



BORDER ISSUES REPORT

CIC

CANADIAN INTERNATIONAL COUNCIL
CONSEIL INTERNATIONAL DU CANADA

A NEW BRIDGE FOR OLD ALLIES

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The Canadian International Council (CIC) is delighted to circulate this new report by our CIC Working Group on Border Issues. Established in the fall of 2007, this Working Group is generating a series of papers that will help inform and motivate a substantive debate on better management for the Canada-US Border.

With a recently re-elected Canadian Government and a newly elected US Administration, the opportunity is ripe for a fresh look at how we can facilitate productivity, investment, security and employment through better border management between Canada and the United States.

The CIC Border Issues Working Group consulted broadly in its work and recommends a compelling invitation for Canadians and Americans to take a bold look at border management opportunities.

Financial challenges around the world make a productive, secure and robust North American economic footprint more vital than ever to the residents, companies and working men and women of both countries.

This paper is a hopeful and creative step in that direction.

Michael Kergin

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CIC Border Issues Working Group

CIC BORDER ISSUES WORKING GROUP

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CIC BORDER ISSUES REPORT – EXECUTIVE SUMMARY

The Canadian International Council (CIC) Border Issues Working Group report entitled “A New Bridge for Old Allies” confronts the question: how can the United States and Canada protect each other from harm while maintaining their competitive edge and quality of life in an era of emerging economies and alarming global forces?

“A New Bridge for Old Allies” details the huge economic importance of the border to Canada and the United States. It further outlines how various regulatory measures since September 11, 2001 have led to border “thickening,” with adverse consequences for both countries.

Regional economic integration is the dominant trend in Europe, Asia and Africa but Canada and the US appear to be moving in the opposite direction.

This report examines how to reverse the disturbing tendency for border security to pull the economies of the two countries apart rather than enabling them to be drawn closer together.

It makes an urgent call for a constructive dialogue between the two countries that will lead to new institutions designed to manage the border more intelligently, and restore the benefits of competitive advantage and economies of scale that the US and Canada have enjoyed for so long.

This report reviews current border issues within a framework of three pillars: border security; transportation strategy and economic competitiveness and innovation.

It recommends initiating three corresponding programs: a Regional Secure Space initiative; a Joint Transportation Strategy and a Bi-national Regulatory Council.

Amongst other measures, this report calls on Canada to validate its security credentials and pursue a high profile public relations strategy to challenge any perception that it is weak on security. For its part, the United States will have to speed up the flow of legitimate trade and people across the border. This dual imperative is the principal focus of this document.

This report suggests that border management be approached through short and long term action items, with the former emphasizing security and structural improvements and the latter regulatory and trade measures.

The report concludes with a recommendation that, at their first meeting, Prime Minister Harper and President Obama mandate the creation of a **Permanent Joint Border Commission** to modernize and manage the border.

INTRODUCTION

This year the Canada-US International Boundary Commission marks its centennial. For the past 100 years the Commission's primary responsibility has been to keep the "boundary vista... entirely free of obstruction and in proper condition." Today, the border is no longer unobstructed and its condition is less than proper.

Over recent years, the border Canada shares with the United States has become the subject of unprecedented attention, from a security perspective and from an economic imperative.

This CIC report confronts the question: how can our two countries protect each other from those who wish us harm, while we maintain our competitive edge and quality of life in an era of emerging economies and alarming global forces?

Not only do we need to reaffirm both countries' commitment to the security of our shared neighbourhood, but also to examine what renovations are required to modernize our common border. Our competitiveness at home and the ability to attract foreign investment depend, in large measure, on low cost and efficient movement within the North American marketplace or economic space.

Our economies are highly integrated. We make things together.

Approximately 70 percent of Canada-US trade is intra-industry, while close to 40 percent is intra-corporate. Additionally, about one-third of Canada's exports to the US are composed of goods which have been previously imported from the United States. Two way trade crossing the border amounts to close to half a trillion dollars per year or \$1.7 (US) billion a day.

Canadian trade contributes importantly to US economic wellbeing. Canada is by far the largest foreign market for the United States, representing almost one-quarter of their total exports. Thirty-seven states identify Canada as their most important foreign market. One in 25 American jobs depends on free and open trade with Canada.

We also invest in each other. The US is the largest foreign investor in Canada and the most popular destination for Canadian investment (as well as tourists). Moreover, Canada is the largest supplier of energy – oil, natural gas and electricity – to the United States.

But uncertainties about new or opaque border requirements can adversely affect business planning and investment decisions in both countries. This is a shared concern. And more must be done to ensure that cross border transaction and inspection costs do not discourage small and medium size enterprises.

Since the terrorist attacks of 2001, Canada and the United States have greatly increased public spending on border security as part of the war against global terrorism. But the private sector has had to share the burden of security costs as well.

Passport and entry regulations, increased inspections, cargo container security restrictions, mandatory cargo data reporting requirements and new border inspection fees have introduced additional costs for individuals and businesses in both countries. The 30 percent decline in tourism to Canada from the United States cannot be explained solely by the corresponding increase – until recently – in the value of the Canadian dollar.

Delays at the border are also affecting delivery schedules and contribute to emissions pollution in and around border communities and along our highways, at a time when both countries are actively seeking to reduce greenhouse gases.

