

CRS Report for Congress

Canada-U.S. Relations

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Summary

Relations between the United States and Canada 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 generally cordial. In early 2006, a minority Conservative government assumed power in Ottawa. It is regarded as more philosophically in tune with the Bush Administration than the Liberals were; some observers believe that this compatibility has helped facilitate bilateral cooperation.

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 has been 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.

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Canada-U.S. Relations

Overview¹

Relations between the United States and Canada 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.² In an interview that year for a nationally syndicated American magazine, 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 51st state of America.... With me, a more mature relation will exist between us and the United States.”³ 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. Since September 11, however, economic and environmental issues have often taken 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

¹ Prepared by Carl Ek, Specialist in International Relations; Foreign Affairs, Defense, and Trade Division.

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

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

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 has been 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 been working 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 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 the war on 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.⁴

February 2006, after a come-from-behind election victory, the Conservative Party assumed power as a minority government, and Stephen Harper became Canada's 22nd 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.⁵

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,

⁴ *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.

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

the former Finance Minister, became Prime Minister in December 2003. Although elections need not have been held until late 2005, Martin called for elections to be held in spring 2004. Maintaining a Liberal 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. The Auditor General, who characterized the program as “such a blatant misuse of public funds that it is shocking,” reported that questionable methods had been used in awarding the contracts and that little or no actual work had been performed.⁶

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 currently hold 127 out of 308 seats in the House of Commons, and are governing as a minority (the Liberals have 96 seats, the Bloc Québécois 48, and the NDP 30. Four members are seated as independents, and there are three vacancies.)⁷

Some analysts caution that the Tory victory does not necessarily represent a “paradigm shift” to the right in Canadian politics; they note 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.⁸ 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.⁹

⁶ “Canada: Martin on the Ropes in Funding Scandal.” *Oxford Analytica*. February 25, 2004. “Scandalous!” By John Geddes. *Maclean’s*. February 23, 2004. “Canada’s Premier Acts to Counter Scandal.” By DeNeen L. Brown. *Washington Post*. February 17, 2004.

⁷ For a description of the campaign, see “Inside Story.” By Paul Wells. *Maclean’s*. February 6, 2006. For current standings, see the Canadian Parliament’s website. [<http://www.parl.gc.ca/information/about/process/house/partystandings/standings-E.htm>] Updated April 7, 2008.

⁸ See “Interview: Stephen Harper.” *Maclean’s*. March 6, 2006.

⁹ See “Conservatives To Govern From Political Center.” *Oxford Analytica*. January 24, (continued...)

Harper immediately began to work on these items. The first bill his government introduced in parliament was the Federal Accountability Act, the Conservatives' response to the sponsorship scandal. The proposal is 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.¹⁰ During his two-plus years 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 2002. In March 2006, he made a surprise visit to Canadian troops in Kandahar. Two months later, 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 two 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 a new approach that emphasizes training Afghan troops to replace departing Canadians. In the fall of 2007, Harper appointed an advisory panel, headed by former Liberal Foreign Affairs Minister John Manley, to review options on the mission. In December 2007, 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. The recommendation became the basis of a February 2008 compromise between the Liberals and Conservatives. At the April 2008 NATO summit in Bucharest, France announced it would commit 800 additional troops to Afghanistan, and the United States is expected to add to that number before the year is out.¹¹

In October 2007, through the Governor General's Throne Speech, Harper indicated that his government would focus on five new policy "themes": national sovereignty, the economy, federal-provincial relations, the environment, and, once again, law enforcement. The sovereignty issue is tied both to Ottawa's claim that the Arctic waters in the northern archipelago are Canadian territory, and to Canada's mission in Afghanistan. The environment will likely be addressed through efforts to

⁹ (...continued)

2006. "Harper's Five Easy Pieces." *Economist*. April 8, 2006.

¹⁰ "Harper Rolls Out His Ethics Act." *CanWest News Service*. April 12, 2006. "Clean Doesn't Get Any Squeakier." By John Ibbotson. *Globe and Mail*. April 12, 2006.

¹¹ "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.

develop new emission reduction targets. The conservatives will likely tap the large annual budget surpluses for tax cuts aimed at strengthening the economy. The federalism issue will revolve around funding transfers from Ottawa to the provinces. Criminal law reform has been carried over from the Conservative's first year in office. Observers suggest that these issues were chosen both to set the stage for the next elections, as well as to provide unifying principles of governance for the Conservatives.¹²

Canada is scheduled to hold its next elections by October 2009. In recent months, the Conservatives have been challenging the opposition to defeat major legislation and thereby trigger a snap vote, but the Liberals have declined. Some observers puzzle over Harper's strategy, noting that the Conservatives are not particularly high in the polls, and are perceived to be vulnerable because of a weakening economy. In addition, a high-profile legal battle over allegedly illegal payments by an arms lobbyist to former Conservative Premier Brian Mulroney may be a drag on Tory support.

However, the main opposition party is not particularly well-positioned, either. In December 2006, after a months-long campaign, the Liberals elected Stéphane Dion as their new leader. 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. Polls indicate that Dion has had some difficulty gaining traction with voters. He has pressed hard on the environment — an issue that has emerged as one of key importance to Canadian voters, and not a strong issue for the Harper government. Many analysts believe that the next elections, whether early or on schedule, will most likely result in another Conservative minority government, likely prompting a Liberal leadership change.¹³

Budget Policy. The federal deficit, which stood at a record high C\$42 (as of May 12, 2008, one Canadian dollar equals US\$1.01) billion when Chrétien became Prime Minister in 1993, was reduced steadily each year until 1998, when then-Finance Minister Paul Martin introduced Canada's first balanced budget in nearly three decades. This dramatic elimination of the deficit was accomplished in part through higher than anticipated tax revenues, and through such politically risky measures as cutting federal funding for health and education transfers, and applying a means test to those eligible for Seniors Benefits.

For the past eleven years, Canadian politicians have been in a post-deficit environment in which they have had to select among competing demands on annual budget surpluses. Some officeholders argue that much of the budget surplus should be devoted to large reductions in corporate and income taxes. They maintain that Canada's high taxation, relative to that of other countries, discourages job creation,

¹² "Harper's Five Priorities Have Morphed Into Five Themes." *Montreal Gazette*. October 17, 2007. "Harper's Master Stroke." *National Post*. October 18, 2007. "Canada: Harper Goads Opposition To Force Election." *Oxford Analytica*. October 19, 2007.

¹³ Country Report: Canada. Economist Intelligence Unit. April, 2008. "Canada Politics: Liberals Back Down." *Economist Intelligence Unit*. March 13, 2008.

reduces household incomes, diminishes worker productivity, and causes a “brain drain” of Canadian professionals, chiefly to the United States. However, other policymakers point out that Canada’s current tax system enables the government to maintain a host of social programs that make Canada the envy of many countries; in addition, they note that, high taxes notwithstanding, thousands of talented people emigrate to Canada every year.¹⁴

The Conservatives tabled their first budget in May 2006. Some of the Harper government’s fiscal priorities arose from campaign themes, including a pledge to reduce by one percent the unpopular Goods and Services Tax (GST, a form of national sales tax); income and corporate taxes were also cut. In addition, funding was earmarked for child care allowances and infrastructure improvements. The 2007 budget emphasized several programs long favored by the Liberals, including increased spending for health care, post-secondary education, and infrastructure. The spending blueprint also contained a “green levy” consisting of higher taxes for vehicles with poor gas mileage, and a rebate for the purchase of fuel-efficient cars and trucks. Perhaps most notably, the budget continued to transfer large sums to the provinces — Quebec being the big winner, with 40% of the increase. In October 2007, the Conservatives tabled a mini-budget with a five-year, C\$60 billion tax cut, and in early March 2008, parliament approved a new, “prudent” budget that featured a tax-free savings account, as well as measures intended to stimulate the sluggish economy. Both of the most recent budgets maintained a surplus.¹⁵

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.”

¹⁴ See “The Tax Trap. By Mary Janigan.” *Maclean’s*. April 12, 1999. p. 14. And: “The Brain Drain: Myth and Reality.” By Ross Finnie. *Choices*. Vol. 7, No. 6. November 2001.

¹⁵ “A Budget So Liberal, the Grits Should Sue.” John Ibbitson. *Globe and Mail*. March 20, 2007. “Canada Unveils ‘Prudent’ Budget.” *Agence France Presse*. February 26, 2008. Harper Government Easily Survives Final Budget Vote. *Canadian Press*. “March 4, 2008. Budget 2008: Overview.” website of the Department of Finance Canada. <http://www.budget.gc.ca/2008/pamphlet-depliant/pamphlet-depliant1-eng.asp>

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 political reasons, have cooperated with one another in several areas.¹⁶ 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 remains premier, but he leads the first minority government the province has had in more than a century. The PQ captured only 28%, and was knocked down to third place. Some believed that the real winner of the elections was Mario Dumont’s Action Démocratique du Québec (ADQ), which took 31% of the votes. A relatively new party, the moderate ADQ espouses a vaguely defined “autonomy” over outright independence for Quebec. It is believed to reflect the views of small towns and rural areas whose residents are proud Quebecers, but do not wish to hold another referendum. In recent months, however, Dumont’s ADQ has fallen sharply in the polls, which also show that, if elections were held in the near future, Charest and the Liberals would be close to reclaiming a majority.¹⁷

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.

