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**PSEP and DHS: Implications For Business In Our New  
Security Conscious Environment**

**by David Butler, Sarah Diamond, and Bill Hearn**

Public Safety and Emergency  
Preparedness Canada  
&  
US Department of Homeland Security

Implications For Business In Our New  
Security Conscious Environment

Wednesday, February 25, 2004

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# Agenda

- Introduction
- Canada
  - Overview of Department of Public Safety and Emergency Preparedness (PSEP)
  - Programs and Related Requirements Arising From Creation and Mandate of PSEP
- United States
  - Overview of Department of Homeland Security (DHS)
  - Vendor Issues and Procurement-Related Matters
  - Effect of *Maritime Transportation Safety Act* and Transportation Canada Harmonization
- Questions

# Participating Law Firms

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# Presenting Lawyers

- David Butler Chair – McMillan Binch LLP
- Bill Hearn – McMillan Binch LLP
- Sarah Diamond – McMillan Binch LLP
- Robert Mangas – Dickstein Shapiro Morin & Oshinsky LLP
- David M. Nadler – Dickstein Shapiro Morin & Oshinsky LLP
- Jon Bonsall – Keegan, Werlin & Pabian, LLP

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# Introduction

- 9/11 changed landscape
- Most western nations reviewing national security policies and programs
- US has been most affected
- Canada most affected by US approach



# Introduction

- What has happened?
  - In US?
    - Creation of Department of Homeland Security (DHS)
    - 3<sup>rd</sup> largest department in US, consisting of 1/12 civilian federal workers
    - Budget = \$38 billion



# Introduction

Public Safety and  
Emergency Preparedness

- In Canada?
  - Creation of Public Safety and Emergency Preparedness (PSEP)
  - Minister: Honourable Anne McLellan
  - Budget: C\$5 billion

# Introduction

- PSEP mandated to support Minister in giving effective direction to agencies responsible for:
  - policing and law enforcement
  - national security
  - corrections and conditional release

# Introduction

- Creation of Canada-US Planning Group at NORAD
- Joint Emergency Preparedness Program (JEPP)
- Relocation of 2000 federal police officers to national security issues
- Expansion of urban search and rescue program

# Introduction

- Electronic exchange fingerprint data agreement
- Budget 2003 provided \$3 billion to infrastructure support
- Purchases of antibiotics to increase National Emergency Services Stockpile System
- RCMP National Security Tip Hotline

# Introduction

- Impact on Business?
  - Individuals:
    - You are being affected daily
    - Long delays and more intense searches at borders/airports
  - Goods:
    - Long border delays/disruptions in transportation



# Introduction

- Impact on Business:
  - Canadian initiatives are following US lead
  - Concern that Canada not following US funding amounts and structures
  - Increasingly, mantra is:

**COMPLY TO COMPETE**

# Introduction

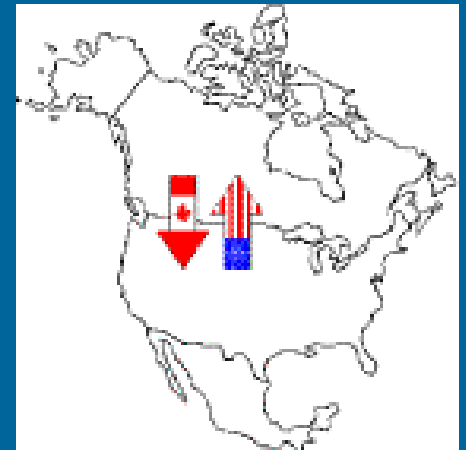
- Impact on Business:
  - need greater awareness of structural differences between Canada and US
  - must understand that:
    - doing business with US has changed
    - US implementation programs may not be suitable to Canadian context

# Introduction

- Impact on Business
  - be aware of efficiencies and differences that legislation and programs are creating
  - also aware of differences between Canada and US legislation and programs
  - Canadian businesses must be innovative in approach to compliance with both US and Canadian security requirements
  - national security trumps all

