January 2010

Regional Actors in the Canada-United States Relationship

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Recommended Citation
Selma Lussenburg, Kathryn Friedman, and Ed Wolking, Regional Actors in the Canada-United States Relationship, 34 Can.-U.S. L.J. 135 (2008)
Available at: https://scholarlycommons.law.case.edu/cuslj/vol34/iss2/10

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INTRODUCTION

Selma Lussenburg

MS. LUSSENBURG: We have the enviable, or unenviable, position of being the last panel of the day before you are released, so we will do our best to move along quickly and make this as interesting and informative as possible, so as to keep you engaged. Therefore, I would like to start by thanking you for staying. Our topic today is looking at the role for regional actors. One of the questions we have before us is: how do we incorporate regional actors into Canada-United States governance? They are distinct; they are different from durable entities, yet they play a very significant role in the trade between Canada and the United States. We are very fortunate to have two excellent speakers who bring very different experiences and perspectives to our discussion today. We have Kathryn Friedman to my immediate right, or Katie, as I understand she likes to be called, who brings a policy perspective and economic analysis to Canada-United States trade and the role of regional actors. We have Ed Wolking, who has a plethora of experience in the business sector working with chambers of commerce. I would like to introduce each very briefly. I would also bring to your attention that there is

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2 See The University at Buffalo Regional Institute, http://www.regional-institute.buffalo.edu/staff_indiv.cfm?StaffID=16 (last visited Sept. 30, 2009).
a lengthier biography for each of our speakers in the brochure so I am not going to try to repeat everything that's in there. Katie is Deputy Director of the University at the Buffalo Regional Institute. She has fulfilled that role since 2006. She is responsible for strategic planning. She oversees the Research Division, and directs the institute's bi-national programming. Katie frequently speaks on bi-national and international legal issues to business and academic audiences. She is also a practicing lawyer, adjunct professor at the University of Buffalo, where she teaches International Trade and North American Free Trade courses. Interestingly, at least to me, she is a member of the Advisory Council for the Niagara Observatory at Brock University and also on the panel for Women in International Security and the Small Business Association International Trade Task Force.

Ed comes to us from the business community. He is presently Executive Vice President of the Detroit Regional Chamber. He is also President of the Great Lakes Manufacturing Council. He has over 35 years of experience in the business community. His responsibilities are many and include, fostering growth in membership and resources through new products and collaborations with other organizations, membership affinity programs, and the development of highly successful affinity products and small group health insurance. Ed told me that his health biography was what we find in the brochure that was handed out today, but I have to assure you that he has significant experience in the manufacturing sector where he is, as I mentioned, the President of the Great Lakes Manufacturing Council.

To return to our topic for today, we are going to start with Katie, who will frame the discussion in terms of governance and provide an interdisciplinary context to the role of regional actors. Ed will focus on two current regional initiatives, near and dear to us in this area, the Great Lakes Manufacturing Council and the Great Lakes Metro Chambers Coalition. I would ask you as we listen to their presentations to consider the impact of federal, provincial, and state jurisdiction and legislation on these actors. Are they relevant? What is the role for our governments at the federal, state, and regional level

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5 See The University at Buffalo Regional Institute, supra note 2.
6 See id.
7 See id.
8 See id.
9 See id.
10 See id.
11 See id.
12 See id.
13 See id.
14 See Detroit Regional Chamber, supra note 4.
15 See id.
16 See id.
to legislate or provide a governance framework for these organizations? Do we need a legal structure for this, or should we just allow freeform organizations? And what are the issues that arise when things do not work out between these organizations? I am going to leave it to Katie to start. We obviously have political, economic, and legal issues before us as we look at regional actors.

UNITED STATES SPEAKER

*Kathryn Friedman*

BETWEEN A ROCK AND A HARD PLACE?

INTERNATIONAL LAW, REGIONAL NETWORKS AND THE GOVERNANCE OF NORTH AMERICA

MS. FRIEDMAN: By most accounts, the North American Free Trade Agreement (NAFTA) has been wildly successful in achieving what it set out to do, increase trade among Canada, Mexico and the United States. From 1993 to 2005, trade among the NAFTA nations climbed 173 percent, from $297 billion to $810 billion. Investment among the signatory countries

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* Kathryn Friedman has served as Deputy Director of the UB Regional Institute since January 2006. In addition to working with the institute's Director on strategic planning, Ms. Friedman serves as direct program manager for Region's Edge, the institute's bi-national research program. Ms. Friedman, a practicing attorney, is an adjunct professor at the University at Buffalo School of Law. She is a member of the Advisory Council for the Niagara Observatory at Brock University, Women in International Security and the Small Business Association International Trade Task Force. Ms. Friedman also served as Vice Chair of the International Law and Practice Section of the New York State Bar Association. In addition to receiving a PhD in political science, with concentrations in international relations and comparative political economy, Ms. Friedman graduated magna cum laude from the University at Buffalo School of Law where she served as an International Law Fellow and as Editor-in-Chief of the Buffalo Law Review. She received the Carlos C. Alden Award for greatest contribution to the Law Review and the Law Faculty Award for outstanding contributions to the law school. Upon graduating from law school, Ms. Friedman served as Confidential Law Clerk to an Associate Judge on the Court of Appeals of New York.

