

# FOREIGN LAW

## Canadian Law

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This article is divided into two parts. The first part discusses legal developments in Canada. The second part discusses legal developments in the United States affecting Canada, particularly with regard to cross border trade disputes.

### I. Canadian Legal Developments

#### A. CANADIAN COMMUNICATIONS LAW

The year 1997 was marked by several key developments in Canadian communications law. Most notably, each of the telecommunications, broadcasting and spectrum management areas continued the recent trend toward greater reliance upon market forces and less regulation.

In telecommunications, the Canadian Radio-television and Telecommunications Commission (the CRTC or the Commission) released decisions fostering increased competition in both the long distance and local telephone service markets. In Telecom Decision CRTC 97-19, the CRTC announced substantial deregulation of the toll and toll free services of all but one of the incumbent telephone companies comprising the Stentor companies and three Quebec telephone companies. This deregulation generally places these companies on a level playing field with competitive long distance carriers that were deregulated by the CRTC in 1995 (Telecom

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Decision CRTC 95-19). The CRTC will, however, continue to regulate basic toll rates and services in remote areas and will continue to apply a number of conditions, including those restricting the bypass of Canadian telecom facilities and protecting privacy.

A series of 1997 CRTC decisions applicable to local telephony have removed the remaining barriers to entry in the local services market, allowing the CRTC to meet its January 1, 1998 target date for local competition. In Telecom Decision CRTC 97-8, the CRTC ordered incumbent carriers to unbundle components of their local networks and to price network components individually so competitors could access essential components of the local network to offer their own competing services. The rules governing these obligations were announced by the CRTC in Telecom Decision CRTC 97-15. The CRTC approved two forms of co-location: "physical," where the interconnecting carrier connects its network with the telephone company inside the telco's central office, and "virtual," where network interconnection is close to the central office. Physical co-location is the preferred option where central office floor space is available. In Telecom Decision CRTC 97-9, the CRTC announced, effective January 1, 1998, the implementation of a four year price cap regime, applicable to the utility operations of the Stentor companies.

In 1997, the distinction between a telecommunications carrier and a broadcaster became increasingly blurred. The CRTC confirmed that as of January 1, 1998, it will consider license applications from telephone companies seeking to carry on full-time broadcasting distribution undertakings (BDUs) (Public Notice 1997-49). The notice states the CRTC's view that barriers into local telephony, including issues related to interconnection and unbundling, local number portability, co-location and rate restructuring, will have been sufficiently addressed by that time. In Telecom Decisions CRTC 97-11 and 97-12 (Broadcasting Decision 97-192 and 97-193), the CRTC approved, for the first time, applications by telephone companies under the Broadcasting Act (by Bell and TELUS) for licenses to carry on BDUs. The BDUs are used to conduct technical and market cable television trials in communities in Quebec, Ontario, and Alberta utilizing a hybrid fibre-coaxial cable conduit overlaid with their existing telephone facilities. Also approved were tariff applications under the Telecommunications Act to deliver high speed Internet access service over the same facilities.

Broadcasting was also opened to greater competition in 1997. The CRTC radically overhauled the regulatory regime applicable to BDUs with the enactment of the Broadcast Distribution Regulations, effective January 1, 1998, which repeal the Cable Television Regulations, 1986. Among the significant regulatory changes, which apply to cable operators, wireless and DTH satellite BDUs, are the following: no regulation of the rates of new distribution undertakings entering into competition with existing undertakings; a prohibition applicable to all licensees against the granting of undue preferences; provisions transferring the ownership of inside wiring from licensees to customers to facilitate choice among competitive BDUs, and a mechanism for deregulating the rates of large BDUs once there is sufficient competitive entry into their markets.

