emissions are less than or equal to such emissions from the equivalent conventional fuel produced from conventional petroleum sources.” The provision is intended to ensure that federal agencies are not spending taxpayer dollars to promote new fuel sources that will exacerbate global warming, and would apply to fuels derived from “oil sands,” which are currently associated with producing higher greenhouse gas emissions than fuels derived from conventional, lighter crude oils.

### **Background and Analysis**

When it comes to future oil supplies, Canada's oil sands will likely make up a larger share of U.S. oil imports. Oil sands account for about 42% of Canada's total oil production, and oil sand production is increasing as conventional oil production declines. Since 2004, when production from a substantial portion of Canada's oil sands were deemed economic, Canada has been ranked second behind Saudi Arabia in proved oil reserves. Canada has 175 billion barrels of reserves and a total of over 300 billion barrels of potentially recoverable oil sands (an attractive investment under high oil price conditions, demonstrated by the billions of dollars already committed to Canadian development). Canadian crude oil exports (from oil sands and conventional petroleum sources) were about 2.46 mbd in 2008, of which 99% went to the United States. Canadian crude oil accounts for about 19% of U.S. crude oil imports, and about 12% of all U.S. crude oil and petroleum products supplied. U.S.-based oil companies are major investors in Canadian oil sands.

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<sup>80</sup> By Robert Pirog, Specialist in Energy Economics, Resources, Science, and Industry Division.

The infrastructure to produce, upgrade, refine, and transport oil from Canadian oil sand reserves to the United States is already in place. Oil sands production is expected to rise from its current level of 1.3 mbd to 3.6 mbd by 2030.

Greenhouse gas “emissions intensity” (CO<sub>2</sub>/barrel) from oil sands are significantly higher than that from conventional oil production. Canada’s federal government classifies the oil sands industry as a large industrial air pollution emitter and expects it to produce half of Canada’s growth in greenhouse gas (GHG) emissions in 2010. Reducing air emissions is one of the most serious challenges facing the oil sands industry. Between 1995-2004, the oil sands industry reduced its emission intensity by 29% while oil production rose. Overall, CO<sub>2</sub> emissions have declined from 0.14 tons/barrel (bbl) to about 0.08 tons/bbl since 1990. However, Alberta’s GHG goals of 238 megatons of CO<sub>2</sub> in 2010 and 218 megatons CO<sub>2</sub> in 2020 are not expected to be met.

### **Status of the Issue**

New refinery capacity that would accommodate heavier crude from Canadian oil sands is being challenged in Indiana, Michigan, South Dakota, and elsewhere. Some of these expansions or new refineries are several years away from operation. A BP refinery upgrade and expansion in Whiting, Indiana, expected to be complete in 2011, is progressing, but faces lawsuits from environmental groups. A new \$10 billion refinery in Union County, South Dakota, being planned to process heavy crude from oil sands, would be the first new refinery in the United States in over 25 years. Environmental groups continue to promote standards for low-carbon emission fuel and oppose the permitting of these refinery projects on the basis that processing heavy crude from Canadian oil sands would generate much higher greenhouse gas emissions than from conventional petroleum sources.

### **Questions**

1. What changes are necessary to significantly reduce the environmental footprint of heavy oil from Canadian oil sands?
2. How much capital investment in pipeline and refinery infrastructure is needed to support increased crude oil imports from Canada?
3. What would be the impact on U.S. federal and defense fuel procurements if Section 526 restrictions remain in place on fuel produced from Canadian oil sands?
4. After the drop in oil prices from over \$100 per barrel and the ongoing economic recession, how likely is it that Canadian oil sands development will be slowed because of revised investment strategies by the major oil companies?



# Natural Gas Pipeline from Alaska<sup>81</sup>

## Issue Definition

In October 2004, Congress approved the Alaska Natural Gas Pipeline Act (ANGPA, P.L. 108-324), which authorized the Federal Energy Regulatory Commission (FERC) to consider any application, created the Office of the Federal Coordinator, provided a loan guarantee for as much as \$18 billion, accelerated tax depreciation and enhanced oil recovery tax credit for natural gas treatment for a pipeline to bring natural gas from Alaska's North Slope to market. Then in 2006, Governor Sarah Palin of Alaska announced the Alaska Gasline Inducement Act to establish an exclusive right for an Alaskan natural gas pipeline and set up a competition for state funding of such a project. Five proposals were submitted, but only one, the TransCanada (a Canadian company), was considered complete. The proposal was approved by the state legislature in July of 2008. One of the competing applications was from a joint venture of BP and ConocoPhillips, however it was rejected. The two companies have nevertheless proceeded with the project, called Denali, and are billing it as an alternative to AGIA.

The destination of the gas is expected to be the lower 48 states. A provision of the ANGPA effectively prevents the pipeline from passing through or near the Mackenzie Delta gas fields in northwest Canada, which contains an estimated 6 trillion cubic feet of natural gas. At one time, development of Mackenzie Valley gas appeared likely to be through a spur line connecting to the pipeline from Alaska. That configuration appears less likely today and Canadian interests hope to proceed with a Mackenzie Valley pipeline before the Alaska pipeline project begins. It is the sense of Congress, as legislated in the ANGPA, that there is sufficient demand for natural gas from both projects.

