



405:How U.S. Border Security & Immigration Measures Are Affecting International Trade

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Graham A. Flack

Graham A. Flack is director of operations in the Privy Council Office, the department which supports Canada's Prime Minister. He headed the team that developed Canada's first National Security Policy: *Securing an Open Society*, which was released earlier this year. He also leads the Borders Task Force which was set up following the events of 9/11 to manage and coordinate Canada-U.S. issues under the "smart borders" process.

Previously, he was director of strategic and legal affairs in the intergovernmental affairs division of the Privy Council Office. His key projects included the reference case taken to the Supreme Court of Canada on whether Quebec had a right to unilateral secession and the *Clarity Act* which set out the conditions under which the government of Canada would participate in a process leading to secession. He also served as law clerk to Justice Charles Gonthier at the Supreme Court of Canada.

He received a BA from Dalhousie University and a BA (Hons) from the University of Oxford where he studied as a Rhodes Scholar. He is a member of the Law Society of Upper Canada and graduated with an LLB from Dalhousie University and an LLM from Harvard University.

Aisa Isabel Mendoza C.

Aisa Isabel Mendoza C. is a partner at the law firm Jáuregui, Navarrete, Nader y Rojas, S.C. Ms. Mendoza's main areas of legal practice are corporate law, M&A, commercial law, foreign investment regulations, environmental law, and mining law.

Ms. Mendoza is a member of the Mexican Bar Association, the National Association of Corporate Counsels, where she served as a director for several years and currently is the chairwoman of the national board of directors, the commerce committee of the Mexican Businessmen's Coordinating Council, the environmental committee of the American Chamber of Commerce-Mexico, the environmental committee of the Mexican Bar Association, and was member of the Mexican committee for the United Nations Decade Program on International Law. She is a frequent speaker in conferences and seminars on corporate law and environmental law.

Ms. Mendoza graduated from the National Autonomous University of Mexico and received a Master of Comparative Law from Southern Methodist University.

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Francisco J. Velazquez

Francisco Velazquez-Osuna, is a senior partner of the Mexican full-service law firm Goodrich, Riquelme y Asociados. He has extensive experience in the international corporate and business transactions and international trade areas, advising clients including large and medium-sized multinational companies.

Mr. Velazquez-Osuna has been lecturer in the U.S., Canada, and Mexico on doing business in Mexico, strategic alliances, foreign investment, competition law, product liability, cross border legal issues, and NAFTA issues and has written several articles on such areas. He taught on legal aspects of NAFTA at the Universidad Iberoamericana in Mexico City and family and estates, obligations civil procedure, economic law, and consular law at the Universidad Nacional Autónoma de México, Acatlán Campus.

He was the national chairman of the National Association of Corporate Attorneys in Mexico in Spanish (ANADE) in 1999-2000 and the coordinator of the NAFTA dispute-settlement committee of the Mexican Business Coordinating Council during NAFTA negotiations (1991-93). He is currently chair of the ANADE's international law committee. Mr. Velazquez-Osuna has been board member of ANADE since 1988, and is a member of the Mexican Importers and Exporters Association, the Mexican Bar Association, the Mexican law committee of the American Chamber of Commerce of Mexico, and of the ABA.

He is a licensed attorney in Mexico who graduated from the Universidad Nacional Autónoma de México and received a Master of Laws degree from the American University in Washington, DC.

David Wilson

David Wilson is vice president and general counsel of Alcatel Canada Inc. Mr. Wilson has extensive, hands-on experience in a broad range of commercial transactions, including extensive M&A work, and has worked specifically in the software, hardware, and telecommunications industries. Mr. Wilson's current responsibilities include a broad range of support for Alcatel in Canada and for specific product lines internationally.

Mr. Wilson is admitted to the Ontario Bar and the Law Society of England and Wales.

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Session 405:

“How U.S. Border Security & Immigration Measures Are Affecting International Trade”

Presentation Title:

“Smart Borders: Canada-U.S. Border Cooperation in a post-9/11 World”

Presenter:

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Written Materials:

- (1) Canada-U.S. Smart Border Declaration**
- (2) Smart Border Action Plan**
- (3) Progress Report**

**THE SMART BORDER DECLARATION
BUILDING A SMART BORDER FOR THE 21st CENTURY ON THE
FOUNDATION OF A NORTH AMERICAN ZONE OF CONFIDENCE**

The terrorist actions of September 11 were an attack on our common commitment to democracy, the rule of law and a free and open economy. They highlighted a threat to our public and economic security. They require our governments to develop new approaches to meet these challenges. This declaration commits our governments to work together to address these threats to our people, our institutions and our prosperity.

Public security and economic security are mutually reinforcing. By working together to develop a zone of confidence against terrorist activity, we create a unique opportunity to build a smart border for the 21st century; a border that securely facilitates the free flow of people and commerce; a border that reflects the largest trading relationship in the world.

Our countries have a long history of cooperative border management. This tradition facilitated both countries' immediate responses to the attacks of September 11. It is the foundation on which we continue to base our cooperation, recognizing that our current and future prosperity and security depend on a border that operates efficiently and effectively under all circumstances.

Action Plan

The attached Action Plan for Creating a Secure and Smart Border includes the measures already identified by our colleagues as well as new initiatives. Four pillars support the action plan:

- (1) The Secure Flow of People
 - a. We will implement systems to collaborate in identifying security risks while expediting the flow of low risk travellers.
 - b. We will identify security threats before they arrive in North America through collaborative approaches to reviewing crew and passenger manifests, managing refugees, and visa policy coordination.
 - c. We will establish a secure system to allow low risk frequent travellers between our countries to move efficiently across the border.

- (2) The Secure Flow of Goods
 - a. We will implement a system to collaborate in identifying high risk goods while expediting the flow of low risk goods.
 - b. We will identify security threats arriving from abroad by developing common standards for screening cargo before it arrives in North America, while working to clear goods at the first port of entry.

- c. We will adopt compatible security standards at production and distribution facilities to minimize security threats. We will expedite the flow of low risk traffic between our countries by establishing compatible commercial processes at the border.
- d. We will expedite the flow of low risk goods between our countries by establishing secure procedures to clear goods away from the border, including at rail yards and at marine ports.

(3) Secure Infrastructure

- a. We will relieve congestion at key crossing points by investing reciprocally in border infrastructure and identifying technological solutions that will help to speed movement across the border.
- b. We will identify and minimize threats to our critical infrastructure including the airports, ports, bridges, tunnels, pipelines and powerlines that link our countries.

(4) Coordination and Information Sharing in the Enforcement of these Objectives

- a. We will put the necessary tools and legislative framework in place to ensure that information and intelligence is shared in a timely and coherent way within our respective countries as well as between them.
- b. We will strengthen coordination between our enforcement agencies for addressing common threats.

Next Steps

- a. We will meet again early in the new year to review the critical paths that we have asked our officials to develop for realizing each of the objectives set out in the action plan. We will consult regularly to ensure continued progress on this plan to achieve the goals outlined as quickly as possible.
- b. This joint action plan is an important step. Our governments are committed to building on this plan to continually identify and implement measures that can be taken to secure a smart border.
- c. These measures are regarded by both governments as matters of the highest priority.

Ottawa, Canada
December 12, 2001

ACTION PLAN FOR CREATING A SECURE AND SMART BORDER

THE SECURE FLOW OF PEOPLE

1) Biometric Identifiers

Jointly develop on an urgent basis common biometric identifiers in documentation such as permanent resident cards, NEXUS, and other travel documents to ensure greater security.

2) Permanent Resident Cards

Develop and deploy a secure card for permanent residents which includes a biometric identifier.

3) Single Alternative Inspection System

Resume NEXUS pilot project, with appropriate security measures, for two-way movement of pre-approved travelers at Sarnia-Port Huron, complete pilot project evaluation and expand a single program to other areas along the land border. Discuss expansion to air travel.

4) Refugee/Asylum Processing

Review refugee/asylum practices and procedures to ensure that applicants are thoroughly screened for security risks and take necessary steps to share information on refugee and asylum claimants.

5) Managing of Refugee/Asylum Claims

Negotiate a safe third-country agreement to enhance the managing of refugee claims.

6) Visa Policy Coordination

Initiate joint review of respective visa waiver lists and share look-out lists at visa issuing offices.

7) Air Preclearance

Finalize plans/authority necessary to implement the Preclearance Agreement signed in January 2001. Resume intransit preclearance at Vancouver and expand to other airports per Annex I of the Agreement.

8) Advance Passenger Information / Passenger Name Record

Share Advance Passenger Information and agreed-to Passenger Name Records on flights between Canada and the United States, including in-transit flights. Explore means to identify risks posed by passengers on international flights arriving in each other's territory.

9) Joint Passenger Analysis Units

Establish joint units at key international airports in Canada and the United States.

10) Ferry Terminals

Review customs and immigration presence and practices at international ferry terminals.

11) Compatible Immigration Databases

Develop jointly an automated database, such as Canada's Support System for Intelligence, as a platform for information exchange, and enhance sharing of intelligence and trend analysis.

12) Immigration Officers Overseas

Increase number of Canadian and US immigration officers at airports overseas and enhance joint training of airline personnel.

13) International Cooperation

Undertake technical assistance to source and transit countries.

THE SECURE FLOW OF GOODS

14) Harmonized Commercial Processing

Establish complementary systems for commercial processing, including audit-based programs and partnerships with industry to increase security. Explore the merits of a common program.

15) Clearance Away from the Border

Develop an integrated approach to improve security and facilitate trade through away-from-the-border processing for truck/rail cargo (and crews), including inland preclearance/post-clearance, international zones and pre-processing centers at the border, and maritime port intransit preclearance.

16) Joint Facilities

Establish criteria, under current legislation and regulations, for the creation of small, remote joint border facilities. Examine the legal and operational issues associated with the establishment of international zones and joint facilities, including armed protection or the arming of law enforcement officers in such zones and facilities.

17) Customs Data

Sign the Agreement on Sharing Data Related to Customs Fraud, exchange agreed upon customs data pursuant to NAFTA, and discuss what additional commercial and trade data should be shared for national security purposes.