Separately viewed, border security requirements are well-intentioned. When considered as a whole, however, they have created an 'impediment net,' entangling our major border users and slowing their efforts to outdo international competition. Similarly, as rising fuel costs continue to erode carriers' profit margins, additional border costs are passed on to downstream manufacturers, and ultimately to consumers.

The North American economies as a whole pay the price for the additional layering of security at their internal borders. Accordingly, the productivity of the world's largest economic space is weakened at a time when competition from emerging economies has become particularly acute.

In this regard, the contrast between the Canada-US border relationship and what characterizes the economic interactions of some of our most serious global competitors is anomalous. The European Union is expanding. Despite ancient and recent animosities, European nations are eliminating border controls between new and old member states. In Asia and Africa we are also seeing the benefits of decisions designed to achieve greater levels of regional economic integration and access to each other's markets.

Canada and the US appear to be moving in a direction opposite to that of the rest of the world: we are tightening our common border!

And yet Canada and the United States have never warred against each other as independent nations and profess – with real justification – to be the closest of allies.

It is therefore urgent that the leadership in Canada and the United States sits together to initiate a constructive dialogue leading to new institutions designed to better manage our common border, thereby restoring the benefits of competitive advantage and economies of scale that we have enjoyed for so long.

The need has never been more acute.

The continuing challenge for Canada is to validate its security credentials, thereby confronting those who doubt Canada's willingness to partner with Americans in strengthening the safety of the neighbourhood. At the same time it is incumbent on the United States to work creatively with Canada to speed the flow of legitimate trade and people across the border.

This dual imperative is the principal focus of this Report.

This Report contains recommendations for improving border security while expediting low risk travel and trade in an effective and intelligent manner. It explores how best to engage the new Administration and 111th Congress in creating a 'smart border,' one which requires mutual recognition and co-management, partnership with the US at foreign ports and joint leadership at multilateral forums.

Above all, our Report examines ways to reverse the disturbing tendency for border security to pull our two countries apart instead of enabling our economies to draw closer together.

Our Report concludes with a suggestion on how to engage the new Obama Administration in this endeavour and it proposes the establishment of a Permanent Joint Border Commission to modernize and manage our common border.

Any discussion of the economy of North America inevitably involves Mexico. The signing of the 1994 North American Trade Agreement (NAFTA) resulted in a new way of thinking about our region, one that is woven into the fabric of our view of each other and how the world views us. This Report focuses primarily on the Canada-US border, but it contends that the benefits deriving from our common border extend to the region as a whole.

PILLAR ONE

BORDER SECURITY – AT HOME AND BEYOND OUR SHORES

Pillar One Strategic Objectives

- To examine new areas for cooperation between Canada and the United States regarding anti-terrorism and commercial/travel enforcement programmes at our common border, at our airports, along our shorelines and at foreign ports.
- To brand Canada as a strong partner with the US in securing our borders against illicit persons and unsafe products.

The starting point for any discussion of managing security at our common border is to address the question of whether Canadians and Americans have different perceptions of what the border means in a post-9/11 world.

Americans tend to view the border as creating the first line of defence against terrorists, illegal aliens and unsafe food and consumer goods. Canadians, on the other hand, traditionally have perceived the border in a more political light, as a line drawn to safeguard Canada's social and institutional identity, and in some instances to distinguish Canadian foreign policy.

This perception is now changing. After 14 years of NAFTA, there has been no erosion of Canada's social or political institutions, and hence Canadians have greater confidence in their sense of independence from US cultural pressures.

At the same time, because of the highly integrated nature of the two economies, Canadians understand that their manufacturing and energy related infrastructure is as likely a target of terrorist action as its American counterpart. Canada has invested in security accordingly.

On the US side of the border, confidence has increased in the enforcement capability of their Canadian partner, both at the border and throughout Canada. US reliance on Canadian energy resources is awakening a new appreciation of the interdependent nature of the relationship.

With goodwill, each side can recognize the border as a meeting point of two separate jurisdictions. Each side would be responsible for assuring the security of its share of North America in a confident, cooperative manner, without fear of sovereign subordination.

This pillar is about building on that burgeoning confidence to find a better balance between security and economics at the Canada-US border.

Post-9/11 border measures must be reassessed to determine to what extent they have materially enhanced North American security. In this connection, it will be important to develop metrics to calculate whether certain measures may have failed in bringing security to either country, while impeding trade to the detriment of both.

Both countries have made significant investments in border and homeland security. Dollars are not, however, the only measurement of a country's commitment to border security. Joint investments in compatible surveillance systems, confidence in the competence and integrity of each country's counter-terrorist capabilities, and long-established cross border enforcement cooperation at the local level – based on mutual trust – are equally important in contributing to effective continental security.

The power of the media to undercut mutual confidence in border management, however, is ever present. For example, the erroneous report in a Boston daily that several of the hijackers responsible for flying aircraft into the World Trade Center towers had crossed into the United States from Canada has persisted for years after Attorney General John Ashcroft first publicly refuted the story in October 2001.

As a result, Canadian authorities should pursue a high profile public relations strategy to challenge any perceptions of Canada being weak on security. This must be undertaken forcefully, at every opportunity, and at multiple political levels.

What has worked?

In the weeks following the 9/11 tragedy, leaders of both countries named high level personal representatives to craft a new cooperative border management strategy. John Manley (then Canada's Foreign Minister) and Tom Ridge (then Director of Homeland Security) launched the Smart Border Accord of 2001, a dynamic collaboration that demonstrated trust between our border agencies in confronting a crisis at our common border.

