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Mr. John Cannis

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● (1535)

[*English*]

The Chair (Mr. John Cannis (Scarborough Centre, Lib.)): Gentlemen, colleagues, you've had the information circulated to you. Let me begin by welcoming our witnesses here today: Graham Flack, director of operations, borders task force; from International Trade Canada, Paul Robertson, director, trade remedies division; Steven De Boer, acting director, investment trade policy; and Sara Wiebe, policy analyst, borders task force.

Welcome.

I understand you don't have an opening statement at all, but if there's something you'd like to say, by all means do.

Mr. Graham Flack (Director of Operations, Borders Task Force, Privy Council Office): Why don't I make a few remarks to situate for the committee where I come from and the areas I may be able to help you with.

Following the events of September 11, a decision was taken at a political level that the Deputy Prime Minister, John Manley, who was the foreign affairs minister, would be named as the political interlocutor with the United States to deal with Canada-U.S. border issues after 9/11. At the same time, the Prime Minister took the decision to set up a group of public servants, a very small group called the Borders Task Force, inside the Privy Council Office to coordinate and support the Deputy Prime Minister on these issues.

So that's what we've been doing since that time. We're the group that developed the smart border declaration and associated action plan, and we work closely with a broad range of Canadian departments and agencies who have individual responsibility for the implementation of the items on the smart border action plan.

To give a little more context to the committee, I think the September 11 attacks and the way the government has worked with the United States to respond to them is really a success story. When we dealt with U.S. and Canadian business stakeholders in the immediate aftermath of the 9/11 attacks, they argued that really we were playing a game of defence. The question was how much slower trade was going to be across the border; we couldn't hope to make gains at that point. We wanted to simply limit the damage that was going to be done to the border as a result of the inevitable new security measures that were going to be put in place.

We took a much more ambitious approach, arguing that one of the challenges we had at the border was actually a lack of attention that had been paid, particularly on the U.S. side, at the political level. So on September 10 we did not have a border that we thought was operating optimally. From the start our objective was never to get the border back to where it was on September 10, but rather to build a fundamentally different border, a border that would be more secure but also more efficient, so we could more expeditiously move the massive flows of trade and people across that border.

That vision, which was articulated and developed in Canada with a detailed action plan behind it, was ultimately agreed to by the United States in the smart border declaration that was signed in December 2001. The declaration set out the principle that economic security and national security were not competing objectives but mutually reinforcing objectives, both of which we had to advance in order to secure our common security and prosperity.

The process was not simply about a declaration but rather a very detailed action plan of very specific measures and public reporting of progress on those measures to demonstrate how we were moving forward. Thirty items were initially on the action plan; two others were added by the President and the Prime Minister a year later. They came in four categories: the secure flow of goods, the secure flow of people, secure infrastructure, and coordination and information sharing in the enforcement of those objectives.

I just wanted to give you a few examples of how we've been able to meet this test of what seems unattainable, which is a more secure border but a more efficient border as well. It was through the use of risk management, and I'll give you some concrete examples of the programs we've put in place that are going to continue to build that border of the 21st century.

The first is the NEXUS program. This is a program for low-risk, frequent travellers at the border. Those individuals who wish to apply, often commuters or people who use the border on a relatively frequent basis, are security cleared in both countries through security checks. They undergo an interview and they have a two-finger scan taken, a biometric, to verify their identity. The program is more secure for us, because when those individuals arrive at the border we have detailed information about who they are. We have already certified them in advance as low risk. But for the individuals crossing the border, they effectively cross the border unimpeded; that is, they don't have to stop at the customs agent. A prox card brings up their image and they're immediately whisked through the border.

We're actually moving to put that same concept in place in two weeks in Vancouver through a program called Air NEXUS, which uses an iris scan biometric and will allow frequent travellers who enroll in the program to get expedited processing through the airport security screening, and whether they're flying to the United States or back into Canada, they will bypass the customs agents. They will go into a booth, their iris will be verified against the iris in the database, and they will move through.

Again, it's more secure for us, because we have a flow of low-risk people we've identified on which we have more information. We can then devote the remaining resources we have more effectively to deal with the higher-risk flows. And it's certainly more efficient for business travellers because they're able to move much more expeditiously across the border.

● (1540)

On the commercial goods side, we've established a similar joint program with the United States called FAST—free and secure trade. Again, we have common security processes with security checks and plans put in place by low-risk importers, carriers, truck drivers, pre-approving them into the system, again with the expectation that when those goods arrive at the border they will be processed instantaneously without having to wait.

Where we've been able to marry that program with dedicated infrastructure, as we have at the Blue Water Bridge and more recently at the Ambassador Bridge with a dedicated lane for FAST traffic, we see dramatically expedited flows for those goods across the border. So, for example, at Blue Water, on one of the worst days the delays in flow for non-FAST traffic were up to three hours. FAST traffic was moving across the bridge in five minutes.

Another example of the intense cooperation between the two countries is at the law enforcement level. We have established 23 integrated border enforcement teams. These are teams of law enforcement officials at the local, state, provincial, and national levels working in an integrated way across the border to effectively secure that border area.

Another example of the cooperation is joint container targeting. Canadian and U.S. officials are working side by side in three ports in Canada, two in the United States, sharing their risk analysis scoring in order to more effectively target the containers arriving at those ports. The program has worked so well that we're now partnering with the United States internationally through a container security initiative that will allow us to do that interdiction of high-risk containers internationally.

I know the committee received the status report of October 2003 of the declaration and the action plan, so I won't go through all the details—I'll leave you to ask questions. I just wanted to highlight some of those examples.

I also want to point out, though, that the smart border process we have used as a vehicle to advance issues of importance to Canada goes well beyond the items that are simply in the smart border action plan. The example that's most prominent and has received considerable press coverage over the last few days is the U.S. visit program. This is a program by which all non-American citizens entering the United States are subject to fingerprinting before entry into the United States. There are only two groups of citizens in the world that are not subject to the U.S. visit program, and those are American citizens and Canadian citizens. That's a reflection of the dense cooperation between the two countries and a recognition by the United States that this cooperation justifies the equal treatment of Canadian and American citizens through the program.

In terms of challenges ahead, I should point out that there are additional areas where we think we need to make additional progress in the smart border declaration and action plan. One is the safe third-country agreement. This is an agreement that governs the flow of refugees across the border. The principle behind the safe third-country agreement, a principle that the United Nations High Commissioner for Refugees supports, is the concept that refugees should make their refugee claim in the first of the safe countries in which they arrive. If you go back two years, some 14,000 individuals who arrived in the United States headed north to make refugee claims in Canada. Under the principle of the safe third-country agreement, the country in which you first arrive is the country where you will make your claim.

From a security perspective, we believe this is an important principle as well. When an individual arrives at the land border, we don't have information on where they entered North America, what their flight pattern was before, so it's difficult to assess the risk. Up to 80% of the refugees we receive from the highest-risk countries from a security perspective actually arrive in Canada not directly from those countries, or even indirectly through other countries, but from the United States. So it's very important to us that we move forward on the safe third-country agreement.

Canada has published its final regulations. We have reached an agreement with the United States. We are hopeful that their final regulations will be released shortly.

A second challenge we face is on the infrastructure front. The government has committed $600 million to enhancing border infrastructure and we've used that money to leverage very important gains. I talked about the dedicated infrastructure at the Blue Water Bridge. We've recently dedicated lanes at Blaine, at Champlain, and at the Ambassador Bridge. So infrastructure is clearly an area that's going to be critical, particularly in southern Ontario where geography dramatically constrains the infrastructure we have.

If you want to really amplify the impact of the FAST and NEXUS programs, it's not very effective if the individual waits in line half an hour, but then once they get to the border they're processed immediately. You need to be able to provide them dedicated access so they're not waiting to get to the border, so they can get there. That's a division we're working to roll out and have at a number of border crossings.

There are two other issues to highlight in terms of challenges. One is pre-clearance. You're probably familiar with it in the air mode. This is where you are cleared into the United States prior to actually arriving in the United States. The customs and immigration processing are done in Canada prior to your departure.

● (1545)

That could have very important security and facilitation benefits at the land border where you have infrastructure-constrained crossings. You could do the processing, let us say, on the Canadian side if that is where the geography made sense, or alternatively, where Canadian officials may want to do their preprocessing on the U.S. side, receive the clearance in advance of arrival at the border, to help facilitate but also provide greater security for the infrastructure.

A final challenge I would like to identify for you on land pre-clearance is this. Secretary Ridge and Deputy Prime Minister McLellan announced at their latest meeting that they will be engaging stakeholders in Buffalo-Fort Erie, which is one of the most pressing areas in terms of the infrastructure challenge being faced, in a pre-clearance pilot that may be put in place at that crossing. We are working hard on that, but it offers real potential at other border crossings, notably in the Windsor corridor, where it could amplify the flows across the border.

The last issue I would raise in terms of challenges on the Canada-U.S. border front from the smart borders perspective is the Food and Drug Administration's advance notification rules. The FDA is responsible for the implementation of the U.S. Bioterrorism Act. The FDA is not historically a player at the land border, so it has had real challenges in understanding how a land border operates. The initial advance notification rules it produced would have required, for example, fishermen in Nova Scotia to provide notification of exactly what they had caught something like 12 hours before they actually got up in the morning to go out and catch whatever it is they were going to catch.