18) Intransit Container Targeting at Seaports

Jointly target marine intransit containers arriving in Canada and the United States by exchanging information and analysts. Work in partnership with the industry to develop advance electronic commercial manifest data for marine containers arriving from overseas.

SECURE INFRASTRUCTURE

19) Infrastructure Improvements

Work to secure resources for joint and coordinated physical and technological improvements to key border points and trade corridors aimed at overcoming traffic management and growth challenges, including dedicated lanes and border modeling exercises.

20) Intelligent Transportation Systems

Deploy interoperable technologies in support of other initiatives to facilitate the secure movement of goods and people, such as transponder applications and electronic container seals.

21) Critical Infrastructure Protection

Conduct binational threat assessments on trans-border infrastructure and identify necessary additional protection measures, and initiate assessments for transportation networks and other critical infrastructure.

22) Aviation Security

Finalize Federal Aviation Administration-Transport Canada agreement on comparability/equivalence of security and training standards.

COORDINATION AND INFORMATION SHARING IN THE ENFORCEMENT OF THESE OBJECTIVES

23) Integrated Border and Marine Enforcement Teams

Expand IBET/IMET to other areas of the border and enhance communication and coordination.

24) Joint Enforcement Coordination

Works toward ensuring comprehensive and permanent coordination of law enforcement, anti-terrorism efforts and information sharing, such as by strengthening the Cross-Border Crime Forum and reinvigorating Project Northstar.

25) Integrated Intelligence

Establish joint teams to analyze and disseminate information and intelligence, and produce threat and intelligence assessments. Initiate discussions regarding a Canadian presence on the U.S. Foreign Terrorist Tracking Task Force.

26) Fingerprints

Implement the Memorandum of Understanding to supply equipment and training that will enable the RCMP to access FBI fingerprint data directly via real-time electronic link.

27) Removal of Deportees

Address legal and operational challenges to joint removals, and coordinate initiatives to encourage uncooperative countries to accept their nationals.

28) Counter-Terrorism Legislation

Bring into force legislation on terrorism, including measures for the designation of terrorist organizations.

29) Freezing of Terrorist Assets

Exchange advance information on designated individuals and organizations in a timely manner.

30) Joint Training and Exercises

Increase dialogue and commitment for the training and exercise programs needed to implement the joint response to terrorism guidelines. Joint counter-terrorism training and exercises are essential to building and sustaining effective efforts to combat terrorism and to build public confidence.

SMART BORDER ACTION PLAN STATUS REPORT

October 3, 2003

In December 2001, Deputy Prime Minister John Manley and then-Governor Tom Ridge signed the Smart Border Declaration and companion 30-point Action Plan to enhance the security of our shared border while facilitating the legitimate flow of people and goods. The Action Plan has four pillars: the secure flow of people, the secure flow of goods, secure infrastructure, and information sharing and coordination in the enforcement of these objectives.

On September 9, 2002, Prime Minister Chrétien and President Bush met to discuss progress on the Smart Border Action Plan and asked that they be updated regularly on the work being done to modernize our common border. They also asked that the Smart Borders process be expanded to cover new areas of cooperation, including biosecurity and science and technology.

This status report is the fourth since the signing of the Smart Border Declaration.

#1 BIOMETRICS

Canada and the United States have agreed to develop common standards for the biometrics that we use and have also agreed to adopt interoperable and compatible technology to read these biometrics. In the interest of having cards that could be used across different modes of travel, we have agreed to use cards that are capable of storing multiple biometrics.

Our countries have begun to integrate biometric capabilities into new programs being deployed. For example, the NEXUS-Air pilot program will evaluate iris recognition technology and the new Canadian Permanent Resident Card is biometric-ready.

Both Canada and the United States have also worked with the International Civil Aviation Organization (ICAO) in identifying international standards for the use of biometrics in travel documents. This international cooperation allowed ICAO to announce, on May 23, 2003, that the facial recognition biometric had been selected as the globally interoperable biometric and has certified two other biometrics for secondary use.

#2 PERMANENT RESIDENT CARDS

Permanent Resident Cards have been issued since June 28, 2002 to all new immigrants arriving in Canada. On October 15, 2002, Canada began issuing Permanent Resident Cards to individuals landed prior to June 28, 2002 (existing permanent residents). To date, more than 500,000 cards have been issued to new immigrants and to existing permanent residents. Effective December 31, 2003, the IMM 1000 will no longer be recognized as a document valid for travel.

The Canadian permanent resident card contains features that make it one of the most fraud-resistant documents in the world. The card has been recognized by the International Card Manufacturers Association, winning the Elan Award for Technical Achievement.

#3 SINGLE ALTERNATIVE INSPECTION SYSTEM

NEXUS Highway is currently operational at the following border locations:

- Douglas, British Columbia/Peace Arch, Washington
- Pacific Highway, British Columbia/Blaine, Washington
- Boundary Bay, British Columbia/Point Roberts, Washington
- Sarnia, Ontario/Port Huron Michigan
- Windsor, Ontario/Detroit Michigan
 - Ambassador Bridge
 - International Tunnel
- Fort Erie, Ontario/Buffalo, New York
- Rainbow Bridge (October 1, 2003)

Future program expansion will include NEXUS lanes opening in the Fall of 2003 at the following sites:

- Niagara Falls, Ontario/New York (November 2003)
 - Queenston-Lewiston Bridge
 - Whirlpool Bridge
- Lacolle, Quebec/Champlain, New York (November, 2003)
- St. Armand-Philipsburg, Quebec/Highgate Springs, Vermont (November, 2003)
- Coutts, Alberta/Sweetgrass, Montana (November, 2003)

NEXUS Enrolment Centres are currently operational at the following locations:

- Blaine, Washington (joint NEXUS-FAST)
- Port Huron, Michigan
- Detroit, Michigan
- Fort Erie, Ontario (joint NEXUS-FAST)

Future Enrolment Centres are scheduled to be opened this Fall (2003) in Champlain, New York and at Coutts/Sweetgrass.

Canada and the United States are also working to implement a joint NEXUS - Air program for air travellers. NEXUS-Air will be piloted at Ottawa Macdonald-Cartier International Airport. Enrolment is scheduled to begin in March 2004.

#4 REFUGEE/ASYLUM PROCESSING

Canada and the United States have signed a Statement of Mutual Understanding (SMU) which will allow them to more effectively exchange information on immigration-related issues. An annex to the SMU has also been approved which will specifically allow both countries to systematically share information on refugee / asylum claimants who attempt access to our respective refugee determination systems. This will help each country identify potential security and criminality threats and expose "forum shoppers" who seek asylum in both systems. This exchange of information will be in accordance with the privacy laws of both countries.

#5 MANAGING OF REFUGEE/ASYLUM CLAIMS

On December 5, 2002, Canada and the United States signed a Safe Third Country Agreement that, once implemented, will allow both countries to more efficiently manage the flow of individuals seeking to access their respective refugee / asylum systems. The Agreement will cover refugee / asylum claims made at land border ports of entry.

The Agreement is bound by the principle of family re-unification in determining whether an individual would be exempted from the requirement of making a claim in the first country of arrival. The Agreement also clearly identifies that individuals making a claim in either country would not be removed to another country until a determination of that person's claim has been made. The Safe Third Country Agreement is very important to both Canada and the United States as the two countries rationalize asylum procedures and seek to increase our security.

The United States is working diligently to bring the Agreement into force by means of implementing regulations issued by both the Department of Justice and the Department of Homeland Security. Most of the work on the U.S. regulations has been completed. The Department of Homeland Security will now focus its efforts to ensure, with the assistance of the Department of Justice, that proposed rules to implement the Agreement are issued in the near future. Canada prepublished its Safe Third Country regulations on October 26, 2002. Upon finalization of the regulations and standard operating procedures for both countries, the Safe Third Country Agreement will be implemented.

#6 VISA POLICY COORDINATION

Canada and the United States have agreed to enhance cooperation between our respective Embassies overseas, which will allow our officials to more routinely and more efficiently share information on intelligence and specific data concerning high-risk individuals. The two countries consult one another during the process of reviewing a third country for the purpose of either a visa imposition or visa exemption.

Canada and the United States share information to identify countries that pose security concerns with a view toward further cooperation on visa policy. In February 2002, the United States announced that nationals of Argentina would require a visa to travel to the United States. In September 2002, Canada announced that citizens of Saudi Arabia and Malaysia would require visas to travel to Canada. Canada and the United States currently have common visa policies for 144 countries.

#7 AIR PRECLEARANCE

In support of the preclearance program, the two countries signed *"The Agreement on Air Transport Preclearance between the Government of Canada and the Government of the United States of America"* on January 18, 2001. It allows for the expansion of in-transit preclearance to other Canadian airports and also has provisions that modernize the regime governing preclearance.

Following a formal exchange of diplomatic notes on May 2, 2003, at a ceremony attended by Ministers Graham and Collette and U.S. Ambassador Cellucci, the Canada-U.S. *Agreement on Air Transport Preclearance* was brought into force. The Agreement replaces the 1974 *Air Transport Agreement* and clearly identifies the authorities of U.S. Preclearance officers.

#8 ADVANCE PASSENGER INFORMATION / PASSENGER NAME RECORD

Canada implemented its Passenger Information system (PAXIS) at Canadian airports on October 8, 2002 to collect Advance Passenger Information and began implementation of its Passenger Name Record program in July 2003.

Canada and the United States have agreed to share Advance Passenger Information and Passenger Name Records (API/PNR) on high-risk travelers destined to either country using a jointly developed risk scoring mechanism. The automated Canada-U.S. API/PNR data-sharing program will be in place by Spring 2004.