Since then officials on both sides of the border have worked in tandem to assure the protection of their fellow citizens.

At ports of entry, the introduction of a government/industry partnership on cargo security programmes such as Customs Trade Partnership Against Terrorism (C-TPAT), Partner in Protection (PIP) and Free and Secure Trade (FAST), go a long way towards securing the cargo supply chain and facilitating the transactions of low risk border users.

Along North American shorelines, Canadian and US customs personnel work side by side in Vancouver, Montreal, Halifax, Seattle-Tacoma and Newark to detect (and deny entry to) dangerous in-transit container cargo while vessels are on the high seas.

Between ports of entry, the cooperative Integrated Border Enforcement Teams (IBET) and Shiprider initiatives have advanced shared border enforcement management in the areas of migration and law enforcement and intelligence sharing. While they began as local initiatives, they have evolved into highly successful bi-national partnerships.

At key foreign maritime ports, Canada and US customs personnel work on the ground and with local customs management to detect dangerous cargo bound for North America before vessels are loaded.

Canada and the US have worked successfully at the World Customs Organization to encourage our trading partners to adopt international container security standards.

Closer to home, serious efforts have been made to coordinate emergency planning exercises among federal, provincial/state and municipal governments on both sides of the border to deal with the threat of a major security incident at one of the principal crossing points. The need to share planning with the private sector and to involve them in these exercises is obvious.

Trusted traveller programmes such as NEXUS have facilitated the transit of frequent border users, whether they are Canadian healthcare specialists working in Detroit, engineers applying complex algorithms to the Canadian space programme in Montreal, or truckers carrying car parts for just-in-time delivery to plants as far away as Georgia.

These initiatives, among others, have capitalized on a high level of trust which has been established between our two enforcement and security forces. Yet there is still much work to be done.

Central to the issue of trust lies the question of the degree of confidence each has in the other's capability to police its share of North America's real estate. The United States has been reluctant to concede that any nation has similar high standards of surveillance and control over the entry and transit of illegal or dangerous items. As a result, the risk-averse Department of Homeland Security has withheld deeming any trading partner, including Canada, as 'secure and trusted.'

Hence cargo from Canada, including previously cleared in-transit cargo, is subject to re-inspection at the Canada-US border without any allowance made for the fact that such cargo originates from a low risk trading partner or, if in transit from third countries, has already been subject to a high standard of risk assessment and inspection by Canadian authorities.

Prior to 2001, Canada and the US recognized the increasing benefits to both countries of economic convergence in the form of the Free Trade Agreement (FTA) and NAFTA. This led to higher levels of economic interdependency and integration – and good paying jobs in both countries.

This Report recommends that, in light of the border improvements founded in the achievements of the Smart Border Accord, the trend towards economic convergence apparent prior to 2001 should now be extended to a form of increased security convergence in the post-9/11 era.

We urge closer collaboration in intelligence sharing, risk management techniques, enforcement operations and cargo/traveller interdiction programmes at our shorelines and outside North America, in order to reduce onerous re-inspection burdens at the border.

Canada and the United States have enjoyed 50 years of a unique defence and security agreement through North American Aerospace Defence Command (NORAD). Nowhere has sovereign trust in mutual defence been so completely shared as when the President of the United States must, in certain circumstances, rely on a foreign national – the Canadian NORAD Deputy Commander in Chief – to advise him on the imminence of a nuclear missile strike on North America. Recently, NORAD's mandate has been extended to maritime command operations.

The shared sovereignty shown in defence and security could serve as a model for increased levels of trust in the implementation of cooperative border security arrangements.

Recommendations

Canada and the United States should move towards a Regional Secure Space initiative. This would include:

- Harmonization or mutual recognition of cargo and container security programmes (one enrolment, two country eligibility).
- Initiation of programmes for joint training and secondments of Canadian Border Services Agency (CBSA) and Customs Border Protection (CBP) personnel.
- Increase of CBSA inspectors at foreign ports where CBP inspectors already are located and/or where they could be used as 'force multipliers' where CBP are not present.
- Review of legal or operational impediments to IBET, such as establishing synchronized radio frequencies, and the expansion of the number of IBET co-location sites along the border.
- Improvement of Shiprider collaboration by more closely coordinating coast guard and RCMP Great Lakes enforcement and response capabilities.
- Agreement on the list of countries and the expansion of the number of countries eligible for harmonized entry visas established between Canada and the US.

- Extension of Enhanced Drivers Licence (EDL) programmes to all provinces and Border States.
- Review of selected risk management projects (e.g. the Pre-Clearance Initiative) which have failed due to incidental policy differences or design flaws.
- Sharing of contingency planning with the private sector with a view to involve carriers and other members of the border community in updated emergency exercises at major ports of entry along the border.

PILLAR TWO

A SHARED BORDER AND TRANSPORTATION STRATEGY

Pillar Two Strategic Objectives

- To create a border infrastructure that will enhance the competitiveness of both countries in the global economy while responding to post-9/11 security requirements.
- To promote green transportation corridors and cross border supply chains.

Canada and the US make up one of the largest productive units in the world. Critical to maintaining our region's competitive edge in the global economy is the availability of efficient infrastructure at the border as well as the serviceability of the transportation systems approaching the crossing points.

