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# C.D. Howe Institute

# COMMENTARY

THE BORDER PAPERS

## A Matter of Trust:

Expanding the Preclearance of Commerce  
between Canada and the United States

Michael Hart



### **In this issue...**

The thickening of the Canada–US border in response to post 9/11 security challenges has created new obstacles to cross-border trade and investment. Canadian and US officials need to pursue a bolder path if they want to preserve and enhance the advantages of the integrated Canada–US market.

## THE STUDY IN BRIEF

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The thickening of the Canada-US border in response to post 9/11 security challenges has created new obstacles to cross-border trade and investment. However, preclearance of people and goods before they arrive at the physical border offers one of the best ways to address cross-border obstacles while ensuring public safety.

Preclearance already has a track record of success where it has been applied. It has proven to be a cost-effective way to provide air travelers with an economically efficient way to clear customs and immigration before entering the United States from Canada. EU members are satisfied that they have succeeded in guarding their security while promoting an integrated single market by relying on a perimeter approach to preclearance. Canada and the United States are relying on preclearance as the basis of trusted traveler and shipper programs. Building on these successful models, Canada and the United States should now proceed to designing and implementing more ambitious programs that rely on preclearance as a cost-effective way to ensure both a secure and an economically efficient border for most travelers and shippers crossing by land.

Getting there, however, will require a determined effort to get beyond conventional wisdom and bureaucratic silos. The current division of administrative and political responsibilities makes it very difficult for the two governments to get beyond current practice. To overcome this problem, the two governments should each appoint a special envoy reporting directly to the President or the Prime Minister through the Secretary of Homeland Security or the Minister of Public Safety, respectively, with a mandate to develop a coherent, joint program of land preclearance as discussed in this *Commentary*. The paper further argues for the creation of a joint, independent commission to provide the two governments with advice on implementation and other issues related to preclearance.

In the current global economic downturn, reducing border costs and facilitating the movement of low-risk goods and people should contribute to faster economic recovery. This can be accomplished by expanding participation and delivering measurable benefits through existing trusted shipper and traveler programs and introducing new, trusted programs based on operational consensus between the two countries' security specialists. Improvements such as providing 24/7 access and border services at major crossings, implementing an integrated "single window" or portal for entering all border-related importing and exporting data, and differentiating between regulatory compliance and risk, should also contribute to better security outcomes.

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*The Smart Border Declaration has never quite delivered on its promise. There are many reasons why; most have to do with lack of trust.*

EDWARD ALDEN, the Bernard L. Schwartz Senior Fellow, US Council on Foreign Relations

*For the bulk of our shared history, Canadians and Americans have seen our joint border as a gateway. Since 9/11, we have seen that joint border viewed by some as more of a checkpoint.*

MICHAEL WILSON, Former Canadian Ambassador to the United States

*[Canada needs to convince the United States that] trade facilitation is an essential part of [the US Department of Homeland Security's] mission.*

STEWART BAKER, former Assistant Secretary for Policy at Department of Homeland Security

**T**he US government has for many years satisfactorily precleared passengers flying to the United States from major Canadian airports, giving rise to no known threats to public safety.

Europeans now ensure the security of their continent on the basis of a comprehensive, cooperative approach to clearing both people and goods at the first point of entry, allowing free circulation from then on throughout the territory of participating countries. Canada and the United States have recently expanded a range of joint customs and immigration preclearance programs at both the perimeter and at the land border, again with no known serious breaches of either Canadian or US security.

Preclearance of people and goods before they arrive at the physical border offers one of the best ways to pursue both public safety and economic efficiency.

Clearance at the border limits the amount of information and time available to inspectors to make informed decisions about risk and compliance. Satisfying all clearance requirements at the border can also delay travelers and shippers, lead to congestion, add to the cost of doing business across the border, and chill discretionary trade, investment and travel. Greater security, therefore, should result from programs that reduce the number of unknown travelers and shippers at the physical border.