#9 JOINT PASSENGER ANALYSIS UNITS

Canada and the United States have agreed to a co-location of customs and immigration officers in Joint Passenger Analysis Units (JPAU) to more intensively cooperate in identifying potentially high-risk travelers. A six month pilot was run at Vancouver International Airport and Miami International Airport to examine the feasibility of the concept. A decision was made at the Shared Border Accord meeting in August to proceed with the JPAU until the end of November 2003 when the National Centre of Expertise (NCE) is established in Ottawa and the National Targeting Center (NTC) is created in Washington, D.C. The NCE and the NCT will facilitate the exchange of API/PNR information on high-risk individuals between Canada and the United States. Three separate organizations participated: U.S. Department of Homeland Security Bureau of Customs and Border Protection (CBP); Citizenship and Immigration Canada (CIC) and Canada Customs and Revenue Agency (CCRA).

#10 MARITIME SECURITY AND FERRY TERMINALS

Canada and the United States have completed a marine benchmark study to enhance Canadian and U.S. border security and contraband interception. A status report on each of the recommendations, including next steps, is currently being compiled.

#11 COMPATIBLE IMMIGRATION DATABASES

Canada and the United States have begun discussions on collaborative enterprise architecture and database interfaces to facilitate regular information exchange. The importance of this issue is reflected in the Canada-U.S. commitment to enhance the interoperability of processes, systems and communications of Canadian and United States border and law enforcement agencies.

#12 IMMIGRATION OFFICERS OVERSEAS

Canada and the United States have deployed immigration officers overseas to deal with document fraud, liaison with airlines and local authorities, and work with other countries to ensure intelligence liaison and to interrupt the flow of illegal migrants to North America.

In the past year, Canada has deployed additional officers for this purpose, bringing the total number of staff engaged in these areas to more than 86. In 2002 and 2003, the United States will deploy 85 new temporary officials with 40 new officials being deployed permanently.

Working together, Canada and the United States will continue to strengthen their capacity to ensure the integrity of their immigration programs, to combat document fraud, and to interdict irregular migrants.

#13 INTERNATIONAL COOPERATION

Canada and the United States continue to work together to provide technical assistance to developing countries to deal with threats to our shared security. Assistance includes improving document integrity, providing expertise on border controls, and joint training. Joint interdiction exercises and joint training programs assist countries in combating document fraud and irregular migration. In addition, Canada and the United States have conducted joint presentations to our partners to promote internationally our border management strategy.

#14 HARMONIZED COMMERCIAL PROCESSING

Canada and the United States have established a joint program for low-risk companies that will expedite the movement of low-risk shipments in either direction across the border. The program, known as Free and Secure Trade (FAST), is currently available at the following high-volume border crossings:

- Pacific Highway, British Columbia / Blaine, Washington (December 31, 2002)
- Sarnia, Ontario / Port Huron, Michigan (December 16, 2002)
- Windsor, Ontario / Detroit, Michigan (December 16, 2002)
- Fort Erie, Ontario / Buffalo, New York (December 16, 2002)
- Queenston, Ontario / Lewiston, New York (December 31, 2002)
- Lacolle, Quebec / Champlain, New York (December 31, 2002)

FAST will be available at the following locations by December 2003:

- Stanstead (55), Quebec/Derby Line, Vermont
- St. Armand/Philipsburg, Quebec/Highgate Springs, Vermont
- Lansdowne, Ontario/Alexandria Bay, New York
- Emerson, Manitoba/Pembina, North Dakota
- North Portal, Saskatchewan/Portal, North Dakota
- Coutts, Alberta/Sweetgrass, Montana

Plans are being developed to have all 22 major commercial crossings FAST capable by the end of 2004. A new enrollment center at Fort Erie, Ontario replaced the Buffalo, New York center in July 2003.

In addition, FAST Enrollment Centers will be in place in the following locations by December 2003:

- Woodstock, New Brunswick/Houlton, Maine
- Stanstead (55), Quebec / Derby Line, Vermont
- Emerson, Manitoba / Pembina, North Dakota
- North Portal, Saskatchewan / Portal, North Dakota
- Coutts, Alberta / Sweet Grass, Montana

Canada and the United States are working to align other customs processes for all commercial shipments by 2005.

In April 2003, Canada announced its intention to adopt the 24-hour advance notification rule for commercial goods crossing the border used by the United States as part of their Container Security Initiative. The Canadian 24 hour rule will be implemented in April 2004. Efforts are currently underway to harmonize our respective 24-hour rules to the greatest extent possible.

In July 2003, Canada and the U.S. announced proposed harmonized rules for advance electronic cargo reporting for rail, air and highway mode.

#15 CLEARANCE AWAY FROM THE BORDER

Canada and the United States are developing approaches to move customs and immigration inspection activities away from the border to improve security and relieve congestion where possible.

Canadian and U.S. Customs Agencies continue working cooperatively with industry partners on the goal of improving security and facilitating the flow of trade goods by rail. Customs Agencies signed a Declaration of Principles with Canadian National Railway (CNR) and Canadian Pacific Railways (CPR) on April 2, 2003 that confirms roles and responsibilities. A Protocol Document between the CCRA and CBP, which outlines the conditions under which the CCRA will undertake examinations on behalf of CBP, is expected to be signed in November 2003.

CCRA continues to work with industry partners CNR and CPR to use detection equipment such as rail VACIS, and to implement a risk management approach for targeting and screening rail shipments. Standard Operating Procedures for the VACIS and the "exceptional circumstances" terms and conditions at Windsor and Sarnia, Ontario, are nearing completion for discussion with CNR and CPR.

#16 JOINT FACILITIES

Canada and the United States have established joint facilities at the following locations and more sites are under consideration:

- Noyan, P.Q - Alburg Springs, Vermont;
- Climax, Saskatchewan – Turner, Montana;
- Carson, BC – Danville, Washington State; and,
- Little Gold Creek, Yukon – Poker Creek, Alaska.
- Coutts, Alberta – Sweetgrass, Montana (Fall, 2003)
- Osoyoos, British Columbia – Oroville, Washington (Fall, 2003)

#17 CUSTOMS DATA

Canadian and U.S. Customs agencies extended the scope of information they share through the signing of the Cooperation Arrangement for the Exchange of Information for the Purposes of Inquiries Related to Customs Fraud in December 2001. This cooperation was further extended on April 23, 2003 with agreement between our customs agencies on the principles to be included in the exchange of information related to NAFTA rules of origin. This new agreement provides for the exchange of audit plans, audit reports, the results of advance rulings, and origin determinations and re-determinations.

Additional efforts are underway to streamline the process and identify further opportunities for exchanging information to address security and enforcement needs.

#18 CONTAINER TARGETING AT SEAPORTS

Through an innovative solution to ensure that containers can be examined where they first arrive, regardless of their ultimate destination in North America, Canadian and U.S. Customs agencies have established joint targeting teams at five marine ports.

In the ports of Vancouver, Montreal and Halifax, U.S. officials aid Canadian customs officials in identifying which containers to examine. In the ports of Newark and Seattle-Tacoma, Canadian officials provide the same assistance to U.S. Customs agents.

The work of these teams will be facilitated through the electronic transmission of advance manifest data for incoming ships and the containers they carry. In March 2003, CCRA and U.S. Customs and Border Protection implemented a system whereby automated in-transit cargo information is shared between the two agencies and risk assessment is performed electronically using the U.S. Automated Targeting System in Halifax, Montreal, Vancouver, Newark and Seattle.

#19 INFRASTRUCTURE IMPROVEMENTS

Both governments have committed funds for border infrastructure. The Government of Canada has provided \$665 million under the new Border Infrastructure Fund and the Strategic Highway Infrastructure Program for physical and technological improvements at key border crossings. The *United States Transportation Efficiency Act for the 21st Century* also funds transportation projects along U.S. corridors and at border points along the Canada-United States border.

New funding will support FAST and NEXUS and facilitate the secure and efficient cross-border movement of people and goods, for example through dedicated lanes for commercial and passenger vehicles at the border between the British Columbia Lower Mainland and Washington state. A dedicated FAST/NEXUS lane at Bluewater Bridge at the Sarnia-Port Huron trade corridor is expected to open early in the new year.

Canada and the United States are working together at key border crossings to model traffic flows through computer simulations. The two countries established a bi-national border infrastructure/modeling group to analyze border congestion on an ongoing basis. Border modeling will ensure that border infrastructure investments are put to the most effective use.

#20 INTELLIGENT TRANSPORTATION SYSTEMS

Technology is being leveraged wherever possible towards the free and secure movement of people and goods across our borders. From biometric readers, through automated targeting systems, to modeling traffic flows at the border, technology serves as an important means for implementing the most efficient risk management approach to border security.

#21 CRITICAL INFRASTRUCTURE PROTECTION

Canada and the United States have agreed to a Joint Framework for Canada – U.S. Cooperation on Critical Infrastructure Protection (CIP) and have established a Bi-national Steering Committee to assess threats to our shared critical infrastructure and ensure ongoing, high-level focus on the issue by both governments. The Steering Committee meets bi-annually bringing together Canadian and U.S. CIP representatives.

In August 2002, the Steering Committee met for the first time and established 8 working groups to address both sectoral and horizontal issues. The working groups are in the areas of energy, defence, telecommunications, transportation, mapping, interdependencies, R&D, and threats, warnings and information-sharing.

An agreement to establish food & agriculture and cyber security working groups was achieved at the March 2003 Steering Committee meeting.

An example of the work being done is the joint Canada-U.S. vulnerability assessment of shared critical energy infrastructure systems such as dams, electrical transmission lines and oil and gas pipelines. The Energy and Dams Working Group is conducting this work. The pilot project will be completed by March 2004 and will increase our knowledge of the infrastructure and how to enhance its protection.

#22 AVIATION SECURITY

Canada and the United States have agreed to recognize each other's national standards for security in airports and on board flights, and to coordinate measures that are essential to protecting our citizens. With the creation of the new federal transportation security agencies and the augmentation of existing departments, the two governments have strengthened their respective capacities to set regulations, review standards, and monitor and inspect all air security services. The two governments have also assumed direct responsibility for security standards, and will work to identify best practices with a view to improving them.