¹⁶ “Unpopular Charest Needs Harper’s Help To Gain Re-election.” By Rhéal Séguin. *Globe and Mail*. April 15, 2006.

¹⁷ “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.

Security and Foreign Policy Issues

Canadian Security Issues. Canadians are proud of their active role 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 and Somalia. As of February 2008, over 2,900 Canadian Forces personnel were participating in international operations in Afghanistan, the Balkans, the Middle East, and Africa.¹⁸

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.¹⁹

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 56th largest in the world. The Canadian forces have also 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.²⁰

¹⁸ *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 February 29, 2008. [http://www.cefcom.forces.gc.ca/site/ops/index_e.asp]

¹⁹ "Spend More On Military, U.S. Envoy Urges Ottawa." *Toronto Star*. February 25, 2004.

²⁰ "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.

Recent Canadian government appear to have heeded these messages. As of August 2007, there were approximately 62,000 regular force members and 25,000 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 2011-12.²¹

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.²²

U.S.-Canada Security 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.²³

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 multinational organizations.

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.

²¹ Canadian Department of National Defence (DND) website, updated August 16, 2007: [http://www.forces.gc.ca/site/about/index_e.asp]. Defence and Budget 2005 — Highlights. DND website. [http://www.forces.gc.ca/site/reports/budget05/summ05_e.asp] Defence and Budget 2007 — Highlights. [http://www.forces.gc.ca/site/Reports/budget_2007/index_e.asp]. Budget 2008. website of the Department of Finance Canada.

²² "Canada First' Defence Procurement." DND website. Updated August 15, 2007. [http://www.forces.gc.ca/site/Focus/first/index_e.asp] "Canada's Forces In the 21st Century." CBC News. April 21, 2008. [<http://www.cbc.ca/news/background/cdnmilitary/>]

²³ United States Department of State. Bureau of Western Hemisphere Affairs. *Background Note: Canada*. January 2008. "Remarks to the Center for Strategic and International Studies." February 28, 2005.

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.²⁴

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.²⁵

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.²⁶

²⁴ "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.

²⁵ U.S. Northern Command website: [<http://www.northcom.mil/news/2008/021408.html>]

²⁶ "Shoot Down Defence Dreamers." By Paul Koring. *Globe and Mail*. June 25, 2003.

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, newly named Defense Minister Gordon O'Connor 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.²⁷

In February 2002, Canada agreed to participate in the further development of the U.S.-led 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.²⁸

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 and 500 troops to maintain stability in Haiti. Canada also supplied 200 troops to NATO's mission in Macedonia, and 600 to the initial U.N. peacekeeping mission in East Timor. In addition, 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. Canada also provided 844 personnel to assist in the post-Hurricane Katrina relief activities in

²⁷ "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.

²⁸ "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.

New Orleans. Canada currently has hundreds of peacekeepers stationed in Afghanistan, the Balkans, Africa and the Middle East.²⁹

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.³⁰

Canada has also made military contributions to the global war on terror. It 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 84 Canadians, including one diplomat, have died in Afghanistan.

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 C1.2 billion through 2011 in reconstruction and development assistance.³¹

Foreign Policy Background and Issues. After 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

²⁹ Current Operations. Canadian Expeditionary Force Command website. Updated February, 2008. [http://www.cefc.com.forces.gc.ca/site/ops/index_e.asp]

³⁰ "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.

³¹ "Backgrounder: Canadian Forces Operations in Afghanistan." August 14, 2007. DND website: [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]

about human rights abroad.”³² 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.³³ 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 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.³⁴ 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 2008, MacKay assumed the Defense portfolio, and Quebecker Maxime Bernier became the new Foreign Minister.

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.

Canada and the United States have worked closely together in a number of troubled regions. One example of such cooperation over the past decade was 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

³² “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.

³³ “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.

³⁴ “Out of Africa: The Perils For A PM.” By Anthony Wilson-Smith. *Maclean’s*. March 25, 2002.

Ottawa's total aid package would be raised to \$555 million. In the wake of the recent turmoil over food shortages, he called for international donors to harmonize their assistance during a donor conference scheduled for April 24-25, 2008.³⁵

U.S.-Canada Agenda. Canada was disinclined to expand the war on terrorism beyond Afghanistan to Iraq. In February 2002, Foreign Affairs Minister Graham stated that Ottawa would oppose U.S. unilateral action against Iraq unless Baghdad were linked to terrorism, or it were “shown that they are amassing their weapons of mass destruction with a vision of using them against someone in the immediate future....” Later, when asked whether Canada would require “tangible proof” of a connection between terrorists and the Iraqi government before Canada would consider joining a military action against Iraq, Graham replied “Yes, absolutely.”³⁶

In September 2002, during a brief meeting in Detroit with President Bush, Chrétien reaffirmed Canada's preference for a U.N. mandate, a stance that strongly reflected Canadian public opinion. Two months later, Washington 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.”³⁷ One week later in Toronto, U.S. Ambassador Cellucci delivered a speech in which he expressed the Bush Administration's disappointment with the Canadian government's decision. The remarks raised strong concerns in Canada over the state of bilateral relations, particularly after the White House postponed a state visit by President Bush to Ottawa. In April, seeking to repair the apparent rift, Secretary of State Powell acknowledged that “differences will come along,” and declared the two countries to be “inseparable.”³⁸

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

³⁵ “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.

³⁶ “Canada Won't Back War On Iraq.” By Mike Trickey and Hilary Mackenzie. *Ottawa Citizen*. February 15, 2002. “Canada FM Requires Proof Of Terror Links For War Beyond Afghanistan.” *Agence France-Presse*. March 11, 2002.

³⁷ “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.

³⁸ “Powell Says Canada and US ‘Inseparable’ Friends Despite Iraq Tiff.” By Robert Russo. *Canadian Press*. April 15, 2003.

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.³⁹

Cuba has been another issue where the two countries have not seen eye-to-eye. For decades, Canada and Cuba have had relatively extensive business links. Because of this ongoing commercial relationship, Canadian government officials have 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.⁴⁰ In recent months, the Canadian press has featured vigorous debate over what policy Ottawa should adopt toward Cuba after the Castro brothers depart.⁴¹

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 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, Foreign Minister 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."⁴²

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 Ressam at the U.S.-Canadian border as he was attempting to smuggle explosives into the United States; it was later discovered that

³⁹ "Iraq: Canada's Commitment." Canadian International Development Agency web page: [<http://www.acdi-cida.gc.ca/iraq#1>] Updated May 24, 2007.

⁴⁰ "Chrétien Admits Having 'A Problem' With Cuba, But Will Maintain Pressure." *Agence France-Presse*. April 10, 2003.

⁴¹ 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.

⁴² "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.

Ressam 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. 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.”⁴³

Some American policymakers pointed to the Ressam 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.⁴⁴ 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 December 2002, the two nations signed the Safe Third Country agreement, which will permit coordination of refugee and asylum policy.

Ottawa and Washington are currently working to resolve 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, or an equivalent document, at the border by June 1, 2009. Travel-dependent businesses, particularly in Canada, are concerned that the cost of acquiring either a passport (only about 25% of Americans and 40% of Canadians hold passports) or similar ID would 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 frequent traveler card to enter the United States on June 1, 2009; however, DHS is currently working with the Canadian government to develop an alternative document that is secure, inexpensive, and would be carried anyway — for example, a driver’s

⁴³ “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.

⁴⁴ “Delays at the Canadian Border Eat Up Trade.” By John Stark. *AP*. February 1, 2003.

license containing enhanced biometric information; U.S. state and Canadian provincial governments have been actively working to develop such documents.⁴⁵

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.

The Martin government in December 2004 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.

In early June 2006, Canadian tactical police squads 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 buildings and capture hostages. Prime Minister Harper was said to have been a key target; he allegedly was to be beheaded if he failed to order a withdrawal of Canadian troops from Afghanistan, as well as the release of jihadist captives. Most of the 17 were men and youths in their teens or early 20s. All were either Canadian-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. Secretary of State Condeezezza Rice praised the police operation as "a very great success," and other U.S. officials claimed that the arrests proved that Canada's law enforcement and intelligence services are 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

⁴⁵ "A Tightening Border Has Canadians Worried." By Ian Austen. *New York Times*. April 15, 2006.

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.⁴⁶

During a March 2005 summit meeting in Texas, President Bush, Mexican President Vicente Fox, and Prime Minister 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 by 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. In August 2007, the leaders of the three countries met in Montebello, Quebec, where they reviewed progress and planned the next phase of cooperation.⁴⁷

Economic and Trade Issues

After several years of steady growth, Canada's economy has been slowing in recent quarters. Canada's GDP rose by 2.9% in 2005, 2.8% in 2006, and 2.7% in 2007. However, the *Economist Intelligence Unit* expects the economy to grow by just 1.3% in 2008. Forecasters attribute the slowdown in part to the strengthening of the Canadian dollar and the weakening of the U.S. economy; because the United States is by far the chief customer for export-dependent Canada, both factors have had a fairly strong impact. Annual consumer price inflation in 2007 stood at 2.1%. The March 2008 unemployment rate was 6.0% — a slight gain from the previous month, but still low by historical standards.⁴⁸ In 2007, Canada enjoyed a current account surplus of \$13.2 billion.