Preclearance is also an efficient way to deal with modern cross-border commerce in the integrated North American economy. The days when the norm was a carrier crossing the border loaded with finished products destined for retail shelves are long gone. Today, that carrier is usually part of a time-sensitive supply chain, loaded with inputs and components destined for further processing in the other country. The hidden tax of new data and reporting requirements adds significantly to production costs, undermining the competitiveness of North American producers, particularly those whose products cross the border several times during production.<sup>1</sup> Properly

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1 See Goodchild and Klein (2009) for a discussion of some of the extra costs incurred from satisfying border procedures. The Canadian Manufacturers and Exporters point out that additional border processing costs incurred since 9/11 include: direct costs at the border – delays and user fees; capital costs – information, reporting, and security systems; processing costs – staffing, training, consulting, and facilitation; waste – complexity, errors, repetition, inconsistencies, random processes, and unnecessary information/travel; operational costs – additional inventory, storage, transportation, and fuel; and penalties – faulty compliance and late delivery.

designed and implemented, preclearance should offer such users a system that is more cost effective than one that relies almost exclusively on inspection and verification at the physical border. It should also provide border officials with more reliable and timely information to make prudent risk assessments. This should increase trust, but only if participating companies see a tangible improvement in service for the costs incurred to become and remain eligible.

Business and other groups on both sides of the border have repeatedly pointed out that finding the right balance between a secure border and an economically efficient one remains elusive. In the words of US analyst Kathryn Friedman, “stakeholders are scrambling to come up with something – anything – to make the border work better” (Friedman 2010, 52). A number of companies have reported, for example, that their inspection rates have not decreased in return for participation in trusted shipper programs, and few believe that the investment has produced sufficient benefit to justify the high costs. Some companies are actively avoiding such programs in the belief that participation increases the number of secondary inspections by both US and Canadian border officials.<sup>2</sup> As a result, user confidence has eroded, undermining the intended security objectives of preclearance programs.

In this paper, preclearance is treated as a broad, conceptual approach to the administration of the border, based on programs that reduce the need for on-site customs and security clearance by increasing the number of border crossers who are enrolled in trusted traveler and shipper programs. It goes well beyond such initiatives as the ill-fated Fort Erie-Buffalo effort a few years ago to relocate US customs and immigration facilities to the Canadian side of the bridge, an initiative that would not have affected

users in any material way other than perhaps by reducing congestion.<sup>3</sup> The paper is also not focused on the continuing need to improve infrastructure at busy border crossings, except to note that greater reliance on preclearance should reduce the need for some physical infrastructure while increasing the need for computer programs and electronic monitoring equipment.

The paper considers the changing security context of customs and immigration clearance at the land border, describes the range of new programs introduced to meet new challenges, and places that experience in the broader context of other efforts to facilitate legitimate cross-border interaction among Canadians and Americans. It considers how the two governments can apply the lessons from experience in North America and Europe in developing an approach to land preclearance for commercial traffic between Canada and the United States that includes:

- the clearance of goods at first point of arrival in North America and earlier in the supply chain;
- the expansion of trusted traveler and shipper programs;
- greater reliance on shared infrastructure and facilities; and
- cross-accreditation of customs and immigration personnel.

It concludes with suggestions for initiatives that the two governments can pursue to expand preclearance programs at the land border and thus realize their joint interest in establishing a more functional common border that is trusted, secure, efficient, and cost-effective.

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2 Points made in discussions with officials of the Canadian Chamber of Commerce (CCC), Canadian Manufacturers and Exporters (CME), Canadian Association of Importers and Exporters (IE Canada), Canadian Council of Chief Executives (CCCE), Canadian Trucking Alliance (CTA), and other border users. These discussions echoed the general tone and message of recent reports issued by business and foreign policy groups, including: Sands (2009); US and Canadian Chambers of Commerce (2009); Canadian International Council (2008); and Canadian International Council (2009).