17 The following paper has been substituted by Ms. Friedman for publication in lieu of her remarks.

increased significantly as well, with intra-industry trade ("we make stuff together") characterizing contemporary North American industry structure. The level of economic integration among these countries has reached the point now where a new governance framework is required to further shape the contours of North American competitiveness.\textsuperscript{19} To paraphrase Jane Jacobs, North America generates the wealth of Canada, Mexico and the United States; however, its governance has not kept up with this reality.

Although most agree that a new governance mechanism is required, its nature is far from settled, as evidenced by the often-contentious debates concerning this issue during the 2008 US presidential election campaign. Proposals from scholars and policymakers most-often call for traditional international law mechanisms to strengthen economic competitiveness. Whether these proposals recommend a new treaty,\textsuperscript{20} international institutions\textsuperscript{21} or a comprehensive agreement,\textsuperscript{22} this thinking focuses on usual international law tools. This is curious, as virtually as many scholars and policymakers agree that the prospects for these kinds of architecture are dim for a number of reasons, not the least of which is lack of political will.\textsuperscript{23} The symbolism of these proposals, particularly of establishing a North American community, is not lost on me, however, to date, a continent-wide governance structure remains undesirable in some important quarters and hence is unworkable.

Other scholars and policymakers suggest that transgovernmental networks offer an alternative governance mechanism to these traditional international law tools.\textsuperscript{24} Transgovernmentalists contend that contemporary international cooperation is not rooted in international institutions and treaties: rather, it occurs among discrete, specialized domestic actors in the executive, legislative and the judicial branches of government. It is these networks that offer promise as the "blueprint for the international architecture of the 21st century."\textsuperscript{25}

\textsuperscript{20} See Daniel Schwanen, Deeper, Broader: A Roadmap for a Treaty with North America, 10 LAW & BUS. REV. AM. 345 (Spring 2004).
\textsuperscript{22} See Allan Gotlieb, A North American Community of Law, 2 IDEAS THAT MATTER 25 (2002).
Such networks do indeed exist in North America, such as the Security and Prosperity Partnership (SPP) negotiated between Canada, Mexico and the United States in March 2005. The SPP was designed to "increase security and enhance prosperity . . . through greater cooperation and information sharing." Canada, Mexico and the US have achieved several accomplishments under this rubric, including in the areas of border infrastructure and aviation.\(^{26}\) Notwithstanding its great promise, the SPP has come up short in several ways, with some suggesting that it will be scrapped altogether in the foreseeable future.

Thus, North American policymakers are faced with continental governance models that are, on the one hand, politically infeasible, and, on the other hand, seemingly ineffective. There remains, however, an inclination, even urgency in some quarters, to broaden and deepen North American relationships to enhance economic competitiveness. At a time when regions throughout the world are breaking down barriers to the free flow of goods, services, and people, North American officials must rethink policies that build fences and thicken borders. But how do we move forward? Are contemporary policymakers stuck between the proverbial rock and a hard place when it comes to North American governance?

I submit not. In my view, policymakers need to drill down into the sub-stratum of North America and examine regional actors and networks as part of governance plan for North America. This is appropriate because the characterization of North American integration as occurring from "the bottom-up" is well documented\(^{27}\). Contrary to supranational "top-down" models such as the European Union with its myriad institutions and structures above the nation-state, North American integration has occurred in the absence of strong institutions and structures. In fact, the North American Free Trade Agreement was set up deliberately with weak institutions, reflecting longstanding concerns about ceding sovereignty to supranational institutions. Hence, it is logical for regional networks to be considered as part of the calculus used to devise an architecture that more adequately reflects the reality of the twenty-first century networked North America.


Canada-United States relations are replete with transnational networks at all levels of government that play an important role in shaping the contours of North American integration. We are certainly familiar with networks that exist at the federal-federal level. I want to focus on networks at the state-provincial or regional levels, which exploded onto the contemporary scene with the signing of the Canada-United States Free Trade Agreement in the late 1980s and the North American Free Trade Agreement in the early 1990s, both of which have ushered in opportunities for broadening and deepening collaborative efforts among the parties across sectors.

There are three types of networks. First, in their relations with US counterparts, Canadian transgovernmental networks include officials at the federal, state, and sometimes regional and local levels. Examples illustrating this point include 1) the CANAMEX Coalition, a north/south intermodal trade and transportation corridor from northern Alberta to the Pacific Coast of Mexico. Meetings are held quarterly, at which representatives from state and provincial governments, as well as officials from the Canadian Consulate in Los Angeles, attend; 2) the Cross-Border Crime Forum, which is a consultative forum established in 1997 at the federal government level but which includes participation by provinces (such as British Columbia) and states; 3) the Provinces/States Advisory Group, an advisory forum to the federal Cana-