In February 2003, Chinese officials announced the outbreak of the severe acute respiratory syndrome (SARS) and in March, it was discovered that a traveler had carried the disease to Toronto. Eventually, about 150 Canadians contracted the illness, and 23 died. Canadian health authorities made strenuous efforts to contain the sickness, and in April, the World Health Organization lifted the travel advisory

⁴⁶ "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.

⁴⁷ See SPP website: [<http://www.spp.gov/>].

⁴⁸ 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>]

it had placed on Toronto.⁴⁹ The Martin government announced the establishment of a Canadian Public Health Agency, which will play a role similar to that of the U.S. Centers for Disease Control and Prevention. Many public health officials on both sides of the border are worried over the possible spread of avian influenza. Bird flu has a much higher mortality rate and is a matter of serious concern to epidemiologists. The security of the two countries' food supplies is another area that policymakers continue to monitor, both bilaterally and in the context of the Security and Prosperity Partnership.

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 2006, U.S. energy imports from Canada were \$75 billion. Canada provides 17% 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.⁵⁰

Bilateral Trade Issues. The United States and Canada enjoy the largest bilateral commercial relationship in the world; the U.S. State Department estimates total two-way trade at \$1.5 billion *per day*. Many analysts believe that the sharp differences of the past, over diverse items ranging from automobiles to peanut butter, are not as prominent today. A likely reason for this is the conclusion of two important bilateral treaties: the 1988 U.S.-Canada Free Trade Agreement and the 1993 North American Free Trade Agreement. These documents, along with major revisions in the Uruguay Round of the General Agreement on Tariffs and Trade and the creation of the World Trade Organization (WTO), contained mutual concessions on commercial trade barriers, and, more importantly perhaps, established or improved upon mechanisms for resolving disputes.⁵¹

⁴⁹ “A Model of Epidemic Control.” David Brown. *Washington Post*. May 3, 2003. “SARS: Fear and Loathing in Toronto.” Jonathon Gatehouse. *Macleans*. May 5, 2003. “Canada Says SARS Has Infected Its Economy.” Gilbert Le Gras. *Reuters*. April 29, 2003.

⁵⁰ Canada-U.S. Energy Relations. Updated February 1, 2008. Canadian Embassy website: [http://www.dfait-maeci.gc.ca/can-am/washington/trade_and_investment/energy-en.asp]. Country Analysis Briefs: Canada. U.S. Energy Information Administration website. Updated April 2007. [<http://www.eia.doe.gov/emeu/cabs/Canada/Background.html>].

⁵¹ United States Department of State. Bureau of Western Hemisphere Affairs. *Background Note: Canada*. January 2008. “Current State of U.S.-Canada Economic Relations.” By Sidney Weintraub. *American Review of Canadian Studies*. Winter, 1994.

Nevertheless, 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.

This was 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 imports threatened to injure U.S. industry, and Commerce applied 27% (later reduced to 21%) duties on Canadian softwood. Canada challenged the agency decisions under NAFTA and in the WTO. In August 2005, NAFTA affirmed earlier NAFTA decisions resulting in an ITC “no threat” determination. Canadians asserted that the United States should lift its tariffs on softwood and refund some C\$5 billion in estimated lumber duties, which might otherwise be distributed to U.S. lumber producers under the Byrd Amendment. The Bush Administration maintained, however, that the ITC “no threat” determination (issued in September 2004) was superseded by a November 2004 “threat of injury” determination issued by the ITC in response to a separate WTO decision. Further complications arose later in August when a WTO panel preliminarily ruled that the November threat determination was not in violation of WTO rules. Canada has challenged implementation of the November ITC determination in U.S. court. Finally, on April 26, 2006, the two sides announced that they had struck a tentative seven-year agreement on softwood. 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. In addition, the United States will return to Canada a large majority of the duties it had collected.⁵²

In May 2003, a cow in the Canadian province of Alberta was discovered to be infected with bovine spongiform encephalopathy (BSE, or “mad cow” disease). The United States banned importation of Canadian cattle or cattle products. The Canadians quarantined several ranches and destroyed and tested several thousand animals. In September 2003, the United States began permitting importation of live animals young enough to be at low risk of having the disease. In December, however, a Canadian-born cow in Washington State was discovered to have BSE, and most countries banned imports of U.S. beef. In January 2005, two new BSE-infected animals were found in Canada. In early March, a U.S. federal judge blocked a USDA ruling that would have permitted more Canadian cattle to enter the United States, and the Senate approved a White House-opposed resolution that would overturn the rule. A U.S. appeals court reversed the blocked ruling in July, permitting Canadian cattle to enter the United States. The two countries have been cooperating bilaterally and in international organizations to develop consistent

⁵² “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.

approaches to animal health and food safety regulations. In March 2008, a twelfth Canadian animal was discovered to be infected with BSE.⁵³

Regardless of the occasional rancor of U.S.-Canadian trade disputes, there is little danger that such conflicts would ever escalate into a full-blown trade war. The Canadians in particular have a strong incentive to resolve feuds and maintain close trade ties with the United States. The Canadian economy is heavily export-oriented, and its largest trading partner by far is the United States, which takes about three-quarters of Canada's exports and is the source of nearly two-thirds of its imports. And although sharp disputes still plague the enormous bilateral trade relationship, it is important to bear in mind that such disputes normally affect only 2% of trade.

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 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.⁵⁴

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

⁵³ For further information, see CRS Report RS21709, *Mad Cow Disease and U.S. Beef Trade*. January 29, 2008.

⁵⁴ CRS Report RL30234, *The Pacific Salmon Treaty: The 1999 Agreement In Historical Perspective*, by Eugene H. Buck.

environmental officials of the two governments, the United States agreed to install a permanent filtration system at the Devils Lake outlet. 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.⁵⁵

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 Claim⁵⁶

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.

⁵⁵ "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.

⁵⁶ 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 the 1980s, the Mulroney government proposed the purchase of a large icebreaker to patrol the region, but the proposal was scrapped due to budget constraints. 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 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. Also, it is believed that larger vessels which cannot use the Panama Canal would be able to sail the passage. 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.

Status of the Issue. The Bush Administration has not made a major issue of the future northwest passage. At the trilateral leaders’ summit of the Security and Prosperity Partnership, held in August 2007 in Montebello, Quebec, President Bush reiterated the Administration’s policy that any future Northwest Passage would be considered straits for international navigation. For the time being, the Ottawa and Washington have “agreed 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 Issues⁵⁷

Issue Definition. Border security has emerged as an area of public concern, particularly after the September 11, 2001 terrorist attacks. Since the terrorist attacks,

⁵⁷ Prepared by Blas Nuñez-Neto, Analyst in Domestic Security, Domestic Social Policy Division.

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 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 the *later* of the following two dates: June 1, 2009, or, three months after the Secretaries of Homeland Security and State certify that a number of implementation requirements have been met.

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 (currently being developed by DOS), and frequent traveler cards (such as SENTRI, NEXUS, and FAST). Additionally, some states have entered into agreements with DHS to develop enhanced driver's licenses (EDL) that will include citizenship information and will be valid for WHTI purposes. DOS has begun accepting passport card applications and is currently forecasting that production of the new card will begin in June of 2008. 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.

The WHTI has fostered much debate in Canada as well as the United States. According to published reports, only about 23% of Americans and 40% of Canadians own passports. These statistics have led some observers to voice concerns that the increased documentation that will be required at the border may suppress travel between the two nations.

Current Coordination Between the Two Countries. 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 eleven 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 concerns about Canadian legal restrictions on Customs and Border Protection officers' authority to fingerprint individuals who refuse inspection.

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 Concerns⁵⁸

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. 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

⁵⁸ Prepared by Ian F. Fergusson, Specialist in International Trade and Finance, Foreign Affairs, Defense, and Trade Division.

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 2007. Canada purchases 21.3% of U.S. exports, a share larger than Japan and the entire European Union and supplies 16% of all U.S. imports. The United States supplied 64.9% of Canada’s imports of goods in 2007 and purchased 76.3% of Canada’s merchandise exports; two-way trade with the United States represents nearly 40% of Canadian GDP. The Ambassador Bridge that links Detroit, Michigan and Windsor, 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. 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 21st 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?

4. Who should pay for the replacement or improvement of aging border infrastructure? Should business pick up part of the tab?

Immigration and Refugee Policies⁵⁹

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. In 2005 and 2006, Canada accepted approximately 260,000 and 250,000 new permanent residents, respectively. An additional 100,000 persons were accepted annually as temporary residents. Many of these temporary residents were unskilled workers or students. New arrivals as permanent and 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 country closest 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 accepts a much higher percentage of independent immigrants and a much lower percentage of family class immigrants than does the United States. Immigrant groups and the opposition parties that support increases in the family reunification program fear that a recent government proposal to give priority to the processing of certain applicants who have arranged employment will drive the skilled worker category even higher.