# Introduction

- Canada/US Trade (2002)
  - Canada/US trade reached ~US\$473 billion, or ~US\$1.3 billion per day
  - US exchange with Canada was worth 61% more than Mexico (second largest trading relationship)
  - US exports to Canada generate 2,000,000 jobs in US

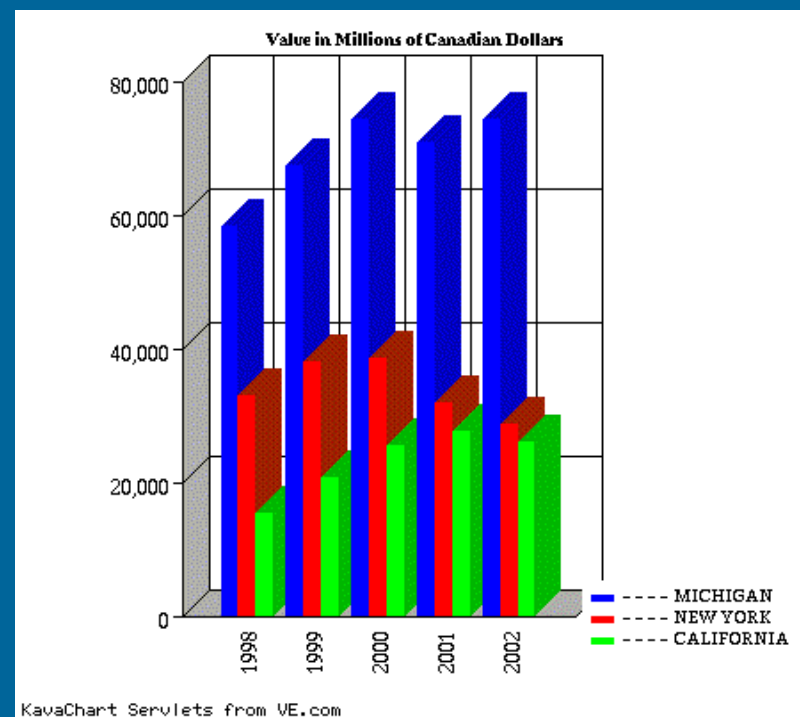


# Introduction

- Canada/US Trade (2002):

- Top 3 US export destinations:

- 1) Michigan C\$74.5 billion
- 2) New York C\$28.8 billion
- 3) California C\$26.3 billion



# Introduction

- Canada/US Trade (2002):
  - Canada's importance to US is more than border-state phenomenon
  - Canada was leading export market for 37 of 50 US states
  - 9 of top 20 state importers of Canadian goods are not border states

# Introduction

- Canada/US Trade (2002):
  - Canada buys 19% of all US exports of goods (US\$163 billion)
  - Canada supplied 16.5 per cent of all US imports of goods and services (US\$188 billion)
  - 74% of all imports are from US (C\$218 billion)
  - 82% of Canada's total exports were shipped to US (C\$345 billion)
  - 43% of Canadian GDP consists of exports (US\$400 billion)

# Introduction

- Canada/US Trade (2002):
  - Canada exports US\$18.4 billion worth of services to the US
  - US exports US\$24.3 billion worth of services to Canada
  - majority US-owned affiliates consumed \$US44.3 billion of services in 2000
  - majority Canadian-owned firms in US bought \$US51.3 billion of services in 2000