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28 The Canadian government has conducted extensive empirical research documenting Canada-United States networks. See JEFF HEYNEN AND JOHN HIGGINbotham, CANADIAN SCHOOL OF PUBLIC SERVICE, ACTION-RESEARCH ROUNDTABLE: ADVANCING CANADIAN INTERESTS IN THE UNITED STATES: A PRACTICAL GUIDE FOR CANADIAN PUBLIC OFFICIALS (2004) [hereinafter PRACTICAL GUIDE]; see DIEUDONNE MOUAFO, NADIA PONCE Morales and JEFF HEYNEN, CANADA SCHOOL OF PUBLIC SERVICE, ACTION-RESEARCH ROUNDTABLE: BUILDING CROSS-BORDER LINKS: A COMPREHEND OF CANADA-UNITED STATES GOVERNMENT COLLABORATION (2004) [hereinafter CROSS-BORDER LINKS]. The methodology for the study consisted of a literature review; survey of approximately seventy federal, provincial and territorial departments and agencies detailing institutions and agreements in place with US counterparts; identification an analysis of case studies submitted by federal and provincial departments and agencies; approximately thirty senior level interviews with federal and provincial deputy ministers, assistant deputy ministers, former ambassadors, parliamentarians and private sector officials; federal working level focus groups in three sectoral clusters; site visits to three provincial capitals (Edmonton, Toronto and Halifax); and a workshop on the importance of the United States Department of Homeland Security on Canadian departments and agencies. See PRACTICAL GUIDE, supra at 28; see also POLICY RESEARCH INITIATIVE NORTH AMERICAN LINKAGES PROGRAM, THE EMERGENCE OF CROSS-BORDER REGIONS BETWEEN CANADA AND THE UNITED STATES: SYNTHESIS REPORT (May 2006); POLICY RESEARCH INITIATIVE NORTH AMERICAN LINKAGES PROGRAM, THE EMERGENCE OF CROSS-BORDER REGIONS: INTERIM REPORT (Nov. 2005); JEAN-FRANCOIS ABRGALL, “A SURVEY OF MAJOR CROSS-BORDER ORGANIZATIONS BETWEEN CANADA AND THE UNITED STATES,” POLICY RESEARCH INITIATIVE NORTH AMERICAN LINKAGES PROGRAM, WORKING PAPER SERIES 009 (Oct. 2005).
da-United States Consultative Committee on Agriculture that meets annually and includes Agriculture and Agri-Food Canada as a key collaborator; and 4) the Transportation Border Working Group, which includes Federal Departments on both sides of the border as well as provincial governments such as Nova Scotia and state governments like New York. 29

Second, provincial and territorial governments also engage directly with states without federal government involvement. 30 Significantly, the most common issues tackled in state fora are related to the economy and environment. 31 Additionally, more and more are advocating for regional actors to participate in policy formulation and implementation in the critical area of border security. Research conducted by the University at Buffalo Regional Institute (UBRI) and the Border Policy Research Institute (BPRI) suggests that regional variation along the 49th parallel is the reality, concluding that paradoxically, making the world’s longest border safer might require thinking about policies and allowing for flexibility at the regional, as opposed to the continental scale.

Third, we see public private partnerships at the regional level becoming important in both the formulation and implementation of policy. The Pacific NorthWest Economic Region (PNWER) of course, is the most notable example, but others exist as well.

In the end, these Canada-United States networks, among hundreds of others, represent the day-to-day reality that defines the Canada-United States relationship. Thus, notwithstanding the fact that more than three hundred treaties are in force between Canada and the United States, transgovernmental networks serve as important drivers of the bilateral relationship, facilitating understanding, collaboration and contact. 32

CONCLUSION

For those of you more policy-minded, I submit that this thinking is important from a strategic standpoint. That is, transgovernmental networks can serve as a tool of statecraft by supplementing traditional international law mechanisms such as NAFTA. These networks create important "social capital" that is, they can foster cooperation, facilitate convergence or serve as "gap-fillers", thus paving the way for the renegotiations of traditional mechanisms such as NAFTA or creation of new treaties and institutions. For those of you who are more academically minded, I submit that these networks may serve as mechanisms of international law in their own right –

31 See Cross-Border Links, supra note 28 at 199.
international law qua law. Do these networks constitute customary international law?33

I hope that I have provided some food for thought right before dinner and ask that you consider moving past the security-economy dichotomy that has framed how we think about Canada-United States relations and, unfortunately, in my view, paralyzed progress. If we begin thinking about governance framework that represents a regional networked reality, we can begin answering questions such as that posed by United States Department of Homeland Security Secretary Napolitano last week: what does a 21st century border look like? Other important questions from a business and policy standpoint include? How can we leverage North American human capital? To me, again, it seems as if regional collaborations in higher education such as the Canada-United States Law Institute, or in my neck of the woods, the Transborder Research University Network, hold promise. There are more questions that flow from this framework that we can discuss afterward. In the end, I leave you with the following idea: transgovernmental regional networks may allow the United States and Canada the ability to maneuver between the rock and the hard place and establish a governance framework that enhances, rather than inhibits, economic competitiveness.

UNITED STATES SPEAKER

Ed Wolking *

Thank you for the opportunity to be here today. I do apologize for that little snafu on the biography. I actually have a fairly long exposure to manufacturing going back to my days as President of the Columbus, Indiana

33 See Raustiala (2002), supra note 25, 84-89, the six hypotheses set forth by Raustiala and applied in a North American context greatly influenced my thinking on these issues.