#23 INTEGRATED BORDER AND MARINE ENFORCEMENT TEAMS

The Integrated Border Enforcement Team (IBET) is a multi-agency law enforcement team that emphasizes a harmonized approach to Canadian and United States efforts to target cross-border criminal activity. Two new Integrated Border Enforcement Teams (IBETs) were recently opened in the Superior and Okanagan regions. IBETs are now operational in all 14 IBET regions along the border. These teams will continue to enhance integrity and security at our shared border by identifying, investigating and interdicting persons and organizations that pose a threat to national security or are engaged in other organized criminal activity.

The two countries have also begun comprehensive training programs for IBET personnel to enhance their awareness and understanding of one another's laws and regulations. Four joint training sessions have been held with additional sessions planned in the near future. These initial training sessions will form the foundation of a long-term integrated training plan.

#24 JOINT ENFORCEMENT COORDINATION

The latest Canada-United States Cross-Border Crime Forum (CBCF) took place in May 2003 in White Sulphur Springs, West Virginia. At the CBCF, the Solicitor General of Canada, Wayne Easter, and U.S. Attorney General, John Ashcroft, made a number of announcements including:

- A joint Canada-U.S. 5-Year Report on Mass-Marketing Fraud, which will include a Joint Action Plan to continue combating cross-border fraud;
- Two joint public advisories on Identity Theft, one for consumers and one for retail business;
- A new Integrated Border Enforcement Team (IBET) for the Prairie Region; and
- An agreement to update the U.S.-Canada border drug threat assessment.

Created in 1997, the CBCF includes a broad spectrum of representation from both countries including law enforcement agencies, prosecuting authorities, Customs, Immigration and Intelligence agencies.

Planning is currently underway for the next Cross-Border Crime Forum, which will be hosted by Canada in late Spring 2004.

#25 INTEGRATED INTELLIGENCE

The Government of Canada has established Integrated National Security Enforcement Teams (INSETs), which will include representatives from federal enforcement and intelligence agencies, as well as international law enforcement partners such as the U.S., on a case-by-case basis. Canada has also been participating since April 9, 2002, in the U.S. Foreign Terrorist Tracking Task Force (FTTTF) in Washington, to detect, interdict, and remove foreign terrorist threats.

#26 FINGERPRINTS

With the signing of the Memorandum of Cooperation on December 17, 2002, the RCMP and the FBI are implementing an electronic system for the exchange of criminal records information, including fingerprints, using a standard communication interface. The U.S. and Canada have shared fingerprint and criminal record information for over 50 years. The new electronic system will increase the efficiency of this longstanding practice.

#27 REMOVAL OF DEPORTEES

Canada and the United States are continuing cooperation in removing high risk individuals to source countries. To date, Canada and the U.S. have conducted eight joint operations resulting in 486 removals.

#28 COUNTER-TERRORISM LEGISLATION

President Bush signed anti-terrorism legislation on October 26, 2001. In Canada, the *Anti-Terrorism Act* came into force on December 24, 2001.

#29 FREEZING OF TERRORIST ASSETS

Canada and the United States have a working process in place to share advance information on individuals and organizations that may be designated as terrorist in order to coordinate the freezing of their assets. To date, Canada and the United States have designated or listed over 430 individuals and organizations.

#30 JOINT TRAINING AND EXERCISES

Canada and the U.S. have committed to conducting more frequent cross-border counter-terrorism training activities. In keeping with this commitment, Canada was invited to participate in TOPOFF2, a U.S.-led counter-terrorism exercise designed to improve domestic and cross-border preparedness for potential terrorist attacks using weapons of mass destruction. A series of counter-terrorism training activities culminated in the full-scale exercise in May, 2003. Canadian participation includes 17 federal departments and agencies with counter-terrorism and consequence management roles as well as the Province of B.C. TOPOFF2 is expected to provide the foundation for further joint training activities.

#31 BIOSECURITY

A bi-national working group is developing an action plan for collaboration on biosecurity issues. The work will reinforce and modernize external borders against shared risks to the food supply, to human, plant and animal health and to the environment on which these depend. The working group is examining how to synchronize enforcement procedures for managing risks at the shared land border, and to enhance cooperation in domestic biosecurity management. Ultimately, these efforts are intended to identify low-risk food imports and expedite their movement. An action plan for biosecurity collaboration will be completed by the end of October 2003.

#32 SCIENCE AND TECHNOLOGY COOPERATION

Canada and the United States have today reached an agreement in principle on the text of the bilateral agreement on science and technology cooperation in order to address gaps in existing arrangements between the two countries. It will enable any Canadian federal government agency to engage in co-operative research and development with any U.S. federal agency in the area of critical infrastructure protection and border security.

A Canada – U.S. research and development program of work is also being developed, and is expected by mid-October. The agreement in principle reached today will facilitate the implementation of this joint program of work.



Session Number 405
**How US Border Security and
Immigration Measures Are Affecting
International Trade**

Félix Todd Pinero

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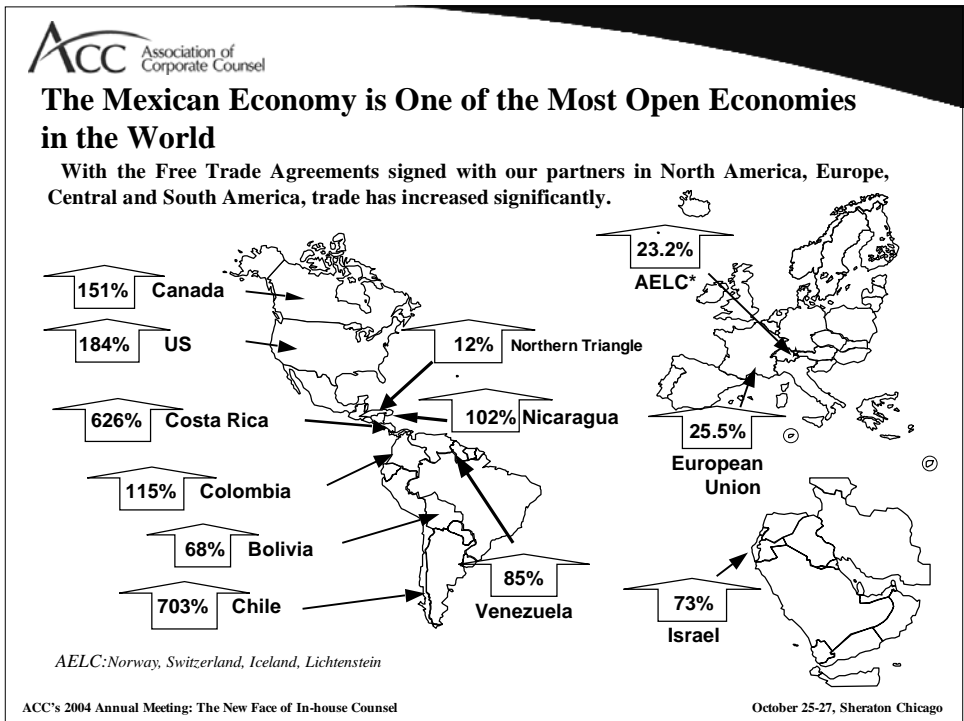
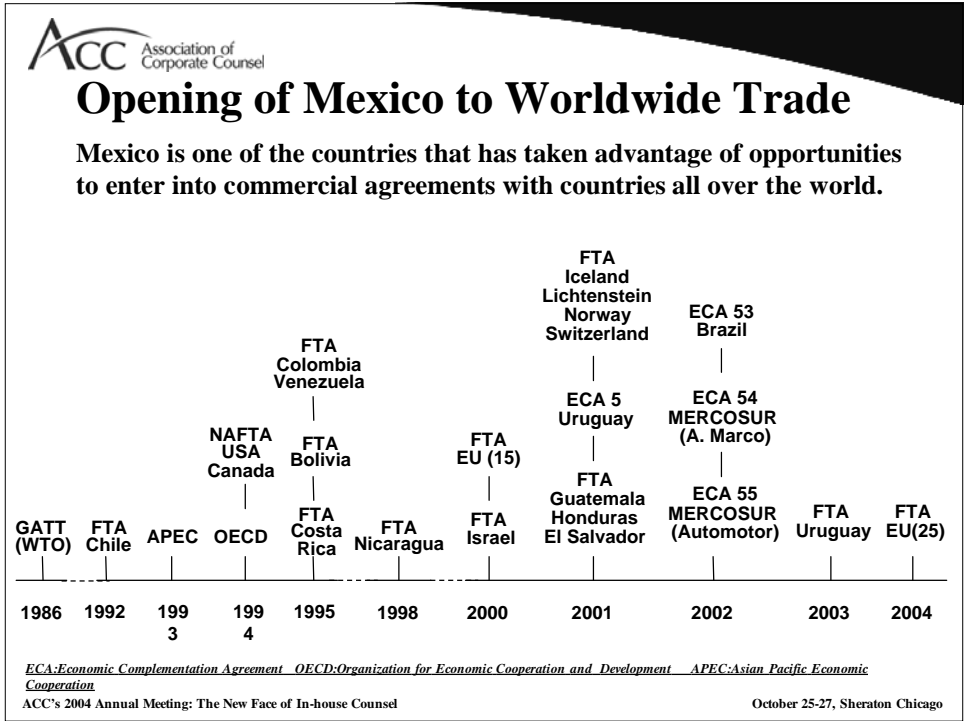


