

### **Panel Three: Border Issues**

1<sup>st</sup> Panelist: Bradford Huther: Intellectual Property Rights

The Security and Prosperity Partnership agreement and global supply chain infiltration is resulting in the intellectual property rights of people being taken advantage of. This has a low risk of detection and there is very little deterrent. The RCMP estimate that there are more than 13 billion in counterfeit goods in the economy. Every product and industry sector is affected by this.

The five largest exporters of counterfeit goods start with China. We have been taking a regional approach to this problem, but the intellectual property threat is not confined by world geography. Consumer health is also affected by counterfeit drugs. Illicit sales of substandard products is 50% of the products being consumed. The US chamber of commerce and Canada is working together and believes that there needs to be a concerted effort on the side of industry. The North American competitiveness council is being used to try and counteract this, and there needs to be some meaningful control taken of this.

NAC gives a series of actions that should be followed to help curb this in eight specific areas. They begin with three broad areas: what does it take to detect and secure shipments across transnational borders? Second what does it take to increase the public's awareness? Third is in the area of metrics. No one really has a good handle on the problem and there is no exact numbers and so we need better and more reliable metrics so that we can have a baseline to measure the effectiveness of our action strategies.

Of the eight recommendations three were not adopted, one deals with who is going to be in charge of the national sovereign undertaking of these actions and who is going to provide the authority to make a difference and who is going to make an effort in making legislation. Five of the recommendations were adopted, first, public awareness, second a task force will be developed to undertake work to focus on the internet and what will be the digital piracy effort of the governments. Third, develop an effort to collaborate on third party governments and investigate the question of can all governments go to a county and force the government to pay attention to the problem? Fourth, to focus the attention of members of congress that there is no consumer liability associated with counterfeit goods. Lastly there is absolutely no good data regarding what is happening with a product.

It has been agreed to start with a small step, beginning with the toy industry. Developing metrics in this area could be the kind of thing that begins to change consumer attitudes. In the long term the 2010 goals are to develop a comprehensive custom clearance and fully compatible national system as well as fund research and development of a container security device so shippers will understand what the standards are.

The public private partnership model in the SPP makes sense. Complementary issues include the US chamber of commerce funding the creation of a place with all the intelligence regarding intellectual property rights: Interpol. Regional investigations will

occur through this organization as it will have the man power to make a difference. Canada's leadership in the WTO, and the word, with regards to curbing counterfeit goods has been a vital stepping stone in making this happen.

2<sup>nd</sup> Panelist: Dean Sherratt: Responsibility and Jurisdiction in International Law – How to Make Ends Meet

International law as it develops should cleave to a nations responsibilities and that is how ends will meet as you will have a responsible international law and the ability to implement policy. You should use your property so as not to injure the property of another (*sic utere tuo ut alienum non laedas*). This was the basis for the Trail Smelter Case, as well as one of the provisions of the boundary water treaty, in addition to being enshrined in virtually all treaties, declarations and pronouncements in the international field since 1909.

Canadian legislation purports to regulate air and water pollution. The US also has a law to help with air and water pollution, but water and air environmental pollution does not have a wall to separate Canada and the US. There is no regulation for this pollution despite these provisions, so how have the countries dealt with transboundary pollution?

The US has an affection for protecting their environment rather than caring for the environment of their neighbour. The US has applied doctrines of extraterritoriality with regards to pollution. Canada has found a parallel principle in the imperial tobacco case. So how do you apply international law principle that says there is a state responsibility to respect the environment of another country when the legislation you apply is over an issue in another country?

When you apply laws extraterritoriality this results in states legislating to protect another countries environment so they are not applied, and instead you end up suing people. The proper way of meeting your jurisdictional duty is to utilize whatever tools you have to seek out the views and opinions of foreign governments and try to engage the interests of the other countries. You can also use proper application of environmental assessment tools, that is, find out if something you are going to do will pollute another country, figure out how, and stop it.

There is a proposal for a lodgpole mine that is going to go under environmental assessment and this is an example of using assessment to prevent pollution before it happens. When you apply legislative tools you must take into account the interests of another county. It is also important for us to give life to legislative tools already in existence so environmental protection acts and pollution laws prevent transboundary harm from occurring. This will lead to more consistency within international law and will create a more appropriate ability to take your own interests, and those of another country, and come to a solution that protects the environment and does so on a bilateral basis so concerns are met.

3<sup>rd</sup> Panelist: Rick Van Schoik: Good Neighbours: Building Resilience Across Borders Together for Common Security, Lessons Learned from the US Mexican Borderlands.

How do these two nations behave as neighbours? How do you adapt to new socioeconomic demands? There is a smart border accord between Canada and the US and the US and Mexico but there is no single appraisal by any of the governments. There is a disparity regarding Canada and Mexico not having the same agenda, it is also difficult to deal with one set of accords at a time. We have authorized appropriated and built a border wall in Mexico and there have been three attempts to build a smart fence on the south border.

We are stalled on legislation due to public participation and transparency, in addition to greenhouse gasses and energy stalls.

To what extent will security trump trade in the future? How do we move from competition to commitment and co mingling of resources? How do we move from the archaic ideal of a buffer between each other to building bridges between each other?

We need to recognize the natural infrastructure that is already there when you impose security infrastructure. The co development of the three is not mutually negating and can be developed together.

We must participate in joint risk management. We have to consider joint threats, responsibilities, vulnerabilities and consequences. There must be a plan to prepare to respond and to recover. What to do (macro) can only be done once we have a joint risk assessment.

There can be development of a cross border cooperation scoreboard with the categories or trust, transactions, tries, and ties.

As the rhetoric warms up before the transition we hear more about unfriendly oil and all the money we spend goes to dirty and corrupt enemies.

4<sup>th</sup> Panelist: Amgad Shehata: Business at the Border

Shift happens. Policy makers and regulatory bodies try and bend shift and regulate it. What's clear is in tough economic times everyone wonders when bottom will hit. Real goods for real consumers will play a big part in how and the pace you will see a shift occur. Shift will lead to a world of synchronized commerce. A trillion dollars passes borders a day and supports five million jobs. As shift continues there will be more trade and more global trade. Intraregional trade generates jobs and maximizes supply chains

Friction, when it comes to cross border commerce, will have the greatest impact on the job market. Research and development are done where the best resources are available and is rarely done in one country. Today, in order to be competitive, you have to have all the pieces come together at the right moment with the right customer. Regulators are

changing the dynamics of supply change management and companies around the world grab a competitive edge using time in transit over countries who cannot gain access to parts.

Implications of time and trade in increasingly stressed and volatile currencies and economies as well as slow and outdated bureaucratic processes do not make us safer and slow trade down. How can we boost Canada US prosperity? We must take private action as well as business and government leaders need a debate to continue the prosperity agenda.

North Americas choice is to race to the bottom by protecting certain jobs or race to the top by developing our brain jobs. Regional competitiveness is key to binational cooperation. Development of interregional and intergovernmental commerce zones, and a remedy to the slow moving paper process, will be needed in a world that is moving at an accelerated rate. Most goods are low risk and we don't need to impede time and trade.

We need to manage border crossings as there is a delay at borders due to government processes that are not fluid. A ship load of cars imported from Asia have a single customs entry and cars within North America have 28000 customs entries between the two countries. Redundant and inefficient policies delay trade.

Change will continue to accelerate and we need active involvement in the Security and Prosperity Partnership.