* Ed Wolking is Vice President of the Detroit Regional Chamber and has nearly forty years of experience in chamber operations. Mr. Wolking also serves as the President of the Great Lakes Manufacturing Council. Prior to his appointment, he served as Senior Vice President of Strategic Directions, Member Services and Marketing for the Detroit Regional Chamber. Mr. Wolking also served as President of Columbus Chamber of Commerce, Group Executive for the Greater Cincinnati Chamber of Commerce and as Executive Vice President of the Clermont County Chamber of Commerce. Mr. Wolking has facilitated several strategic health care initiatives including, the development of the chamber Health First America program for the working uninsured, representing the chamber and small business on the Greater Detroit Area Health Council’s Future Directions Initiative and the resulting Save Lives Save Dollars movement and representing the chamber in the Michigan State Medical Society’s Future of Medicine. Mr. Wolking holds both a BA and an MBA from Xavier University.
Chamber of Commerce, and our two largest members were Cummings Engine Company and Arvin Industries, which is now Arvin Meritor.\textsuperscript{34} I know you all know them well. We also had COSCO, the metal furniture people. We had Reliance Electric, which made a lot of wiring harnesses and electric motors. We had Golden Foundry, which made castings for the automotive and diesel engine industry and so on. Before that, when I was with the Cincinnati Chamber, I had the great privilege to do the thing that was the most fun thing I ever did in my career, so I guess you could say it has all been kind of downhill since. Many of you may remember the severe winters of the late 1970s. In Cincinnati you could not get coal up the river to the utilities to burn, so essentially the governments shut all of the manufacturers down because the priority for electricity and natural gas was homes, hospitals, and so on. So, we turned ourselves into a propane-buying consortium because you could convert propane into natural gas equivalent in the utility stations, and you could get equivalent credit for that on your account, and you could stay in operation.\textsuperscript{35} So, we kept twenty-six small and mid-sized manufacturers in business that winter, and that was the proudest, and I think maybe most significant thing, I have ever had a chance to be around.

I am here today to really talk with you about a couple of stories of collaboration. First, Great Lakes Manufacturing Council; and secondly, Great Lakes Metro Chambers Coalition.\textsuperscript{36} And so it is kind of like a tale of two groups, but it really ends up on the border, as you will see in the end. What you are going to hear from me is extremely supportive of what Katie has just said, and not just because we were at the same conference a couple of weeks ago. We were both thinking these things anyway, as you will see.

But let us talk about these two organizations a little bit, Great Lakes Manufacturing Council and Great Lakes Metro Chambers Coalition. Let us position the region, if we can, a little bit in our minds. We are a very big deal. I think for too many years, too many decades, we have been too modest, too self-effacing, and too divided in our outlook; and as a result, we have been stampeded by some other regions. I think there are a couple of things here just to think about with the Great Lakes region. We have twenty percent of the world's fresh water supply.\textsuperscript{37} We are the cradle and fulcrum of innova-

\textsuperscript{34} See Detroit Regional Chamber, supra note 4.


tion and manufacturing in North America, historically.\(^38\) If you look at an economic map, we are one of the United States ten mega regions.\(^39\) As global trading blocks become more important, which I think they will as Katie alluded to, the Great Lakes, I think, people are going to find is really going to be the hub of the North American block. And then finally we all love hockey, right? And it is getting to be that time of year.

This region happens to be people-wise the twelfth largest population in the world, the second largest economy in the world, and has forty percent of the hospitals and universities in the United States and Canada.\(^40\) I want to come back to this second-largest economy in the world. You can thank the Great Lakes Manufacturing Council for that because; when we were doing our first forum in 2005 in Detroit we were looking for a reason. Why is it important to get people together? What is so significant about this and us? And we started shopping around to see what might jump out, and we thought well, let us compare the economic production of these states and provinces and see what we come up with. And sure enough, as it turns out, when you add it all up, we are the second-largest economy in the world in terms of Gross Domestic Product (GDP), and everybody who was involved with planning the conference, I know it was kind of like one of those “a-ha” moments, big surprise, everybody stepped back.\(^41\) Then, oh, wow, we did not even know that fact ourselves until we joined together as in a group. I want you to keep that thought because that is one of the things I want to drive home: a need for us to work together, collaboratively rather than to work in separate silos.

Like Katie, I love statistics. You have probably seen a lot of this before, so I am not going to dwell on it. But again, you will find that we are population-wise about what you would expect us to be of the two countries, and about the same in terms of generating patents.\(^42\) But we graduate more of the United States scientists and engineers.\(^43\) Ontario itself accounts for fifty percent of Canada's total manufacturing output, and it is easily the biggest single business sector in Canada and Ontario.\(^44\)

Now, this next slide, I am kind of glad you cannot read it because this is from a couple years ago before our economic meltdown, and maybe it is just

\(^{38}\) See id.


\(^{40}\) See An Agenda, supra note 37, at 3.

\(^{41}\) See id. at 2.

\(^{42}\) See id. at 3.

\(^{43}\) See id.

as well you cannot see the numbers, but this chart illustrates the tremendous concentration of manufacturing and the tremendous impact of manufacturing in the GDP of the individual states. But particularly, in the Midwestern states, the blue is the percent of manufacturing of GDP. In Michigan it was 69. One percent of GDP. The red is the number of employees that is 644,000. Now, obviously, we have some issues there with the numbers. But I want to tell you another story that is really important that these numbers do not even include, and that is that these are government numbers. And if you will recall, government numbers are just the numbers of the jobs in the factories and the companies themselves. But there was a very significant study done by the Chicago Federal Reserve Board, and they started in 1957, noting that probably about eighty-eight percent of the manufacturing activity was done inside the plant gate. And then fast-forwarded to 1997, it turns out that about sixty-seven percent of manufacturing activity was actually done in the plant gate, inside the plant gates. Where was the rest of that, where did that twenty-some percent go? It went into what we call the service sector, consulting, engineers, design engineers, customer relationship management (CRM), and so on. So, even if our numbers are down, manufacturing accounts for way more economic activity than people give it credit for, and that is the point of this slide. If you look at our economic prowess, we are firmly convinced in the Great Lakes Manufacturing Council that manufacturing is the key to our prowess. Our manufacturing goods comprise fifty-six percent of the nation's exports in the United States. The Great Lakes states account for thirty percent of United States exports and also the greatest share of the United States exported manufacturing goods. Again, you can see the dominance of manufacturing in Ontario's exports. People talk about manufacturing in the Midwest, and they often think about the automotive


46 See generally id. (listing employee numbers for state).


48 See id.


sector. We obviously have our issues, our legacy issues on the domestic side, and we will get over those in time.