We have worked closely with the FDA and the U.S. Department of Homeland Security to move those rules back into a more reasonable zone. We still think there is more work to be done, even though tremendous progress has been made on it. But as you get new players at the border such as the FDA—not traditional players at the border—additional challenges are provided for us in managing it.

In terms of where next, the government issued Canada's first integrated national security policy in April 2004. It was well received among Canadian stakeholders—business stakeholders—as well as by the U.S. administration.

One of the items in the national security policy was an identification of the fact that Canada has been working with the United States and Mexico to develop a next-generation smart borders agenda to further advance both the economic security and the national security of North America, which will permit us to broaden and deepen the borders agenda.

That is a brief overview from the perspective of where we sit on the smart borders process, but I would be happy to take questions.

Paul, from a Foreign Affairs perspective, is there anything you wanted to open?

● (1550)

Mr. Paul Robertson (Director, Trade Remedies Division, International Trade Canada): Thank you, Graham.

Mr. Chair, by way of introduction, I would like to extend the apologies of my director general, Andrea Lyon, who was supposed to be here today. She is sick.

Perhaps it is indicative of the breadth of her understanding that we have here today directors dealing with trade remedies and with investment. I would also like to bring to the attention of the committee another person, Allison Young, who is from the technical barriers and regulations division, dealing with regulatory issues. We will be a poor second, but we'll try to answer the questions Andrea would have answered had she been here.

Thank you.

The Chair: Are there any other comments from the witnesses?

We will now go to questions. Thank you very much, Mr. Flack, for a very nice presentation.

We will start with Ms. Stronach.

Ms. Belinda Stronach (Newmarket—Aurora, CPC): Perhaps someone else would like to go first and I will be second.

The Chair: Monsieur Paquette.

[*Translation*]

Mr. Pierre Paquette (Joliette, BQ): Good afternoon.

Mr. Chairman, the presentation dealt almost exclusively with the smart border but as I understand it, there may be much more at issue. The problem for me is mainly with chapter 19 of NAFTA.

I discussed this with people involved in lobbying in relation to softwood lumber. It is their impression that over the years the Americans have found a way of getting around the spirit of chapter 19 and that this chapter has become almost inoperative.

For example, in the case of softwood lumber, even if we do win the extraordinary challenge that they have mounted, nothing will prevent the industry from submitting another petition and starting up the process all over again.

How do you assess the efficiency of chapter 19 of NAFTA in resolving our disputes with the Americans? Of course, our disputes are mainly with them since they are our main export market.

[*English*]

Mr. Paul Robertson: Thank you for the question. I think there are a couple of elements to it.

First of all, the way we view the efficiency of the NAFTA chapter 19 process is in terms of the timeframes that are used to do a review of U.S. policy. Those timeframes have been stretching out. There's now work under way to try to identify the reasons for that and see what can be done to shorten them.

Originally it was supposed to take just over 300 days for the whole review to take place. There have been time lags that have come into the process—selection of panellists and these types of administration elements—and those elements are being looked at to see how we can reduce the timeframes, because that's a very important part of the equation. You have to remember, of course, that chapter 19 is an alternative to the domestic U.S. litigation process, which can go right to the Supreme Court, and the timeframes involved in that process are considerable, as you know.

Secondly, with respect to the question of panel decisions, there is of course in the chapter 19 process recourse to an extraordinary challenge committee to review the elements of the panel decisions. I think in the case of softwood, although I am not responsible for softwood, there has been a statement by USTR that they intend to invoke the ECC. They haven't done so yet, but they have until November 25, I think, to do it. We are expecting that to take place. It's a natural process that had been provided for in the NAFTA.

On the question about recurring cases, I think we have to bear in mind that it is the petition that is brought to the government by industry that triggers cases. If cases are brought by the industry to the government, the government, because this is a quasi-judicial process, has to review those cases against the relevant laws and the like.

With respect to the process itself in trade remedies, the trigger is the private sector initiative. If the private sector keeps coming back to the issue, parties are bound to deal with those petitions through a quasi-judicial process. In that respect there is nothing governments can do to stop industry from making their legitimate request petitions for trade remedy action, provided, of course, that the petition is based on grounds that would initiate an action.

● (1555)

[*Translation*]

Mr. Pierre Paquette: How many extraordinary challenges have their been in the past 10 years? From what I understand of the challenge that the Americans can undertake by November 25, it is possible to challenge the integrity of the panellists or that of the process. Can you tell us a bit more about that?

[*English*]

Mr. Paul Robertson: I can't give details of the Pacific softwood case because I'm not responsible for it, but one of the issues you can put before an ECC is conflicts of interest that are viewed by either side in terms of the panel and deliberations. If the Americans feel there is a conflict of interest among the panellists, they have the right to bring that to an ECC. That's provided for in the criteria to bring about an ECC.

I can't speak authoritatively on how many ECCs have been taken since the beginning of the process. I know, for example, we have just had an ECC on magnesium, and it was ruled in Canada's favour. In fact, that just occurred this month. I think there have been three or four in the course of the NAFTA. I'm not able to break down what were the issues and decisions on both sides, but of all the panel cases brought, to give you a sense of proportion, there have been about three or four ECCs done for all those cases.

[*Translation*]

Mr. Pierre Paquette: More generally speaking, lots of people, including myself, have the impression that there has been a rise in protectionism in the United States over the past several years. Based on what is happening in the department, can you tell us whether you also have this impression?

[*English*]

Mr. Paul Robertson: It's a difficult question to generalize about, but you have to remember that trade remedies are triggered by individual industry petitions, and those industries react to economic conditions and their place in that environment. So if there's been an increase over the last number of years in trade remedy cases, it's a reaction by the U.S. industry to what they see as their own economic condition within their economy.

It depends on how each sector views themselves and their need for recourse to trade remedy action. I don't think we can make a sweeping statement about protectionism generally in the United States, because each case is brought by a specific industry or a group of companies, so it's how those—

[*Translation*]

Mr. Pierre Paquette: We can also add the hog case. After the mad cow crisis, the border was shut down. Then there is also the failure to settle the softwood lumber conflict and the Americans don't seem to be in any hurry to resolve the matter. We are now facing the problem of exporting live hogs to the United States. It is our impression that there has been a rise in American protectionism. You're probably right in saying that it depends on the sector.

In the final analysis, is not one of the problems the fact that the American legislation is too favourable to industry? In the US it is possible to make a preventive complaint, the effect of which is to make access to American markets difficult for Canadian producers.

[*English*]

Mr. Paul Robertson: Certainly trade remedy actions create difficulties for exporters into the United States, just as Canadian trade remedy actions cause problems for exporters to Canada.

I guess I have a couple of points. On live swine, for example, we've won the preliminary with respect to the countervail, whether or not we subsidize. On the dumping side, that's led by the industry. We have a preliminary rate attached there. We still have the next hurdle of injury to go through. If there's no injury proven, that will end the case right there. So we're hopeful that the efforts of our industry and provinces will lead us there.

On your second element of the question, both the Canadian and the United States governments have to respond, in a judicial process, to petitions that have been triggered by the industry. It is a judicial process and there is no discretion, other than you reviewing the petition and the legitimacy of the petition against your internal law. So in that respect it is an automatic process. It is not something to be tampered with.

Frankly, if you could start playing with that judicial process to have that discretion there'd be a lot more concerns about how that process was being conducted by the parties. So in that respect we can't control the petitions being brought, but we can take comfort from the fact that it's a judicial process that reviews those petitions for initiation of cases.

● (1600)

The Chair: Thank you, Mr. Robertson.

We will go to Ms. Stronach.

Ms. Belinda Stronach: Thank you.

My question relates more to the smart border plan introduced in 2001 overall. There was a positive plan introduced at that point by John Manley. I guess my question is sort of a general one.

What kind of a results-based assessment do you have against that plan? How is the program assessed and how often? What I'm seeing here is from October 3, 2003, so how often is that done, and when were the last results compiled? What has been positive from that? What areas need improvement? What kinds of measurable results are being used to make sure this program is functioning as it was intended? What actual progress has been made against it?

Mr. Graham Flack: Somewhat unusually from the very beginning—and this was in part a function of Deputy Prime Minister Manley and Tom Ridge being very much into benchmarking results and publicly reporting on them—they insisted on two things. One was receiving joint briefings and scorecards on progress. There wasn't a Canadian scorecard that went up and an American scorecard. We actually provided to them a joint briefing that we negotiated, so that they had a collective view from the two governments on how we were doing on each of the issues.

But then they wanted to take that to the next step and issue regular public reports. Deputy Prime Minister McLellan and Secretary Ridge indicated at their last meeting in Ottawa that the next report would be coming out in the coming weeks. We expect to have that next report very shortly.

They have averaged one report a year. It has been a detailed report looking at each of the individual items and exactly how we are doing, in a quite transparent way. Taking the individual items, some are very easy to benchmark. If you look at the joint container targeting program that the two countries have, for example, it's easy to put a check mark beside it because you can say the program had the following elements, all of those elements are in place, and operationally we believe they are working.