## Background and Analysis

Alaskan natural gas is a potentially significant U.S. energy resource. The U.S. Geological Survey (USGS) estimates recoverable gas reserves in the North Slope oil fields at about 37.5 trillion cubic feet (Tcf), which is equivalent to about 6.8 billion barrels of oil. Natural gas is believed to be under the Arctic National Wildlife Refuge (ANWR) as well. The already discovered natural gas resource has not been developed because of a lack of cost-effective means of transportation to major markets; estimated costs of construction have repeatedly precluded successful project development to transport Alaska gas by pipeline. The gas produced now is re-injected into the ground to help recover oil; so far, it has helped recover 3 billion barrels of oil.

Construction of a pipeline to transport natural gas to North American markets and/or a warm-water port for shipping liquefied natural gas (LNG) might possibly enhance North Slope oil and gas economics and the commercial potential of ANWR. Potential profitability for owners and the state of Alaska from the authorized pipeline is enhanced by the \$18 billion in loan guarantees approved by Congress for the project, estimated in 2002 to cost as much as \$20 billion. Since

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<sup>81</sup> Prepared by William F. Hederman, Specialist in Energy Policy; Resources, Science, and Industry Division. Stephen Meehan, a CRS intern, contributed to the preparation of this material.

then, however, the rising cost of steel, other materials and construction labor drove up the cost of the pipeline. Recent cost decreases have not been reflected in cost estimates available at this time. An LNG option is being explored by the Alaska Gasline Port Authority (AGPA); FERC is watching these proceedings since they would have jurisdiction over any Alaskan LNG project.

Congress had previously created a statutory framework for an Alaska natural gas pipeline in the mid-1970s. Legislative authority for designation of the route, and for the U.S. role in the approval, construction and operation of such a pipeline were established in the Alaska Natural Gas Transportation Act of 1976 (15 USC 719 *et seq.*). Under that authority, still in force, a gas pipeline would parallel the existing Alaska oil pipeline from the North Slope to Fairbanks, then head southeastward along the Alaska Highway and into Canada via the Yukon Territory, British Columbia, and Alberta. This, the Alaska Natural Gas Transportation System, was approved by U.S. and Canadian governments. Phase I of the ANGTS pipeline was completed in the early 1980s and is in operation. Its two legs, stretching from a collecting point in Alberta in the directions of the U.S. West Coast and the Midwest, respectively, deliver one-third of Canada's total annual gas exports to the United States. The construction of the third leg, connecting the Alaska North Slope to the "pre-built" network was never started and in January of 2009 ANGTS notified FERC that it was no longer a viable entity and surrendered its conditional certificate.

Alaska enacted separate legislation that bans construction of a gas pipeline in northern state waters, while supporting a pipeline to the south. Under the shorter, less costly, northern route, estimated netback wellhead prices (determined by subtracting transportation cost from market price) would be higher, and royalties to the state would be higher (the gas resources are state-owned). But state officials apparently perceive greater gain through the income multiplier effect of construction within the state and Alaskan communities' greater access to the gas supplies. There are some questions concerning who will construct and operate the Canadian portion of the pipeline originating in Alaska. The U.S.-authorized pipeline likely would not enter service for ten years after an initial construction contract is approved. The company selected by AGIA, TransCanada, is also the company that claims to have the legal right of way for building the Canadian section of the pipeline because of the Northern Pipeline Act passed by Canada in 1977.

Canada supports a natural gas pipeline that would travel from the North Slope through Canada and has opposed any unilateral selection of routes by the United States. The Canadian government believes that the private sector is best suited to decide the route, subject to regulatory and environmental review procedures. Canada has an interest in selling more oil and natural gas to meet U.S. energy needs.

Negotiations are continuing in Canada on the plan to build the Mackenzie Valley gas pipeline, which is intended to carry natural gas from inside the Arctic Circle in Canada to northern Alberta, where it would flow into the existing natural gas transportation system. A joint review panel has been established under the auspices of the Canadian National Energy Board, for the purpose of determining the feasibility of the Mackenzie project. Among the subjects it is considering are the participation and compensation of aboriginal peoples in Canada along the route of the pipeline. The estimated cost of the Mackenzie Gas Project is about \$13.5 billion (US), with an earliest production start-up in 2014. The engineering and construction planning continues to improve the details of Project needs.

## **Status of the Issue**

Both the United States and Canada are moving toward the construction of natural gas pipelines built from their respective Arctic regions that will partly compete with each other for markets in the Lower 48 states and in southern Canada. At this time, the Canadian government has not authorized a project. However, the state of Alaska has authorized the TransCanada project, though this company has not yet completed their application with FERC and the Denali pipeline companies, though not authorized by Alaska, continue to pursue their project. In EIA's most recent forecast, it forecasts Alaska gas flow to begin in 2020.

## **Questions**

1. How close is Canada to actually making a decision to go ahead on the Mackenzie pipeline?
2. Will the Canadian project time the construction to minimize competition between the U.S. and Canadian projects for inputs such as labor and steel?
3. How likely are Arctic Ocean ice cover changes to open new LNG transport options for North Slope gas?
4. With recent changes in the long term lower-48 natural gas supply outlook due to unconventional gas success, when might a pipeline be competitive?
5. To what extent might the partly competing natural gas pipelines, once completed, diminish the economic viability of each other?
6. What percentage of the gas delivered by the Mackenzie pipeline is likely to be used by the Canadian oil sands development?