3 From 2005 to 2007, the two governments explored ways and means to implement a land preclearance pilot project (also referred to as shared border management), which would have re-located the US border inspection facility from the Buffalo side of the Peace Bridge to the Fort Erie side. All CBP inspections and operations would then have taken place before travelers and cargo formally entered the United States. The Peace Bridge site was selected because the US inspection facility in Buffalo was outdated, undersized, and lacked the facilities a port of its size should have to operate efficiently and securely. On the Fort Erie side, approximately 70 acres of land was – and remains – available on which the US inspection facility could have been co-located with Canadian inspection facilities. The discussions were terminated in April 2007 because US officials concluded that Canada could not accommodate all US requirements for co-location (US GAO 2008).

## Box 1: Acronyms Used in This Paper

ACE	Automated Commercial Environment (US)	FLUX	Fast Low Risk Universal Crossing
ACI	Advance Commercial Information (Canada)	FSIS	Food Safety Inspection Service, part of USDA
APHIS	Animal and Plant Health Inspection Service, part of USDA	GOES	Global Online Enrollment System (US)
ATF	US Bureau of Alcohol, Tobacco, and Firearms	IBET	Integrated Border Enforcement Team (Joint)
CAN-AM BTA	Canadian-American Border Trade Alliance	IBIT	Integrated Border Intelligence Team (Joint)
CBCF	Cross-Border Crime Forum (Joint)	ICE	Immigration and Customs Enforcement (US), part of DHS
CBP	Customs and Border Protection (US), part of DHS	IECanada	Canadian Association of Importers and Exporters
CBSA	Canada Border Services Agency	IMET	Integrated Maritime Enforcement Team (Joint)
CCC	Canadian Chamber of Commerce	LEA	law enforcement agency
CCCE	Canadian Council of Chief Executives	PIP	Partners in Protection (Canada)
CFIA	Canadian Food Inspection Agency	POE	Port of Entry
CME	Canadian Manufacturers and Exporters	RFID	radio frequency identification
CSI	Container Security Initiative (US)	SENTRI	Secure Electronic Network for Travelers Rapid Inspection (US)
CTA	Canadian Trucking Alliance	USDA	United States Department of Agriculture
C-TPAT	Customs-Trade Partnership Against Terrorism (US)	VISIT	Visitor and Immigrant Status Indicator Technology program (US)
DHS	Department of Homeland Security (US)	WHTI	Western Hemisphere Travel Initiative (US).
EDL	enhanced driver's license		
FAST	Free and Secure Trade (Joint)		

## The Land Border Today

Analysts at the Border Policy Research Institute at Western Washington University recently observed that “the ideal border inspection regime delivers heightened security, while imposing little or no added burden (in terms of delay or cost). Post-9/11 security regimes are not yet close to the ideal, with negative economic impacts persisting for the integrated Canada-US economy” (Border Policy Research Institute, 2009). The Institute’s detailed research into the impact of border operations on trade, travel, and other bilateral interaction bears out this observation. Despite the pledge by the two governments in 2001 to work together “to develop a zone of confidence against terrorist activity ... [and] build a smart border for the 21st century ... that securely facilitates the free flow of people and commerce,”<sup>4</sup> travel across the land border remains

significantly below the levels reached in 2000, and trade, particularly by truck, has yet to return to the level attained that year. Macroeconomic and other factors may have contributed to the malaise in cross-border trade and travel, but management of the land border is an important contributing factor.<sup>5</sup>

Following the 9/11 terrorist attacks, the two governments engaged in a major overhaul of border-related policies, programs, and institutions with a view to enhancing their capacity to become frontline players in the management of security risks. Much of this served primarily to enhance the role of the border as a defence against terrorism and other illicit activity, but also had a direct, and large, impact on the border as an economic and regulatory enforcement mechanism. The result has been a higher level of confidence about security but at a cost in reduced economic activity and efficiency.

<sup>4</sup> The Canada-US Smart Border Declaration,” December 12, 2001.

<sup>5</sup> In addition to the reports of the Border Policy Research Institute, see Gliberman and Storer (2009) Gliberman and Storer (2006) and Grady (2008).