I want to tell you that there is way more to manufacturing in the Great Lakes region than just automotive, and you see some of the other contributors there. Some of them do supply automotive, no doubt, but a lot of them are also great industries on their own with their own separate customer markets. And this is just a smattering of the industries, there are more than that. If you look at Nano here, I could very easily put in biomedical as well, which is very, very big and hot in the Pittsburgh and Cleveland areas. Another thing that is really important to note is that we really do need one another. You are going to see this on the following slides. Seven of the Great Lakes states ship a more significant share of their exports to Canada than the United States' states on average do. Fifty-three percent of Ontario's exports, on the other hand, go into the Great Lakes states. Eighty-seven percent of Canada's exports end up in the United States. Here is a slide that backs that up. You can see the numbers. You do see state exports less as a percentage than the United States, and there are the dramatic numbers from Canada and Ontario.

Now, let us flip to the Great Lakes Manufacturing Council, which began in 2004. One of our colleagues in the room and a group of his compatriots came to us and said we need one another, we need to talk. Richard Newcomb, who really is to blame for everything that you are about to see, or I would like to say to credit for what you are about to see. It was a very simple proposition. They came to us at the Detroit Chamber and said, "we need for you guys to be successful, you need for us to be successful." Can we talk about working together? So we assembled a dialog, which you saw, and it was the first Great Lakes Manufacturing Forum in Detroit, and you have also heard about the relative size of the economy, where we got that statistic. And as we were planning the forum, there were a number of people who said

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55 See Statistics Canada, http://www40.statcan.gc.ca/l01/cst01/gblec02a-eng.htm (last visited Nov. 9, 2009).
unequivocally we are not just going to get together and talk. If we are going
to do this forum, then we are going to have a way forward, and that way for-
ward became the Great Lakes Manufacturing Council, a beginning of a col-
laborative. And the council is kind of modeled along these lines, the famous
quote from Henry Ford, "Coming together is a beginning, staying together is
progress, and then working together is really success."\(^{58}\) And we are at the
point where I can tell you today that we are actually working together. And I
want to credit another person in our audience, who has been a very instru-
mental part of that coming together, staying together, working together, and
also was one of our founding board members, and that is John Tennant, when
he was with the Canada's Technology Triangle.\(^{59}\) We are deeply indebted to
John for his leadership, vision, and wisdom in this effort.

We had a very simple mission: We want to be competitive both for man-
ufacturing in our communities and in doing so, we want our region to pros-
per. We are an association of associations. In other words, it is an organiza-
tion of organizations. We do have individual companies who are members,
but what we want in every state, in the province of Ontario, is twenty strong
associations, groups of people who are interested in and committed to manu-
facturing.\(^{60}\) We do represent the eight Great Lakes states that touch on the
Great Lakes, as well, as the provinces of Ontario and Quebec.\(^{61}\) And we also
have national groups involved, as well, like, Canadian Manufacturers and
Exporters (CME), and National Association of Manufacturers (NAM).\(^{62}\)
And, again, our membership target as you can see, anybody who is really
interested in and committed to manufacturing in the Great Lakes.

Four priorities and here is where I launch into a little soliloquy, colloquy I
guess you would call it in legislative terms, just a little word of explanation
about image. When we talk image, we are talking about the image of manu-
facturing in general, as well as, the image of manufacturing in the Great
Lakes states. We are not dumb, dirty, dull, dangerous, and dying. We are a
very dynamic sector, maybe the sector that is the most competitive of all
industries and sectors because we really are on the world stage. Secondly,
there is innovation. When we talk innovation, we are talking about both
product innovation, as well as, process innovation. Third, we started talking
about workforce, but increasingly we talk about talent base because one of
the things we are determined to do, tied to image, is we want to make sure

\(^{58}\) See Holden Leadership Center, http://leadership.uoregon.edu/resources/ quotes (last
visited Nov. 8, 2009).

\(^{59}\) See W\(^2\)N\(^2\), at About, http://www.w2n2.ca/about (last visited Nov. 8, 2009).

\(^{60}\) See Great Lakes Manufacturing Council, supra note 56.


that people understand that manufacturing is a knowledge-driven and knowledge-based industry. Otherwise, how could you make all of those sophisticated products that we all use and depend on every day and then operate so safely? It is obviously a knowledge-based business.

And then finally, borders and logistics. That is the way we say it in Buffalo and Detroit. In Chicago they say logistics and borders. Either way it works out to be the same. Bob Sheetz, who is one of our board members and who is one of the workforce gurus in the Midwest made an interesting observation at the first forum. That is, we can get everything right in image, innovation, and workforce; but if we are not perceived to have the best logistic system in the world and if we do not in fact have the best logistic system in the world, the rest of it does not mean very much because that is what we are really known for on the world stage.