## **Northern Energy Development<sup>82</sup>**

### **Issue Definition**

Should the United States proceed to develop energy resources thought to be in the coastal plain of the Arctic National Wildlife Refuge (ANWR)? And if it chooses to do so, how would Canadian interests, especially those of the Gwich'in people who live on both sides of the Alaska/Yukon boundary, be affected? Canada opposes ANWR development, arguing a need to protect the calving grounds of a caribou herd heavily used by Gwich'in in both countries.

### **Background and Analysis**

During the 110<sup>th</sup> Congress, ANWR was not a major element of the energy debate until the run-up in energy prices. Some bills in the second session of Congress were introduced to address energy supply and these bills include titles to open the Refuge. The debate was (a) the extent to which any ANWR discoveries might lower energy prices, and (b) whether to approve energy

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<sup>82</sup> Prepared by M. Lynne Corn, Specialist in Natural Resources Policy; Resources, Science, and Industry Division.

development in the Arctic National Wildlife Refuge (ANWR) in northeastern Alaska, and if so, under what restrictions, or whether to continue to prohibit development to protect the area's biological resources. ANWR is an area rich in fauna, flora, and oil potential. A study by the U.S. Geological Survey estimated that the mean level of economically recoverable oil on federal lands in the refuge is 7.1 billion barrels, at \$55/barrel. Development proponents argue that ANWR oil would reduce U.S. energy markets' exposure to recurring crises in the Middle East, create many jobs in Alaska and elsewhere, boost North Slope oil production, and extend the economic life of the Trans Alaska Pipeline System. They maintain that ANWR oil could be developed with minimal environmental harm, with a footprint limited to 2,000 acres of the 19 million acre Refuge. Opponents argue that intrusion on this ecosystem cannot be justified on any terms; that it should be designated as wilderness; that oil found (if any) would provide little energy security and could be replaced by cost-effective alternatives; and that job claims are exaggerated.

With the change in control of the House and Senate, chance of action on ANWR development appears substantially reduced. At the same time, prospects of legislation to protect the area as statutory wilderness are also slim, due to the possibility of a Senate filibuster.

Global warming has added a new factor to the debate in recent years. If the Arctic Ocean becomes navigable in the summer, northern oil and gas may be more readily transported during the summer months to lucrative markets in the North Atlantic. This reduced cost would make marginal finds in either country more profitable and lead to increased industry interest. In addition, if other areas north of the Arctic Circle are also developed for energy or other resources, the economics of Alaskan and Canadian development may change with the greater attention to the area or with corresponding technology improvements. (The most recent comprehensive assessment of Arctic resources may be found in Kenneth J. Bird et al., *Circum-Arctic Resource Appraisal: Undiscovered Oil and Gas North of the Arctic Circle*, U.S. Geological Survey, Menlo Park, CA, 2008, pp. 1-4, <http://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>.)

Canada opposes energy development in ANWR primarily because it might disturb calving of the Porcupine Caribou Herd (PCH). The PCH is covered under the Agreement Between the United States of America and Canada on the Conservation of the Porcupine Caribou Herd, which entered into force on July 17, 1987. The objective of the agreement is to conserve the herd for customary, traditional uses by peoples on both sides of the international boundary, with disputes to be settled by consultation between the parties. Since it was an executive agreement, no implementing legislation was required. The U.S. agency primarily responsible for implementing the agreement is the Fish and Wildlife Service.

The range of the PCH centers on the Porcupine River in the United States and Canada; the herd winters south of the Brooks Range in both nations. The herd of about 130,000 animals provides the staple diet of Gwich'in hunters in Alaska, the Yukon, and the Northwest Territories. It is also the source of cultural tradition and a focus of religious ceremonies. The Gwich'in on both sides of the border have vigorously opposed oil development, fearing that development in the herd's most frequent calving ground in ANWR's coastal plain area might jeopardize their livelihood and even their culture. Indeed, the concern over the PCH has resulted in stronger cross-border contacts between Gwich'in for more than a decade.

Under current law, Alaskan Gwich'in would receive relatively little economic benefit from development, successful or otherwise. (Canadian Gwich'in would receive no direct economic benefit; there are no known reports of indirect benefits.) In contrast, Inuit Natives (primarily from Barrow and Kaktovik) along Alaska's North Slope would receive tax revenues, as well as bonus,

royalty, and rent payments if successful development took place on Native-owned subsurface lands within ANWR. As a result of their experience with Prudhoe Bay development, and of its effects on the smaller Central Arctic Herd (CAH), many Inuit feel that ANWR development can proceed without significant risk to the PCH. Other Alaskan Inuit are more cautious, with villagers such as some in Nuiqsut, west of ANWR, arguing that a nearby existing development has not generated expected levels of employment or dividends, while exacerbating social problems or driving a local caribou herd farther away.

The Canadian portion of the PCH calving ground is protected in Ivvavik National Park. While some energy exploration has taken place in the Canadian portion of the calving area, Canadians argue that that activity occurred only before the government was aware of the importance of the area to the PCH. Indeed, some Canadian industry officials have complained of government hostility to development in the northern areas of the country, based on what they perceive as overzealous environmental concerns. Critics note that the Canadian part of the calving area was protected not only after the area's importance to caribou was known, but also after it was known to lack commercial energy resources. Canada is proceeding with development plans farther east, in the Mackenzie River Delta.