The CRTC's policy on the distribution of non-Canadian satellite services is another area in which broadcasting regulation was eased in 1997. The "eligible satellite services lists" consist of foreign satellite services which are authorized by the CRTC for distribution by BDUs in Canada. In Public Notice 1997-96, the CRTC announced that it would no longer remove a foreign service from the eligible lists when a Canadian specialty service with a similar and competitive format obtains a license. This is in stark contrast with the prior policy that prohibited the distribution of non-Canadian services when Canadian services with similar content were licensed. Readers may recall that the former policy recently led to a trade dispute with the

United States over the de-listing of an American country music television programming service when a similar Canadian service was licensed.

In a frequency spectrum-related development, Industry Canada, the federal government department responsible for such matters, issued a discussion paper initiating a consultative process on the use of auctioning to allocate radio spectrum. The discussion paper makes it clear that Industry Canada intends to utilize auctions in conjunction with the current application process in future proceedings to allocate spectrum. Auctions may be used where market forces can be relied upon to select licensees.

#### B. ENVIRONMENTAL LAW

The year 1997 featured harmonization and reform in Canadian environmental law and regulation. As an area of overlapping jurisdiction between the federal and provincial governments (with the provinces taking the primary role), the federal government is attempting to "harmonize" environmental laws, primarily by more delegation of federal powers solely to the provinces. While this initiative was high on the federal agenda in 1997, it will come to fruition in early 1998 (although without the support of Quebec, which wants the federal government to go further). The other major federal initiative was participation in the Climate Change Convention in Kyoto, where Canada did not distinguish itself by last-minute decision-making, and ultimately lack of support for its agreement from the provinces.

In the provinces, 1997 was a year of consolidation and reform initiatives, but compared to past years, such initiatives were relatively few, but significant. Both British Columbia and Manitoba proclaimed contaminated sites legislation or regulation. In Quebec, a major reform of hazardous waste law under its Environmental Quality Act was put in place. In Ontario, there was little specific legislative change (environmental assessment reforms were an exception), but change was on the agenda, resulting in the "Better, Stronger, Cleaner Environmental Regulation" proposals. These proposals, if implemented, will be the largest reform of Ontario environmental law in twenty-five years.

Looking ahead, we expect 1998 to be more of the same. Debate over "harmonization" will continue following the agreement, climate change initiatives will not make much progress, and the provinces will continue to strengthen their roles, if they choose to, in environmental protection. Public concern over environmental issues has not abated, and politicians continue to lag behind.

#### C. CANADIAN CUSTOMS LAW

After three years of negotiations involving the Canadian and United States trucking industries, Revenue Canada and Canada Customs, and the U.S. Treasury and U.S. Customs Services (USCS), an agreement has been reached providing for the reciprocal reinterpretation of tariff regulations. This agreement will extend the permitted use of Canadian truck equipment operating into the United States, and U.S. truck equipment operating into Canada.

Prior to December 1, 1997, both United States Customs Regulation 19 CFR Section 123.14 and Canadian Tariff Item 9801.00.00 permitted truck equipment to move between the two countries without the requirement of formal customs reporting and without attracting customs duty or tax. The latitude given by these regulations on both sides of the border related to the use of the truck equipment in "International Traffic" as defined by the USCS and "International Commercial Transportation" as defined by Canada Customs. Both the USCS and Canada Customs applied restrictive interpretations in determining what constituted participation in international transportation. In effect, "international" was determined by the route on which

the truck equipment operated rather than the nature of the cargo carried. With that restrictive interpretation, a Canadian truck carrying international cargo from Kansas City to Chicago, for transfer and furtherance to Canada, was deemed to be operating in "local service," notwithstanding that the cargo was being transported from one country to another.

Similarly, a U.S. truck carrying cargo originating in Ottawa and transferred from that truck to another vehicle in Montreal, for furtherance to the United States, was deemed by Canada Customs to be operating in "domestic service." In each case, the vehicles participating in the "local service" portion of an international move were regarded as operating in violation of the Customs regulation.