But some of the more macro flows are measures that cut across a range of the border items, and those would include border wait times, assessments of how secure facilities are, and how secure the programs are. They are much more difficult to do in a global sense. We have attempted to do tracking of border wait times, although there are a lot of factors that go in there. One of the factors is that there was a significant reduction, not so much on the truck traffic side but on the passenger car traffic side, in flows across the border between the two countries.

On border wait times themselves, I think the averages are quite good. They're 14 to 16 minutes on average, with a six-minute variation on either side overall. It's difficult to tease out of that how much of it is a function of the fact that we have only recently returned to the same border capacity we had pre-9/11 and how much of that is a function of the new measures we're taking.

You can see localized effects of the programs. The example I would give is at the Blue Water Bridge crossing at Sarnia. Because of the infrastructure that exists there, we were able to put in a dedicated lane for the FAST program, the free and secure trade program. We had a significant increase in applications to the program from companies that use that bridge, because they saw the immediate effects of doing that. There was a pull effect in terms of how they value the program commercially. They are now applying for it because they see the benefit. We had a particularly bad day in terms of border flows when the wait time was three hours at the bridge. The wait time for the dedicated FAST lane was four to five minutes.

So you can see measurable impacts of the programs, and we believe that on a going-forward basis, as we are able to put that dedicated infrastructure in place.... We just announced a dedicated lane at the Ambassador Bridge in Windsor, and it has seen a very significant impact—and I think I actually have some stats that give you measurability in terms of the impact.

Even though it was only announced two weeks ago, 37% of the trucks are now using that dedicated lane, so we are seeing reductions in border wait times there as well. That was combined with the U.S. addition of four new primary inspection lines on their side.

So we're measuring border wait times, we're looking at the consequences of the programs we are putting in place, and we're seeing very positive improvements. But I don't want to claim that we can scientifically tease out of that how much of that is a function of the nature of the flows, when they're crossing, and the demand of the flows. Overall, though, we think we're moving in the right direction on this.

● (1605)

Ms. Belinda Stronach: And you indicated that it would probably be the third benchmark, or that it's still going to be a joint progress report card.

Mr. Graham Flack: Yes.

Ms. Belinda Stronach: And it's going to be out shortly?

Mr. Graham Flack: Yes, we expect so.

Ms. Belinda Stronach: I met with the Ontario Chamber of Commerce just about two weeks ago. They indicated that border delays are costing the Canadian and U.S. economies about $13.6 billion annually. I'm just wondering what the priorities are. What are your priorities? How are you going to continue to reduce these border delays? In particular, under the border infrastructure fund, what are the priorities and the timetables?

Mr. Graham Flack: We've worked closely with a wide range of stakeholders and business stakeholders. In fact, the Deputy Prime Minister and Secretary Ridge, when they were last in town, held a luncheon with stakeholders to hear directly from them their views of what was working and what wasn't.

The overall assessment from business stakeholders is that the smart border process and the action plan have been tremendously positive processes. There's universal praise of the measures that have been taken. But there's also a realization that in the new post-9/11 environment we can't view this as a single action plan that gets finished and done, and that we have to continually evolve and modernize the border.

In terms of the priorities, I think the Ontario chamber report reflects a very valid view, which is that we were not operating, pre-9/11, with a perfect border that didn't have infrastructure delays. They were largely infrastructure delays, but there were other delays as well, in terms of staffing. That's why our objective at the front end of this process was not to try to get back to where we were on September 10, but rather to transform the border fundamentally in a way that would allow you to deal with the massively expanding trade flows that we hope will continue under the NAFTA, and to deal with the security enhancements required, but to do so in a way that would enhance both economic security and national security.

There's a platform piece underlying this, and it is a whole, wide series of information sharing and law enforcement measures that provide a measure of confidence in the two countries that we are benchmarking well on broad security measures. That provides the foundation on which we can do joint programs at the border, truly joint programs that are really the priority, like the FAST program and the NEXUS program.

Although NEXUS is a passenger program, from a business perspective, in addition to having executives who sometimes use the program, at many border crossings there is a challenge of trucks waiting behind long lines of passenger traffic. Moving the passenger traffic is therefore equally important from an infrastructure perspective.

FAST and NEXUS are beginning to have a dramatic effect at the border. The most dramatic effect is in places that are not infrastructure-constrained. If you look at

[*Translation*]

Lacolle, in Quebec, for example, you will note that there is no infrastructure problem: roads can easily be added since there is no bridge between the two countries at that point. FAST, EXPRES and NEXUS make it easy to increase capacity.

● (1610)

[*English*]

Where we have a challenge is, for example, at the Windsor crossing, where you can't just add an extra lane on the bridge. We're taking the passenger lane on the bridge and dedicating it for passenger and FAST traffic. The longer-term solution, though, clearly is to go the way we've gone with Blue Water, and that is with dedicated crossings.

When you have the law enforcement and information coordination infrastructure that provides confidence for true common programming between the two countries—FAST and NEXUS being key pillars of that—and you add to that a dedicated infrastructure that allows you to take FAST and NEXUS traffic several kilometres back from the highway directly to the bridge and across it, that's when you get massive amplification effects in terms of the flows you can throughput across the border.

On the smart border, I'm only touching on those as real priority areas, but we're already seeing very positive effects. I think what business leaders are telling us—and they're absolutely right—is that we have to continue to make the progress and continue to set new and higher benchmarks, so that this doesn't simply become a one-shot process, but rather an ongoing process in which we continue to identify new priorities that are going to facilitate border flows.

Ms. Belinda Stronach: I'm very happy to hear the benchmark you're setting is not pre-September 11, because after NAFTA and the increased flow of goods across the border, there was already back-up then and delays at the border. It should be to also service future needs of the countries involved as well, so I'm glad to hear that.

Mr. Graham Flack: We meet with a pretty diverse range of business stakeholders. A number of them were telling me that in their industries the border has never worked better for them in terms of their ability to reliably get goods across the border in an efficient way.

Our biggest challenge remains the Windsor crossing itself. There are limits to what we can do in terms of moving flows across that. That's clearly, in the medium term, going to require an infrastructure fix.

Ms. Belinda Stronach: Are there any plans for major infrastructure, like a new bridge or a tunnel? Is there anything being considered there?

Mr. Graham Flack: Absolutely. There's a binational process that the two countries are well into for a new crossing at Windsor. As you might imagine, these processes are complicated by the fact that there are multiple levels of governments on two sides that have environmental reviews that need to be followed, all of which can be litigated if they're not accurately followed.

There is a very aggressive plan. Canada has already announced some initial investments in Windsor to provide some immediate relief, and some of those investments have helped to facilitate this dedicated FAST lane, like the use of FAST placards right out to the E.C. Row Expressway, to be able to stream the traffic.

The medium-term solution is clearly additional capacity. The Ambassador Bridge is expected to reach capacity between 2010 and 2013. That may seem like a long time away, but it clearly isn't in terms of adding new infrastructure.

So with the programs we have, we're attempting to optimize the infrastructure as well as we can while still pushing forward for additional capacity in that crossing. The binational process is being followed, all levels of government are being engaged, and Secretary Ridge and Deputy Prime Minister McLellan have pledged to go to Windsor in the coming month to meet with stakeholders to see if there aren't ways we can accelerate that process further.

Ms. Belinda Stronach: Okay, thank you.

The Chair: We will go to Mr. Eyking.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Thank you, Chair.

Thank you for coming here today. One of the most important things on this committee's agenda is our relationship with the United States and moving goods.

My question follows up on what you were just talking about in regard to the border. How does it work, really? If a company is shipping stuff from Toronto to Michigan, for instance, how do they get that fast track done? Do they apply for it on the Internet? Do they say, "Here's a trucker's name and his background." Just run that by me again, because I know there's fingerprinting done now. Just give me an example of how it's done. Do the company and its truckers have to be registered first?

Mr. Graham Flack: You've identified all the key elements. First, let's say it's a company going to the United States, although we have a similar program for companies that are coming from the United States to Canada.

If it's a company in Toronto, then for the overall company, it will provide a security plan that looks at things like whether there is security around its loading docks. It's an overall security plan to determine the security of the plant.

Hon. Mark Eyking: Do U.S. people come over and check that whole compound?

Mr. Graham Flack: It depends. We could meet with the folks from the Canada Border Services Agency. In fact, the committee might want to consider a visit to one of the border crossings, where they could walk you through the details of how things are done, and they could provide you with a lot more detail on the program. But the objective is to certify that the company itself is a legitimate company and is taking appropriate security measures.

But it's really about securing the entire supply chain. The truck driver has to apply to the FAST program and has to be certified. That certification involves a criminal records check on both sides of the border and a face-to-face interview, and a biometric is taken to provide certainty as well.

When you have all the elements of that supply chain certified, the other new element that the two countries have introduced is advance notification of the goods that are being carried. Before any goods arrive at the border, advance notification of those goods is being transmitted so that risk analysis can be done on them. For FAST trucks, what this means is that when they arrive at the border, they get a very cursory check because we know they're a low risk, we know they've been involved in a program and certified throughout the supply chain. Those trucks are being processed not only much more quickly, but the pull-aside rate for secondary is very low.