Cross border infrastructure should also be viewed as a vital component of the security system required to keep both countries safe from terrorist or criminal activity. The physical layout of customs plazas, the need for redundancy for cross border routing and fail-safe contingency planning at the border are all integral to any strategy designed to improve cross border management.

Furthermore, border traffic, both in volume and nature (traveller vs. cargo), and the ownership/management of border crossings and plazas, vary significantly along the 8,900 kilometre border. This underscores the importance of engaging our border communities with a view to finding local solutions to regional challenges, some of which (such as IBET) can be implemented on a national scale.

Billions of dollars worth of goods and services and thousands of travellers cross the border every day. Time is of the essence for tourists who wish to enjoy hassle-free leisure, for trucks carrying just-in-time components or perishable goods and for business representatives on tight schedules.

Surface transport between Canada and the US has long enjoyed the benefit of short supply lines. This benefit is now being eroded by extended waiting times and increased delivery charges at the border, alongside high fuel costs. Should the border become a physical obstacle to an efficient cargo supply chain and product delivery system, the economic vibrancy of the region will be weakened for our companies and the consumers they serve.

For example, the chief global product supply officer for Procter & Gamble stated recently that: "the company's storage and transportation costs are currently higher than the operating cost of its factories."¹

¹ Jonathan Birchell and Elizabeth Rigby, "Battling to keep 3.5bn consumers happy," *The Financial Times*, June 26, 2008.

The border can quickly become clogged during a shift change of border personnel, technology grey-outs, or heightened alert status, as shown by aerial views of eight-kilometre backups at some of our critical land crossings during the summer of 2007.

A recent study by the American Transportation Research Institute, the research arm of the American Trucking Association noted:

While Canada continues to be the US's largest trading partner, existing research indicates that inefficiencies at the border have increased costs by 10-15 percent, ultimately impacting the amount of cross-border trade. The main cost impacts derive from border delays, either real or anticipated. Research estimates that border delays cost the Canadian economy \$952,000 per operational hour, with an annual cost to the Canadian trucking industry of more than \$280 million. In the US, it is estimated that border delays cost the trucking industry \$9 billion per year. In addition to the costs associated with uncertain and unreliable border transit times, motor carriers and manufacturers also bear the cost of duties, broker fees, customs administration, etc., while the Canadian and U.S. governments bear the cost of border inspection infrastructure and personnel. The total costs represent 2.7 percent of merchandise trade totalling US \$382 billion in 2001.²

Accordingly, both border management policies and the physical infrastructure of the border region, including the actual ports of entry and access road systems, should be examined with a view to ascertaining how to facilitate and speed cross border traffic. Increasing border personnel and expanding the hours of service will likely be necessary. Re-examining land pre-clearance projects and enlarging clearance plazas would also be valuable.

Improved border infrastructure would also bolster and enhance private sector membership in successful cargo security programmes such as FAST and Partners in Prosperity (PIP).

Central to national productivity is modern interconnecting transportation – marine, surface and air. Planning North American transportation systems, especially those which impact our common border, should be undertaken jointly if Canada and the United States are to compete effectively in the rapidly changing world economy. Multimodal options, renovated ports and seamless border connections can immensely improve North American productivity when competing in the global marketplace, while being a magnet to attract offshore direct investment.

The road and rail systems of Canada and the US should be more strategically interlinked and cross border bridges and tunnels located or renovated to develop more economically viable trade routes.

Short sea shipping across the Great Lakes is an environmentally friendly, direct and cost effective means of moving bulk products between Canada and the United States. Both governments can encourage joint investments in Great Lakes marine transportation by providing upgraded freshwater port facilities.

Shipment delays at the border not only have an adverse economic impact for both countries, but also pose serious environmental concerns. According to a Brookings Institution report, the cost of fuelling the transportation system contributes hugely to the US carbon footprint:

US transportation performance... results in the world's largest amount of oil consumption per capita, at 8.35 tons of oil equivalent per person or about 61.2 barrels per year for every man, woman and child. Though Canada comes in a close second, with 59.8 barrels per person, the next closest country (Finland) uses almost 25 percent less oil per capita.³

² Sandy Shackelford, *Assessing the Impact of the ACE Truck e-Manifest* (American Transportation Research Institute, March 2007), 14.

³ *A Bridge to Somewhere: Rethinking American Transportation in the 21st Century*, (Brookings Institution, Metropolitan Policy Program, June 2008), 31.

Idling trucks greatly add to carbon emissions. The American Trucking Association observes that inefficient movement of surface carriers adds to environmental burdens. “[T]hese types of idling annually consume an estimated 1.1 billion gallons of diesel fuel. Options currently available to fleets to minimize discretionary idling have the potential to reduce CO₂ emissions by an estimated 61.1 million tons over the next ten years – the equivalent of 16 million Americans not driving for a year.”

Creating new and efficient ports of entry along our border, on land and at the water’s edge would go a long way to reducing emissions and contributing to healthier air.

Both countries are making significant investments to gateway corridors at our shorelines, most notably in Canada with the Pacific Gateway. Strategic planning in this area will assist in facilitating third country imports into North America and North American exports abroad.

Our efforts to provide similar seamless transition for intra-North American travel and trade have been lagging. Our Report recommends that improvements to this aspect of our joint infrastructure are equally important to maintaining North American competitiveness and the health of our environment in the global economy.

What has worked?