### **Status of the Issue**

Canadian Prime Ministers have raised the issue of development in the PCH calving range on several occasions over the years, and their government has sent numerous position papers to various U.S. agencies and departments. Two ANWR bills have been introduced in the 111<sup>th</sup> Congress to designate the ANWR area as wilderness, and two development bills have also been introduced. One of the development bills would forbid surface occupancy of the federal lands in the refuge. The Alaska delegation remains strongly in favor of ANWR development.

### **Questions**

1. What data are available to the federal or provincial governments regarding the effects of global climate change on northern species such as the PCH?
2. Is Canada planning for increased industry activity in the Arctic in the coming decades? Have natural resource companies (i.e., energy, mining, and others) become more active in recent years? Is any other industry already showing signs of increased interest, and if so, how and where? How have development practices changed in light of melting permafrost and other climate-related impacts?
3. If Congress were to decide to open ANWR to development, are there specific mitigation practices that Canada is seeking for the protection of caribou? For the protection of other marine or terrestrial species?
4. What energy development activities are going on currently in the northern Yukon and the Northwest Territories? What activities have occurred in the last two years? How do these activities affect calving grounds, migration routes, and wintering areas in Canada? Are there any known effects on the PCH?
5. If natural gas is developed commercially in northern Alaska, there is debate about how best to bring the gas to markets in the upper Midwest. While the United States has generally favored a

route paralleling the Trans Alaska Pipeline, Canada has voiced support for a route running seaward of ANWR into Canadian waters, then south through Canada to the same markets (this route is often popularly called the “over-the-top” route). Wouldn’t this route affect the PCH too? If so, how can this be consistent with the opposition of the Canadian government to energy development in ANWR (where the PCH calves in most years)? Would the pipeline be sited to avoid the areas that the PCH tends to use for calving in the years when it does not reach ANWR in time for calving?

## **Global Climate Change<sup>83</sup>**

### **Issue Definition**

The United States and Canada share an errant status among industrialized countries on climate change. The two countries share similar political challenges to taking more aggressive actions to reduce human-induced climate change, due to strong fossil fuel dependence and interests, infrastructure based on cheap fossil fuels and individual vehicles, long distances, cold winters, and other factors that tend to increase costs of abating greenhouse gas (GHG) emissions. While governments of both countries have articulated seriousness in addressing climate change, neither country has enacted strong policies consistent with the commitments they signed in 1997. It remains to be seen, the degree to which the federal governments will change courses and begin to reduce GHG emissions domestically, and through the international cooperative processes. There could be significant benefits, especially to Canada, in harmonizing aspects of any GHG control strategies; for example, an interlocking emissions cap-and-trade system could help minimize bi-national costs and make compliance easier for transnational businesses.

### **Background and Analysis**

Human emissions of “greenhouse gases” (GHG), largely from fuel use, agriculture and land use, and some industrial products, have altered the balance of the atmosphere. The increase by one-third of atmospheric concentrations since the Industrial Revolution are very likely to have contributed a major portion of the global climate change observed over the past three decades. Industrialized countries, including Canada and the United States, are responsible for the majority of the increased concentrations, although the rapid growth of developing countries will be responsible for most of the future increases. If policies do not result in radically reducing emissions from current levels, scientists have projected climate change to have increasingly negative and severe—potentially catastrophic—effects on most countries and many sectors, as well as natural systems.

Scientists have been aware of the risks of human-induced climate change for many decades, and brought these risks to international political attention by the 1980s. Both Canada and the United States were among the governments that set up the Intergovernmental Panel on Climate Change (IPCC), and later negotiated the United Nations Framework Convention on Climate Change (UNFCCC), to provide the scientific foundations for decision-making (IPCC) and the international cooperation necessary to mitigate the risks effectively (the UNFCCC). While both

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<sup>83</sup> Prepared by Jane A. Leggett, Specialist in Energy and Environmental Policy; Resources, Science, and Industry Division.

countries have, for the most part, vocally supported greater action to address climate change, and agreed to the Kyoto Protocol, a subsidiary agreement under the UNFCCC. In it, the United States committed to reduce its GHG emissions to 7% below 1990 levels during 2008 to 2012, while Canada committed to reduce to 6% below 1990.

Both countries signed the Kyoto Protocol in 1997. Neither country has fulfilled the commitments it signed. U.S. President Clinton never submitted the agreement to the Senate for consent to ratification, and in 2001, President Bush announced his rejection of the Kyoto Protocol. In contrast, the Canadian government ratified the treaty in 2002. But, according to one analysis:

Jean Chretien's Liberal government was faced with a tricky problem. In 1998, greenhouse gas emissions were already 27% above the Kyoto target, and had been growing by 1.7% a year since 1990: reversing that trend would have involved burning up significant amounts of political capital. On the other hand, it was very mindful of Canada's reputation for taking part in multi-national agreements: there also would be a political cost to pay for not joining the international consensus.... [The federal Liberals] needed the political support of the pro-Kyoto constituency, but they weren't in a position to pay the political costs of complying with the protocol. Their solution to this dilemma was breathtaking in its effectiveness and its simplicity:

- Sign the treaty.
- Make no effort to comply with the protocols....

(Stephen Gordon, "The Politics of Climate Change Policy in Canada" *Worthwhile Canadian Initiative* (webblog), posted 12 January 2007)

The conservative Canadian government of Prime Minister Harper eventually stated that Canada did not intend to meet its Kyoto Protocol commitments. It now hopes its GHG emissions will peak in 2010 then decline, though experts examining the policies in place have judged the measures insufficient.