Progress to date. Just want to mention a few things. We have had three major forums already. Our fourth is in Chicago on October 14th and 15th of this year, mark your calendars please, and we hope we will see a lot of you there. They are very dynamic and action-packed programs. This past year we were in Cleveland, and before that we were in Toronto, and the first one, again, was in Detroit. We have a project planning exercise on image, which is now underway, and people are going to be hearing more about that in the coming months. We are beginning to do resource cataloging for all of the innovation resources to help support small and midsize firms in the Midwest region, and that is underway. We also have a workforce and talent base initiative that is underway for common certification standards from the lowest levels of the profession to the very highest levels of the profession bi-nationally, and so we are looking for additional partners on that one. And then one of the things that the people at Case Western help us put together is the Borders Crossing Resources section that is on our web-

67 See generally Great Lakes Manufacturing Council, supra note 56.
Let me turn briefly to the Great Lakes Metro Chambers Coalition. Not as much to say about this because they are the new kids on the block. They have been around about a year. They are really not what you would call a formal organization. They are a way of working together, but very, very important because while the Great Lakes Manufacturing Council can think good thoughts and do good things, create great networks, come up with good ideas, great solutions and knowledge bases, we cannot go to Washington and tell Washington to do things because we are a foundation essentially. However, the Great Lakes Metro Chambers can because they are all 501(c)(6)-business associations. You are going to see that there is a pretty interesting parallel between what they are interested in and what we are interested in.

You have some things on your table there that are from the Metro Chambers themselves. You are welcome to have those. One is our agenda, and two is the individual projects, transportation and logistics infrastructure projects that we had just taken to Washington, D.C. on a Capitol Hill visit.

So our five priorities are very simple: first, federal transportation, infrastructure funding and policy. We want to see the money get out of silos and into strategic investment decisions that focuses on trade corridors. This is the year to do that because the reauthorizations are coming up this year. Secondly, a 21st century border with Canada. That sounds familiar, doesn't it? Also relates to transportation and transportation infrastructure. Third, investment in the Great Lakes themselves. The vitality and the quality of the lakes to help transform our economic region and broaden our appeal. And there have been a lot of good things that have happened in Washington there within the past several months: the Great Lakes Legacy Act as well as the Great Lakes Compact, and stimulus money for water and sewer runoff in the stimulus package. President Obama has included another significant allocation in the coming federal budget. Fourth is innovation strategy. That is very, very important. Finally, fifth is federal immigration policy. We can talk a little bit more about these in the Q and A. Just going to the border itself from the standpoint of the Great Lakes Metro Chambers, this is what we would like to see. You will see this in the text in your documents there. Maximum fifteen-minute wait time at any border at any time at the busiest times, that is called

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68 Id.
69 Id.
the Just-In-Time standard.\textsuperscript{72} Also integrated policy technology and procedures and tailored regulations. You will note that Katie was talking about that: regulations that are tailored to our border communities and their unique geographic and commercial needs, strategic investment and increased funding, adequate resources and appropriate formulas. We can talk about that in the question and answer session. There is some of that underway in the budgeting process both in the stimulus bill and in the appropriation coming up. We would like to see the bi-national talks reopened to see how we could do better on the border crossings and also act on the SPP recommendations. Many of those recommendations have not even been acted on yet.

Just some reasons why these kinds of things are important; this is the concentration of automotive importing and exporting. This slide, I borrowed this from Jay Myers at CME is very, very significant. And this is not all manufacturing, this is just automotive. If you go to our manufacturing region, it shows up a little better, you can see it all up and down the 401 and 406 corridors into the Midwest.\textsuperscript{73} There is a tremendous amount of economic integration among our communities and within our region. I like to tell people, and I can get in trouble for this, but I am going to say it anyway, we are more highly integrated and have more in common with our brothers and sisters across the Canadian border than we do with our brothers and sisters in the southern states. That is just the way it is. We are much more of an economy in that geographic sense than any other. You can see the tremendous flows, truck traffic here. Again, I do not need to tell you anything more why that is so important, but you can see the large east-west corridor. And then the north-south corridor that forms the "T" right in here in Buffalo to Detroit and Chicago region is an extremely, extremely important transportation intermodal hub for the United States economy.\textsuperscript{74} Again, you can see it here. This is average daylight tonnage to and from Canada. Again, it shows up there. You can start to see the volume of things that are exported from the different parts of the country and notice again how thick it is in the Great Lakes region.

I want to turn back to the borders and kind of wind up with a few thoughts about the borders. Something we picked up at the Brookings Institution. I did not really realize this, but there are one hundred twenty-seven Canadian laws, ninety-six United States statutes, and eighty-six Congressional commit-

\textsuperscript{72} See generally United States Customs and Border Protection, http://apps.cbp.gov/bwt/ (last visited Nov. 8, 2009) (listing wait times at various border points).


\textsuperscript{74} See id.
tees and subcommittees that all have something to say about the border. 75 From a business perspective, a customer's perspective, you get a lot of fallout from that, and it ends up in delays and things that do not make a lot of sense. We would like to suggest the government think of its role versus those who are crossing the borders as a supplier and a customer. How can government make border crossing easier and still maintain security? We think mostly they focused on security rather than "easier." But here are some key questions: Can we learn to separate risk? Can we harmonize requirements, questions, and data that the two countries need? Can we sort our traffic for frequency and our approvals for frequency?