It's a program that says, from a supply chain security perspective, we're going to certify all the elements of that supply chain as a low risk, but in return for certifying them as a low risk, we're going to process those goods much more quickly when they cross the border. What that means is that in a world of growing trade flows, where we can't infinitely expand either the infrastructure at the border or the government resources in terms of the number of agents we put at the border, we can have higher and higher volumes of flows that are certified as a low risk but can be processed with fewer and fewer people. That allows us to take the remaining resources we have and concentrate them much more intensely on the high-risk flows that we have at the border.

● (1615)

Hon. Mark Eyking: So, for instance, if you were shipping to the states, the border people would know already that truck is coming through in the afternoon. They know what goods are on there, the value of the goods, and the whole thing, so as soon as it comes through, it would just pop up on the screen that clearance has already been set.

Mr. Graham Flack: In fact, the two countries have targeting centres that are connected and talk with one another, that do joint targeting. It's targeting based on a whole series of profiles you may set up in terms of the nature of the goods and associations the company may have with other companies. And that's not just for the FAST goods, but for other goods being shipped in advance.

The idea is that we are moving to have the screening done not at the instant when the goods arrive at the border but well in advance, so that good decisions can be brought to bear. And that's just at the Canada-U.S. border.

We're partnering with the United States internationally on the container security initiative to push that border out as far as possible. Rather than waiting until the ship arrives in Halifax and then doing an analysis based on the physical manifests we have, for example, we're demanding information on all of the cargo being shipped 24 hours before the ship is loaded at the port of embarkation. We are doing remote risk analysis of those containers before the containers are actually loaded. If there are American officials at the port, local officials at the port, or Canadian officials in place at one port that we're piloting, they can then work with the local officials to do a de-stuff of the container to determine whether there's a risk, prior to the container being loaded onto the ship.

Clearly, you can imagine that if the risk that we're screening against is a weapon of mass destruction, for example, discovering a weapon of mass destruction in Halifax harbour is too late because the weapon could be detonated and have the desired effects. We are attempting to do that risk screening as far out as possible.

Hon. Mark Eyking: For instance, if the container were coming from London and going via Halifax but ended up in Boston, who would do the pre-clearance check in London? Would it be the U.S. or Canada?

Mr. Graham Flack: If it's coming to Halifax, we would receive the information 24 hours prior to the boat being loaded in London. We would do our risk analysis of the cargo based on that. We would then contact the London authorities, who we have close partnerships with, to ask them to do further examination of the container if we thought that was necessary. When the container is actually coming into Halifax...and Halifax is a good example because up to 50% of the containers there, depending on the time of year, are ultimately transshipped to destinations in the United States. Halifax is one of the five ports—three in Canada and two in the United States—where we have Canadian and American targeting agents working together. The U.S. have their IT set up so that they can fully access their targeting systems from Halifax, just as we have our targeting system set up in Newark, for example. They are working side by side to do joint targeting of the containers to fully share that information, not just the national information we have but also any local information we may have. If the American officials, through their information, determine that there is a risk from the container, they would ask the Canadian officials at the port to do the de-stuff and examination of it, just as we would ask the American officials in Newark to do that.

● (1620)

Hon. Mark Eyking: When you are going across the border, do they still randomly take one out of every couple of hundred trucks, take them all apart, and check them right through?

Mr. Graham Flack: I certainly hope it's not that high.

But, yes, you are absolutely right that in security terms, randomness is an important factor to build into a system, because it's the one thing that individuals trying to defeat a system can't control for. Particularly in periods of higher alert, when we work very closely with the United States, we may move to a higher random inspection rate where we're counting the number of individuals moving across. I think the folks at the Border Services Agency might be able to give you a more detailed understanding of how exactly things work at the border.

In terms of taking apart the trucks, we were down at Peace Bridge recently, where we're working on that land pre-clearance pilot with the Americans. The new tools that the two countries have to apply the screening at the border are really quite remarkable. If you look at the VACIS machine, which is essentially a large X-ray, it allows you to get a very detailed look at exactly what's in a truck without having to touch the truck. Rather than having to rip things apart, as you might have had to do in the past, now you have a capacity to screen without having to do that. Radiation portals are also being installed, for example, which allow us to get a read of radiation measures.

So there is a combination of technology tools and intelligence-led assessments that lets us focus on the targets that are the highest risk, which is dramatically reducing the need to do the sort of thing you are talking about.

The Chair: Is the X-ray equipment that is available standardized? How many countries have it?

Mr. Graham Flack: I know that both Canada and the United States are using VACIS, or this particular technology. I can't speak to how many other countries are using it.

The Chair: We'll go to Mr. Julian.

[*Translation*]

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you. I'd like to return to the issue raised by Mr. Paquette about chapter 19.

[*English*]

We know that in British Columbia, of course, we've had enormous difficulties with the softwood lumber dispute. The crisis is now going into its third year. In our case, in British Columbia, we're looking at 20,000 jobs lost, a couple of dozen mills closed. The impact has been absolutely enormous.

We also know that when we look at dispute settlement mechanisms, the U.S. has not been paying its share of the cost of the dispute settlement system; that it was set up under NAFTA; that the dispute settlement process that should have taken about 315 days under the agreement is taking more than twice that. Trade lawyers Baker and Hostetler, who specialize in trade law in the United States, recently said:

> United States responded with a two-pronged attack on the Chapter 19 process, calculated to either bend it to U.S. advantage or destroy it.

They submitted this in the paper and went on to say:

> Canadians must not only contend with a reduced likelihood of success in future binational panel reviews. They also must expect binational panel reviews to be as slow and as expensive as appeals to the U.S. courts, and no fairer, with U.S. panellists who are no longer necessarily expert in trade law, who are protected from appeal, and who are carefully selected to defend U.S. government agency prerogatives.
>
> It is now arguable that Canadian private interests ensnared by antidumping and subsidies disputes with the United States would be better off in U.S. courts than before binational panels.

Given that we are now entering the third year of a dispute, and given that systematically we have seen that the dispute settlement mechanism is not only not working but there seems to be no intent on the U.S. side to even make it work, I would ask two questions. First, what is the strategy to deal with this? In my province the impact has been substantial, and it is a source of immense frustration to British Columbians that there has been no resolution.

My second question is, do you not feel it's about time our government showed more backbone in dealing with this issue, given the fact there's been no resolution to this and given the impact on Canadian jobs and Canadian businesses?

Mr. Paul Robertson: Thank you very much for that.

We all understand softwood and the huge burdens and hardships it has placed on Canadians. We're fighting on all fronts to deal with the softwood issue.

The softwood issue is running its course—I mean in the sense that you've had to go through the initial U.S. trade remedy investigation to the NAFTA chapter 19 and now we're into the extraordinary challenge. I don't think I agree with the lawyers that the chapter 19 process is now as slow as the domestic process. I don't think that is the case at all.

As I noted earlier, it's clearly more than the 300 days we intended it to be. There are questions there relating to selection of panel. As well, in big cases like softwood, where every trick and every means to deal with issues are extended, challenged, and the like, there are longer time periods to that. There are questions relating to how to fix the system, in terms of reducing those time periods, as to what the intent has been.

I think I would flag here that the chapter 19 process is still effective in terms of the review by the U.S. administration of their laws. In every free trade agreement the U.S. has with another country, each of those other countries are requesting a chapter 19 process. The U.S. is refusing to provide those types of means open to other countries. So other countries that are used to the U.S. domestic process and how you can go through three layers of court right up to the Supreme Court to drag that out...I wouldn't agree with that opinion of those trade lawyers in Washington that the chapter 19 process is now equivalent to the domestic courts process itself.

Having said that, there are issues being raised on how to increase the efficiency, reduce the timeframes, and bring the Americans to better staff and administer their side of the secretariat. These questions are being looked at. There is a working group on the chapter 19 institutional process and things of that nature.

I can also only say that in terms of softwood, which I'm not responsible for, I know everything is being done to deal with this issue, working closely with the Government of B.C., with industry throughout Canada, and we're leaving no stone unturned in bringing resolution to this question.

● (1625)

Mr. Peter Julian: We are now looking at a situation where the 315 days is stretching to 700. We are not talking about missing by a small factor; we are talking about missing by a country mile. We are looking at delays of potentially two years, and that's just with the current stats. If we look over the course of next year, we may find further delays.

We have also seen an unwillingness from the U.S. commerce department to refund anti-dumping duties that were taken from West Fraser Timber in British Columbia, again a situation where the duties should not have been paid. They were paid and the commerce department is not returning them.

We also have a very powerful American senator, Senator Max Baucus, who is now stating that he's putting forward a bill to actually have the moneys that were paid, $150 million a month, go to American companies.

I come back to my initial question. What is the strategy to deal with this? We are looking at a crisis in employment and loss of jobs, closures of businesses, $3 billion in funds that were paid into the United States that at least a substantial number of those in power in Washington would like to see go to American companies, moneys that everyone agrees shouldn't have been paid in West Fraser's case, that the commerce department in the U.S. is refusing to return.