From the birth of the Kyoto Protocol to the U.S. elections of 2008, the two federal governments have said they were serious in addressing climate change. But their actions have been mostly limited to voluntary programs, moderate energy efficiency regulation, and government support for science and research. The conservative Tory government did set up a cap-and-trade program, but one based on energy intensity (emissions per GDP) and, thus, not a fixed cap on emissions, as the economy grows. Action has been undertaken by some local and state/provincial governments, however, and elements of the private sector.

## Status of the Issue

Remaining a Party to the Kyoto Protocol, Canada has not incurred disdain from other countries similar to that aimed frequently at the United States. Canadian GHG emissions were 26% above 1990 levels in 2007 (34% above their Kyoto commitment), compared to U.S. emissions at 16% above 1990 in 2007. Canada is being investigated by the Protocol's bodies for not having established its required GHG accounting registry. On the other hand, the compliance sanctions in the Kyoto Protocol—and in many other international agreements—are insufficient to motivate an unwilling Party to meet its commitments.

Now that UNFCCC Parties are engaged in negotiations towards commitments for the post-Kyoto period, beyond 2012, many countries wonder how to deal with the similar but different problems of gaining efforts from the United States and Canada. Canada has adapted a plan to reduce GHG by 20% from 2006 levels by 2020. This would be slightly more aggressive numerically than President Obama's proposal to reduce U.S. emissions by 17% from 2005 levels. Neither country has programs in place to assure that such targets are met.

In February 2009, President Obama and Prime Minister Harper discussed trade and climate change. They agreed to work jointly on research and development of advanced carbon reduction technologies and on establishing an advanced, "smart" electric grid that could enhance electricity trade. Elements of tension include the high CO<sub>2</sub> emissions that would be associated with development of Canada's extensive tar sands resources, as a more reliable and less expensive substitute for other fossil fuels. California Governor Schwarzenegger has threatened to ban tar sands oil from his state. On the other hand, U.S. coal-fired powerplants are less efficient than Canada's. The Canadian federal government generally is waiting to see what measures the United States will take—on vehicle standards, on GHG cap-and-trade legislation, and other GHG reduction programs. In February 2009, Canadian Environment Minister Jim Prentice suggested a common cap-and-trade system, fuel efficiency standards, and targets for biofuels. He suggested as well that the two countries consider a joint GHG target under the post-Kyoto agreement, similar to the arrangement of countries within the European Union. Like in the United States, opinion polls suggest that the public shares concerns about climate change and would permit the governments to take action, even with modest cost. For Conservative Party Prime Minister Harper, this support may be important politically. His party lacks a majority in Parliament, and reportedly, one in three Conservative voters hold the Green Party as their second choice.

## Questions

1. Previously, the Canadian government established a cap-and-trade system without an absolute cap on greenhouse gas emissions. If other major industrialized countries participating in a post-2012 treaty to reduce GHG emissions agree to absolute caps on their emissions, will the Government of Canada as well? How quickly?
2. Canada has expressed interest in possible taking on a joint GHG reduction commitment with the United States in a post-2012 agreement. Please tell us in more detail how this might work, especially given that we do not have the legal frameworks in place that the European Union uses to enforce its regional target. Are there specific issues the U.S. Congress should take into account as it drafts legislation to control GHG emissions?
3. In the Framework Convention on Climate Change and the Kyoto Protocol, Parties agree to count and take responsibility for the emissions that occur within their borders. I understand that Canada has tried to rewrite that principle with regard to the respective responsibilities of the United States and Canada for emissions associated with energy trade. Please explain your reasoning for making this an exception to how emissions associated with other manufacturing and trade is counted.



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## Great Lakes Restoration<sup>84</sup>

### Issue Definition

The Great Lakes are recognized by many as an international natural resource that has been significantly altered over the last two centuries. In response, the federal governments of the United States and Canada, and the state and provincial governments in the Great Lakes basin have implemented several restoration activities. After several years of restoration activities, some contend that efforts are not progressing and are loosely organized. Some specific concerns include the slow rate of cleaning up toxic sediments in this ecosystem, and lack of governance and a comprehensive plan to address restoration of the Great Lakes.

### Background and Analysis

The Great Lakes watershed is the largest system of fresh surface water in the world. The watershed covers approximately 300,000 square miles and is shared by eight U.S. states (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) and one Canadian province (Ontario). The Great Lakes contain nearly 90% of the surface freshwater of the United States and 20% of the surface freshwater of the world. An estimated 40 million people rely on the Great Lakes basin to provide jobs, drinking water, and recreation, among other things. In the last several decades, agricultural activity throughout the basin, and urban and industrial development concentrated along the shoreline, have degraded water quality in the Great Lakes, posing potential threats to the ecosystem. Development has also led to changes in terrestrial and aquatic habitats, the introduction of non-native species, the contamination of sediments, and the listing of more than 50 threatened or endangered species in the basin.

