

Canada – Law Firms

Trade Relations With Canada From An Insider's View

The Editor interviews the **Honorable Gordon Giffin**, former Ambassador to Canada from the U.S., and Partner in the Atlanta and Washington, DC office of McKenna Long & Aldridge LLP.

Editor: Please give our readers a brief review of your time as U.S. Ambassador to Canada, some achievements of your administration and a bit of background on your Canada origins.

Giffin: I served in Canada as Ambassador from August of 1997 until May 2001. Although born in the United States, I grew up in Canada, having moved there when I was about six weeks old. I lived in Montreal and Toronto up until the time I returned to the U.S. to go to university. Therefore I had a sense of the country – its history, its people and its culture – prior to returning as ambassador. During my period as ambassador we resolved a number of nagging trade disputes like that of Pacific salmon, a big issue at the time. We worked out important agreements on customs and immigration pre-clearance that facilitated easier movement of people across the border. We began a number of initiatives in trying to make border management more efficient which formed a good foundation for the period after September 11, 2001. We made some real progress on softwood lumber discussions although we didn't conclude an agreement.

There is a very active relationship between our two countries with hundreds of thousands of persons crossing the border; it is the largest trading relationship in the world in terms of merchandise and services crossing that border everyday.

Editor: Since our last visit with you in 2006, you undoubtedly have seen some changes in U.S.-Canada cross-border relationships. What is the most noteworthy change you have seen in terms of trade relations?

Giffin: I think that the recent conclusion of an agreement on softwood lumber was the most noteworthy, but there are still some nagging disputes about the implementation of that agreement. I think the efforts to secure U.S. borders for both the northern border and southern border have presented a number of challenges to efficient and effective trade. The collaboration between Canada and the U.S. to try to find ways to secure the border and at the same time not impede legitimate travel and trade across the border is working well. There is a healthy mechanism called the Security and Prosperity Partnership that involves a meeting of the three national leaders of Canada, the U.S. and Mexico which assures that the top levels of our governments are communicating with each other and working towards rational solutions.

Editor: The borders are porous both between Canada and Mexico. What measures have been adopted to secure these borders?

Giffin: I think that we are using a wide variety of mechanisms. I have to say that at some point it is pretty difficult to absolutely secure a border that is about 5500 miles long which includes a lot of very remote areas. Undoubtedly, we are using electronic surveillance and fly-overs by planes, but in the final analysis it's a pretty daunting task to think that you can absolutely secure it.

Editor: You had mentioned in you previ-

ous interview that there have been disputes over milk and other agricultural products as well as a failure to achieve an "Open Skies" program to allow Canadian airlines to make multiple stops in the U.S. Have any of these areas been improved?

Giffin: Agricultural commodities – whether it is milk, wheat, hogs or beef – will always be present as points of contention. For example, milk is not a particularly hot item right now but will come back as will wheat at some point if there is a big durum wheat crop in western Canada whose farmers undertake to export a substantial volume to the U.S. Durum wheat producers in the mid-west will complain. The "Open Skies" question still remains since U.S. airlines are reluctant to allow Canada's airlines to operate on an unrestricted basis in the U.S. Air Canada cannot fly point to point in the U.S. – it cannot fly from Toronto to Detroit and pick up passengers and bring them to Atlanta but can only fly to Detroit and back to Toronto. U.S. airlines see no point in granting reciprocal rights to Canada airlines since Canada is a smaller market with only 33 million people and so there is no great advantage for U.S. airlines to be able to fly point to point in Canada.

Editor: Are there any restrictions on U.S. investment in particular Canadian industries?

Giffin: There are limitations on foreign ownership in Canada of telecommunications and broadcast assets, but this is not unlike restrictions in the U.S. Whether these assets will someday be available to all North American interests is often debated. It is hard to imagine Canada removing their ownership restrictions without corresponding U.S. action.

Editor: What has been the attitude of the Harper government vis-à-vis trade with the U.S. and promotion of other exchanges between our two countries?

Giffin: I think that the Harper government is quite open to collaboration with the U.S. It is criticized from time to time in Canada for being in some respects too close to the U.S. government, but I believe this relationship has stabilized the manner in which our two governments deal with each other. No Canadian prime minister can ever get it quite right in the eyes of many Canadians as to how close or how distant to be from the U.S. President.

I don't think we have ever had any particular problems with student exchanges or scientific exchanges. We have had a pretty vibrant cross border activity in education. Many Canadians come to the U.S. to study while fewer Americans go to Canada to study although Canada has great universities and tuition is much lower. Any limitations on exchanges are in the commercial area.

Editor: Since the Canadian dollar (or loonie) is virtually on a par with the U.S. dollar, has there been a slackening of interest on the part of U.S. companies in moving investment into Canada? Are there still substantial differences in the cost structure of a plant operating in



The Hon. Gordon Giffin

Ontario, for example, and one in Michigan?