In recognition of changing priorities, both governments integrated most border-related functions into single departments. In Canada, primary responsibility for border administration was assigned to the Canada Border Services Agency (CBSA) while US Customs and Border Protection (CBP) brought together all frontline personnel with enforcement responsibilities at US borders. (See Box 1 for a list of acronyms). In both cases, the customs function of government was taken out of departments with major economic responsibilities – Finance and Treasury – and transferred to newly established departments focused primarily on security and law enforcement: Public Safety and Homeland Security, respectively. Political oversight for border administration, therefore, is now assigned to officials whose responsibilities revolve around law enforcement and public safety, helping to explain the difficulty experienced on both sides of the border in finding a balance between economic efficiency and public safety.<sup>6</sup> The movement in both countries toward user fees to recover costs has compounded the problem. The costs of administering programs aimed at reducing risk and enhancing compliance are now largely passed on to users and no longer attract the close scrutiny of Finance and Treasury officials to determine appropriate cost/benefit ratios.

While primary responsibility for border administration now rests with CBSA and CBP, other government agencies continue to discharge specialized functions at the border, including the Canadian Food Inspection Agency (CFIA) and Health Canada, the US Food and Drug Administration (FDA), the US Department of Agriculture – through the Animal and Plant Health Inspection Service (APHIS) and Food Safety Inspection Service (FSIS) – the US Immigration and Customs Enforcement (ICE), and US Alcohol, Tobacco, and Firearms (ATF). Each of these agencies

has its own corporate culture and information requirements. As a result, border clearance requires not only that either CBSA or CBP be satisfied, but that in some instances one or more of the other agencies be satisfied as well. The amalgamation of the various border-focused agencies into single departments, therefore, remains incomplete, resulting in continued redundancies and conflicts in information requirements, hours of work, and approaches to compliance and risk assessment. This has, in turn, prompted commercial users of the border to conclude that the security-oriented agencies of the two governments are less mindful of user costs and efficiency than of enforcement targets and security risks.

Even before 9/11, the two governments had started working together to streamline and harmonize data and other reporting requirements and standardize customs clearance procedures.<sup>7</sup> In the changed context after 9/11, they redoubled their efforts but with a radical redirection in priorities. Immigration and public safety considerations were now at the top of the agenda.<sup>8</sup> To that end, a range of new programs was introduced, many of them jointly, including:

- **Canada's Partners in Protection (PIP) and US Customs-Trade Partnership Against Terrorism (C-TPAT)**, which are two similar programs set up to enlist industry in sharing responsibility for securing the supply chain. In 2008, the two governments announced that the two programs would operate on the basis of agreed standards and mutual recognition, although progress to this end remains slow.
- **Integrated Border Enforcement, Maritime, and Intelligence Teams (IBET/IMET/IBIT)**, which consist of Canadian and American law enforcement teams that share information and resources to maximize border security. The five core agencies are CBSA, the Royal Canadian

6 The challenge is well illustrated by comments by John Morton, the assistant secretary of Homeland Security responsible for Immigration and Customs Enforcement (ICE). He told the media in Ottawa that there had been no thickening of the border since 9/11, despite a six-fold increase in the number of US agents deployed at the northern border and a major increase in information requirements (Blanchfield 2009). More generally, Morton's comments point to a common problem when security personnel are assigned operational functions. The balance between efficiency and security should not normally be a security decision, but an operational one. Since 9/11, however, security risk management has been driving the decision-making in cross-border operations, rather than providing an important input. It is also worth noting that police and intelligence agencies are typically the most difficult to convince to share information (and thus gain trust). It is not unusual for security agents to display high levels of mistrust toward those managers who are considered "outside the fold."

7 For example, through the 1995 Shared Border Accord, the 1997 Citizenship and Immigration Canada-US Border Vision (1997), establishment of the Canada-US Border Crime Forum in 1997, and the 2000 Canada-US Partnership.

8 The two most important initiatives were the 2001 Smart Border Action Plan and the 2005 Security and Prosperity Partnership.