### *The Great Lakes Strategy*

In 2004 a federal Great Lakes Interagency Task Force was created to provide strategic direction for Great Lakes policies on restoration and to form a regional collaboration of stakeholders interested in restoring the Great Lakes ecosystem. The Great Lakes Regional Collaboration, which consists of over 1,500 stakeholders, released the Great Lakes Regional Collaboration Strategy, a plan based on implementing a series of recommendations for actions and activities to start the restoration of the Great Lakes ecosystem over the next five years. The Strategy encompasses eight issue areas: aquatic invasive species, fish and wildlife habitat (habitat/species), coastal health, contaminated sediments, nonpoint source pollution, toxic pollutants, indicators and information, and sustainable development. The total cost of implementing the Strategy is estimated to be \$20 billion over five years. The implementation of the Strategy relies on existing authorities, programs, and funding at federal, state, and local levels of government, as well as some new actions that may require enacting new federal legislation. The Strategy as a whole is not being implemented, although several existing restoration programs that are included in the Strategy are ongoing.

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<sup>84</sup> Prepared by Pervaze Sheikh, Analyst Natural Resources Policy, Resources, Science, and Industry Division.

### *The Great Lakes Restoration Initiative*

The Great Lakes Restoration Initiative (GLRI) aims to restore and maintain the chemical, physical and biological integrity of the Great Lakes Basin Ecosystem. The GLRI is slated to begin in 2010 and the Administration has requested \$475 million in the FY2010 budget request to fund the GLRI. The planning, structure, projects, and programs of the Initiative are based on the work of the Great Lakes Interagency Task Force. The Initiative will be directing funding to the following focus areas:

- Toxic substances and Areas of Concern;
- Invasive species;
- Nearshore health and nonpoint source pollution;
- Habitat and wildlife protection and restoration; and
- Accountability, monitoring, evaluation, communication, and partnerships

The EPA will be the lead agency for the GLRI. The Administration is requesting authority for the EPA to be able to transfer funds to federal agencies for subsequent use and distribution for Great Lakes restoration activities and projects. The request also would allow for grants to be competitively awarded to governmental entities, nonprofit organizations, institutions, and individuals for planning, research, monitoring, outreach, and implementation of the Great Lakes Restoration Initiative and Great Lakes Water Quality Agreement. Although current EPA restoration programs and activities for the Great Lakes are included in the \$475 million, other ongoing restoration activities conducted by federal agencies are not expected to be diminished, according to the Administration's FY2010 budget request. This represents approximately \$414 million in additional funding for Great Lakes restoration over the FY2009 enacted level for the EPA.

### *Restoring Areas of Concern the Great Lakes*

The Great Lakes Legacy Act of 2002 was enacted to address sediment contamination in Areas of Concern (AOCs) within the Great Lakes ecosystem. AOCs are geographical areas within the Great Lakes that represent the most degraded portions of the ecosystem. AOCs contain contaminated sediment, wastewater, and other non-point source pollution. In 1987, the United States and Canada identified 43 AOCs in the Great Lakes basin. Twenty-six AOCs are in U.S. waters, 12 in Canadian waters, and 5 shared by both countries. The act authorizes \$50 million annually in appropriations for FY2004-FY2008 for contaminated sediment remediation projects in AOCs in the United States. From FY2004-FY2009, there has been approximately \$163 million appropriated to all programs authorized under the Legacy Act, approximately half the authorized amount. The act also authorizes funding for research and development of remediation technologies, and public outreach and education about remediation. The Environmental Protection Agency (EPA) administers the selection and funding of projects authorized under the Legacy Act. Six projects are currently being evaluated, one projects is underway, and four projects have been completed under the Legacy Act. One AOC has been delisted in the United States and two have been delisted in Canada.

## ***Water Withdrawals From the Great Lakes***

Several laws, policies, and governing bodies regulate the use, withdrawal, and diversion of water from the Great Lakes basin; however, the concern over domestic and international demand for Great Lakes water has prompted officials from the United States and Canada to reevaluate these laws and policies. The Council of Great Lakes Governors (CGLG)—a partnership of the governors of the eight Great Lakes states and the Canadian provincial premiers of Ontario and Quebec—was tasked with creating a new common conservation standard to manage water diversions, withdrawals, and consumptive use proposals. In 2005, the CGLG released (1) the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (Agreement) and (2) the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact). These water management proposals ban new and increased diversions of water outside the Great Lakes Basin with only limited, highly regulated exceptions, and establish a framework for each state and province to enact laws protecting the Basin. The Compact was approved by each state legislature and the U.S. Congress. It is now taken effect as an interstate compact. The Canadian federal government and the provinces of Ontario or Quebec are not parties to the Compact; however, the provinces are signatories to the related international state-provincial Agreement.

### **Status of the Issue**

The FY2010 budget request from the Administration introduces the Great Lakes Restoration Initiative and requests \$475 million for its implementation in 2010. Congress is expected to deliberate the specifics of this request and the GLRI during the appropriations process.

Several bills have been introduced in the present Congress that address restoration of the Great Lakes ecosystem. None of the bills authorize the implementation of the Strategy, nor authorize funding for restoration prescribed by the Strategy. The Great Lakes Collaboration Implementation Act (H.R. 500 and S. 237) is the most prominent restoration bill. This bill would authorize appropriations to conduct research, provide for detection and prevention of aquatic non-native species around the country, address water quality in the Great Lakes, and ocean monitoring. The bill would also authorize duties and activities for the Great Lakes Interagency Task Force and the Great Lakes Regional Collaboration. A separate bill introduced April 30, 2009 would reauthorize the Great Lakes Legacy Act and authorize \$150 million annually from FY2008-FY2012 for cleaning up AOCs in the U.S.