Given all of that—these are huge, contentious issues—what's the strategy to deal with this, how to respond to a situation where Canadians are playing on a playing field according to the rules and they don't seem to be getting any sort of success or any sort of resolution to critical issues?

Mr. Paul Robertson: With respect to your points, I take them. As I say, I'm not running the case, so I can't speak to your issue relating to West Fraser and the liquidation of duties.

With respect to a possibility of Baucus introducing legislation to liquidate assets now, if that comes to pass that will be dealt with. I mean, it will be addressed as fulsomely as I think the government and the B.C. government...all the provincial governments involved, plus the industry, have been addressing every issue that's come up in this case with this huge issue.

I can only repeat, we're not at all viewing the treatment of softwood and the softwood case with anything but the utmost seriousness. Issues identified that we think are delays in the process are being addressed. We are trying to get agreement on the sides.

I think as well that we have to recognize in the softwood lumber case the manoeuvring that has been taking place, because the notional side is 315 and then you can have extensions on various elements as they come out. My understanding of how the softwood case has been fought is that it's been fought tooth and nail at every juncture, but I can't explain to you why it's taken that long in terms of the process because I'm not responsible for the case.

What I can say, however, is that we recognize the seriousness of delays and we are looking at ways to ensure that the timeframes are closer to the original intent of the framers of chapter 19.

● (1630)

Mr. Peter Julian: Are you aware of a contingency plan? I understand this isn't your area of responsibility, but I assume there are discussions, just the same, about a potential contingency plan around Senator Baucus' bill. If that bill passes and those funds are disbursed to American companies, is there a contingency plan that you're aware of?

Mr. Paul Robertson: No, because I'm not responsible for the softwood. I'm sure they're being addressed.

I do have some experience with the U.S. system, as we all have. When what amounts to a private member's bill is introduced, there's a long distance between what is introduced by a member and what is eventually passed, if it's agreed to at all. So I'm not sure where the status of this proposal is or if it has been introduced.

I'm sure it's being addressed. As I said, I'm not responsible for softwood, so I can't talk of contingencies relating to that specific issue or proposal by Senator Baucus.

Mr. Peter Julian: Senator Baucus does have a good track record, certainly on the issue of American beef exports to Japan. He played a significant role in ensuring that American beef exports could be re-established or re-permitted into Japan, so he does have a strong track record. He certainly has a lot of support as well in Washington, and that is a matter of immense concern.

Is that something you can take under advisement, to find out whether there is a contingency plan in place, and communicate that back to us?

Mr. Paul Robertson: I can certainly ask the people responsible for the file what the position is or what is being done on that.

Mr. Peter Julian: Okay. Thank you.

The Chair: Thank you.

We'll go to Mr. Obhrai.

Mr. Deepak Obhrai (Calgary East, CPC): I'm looking at your 30-point plan, and it is fine; I don't have many problems with that.

What I'm interested in is this. I had the other federation come and talk to me today, and a major concern that is coming is on the Privacy Act, on the way we have a Privacy Act in Canada and on the way the Americans have their privacy act in America. Yet in your 30-point plan there is a tremendous amount of information being shared between Canada and the U.S.A. with this objective.

The concern that everybody would express here would be on our privacy laws. Are they as compatible as the U.S. privacy laws? What are the safeguards, in discussions with the Americans, as to how much we will give ground or we won't give ground? How are you going to come to an agreement with our counterparts in the U.S.A.?

Mr. Graham Flack: It is an excellent question and it cuts across a whole number of the initiatives we have had with the United States. As you rightly identified, information sharing is the life blood of security systems. If Canada and Canadian security agencies want to assess threats to Canada, we need to cooperate very closely with a very wide range of other countries, not just the United States, to get information about those threats and combine that information to provide that assessment.

Perhaps I can give you a specific example. However, I would say generally that in everything we do with the United States we work closely with the Privacy Commissioner to ensure that Canadian law is being followed, and Canadian law has application in terms of who we share with and what is done with that information. Therefore, we do work very closely with the relevant Canadian authorities to ensure they're protected.

I can perhaps give you an example of this. There is an initiative we have with the United States dealing with airline passenger information. There are two types. One is called advance passenger information—tombstone information such as name, date of birth, citizenship, etc. The other is passenger name record information, which gets into whether they purchased the ticket with a credit card, the previous flights they took on the routing, etc.

From a security perspective it makes sense to share information about flights coming into North America because we may have information on high-risk individuals or patterns of behaviour of individuals that would apply to some in one country and some in the other country.

When the United States put in place this advanced passenger information program, it approached the governments of Canada and Mexico and asked, could you simply provide us with the full data stream of every flight flying into Canada and every flight flying into Mexico? They said, we'll do the processing in the United States and do the analysis. This was based on the argument that once a flight arrives in North America, that is a key point at which you want to do that analysis. It is easier to move across the land border, so you want to do that analysis out beyond that.

The Government of Mexico acquiesced to that demand and Canada didn't. We argued that the Canadian government would take responsibility, as we had intended to do in a program we had been developing, to do the analysis of the advance passenger information and the passenger name record information.

We did cooperate very closely with the United States and with international partners in developing scoring profiles, for example, if the individual purchased the ticket with cash, if the individual purchased a ticket from a travel agent company that had had problems in the past in terms of who it was selling tickets to and how it was operating, etc. So there was work done collectively in identifying the risk-scoring criteria we would use.

We also work very closely in terms of sharing not just with the United States and others but information around terrorist watch lists, for example, to ensure that the data is screened against that.

However, we do not do a wholesale data dump across the border. The only information that is shared is information on individuals who are believed to be high-risk individuals. The first level of check between the two countries is a computer to computer check. For example, we have an individual coming in who passes a certain risk-scoring threshold. The U.S. computer is queried by the Canadian computer asking if it has any other additional information about that person. Together that information may add up to enough that when a border agent receives the person at the airport, we would then send the person to a secondary...and ask additional questions. In most cases nothing comes of it. It is just that you want to ask individual questions about their particular travel patterns or behaviour.

We have found a way to do that data sharing in a way that does not compromise the privacy of the individual, that allows you to get the information you need without doing that.

I guess I want to assure you that in all of the processes we're putting in place we are striving to meet the privacy demands of Canadians.

As for the national security policy, I headed the team that developed that over the last year and a half. One of the most remarkable achievements, I would say personally, about the national security policy was a press release released by the Canadian Arab Federation and the Canadian Islamic Congress the day the national security policy was released that "cautiously welcomed" the release of the national security policy.

When you look at the critiques the Canadian Arab Federation has had about the legislation the Government of Canada has introduced, such as Bill C-36, the anti-terrorism legislation, etc., while they want to keep a close eye on the implementation of that national security policy, I think they recognize that we have attempted to put together a package that is consistent not only with the interests Canadians need in terms of protecting their security but absolutely consistent with the core values we share as Canadians. That includes values of privacy that we need to respect.

● (1635)

So we've tried in everything we've done in the smart borders declaration to meet that test, and we have found that there haven't been impediments. We have found other ways to do what needs to be done with the United States than simply giving them information.

● (1640)

Mr. Deepak Obhrai: Let me also go back. I'm more concerned about Canadians' privacy rights and everybody else's privacy rights. International terrorism has a different connotation, but I really want to focus on Canadians' privacy rights. As you can see, there is already a public inquiry going on on the Arar case on that same issue. Therefore, in your agreement and all these things here, how would you give confidence to a Canadian that, absolutely, when you come into these smart border agreements with the U.S.A. and with other countries, as you rightly pointed out, Canadians feel comfortable enough that their privacy rights are not being eroded? And if they are, where do they go? Is there some mechanism in here?

I'm bringing this point up so that when you're discussing and making all these arrangements, you understand that there's a caveat as well. You are not just signing a blank cheque and saying, yes, we'll give you this information and yes, you'll give us this information. There is this protection. I would like to know how much caution and how much attention you're giving out there. I would also recommend that every time you do this, you put a cautionary note for Canadians that says this does not infringe on your privacy rights, or something to that tune.

Mr. Graham Flack: I'm a lawyer by training, and I guess in almost everything we do in public policy in government, the advent of the charter post-1982 has meant that we have to do, in the analysis of everything we do, a verification that everything we're doing is consistent with the charter. We work closely with lawyers at the Department of Justice to ensure that all of the processes we're moving forward on are consistent with the charter.

Similarly, though, I think the Office of the Privacy Commissioner has provided another test that I'm certainly conscious of in everything we do with the Americans on the smart border declaration. That's not only the usual question we would ask, which is, are these measures consistent with Canadian laws and the charter, but are they consistent with the privacy expectations we have? For example, on advanced passenger information, detailed negotiations took place with the Privacy Commissioner around the retention periods for the data, the nature of the sharing of information with the United States—very, very sophisticated and detailed negotiations around the programs.

Everything we're doing under the smart borders declaration is also passing through a privacy filter, and a privacy filter of our independent official in the Office of the Privacy Commissioner, who is doing an analysis of that information. But I guess as somebody who operates with the process, I can say that it's not just a charter issue you have to run the filter through anymore; you also have to run it through a privacy filter, and we have from the beginning of the process.