# Introduction

## Security-related acronyms:

CAN-PASS - customs clearance for frequent airport travellers

CATSA- Canadian Air Transport Security Authority

CBSA - Canada Border Service Agency

CCRA - Canada Customs and Revenue Agency

CFC - Canada Firearms Centre

CFIA - Canadian Food Inspection Agency

# Introduction

## Security-related acronyms:

CIC - Citizenship and Immigration Canada

CPA - Canadian Port Authority

CSC - Correctional Services Canada

CSIS - Canadian Security Intelligence Service

DHS - Department of Homeland Security

FAST - Free and Secure Trade program

# Introduction

## Security-related acronyms:

JEPP - Joint Emergency Preparedness Program

NEXUS- joint customs and immigration program for frequent travellers

NORAD- North American Aerospace Defense Command

NPB - National Parole Board

OCIPEP - Office of Critical Infrastructure Protection and Emergency Preparedness

# Introduction

## Security-related acronyms:

PIP - Partners in Protection

PSEP - Public Safety and Emergency Preparedness Canada

RCMP - Royal Canadian Mounted Police

VACIS - Vehicle and Cargo Inspection System

VISIT - Visitor and Immigration Technology program

# Safety and Emergency Preparedness <sup>24</sup> Canada

## Overview

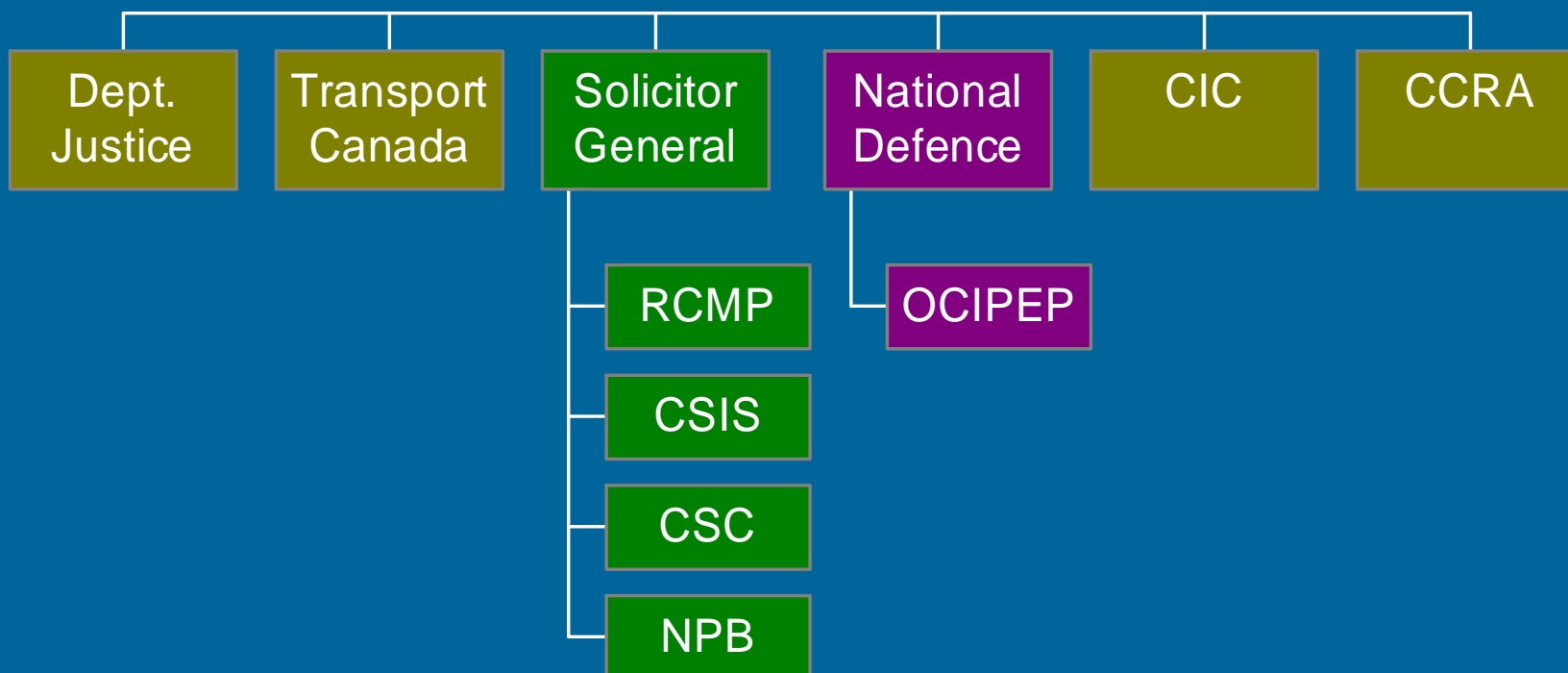
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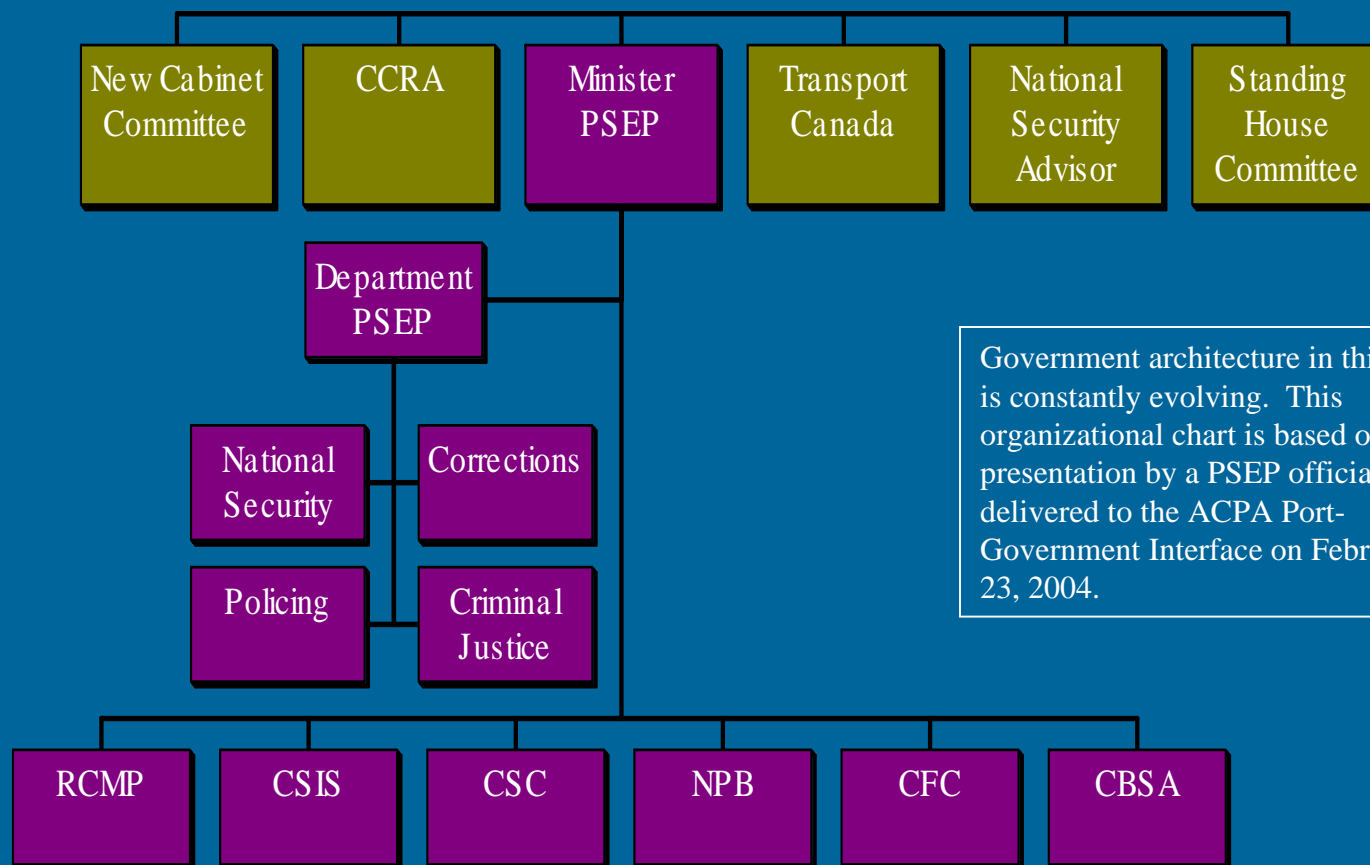
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# National Security: Pre 9/11



# National Security: Post 9/11



Government architecture in this area is constantly evolving. This organizational chart is based on a presentation by a PSEP official delivered to the ACPA Port-Government Interface on February 23, 2004.