The Detroit River International Crossing (DRIC) is a partnership between the two federal governments, Ontario and Michigan to build a new crossing point at the Windsor-Detroit Gateway designed to respond to forecasted increased levels of traffic and to anticipated terrorist threats, while safeguarding municipal quality of life. While the ownership of the new bridge will remain with the two governments, its construction and management will be based on a Public Private Partnership (3P).

The DRIC process has been drawn out and is far from complete, while its future may be subject to political and legal challenges. Nevertheless, in an age of overlapping jurisdictions and competing interests among security, environmental and corporate players (not to mention differing levels of government on both sides of the border) DRIC provides a valuable case study on how to handle complex international infrastructure projects.

3Ps are increasingly viewed on both sides of the border as efficient, secure and cost effective mechanisms to renew and improve vital national infrastructure. As the DRIC process illustrates, governments can continue to exercise sufficient sovereign control over sensitive international crossings (e.g. Canada’s International Bridges and Tunnels Act), while partnering with the private sector in the construction and management of the facility.

A number of regional models, such as Cascadia and the Northeast Coalition, also demonstrate that cross border communities can and should work together to find ways to improve infrastructure shared among jurisdictions. The Pacific Northwest Economic Region (PNWER) has been a pioneer in developing some novel and highly effective consultative and problem solving mechanisms.

In Canada, the Pacific Gateway and the Ontario/Quebec Gateway initiatives have shown the value of consultative planning for long-term investment in national transportation systems involving different public and private sector stakeholders, as well as civil society groups from environmentalists to urban planners.

Additionally, investment in Canada’s seaports has helped to alleviate vessel congestion and will provide transportation security redundancy for some of the major ports of the United States, such as Los Angeles/Long Beach and

⁴ *Our Recommendations for a Cleaner Tomorrow*, American Trucking Association, <http://www.trucksdeliver.org/recommendations/index.html> (accessed October 24, 2008).

New York/New Jersey. These investments have given the North American space more entry options for controlled container imports and more expedient exit points for cargos destined to markets outside North America.

The 1995 Bilateral Open Skies Agreement liberalized Canadian air carrier access to American third country markets and vice-versa, and created an open regime for air services between both countries.

Recommendations

In order to maximize the benefits for the North American economy and to strengthen the Regional Secure Space, a **Joint Transportation Strategy** should be established, so that future transportation planning involving our common border can be undertaken at the same time by policy makers in both countries. This might include:

- Work towards a green transportation supply chain – one supported by cross border infrastructure and approaches designed to accommodate FAST authorized transit well before reaching the border entry point, thereby reducing waiting times, energy costs and attendant emissions.
- Encourage cross border collaboration for 3P investment into new transportation linkages (e.g. new or expanded bridge facilities, short sea shipping port infrastructure and better integrated inter-modal transportation connections).
- Commit to provide around the clock staffing by all key border agencies on a 24/7 basis at all of our critical ports of entry.
- Eliminate on a reciprocal basis obsolete rules and regulations, such as cabotage, that impede efficient use of carrier and transportation systems.
- Establish a standing Canada-US Transportation Planning Group staffed by officials from Transport Canada and the US Department of Transportation and supplemented by representatives from province/state transportation departments to promote synergies between intended transportation investments on both sides of the border.

PILLAR THREE

CANADA-US ECONOMIC COMPETITIVENESS AND INNOVATION

Pillar Three Strategic Objectives

- To allow North America's natural economies of scale and competitive advantages to operate more freely, by simplifying cross border trade and investment rules and by reducing artificial border and trade impediments.
- To work towards mutually recognized health and product safety regimes, thereby reducing and eventually eliminating redundant inspections at our shared borders, while serving North American economic and consumer safety interests.

Our companies and workers confront new challenges in constructing the productive and high wage economy that will contribute to North America's future prosperity. The ability of Canada and of our two North American partners to build this economy will rest in part on how well the three of us work cooperatively in the face of stronger global competitive winds and recent turmoil in financial markets.

While the three countries still have NAFTA to shore up trade and investment, that agreement is increasingly antiquated and appears restrictive in the face of new opportunities and other regional cooperation arrangements that are mushrooming around the world.

For example, NAFTA has reduced tariffs on products across the board. Yet many shippers have found that NAFTA customs compliance costs exceed the benefit of NAFTA tariff reductions. Consequently, these shippers are opting out of the NAFTA regime and instead are applying for Most Favoured Nation status, available to all countries under the World Trade Organization (WTO). This trend undercuts many of the benefits anticipated under NAFTA.

We need smarter ways of exchanging goods and of reducing competitive and redundant regulatory regimes within the North American economy. Likewise, retaining and attracting foreign investment (particularly greenfield foreign and direct investment) will be influenced by the level of North American economic efficiencies including border transaction costs, ease of access and transportation networks.

Because fuel costs for long range marine and air transport have risen sharply in recent years, many multi-sourced manufacturers are beginning to re-examine the benefits of extended global supply chains, focusing instead on organizing production within more immediate neighbourhoods. This 'neighbourhood effect' presents an excellent opportunity for reinvestment in trans-border manufacturing, provided the cross border transaction costs do not outweigh benefits that can be attributed to the globalization of production.

In recent decades it is the private sector which has largely driven a more integrated North American economic space. Since 2001, however, governments have been obliged to create security barriers within that same market space. Laudable measures have been introduced to mitigate the effects of additional security, but more needs to be done to ensure the benefits of proximity are not wiped out by the burdens of protection.