Giffin: There has been some slackening of interest because one of the advantages of having locations in Canada over the last 15 years has been the currency differential and the resultant lower cost of doing manufacturing and production activity in Canada. The Canadian dollar is today the equivalent of the U.S. dollar. In Canada it is a little harder to compete without the extra advantage of the currency differential. I would also guess that a Canadian dollar buys a little less for the consumer since prices tend to be a bit higher in Canada.

Editor: I understand that the commercial paper market has experienced some disarray in Canada, especially commercial paper backed by foreign banks. Why have the Canadian banks remained unscathed?

Giffin: I think that the Canadian banks moved quickly to make sure there was adequate liquidity to support their commercial paper in their conduits while the non-bank backed commercial paper suffered from limited liquidity. The foreign banks which were involved to some degree with those instruments had to step in and provide that additional liquidity. The Canadian rules in that area are meaningfully different than elsewhere, certainly different from the U.S. and EU. Canada was a unique market in that respect.

Editor: Although you have had high praise for NAFTA in prior interviews, you have also mentioned that you would like to see improvements if we are to have a veritable free trade zone between the two nations. What improvements would you care to see?

Giffin: Sooner rather than later I would like to see further reduction of barriers between the two countries, not for purposes of reducing political sovereignty in any way but to make the manner in which we travel from country to country or the manner in which we do business a simpler process. I think that is an unrealistic expectation at the moment because the political environment in the U.S. is increasingly protectionist. Some of the debates by those running for President indicate they are skeptical about free trade agreements, and NAFTA has become symbolic of a free trade agreement people object to, mainly because they do not understand what NAFTA is about. In the short run it is unlikely that we will see much in the way of enhancements. In the long run I hope that we can see ever greater improvements in public understanding. I participated in an analysis done a couple of years ago by the Council on Foreign Relations which collaborated with experts in Mexico and Canada. We developed a thorough report that outlined many enhancements that we should consider. It is a thoughtful piece of work, but I do not see a lot of movement to implement most of those recommendations.

Editor: Has Canada's immigration policy fostered greater economic and scientific development than what we have experienced in the U.S.?

Giffin: I am not familiar with how immigration policy has impacted those issues in Canada; however, I believe that Canada is generally more open to immigration today than is the U.S. Canada is not as restrictive

in terms of quotas as we are. They may need more immigration than the U.S., but I also think that in the U.S. there is an ongoing debate on whether our immigration laws should be based on family unification or whether they should be based on professional requirements. That is an important debate and something that requires balance over the years. Our laws are heavier in favor of family unification than on professional criteria. As a consequence, I think we see some leading thinkers and scientists from other parts of the world going to Canada rather than the U.S.

Editor: With its vast natural resources, particularly in the oil sands, and also other mineral wealth, what would you forecast for Canada's GDP growth?

Giffin: I believe that Canada's energy resources, certainly the oil sands, are a material part of Canada's prospect for growth, but Canada has some significant natural gas and conventional oil resources as well. I believe that Canada will become an increasingly strong energy-providing nation. Today Canada is our largest foreign supplier of energy which will only increase as a source of energy for the U.S. As a consequence, the Canadian economy will do quite well because there are all kinds of collateral benefits for the economy. The projects in Northern Alberta to develop the oil sands are employing people from Newfoundland, Nova Scotia and New Brunswick, not just from western Canada. They are causing demand on all sorts of services and equipment across Canada, some of which has to be imported from other parts of the world. The Canadian economy now is more robust and somewhat more likely to remain so than that of the U.S. for those reasons.

Editor: Does Canada have the refining capacity to handle all of its oil?

Giffin: There isn't refining capacity in Canada to handle the growth in energy output. A lot of upgraders are being built in the Canadian oil sands area. An upgrader gets synthetic crude to a point where it can go to a refinery and be efficiently refined although the cost is quite high. Conversion of some of the U.S. refineries to refine more heavy crude oil is likely. Some of the existing refineries in the U.S. are being converted to be better able to more efficiently refine the synthetic crude from the oil sands. Pipelines are being used efficiently to take this crude from the northern tier of the U.S. down to Texas, Oklahoma, and the Gulf Coast refineries. In the long run all of North America needs more refineries.

Editor: Do you see any reason why Canadian-U.S. ties would not continue to strengthen over the next several years? What possible impediments do you see to close collaboration?

Giffin: The only impediments are the kinds of political flare-ups that occur from time to time. I see no reason why our relationship won't continue to be as strong as it has been historically. It is hard to say that it is going to improve since that would imply that there are deficiencies. Canada and the U.S. have one of the most remarkable bilateral relationships in the world, and I think it will always be that way. We can improve it on the margins and make some of these policies more efficient. At the core this is the best neighbor relationship on the planet.

Please email the interviewee at giffin@mckennalong.com with questions about this interview.