# PSEP

Public Safety and  
Emergency Preparedness

- Minister: Honourable Anne McLellan
- Budget = C\$5 billion
- Employees = 50,000

# PSEP

- New “Cabinet Committee – Security, Public Health and Emergencies” which is chaired by Minister of PSEP
- House of Commons Standing Committee
- Created new position of National Security Advisor to Prime Minister (Robert A. Wright)

# Programs and Related Requirements Arising from Creation and Mandate of PSEP

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## Overview of the Impact of PSEP

and

## Related Vendor Issues

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# Supply Chain Programs

- Importance of Supply Chain
  - Definition:
    - entire network of companies that work together to design, produce, deliver, and service products
    - historically, companies focused on in-house manufacturing and quality improvements
    - now efforts extend beyond to encompass entire supply chain



# Supply Chain Programs

- Importance of Supply Chain:
  - locus of value for manufacturers
  - obvious effects:
    - New delivery times for purchasers
    - Increased spending on compliance
  - non-obvious effects:
    - cash flow, accounting practices, and capital structure of companies
  - affects service organizations providing services to these companies (investment firms, law firms, management consultants, etc...)

# Smart Border Declaration

- On December 12, 2001, Smart Border Declaration signed by Deputy Prime Minister John Manley and US Homeland Security Director Tom Ridge
- Objectives:
  - enhancing security of border
  - facilitating legitimate flow of people and goods



# Smart Border Declaration

- Declaration outlines a set of initiatives called 30-Point Action Plan, which includes:
  - Biometric identifiers
  - Permanent resident cards
  - Single alternative border inspection system

# Canada Border Services Agency



- December 12, 2003: federal government announced creation of the Canada Border Services Agency (CBSA)
- Part of PSEP

# Canada Border Services Agency



- CBSA comprises:
  - Customs program, formerly with the CCRA
  - intelligence, interdiction and enforcement functions, formerly with CIC
  - passenger and initial import inspection services at ports of entry, formerly with CFIA

# Road

- Context:
  - Six million trucks crossed from Canada into US in 2002 (= over 11.5 trucks per minute 24/7)
  - Constitutes 70% (in value), 41% (in volume), of all CDN exports to US
  - Projected growth rate of truck freight 1995-2020 = 61%



The day after the attacks, trucks were backed up 27 kilometres from the U.S. border on Highway 402 at Reece Corners, southern Ontario. Heightened security checks slowed cross-border traffic to a trickle.

# Road

- FAST
  - Free and Secure Trade (FAST) program is a joint Canada-US initiative
  - Participants must voluntarily register in the CBSA's Partners in Protection (PIP) program (similar to DHS C-TPAT program)

# Road

- FAST
  - harmonizes commercial process offered to pre-approved importers, carriers, and registered drivers at 12 major border crossings
  - shipments for approved companies, transported by approved carriers using registered drivers, will be cleared into either country with greater speed and certainty, and at a reduced cost of compliance

# Road

- NEXUS
  - joint customs and immigration program for frequent travellers that both Canadian and American governments have implemented
  - dedicated lanes at select border crossings
  - not be regularly subjected to usual customs and immigration questioning

# Road

- Advance Cargo Reporting
  - Non-FAST = 1 hr prior to arrival at border
  - FAST = none
- Shared border facilities under *Canada-United States Accord on Our Shared Border- Joint Facilities Initiative*

# Rail

- Overview:
  - Constitutes 27% (in value), 32% (in volume), of all CDN exports to US
  - Projected growth rate of rail freight 1995-2020 = 38%



# Rail

- Declaration of Principles
  - On April 3, 2003, US and Canadian customs agencies and Canada's two major railways signed a declaration of principles
  - further enhances security at Canada-US border and to ensure Canada's secure rail access to US

# Rail

- The Declaration:
  - outlines principles for targeting, screening and examining rail shipments to US by:
    - Canadian National Railway
    - Canadian Pacific Railway
  - includes guidelines for collecting electronic manifests and installing imaging and radiation detection equipment