Canada Customs Notice N-185, issued on November 28, 1997 and effective December 1, 1997, states that foreign-based highway transportation equipment will be considered to be participating in International Commercial Transportation if the vehicle was engaged, in whole or in part, in the carriage of goods originating in one country and terminating in another country. Coincidentally, the U.S. Customs Service, by its decision dated September 17, 1997, revoked its previous interpretation of its Customs Regulation and ruled that, after December 1, 1997, foreign based trucks will be considered to be operating in International Traffic, where such vehicles are engaged, in whole or in part, in the carriage of merchandise originating in one country and terminating in another country. In both cases, a tariff barrier created through the restrictive interpretation of tariff regulations was removed in both countries by simply reinterpreting, rather than amending, the tariff item.

In deference to the North American Free Trade Agreement (NAFTA), Mexico was invited to participate in the negotiations which led to the reinterpretation of these two tariff regulations. Mexico declined to participate, and continues to adhere to the NAFTA timetable for liberalization of tariff regulations relating to the cross-border movement of truck equipment.

Coincidentally, the customs tariff on highway transportation equipment exported from the United States into Canada or from Canada into the United States was reduced to zero, effective January 1, 1998.

#### D. CANADIAN ANTI-TRUST

##### 1. *Decision in Merger Case*

On March 20, 1997, the Supreme Court of Canada handed down its unanimous reasons and decision in the Southam merger case. The case is important for two reasons. First, it is the first case in which the Supreme Court has considered the Competition Act merger provisions and the reasons bear careful consideration. Second, in rejecting the Director's view of what is required from the Tribunal by way of its remedial orders, the case provides greater scope for the parties to cut a deal with the Director in contested cases.

In the first instance, the case involved a challenge by the Director of Southam's acquisition of a number of community newspapers in the lower mainland of British Columbia. At the trial level, the Competition Tribunal rejected the Director's contention that there was or would be a substantial lessening of competition in certain markets (the Tribunal defined the market more narrowly than did the Director), but found a substantial lessening in others and ordered Southam to dispose of one of its community newspapers. The Director appealed to the Federal Court of Appeals, and won.

The Supreme Court's reasons for its decision focus primarily on principles of administrative law, and thus offer limited guidance on merger analysis. However, the Court had important

things to say on the subject of deference to the Tribunal and the test for the exercise of its remedial powers:

Decisions of the Competition Tribunal (including the definition of relevant markets) should be given deference and should only be overturned by an appellate court if found to be unreasonable or clearly wrong. So long as the Tribunal has supportable reasons for its decision, the decision should stand (even though an appellate court might think the decision not necessarily correct).

When fashioning a remedy in a merger case, the appropriate test is whether the proposed merger restores competition to the point where the lessening is no longer *substantial*. In reaching this conclusion, the Supreme Court rejected the Director's more onerous test that the remedy must *restore* to pre-merger levels.

The Supreme Court reinstated the Tribunal's original decision, and Southam is now faced with the Tribunal's original remedy which requires it to dispose of one of its two weekly newspapers in the north shore of Vancouver.

## 2. User Fees Introduced

On November 3, 1997, the Competition Bureau began charging user fees for merger notification filings, advance ruling certificates, advisory opinions, and photocopies. The fee for prenotification filings and advance ruling certificates is CDN \$25,000. Advisory opinions cost between CDN \$500 and CDN \$4,000, depending on the nature of the opinion. Photocopies of documents in the Bureau's possession cost 25¢ per page.

As part of the user fee scheme, the Director has committed to certain so-called "service standards." In essence, the Competition Bureau will strive to complete its investigation of feed services within a defined period of time. For example, non-complex mergers are to be reviewed within 14 days, complex mergers within 10 weeks, and very complex mergers within 5 months. Maximum time frames also have been established for advisory opinions.