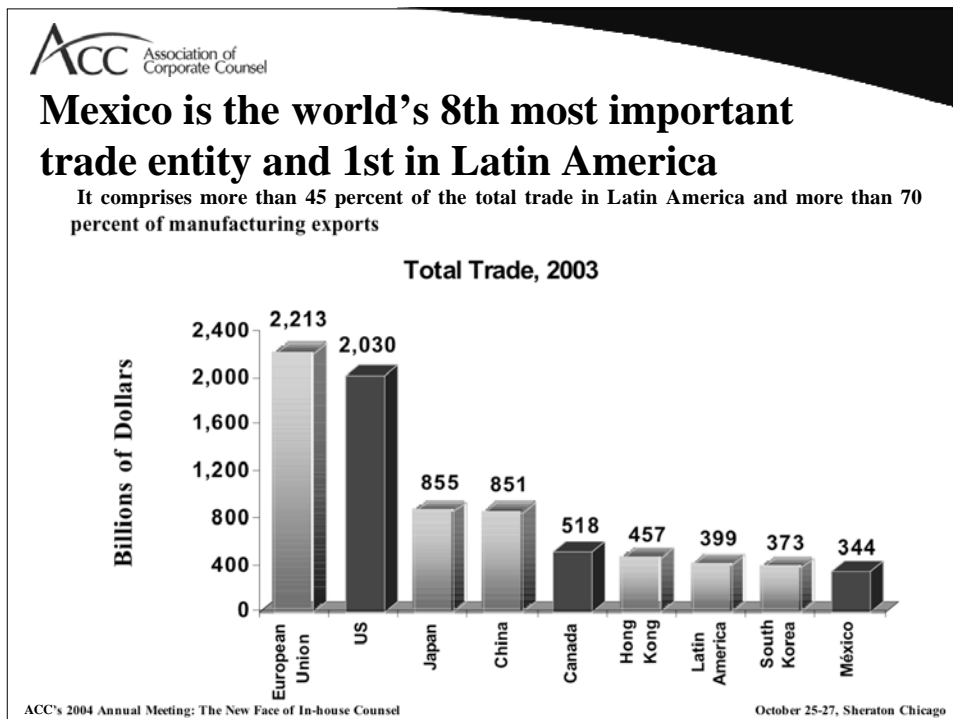
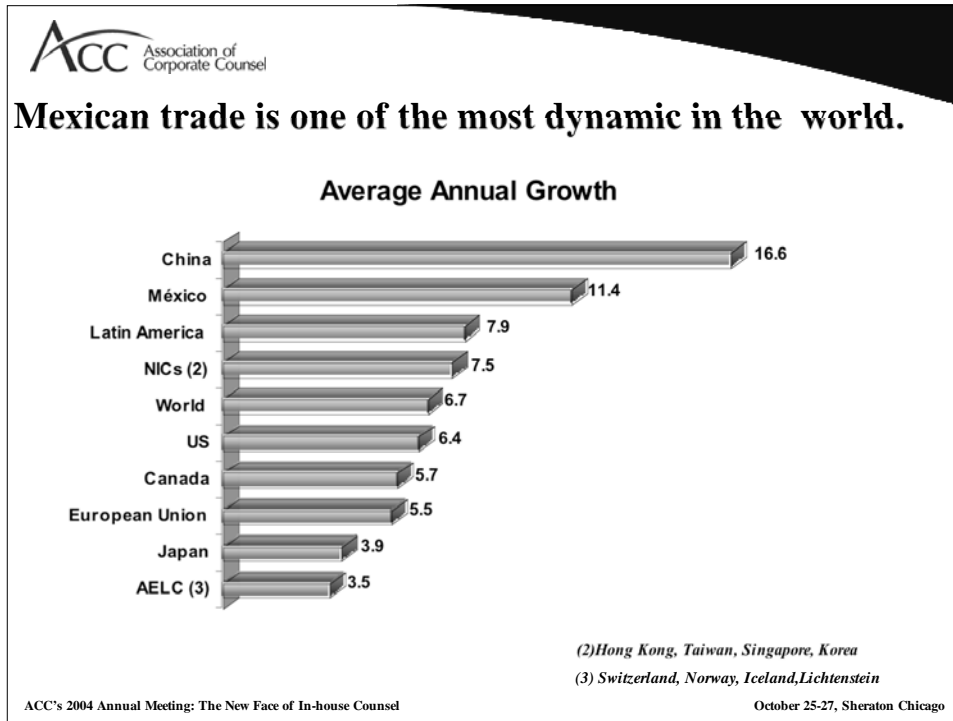
Introduction

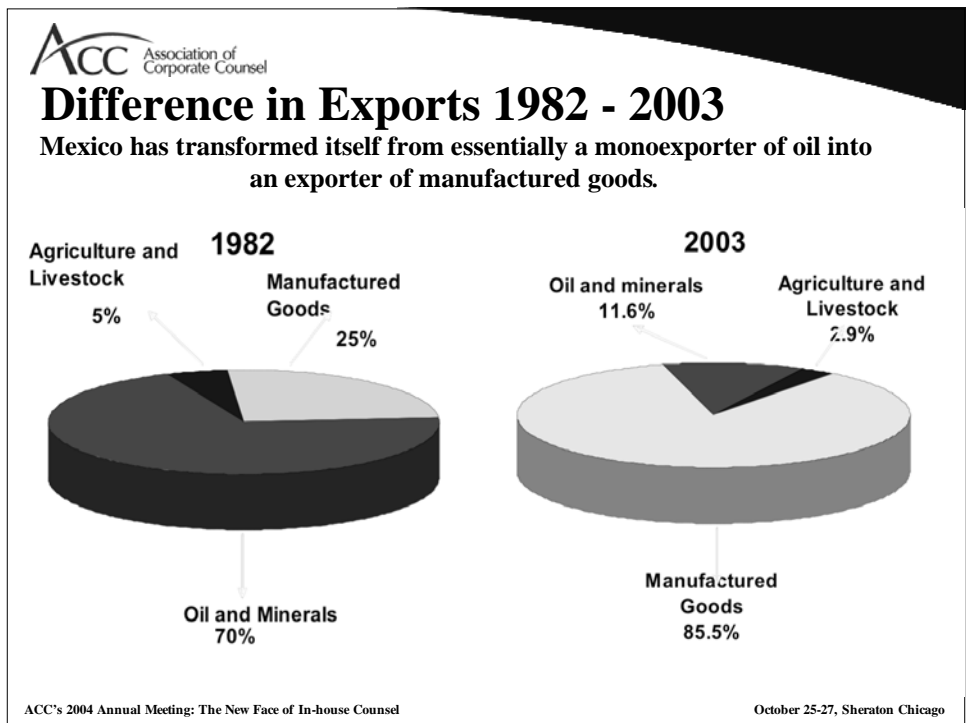
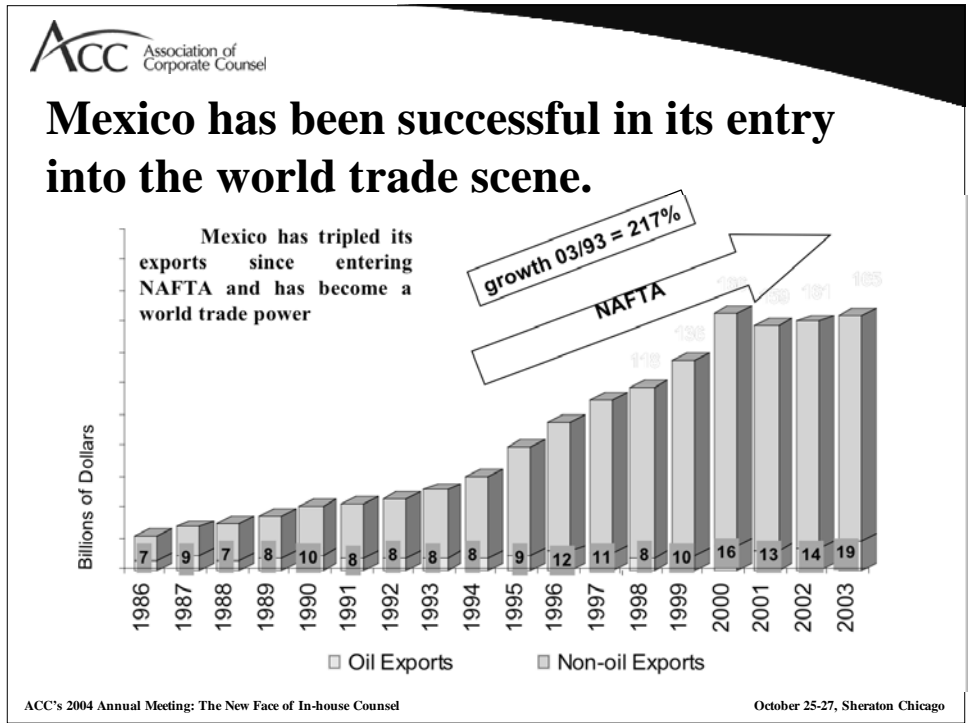
- Prior to September 11 the United States, Canada and Mexico were making progress toward integrating the region into a powerful free trade zone.
- The culmination of approximately 2 years of negotiations, NAFTA was an effort to raise the standard of living in Mexico, while reducing manufacturing costs in the US and providing new markets for raw materials from Canada.

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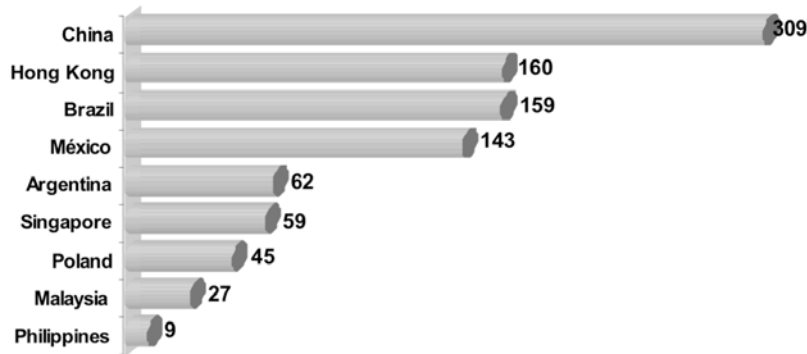




Mexico is 4th in Reception of Direct Foreign Investment

China, Hong Kong, Brazil y México represent 59 percent of the Direct Foreign Investment among the developing countries.