# Marine

- Overview:
  - Constitutes 3% (in value), 27% (in volume) of all CDN exports to US
  - Over 250 commercial ports
  - \$100 billion passes through CPAs, generating over \$20 billion in annual economic activity and 250,000 direct and indirect jobs
  - 3.5 million containers brought into Canada, but only 3% checked



# Marine

- Feds committed C\$172.5 million in 2003 on marine and port security
- Implementing International Ship and Port Facility (ISPS) Code
  - by July 1, 2004

# Marine

- Enhanced security screening procedures for ships entering St. Lawrence Seaway/Great Lakes System
- Advance cargo reporting
  - 24 hours prior to lading
  - Canada is adopting US rule, giving up its intention to require 96 hours

# Air



- Overview:
  - Projected growth rate of air freight 1995-2020 = 91%
  - Not very large when compared to big 3 (road, rail, marine)

# Air

- *Canadian Air Transport Security Authority (CATSA)*
  - created April 1, 2002
- CAN-PASS AIR
  - implementation began July 2003
  - allows pre-screened, low-risk travelers to pass quickly through Canadian customs and immigration at major Canadian airports



# Air

- Share advance passenger information and agreed-to passenger name records
- Canada-US Pre-Clearance Agreement
- Air Travellers Security Charge
- Advance cargo reporting
  - flights > 4 hrs = 4 hrs prior to arrival
  - flights < 4 hrs = at time of take off

# Vendor Programs

- What challenges are there for organizations operating in this “secure” environment?
- Closely review new security environment and try to determine where and how new programs will affect you
- Often new infrastructure required but no or insufficient \$ to offset costs imposed by federal government

# Vendor Programs

- Ensure compliance department in place, if possible
- HR must be more vigilant in background checks
  - Vigilance must be balanced with realities and unions/employees
  - Tension with health/safety and privacy legislation
- Re-structure value chain depending on “just-in-time” structure of organization

# Procurement

- Opportunities from investments in security-based initiatives
- \$7.7 billion for security enhancement initiatives in 2001 budget
- \$3 billion for infrastructure support in 2003 budget

# Procurement

- Examples of goods required:
  - hi-tech equipment to scan freight
  - advanced explosives detection system
  - ion mobility spectrometers
  - underwater vehicles to search for contraband/dangerous goods
  - VACIS (gamma-ray imaging system)

# Procurement Programs

- Examples of services required
  - Operators of certain hi-tech equipment
  - Trainers of security personnel
  - Security assessments and plans for ship owners and port facility operators
  - Assisting with security certification
    - being done in US; possible in Canada?

# Procurement Programs

- Outsourcing opportunities
- P3 opportunities

# Other Related Programs

- Money laundering legislation
- Enhancements to surveillance and animal tracking systems
- New bank notes (\$100, \$50, and \$20)
- Canada opening new consulates in US

# Summary & Recommendations

1. Be aware of changing government structure and programs
  - moving target
  - organizations must be nimble
2. Enrol in trade facilitation programs
  - NEXUS = people (ground)
  - CAN-PASS = people (air)
  - FAST = goods
  - anticipate challenges (e.g. union/employee reaction)

# Summary & Recommendations

## 3. Comply to Compete

- Comply with emerging security enhancements
  - e.g.: advance cargo requirements
    - beginning April 1, 2004
    - Marine:
      - 24 hrs prior to lading
    - Road:
      - FAST: no advance notice required
      - Non-FAST: 1 hr prior to arrival

# Summary & Recommendations

- Certify as required
  - e.g.: ISPS Code
    - compliance required by July 1, 2004 for all port facility operators and ship owners
- Cause all in supply chain to comply and certify
  - e.g.: representations & warranties and tiered remedies (including indemnities) regarding security compliance and certification

# Summary & Recommendations

## 4. Seize Business Opportunities

- massive government expenditures in Canada and the US
- search out request for proposals (RFPs) in order to be a prime government supplier
- provide support services to those companies contracting directly with government

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