But the clock will start to run only after the Director has received the information that he believes is necessary to properly complete his investigation. In the case of mergers, the information requirements are considerable, and substantially more information is contemplated than prescribed currently under the Competition Act with respect to merger prenotification filings.

## E. FEDERAL FINANCIAL INSTITUTION LEGISLATION

In 1997, important amendments were made to the Bank Act (Canada), the Trust and Loan Companies Act (Canada) and the Insurance Companies Act (Canada). In general, the changes have simplified the self-dealing rules and streamlined certain corporate governance requirements. In addition, the federal government of Canada has created new authority to establish privacy disclosure requirements and to implement a federal-provincial process which will harmonize consumer cost of credit disclosure. Further, there have been important reforms to the membership regime of the Canada Deposit Insurance Corporation (CDIC). Deposit-taking institutions that do not take retail deposits will be permitted to opt out of the CDIC.

Another significant development was the announcement by the federal government that foreign banks will be permitted to establish direct branches in Canada. The federal government is currently drafting the necessary implementing legislation. In order to establish a direct branch in Canada, a foreign bank will be required to have at least \$25 billion in assets on a worldwide basis. In addition, direct branches of foreign banks will not be permitted to take retail deposits.

At the provincial level, the Province of Ontario has created the Financial Services Commission of Ontario. The Commission brings together the previous Pension Commission of Ontario, the Ontario Insurance Commission, and the deposit-taking division of the Ministry of Finance within one regulatory structure.

#### F. TRANSFER PRICING

Draft amendments to the Income Tax Act, relating to the transfer pricing measures that were announced in the February 18, 1997 Federal Budget, were released in September 1997.<sup>1</sup> At the same time, a draft revision of Information Circular 87-2 was released in which Revenue Canada describes its administrative practices in the area of transfer pricing.<sup>2</sup> The underlying objective of the draft legislation is to force taxpayers to fully document cross-border pricing arrangements entered into between themselves and non-arm's length parties and to ensure that an appropriate share of a multi-national's profits is being taxed in Canada.

In effect, a company operating in Canada will be required to charge or pay, in the context of a cross-border transaction with a non-arm's length party, the same price for goods and services that it would charge or pay to an arm's length party. Revenue Canada proposes to rely on the transfer pricing methods recommended in the Organization for Economic Co-operation and Development Guidelines to determine if the terms and conditions of a taxpayer's cross-border transactions with non-arm's length parties are consistent with the arm's length principle.

These transfer pricing methods are divided into two groups, namely: the traditional transaction methods, *i.e.*, the comparable uncontrolled price method, the resale price method, and the cost plus method; and the transactional profit methods, *i.e.*, the profit split and transactional net margin methods.

Proposed new subsection 247(2), applicable to taxation years and fiscal periods that begin after 1997, sets out, on a statutory basis, the manner in which transfer prices for property or services purchased and sold in non-arm's length cross-border transactions are to be determined for Canadian tax purposes. These provisions purport to cover any amount that is paid or payable or received or receivable by a participant in the transaction as a price, rental, royalty, premium or other payment for, or for the use of, production or reproduction of, property or as consideration for services, as part of the transaction.

The litmus test contained in the proposed legislation is the "arm's length transfer price," namely the amount that would have been the transfer price with respect to the particular transaction assuming the participants in the transaction had been dealing at arm's length with each other. Where Revenue Canada concludes that the terms or conditions of a transaction or series of transactions that are entered into between non-arm's length parties differ from those that would have been made between persons dealing at arm's length or, alternatively, the transaction or series would not have been entered into between parties dealing at arm's length, an adjustment or recharacterization of any such amounts may be made so as to reflect the quantum or nature of the amount that would have been determined if the participants had been dealing at arm's length with each other. Under the proposals, the Canadian fiscal

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1. A Notice of Ways and Means Motion, including revisions to the draft transfer pricing rules released in September, 1997, was tabled in the House of Commons on December 8, 1997.