But I would say that my experience has been that with creative and innovative thinking you can find ways to achieve the same outcomes without having to share information that Canadians would be uncomfortable with sharing. So we haven't found that there's been a need to compromise on security in order to meet those privacy objectives. We've found ways to get the appropriate information sharing through other means.

Mr. Deepak Obhrai: So we wouldn't have the HRDC situation that we had a couple of years ago, when they had that supercomputer database?

Mr. Graham Flack: The API/PNR program that I mentioned to you is a good example of where we worked with the Privacy Commissioner on very, very detailed restraints around what that information was going to be used for, levels of storage. Most information is dumped within 24 hours. You can only retain certain information beyond that if it has been accessed for some reason—you have a security expectation of it. Beyond certain periods, the information can't be accessed simply by front-line officers, but only by very senior officials if they have reasons to access that information, and there are safeguards on who that information can be shared with.

It's a very, very detailed arrangement, even within Canada, on what we can do with the information and who within Canadian departments we can share it with, let alone with our international partners. It's something that's very much in the details of everything we do in this area.

Mr. Deepak Obhrai: I have a little one. The Government of Alberta introduced a privacy act applicable in Alberta. I'm not a lawyer, so I can't say whether that is a tougher one or the Canadian Privacy Act is a tougher one, but there is a law, which is a provincial law, on the privacy thing. How would a provincial law be applicable in an international agreement that you are making? Would you take that into account? Just let me know, explain to me, you have a provincial privacy act and a Canadian privacy act.

● (1645)

Mr. Graham Flack: It is a good question. It's an area of expertise and a level that I'm not comfortable giving an answer to. You may want to put that question to the Privacy Commissioner. But my presumption going in would be that if it's an information-sharing arrangement between the Government of Canada and the Government of the United States, it's the laws of those two levels of government that drive that agreement. One of the principles of constitutional law is that one government cannot legislate in another government's area of jurisdiction.

I think you'd want to put that question to the Privacy Commissioner and her office to determine the answer.

Mr. Deepak Obhrai: Do you want to do it in the smart border context?

Mr. Graham Flack: Provincial privacy legislation has not been an issue, as far as I'm aware, in the issues I've dealt with.

The Chair: Let me ask Mr. Flack this. On the safe third country agreement, why has the United States procrastinated in implementing this agreement? We all know this because our constituents ask us often, and we were very proactive on this agreement.

Secondly, perhaps you could explain this to me. Once the program is accepted and implemented by the two countries, what would happen if an individual leaving Canada and going to the United States or going from the United States to Canada...would we, given, let's say, the charter, have the ability for immediate deportation, or is there an appeal process?

How does this safe third country agreement really help both countries?

Mr. Graham Flack: In terms of the issue of why we don't have the safe third country agreement in place, you're right that the initial political commitment to negotiate a safe third country agreement came in late November, early December 2001. We have worked tirelessly with our American colleagues to get an agreement negotiated, which we succeeded in doing, and a lot thought we'd never get to do it.

I think one of the reasons is that from a net flow perspective, it was estimated—the best figures I have are from two years ago—that roughly 14,000 individuals arriving in the United States headed north to make refugee claims in Canada. So that was a flow into Canada of 14,000. The reverse flow, that is, individuals coming to Canada and then heading to the United States to make a refugee claim was measured in the couple of hundred range.

So from a net perspective, the U.S. administration is going to have to process 13,500 more refugee claims every year, and that creates a large administrative burden on their system. That's one of the reasons the folks who administer the system in the United States say, “Why should we take on this increased burden?”

The perspective that Tom Ridge and other senior officials in the U. S. government have had is both from a security perspective and from a perspective of equity. If the United States has agreed to allow these individuals to enter the United States, the United States being a safe country, then the United States is where they should make that refugee claim. And that's the principle behind the safe third country agreement. But you can understand why people who administer programs might be uncomfortable with what's going to be a massive surge in the number of individuals they're going to have to process.

So we have been working very closely with the Department of Homeland Security in moving this forward. Tom Ridge indicated when he was in Ottawa that the U.S. final regulations would be issued in a matter of weeks, so we are waiting day by day to see that those regulations have been signed.

The final regulations had been signed by Tom Ridge and Attorney General Ashcroft before he left his post.

We are now at the office of the management of the budget in the White House. That's the final sign-off process, and we're hoping that's going to happen any day.

We think it's a very important agreement and one that Canada has been trying to get for 20 or more years. I think it's a reflection of the level of cooperation between the two countries that on something where, from a purely national interest perspective... You could see some American officials arguing this is a give to Canada, why would we do that? Notwithstanding that, we think we're going to get the agreement put forward.

The Chair: I want to thank you for coming.

Mr. Paquette, I apologize. I didn't notice.

[*Translation*]

Mr. Pierre Paquette: I'd like to take advantage of your presence here to ask you whether there have been any developments in the legal action undertaken by UPS against the Government of Canada with respect to the courier service offered by Post Canada.

[*English*]

Stephen De Boer (Acting Director, Investment Trade Policy, International Trade Canada): Not much has happened. We had a jurisdictional hearing in the summer of 2002 and we are now in the document discovery stage. When I say not much has happened, I should clarify that not much has happened in terms of the official process. Obviously officials within the federal government are working quite hard in crafting a defence of the Canadian measures.

As it stands right now, we are in the document discovery phase, and a date has not been set for a merits hearing. I think the earliest that would probably happen would be in the fall of 2005, but that isn't clear at this point.

● (1650)

Mr. Paul Robertson: Mr. Chair, I just wanted to add that the member asked me earlier about ECCs, and we've just received more information. We've dug out some statistics.

I noted there were very few ECCs, extraordinary challenge committees, that had taken place. Since the establishment of the FTA in 1989, there have been four involving Canada, all brought by the U.S. All were rejected. Therefore, that's been the specific number of ECCs. They've been brought against us and they've all been unsuccessful. There was pork in 1991, swine in 1993, lumber in 1994, and the magnesium case that I just mentioned, just to create a little more specificity.

The Chair: Thank you very much.

Ms. Stronach.

Ms. Belinda Stronach: It's back to my first question. You mentioned that a report card will be coming out in a few weeks. I guess what I'm interested in seeing at that point in time is, what is the progress that is actually being made? Depending on how that report card is structured, that may reference that initial.... It may do the comparison, but if it's not sufficient, would you be prepared to come back and give us a deeper assessment of the progress that's been made in 2001?

Mr. Graham Flack: Sure. Of course, we're always at the disposal of the committee. If you want to have us come back, after the report card may be a useful time.

We do try in the report card to be relatively detailed about the measures that have been taken. To give you some examples, though, the FAST program...Canada pre-9/11 had developed a prototype program, a risk-assessment-based program called custom self-assessment that the U.S. customs agency was just completely not interested in.They had a law enforcement approach to the border, a “we want to look 'em all in the eye, manage every transaction like a transaction” approach.

As late as March 2002, the U.S. Customs commissioner was saying he could never imagine establishing a FAST-like program between Canada and the United States because he didn't have confidence in the risk assessment approach that was being taken. Nine months later, in December 2002, FAST was not just announced, FAST was operational at the top six crossings between Canada and the United States.

In terms of the usual developments of programs, these have moved at light speed in terms of the quickness with which they've been developed and actually been rolled out at the land border. We really have made tremendous progress on this front.

In terms of FAST and NEXUS, which are really the guts of what's going to affect the border flows—because I do think we have that underlying basis of confidence—the challenge is going to be an infrastructure challenge. The private sector is telling us that our incentive to participate in those programs...we're going to participate in massive numbers when we see benefit.

At Sarnia you're seeing that full effect now. At the land crossings out in B.C. and Quebec you're seeing that full effect now because they can see the tangible benefit at the border. They also realize that when we've moved, as the U.S. has, I believe, on six occasions now, to alert level orange, these programs have not been affected. Even when the U.S. is moving in higher alert levels, the programs continue to operate unimpeded. So companies do see this as an important risk management investment for them.

Our biggest challenge remains the southern Ontario crossings, particularly in the Windsor corridor. We have had a real impact on border flows at the Ambassador Bridge. The wait times were being measured in the two hours and up range for a long period. Through negotiation with the U.S., we had additional resources put on the U. S. side. That, with the amplification of this dedicated FAST lane I've talked about, has had a very measurable effect on the crossing there.

I think we have to be realistic. On the medium term in Windsor it's a capacity issue. We are working to optimize it, and that's positive, but we're going to have to add additional capacity there.

I meet regularly with the Perrin Beattys of the world, as does the Deputy Prime Minister and other members of the team, the National Security Advisor, Rob Wright. They are a constant source of feedback to us on what's going wrong. We're attempting to address those things.

I think you'll find in your discussions with them, if you ask them whether we are on the right track in terms of the architecture we're trying to put in place...the feedback we've had from them is that absolutely we are, and that infrastructure is the number one challenge we face and Windsor is the number one infrastructure challenge.

The pre-clearance program I mentioned we're trying to put in place in Buffalo-Fort Erie offers another one of those amplification effect benefits. If you have, as you have in Fort Erie, a lot more land on the Canadian side, instead of having the trucks all line up and wait on the bridge, you can build a dedicated infrastructure coming into Fort Erie, you can have the Americans do the processing on the Canadian side, and then the bridge just becomes a throughput.