Security measures, applied intelligently, can facilitate trade by raising the level of governments' confidence that cross border transactions do not pose undue risk to North Americans, and thereby do not require time-delaying, intrusive inspections.

This can apply as much to the southern border of the United States as it does to its northern border. Smarter security, applied variably to meet the specific conditions pertaining to each border's 'variable geometry' will create a climate more conducive to promoting integrative economic policies as confidence grows in the safety of the products and persons transiting the border.

A more competitive North America will require more than physical improvements at the border. Enhanced productivity is as much about software (e.g. electronic customs compliance and pre-arrival data processing, regulatory convergence and complementary trade enforcement regimes) as it is about the hardware of border infrastructure.

Should more radical approaches to North American trade policy be considered in light of today's global forces? It is our assessment that ideas such as a customs union, unrestricted labour movement and the total elimination of rules of origin are not feasible in the current political climate.

What has worked?

An economically competitive North America requires stronger mechanisms and more predictable rules to confront global economic challenges as they arise. Relying on serendipities, such as Congressional alliances or the lottery of leaders' compatibilities, do not guarantee the conditions for long-term trade and investment commitments which can improve North American productivity.

Despite their many imperfections, FTA and NAFTA have provided building blocks for deeper North American economic integration. Both agreements were largely driven by market forces based on making the best of comparative advantage and economies of scale.

Since 9/11, the security component has emerged as a prime element overlaying the economic relationship. With the changing nature of threats to society, governments have found it increasingly necessary to intervene on security grounds.

The Smart Border Accord of 2001 was a rapid response to border congestion immediately following the 9/11 attacks and introduced sophisticated risk management techniques and information technologies to mitigate impediments caused by the new security paradigm. It led, among other things, to the 25 percent challenge at the Windsor-Detroit gateway, whereby enforcement personnel on both sides of the border were instructed to streamline processing so as to reduce clearance times by 25 percent over a 12 month period. The challenge was successful and a border accord between the United States and Mexico followed about a year later.

The Security and Prosperity Partnership (SPP), established by the three heads of government in March 2005, was the next step in formalizing discussions regarding security among the North American countries as well as addressing a number of outstanding trade, regulatory and other economic cooperation issues under the prosperity rubric.

Fundamental to this initiative was the inclusion of the business community in the SPP process, with the creation of the North American Competitiveness Council (NACC). The leaders acknowledged that the border's business users not only faced the challenges of moving products and goods across the border but, because of their frontline operational experience, were probably the best equipped to suggest the most practical solutions to many of the border problems.

The leaders were not disappointed: the NACC came up with 51 recommendations in its first report to the heads of government in August 2007. In their April 2008 statement to SPP leaders, the community stated: "In addition to strengthening ties within North America, there should be a trilateral effort to cooperate more closely in hemispheric and global fora."⁵

We agree that it is now time to accompany innovative thinking on the security related aspects of the border with creative initiatives regarding more fluid and compatible trade policies among the North American partners.

Fourteen years of tariff reduction under NAFTA have produced a vibrant North American economic zone. The removal of tariffs facilitated a more competitive North American economy in a number of critical industrial sectors, such as the auto and auto parts sector. Others, such as the agri-food and electronics sectors, have also benefited from NAFTA, thanks to the advantages of economies of scale.

Despite tariff 'disarmament,' regulatory divergences continue to exist in many manufacturing and processing concerns, causing what critics have termed the 'tyranny of small differences.' Regulatory disharmony also adversely affects production planning and investment decisions. Vastly increased public concerns over food and product safety have potentially added to the regulatory burden in recent months.

Indeed, some have argued that regulatory differences, more than customs duties on goods, have now become the most significant intra-North American trade barrier.

Can the proliferation of competing or duplicative regulatory regimes be reversed? Do existing bilateral institutions provide the most effective vehicles to establish greater compatibility among our regulatory regimes?

While the industry advisory groups (Secretariats) under the SPP have identified a number of areas for harmonization or mutual recognition of standards on food and product safety, real progress toward removing regulatory obstacles remains elusive.

⁵ *Meeting the Global Challenge: Private Sector Priorities for the Security and Prosperity Partnership of North America*, (North American Competitiveness Council, April 2008), 11.

Because the SPP relies on a strategy of administrative arrangements under the radar, moreover, it has been subject to significant public criticism. Sceptics have charged that it lacks transparency, that it should initiate consultations far more broadly, and – in spite of the initial impetus from elected leaders – that it lacks legitimacy.

However, greater regulatory convergence is achievable in the North American context. Canada and the US have similar concerns and criteria for ensuring the health and safety of their citizens; it is often only the terminology and technical nuance which may differ.

As the 26 member European Union has reached consensus over a multiplicity of product and safety standards, Canada and the US (and eventually Mexico) should be able to evolve towards closer harmony regarding regulatory authorities.

The foundation has long been laid. Article 906 of NAFTA regarding Compatibility and Equivalence requires the three members to “work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers” and to “treat a technical regulation adopted or maintained by an exporting Party as equivalent to its own.” Article 906 applies when it has been demonstrated that the regulation adequately fulfills the importing country’s legitimate objective, such as safety, protection of consumers or sustainable development.