2. A further revised version of the circular is expected in 1998.

authorities are given the power to disregard a transaction or series of transactions based solely on the assumption that unrelated parties would not have entered into this type of arrangement, thereby effectively allowing Revenue Canada to question the entire business model put in place by a taxpayer.<sup>3</sup>

The draft amendments contain a new penalty provision that will apply where a taxpayer fails to make reasonable efforts to determine and use arm's length prices in its non-arm's length cross-border transactions. If the total amount of a taxpayer's "reduced" transfer pricing income (100 percent) and capital adjustments (75 percent) for the year exceeds a threshold amount, namely the lesser of 10 percent of its gross revenue for the year and \$5 million, the taxpayer will be liable to a penalty for the particular taxation year. The penalty will be equal to 10 percent of the amount of the "reduced" transfer pricing income and capital adjustments. Assuming a hypothetical federal effective tax rate of approximately 25 percent, the penalty is approximately 40 percent of the tax adjustment.

The draft provisions purport to soften the blow by reducing the amount of a taxpayer's transfer pricing income and capital adjustments to the extent that they can reasonably be considered to relate to, *inter alia*, a transaction in respect of which the taxpayer made reasonable efforts to determine arm's length transfer prices or arm's length allocations. However, no reduction may be made to the transfer pricing income and capital adjustments if the taxpayer has failed to document the transactions in accordance with the requirements set out in the proposed legislation. All taxpayers subject to the draft legislation, must contemporaneously document transactions that are governed by the new transfer pricing provisions (*i.e.*, by the taxpayer's filing date) and provide such documentation to the Minister of National Revenue within three months of a request therefore. If taxpayers fail to comply with these requirements, they will be deemed not to have made reasonable efforts to determine arm's length transfer prices or arm's length allocations with respect to a transaction.

The effect is that if taxpayers fail to document their transactions that are governed by these new provisions, they will be liable to the penalty otherwise calculated without any chance of having the base amount reduced under the relieving provisions noted above. The underlying or implied justification for this result is that the absence of such documentation is regarded as an irrefutable presumption that the taxpayer has not made reasonable efforts to determine arm's length transfer prices or allocations in respect of the particular transaction.

Subject to certain transitional rules, these new penalty and documentative rules apply to taxation years beginning after 1998.

Finally, the draft legislation only permits the Minister to set off, for penalty purposes, an overstatement and understatement of profit on two cross-border transactions between associated enterprises where reasonable efforts have been made to determine and use arm's length transfer prices. Under the provisions, as currently drafted, the penalty could be applied to the full amount of the adjustment to the transaction that understates profits in Canada, with no setoff for the overstated profit on the other transaction, where the reasonable efforts compliance test has not been satisfied.

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3. In the Bill C-28 version, it appears that the ability of Revenue Canada to disregard a transaction has been somewhat circumscribed by the introduction of a purpose test. It must be noted, however, that the proposal does not require that a misuse or abuse be demonstrated (as in the case of GAAR). Moreover, it is far from clear that re-characterization will be limited to traditional transfer pricing issues.

## II. U.S. Legal Developments

### A. TRADE DISPUTES

#### 1. *World Trade Organization*

There were two major developments at the World Trade Organization (WTO) in 1997 involving U.S. complaints against Canada. First, a WTO panel ruled against Canada's restrictions that effectively block the import of "split-run" magazines, finding that Canada's import ban violates the General Agreement on Tariffs and Trade (GATT) prohibition on quotas and that Canada's 80 percent excise tax on split-run magazines violates the GATT national treatment obligation. After Canada appealed, in July 1997, the WTO Appellate Body affirmed the panel decision on excise taxes.<sup>4</sup> In August 1997, Canada announced that it would implement the WTO ruling but would introduce new measures to protect its domestic magazine industry.<sup>5</sup>

Second, the United States began a dispute resolution proceeding alleging that Canada's pricing system charges milk processors supplying export markets less than processors serving the Canadian market, thereby creating an export subsidy, and that Canada is refusing to implement a promise to allow imports of fluid milk.<sup>6</sup> The case responds to a Section 301 case filed by U.S. dairy organizations.