Mounted Police (RCMP), CBP, the US Coast Guard, and US Immigration and Customs Enforcement (ICE). They work closely with local, state, and provincial enforcement agencies in addressing cross-border criminal activity.

- The **Advance Commercial Information (ACI)** and **eManifest** programs in Canada and the **US Automated Commercial Environment (ACE)** and **Container Security Initiative (CSI)** programs, which introduced more effective risk management processes and tools to help identify threats to the health, safety, and security of Canadians and Americans in the supply chain before they reach Canadian or US ports of entry. There remain significant opportunities for harmonizing and integrating these programs, and simplifying data requirements. The need for informed security and operational risk assessments has led to a growing appetite for data and information but has also raised skepticism about the operational need for some of this information.
- **Enhanced documentation** requirements for individuals entering the United States as a result of the US Visitor and Immigrant Status Indicator Technology (VISIT) program, and the Western Hemisphere Travel Initiative (WHTI). The US government has invested considerable resources to ensure that machine-readable passports and passport cards, enhanced driver's licenses, and radio-frequency-identification (RFID)-equipped personal identification documents can be read at ports of entry and used to speed up border processing. Canada has yet to bring its documentation requirements and facilities fully up to these new standards.
- **NEXUS**, which is a joint program set up to expedite the border clearance process for low-risk, pre-approved travelers into Canada and the United States available at major airports and land ports of entry. Its success suggests that more can be done along similar lines.
- **FAST**, which is a joint program that facilitates moving pre-approved eligible goods – and the truck and driver carrying them – across the border and that verifies trade compliance away

from the border for firms participating in C-TPAT and PIP. It is available at most major ports of entry (POEs). Again, its success suggests that it is a model on which to build, particularly if progress can be made in further integrating the other new programs on a cross-border basis.

In addition to establishing these new programs to enhance security and streamline and facilitate cross-border trade and travel, Canada and the United States also established a number of joint programs aimed at ensuring a high level of cooperation and information sharing among law enforcement agencies at the operational level, including:

- **Project North Star**, which is a bi-national forum that provides Canadian and US law enforcement managers a mechanism to enhance existing communications, cooperation, and partnership among agencies and personnel that operate within the Canada-US border area.
- **Cross-Border Crime Forum**, which was established in 1998 as a joint effort of Public Safety, the Department of Justice in Canada, and the US Department of Justice. It brings together senior law enforcement and justice officials from participating organizations in Canada and the United States in order to address transnational crime problems such as smuggling, organized crime, mass marketing fraud, counter-terrorism and other emerging cross-border crime issues. It also focuses on resolving obstacles and impediments – primarily with regard to policy, regulations, and legislation – faced by law enforcement and justice officials who work on cross-border crime issues.

From a security perspective, experience at the border since 9/11 has been generally satisfactory. There have been no significant security breaches of either the Canadian or US side. There have been a number of high-profile arrests, the most prominent being that of Ahmed Ressay by US officials at the port of Port Angeles; his conviction and subsequent incarceration stand as a clear example of the benefits of cross-border police and intelligence cooperation.<sup>9</sup> There

<sup>9</sup> At his trial, most of the evidence offered against Ressay had been developed by an RCMP anti-terrorism task force.

have been a number of less happy experiences resulting from arguably over-zealous applications of shared intelligence. None of these cases, however, suggests that security measures applied at the border are inadequate to the challenges posed by the new security context. A high level of cross-border criminal activity is successfully interdicted through joint police and intelligence operations that go well beyond the border. The rate of arrest for minor customs and immigration offenses remains miniscule in relation to the 400,000 people and \$2 billion in trade goods and services that cross the border on a daily basis.<sup>10</sup>

Both conceptually and in broad design, these new programs have also been well received by legitimate travelers and shippers, but all remain works in progress. Industry and other criticisms have focused largely on the implementation and application rather than on the intent of the new programs. From that perspective, much remains to be done to make them more cost-effective and less disruptive of commerce and tourism. In the absence of clear direction from senior officials, for example, regarding the level of residual risk that they are willing to assume in support of efficiencies, onsite enforcement officials will opt for conservative security assessments without due regard to the broader goals that their efforts support. Over time, as some of the problems are worked out, and the two governments attain higher levels of intra- and inter-agency coordination and cross-border harmonization, public confidence in these programs should grow. Industry support is critical to their long-term

effectiveness. This support, in turn, is dependent on confidence that industry will have a voice in their further evolution and implementation.