Collaboration between specialized cross border agencies, such as the Canada-US Agriculture Consultative Committee and the FDA-Health Canada NAFTA working groups, is well established. These bodies have made good progress in identifying cross border differences requiring further attention, most often at the political level because of their public sensitivity.

In this regard, more work could be done to expand common ground among agreed product safety standards to ensure: first, those regulatory authorities provide necessary protections equally for consumers in all of North America; and second, that harmonization enhances North American competitiveness through the reduction of unnecessary burdens on each other’s industries.

This work might be undertaken in two distinct phases: between Canada and the United States; and subsequently, extending formal consultations to Mexico. In this manner, the process would parallel the history of border security management developed throughout the post-9/11 period, as described above.

The involvement of civil society groups is critical to the success of accelerated convergence of regulatory standards. There is risk that consumers in either country will view efforts to harmonize regulations at best as adopting the other’s ‘weaker’ standards, and at worst as selling out sovereign interests.

Unless civil society is actively involved in the negotiating process, assurances that consumers’ interests will be safeguarded, costs reduced and productivity enhanced will be met with skepticism.

Finally, on the Canadian side, it must be acknowledged that serious impediments to regulatory standardization exist due to provincial differences.

Recommendations

Create a **Bi-national Regulatory Council** to review all major or significant rulemaking.

The Council would be appointed by the Prime Minister in Canada and the President in the United States from the relevant economic departments in each country. In addition, in the US the head of the Office of Management and Budget could be invited to participate and in Canada, the Liaison Secretariat for Macroeconomic Policy in the Privy Council Office.

Provision would be made for consultations on an institutional basis with the provinces, states and with relevant sectors of civil society in the manner which was developed for the FTA negotiations during the 1980s.

We recommend the Council undertake the following actions:

- Examine draft rules or regulations of significance in either country to assess the impact on the partner's economy and to determine whether the measure could be rendered more compatible with the partner's existing regulatory regime.
- Develop a North American strategy that will seek to remove regulatory differences of a minor technical nature between Canada and the United States (and eventually Mexico) beginning with industries critical to North American competitiveness.

Other recommendations include:

- Provide real incentives through facilitating accelerated border access to those users who invest in the public/private sector security programmes, e.g. waiving inspection fees for trusted cargo members.
- Consider implementing the 25 percent challenge at those crossing points, which like the Windsor/Detroit Gateway, are ready for improved customs processing time.
- Seek agreement with the US to establish common trade enforcement principles in order to ensure that goods coming into the common economic space are not subject to competing inspection regimes.
- Work towards one set of professional standards and recognition of North American credentialing.

ENGAGEMENT WITH THE NEW ADMINISTRATION

Throughout the past century, the border we share has been an enormous economic asset to both countries. It has marked the exceptional economies of scale and comparative advantages benefiting Americans and Canadians and contributed to bringing their standard of living to a level which is the envy of the world.

It is time to renovate the neighbourhood and bring cross border trade and manufacturing back home.

Pre-9/11 border management arrangements, such as the Shared Border Accord of 1995 and the Canada-US Border Crime Forum, were based on the principle that responsibility for securing the border should be shared. Under the current management of the Department of Homeland Security, a degree of unilateralism has crept into border management. Rather than the principle of joint responsibility, the US has tended to arrogate to itself sole accountability for the security of the homeland.

Today's US political landscape, shaped by fear of actions arising out of foreign religious extremism as well as by concerns over foreign economic competition, places a premium on restrictive initiatives by homeland security.

Some restrictions which reduce product competition may be welcome in certain quarters. It is anticipated that this attitude will extend past January 2009.

Despite the dependence of some sections of the US economy on many elements of Canadian exports – from natural resource imports to more sophisticated advanced technologies in aerospace, communications and medicine – our bilateral trade represents only some three percent of US Gross Domestic Product (GDP). On the other hand, trade with the US counts for about one-third of Canada's GDP.

Given this asymmetrical relationship, it is an uphill task for Canadians to persuade US policy makers and political leaders that US interests will be served by a smoother functioning border and enhanced trading relationships.

Those who legislate and pay taxes in the US have the greatest ability to effect the changes necessary to achieve a smoother functioning border and closer integration of our two economies.

Accordingly, to be effective, the message that unimpeded two-way trade equals significant US jobs and prosperity must be made by Americans for Americans.

Essentially our US allies, both governmental and non-governmental, will be drawn from those Americans whose economic prosperity is directly affected by Canadian investment or trade relationships.

Governors of states which are recipients of important Canadian investment will likely join their state legislators, whose constituents derive employment from Canadian trade, in pushing back against restrictive measures affecting the border.

In particular, sub national politicians (seconded by municipal and community leaders living in Border States) can be counted on to influence their federal representatives on Capitol Hill to reverse or modify impractical legislation and attendant unreasonable deadlines. Congressional revision of the Western Hemisphere Travel Initiative (WHTI) is a case in point.

The many private sector interests with a stake in Canadian trade, either for inputs required to complete production or because of a need to access proximate consumers, are potential allies for supporting government policies leading to the improved management of the border and to increased investment in border infrastructure.

They can be called upon to assist Canadian government representatives to promote with Congress, the Administration and in state capitals policies that enhance border efficiency.

Multiple actions by public and private sector interests will be necessary for maintaining momentum towards the improvement of the Canada-US border.

But they are not sufficient.

The initial and critical impetus must be taken at the most senior political level. Without the direction and ongoing involvement of the two heads of government, reform of border operations will remain incremental and linear at best. At worst, the management of our border will revert by default to seeking the most restrictive, risk-averse security measures.