Principal Recipients of Direct Foreign Investment
1990-2003



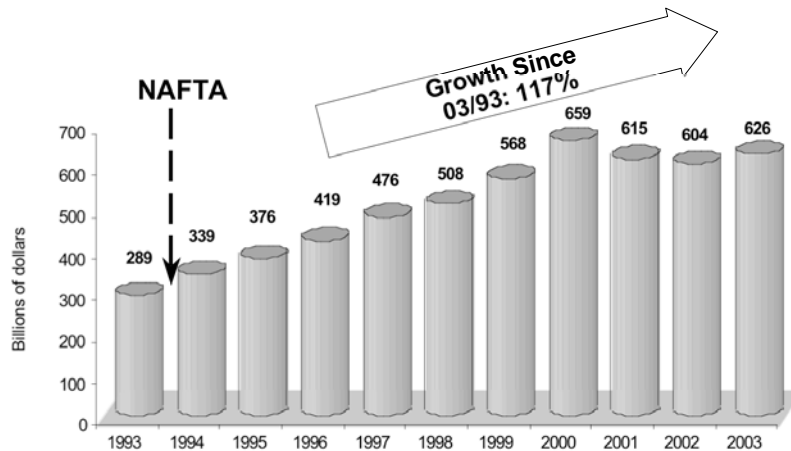
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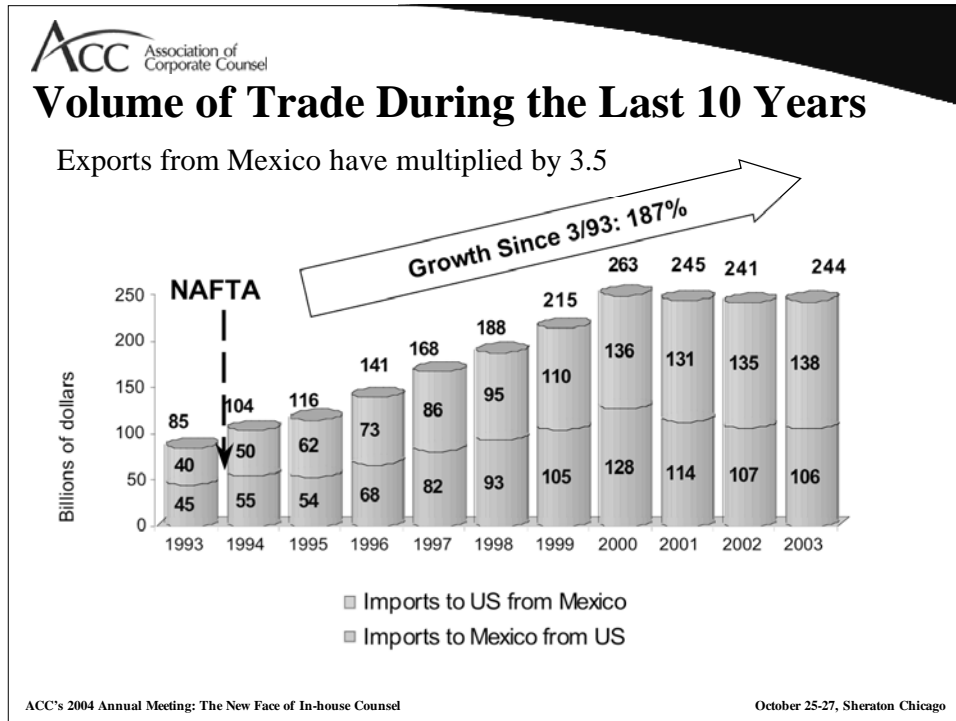
Volume of trade during the last 10 years

Trade among the NAFTA partners grew at an average annual rate of 8.1%



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Unfulfilled Expectations of NAFTA's Promise

- Failure on the part of US and Mexico to reach an agreement on anticipated immigration reform
- Increased competition for maquila industry especially from China and other Far East countries
- Reduction in the source of Direct Foreign Investment in favor of other countries, particularly in Asia and South America

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Effect of September 11 on Border

- With the terrorist attacks of 9/11, the focus switched from integration of the US, Canada and Mexico to a overemphasis on the part of the US in increasing the fortification of the borders.
- This resulted in a putting aside of the intention to integrate the NAFTA region in favor of the creation of a Fortress America, a situation that continues today.

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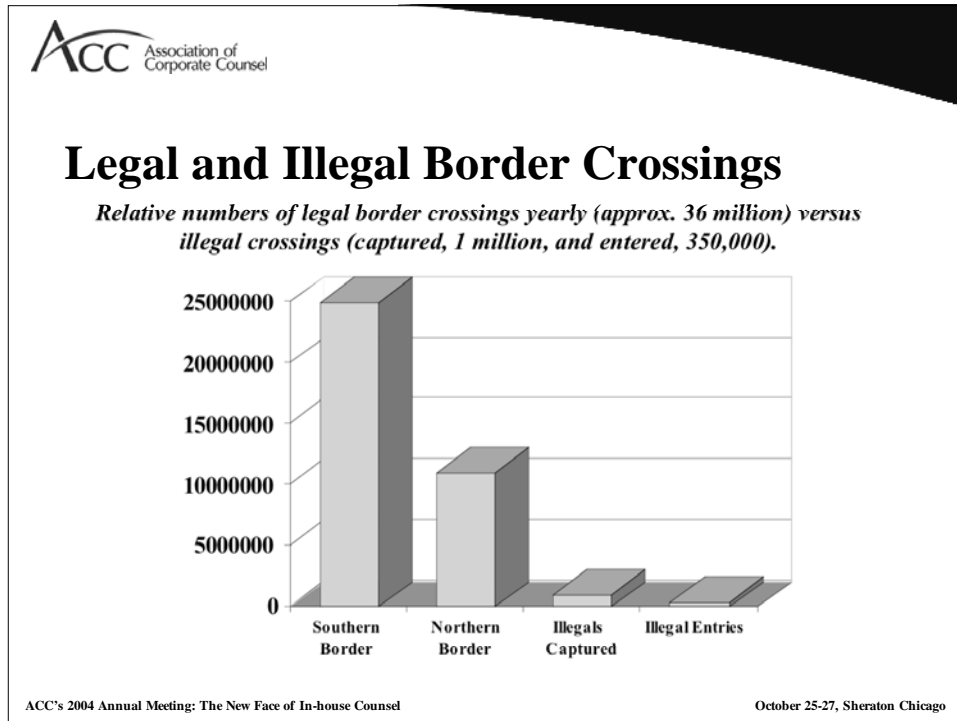


Migration

- Both the northern and southern borders of the US need to be secured in such a way that does not impede the flow of people and goods that form an integral part of economic activity in the region.
- An estimated 11 million people cross the northern border each year and 25 million cross the southern frontier. The number of illegals caught each year is about a million. Many people are caught more than once.

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Conditions That Contribute to Increased Migration

- The richest NAFTA country subsidizes its own farmers to the detriment of the agriculture industry in other countries, particularly Mexico.
- This means more demand for agricultural workers in the US and less employment for the same workers in Mexico.
- US policy on agricultural products aggravates the problem of migration to the US.

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Common Agriculture Policy

- One of the ways to resolve the immigration issue is to adopt an integral agriculture policy for the NAFTA similar to the arrangement that exists in the European Union.
- This would convert Mexico into a strategic supplier of fruit and vegetables in the NAFTA region, taking advantage of its geography and climate, increasing the employment of Mexican farmers and allowing the US to concentrate primarily on the production of grains, which is less labor intensive.

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Emotional Response

- Sentiments toward a fortification of the US border as a security solution in the past have been fueled by the emotional reaction of US citizens to uncontrolled immigration.
- One of the reasons for this demand for increased border security is that many of the immigrants refuse to learn English and adopt the values of the United States, causing discomfort and suspicion among the US citizens.
- This explains continued US public support for closing the borders.

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A Possible Solution

- As part of the NAFTA security integration process, one solution would be the creation of a natural regional alliance between the 6 northern states of Mexico and the 4 border states of the US.
- This would effectively minimize the importance of the border in favor of a region-wide secure zone which would feature shared responsibility for security, simplifying the movement of goods and people within the zone.

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Natural Border States Integration



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Common Values of the Border States

- This is best explained as the historic tendencies of citizens of this region toward self-reliance and away from dependence on the federal government.
- It is not unreasonable to think that these people would unite around a common cause: protecting their land against foreign invaders.
- The people of the border states share the same attitude towards life in an environmentally hostile region.

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Security

Some problems may arise regarding the integration of security between the 3 countries.

- Canada's liberal migratory policies
- Mexico's sovereignty concerns with regards to the presence of the US military in Mexico
- US lack of confidence in existing Mexican political and governmental authorities

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The Need for Integration

- Since September 11, it is clear that Canada, Mexico and the US have to share information about intelligence, control of migratory movements, customs issues, and information about airports and aircraft in the area.
- It is important to create a North American security perimeter harmonizing immigration policies to resolve threats in the future.

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Conflict Between Trade and Security

- The US Government has accepted the obligation of balancing security needs with economic concerns.
- US officials realize that increased security harms healthy trade between the 3 countries and this is one of the reasons for the increased effort to solve this dilemma with high technology.

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High Tech Solutions Being Implemented

- Smart Border Declaration: 30 point plan for securing the US-Canada border including biometric identifiers and aviation security standards
- US-Mexico Smart Border Plan: 22 point plan similar to the Canada SmartBorder Declaration
- National Security Entry-Exit Registration: INS plan includes fingerprinting upon entry, registration of those who stay more than 30 days, and exit controls to identify those who overstay visas

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High Tech Solutions Being Implemented

- Customs-Trade Partnership Against Terrorism (C-TPAT): Voluntary cooperation between industry and customs to expedite shipments
- Container Security Initiative (CSI): Identifies high-risk containers, pre-screens containers, implementation of 'smart and secure' containers to speed flow of goods
- US Visit (United States Visitor and Immigration Status Indicator Technology): Smart cards with digital photographs, retina scans and fingerprints issued in the country of origin at the time of visa application

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High Tech Solutions Being Implemented

- FAST (Free and Secure Trade): Program which equips trucks with RFID transponders that allow pre-screened carriers to pass the border without stopping
- Video Early Warning: Defense Department-developed camera and computer system which analyzes data against specific rules and alerts authorities when the border is breached
- E-Z Pass: Use of RFID (Radio Frequency ID) devices which allow frequent border crossers to zip past toll booths, avoiding long lines

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Security Needs in the NAFTA Region

- Ignoring Mexico and Canada leaves a large hole in the US security perimeter.
- The US is trying to stop terrorists at US ports of entry without concern for the security for the rest of the region.
- It is important to ensure that increased border security does not impede the cross border movement of goods in the region

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The Correct Approach

- As demonstrated by the execution of foreign nationals by extremists and the bombings in Spain, terrorists are not only interested in attacking the US, but all westerners and friends of the United States.
- Therefore, there is no assurance that once the US is secure against terrorist attack that the terrorists won't turn their attention to the other NAFTA countries where the US has vital economic interests such as oil, manufacturing, timber, etc.