Gaining full benefits from new programs and policies will require a consistent security posture on both sides of the border, adequate physical infrastructure, and compatible electronic infrastructure.<sup>11</sup> To that end, the two federal governments, together with state, provincial, and local governments, have already devoted considerable funds to upgrading infrastructure at the approaches to the land border and at customs clearance facilities.<sup>12</sup> Veteran observers of the border point out, however, that Canada has spent more resources on roads, bridges, and inspection plazas while the United States has concentrated on electronic systems and related equipment.<sup>13</sup>

The two governments have also increased human resources at the border to meet increasing demand flowing from both the enhanced security programs and increases in commercial and other traffic. The new security context provides a partial explanation for this expansion, but there is also a lingering suspicion expressed by various business and other critics that this increase represents a significant loss of confidence in Canada as a security partner, a suspicion that needs to be addressed urgently by the two governments. Failure to do so will mean that the border will continue to thicken and cross-border trade and investment will gradually begin to shrink.

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10 The latest report by the US CBP on security at the Canadian border for fiscal year 2008/09 pointed to a total of 15 individuals denied entry for security reasons, out of 21.3 million passengers, 8.2 million autos, 1.4 million trucks, and 41,660 buses processed at 17 border crossings in Central Canada. In addition, 212 fugitives were arrested for crimes including kidnapping, negligent homicide, dangerous drugs and mortgage fraud (MacLeod, 2009).

11 The focus of this paper is on policies and programs that the two governments can pursue either individually or jointly. Additionally, of course, more may need to be done, again both individually and jointly, to realize the physical and electronic infrastructure required to make the border operate as efficiently as possible. Full implementation of these programs, however, may well reduce the need for costly new investments in infrastructure. Reducing the amount of traffic subject to on-site inspection should speed the flow of traffic generally and reduce bottlenecks.

12 Railroad companies have also devoted considerable resources to upgrading their facilities, including a new rail tunnel under the St. Clair River. As a result, rail now accounts for an increasing share of cross-border trade, much of it made up of industrial products. The assessment of APHIS fees on this trade defies explanation but provides a further example of the insensitivity of current US officials to its importance and raises concerns about the prospect of further, unjustified user fees.

13 These observations emerged from discussion with officials from the CCC, CME, IE Canada, CCCE, the Canadian-American Border Trade Alliance (CAN-AM BTA) and the CTA.

## Goals and Means

The cross-border movement of commercial shipments of goods, while now generally free of customs duties, remains subject to a wide array of customs and regulatory requirements.<sup>14</sup> These can be divided into three broad categories:

- those intended to discriminate in favour of either Canadian or US producers, representing the residual elements of traditional trade and industrial policies that have been largely liberalized as a result of trade agreements. However, residual elements include such measures as tariffs on some agricultural products, trade remedy laws, rules of origin, and similar measures;
- those that are the incidental result of regulations aimed at other objectives, involving a wide range of measures that reflects the increasing complexity of modern economies and the response of governments to demands ranging from consumer protection to environmental stewardship; and
- those aimed at ensuring public safety; many of the new requirements flow from the need by border officials to acquire advance information that allows them to make informed risk assessments involving both people and cargo.

They want to know, for example, whether a truck driver poses a potential criminal, security, or terrorist threat, or whether a shipment of goods may be counterfeit and compromise consumer safety or intellectual property rights.