So we're working to do that, but we'd certainly welcome the opportunity to come back and hear the committee's views on progress.

● (1655)

Ms. Belinda Stronach: I keep raising it because it is such an important issue. Some positive steps have been made. Are they enough, not only due to the increased security demands that we have post 9/11, but due to the increase in export and import flows across the border? Are we doing enough, and are we giving enough resources to the management of the border?

Mr. Graham Flack: It's an excellent question and one we believe we have to continue to ask. That's why, as I mentioned, the Deputy Prime Minister and Secretary Ridge spent two hours with business leaders telling them: "We know you've said good things about the process, but that's not why we're here today. Tell us what's going wrong and what needs to be done better."

We have those frank exchanges all the time with the folks who operate at the border, to get their sense of what can be done to improve things. We invite suggestions on all fronts, because this is a collaborative effort to try to improve what we're doing at the border.

The Chair: Are there any costs on infrastructure programs, Mr. Flack?

Mr. Graham Flack: The government to date has put in place a $600 million border infrastructure fund to deal with the primary crossings, and investments have been made at those key crossings.

There was also a highway strategic infrastructure fund that Transport Canada had that has dealt with smaller crossings. I am thinking particularly of, I believe, the St. Stephen crossing in Atlantic Canada. It has a much lower volume, but there were some infrastructure investments made there to facilitate the traffic moving around the city.

I think all have recognized that the biggest infrastructure challenge we face is in the Windsor corridor, and that is going to require an additional crossing. We have a process in place that we're driving forward, but it's a process that if you accelerate it too much, the risk you have is increased chance of litigation, at the back end, as parties who feel aggrieved will argue it was bypassed.

The Chair: When you say "additional", are you talking above and beyond the $600 million?

Mr. Graham Flack: I guess it will be up to the government to determine whether to put additional funds in beyond the $600 million, but so far we have a $600 million border infrastructure fund that we've used. The U.S. government has a slightly different way of funding things, but they're also making investments.

To give you an example of one of the innovative things we're doing, Canada and the United States have both purchased border modelling software. I don't know if you know the program SimCity, but it's like SimCity for borders. You can make all kinds of adjustments around what you expect in terms of flow, where you position the primary inspection line, and what percentage of traffic is FAST and NEXUS traffic. With this modelling software, you can really optimize what's going to happen at the border.

In the short term, what it lets us do, as we've done at the Ambassador Bridge, is optimize the infrastructure in terms of how we are going to stream FAST and NEXUS flows, where we're going to position any additional primary inspection lines. But on the medium-term assessment, what it does is really let you model, in a quite sophisticated way, the way in which you can get absolutely the most bang for your buck in new infrastructure. That may involve using pre-clearance with Canadians operating in the U.S. or Americans operating in Canada. It may involve different ways of configuring the infrastructure.

We really are trying to find ways to squeeze what we can out of existing capacity, and build for the future with the most optimum models we can in those infrastructure-constrained crossings in southern Ontario.

The Chair: This committee has been moving so efficiently, and we have so much time, that Ms. Stronach wants to ask another question, and so she should.

Ms. Belinda Stronach: Paul Cellucci has indicated several times in the media that if we go forward with the decriminalization of marijuana, there are going to be increased border delays. What's your view on this?

It has come out several times, so it's a valid issue.

Mr. Graham Flack: In fairness, Ambassador Cellucci is at many of the meetings we have, and I've never heard him say that there will be increased border delays as a result of Canada taking the measures. I have heard him say that if Canada takes increased measures, we're going to have to look at what those measures are and we're going to have to do an assessment of that, which could potentially have an impact on the level of inspections we do.

I will point out that the question came up, and Ambassador Cellucci raised it with us, in terms of this land pre-clearance option at Buffalo-Fort Erie. We had done some work in advance—I'd expected that he might ask the question—and I pointed out that, right now, if an individual is caught at the Buffalo-Fort Erie crossing with, say, under 25 grams of marijuana, a couple of joints, and they're caught on the U.S. side, the process right now is that this individual is turned over to...because the U.S. federal government generally doesn't prosecute possessions on anything less than 100 kilos of marijuana. They leave any even significant levels of prosecution to state levels of government.

So right now, if that person with two joints is prosecuted by the New York government at the Buffalo-Fort Erie crossing, New York's penalty for possession of small amounts of marijuana is a civic citation and a $200 fine. So under the current rules we have right now, that individual would be much better off if they were arrested on the U.S. side of the border than on the Canadian side of the border. Parliament will ultimately have to consider the marijuana legislation and whether, for domestic and international reasons, it wants to go forward.

On the crossing we're looking at right now, Buffalo-Fort Erie, there is a mismatch. The mismatch is that the penalties are significantly higher in Canada because it's a Criminal Code offence. I believe the measures that were mooted at the last Parliament would have brought Canada within the range of what New York State does. I think you'll find that this is true at a number of the border states. It's state legislation that governs the prosecution of individuals for small quantities, and many of those states have alternate measures, non-criminal measures, for doing that assessment.

I know this is something that parliamentarians will want to consider.

● (1700)

Ms. Belinda Stronach: Thank you for that answer. It was helpful.

[*Translation*]

Mr. Pierre Paquette: Is provision made for the extraordinary challenge in NAFTA or is it a procedure that was agreed upon at a later date? If we agreed on this procedure later—that is what I was told—can we have access to the document setting out the rules?

[*English*]

Mr. Paul Robertson: Yes, it is part of the NAFTA, chapter 19. In that chapter there are regulations governing ECCs. I'm sure your research staff can provide it. It's right in the NAFTA.

The Chair: Mr. Julian.

[*Translation*]

Mr. Peter Julian: I have a question for Mr. Robertson as well as some for Mr. Flack. I'd like to thank both of you for being here today.

[*English*]

The first question is on the BSE crisis. I asked about the strategy around chapter 19 dispute settlement and softwood lumber. Of course, we know that the impact of the BSE crisis is even greater. We're looking at a drop of $2 billion in GDP, a drop of $1 billion in labour earnings, and a loss of up to 75,000 jobs as a result of this.

My question is, are you aware of a strategy to deal with this issue?

Mr. Paul Robertson: On BSE, Mr. Chair and Mr. Julian, I'm afraid I have no.... It's even outside of the trade remedies realm, beyond softwood, so I have no answer at all to give to you on BSE. It's not an area I'm familiar with. I guess we'll have to come back to you on that.

Mr. Peter Julian: If we could get the plan to deal with this issue, that would be very helpful.

Mr. Paul Robertson: I apologize; it's just something that's outside our scope.

Mr. Peter Julian: Okay. Thank you.

The Chair: One more question, so we can wrap up.

Mr. Peter Julian: One more? I have a number.

First, in terms of privacy and information, you mentioned, Mr. Flack, the issue around the national security policy, and the careful attention to privacy information. I appreciate your very extensive answer on that issue, but can you assure us today that none of the data or information that is exchanged would be subject in any way to the Patriot Act?

● (1705)

Mr. Graham Flack: I would assume that once a decision is taken to share information, such as information on an individual who has a criminal conviction or a conviction of a terrorist act, then that information, if validly shared, would go in the other country's database. It's not protected. So the test is sharing information that is valid to share.

But let's say the United States had information, or France provided us with information, on an individual they had just convicted of a terrorist offence. We wouldn't ring-fence that information in our databases and not subject it to Canadian law. It would be shared through Canadian law. The U.S. Patriot Act is one of their pieces of legislation. Information that's validly shared would have to conform to all of U.S. law, and I assume the Patriot Act would govern as well.

What particularly do you have in mind? I know there's an issue out in B.C. that the Privacy Commissioner has—

Mr. Peter Julian: Absolutely, yes.

Mr. Graham Flack: Okay.

Mr. Peter Julian: And this is increasingly an issue, as you know, with financial institutions who have their data actually managed in the United States, that they are subject to the provisions of the Patriot Act.

Mr. Graham Flack: Right, and I'm with you on that. I want to just draw a distinction between information that the Government of Canada shares with the United States, where we put privacy safeguards and other safeguards in terms of the decision of what information is shared versus the information that private companies are provided.

Certainly we're following the B.C. case. Although it's a case of provincial jurisdiction because it's provincial health information, the question of the extraterritorial reach of the Patriot Act and whether, I believe, it's having a private health care provider present that might be an American company...if they bid on that contract, will they legally be required to then provide that information to the U.S. government if they request it, because the Patriot Act applies to all U.S. companies?

That issue has come up at the provincial level. We're certainly monitoring it, but it's an issue that, in the first instance, the Government of British Columbia is going to have to address. And the Privacy Commissioner has just issued a report.

We've had issues of extraterritoriality in a number of other areas. I think Cuba is the most prominent one, where the Government of Canada ultimately passed counter-legislation, if you will, to negate the extraterritorial impact of U.S. legislation in that area. But in terms of Patriot Act application to Canadian private companies, I think you'd be well advised to get somebody from the privacy office in here to give an explanation of that.

The focus of our work is the government-to-government sharing of information, and on that we have detailed safeguards on what's shared and how.

