

Trilateral Committee on Transborder Data Flows: Inaugural Meeting Outcomes Report

I. Background and Introduction

In April, 2008, a Statement on the Free Flow of Information (Statement) was signed by representatives from Canada, Mexico and the United States under the Security and Prosperity Partnership of North America (SPP). The Statement affirms that sustained economic growth is dependent on a “transparent legal, policy and regulatory environment that permits the free flow of information across borders and facilitates its use for the conduct of trade and commerce.” The Statement identifies the essential elements of such an environment to include:

1. Expanded or enhanced regulatory cooperation in areas that have an impact on cross-border data flow, notably in relation to the enforcement of rules for the protection of personal privacy.
2. The identification and mitigation of impediments to the free flow of information that unnecessarily impede cross-border trade or impose an unreasonable burden on the business community.
3. The application of transparent and non-discriminatory policy, legislative and regulatory measures in cross-border trade in North America notably in relation to the global sourcing of business processes across North America.

In furtherance of these goals, the signatory countries established the Trilateral Committee on Transborder Data Flows (Committee). The Committee is composed of government representatives of each of the three SPP member countries and has been working in consultation with the business communities in each to identify and address impediments to electronic information flows across borders that affect economic growth. The purpose of the Committee is to provide a vision and strategic direction for addressing these problems as well as visibility on the importance that information flows freely in support of a growing and efficient North American market.

The following are the outcomes of the Committee’s first meeting, held on September 25 at Hunton & Williams, LLP in Washington D.C. The Committee heard from representatives of all three countries’ business communities as well as from Fred Cate , Professor of Law and Director, Center for Applied Cybersecurity Research, at Indiana University and Kris Klein, Attorney, The Law Office of Kris Klein in Ottawa, Ontario.

II. Outcomes

A. Collective Actions

Committee members have begun several collaborative efforts to identify impediments to transborder data flows and to assess their economic impact. In July 2008, Industry Canada, Mexico's Ministry of the Economy, and the United States Department of Commerce solicited the assistance of the business community in their respective countries in identifying and analyzing such impediments. The resulting "*Questionnaire on the Cost of Impediments to Transborder Data Flows*" was designed to collect essential information for the purpose of this study. In addition to the micro-economic information gathered in the questionnaire, Committee members are considering the commission of a companion macro-economic study that would address the aggregate cost associated with such impediments.

i. Questionnaire on the Cost of Impediments to Transborder Data Flows:

- The Committee agreed to revise and re-circulate the questionnaire in order to broaden the scope of participation. Suggestions to clarify questions or proposals for additional questions are currently being solicited by industry. It was agreed that interested parties should send comments to Eric Futin at Industry Canada (Futin.Eric@ic.gc.ca) and cc Julio Vega at Mexico's Ministry of the Economy (jcvega@economia.gob.mx) Michael Smith at the U.S. Department of Commerce (Michael.Smith@mail.doc.gov) and Joshua Harris at the U.S. Department of Commerce (joshua.harris@mail.doc.gov).
- Committee members agreed that all submissions will be treated as "business proprietary" and that each country will reference the relevant legal protections afforded to any information provided in the text of the revised questionnaire. All data compiled will be anonymized in the Committee's subsequent findings report.
- It was agreed that responses from the revised questionnaire will be received no later than December 19, 2008.

ii. Potential Macro-Economic Study:

- Committee members agreed to begin exploring the use of outside experts in drafting a paper on the macro-economic impact on the restriction of transborder data flows. If such a paper is undertaken, it is anticipated that it would be submitted for consideration by Ministers in 2009 along with any final recommendations made by the Committee.

B. Country-Specific Initiatives:

In addition to the collaborative economic studies being undertaken or considered, Committee members agreed to take steps to clarify the applicability of the various regulations identified by industry as relevant to transborder data flows.

i. Canada:

- Produce clarifying documentation¹ on the *Personal Information Protection and Electronic Documents Act* (PIPEDA) and its application to transborder data flows.
- Identify relevant staff within Industry Canada and/or the Office of the Privacy Commissioner to answer industry questions regarding the same.
- Post a hyperlink on Industry' Canada's website to a paper produced for the Committee by Kris Klein of the Law Office of Kris Klein entitled *Applying Canadian Privacy Law to Transborder Flows of Personal Information from Canada to the United States: A Clarification*.

ii. Mexico:

- Provide legislative summaries and updates.
- Provide links to the Mexican Software Industry Association website.

iii. United States:

- Post a hyperlink on the SPP.gov website to a paper produced for the Committee by Fred Cate of the University of Indiana and the Centre for Information Policy Leadership entitled [Provincial Canadian Geographic Restrictions on Personal Data in the Public Sector](#).
- Investigate the regulations for transborder data transfers involving U.S. federal government data, and provide an overview of such regulations.

III: Mexico, 2009

Mexico has agreed to host the next Committee meeting, tentatively scheduled for the week of February 2, 2009. Mexico will work with other members of the Committee on specific location place and date. Committee members anticipate reporting on the results of the revised questionnaires as well as introducing a draft overview of each country's legal regime as it applies to transborder data flows.

IV: Canada, 2009

Canada will host the third meeting of the Tri-lateral committee to finalize consultation and reporting on results. This meeting is scheduled to take place in late spring 2009 (Date and location TBD).

¹ Representatives from the Privacy Commissioner's Office informed the Committee of their work on a PIPEDA FAQ designed to answer commonly asked questions.