### **Questions**

1. Given that the boundaries of the Great Lakes ecosystem extends across the United States and Canada, what major efforts are being done in Canada to restore the Great Lakes? Is Canada considering a comprehensive restoration plan that may involve binational participation?
2. Does Canada have plans for a comprehensive Great Lakes restoration strategy or plan? How can Canada collaborate with the EPA in undertaking restoration activities in the GLRI?
3. What efforts are being done to clean-up AOCs in Canada, and have they been successful? Is there scientific, technical, or programmatic collaboration between the U.S. and Canada in cleaning up AOCs shared by both countries?

4. The Compact and resulting water withdrawals could potentially affect the environment and the economies of, and relationship between, Canada and the United States. How is Canada implementing the Great Lakes Water Agreement? Are there any foreseen implementation challenges that might require binational cooperation?

5. Water quality is a concern for many in the U.S. and Canada, and is currently addressed by the Great Lakes Water Quality Agreement. The Agreement is being considered for revision by the Governments of Canada and the United States. What is the status of the review of the Agreement? Is Canada considering revisions to the Agreement?

## Great Lakes Water Levels<sup>85</sup>

### Issue Definition

Great Lakes water levels have been decreasing steadily since 1997, with Lake Superior setting a record low for September in 2007, and Lakes Michigan and Huron near their record lows for December in 2007. In 2008, water levels initially rose for all Lakes, due to above average snowfalls in the northern Great Lakes. The latest water level forecast predicts higher water levels on Lake Superior and Lake Michigan-Huron when compared with 2008. The remaining lakes are expected to have lower water levels than 2008.

Low water levels disrupt shipping, alter coastal and aquatic ecosystems, reduce recreational boating and fishing, and adversely affect water quality. Water levels are directly related to precipitation, runoff, evapotranspiration, and outflows (e.g., through the St. Lawrence River and diversions). Climate change and new precipitation patterns are cited as a possible causes for low water levels. Some also contend that dredging in Lake St. Clair in the 1960s might have led to widening the channel in the St. Clair River and increasing outflows from the Lakes. Understanding the causes of declining water levels in the Great Lakes is a concern for many because of their potential economic and environmental costs.

### Background and Analysis

The Great Lakes watershed is the largest system of fresh surface water in the world. The Great Lakes contain nearly 95% of the surface freshwater in North America and 20% of the surface freshwater of the world. An estimated 40 million people rely on the Great Lakes basin to provide jobs, drinking water, and recreation, among other things. The water levels of the Great Lakes are affected by a number of factors, including precipitation, evaporation, groundwater, surface water runoff, diversions into and out of the system and regulation. Some of these factors are controlled by the seasons, which can bring varying amounts of precipitation and runoff to the lakes. For example, water levels are high in the spring and summer, when runoff amounts are high, but low in the winter, when little or no runoff occurs. As a system, the Great Lakes annually lose approximately 1% of their water through natural outflows (i.e., via the St. Lawrence River).

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<sup>85</sup> Prepared by Pervaze A. Sheikh, Analyst in Natural Resources Policy, Resources, Science, and Industry Division.

### *Decline in Water Levels*

Water levels in the Great Lakes have been declining since 1997, according to the National Oceanic and Atmospheric Administration (NOAA). This decline is most prominent in Lake Superior, which recorded a historic low for September and October 2007. Some contend that recent declines in Great Lakes water levels are following a pattern of fluctuating Lake levels that have been recorded since the 1800s. For example, Lakes Huron and Michigan experienced record highs in 1886 and 1986; and experienced record lows in the 1930s, corresponding to drought conditions during the Dust Bowl. Others suggest that low water levels are a combination of several natural and man-made factors. NOAA collects data on historic water levels in the Great Lakes, and the U.S. Army Corps of Engineers (Corps) maintains models that predict changes in Great Lakes water levels.

### *Potential Threats to Water Levels*

Potential changes in water levels may come from existing and new diversions; climatic variations; geologic processes; variations in precipitation, evaporation, and runoff; population growth; and changes in land use (i.e., farm to urban). Many contend the greatest threat to water levels in the Great Lakes is excessive consumptive withdrawals.

Most experts believe that there is still much to be learned regarding the effects of water withdrawals, climate change, and consumptive uses on the Great Lakes. Moreover, trying to determine the individual impact of a single factor may be difficult to quantify because more than one factor might be contributing to declining water levels. Accordingly, many have become concerned with the cumulative effects of these factors on the Great Lakes. The International Joint Commission (IJC) began an investigation in the causes of water level decline in Lake Superior in March 2007. Effects of climate change, dredging and channel widening in the St. Clair River, and changes in precipitation are some of the factors being considered. With respect to climate change, some hypothesize that warmer winters in the Great Lakes basin will lead to less ice formation on the Lakes, and consequently greater evaporation of water into the atmosphere. If precipitation does not correspondingly increase, then lower water levels could result. Uncertainty in predicting future water levels, in conjunction with the cumulative impact that many of the above factors may have on lake levels, has stimulated many to consider a “precautionary approach” addressing water withdrawals and diversions out of the Great Lakes Watershed.