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 as it recently has been in parts of Western Europe. In fact, immigration still generally is 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

⁵⁹ Prepared by Stephen F. Clarke, Senior Foreign Law Specialist, Western Law Division, Law Library of Congress, May 2008.

Canada, but because it generally is believed to invite fraud and abuse. Between 1989 and 2004, an average of about 30,000 refugee claims were presented annually. In 2006, the number of refugees was approximately 32,500 and about 47% of the applications were accepted. This number is higher than the corresponding figure in the United States. 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. While Canadian officials do not often detain undocumented arrivals, Canada has created new facilities for the detention for persons who may be viewed as posing a security or flight risk.

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 four high-profile cases of terrorists from the Middle East who entered Canada as refugees with the intention of launching attacks against U.S. targets. Among these examples was the case of Ahmed Ressam, who was captured in 1999 while crossing the border with explosives that he planned to set off at Los Angeles International Airport. 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 has 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 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, because 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. The government has appealed the decision respecting the Safe Third Country Agreement to the Federal Court of Appeal, and the agreement remains in force pending resolution of the case by that body or the Supreme Court of Canada.

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 because, as the drafters of the Agreement have explained, authorities know that persons are in the other country only in instances where they are seen crossing the border. However, 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.

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 that the government does not know the whereabouts of approximately two-thirds of the over 60,000 persons who are 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 will it eventually withstand judicial scrutiny on legal, including constitutional, grounds in Canada and the United States?

2. Are the well-reported cases of terrorists and potential terrorists entering North America through legal means a sign of a potentially much greater threat?
3. Why do Canada and the United States 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 the WTO Doha Development Agenda⁶⁰

Issue Definition. A signatory to the Havana Treaty in 1947, Canada was one of the founding members of the General Agreement on Tariffs and Trade (GATT). Over the intervening half-century, Canada has become a leading trading economy and has become increasingly involved in shaping the world trading system through several rounds of GATT and, since 1994, World Trade Organization (WTO) negotiations. Canada played a key role in facilitating the 2001 launch of the Doha Development Round. The Doha Ministerial Declaration set forth objectives in several negotiating areas such as agriculture, industrial tariffs, services, and the special needs of developing countries in the international trading system.

Background and Analysis. Canada's interest in the world trading system can be partly attributed to its dependence on it. In the half-century since the signing of the GATT, Canada has developed an export driven economy. In 1947, Canada exported approximately 2% of its GDP; that figure was 29% of GDP in 2007. Imports of goods represent 27% of GDP. It has been estimated that one-third of Canadian employment is directly dependent on international trade. The United States is Canada's largest trading partner, buying 76% of its merchandise exports and supplying 65% of Canada's goods imports in 2007. It must be noted, however, that much of this trade relationship is due more to the Canada-U.S. Free Trade Agreement of 1988 (which was incorporated into the North American Free Trade Agreement in 1994), than to multilateral trade liberalization. Recently, some commentators have questioned the influence that Canada has on the WTO negotiations as well as the relevance of those negotiations to Canadian trade flows.

The Doha Round negotiations are currently stalled. Four years into the negotiations and after a string of missed deadlines for conclusion of the talks, agreement on modalities — methodologies such as formulas for tariff reductions by which negotiations are conducted — still elude the agriculture, industrial market access, services, and other negotiating groups. The negotiations were suspended in July 2006 over the lack of progress in the agricultural talks. Informal discussions have now resumed, but no breakthrough has been made.

⁶⁰ Prepared by Ian F. Fergusson, Specialist in International Trade and Finance; Foreign Affairs, Defense, and Trade Division of CRS.

Agriculture. Canada and the United States broadly share common objectives concerning agricultural negotiations begun in early 2000. As the fourth largest agricultural exporter, Canada seeks to maximize reductions or elimination of trade distorting domestic support and to improve market access for agricultural products. Canada also supports the total elimination of export subsidies, which was agreed to at the Hong Kong Ministerial in 2005. However, Canadian negotiators have resisted attempts to include state trading enterprises (such as the Canadian Wheat Board) in parallel negotiations on other trade-distorting export practices. Disciplines on these entities are a priority for the United States.

Non-Agricultural Market Access (NAMA). The United States and Canada have similar goals for the NAMA talks. Canada's main objectives in tariff negotiations are to seek broad-based market access opportunities, especially among developing countries where tariffs on non-agricultural products remain high. It favors the reduction of tariff rates through a Swiss formula approach adopted at the Hong Kong Ministerial. However, it has not advocated specific coefficients in the talks. It has favored the negotiation of non-tariff barriers and, with the United States, expanding the use of sectoral tariff elimination agreements, specifically on chemicals, forestry products, non-ferrous metals, fisheries, fertilizers and energy equipment.

Services. Negotiations on amending the General Agreement on Trade in Services (GATS) have been in progress since early 2000. Canada's stated objective is to target sector requests to maximize the opportunities of Canadian service exporters, especially small and medium enterprises (SMEs) in the areas of architecture, engineering and integrated engineering, computer and related services, construction and related engineering, energy, environment, finance, law, maritime transport and telecommunications. Canada also is interested in providing additional labor mobility for its service professionals overseas. Conversely, Canada is committed not to negotiate liberalization of health care, education, or social services provision. Canada has also declared that its cultural identity policies (including Canadian content restrictions and media subsidies) will not be subject to the GATS, but instead it has proposed the negotiation of a "New International Instrument on Cultural Diversity" that would govern regulations concerning cultural industries.

Trade Remedies. The launch of negotiations at Doha to discipline, to clarify, and to provide transparency in the use anti-dumping, subsidies, and countervailing measures is a key priority for Canada. The government's position in these negotiations is to separate legitimate uses of trade remedy legislation from what it considers disguised attempts at protectionism and has sought to impose more specific disciplines and increased transparency in the use of trade remedy measures. In addition, Canada has objected to the use of these remedies by the United States and has been engaged in anti-dumping and countervailing duty disputes at the WTO over softwood lumber, wheat, and the Byrd amendment. The U.S. position has sought to reflect the negotiating mandate of trade promotion authority, i.e. not to undermine U.S. trade remedy laws. The United States has focused on promoting transparency in the administration of trade remedy laws, adherence to appropriate standards of review in dispute settlement panels, and addressing underlying trade distorting practices.

Questions. 1. What is the legislative process in Canada for approving trade agreements? Are there expedited legislative procedures analogous to trade promotion authority (TPA) in place between 2002-2007. Do you believe that progress in the Doha talks has been hampered by the expiration of TPA?

2. Have U.S. antidumping and countervailing duty cases against Canadian softwood lumber and wheat stiffened Canada's resolve to press for additional disciplines on trade remedies in the WTO negotiations? Given the general opposition of Members of Congress to changes in U.S. trade remedy laws, what types of disciplines can be agreed upon?

North American Integration⁶¹

Issue Definition. The terrorist attacks on the United States in 2001 fueled a wide-ranging debate in Canada over its relationship with the United States, including the feasibility or desirability of furthering the process of North American integration. While concerns in the United States over the U.S.-Canada border are focused primarily on border security and immigration issues, the debate in Canada has become much broader, encompassing such issues as sovereignty, the desirability and feasibility of further economic integration with the United States, and even the adoption of the U.S. dollar. This discourse is not unusual in Canada; questions concerning its relationship with the United States continually loom large in policy discussions. Recent initiatives, however, may spur the process of economic integration.

The venue for discussion of further economic and security cooperation in North America has become the Security and Prosperity Partnership (SPP). In 2005, the leaders of the United States, Canada, and Mexico pledged to develop a series of security and economic cooperation measures among the three countries of the North American Free Trade Agreement (NAFTA). Ministerial working groups were established to develop concrete proposals, the first set of which were announced in June 2005. Additional measures were announced at the trilateral Cancun summit in March 2006, Montebello, Quebec in August 2007, and New Orleans, Louisiana in April 2008. The impetus for the establishment of the SPP has been the effect on trade from the increase in security along the border following the 2001 terror attacks as well as the growing perception among some that NAFTA needs to be reinvigorated in order to compete with the growing economic power of Asia. Many of the security planks expand on the Smart Border Action Plan of 2001. (For further information, see "Security and Prosperity Partnership of North America")

Many of these initiatives reportedly were chosen because they could be undertaken through the regulatory process and would not require legislation. Some initiatives are being developed by the North American Competitiveness Council, formed after the 2006 summit. Business groups in the United States and Canada

⁶¹ Prepared by Ian F. Fergusson, Specialist in International Trade and Finance, Foreign Affairs, Defense, and Trade Division.

have generally supported this effort, and some have called for its expansion. However, other groups have decried what they consider the undemocratic nature of implementing regulatory changes without legislative approval and what they consider the business-driven agenda of the initiatives. Some Canadians also fear that regulatory harmonization, given the wide disparity in population and economic power of the two nations, would inevitably lead Canada to adopt U.S. standards and, implicitly, the policies behind them.