#### 2. *NAFTA Disputes*

A potentially significant claim was brought in April 1997 by Ethyl Corp. ("Ethyl"), a U.S. manufacturer of leaded gasoline and other fuel additives, against Canada under Chapter Eleven of the NAFTA. Chapter Eleven allows private investors to sue for compensation if a NAFTA government's action expropriates their property without full compensation. Ethyl is suing for \$251 million in compensation from Canada.<sup>7</sup>

The case arises out of Canada's early April 1997 enactment of a law banning the import and interprovincial transportation of the gasoline additive MMT, which Canada considers to be a potential public health hazard. Ethyl claims that Canada has expropriated its property by denying Ethyl the profits it expected from Canadian sales of MMT. Ethyl's position is supported by a 1996 letter written by Canadian International Trade Minister Art Eggleton, which reportedly states that banning import of MMT would be an "impermissible prohibition" inconsistent with Canada's NAFTA obligations.<sup>8</sup>

#### 3. *Antidumping and Countervailing Duty Cases*

Two developments are worth noting in U.S. antidumping and countervailing duty cases involving Canada during 1997. In March 1997, the U.S. International Trade Commission (ITC)

4. *Canada-Certain Measures Concerning Periodicals* (visited May 16, 1998) <<http://www.wto.org/wto/dispute/distab.htm>>.

5. The panel also had found that Canada's discriminatory postal rates did not violate the GATT national treatment article. The U.S. challenged this decision and the Appellate Body reversed the panel on this point.

6. *WTO Dispute Status Report (No. 88)* (visited May 16, 1998) <<http://www.wto.org/newsroom/media/no88.htm>>.

7. *Ethyl files claim to seek not less than U.S. \$250 million* (visited May 16, 1998) <<http://www.ethyl.com/news/4-17-97.html>>.

8. See Peter Menyasz, *NAFTA: Ethyl Corp. Files \$250 Million Claim Over Passage of MMT Legislation*, 14 BNA INT'L TRADE REP. 693 (April 16, 1997).



began an antidumping investigation of ultra high temperature milk from Canada. However, the petition was subsequently withdrawn.<sup>9</sup>

On November 19, 1997, the ITC found that wire rod imports from Canada and three other countries (which the Commerce Department had earlier found to be subsidized) were not materially injuring or threatening U.S. industry.<sup>10</sup> The ITC's determination averted a NAFTA panel proceeding regarding the Commerce Department findings. However, the ITC's decision has been appealed by the U. S. industry to the U.S. Court of International Trade.

#### 4. *Bilateral Agreements*

On August 29, 1997, Canada and the United States reached a bilateral agreement on access for Canadian sugar to the U.S. market. The agreement allows limited access for Canadian sugar, in return for Canada dropping its challenge under NAFTA to the U.S. Re-Export Program for Sugar-Containing Products.

On September 8, 1997, the province of British Columbia filed suit against Alaska, Washington, and the U.S. federal government, asking a federal district court to decide that the American defendants had violated the Pacific Salmon Treaty of 1985.<sup>11</sup> The suit seeks \$235 million in damages, but is mainly aimed at obtaining leverage in negotiations over regulations implementing the Pacific Salmon Treaty. The defendants have moved to dismiss the suit, but no ruling had been issued as of the end of 1997.