### *Potential Impacts of Low Water Levels*

Variations in water levels can have potentially significant socio-economic and environmental consequences. Lower water levels can reduce hydroelectric power generation and increase costs to commercial shipping. The Great Lakes-St. Lawrence shipping corridor, which is more than 2,300 miles in length, would need more dredging to maintain current levels of navigation if water levels decrease. Dredging may also be necessary for recreational boating. Lower water levels could also affect water quality by limiting the ability of the lakes to flush out toxic substances and excessive levels of nutrients, such as phosphorous and nitrogen. Coastal wetlands can dry up if water levels significantly recede along the shoreline and wetland habitat may be replaced by forested lands or dunes. Receding shorelines could also create problems in accessing marinas and necessitate change in other infrastructure (e.g., extending water intake pipes) to maintain recreational and other activities. Some contend that changes in scenic areas and the environment would decrease tourism and recreation. Lower water levels may have some positive impacts, such

as decreasing the potential for flooding and increasing the area of beaches in some regions of the Basin.

### **Status of Issue**

Congress is addressing declining water levels in the Great Lakes through proposed legislation that would authorize the Secretary of Commerce to study and continue monitoring fluctuating water levels in the Great Lakes (H.R. 1905, H.R. 500, and S. 237). Lastly, the IJC is conducting a five-year, \$15 million study to examine declining water levels in the Great Lakes. (The duration of the study is from 2007-2012.)

### **Questions**

1. Understanding the contribution of potential causes for declining water levels in the Great Lakes is a concern. Is Canada sponsoring any studies to address this issue, have any results been released?
2. The socio-economic consequences of declining water levels in the Great Lakes might be significant for both Canada and the United States. Does Canada have any existing programs that are implementing mitigation strategies for declining water levels ?
3. Climate change might be a significant factor in declining water levels. Is Canada addressing the effects of climate change on natural resources such as water supplies in the Great Lakes, and if so, has Canada developed any strategies for adapting to climate change that involve the Great Lakes?

## **Status of Polar Bears**<sup>86</sup>

### **Issue Definition**

In May 2008, the United States listed polar bears as “threatened” under the Endangered Species Act (ESA; 16 U.S.C. §§1531 et seq.). An ESA listing as “threatened” triggered an automatic listing of polar bears as “depleted” under the Marine Mammal Protection Act (MMPA; 16 U.S.C. §§1361 et seq.), preventing U.S. citizens from importing polar bear products (under 1994 amendments to the MMPA, U.S. sport hunters had been authorized to obtain permits to import polar bear trophies from Canada). Under the MMPA, the United States allows only limited subsistence harvest of polar bears by Alaska Natives. In Canada, only Inuit hunters are permitted to hunt polar bears, but they may allocate a limited portion of their subsistence harvest to sport hunters. Some suggest that the import ban, effectively stopping U.S. sport hunters from killing polar bears in Canada, could compromise successful Canadian community-based conservation programs.

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<sup>86</sup> Prepared by Eugene H. Buck, Specialist in Natural Resources Policy; Resources, Science, and Industry Division.

## **Background and Analysis**

Globally, 6 of the 19 recognized polar bear populations are declining, while 4 populations are stable and 3 populations are increasing. The remaining 6 populations have insufficient data available to estimate population trends, and their status is uncertain. Two polar bear populations occur partially within U.S. jurisdiction; fourteen polar populations occur within Canadian jurisdiction.

Polar bears are affected by climate change, contaminants, and subsistence and sport hunting. Polar bears depend on Arctic sea ice for movement, hunting, and other activities and, except for pregnant females, rarely come ashore in many populations. Seals, which are caught when coming to ice holes to breathe, are the preferred prey of polar bears. Scientists have confirmed that, in recent decades, the extent of Arctic sea ice has declined significantly as the result of climate change: annual ice break-up in many areas is occurring earlier and freeze-up later. Arctic sea ice is experiencing a continuing decline that may not easily be reversed, and some models project that Arctic sea ice could disappear completely by 2037 (M. Wang and J. E. Overland, "A Sea Ice Free Summer Arctic Within 30 Years?," *Geophysical Research Letters*, v. 36, no. 7 (2009): L07502). In addition, three groups of contaminants are implicated as potentially threatening polar bears—petroleum hydrocarbons, persistent organic pollutants, and heavy metals.

## **Status of the Issue**

On May 15, 2008, the Fish and Wildlife Service (FWS) listed polar bears as a threatened species under ESA, acknowledging the increasing threats to their existence. The FWS listing was to be based solely on the best available scientific and commercial information regarding five factors: habitat destruction, overutilization, disease or predation, inadequacy of other regulatory mechanisms, and other natural or manmade factors.

In late April 2008, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) announced a status assessment of the polar bear in Canada as a species of "special concern," and a more detailed official report was released in August 2008 (This report is available at [http://www.sararegistry.gc.ca/virtual\\_sara/files/cosewic/sr\\_polar\\_bear\\_0808\\_e.pdf](http://www.sararegistry.gc.ca/virtual_sara/files/cosewic/sr_polar_bear_0808_e.pdf)). When the COSEWIC report was released, Canada's Environment Minister, John Baird, announced that a National Roundtable on Polar Bears would be held as part of determining how the Government of Canada will proceed toward a decision on how best to conserve polar bears under Canada's Species at Risk Act. This National Roundtable was held on January 16, 2009, in Winnipeg, Manitoba.

## **Questions**

1. What are the current programs in joint cross-border management through the Inuvialuit-Inupiat Polar Bear Management Agreement for the Southern Beaufort Sea between Alaska and Canada?
2. How might halting the hunting of Canadian polar bears by U.S. sport hunters affect Canadian community-based conservation programs for this species?
3. What are the options available to Canada under their Species at Risk Act, relative to polar bears? What was the significance of Canada's National Roundtable on Polar Bears?

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