More generally, some in Canada believe the lesson from September 11 is that increased cooperation with the United States is both necessary and inevitable, given the reality of Canadian trade flows and economic interdependence. Several long-term economic options have received renewed attention, including a *customs union*, a *common market*, or a *monetary union*. These concepts are not new; they have been discussed in conjunction with “deepening”NAFTA. Consequently, these discussions often involve Mexico as well.

Customs Union. The first step usually discussed regarding the further integration of the North American economy is the creation of a *customs union*. Members of a customs union commonly eliminate tariffs among themselves, and erect common barriers against the rest of the world. Both the U.S. and Canada have already eliminated all tariffs between each other under NAFTA, and have similar, though not identical, tariff schedules with third countries. However, the continued use of trade remedy laws against each other would be called into doubt. Although customs duties would be paid at ports of entry at the perimeter of the customs union, border agents would still enforce immigration, sanitary and phytosanitary, and environmental laws, as a customs union does not imply a harmonization or mutual recognition of each nation’s regulations.

Common Market or Economic Union. In addition to a common tariff policy and free trade in goods and services, a common market would imply free movement of capital and labor. At this point, harmonization of certain investment and immigration issues would need to be agreed upon. A type of economic union approaching that of the European Union would also require harmonized or mutually recognized standards and regulations and perhaps some supranational institutions. Although the United States and Canada share many developed country level standards, this form of integration would require regulatory harmonization or mutual standards recognition. For example, would the United States adopt the metric system to fulfill its obligations to harmonize standards? Could the two nations adopt common forestry practices and management policies that have been at the heart of the softwood lumber dispute? These questions illustrate the extent to which North American economic integration may affect the governance of the United States, Canada, and possibly Mexico.

Monetary Union. The concept of monetary union took hold in Canada during the 1990s and early 2000s when the Canadian dollar steadily depreciated against the U.S. dollar. However, since 2003 the loonie (named after the bird on the C\$1 coin) has risen over 40% from 2002 levels to parity in November 2007, and has hovered around that point since then. The loonie is benefitting from record high prices for energy and other primary products. Hence, talk of the desirability of monetary union has been muted. However, those who support monetary union argue that it would

force Canada to make the necessary structural adjustments that would make it more competitive with the United States. In addition, business would also reap significant savings in transaction costs associated with the huge volume of bilateral trade. Opponents of monetary union contend that it would lead to an unacceptable loss of political and economic sovereignty. According to them, monetary policy would be dependent on (or tied to) actions of the U.S. Federal Reserve, with which Canada would have little influence.

Status of the Issue. The active pursuit of North American integration is not a front-burner issue for either the United States or Canadian government. However, the evolution of the SPP indicates that the three NAFTA countries are beginning to think about the parameters of economic integration, and may be taking the first steps towards the creation of a North American economic space.

Questions. 1. How does the Canadian public feel about closer economic ties with the United States? Is there a perceptible difference on this issue among Canadian political parties?

2. Has the loonie's appreciation since 2002 hurt the Canadian manufacturing sector that previously relied, in part, on a weak currency to maintain competitiveness?

3. Has the Security and Prosperity Partnership received much attention in Canada? Has it proved controversial? Do you think Parliament and Congress should be more involved in making these decisions?

Security and Prosperity Partnership of North America⁶²

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). Some key

⁶² Prepared by Angeles Villarreal, Specialist in International Trade and Finance, Foreign Affairs, Defense, and Trade Division.

issues for Congress regarding the SPP concern possible implications related to national sovereignty, 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.

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. In the 2008 joint statement, the leaders highlighted the need for the three countries to implement compatible fuel efficiency regimes and high safety standards to protect human health and the environment, and to reduce the costs of producing cars and trucks for the North American market. They also emphasized their efforts to advance intellectual property rights protection in North America through the Intellectual Property Action Strategy.

The SPP is not a trade agreement, nor a form of economic integration, and goes only as far as leading to some measure of regulatory harmonization among the United States, Canada, and Mexico. 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.

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?

U.S. Imports of Canadian Softwood Lumber⁶³

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

⁶³ Prepared by Ross W. Gorte, Natural Resource Economist and Senior Policy Specialist, Resources, Science, and Industry Division, and Jeanne J. Grimmatt, Legislative Attorney, American Law Division.

WTO. Negotiations led to a seven-year agreement with Canadian export charges depending on U.S. lumber prices, and the United States revoked the countervailing and antidumping orders. Recent U.S. interest group complaints have asserted unfaithful implementation of the agreement.

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 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 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.

U.S. interest groups have questioned whether Canada is faithfully implementing the agreement. 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 its eastern provinces 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; a decision on the remedy for the violation is pending. In January 2008, U.S. officials filed another arbitration case, alleging that Ontario and Quebec lumber industry subsidies violate the agreement; a decision is due by September. Separately in January, U.S. officials sent a letter to Canadian officials expressing concern about possible subsidies from the proposed \$1 billion Community Development Trust.

Questions. 1. The dispute over U.S. imports of Canadian lumber has persisted for more than 25 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 Dispute⁶⁴

Issue Definition. In January 2007, Canada requested consultations with the United States, under the auspices of the World Trade Organization's (WTO's) dispute settlement process, to discuss three specific charges against 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. The request for consultations represented the first step in instituting a WTO dispute settlement case against the United States — the assigning of an official dispute settlement case number (DS357) — thus setting in motion the explicit rules and timetables of the WTO dispute settlement process.

Canada's first allegation in its WTO case built upon previous trade complaints against the United States initiated by Canadian corn producers starting in 2005, while the latter two allegations were based on a previous WTO ruling in a case (WTO case DS267) brought by Brazil against the U.S. cotton program. The first charge of serious prejudice against Canadian corn producers 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 June 2007. However, 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.

⁶⁴ Prepared by Randy Schnepf, Specialist in Agricultural Policy, Resources, Science and Industry Division.

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 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 since mid-2007.

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 a previous 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.

Status of the Issues. In late 2007, Brazil initiated its own similar case against U.S. farm support. Canada and Brazil appear to have coordinated their efforts as both countries submitted official requests on November 8, 2007, for the Dispute Settlement Body (DSB) to add the establishment of a panel to its next meeting agenda. In accordance with WTO rules, the United States blocked this first panel request at the November 27, 2007, DSB meeting. However, at its next meeting on December 17, the 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.

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, will finish its work and issue a final ruling before late 2008. Subsequent appeals of any negative ruling and disagreement over appropriate retaliatory levels, etc., could push resolution of the dispute well into the future. Should any eventual changes in U.S. farm policy be needed to comply with a WTO ruling against the United States, it would likely involve action by Congress to produce new legislation. For more information see CRS Report RL34351, *Brazil's and Canada's WTO Case Against U.S. Agricultural Support*.

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. What effect, if any, will the formulation of a new U.S. farm bill have on Canada's WTO case?

Country of Origin Labeling⁶⁵

Issue Definition. Section 10816 of the Farm Security and Rural Investment Act of 2002 (P.L. 107-171), as amended, requires many retailers to provide country-of-origin labeling (COOL) for fresh produce, red meats, seafood, and peanuts. Although seafood COOL began September 30, 2004, Congress delayed the implementation date for the other covered commodities until September 30, 2008. In early May 2008, a House-Senate conference committee was attempting to finalize a new omnibus farm bill (H.R. 2419), and it is anticipated that the final measure will contain some changes in COOL requirements, if not the implementation deadline. In light of this uncertainty, a currently pressing issue is whether COOL will in fact be implemented by September 30, or even whether USDA could complete the necessary rulemaking by then.

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." The 2002 farm bill required those 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), to begin providing such information. Specifically covered commodities are: ground and muscle cuts of beef,

⁶⁵ Prepared by Geoffrey S. Becker, Specialist in Agricultural Policy, Resources, Science and Industry Division, Congressional Research Service.

lamb and pork; seafood; peanuts; and produce. These commodities are exempt if they are ingredients in processed foods, or if they are sold in dining out settings.

Passage of the law in 2002 did not end debate over the value and efficacy of mandatory COOL, particularly with regard to meats. COOL opponents have continued to argue 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 have 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 have 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 importation 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.)

Canada is by far the leading source of U.S. food and agricultural imports, accounting for about 20% of total import value, and reflecting the close and growing economic integration of the two countries’ markets. Many of these imports are those covered by mandatory COOL, including live animals, red meats, seafood, and fresh vegetables and fruits. The Canadian government’s views generally parallel those held by other opponents of mandatory COOL. Canadian officials had earlier stated that they would challenge the COOL law as trade distorting under the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) Agreements.

Status of the Issue. The 2002 farm bill initially called for mandatory COOL to be implemented by September 30, 2004. However, Congress has twice postponed the requirement. The omnibus FY2004 appropriations law (P.L. 108-199) delayed this date for all covered commodities, except seafood, until September 30, 2006. (The seafood regulations have been in place for several years.) The FY2006 USDA appropriation (P.L. 109-97) postponed the date for two more years, until September 30, 2008.