Mr. Peter Julian: Thank you for that answer.

Second, you mentioned earlier that about 50% of the cargo going through Halifax harbour is actually transshipped, as I understand it, through to the American ports. Do you have any information about what percentage of goods destined from the United States goes through the three ports in Canada, where there is cooperation between Canadian and American authorities, and what percentage of cargo destined for Canada goes through the two ports where there is cooperation in the United States, Seattle-Tacoma and Newark?

Mr. Graham Flack: We'd have to get you the detailed information on that, but we consciously picked the ports based on the fact that they were the ports where the overwhelmingly largest percentage of containers that were being transshipped to the other country were going.

In Canada, that's a little easier to do, because we have three megaports—Vancouver, Montreal, and Halifax—that handle the overwhelming volume of that traffic.

On the U.S., I'm not as familiar with the numbers, but I do know that we picked Seattle-Tacoma and Newark because those were the ports that had by far the largest percentage of Canadian containers being transshipped. I can't tell you exactly what percentage of additional containers are going through the United States through other ports.

I will say, though, that the Deputy Prime Minister and Secretary Ridge, when he was in town, announced that Canada and the United States will be partnering in the container security initiative. This is, I think, the next generation of that type of port cooperation. Rather than doing it in port, on arrival, we're pushing out the frontiers; we're getting advanced cargo information 24 hours before loading and doing any security interdictions that we have to overseas, in the ports of origin.

As we move toward that kind of globalized system, in which we'll ultimately be bringing in other international partners, I would think our need to do that detailed cooperation in the individual ports is going to diminish, because our primary line of threat evaluation assessment interdiction is going to be overseas.

● (1710)

Mr. Peter Julian: But that information would be available. You would be able to access the percentage through Newark and Seattle?

Mr. Graham Flack: We'd have to contact the ports. I don't know if there's proprietary information there, in terms o—

Mr. Peter Julian: There wouldn't be. I don't think that would be an issue—

Mr. Graham Flack: If there's not, then I'm sure we can get the information. But I know that when the Canada Border Services Agency selected the ports, it selected the ports based on a volume assessment.

Mr. Peter Julian: On overseas assessment, is there a pilot project in place at this point or are you moving toward that? If so, which port would be targeted by a pilot project?

Mr. Graham Flack: First of all, the two countries have moved together in going to common reporting standards, this “24 hours in advance of loading” rule. So whether the containers are coming to Canada or to the United States, the common rule that the two countries have is that information must be provided electronically and they must list the information 24 hours in advance.

So that's common.

The United States is already present, I believe, in 26 ports internationally, where they are building a container security initiative. Canada has announced it will do a pilot in a port. That port has not yet been announced publicly.

Mr. Peter Julian: Thank you.

My next and final question has to do with the issue of illegal guns from the United States, which is an issue in a number of Canadian communities, as you know. Has that issue been dealt with in terms of the smart border initiative, and if so, how has it been dealt with?

Mr. Graham Flack: The smart borders process... clearly the 9/11 attacks were an impetus for developing this. The approach we're taking at the border is an approach that will address all hazards and all threats, not only threats that are heading north to south, but also threats that are heading south to north. Clearly illegal guns are one of those examples.

I know the Cross-Border Crime Forum, which is one of the working groups of law enforcement officers and agencies from the two countries that work together, has looked at that issue. I think they may have even done a joint threat assessment on the issue of guns. So there is a level of assessing threats, a common effort, that's happening there, though I think you may want to talk to the folks at the RCMP and the new Public Safety and Emergency Preparedness department for more details.

The operational advantage we now have on the ground that we didn't have historically are these integrated border enforcement teams. We have 23 teams in 15 regions. These are folks who are operationally integrated on the ground, whether they're local law enforcement, state or provincial law enforcement, federal law enforcement. So when they get intelligence information about possible gun smuggling, for example—or it could be drugs or terrorism—they are able to work operationally in an integrated way at the border to ensure that the individuals trying to effect that smuggling operation are not able to use the border to their advantage. That is, we have an integrated approach to being able to interdict, and we can conduct joint operations.

I know gun smuggling is an issue that Canada has put front and centre at the Cross-Border Crime Forum, but what's new, I think, is the degree to which the IBETs give us a better capacity between ports on the ground to address this issue, as opposed to just doing the intelligence-based stuff we do at ports, where we have information that a certain truck has a number of guns in it and you can attempt to do a VACIS of the truck to see if they have anything. The IBETs give you that between-the-border-point capacity to do that operation.

Mr. Peter Julian: Thank you.

Ms. Belinda Stronach: I'm sorry, how many teams did you say there were?

Mr. Graham Flack: There are 23 teams in all 15 border areas. So it really is...

Ms. Belinda Stronach: Thank you.

The Chair: We thank you all, panel.

Mr. Flack, you led the way most of the day, and on behalf of the committee I want to thank you, because it gave us a really good start on what we were looking for.

Committee, I would like to spend just five minutes, if I can, once the people are gone, just to go over the notes we received from the researchers.

Is anybody concerned about how we proceed? I simply want to cover the summary of what we requested last week.

A voice: This is the proposed work plan?

The Chair: Yes.

In my view, I think everything we asked for is pretty well covered. If there are any comments...

● (1715)

[*Translation*]

Mr. Pierre Paquette: I agree with the work plan as it concerns the two items mentioned. I'd like to raise a particular issue. I don't know whether it is of concern to anyone else but the textile and apparel industries are very worried about the abolition of quotas at the end of the year. For that reason they have been asking us for information. My colleagues from areas where the industry is present have been asking me what the situation is. Perhaps it would be interesting for us to hear from officials at an ad hoc meeting dealing with this particular issue so we are better informed about what is being done at the present time. That is a suggestion, if our timetable allows for it.

[*English*]

The Chair: I have a smile on my face, Pierre, because it was something we discussed earlier today and I had wanted to bring it to the table for discussion.

[*Translation*]

Mr. Pierre Paquette: Great minds think alike.

[*English*]

The Chair: We have discussed the various points, and I think 99.9% have been addressed. The one issue that I brought to Peter's attention, as we were just discussing, was the textile industry. I couldn't agree with you more. Unless anybody else has any objections, we would plan to include that in our agenda.

A question we were discussing was when we would want them to come in.

I'll hear your views first. When would you like them to come in, based on our schedule?

[*Translation*]

Mr. Peter Julian: I'd like to say one or two things. I note that the list of potential witnesses is not closed. As I understand it, we can suggest other people or other organizations we would like to hear from. What procedure should we follow to do so?

[*English*]

Committee Clerk (Mr. Stephen Knowles): Normally any further suggestions are sent to the clerk of the subcommittee. He would ensure that the researchers get them, and they'd no doubt be incorporated into a revised work plan—which you can adopt here and take our word for it, and we'll circulate it again.

The Chair: I spoke about bringing in the textile industry, and I put them in for November 30.

Is that okay with you?

Ms. Belinda Stronach: Is that in addition to emerging markets, not to replace?

The Chair: Yes, because most of the textile industry is... we're looking at...

[*Translation*]

Mr. Pierre Paquette: It is certainly relevant for our study on emerging markets, such as China, India and Bangladesh. There is the American market and the agreements entered into by the Americans with the Caribbean countries. There is all of that.

[*English*]

The Chair: Belinda, do you want to add something?

Ms. Belinda Stronach: I just want clarification on November 30, because I was busy chatting at the back for a second and I missed that. I'm fine with that. It's a good idea.

The Chair: I suggested November 30 because of the issues in the areas of international trade—China, India, Brazil, etc.

Is that okay?

Are there any other comments?

[*Translation*]

Mr. Pierre Paquette: I'd like to make another small suggestion. As far as the Canadian-American border is concerned, it might be interesting for us to hear as witnesses representatives of the union representing these workers. Normally these people are very critical but this would at least give us another point of view.

● (1720)

Mr. Peter Julian: I agree with Mr. Paquette.

At our first meeting, we talked about two subjects related to international trade. There was the revision of NAFTA following its anniversary and there was also some talk about the various aspects of chapter 11 of NAFTA. Since I see no reference to this, I suppose that we could begin our consideration of these matters for the month of February. I'm convinced that there will be a good many witnesses who would like to discuss this. I wouldn't like us to overlook these very important issues.

Mr. Pierre Paquette: I think that in January the Union of Canadian Postal Workers will be taking legal action under the Charter of Rights and Freedoms or under the Constitution. So there is a chance that it may once again become a topical issue.

[*English*]

The Chair: I don't have the schedule here on when the House is rising.

A voice: December 17.

The Chair: So December 14 for chapter 11?

Mr. Peter Julian: No, I think it would be better to put that in the February session.

As we know, I'm a new member here, but my understanding is that the last week before Christmas is silly season.

The Chair: All right. Are all agreed?

Ms. Belinda Stronach: … [*Inaudible—Editor*]... the December 7 meeting?

Mr. Peter Julian: So we'll put that in February?

The Chair: February.

Ms. Belinda Stronach: So there's no December 14 plan right now?

The Chair: No, we were going to add it to...

Are there any other comments?

We had a great meeting today. We tried to be as generous as we could with our time.

The meeting is adjourned.

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