On the federal side, can we listen to the locals because locals often complain that the federal governments do not listen to them? On the local side, can we cooperate with the federals because the federals often say we are not very cooperative at the local level, and we do not pay them much attention? So that is the challenge, and I have a thought about this, and I borrowed this from a movie title. 76 It may offend some people what I am suggesting here, but I will just call it for sake of discussion an "indecent proposal." Can we create a set of guiding national principles that are developed together by Canada and the United States at a high level? And then can we create regional border authorities to establish the operational rules within those principles, and those authorities would have all government levels, relative agencies, the key stakeholder groups, the users of the border together developing the solutions and then going back to Washington and Ottawa for the sign-offs? And then finally, can we get allocations of federal resources on both sides of the border actually based on actual volumes of commercial and passenger traffic? A lot of times that does not happen. If you put it on a chart, a Vizio chart, it looks something like that. You know, you have the common principles, the two governments which really develop those; you have the authorities in the different regions composed of the stakeholders developing their solutions, all gets tied back consistently to the governing principles in United States and the federal government, Canadian federal government. You have a continuous loop feedback. So that is it.

DISCUSSION FOLLOWING THE REMARKS OF KATHRYN FRIEDMAN AND ED WOLKING

MS. LUSSENBURG: I appreciate it is the end of the day. Having said that, I think there are some interesting issues that have been brought forward in this discussion. Are there questions from the floor?

MR. CARMODY: Just wanted to ask a question of Kathryn. It was very interesting in your presentation, and I am wondering if you can elaborate a little bit on this notion of international law and custom, and how some of these regional initiatives might constitute or come to constitute over time some custom?

MS. FRIEDMAN: Well, it is a great question, and I think the jury is still out on that. I mean, I think what is unknown is whether or not the policy-makers and their counterparts across the border who meet frequently, on a whole host of different issues, whether those folks consider their meetings, their information exchange, their policymaking, whatever specifically it is that they are doing obligatory, right? And so we have to get a sense as to whether or not they viewed their interactions as obligations. And I suppose we could, interview or actually look at the nature of their interactions over time and come to conclusions by ourselves. But I think certainly there is the possibility for that. I agree. I think it is a very provocative question because it would change the fundamental nature and at least add another mechanism, another international law mechanism that we could think about using in the Canada-United States context.


MR. ROBINSON: It is not a question at all, just a bit of information. We have talked about the Brookings Conference, it was actually co-sponsored by the Canadian International Council. And, if anybody wants to get a bunch of this stuff including Miss Napolitano's remarks and research papers and all that stuff, you can get it on the website of www.canadianinternationalcouncil.org for free.

MS. LUSSENBURG: Thanks, Michael.

MR. KNAPP: I am Roy Knapp. It sounds like, especially when you plugged your book that you are letting at the federal levels in both countries dictate largely through legislation of what the objectives are. But I would guess, and I admire your local initiatives to say how we are going to meet those objectives, I think that is what I am disseminating from your comments here, that local pilot programs may work. Do you have any successful programs that you can point to anywhere along our border where we have come


78 Id.
from common cause on both sides of the border and a localized issue and taken it back to our governments and said this is an accommodation of law, all the states, et cetera, but we are looking for some ease of accommodation? Is that what we are looking for?

MR. WOLKING: I think the answer is yes, in general. I think it is a pretty new idea at least, you know, within the last couple of years or so where you might find the best example of that both in the way it is organized and in what it does and some of the progress it has made as the Pacific Northwest Economic Region, who Katie mentioned, I think they offer a pretty good model because they have all the players and the stakeholders regionally at the table and a pretty good representation, and I think they have a pretty good working relationship with the federal governments. But, you know, when we talk about principles, I think what we are talking about is outcomes, maybe that the two governments want to see, let us figure out how to deliver the outcomes. You guys specify the outcomes, and we'll figure out how to do it, but we will have federal officials from the appropriate jurisdictions involved in the regional planning for those outcomes so there are no surprises because they do know a lot of things as well as our knowing a lot of things. So, I think it's an interesting way to get to what the government is looking for, the outcome, and to be less prescriptive in a set of rules that kind of apply to all because our borders are very different. And, I guess that is the one thing in Secretary Napolitano's comments that really disturbed me. If she said it once, I bet you she said it three, four, maybe five times: Make no mistake, this is a real border, and we know it is a real border. And also understand that your southern neighbors want parity, and whatever works for you guys needs to work for them and vice versa. I do not really think that you can look at it like that. And to be honest, I do not want it to be a real border on the northern side. I think our issues are more economic than they are security-driven, and I think on our side the economics have to outweigh the security part.

MS. LUSSENBURG: I might add that what you put your finger on is sort of the nub of the issue though; that if it is customary international law, and even if it is regional customary international law, is there a fear in Washington and in Ottawa that this will come back to haunt them because it was not something that they freely entered into in the classic forum of treaty negotiations? In fact, it just happened through a series of events, and all of a sudden they are confronted in the context of some other situation with what has

80 See id.
81 See generally id. (discussing border issues between Canada and the United States).
happened on the northern border. And I think Katie at the beginning of her paper said, you know, is there that political will? And I think that is one of the very difficult issues that we have here given the closeness of the two borders and the two economies, and yet the concerns about the broader repercussions that that would bring forward.

MR. WOLKING: If I could just respond to that very quickly. You are right on the money. Absolutely, I think that is the question and the issue. And I think this is something that the two federal governments have to struggle with, but they have to struggle with it and get it right and ultimately resolve it. I think it was either John Engler or Jay Meyer said that plus or minus two percent expense of time at the border was not a big deal. You know, when things were going really, really well, you could afford that slip from cup to lip. You cannot afford that anymore. Investment decisions get made on that, capital is mobile, and this is the manufacturing economic engine of these two nations. And, so, it is imperative that we get this right. And government just has to understand that, and maybe we need to have a bigger voice in that.