Language (in H.Rept. 110-258) to accompany the FY2008 USDA appropriation (Division A of P.L. 110-161) directs USDA’s Agricultural Marketing Service (AMS) to meet the following timeline in implementing COOL:

- January 17, 2008, publish re-proposed rule for covered commodities with a 60-day comment period;
- July 19, 2008, publish final rule for all covered commodities;
- July 26, 2008, initiate congressional review for final rule for all covered commodities;
- September 30, 2008, effective date for final rule for all covered commodities.

As of early May 2008, AMS had not met this first deadline, for proposed rules; officials have cited possible changes in the final COOL requirements that are in the pending omnibus farm bill (H.R. 2419). Both versions of this bill, which was nearing completion in a House-Senate conference committee in early May, would maintain the September 30 implementation date, but modify (i.e., ease) some of the labeling and record-keeping requirements, as well as exempt products from any animals born prior to January 2008. The Senate-passed farm would also newly extend coverage to poultry and macadamia nuts; the House-passed bill to goat meat, making it possible that these provisions could be in the final version as well. Although the labeling and recordkeeping changes are intended to make it easier for the livestock and meat industry in particular to comply with mandatory COOL, they also have created uncertainty among regulators and the regulated industries about what the final requirements will be.

Questions. 1. Canada has commented in the past that it intends to challenge the COOL law as trade distorting under the WTO and NAFTA. Does it still intend to do so, even if the labeling and paperwork changes anticipated by the new U.S. farm bill are adopted? If so, what, specifically, will be its arguments?

2. Reports in meat trade publications have suggested that the current uncertainties about final COOL requirements have strained marketing relationships between Canadian and U.S. producers and processors. 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, and how do they compare to those for which implementation is pending in the United States?

Steel⁶⁶

Issue Definition. Steel issues have not been at the forefront of U.S.-Canada trade relations in recent years. In part, this is because the independent Canadian steel industry, as with other Canadian metals producers, has been largely subsumed within globally operating companies, which also have large investments in the U.S. market. Increasingly, the U.S. and Canadian industries, though both highly profitable today, have common concerns with the increasing potential of competition from China. The continued strong performance of the Canadian economy, and the movement of the Canadian dollar exchange rate to a position above parity with the U.S. dollar, have reduced tensions in trade with Canada on this side of the border. On the other hand, there have been serious concerns raised in Canada about the viability of important

⁶⁶ Prepared by Stephen Cooney, Specialist in Industrial Organization and Business, Resources, Science and Industry Division.

steel-consuming industries, notably motor vehicle manufacturing, if these conditions continue over the long term.

Background and Analysis. *Local Ownership Ends at Canadian Steel Mills.*

Canadian-owned companies have disappeared from the list of the world's largest steelmaking enterprises. One of the two largest and the most profitable, Dofasco, in January 2006 was bought by Arcelor, which then placed it in a trust operated by a Netherlands-based foundation as a ploy to complicate its own hostile takeover by Mittal Steel. The maneuver failed, and Dofasco is now part of ArcelorMittal, the world's largest steelmaker, and a major operator of U.S. integrated steel mills.

Canada's largest minimill operator was also acquired by a company based outside North America. Ipsco had moved its headquarters to Illinois, but its origins were in western Canada, and it maintained operations in both countries. On May 3, 2007, it announced agreement on a friendly acquisition by Svenskt Stal AB (SSAB) of Sweden, a producer of high-value and specialty steel products. Since then, SSAB has sold Ipsco's tubular products division to the Russian steel company, Evraz. In another friendly acquisition of a Canadian company, Essar of India acquired Algoma Steel, based in Sault Ste. Marie, Ontario, in a \$1.7 billion deal. The Algoma acquisition is part of Essar's plan to operate integrated operations in the Great Lakes region.

Finally, on August 26, 2007, U.S. Steel announced an agreement to acquire Stelco. Stelco was, in 2005, Canada's largest steel producer and remained its last locally owned major steel company. It reorganized in 2006 after two years in bankruptcy protection, with an output of 3.81 million metric tons, well below earlier levels. The company, based in the Canadian steelmaking center of Hamilton, Ontario, continued to struggle financially, losing more than C\$300 million in 2006. U.S. Steel announced an acquisition price of \$1.1 billion (U.S.), plus assumption of Stelco's debts and pension liabilities.

U.S. Trade Remedy Cases on Imported Iron and Steel from Canada. Only two U.S. antidumping orders remain in place on iron and steel products from Canada. One is applied to iron construction castings. The other is a 2002 order on imports of carbon and alloy steel wire rod from Canada and other countries. This is now subject to a five-year sunset review investigation. The U.S. International Trade Commission (ITC) held a hearing in April 2008, and will vote on continued injury, and whether to revoke the order, in June.

Canadian and U.S. Policy Actions on Imported Pipe from China. In 2007, the ITC, in another sunset case, revoked duties that had been placed on steel products imported from a number of countries and used in the oil and gas industry (known generically as "oil country tubular goods" or OCTG). U.S. imports from China of such products increased substantially and, unlike with other steel products, the Chinese government did not take measures to slow exports down.

In August 2007, an antidumping case was initiated in Canada against certain OCTG imports from China, alleging that government subsidies were allowing Chinese producers to dump product at low prices. In 2008, the Canadian Border Services Agency applied trade remedy duties of up to 91% on subject imports, and

the Canadian International Trade Tribunal confirmed a finding of injury to Canadian producers. The Chinese government and industry reacted strongly. They have indicated that they will appeal the Canadian actions and possibly file a complaint with the World Trade Organization (WTO).

In the United States, a similar case was filed on April 3, 2008 before the ITC against imports from China of welded carbon steel line pipe, another product widely used in the oil and gas industry. The ITC will announce its preliminary decision on May 16.

Intellectual Property Rights⁶⁷

Issue Definition. The United States has expressed concern that Canada's protection and enforcement of intellectual property rights (IPRs) 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. 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 IPRs 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 Canadian businesses about \$22 billion a year. The Canadian Manufacturers & Exporters estimate that the counterfeit industry in Canada is worth between \$20 and \$30 billion annually.

Special 301 Watch List. Since 1995, the U.S. Trade Representative (USTR) has placed Canada on its Special 301 "Watch List," the mildest category of criticism for inadequate IPR protection and enforcement. Some U.S. industry associations have called on the USTR to elevate Canada to the "Priority Watch List." The USTR has considered elevating Canada's status, but Canada remained on the Watch List in the 2008 Special 301 Report. Canada has raised concern about the Special 301 process, claiming that it is industry-driven and not objective. Some Canadian industry groups maintain that USTR's identification of Canada on its Watch List is a genuine signal of the inadequacies of Canada's IPR regime.

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. Known as the "WIPO Internet treaties," they address IPR protection and enforcement issues related to the Internet

⁶⁷ Prepared by Shayerah Ilias, Analyst in International Trade and Finance, Foreign Affairs, Defense, and Trade Division, CRS, May 6, 2008.

and other forms of digital media. However, Canada has not implemented either of the WIPO Internet treaties. This has raised controversy in Canada. Some critics assert that Canada does not adequately prevent the circumvention of technological measures that protect copyrighted works. Concerns also have been raised that Canada does not sufficiently protect against online piracy. In addition, some criticize Canada for focusing on only commercial piracy. Rather, they maintain that Canada should also 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 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. Canada recently passed legislation criminalizing illegal recording of movies in theaters. Bill C-10, which would bring Canada in compliance with the WIPO Internet treaties, may be introduced into Parliament soon. Previous versions of the bill were not successfully passed in earlier Parliament sessions.

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 IPRs. 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 WTO TRIPS Agreement.

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 affect U.S.-Canadian relations? Does identification on the list affect Canadian IPR policy?

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?

Electric Reliability⁶⁸

Issue Definition. Reliability of electricity supply is a significant concern in both Canada and the United States. As was shown during the 2003 blackout, both countries are interconnected, and operational control issues in one country can affect the electric system in both countries. The Energy Policy Act of 2005 (P.L. 109-58) requires the formation of an Electric Reliability Organization (ERO) with enforceable standards and mandatory membership. The Federal Energy Regulatory Commission (FERC) has selected the North American Electric Reliability Corporation (NERC) as the ERO and has approved 102 of the ERO's 142 proposed reliability standards. NERC is an industry organization whose membership had been voluntary prior to enactment of the Energy Policy Act of 2005. Its mission is to ensure that the bulk power system is reliable, adequate, and secure. The ten regional reliability councils of NERC account for virtually all the electricity supplied and used in the United States, Canada, and a small portion of Mexico. At issue is whether the provincial and federal governments of Canada will approve and enforce FERC-approved reliability standards. In addition, the U.S. electric industry relies on Canadian natural gas to generate approximately 16% of U.S. electricity generation. At issue is whether Canada will be able to continue to increase its exports of natural gas to the United States.

⁶⁸ Prepared by Stan Kaplan, Specialist in Energy and Environmental Policy, and Amy Abel, Specialist in Energy Policy, Resources, Science, and Industry Division.

Background and Analysis. There are three components of electric power delivery: generation, transmission, and distribution. Electric generators need to move their power to their ultimate customers through the transmission system, crossing state and international borders. The current system allows for power transfers within, but not between, three major regions of the United States, Canada, and parts of Mexico: the area west of the Rockies (Western Interconnection), Texas, and the Eastern Interconnection. Because of these international interconnections, operational control issues in one country may affect the reliability of the power supply in the neighboring country.