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The Correct Approach

- The USA, Canada and Mexico share common religious values, cultural heritage and economic success that make all 3 nations targets of potential terrorist attack.
- The entire North American continent must develop a unified strategy to ensure that terrorists will not achieve their goals of continued assaults on western civilization

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Ineffective Approach to Solving the Problem of Security

- A continued emphasis on stopping illegal migration
- Waste of resources capturing migrant workers instead developing a NAFTA region free of terrorists
- Loss of focus on increasing the integration process in the NAFTA region in favor of an approach to security that will not stop terrorism in North America

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Conclusion

- Even though Canada, Mexico and the US still have a lot of work to do, it is important to promote the growing interdependence that makes it essential the 3 countries move forward together
- Only a combination of domestic reforms and cross border cooperation on all issues can ensure that national security and economic integration advance together.

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Conclusion

- Since the US cannot set up an impenetrable fence along its borders, it needs Mexico and Canada to be part of its security strategy.
- Current security measures are based on an assumption that the security needs of the US are somehow different from those of Mexico and Canada, instead of using the idea of NAFTA to integrate the security between the 3 countries.

ACCA PROGRAM 405

HOW US BORDER SECURITY AND IMMIGRATION
MEASURES ARE AFFECTING INTERNATIONAL TRADE
(PRESENTED IN COOPERATION WITH THE
ASOCIACION
NACIONAL DE ABOGADOS DE EMPRESA
DE MEXICO AND THE CANADIAN CORPORATE
COUNSEL ASSOCIATION)

MATERIALS SUBMITTED BY
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AUGUST, 2004

Following the September 11 attacks, the federal government focused its energies on providing new measures to protect the nation from future terrorist attacks.

The attacks led to a series of government actions aimed at countering the new threat of large-scale terrorism, including the proposed creation of a new Cabinet-level Department of Homeland Security.

Over the past year, Congress and federal agencies have taken other key steps aimed at strengthening security within the nation's borders.

The Patriot Act

Six weeks after the attacks, President Bush signed into law a measure that granted federal authorities expanded powers for surveillance and intelligence gathering. Both houses of Congress had passed the bill by wide margins.

The law, dubbed the U.S.A. Patriot Act, called for federal authorities to use more foreign intelligence information, gave authorities expanded wiretapping authority, and allowed intelligence agencies access to wiretaps and to secret grand jury testimony.

It also created new criminal charges and expanded penalties related to terrorism. The law ran afoul of civil liberties advocates, who said its provisions would harm the rights of American citizens and immigrants.

FBI reorganization

Intelligence-gathering agencies came under sharp criticism after September 11 for missing signs that, collectively, could have pointed to an imminent terrorist attack. Post-9/11 examination of the FBI found an agency plagued by turf battles and challenged to share information internally and externally. Especially troubling were two incidents involving field agents.

Coleen Rowley, an agent in the Minneapolis, Minnesota, office, wrote a memo which said FBI headquarters stymied her efforts in summer 2001 to investigate Zacarias Moussaoui, who was eventually charged as a conspirator in the September 11 attacks. And in May, a memo from an agent in the bureau's Phoenix, Arizona, office came to light. The memo, written in July 2001 but never acted upon, urged FBI headquarters to investigate a group of Middle Eastern men training at U.S. flight schools.

Stung by the criticism, the FBI in late May announced a reorganization that would focus more of the bureau's assets on fighting terrorism.

The plan called for the hiring of hundreds of new agents, many of them in the anti-terrorism field; the transfer of more than 500 agents from criminal investigations to terrorism prevention; a new terrorism squad within the FBI; and more cooperation with the CIA in intelligence gathering.

In announcing the reorganization, FBI Director Robert Mueller said, "We need a different approach that puts prevention above all else."

Not everyone has embraced the change. Some city leaders fear moving agents into terrorism prevention will leave other law enforcement efforts wanting.

"That's robbing Peter to pay Paul. You're going to sacrifice street security in order to provide homeland security," said John DiStefano, Mayor of New Haven, Connecticut, and first vice president of the National League of Cities.

"What you're telling us is, you're backing out of some of the business of what you've traditionally done, of law enforcement on our streets," he said. "And frankly, for many of us, we have more people who experience the violence of drug terrorists than Taliban terrorists or al Qaeda terrorists."

The US Congress and the Bioterrorism

While the specter of terror attacks after September 11 involving anthrax, Ebola, plague and other deadly infectious diseases haunts public health officials today, a nearly eradicated disease from the past may reveal the most about the future of bioterrorism.

Since the 2001 anthrax attacks, the federal government has begun to restrict the possession and transfer of potential bioterror agents - known as "select agents" - to keep them out of the hands of terrorists.

New federal laws and regulations require research institutions and clinical and diagnostic laboratories to register and closely inventory more than 60 select agents. Those institutions must keep the agents locked up and restrict access to people who have cleared government background checks. Scientists also must prove a "bona fide research purpose" to work with a select agent..

But there may be less agreement in the scientific community about whether any type of restrictions on research related to bioterrorism might be appropriate. In a report released last October, the National Research Council of the National Academy of Sciences recommended that HHS review certain types of research reports before they are published, but largely left decisions to publish experiments involving biological agents up to journal publishers.

But the most important measure taken by the U.S Congress against bioterrorism is the "Public Health Security and Bioterrorism Preparedness and Response Act" of 2002. Commonly known as The Bioterrorism Response Act, the law requires the United States Food and Drug Administration (FDA) to enact and enforce regulations to protect the food supply in the event of a terrorist attack.

Every food-processing company in the U.S., excluding farms and restaurants, is required to follow these regulations, which ensure that food companies can account for every link in their supply chain. The Bioterrorism Response Act also impacts international organizations that import or export food or other biological products to the United States.

Wonderware recognizes that manufacturers will likely want assistance in providing the FDA with the information demanded by The Bioterrorism Response Act. Therefore, we have dedicated our resources to providing eCompliance solutions that are:

- Affordable
- Secure
- Paperless
- Easy to use
- Quick to deploy
-

The Wonderware Strategic Integration Group can assist food-processing companies to comply with the regulations associated with The Bioterrorism Response Act by explaining the relevance of new terms like IPS and ISR and giving them the tools they need to provide precisely the right information within several hours after an investigation into a bioterrorist attack begins.

The FDA and The Bioterrorism Response Act

In the event of a bioterrorist attack, the FDA must be able to connect all the links in the supply chain – from the source of a biological threat to its possible destinations in our food supply. This will affect literally thousands of food processing operations of all sizes. Based on the comments submitted to the FDA, many are deeply concerned about their ability to manage and sort through two years' worth of paper records on sources and destinations of all their raw materials and finished products.

The Historical Perspective

On December 4, 2001, only weeks after the coordinated attacks on September 11th, U.S. Senator Bill Frist of Tennessee introduced Senate Bill S. 1765, described as "a bill to improve the ability of the United States to prepare for and respond to a biological threat or attack." On December 11, 2001, Representative Billy Tauzin of Louisiana introduced its companion bill to the U.S. House of Representatives, H.R. 3448, with its description broadened slightly as "a bill to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies." That Winter, the Bills were passed in their respective chambers, merged and reconciled back into a single piece of legislation under H.R. 3448. That Act was then signed into law by President George W. Bush on June 12, 2002 as the:

**Public Health Security
and
Bioterrorism Preparedness and Response Act of 2002**

Section 306 of that Act, titled Establishment and Maintenance of Records, required the Secretary of Health and Human Services (the FDA, in other words) to:

- Establish requirements for the establishment and maintenance of records needed to determine the immediate previous sources (IPS) and the immediate subsequent recipients (ISR) of food. The record-keeping requirements will be for a minimum of two years for non-perishable items, and a minimum of one year for perishables.
- Consider the size of a business in developing the regulations. The regulations will be phased in over approximately 18 months, with larger facilities required to comply earliest.
- Take appropriate measures to ensure protection from disclosure of sensitive information. Information such as recipes, financial data, personnel data, research data, and sales data (other than shipment data regarding sales) are specifically excluded. This is not about intruding into anyone's intellectual property. It's about minimizing the time it takes to respond to what could be a national emergency.

Bioterrorism Act Terrorizes Mexican Food Industry:

According to a December 16 report from the Foreign Agricultural Service of the U.S. Department of Agriculture, Mexico's trepidation that the December 12 implementation of the Bioterrorism Act will obstruct trade with the United States has caused the Congressional Treasury Commission to create a group that will coordinate with President Fox's Inter-Secretarial Commission to evaluate the U.S. law's potential effects. Legislators fear that the implementing regulations might justify an interruption of Mexican agricultural exports, as seen before in Chile with grapes. In addition, producer groups have hypothesized that the United States will use the law as leverage to make Mexico reduce its trade barriers affecting U.S. high fructose corn syrup, potatoes, rice and beef. The NAFTA Director of the Secretariat of the Economy has countered that actions between the Secretariat of Agriculture, Customs, and the Public Affairs arm of the Executive Branch have prepared Mexican companies to comply with the regulations, that the United States will enforce the law only "flexibly" during the first four months of implementation, and that the new U.S. regulations will therefore not harm Mexican exports. According to Mexican government figures, however, so far only 3,000 of 7,500 exporters have registered their facilities with the FDA. And by preventing trucks from using Free and Secure Trade ("FAST-track") lanes, enforcement of the Bioterrorism Act has reportedly doubled wait times--causing delays of between one and

three hours--for food at border points in California, where more than 50 percent of the trade between Mexico and the United States takes place.