### B. ENVIRONMENT

#### 1. *Importation of PCBs*

A U.S. appeals court rejected the decision of the U.S. Environmental Protection Agency ("EPA") to allow imports of polychlorinated biphenyls (PCBs) from Canada into the United States for disposal. In March 1996, the EPA issued a rule reversing the United States' sixteen-year ban on PCB imports. The EPA based its decision on its reasoning that allowing imports would benefit U.S. companies, would ensure safe disposal for a persistent pollutant, and would not overburden U.S. disposal facilities.<sup>12</sup> In February 1997, Canada published regulations permitting the export of PCB wastes to the United States.<sup>13</sup>

However, in July 1997, the U.S. Court of Appeals for the Ninth Circuit held that the Toxic Substances Control Act (TSCA) bars the importation of PCBs into the United States.<sup>14</sup> The court reasoned that the plain language of the TSCA barred the "manufacture" of PCBs in the United States, and that the TSCA defined "manufacture" as including "importing into the Customs territory of the United States." As no petition for certiorari has been filed with the U.S. Supreme Court, it appears that the EPA has accepted this ruling.

9. See *Ultra High Temperature Milk From Canada*, USITC Inv. Nos. 731-TA-767, (Prelim), 62 Fed. Reg. 14,442 (1997), *petition withdrawn*, 62 Fed. Reg. 16,607 (1997) (notice of withdrawal of petition).

10. See *Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, USITC Pub. 3075, Inv. Nos. 701-TA-368-71 (Nov. 1997).

11. See *Province of British Columbia v. United States*, Ct. No. C97-1464-JCC (W.D. Wa. 1997).

12. See 40 C.F.R. § 761.93 (1997).

13. See *C. Gaz.*, Part II (Feb. 7, 1997).

14. See *Sierra Club v. U.S. Envtl. Protection Agency*, 118 F.3d 1324 (9th Cir. 1997).

## 2. *Bilateral Agreements*

On April 7, 1997, U.S. and Canadian officials signed several environment-related measures.<sup>15</sup> Arguably the most significant agreement was a plan for the “virtual elimination” of persistent toxic substances from the Great Lakes by 2006, agreed to by EPA Administrator Carol Browner and Canadian Minister of the Environment Sergio Marchi. The agreement calls for specific measures (e.g., for Canada, a ninety percent reduction in the release of mercury) and calls for a four-step process to achieve virtual elimination of the toxic substances.

Another agreement addressed cross-border air pollution problems, but failed to achieve specific targets or deadlines for actually cutting emissions of pollutants. Instead, the agreement essentially commits Canada and the United States to cooperate in defining transboundary air pollution problems.

Two other agreements were also signed. Canadian Environment Minister Marchi and U.S. Secretary of the Interior Bruce Babbitt signed a framework for cooperation in the protection and recovery of wild species at risk. Canadian and U.S. officials also agreed to promote the exchange of environmental research findings and technical data regarding pollution.

## C. IMMIGRATION

In September 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).<sup>16</sup> Section 110 of the IIRIRA requires that by September, 1998, the Attorney General establish an automated entry and exit control system that would permit the matching of an alien’s departure record to his or her arrival record, and would allow the Attorney General to identify, through computerized search techniques, any lawfully admitted aliens who remained in the United States beyond their authorized period of stay.

Section 110 has raised concerns that the increased immigration inspection activity necessary to implement this automated system could impede travel between the United States and Canada. Several businesses in the auto parts and tourism industries complained that these inspection delays could have a significant negative impact on their commercial activities.

In response to these concerns, Senator Spencer Abraham (R-Mich.) introduced S. 1360, the Border Improvement and Immigration Act of 1997. This bill would exempt from the automated system any alien entering at a land border, and would instead require the Attorney General to undertake a feasibility study for developing and implementing an automated entry/exit system for all aliens. While no vote was taken on S. 1360 in 1997, the U.S. Immigration and Naturalization Service expressed support for such a modification to Section 110 during Congressional hearings held in November.

15. *Press release—United States and Canada Move to Eliminate Toxics in Great Lakes—The Great Lakes Binational Toxics Strategy is Finalized* (visited May 16, 1998) <<http://www.epa.gov/reg5oair/glakes/velim.htm>>.

16. Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).