MS. LUSSENBURG: There is a gentleman right here at the front.

MR. PIERSON: Michael Pierson. Do you have an example of interstate practice being established as customary international law, or is this just a new forum of customary international law? Does it consist of customary international law or state practice? I am not familiar with an example where state practice has been demonstrated by an interstate practice, it has only been done on a national level.

MS. FRIEDMAN: I am not familiar, no, but I do not know why it would make a difference. I guess I do not know. I'm not sure. But there is a gentleman back there that might disagree.

MR. ULRICH: There was an example some years ago when it was still the United States Customs Service on entry documentation between Canada and the United States, and I cannot think of the acronym, coming across through Buffalo and out of the northeast pilot, and it was in place for almost ten years to expedite transportation and documentation between the two countries. And it was a pilot that really led to some of the changes in the

82 See Kathryn Friedman, Between a Rock and a Hard Place? International Law, Regional Networks, and the Governance of North America (2008).
84 See id.
regulations of United States Customs Service.86 So there is, I cannot think of, well, it has been in Ottawa probably a decade now, but there was an initiative some years ago. And the other one that I would posit was when we worked on the Saint Lawrence Seaway Development Corporation, the whole idea of the Saint Lawrence, United States and Canada working together, I think it changed a lot of our regulations on both sides to accommodate a common canal for both countries.87 So there is some precedent out there. We would have to go back to 1957, '58 and '59 to find that.

MR. WOLKING: Could we get that information from you? Because that would be very helpful if we can get those services.

MR. ULRICH: You mean now or later?

MR. WOLKING: Later, go work that out now.

MR. KOLUNDZIC: Just very quickly. Dan Kolundzic, the Canadian Consulate General in Buffalo, New York. Given the high profile in the stalled situation we share over at the Peace Bridge, I mean, it is a very good example of how there is a unique specific problem and challenge to try and resolve. This may be an unfair question, but how would a regional border authority assist in resolving that situation in a more effective way? Or are there just some problems, some issues that simply cannot be resolved?

MS. LUSSENBURG: Before you answer that, can I ask you when you say a regional border authority, do you mean like in the eastern Canada-United States or Canada-United States broadly? Because when you look at one of the things, that I was going to draw this to your attention that Katie has distributed, some very interesting data about how our cross-border traffic works and how different the west is from the east. And I think that sort of supports the thesis that maybe we need solutions that are different. Just like we have different sectoral solutions under the NAFTA, maybe we need different regional solutions to achieve the interface of commerce.88

MR. KOLUNDZIC: In full agreement that it could be separate.

MS. LUSSENBURG: But are we looking northeast?

MR. KOLUNDZIC: Well, let us call it northeast. I mean, we were talking about using regional authorities in some way, regional networks in some way that were effective in dealing with these issues in a more effective way. In the Buffalo, Fort Erie instance, which has been a real challenge, and it has stalled, it is actually dead at the moment. How would a regional authority, whatever that network is and whether it is structured, how could that help navigate that issue in a more effective way?

86 See id.
MS. FRIEDMAN: Well, I guess my understanding of the problem with shared border management in our region, how can I say this; it is a problem that the Department of Homeland Security (DHS) has with fingerprinting. And, you know, in that circumstance, I suppose you could have as much collaboration and, you know, as much pressure put on DHS by local actors, as you would like. But as I indicated I do not think Washington will ever fully devolve policymaking power to states and provinces. So maybe there are circumstances where it is, the federal government, and that, you know, it is what it is.

MR. KOLUNDZIC: Enough to both see sovereignty in these issues.

MS. FRIEDMAN: Right, right. But again, another example where regional entities, states, and provinces played a critical role while with the private sector would be the Western Hemisphere Travel Initiative (WHTI), where the federal government came out with a mandate, right? But, again, I am not saying it was purposeful, I do not know who drafted that language. But those four words provided the flexibility needed for states and provinces to become real actors and real voices in policy implementation.

MR. WOLKING: I think you could say at the federal level if we could get Ottawa and Washington together and say we are trying to accomplish these five things, this is what we want, these are the five standards, okay? Now, you guys tell us in Buffalo, as a region, then how you would implement that and accomplish what you want to accomplish at the same time. We still have right of refusal, but we will let you guys come up with a flexible approach to meet those objectives. It is just an idea. I think it would be easier to actually have somebody put a construct on paper saying what the standards or principles would be and then give some ideas about how the two sides across the border in a region can work out solutions for those standards. But I really believe that you would find that we might surprise ourselves on the upside; that, you know, the two federal governments might get pretty much what they want, and we might get a lot more ease of use of the border. You know, the issue of fingerprinting, for example, and this is just a wild comment, but I know how important it is to the United States, and I know how anathematic it is to the Canadians.

However, there is in WHTI, you know, other acceptable means of identification or whatever as an example. So if Canada has a way of certifying

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that everybody who is a Canadian citizen is really not here for terrorist purposes, then why do they need fingerprints? But we will have other means of identification, you know, and for Canadians. So, there is a whole series of "if-then" things, and then comes the whole notion of if we can find a way to harmonize our data and our standards of what we are looking at on both sides of the border coming and going, what a wonderful world it would be.

MS. LUSSENBURG: Well, I think we will finish up on that note. Thank you all for staying at the end of a long day.