MEXICO

Early last month, the U.S. Congress approved the transportation appropriations bill for FY02. The legislation-House vote 371-11, Senate vote 97-2-grants Mexican trucks access to U.S. highways under rigorous safety requirements. Specifically, the U.S. Federal Motor Carrier Safety Administration will require verification of available safety performance data and safety management programs; verification of a drug and alcohol testing program; compliance with hours-of-service rules; proof of insurance (with an insurance company licensed in the United States); driver's qualifications and validity of driver's license; and the evaluation of safety inspection, maintenance, and repair facilities and management systems, before allowing Mexican trucks to haul cargo beyond the U.S.-Mexico commercial zone. Although Mexican trucks were to have been granted access into the United States by January 2000, as stipulated in the 1993 North American Free Trade Agreement (NAFTA), U.S. labor unions exerted sufficient political pressure to prevent U.S. compliance by contesting Mexican truck safety standards. The Mexican Government has yet to officially respond to this new measure and 11 Mexican trucking firms have filed a \$4 billion lawsuit against the U.S. Government for violating NAFTA. *This resolution is probably a success for both the Fox and Bush administrations, even though this law does not provide Mexico with national treatment as stipulated under NAFTA. The law will in due course provide Mexican trucks with access to the United States. Nevertheless, it raises questions as to whether these more stringent safety requirements imposed on Mexican carriers will also be applied to carriers of Canadian and domestic origin operating in the United States.* **Armand B. Peschard-Sverdrup**

In an effort to help raise Mexico's awareness concerning the decisionmaking implications of a bioterrorist attack, the Mexico Project hosted a presentation by CSIS president & CEO, John Hamre on Dark Winter-a bioterrorism exercise developed by CSIS in partnership with Johns Hopkins Center for Civilian Biodefense Studies and the ANSER Institute for Homeland Security. The Dark Winter exercise simulated the possible U.S. reaction to the deliberate introduction of smallpox in three states, and its eventual spread to 25 states and 15 other countries. Adolfo Aguilar Zinser, the National Security Advisor, headed the Mexican delegation. CSIS was invited to give the Dark Winter presentation in January 2002 to the Mexican government's Bioterrorism Task Force that Health Secretary Dr. Julio Frenk head. *With a 2,000-mile border and more than 1 million border crossings per day, the Fox administration recognizes that it must enhance its level of preparedness in the event of a bioterrorist attack anywhere in North America. Likewise, the U.S. government recognizes that Mexico is an integral partner for establishing a North American homeland security arrangement.* **Armand B. Peschard-Sverdrup**

**Ministry of Economy
Underministry of International Trade
Negotiations Trade Intelligence**


**Mexico's total exports
Value in million dollars**

Country	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	January- March 2004
TOTAL	51,832.0	60,817.2	79,540.6	96,003.7	110,236.8	117,459.6	136,391.1	166,454.8	158,442.9	160,762.7	165,355.2	43,294.5
NORTH AMERICA	44,419.5	53,127.9	68,260.1	82,746.0	96,340.9	104,442.9	122,784.2	151,038.6	143,366.0	145,854.0	149,634.5	39,179.2
United States	42,850.9	51,645.1	66,272.7	80,574.0	94,184.8	102,923.9	120,392.9	147,685.5	140,296.5	143,047.9	146,802.7	38,590.0
Canada	1,568.7	1,482.8	1,987.4	2,172.0	2,156.1	1,518.9	2,391.3	3,353.1	3,069.5	2,806.0	2,831.8	589.2

**Ministry of Economy
Underministry of International Trade Negotiations
Trade Intelligence**

**Mexico's total imports
Value in million dollars**

Country	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Juanary- March 2004
TOTAL	65,366.5	79,345.9	72,453.1	89,468.8	109,808.2	125,373.1	141,974.8	174,457.8	168,396.4	168,678.9	170,958.2	43,717.6
NORTH AMERICA	46,470.0	56,411.2	55,202.8	69,279.7	83,970.3	95,548.6	108,216.2	131,551.0	118,001.6	111,037.0	109,806.6	27,472.0
United States	45,294.7	54,790.5	53,828.5	67,536.1	82,002.2	93,258.4	105,267.3	127,534.4	113,766.8	106,556.7	105,685.9	26,408.5
Canada	1,175.3	1,620.6	1,374.3	1,743.6	1,968.0	2,290.2	2,948.9	4,016.6	4,234.9	4,480.3	4,120.8	1,063.5




405. How U.S. Border Security & Immigration Measures Are Affecting International Trade

Aísa Isabel Mendoza C.

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**AFTER SEPTEMBER 11
SECURITY AND TRADE BETWEEN
MEXICO AND USA**

1. THE SECURITY LEGISLATION OF USA

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**AFTER SEPTEMBER 11
SECURITY AND TRADE BETWEEN
MEXICO AND USA**

2. SECURITY LEGISLATION OF USA

Border Inspections and Import Requirements

- a) Public Health Security and Bioterrorism preparedness and Response. Act of 2002 (Bioterrorism Act)**

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**AFTER SEPTEMBER 11
SECURITY AND TRADE BETWEEN
MEXICO AND USA**

- Facilities to be registered
- Who shall register the foreign facilities
- Where to do the registration
- How to do the registration for foreign facilities

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AFTER SEPTEMBER 11 SECURITY AND TRADE BETWEEN MEXICO AND USA

- Prior notice of imported food shipments
 - Article of food being imported into the United States
 - Article of food being offered for import into the United States

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- Notice to the Secretary identifying:
 - The article
 - The manufacturer of the article
 - The shipper of the article
 - The grower of the article

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- The Country from which the article originates
- The Country from the article is shipped
- Anticipated port of entry for the article

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- Examples of food include:
 - Dietary supplements and dietary ingredients
 - Infant formula
 - Beverages (including alcoholic beverages and bottled water)

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- Fruits and vegetables
- Fish and seafood
- Dairy products and shell eggs
- Raw agricultural commodities for use as food or components of food

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- Canned and frozen foods
- Bakery goods, snack food, and candy (including chewing gum)
- Live food animals
- Animal feeds and per food

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- Maintenance and inspection of records of foods

- Administrative detention
 - Credible evidence

 - Period of detention

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- Annual registration of foreign manufacturers

- The Food and Drug Administration
 - Responsibilities. Foods. Cosmetics.
Medicines

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b) Trade Act of 2002

- Emergency adjustments to offices, ports of entry, or staffing off the customs service;
- Mandatory advanced electronic information for cargo and other improved Customs reporting procedures;

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b) Trade Act of 2002

- Secure systems of transportation; and
- Border search authority for certain contraband in out bound mail.

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c) Homeland Security Act

Border and Transportation Security. Title IV.

Under Secretary Primary responsibilities. Section 401:

- Preventing the entry of terrorists and the instruments of terrorism into the United States;

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c) Homeland Security Act

- Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States;
- Administering the immigration and naturalization laws of the United States, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not citizens or lawful permanent residents thereof;

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c) Homeland Security Act

- Others.

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Visa Issuance. Sec. 403.

- Exclusive authority of the Secretary of State for granting or refuse the issuance of visas.

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**3. INCOMPATIBILITY OF MEASURES WITH
LIBERALIZATION OBLIGATIONS IN
AGREEMENTS OF FREE TRADE UNDER
THE RULES OF THE WORLD TRADE
ORGANIZATION**

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4. EFFECTS IN MEXICO

- Administrative procedures to comply with US Security Legislation
- Annual registration
- Prior notice
- Perishable goods
- Increased costs

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5. CONTRACTS

- Drafting contracts according to the US Security Legislation
- Application of International Treaties and Agreements
- Contract breaches. Sellers and purchasers.

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6. CONCLUSIONS

- a) US Security legislation is affecting the trade in the NAFTA region.
- b) The exponential growth of the trade reached by Mexico, US and Canada may come to a halt.
- c) Contracts. Bear in mind international treaties besides the US Security Legislation.

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Post 9/11 Comments

David Wilson
VP & General Counsel
Alcatel Canada Inc.

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Post 9/11 Comments

Three General Concepts:

- Change in how we want to appear to be in control.
- Changes in employees attitudes and behaviors toward the US.
- Difficulties in reconciling “deemed re-export” with Canadian law and custom.

Post 9/11 Comments

Control Changes to Meet US & Canadian Restrictions on the Sale/Distribution of Certain Technologies:

- Pre-9/11 tracking and clearance for in product components and software was done through a mix of manual tracking and use of assorted spread sheets etc.
- This was managed and controlled by several competent people and worked very well.
- Post 9/11 we became very uncomfortable with the image this may portray should we ever be investigated.
- Decided to implement a major SAP enhancement at great expense to assist in tracking components and software.

Post 9/11 Comments

Changing Employee Experience:

- Pre-9/11 obtaining visas and crossing the boarder was relatively "hassle free".
- Now, especially for those with certain places of origin or nationality the prospect of applying for visas or crossing the boarder is simply too much hassle (especially the prolonged questioning by boarder personal resulting in missed flights etc.).
- The result for us is that increasing numbers of our very talented people simply refuse to travel to the US resulting in project management problems for us especially in areas of specialty skill sets.

Post 9/11 Comments

Deemed Re-export:

- If a foreign national or someone with a place of birth in one of the list countries is “exposed” to controlled technologies then it is deemed to be a re-export and all export permit requirements apply.
- In Canada we ask at the time of employment if the individual is legally entitled to work in Canada (this can typically be satisfied by proof of Canadian citizenship or land immigrant status etc.
- We do not inquire as to place of birth or with regard to any other identifiers of nationality etc.
- To restrict employment or ones ability to work in certain areas based on these criteria likely violates several sections of Canadian employment law and anti-discrimination laws.

Post 9/11 Comments

Summary: Post 9/11

- We have incurred substantial “system upgrade” costs.
- Allocation of our expert personnel to projects in the U.S. is becoming more difficult.
- The stringent application of U.S. rules may conflict (or cause violation of) Canadian legislation and expose the corporation to damages.