The United States is a net importer of electricity from Canada. In 2006, net imports of electricity from Canada were 17.4 terawatt-hours [1 terawatt-hour= 10^{12} watt-hours], which increased to 29.6 terawatt-hours in 2007. During 2006 (the latest published data), total sales to ultimate consumers of electricity in the United States were 3,670 terawatt-hours.

On September 15, 2006, the National Energy Board of Canada entered into a Memorandum of Understanding recognizing NERC as the ERO for jurisdictional transmission lines. This allows the National Energy Board to promote ERO standards for international transmission lines but not for lines located within Canada's borders. Ontario is the only province that has approved NERC reliability standards.

Transmission Constraints. Power transfers between the United States and Canada are limited by the physical infrastructure of the transmission system and its operation. One method to improve reliability is to increase transmission capacity. Bangor Hydro (Maine) and New Brunswick Power energized the newly constructed Northeast Reliability Interconnect transmission line in December 2007. Sea Breeze Power Corporation has applied for a U.S. Presidential Permit for the construction of a 550-megawatt high voltage transmission line. The U.S. Department of Energy has not completed its consideration of the permit. The proposed line would extend from Vancouver Island to the Olympic Peninsula in Washington state. Sea Breeze Power Corporation obtained the necessary permits from the National Energy Board of Canada on September 7, 2006.

Three types of constraints limit the transfer capability within the existing transmission system: thermal constraints, voltage constraints, and system operating constraints. Thermal constraints limit the capability of a transmission line or transformer to carry power because the resistance created by the movement of electrons causes heat to be produced. Overheating can lead to two possible problems: The transmission line loses strength, which can reduce the expected life of the line, and the transmission line expands and sags between the supporting towers. This presents safety issues as the lines approach the ground as well as reliability concerns. Voltage can be likened to the pressure inside the transmission system. Constraints on the maximum voltage levels are set by the design of the transmission line. If voltage levels exceed the maximum, short-circuits, radio interference, and noise may occur. Low voltages are also a problem and can cause customers' equipment to malfunction and can damage motors. System operating constraints refer to reliability and security. Maintaining synchronization among generators on the system as well as preventing the collapse of voltages are major

aspects of the role for transmission operators. ERO standards require utilities to be able to handle any single outage through redundancy in the system. Reducing the constraints on the system through technology improvements is one way to increase the transfer capability over existing lines.

Status of the Issue. The Energy Policy Act of 2005 provides for an Electric Reliability Organization to develop and enforce mandatory reliability standards. FERC issued a final rule on the certification of the ERO on February 2, 2006. The rulemaking included provisions for the approval and enforcement of mandatory electric reliability standards. On April 4, 2006, NERC filed its application to become the ERO in both the United States and Canada. FERC approved NERC as the ERO on July 20, 2006.

Natural Gas Supply. A significant part of U.S. gas consumption is used to fuel power plants. Currently about 20% of electric generation in the United States is produced using natural gas. In 2006, generators consumed about 6.2 trillion cubic feet (Tcf) of natural gas, equivalent to 29% of total consumption (21.7 Tcf). Under the Energy Information Administration's current Annual Energy Outlook reference case, gas used for power generation is expected to remain near current levels in the midterm, before slowly declining to 5.0 Tcf by 2030. However, this projection is based on current laws and regulations, and does not account for prospective actions, such as climate change regulation, that could encourage the use of natural gas over coal in new power plants. A recent EIA study of the Lieberman-Warner Climate Security Act of 2007 investigated several implementation scenarios, including cases in which natural gas-fired generation increases by up to 88% as early as 2020 and accounts for over a third of all power production.

A secure and affordable supply of natural gas is therefore important to the U.S. power sector today, and in some scenarios that importance could grow substantially. The United States does not, however, produce enough natural gas to meet its own needs; the United States is the world's largest natural gas importer. In 2006 imports totaled 4.2 Tcf compared to consumption of 21.7 Tcf. Over 80% of gross U.S. imports are delivered via pipeline from Canada (3.6 Tcf in 2006). However, Canadian imports are expected by EIA to decline steadily, to under 1 Tcf by 2025. The Canadian National Energy Board (NEB) also expects net exports to decline under current trends, with Canada becoming a net importer of gas by 2030. The decline in exports is due to increases in Canadian consumption, demand for gas and competition for investment capital from oil sands extraction projects, and reduced productivity from gas production fields in western Canada. The decline in Canadian exports may cause the United States to rely increasingly on potentially less secure sources of natural gas imports, brought into the country by tanker as liquefied natural gas.

Questions. 1. Will Canadian regulators approve and enforce identical electric reliability standards? Without identical standards and enforcement, the reliability of the electric power system could be reduced.

2. Encouraging investment to improve reliability has not been a goal of electric regulatory restructuring. In a more competitive electric market, utilities minimize unnecessary expenses. For example, FirstEnergy implemented cost saving measures

by reducing the frequency of tree trimming activities, contributing to the blackout of 2003. Compliance with reliability standards may involve new capital investment and/or expenses. Will regulators in both the United States and Canada approve recovery of these costs?

3. What steps are the Canadian federal and provincial governments likely to take to maintain and increase gas production?

4. What are the prospects for using alternative fuels in Canadian oil sands extraction projects (a major and potentially growing domestic consumer of natural gas)?

U.S. Energy Security and Canadian Oil Sands⁶⁹

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 one million barrels per day (mbd) of petroleum Canada exports to the United States, 75% is delivered to the Midwest. This region's current capacity and planned expansion places it in a position to receive some increased heavy oil exports from Canada.

Overall U.S. refinery capacity is forecast to increase from 16.9 mbd in 2004 to nearly 19.3 mbd in 2030 — a 2.4 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, even if the expansion includes upgrades in heavy oil processing. Canada is also pursuing additional refinery capacity for its heavier oil. Refinery expansions will have environmental impacts, and Congress will continue to face controversy over the balance between energy security and the environment.

Another matter of concern is Section 526 of the recently enacted 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 “tar sands,” (a term synonymous with oil sands) which are currently associated with producing higher greenhouse gas emissions than fuels derived from conventional petroleum.

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

⁶⁹ by Marc Humphries, Analyst in Energy Policy; and Anthony Andrews, Specialist In Energy and Energy Infrastructure Policy; Resources, Science, and Industry Division.

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 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 current conditions demonstrated by the billions of dollars already committed to Canadian development). Canadian crude oil exports (from oil sands and petroleum) were about 1.82 million barrels per day (mpd) in 2006, of which 1.8 mbd or 99% went to the United States. Canadian crude oil accounts for about 18% of U.S. net imports and about 12% of all U.S. crude oil supply. U.S.-based oil companies are major investors in Canadian oil sands. 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 2.8 mbd by 2015.

Greenhouse gas "emissions intensity" (CO₂/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 by 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, CO₂ 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 CO₂ in 2010 and 218 megatons CO₂ 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. A BP refinery upgrade and expansion in Whiting, Indiana, expected to be complete in 2011, is in the permitting stage as its air permit is undergoing regulatory review and public comment. 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.

The National Defense Authorization bill for Fiscal Year 2009, as marked up by the Senate Armed Services Committee, would authorize ten-year contracts for the purchase of alternative and synthetic fuels while incorporating greenhouse gas requirements identical to those in Section 526 of the Energy Independence and Security Act. Bills such as the American Energy Production Act (S. 2958) would repeal Section 526.

- 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. How much Canadian crude oil is expected to be impacted by Section 526?

Natural Gas Pipeline from Alaska⁷⁰

Issue Definition. In October 2004, Congress approved the Alaska Natural Gas Pipeline Act (ANGPA), which authorizes, in principle, a pipeline to carry natural gas from Alaska's North Slope, establishes rules governing its construction, and authorizes federal guarantees on pipeline project loans. In 2006, the then-Governor Murkowski of Alaska and the three North Slope oil producers and the state of Alaska agreed on a contract to build the pipeline. But the contract never received the necessary approval of the state legislature, and a new governor, Sarah Palin, took office in December 2006. She has called for a new contract with a firm or consortium of firms, to build the pipeline, in accordance with new legislation that has been introduced in the legislature. In 2007, TransCanada Corporation, the Alberta, Canada based pipeline operator, submitted the only proposal that met state guidelines. Governor Palin has not sent the proposal to the legislature for consideration. In 2008, BP and ConocoPhillips proposed a pipeline project that required no state money for construction.

The destination of the gas is expected to be markets in the lower 48 states. A proviso of ANGPA effectively prevents the pipeline from passing through or near the Mackenzie Delta gas fields in northwest Canada. This prohibition appears likely to limit the potential gas throughput inasmuch as Canada is moving to construct its own pipeline from the Mackenzie Delta fields. It is the sense of Congress, as stated in ANGPA, that there is sufficient demand for gas from both projects. Also, if the Mackenzie pipeline is built, it appears at this time that all the gas from that project would be used to operate the oil sands projects in northern Alberta.