Security would indeed continue to trump trade.

We expect the Canadian Prime Minister and the 44th President of the United States will meet shortly after Inauguration Day, January 20, 2009. The new President will be briefed on the highly interdependent nature of our two economies. A compelling case can be made that central to the health of the Canada-US economic relationship is the improved efficiency of our common border. Border management, therefore, should be high on the agenda for this first encounter.

This leads us to the final recommendation.

THE ESTABLISHMENT OF A PERMANENT JOINT BORDER COMMISSION

Eighteen months before the United States entered into the Second World War, and just after the fall of France, President Franklin D. Roosevelt and Prime Minister Mackenzie King sat together in Ogdensburg, New York, to contemplate the possibility of European devastation and its impact on North America.

The result of their meeting was the Ogdensburg Declaration of August 18, 1940. Though only 100 words in length, it created the Permanent Joint Board of Defence (PJBD). Two trusted advisors, reporting directly to the leaders, were appointed as co-chairs, presiding over military and foreign affairs officials, "to consider in the broad sense the defence of the north half of the Western Hemisphere." In the words of the Declaration, the PJBD was "to commence immediate studies relating to sea, land and air problems including personnel and material."⁶

Out of the PJBD, which still meets semi-annually 68 years later, came an extraordinary series of integrating agreements and institutions such as NORAD, the Defence Production Sharing Agreement and various early warning radar systems which have assured North American security throughout the Cold War to the present.

For example, Canada's military has achieved the highest degree of interoperability with the US armed forces of any nation within NATO.

With the fundamental changes occurring so rapidly in the global economy, from new forces challenging US economic predominance, to the failure to negotiate a renewed world trading regime and crippling financial turbulence in world markets, it may be time to consider whether the leaders of Canada and the United States might not, once again, collaboratively confront international instability, albeit of an economic nature.

A record of unprecedented joint cooperation in defence and security over the past seven decades should be transferable to a mutual confidence in each country's capacity to collaborate as partners to protect their citizens from threats, be they from terrorists, illegal substances or unsafe products. Cooperatively enforced, virtual border security measures based on information technologies and intelligence sharing can be as effective as physical barriers.

At the same time, establishing stronger trust at our borders can inspire the confidence necessary to develop joint initiatives aimed at clearing away residual trade and regulatory barriers which greatly weaken our interdependent economic relationship.

Consequently, this Report suggests that recommendations should be broken down into short and long term, the former emphasising security and structural improvements, the latter regulatory and trade measures.

As a deliverable from their first meeting, the leaders could mandate two trusted and high profile Personal Representatives to prepare recommendations to improve the management of the border, along the lines of those which appear in the first two pillars of this Report.

The Representatives could also be charged with the task of designing a mechanism to coordinate a longer term strategy to address border security and North American competitiveness. In this regard, the Representatives might propose the creation of a new institution, such as a standing Permanent Joint Border Commission (PJBC), headed by a cabinet level official from each side, reporting to their respective heads of government.

⁶ "Joint statement by the Governments of Canada and of the United States of America regarding defence cooperation between the two countries, made in Ottawa and Washington on February 12, 1947," *Canada-American Treaties*, http://www.lexum.umontreal.ca/ca_us/en/cts.1947.43.en.html (accessed October 23, 2008).

The PJBC would recommend policy initiatives as well as coordinate the implementation of new border measures. The proposed Canada-US Transportation Planning Group should be linked with the PJBC.

The new Commission would include officials from the relevant border, security, foreign and economic agencies of government.

The Representatives would be asked to report to the leaders within six months in anticipation of a heads of government border summit to be convened before the end of 2009. At that meeting, leaders would be expected to consider the recommendations of the Personal Representatives and approve the creation of a PJBC type structure.

Over the longer term, the PJBC could expand its work to include the economic challenges outlined in Pillar Three of this Report.

In this later phase, the Commission should include representatives from the state and provincial governments. It would also need to consult on a prescribed basis with border community groups and the major associations representing common border users. The proposed Bi-National Regulatory Council, recommended in Pillar Three also would be associated with the PJBC.

The press release we envisage:

The White House Rose Garden Media Opportunity, February 14, 2009

Today the President met with the Prime Minister of Canada in their first meeting as leaders, exchanging views on critical foreign policy issues, including Afghanistan and global climate change. The leaders agreed to appoint two high level Personal Representatives, Mr/Ms... .., from Canada and the Honourable... .., from the United States, to prepare recommendations to modernize our shared border and to secure our economic competitiveness, including devising a bi-national body to coordinate the implementation of new border measures.

The Personal Representatives will report back within six months with their findings and recommendations.

The Canadian International Council (CIC) is a non-partisan, nationwide council established to strengthen Canada's role in international affairs. With local branches nationwide, the CIC seeks to advance research, discussion and debate on international issues by supporting a Canadian foreign policy network that crosses academic disciplines, policy areas and economic sectors.

The CIC features a privately funded fellowship program, supported by a network of issue-specific Working Groups. The goal of the CIC Working Groups is to identify major issues and challenges in their respective areas of study and to suggest and outline the best possible solutions to Canada's strategic foreign policy position on those issues. Each Working Group aims to generate high end, empirically valid research and impactful foreign policy advice on each issue that are grounded in scholarship.

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