Background and Analysis. Alaskan natural gas is a major potential U.S. energy resource that has been hardly tapped. The Alaska Department of Natural Resources estimates recoverable gas reserves in the North Slope oil fields at about 30 trillion cubic feet (tcf), which is the energy equivalent of about 5.3 billion barrels of oil. Natural gas is believed to be under the Arctic National Wildlife Refuge (ANWR) as well, although seemingly not as much as already discovered in the rest of the North Slope. The already discovered natural gas resource has not been developed because of a lack of a cost-effective means of transportation to major markets; estimated costs of construction have precluded serious consideration of transporting the gas by pipeline. Most of the gas produced so far on Alaska's North Slope — 80% of the 8-9 billion cubic feet produced annually — has been re-injected into the ground. The small amounts produced are used for operations in conjunction with oil production and transportation, such as powering oil through pipelines.

⁷⁰ Prepared by Robert Pirog, Specialist in Energy Economics, Resources, Science, and Industry Division.

Construction of a pipeline to transport natural gas to North American markets and/or a warm-water port for shipping liquefied natural gas (LNG) could enhance North Slope oil and gas economics and the commercial promise of ANWR. Recent steep increases in gas prices and projections of continued high prices have suggested improvement in the relationship between market prices and the combined cost of known North Slope gas resources and of pipeline transportation. Potential profitability of the authorized pipeline is enhanced by the \$18 billion in loan guarantees approved by Congress for the project, estimated in 2004 to cost as much as \$20 billion. Since then, however, the rising costs of steel, other material and construction labor have driven estimated costs of the pipeline to approximately \$30 billion. The LNG alternative, a possibility considered by the state of Alaska, has so far not found favor with the North Slope producers.

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 (ANGTS), was approved by the 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 North Slope to the "prebuilt" network, has never been started.

Alaska has 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, 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 see 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, but the Canadian government has promised that these issues will not impede completion of the project. The U.S.-authorized pipeline likely would not enter service for ten years after an initial construction contract is approved.

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. Both the Canadian government and the Bush Administration opposed supporting development of a pipeline by setting a government-guaranteed price floor under gas delivered from Alaska, and such a provision was not included in the ANGPA legislation.

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 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. A final report is due to the National Energy Board by mid-2007. The Board will then make a final recommendation to the Canadian government, possibly in 2008.

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, neither the Canadian or the U.S. and the state of Alaska have authorized projects in place. As the Mackenzie route is technically less difficult than that from Alaska, it might seem that the Canadian project could be completed more quickly and sooner than the Alaska natural gas pipeline, if Canada decides to go ahead with the project.

Questions. 1. How close is Canada to actually making a decision to go ahead on the Mackenzie pipeline?

2. Will the Canadian project begin construction long enough before the U.S. project begins so as to minimize competition between the projects for inputs such as labor and steel?

3. To what extent might the partly competing natural gas pipelines, once completed, diminish the economic viability of each other?

4. What proportion of the gas delivered by the Mackenzie pipeline is likely to be used by the Canadian oil sands development?

5. Is it likely that further delays in either, or both, pipeline projects will cause the North American gas market to be lost to LNG imports?

Northern Energy Development⁷¹

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.

⁷¹ Prepared by M. Lynne Corn, Specialist in Natural Resources Policy; Resources, Science, and Industry Division.

Background and Analysis. During the 110th Congress, ANWR has not been a major element of the energy debate until the run-up in energy prices. Some bills in the second session of Congress have been introduced to address energy supply and these bills include titles to open the Refuge. The debate is (a) the extent to which any ANWR discoveries might lower energy prices, and (b) whether to approve energy 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. 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 much reduced, especially since any ANWR oil would come on-line in 7 to 12 years, and therefore have little immediate effect on gasoline prices. At the same time, prospects of legislation to protect the area as statutory wilderness are also dim, due to the likelihood of a Senate filibuster and presidential veto.

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 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.

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 is centered 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. Fearing that oil development in the herd's most frequent calving ground in ANWR's coastal plain area might jeopardize their livelihood and even their culture, the Gwich'in on both sides of the border have vigorously opposed development. Indeed, the concern over the PCH has invigorated 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. Three ANWR development bills have been introduced in the 110th Congress; two bills have been introduced to designate the area as wilderness. The Alaska delegation and the Bush Administration remain strong proponents 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 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. How can one reconcile the opposition of the Canadian government to energy development in ANWR (where the PCH calves in most years) to its support of an “over-the-top” natural gas pipeline? 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?

Great Lakes Restoration⁷²

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 the potential negative consequences of new proposals to withdraw large volumes of water from the Great Lakes for consumption.

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.

⁷² Prepared by Pervaze Sheikh, Analyst Natural Resources Policy, Resources, Science, and Industry Division.

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.

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-FY2008, there has been approximately \$126 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. No AOCs have 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 needs to be approved by each state legislature, as well as the U.S. Congress, to achieve full force and effect as an interstate compact. Each of the Great Lake states are considering the Compact. Currently, one state (Michigan) has introduced a related bill; three states (Ohio, Pennsylvania, and Wisconsin) have passed bills in one chamber; and four states (Illinois, Indiana, Minnesota, and New York) have enacted legislation approving the 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. 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. 1350 and S. 791), introduced March 6, 2007, 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 May 9, 2008 would reauthorize the Great Lakes Legacy Act and authorize \$150 million annually from FY2008-FY2012 for cleaning up AOCs in the U.S. Other bills in the 110th Congress address invasive species in the Great Lakes, migratory birds, and specific projects that may restore portions of the Great Lakes ecosystem. Water withdrawals guidelines for the Great Lakes as prescribed in the Compact and Agreement have not been addressed in the present Congress.

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. 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?

3. The Compact and resulting water withdrawals could potentially affect the environment and the economies of, and relationship between, Canada and the United States. What is the Canadian position on the Compact and Agreement? Is Canada considering similar measures to govern its use of Great Lakes water? Would a parallel Compact in Canada be considered at some time?

4. 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 Levels⁷³

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. 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

⁷³ Prepared by Pervaze A. Sheikh, Analyst in Natural Resources Policy, Resources, Science, and Industry Division.

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. 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).

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. Corps models, for example, predict below average water levels for Lake Michigan, Lake Huron, and Lake Superior for the remainder of 2008.

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 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 (S. 2355, introduced November 14, 2007, and H.R. 250, introduced January 5, 2007). Great Lakes water levels are indirectly addressed through proposed legislation that would authorize a national strategy to ensure the recovery, resiliency, and health of coastal and Great Lakes ecosystems from climate change effects (S. 2211, introduced October 19, 2007). 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 Bears⁷⁴

Issue Definition. The United States has proposed listing of polar bears as “threatened” under the Endangered Species Act (ESA; 16 U.S.C. §§1531 et seq.). Under 1994 amendments to the Marine Mammal Protection Act (MMPA; 16 U.S.C. §§1361 et seq.), U.S. citizens may obtain permits to import sport-harvested polar bear trophies from Canada. In Canada, Inuit hunters are permitted to allocate a limited portion of the subsistence harvest to sport hunters. However, an ESA listing as “threatened” triggers an automatic listing as “depleted” under the MMPA, a listing that would prevent U.S. citizens from importing polar bear products. Some suggest that an import ban, effectively stopping U.S. citizens from hunting polar bear in Canada, could compromise successful Canadian community-based conservation programs.

Background and Analysis. Polar bears depend on Arctic sea ice, which most scientists acknowledge will be affected by climate warming causing, at minimum, an earlier annual or seasonal thaw and a later freeze of coastal sea ice. Globally, less than one-third of the 19 known or recognized polar bear populations are declining, more than one-third are increasing or stable. The remaining third have insufficient data available to estimate population trends and their status has not been assessed. Two polar bear populations occur within U.S. jurisdiction.

Polar bears are affected by climate change, contaminants, and subsistence and sport hunting. Environmental organizations have voiced public concern that polar bear populations are threatened by climate change. Scientists have confirmed that, in recent decades, the extent of Arctic sea ice has declined significantly as the result of climate warming: 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 during summer by the second half of this century. In addition, three groups of contaminants are implicated as potentially threatening polar bears — petroleum hydrocarbons, persistent organic pollutants, and heavy metals. The United States allows limited subsistence harvest of polar bears by Alaska Natives. In Canada, Native hunters are permitted to allocate a limited portion of the subsistence harvest to sport hunters. Under 1994 amendments to the MMPA, U.S. citizens may obtain permits to import sport-harvested polar bear trophies from Canada.

Status of the Issue. The Fish and Wildlife Service (FWS) has proposed listing polar bears as a threatened species under ESA, acknowledging the increasing threats to their existence. The FWS listing decision must 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. Under a late April 2008 court ruling, a listing decision on the polar bear must be published by FWS no later than May 15, 2008.

⁷⁴ Prepared by Eugene H. Buck, Specialist in Natural Resources Policy; Resources, Science, and Industry Division.

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,” with a more detailed official report scheduled for release in August 2008. After the August COSEWIC report is received, Canada’s Environment Minister, John Baird, is scheduled to issue a statement outlining how the Government of Canada will proceed toward a decision on polar bear listing under Canada’s Species at Risk Act.

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 polar bears by U.S. citizens in Canada 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?

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