At border checkpoints, CBSA and CBP officials have traditionally focused their attention on the first two aspects: determining whether a truck, its driver, and its load are properly documented and eligible to enter. Since 9/11, they must also assess the degree of risk posed by the driver, the vehicle, and the load. The application of strategic risk management techniques to border security is relatively new and remains poorly understood. Many of the criticisms of new programs flagged by industry flow from the steep learning curve both Canadian and US officials have encountered in applying strategic risk management techniques at the border.<sup>15</sup> Risk assessment depends critically on information and explains the increasing appetite of CBP and CBSA for ever more information and time to process it. As one industry executive put it, much of the border clearance process now depends on “getting the right information to the right people at the right time.”<sup>16</sup> Failure on any of these three counts will lead to delays and time-consuming secondary inspections. Secondary inspections tie up resources and, in most cases, add little to security. To be effective, therefore,

14 The Hudson Institute’s Christopher Sands (2009) suggests that officials at the land border focus on five key enforcement targets: commercial – the thousands of trucks, containers, and railway boxcars that cross the border every day, and the people involved in this traffic, from truck drivers to business executives; energy – the gas, oil, and electricity that flow through pipelines and transmission lines; commuters – the several tens of thousands of people who cross the border every day to go to work at major border crossings such as Windsor-Detroit; tourists and other casual visitors – who cross the border for visits of a few hours to a few months; illicit traffic – in drugs, people, guns, counterfeit goods, and other criminal activity.

Each of these targets requires different programs and arrangements to achieve its objectives. It is the mix of users at some of the larger ports of entry that complicates the ability of officials to ensure prompt, effective, and safe clearance for the first four users. For the purposes of this paper, the focus is on the first group, particularly truck-based commercial traffic, the largest and by far the most resource-intensive user of the border. Energy largely flows without much incident or attention from border officials; the principal issue is the security of critical infrastructure. Immediate problems associated with commuter traffic have been largely resolved through the NEXUS program, which allows pre-approved, low-risk commuters to use dedicated lanes at the busiest ports of entry. Cross-border travel by tourists and other casual visitors has declined dramatically since 9/11, due in part to perceptions of the difficulties engendered by additional documentation requirements. Assessing problems associated with this aspect of border clearance would require separate analysis. Finally, illicit traffic is a much larger issue than the border. As noted by the RCMP: “While some people see the border as our first line of defence, it should be looked at as one of the last lines of defence. We need to stop the criminals, the terrorists, before they get anywhere near the border. We must detect their intentions and disrupt their operations” (RCMP 2008).

15 See Schanzer and Eyerman (2009) and de Rugy (2009). Risk management has in recent years been complicated by the increasing popular appeal of the so-called precautionary principle. Precaution has, of course, always been central to risk management, but the precautionary principle is based on proving the absence of risk, a logical impossibility. It is possible to take steps to reduce risks; it is rarely possible to wholly eliminate them.

16 Discussion with senior officials at the Canadian Association of Manufacturers and Exporters.

preclearance should provide the tools that will allow CBSA, CBP and allied agencies to address most of the routine information requirements related to the first two aspects on a post-movement audit basis and that will allow border officials to concentrate on the information needed to make informed risk assessments.

Border officials dispose of a tremendous degree of authority in assessing risk. They are able to make determinations on seemingly arbitrary and even capricious grounds, with little recourse for those denied entry or subjected to burdensome secondary inspections. What constitutes a risk, for example, and how large, is a matter of judgment based on criteria that are not widely shared with the public.<sup>17</sup> Confidence in that judgment arises from the implementation of appropriate physical, personnel, technical, and operational safeguards in an integrated program. Appropriate levels of supervision and safeguards should be readily adaptable as the threat changes, temporarily or permanently. Finally, confidence flows from inter-agency and cross-border sharing of intelligence; sharing leads to trust and trust is maintained by sharing. Ultimately, trust in the overall protection program rests on the confidence of managers on both sides of the border that required and approved safeguards will be implemented consistently and correctly, and will continue to function as designed.

Until 9/11, this aspect of border management was informed by local experience and circumstances. Officials at the border relied to a large extent on their knowledge of local circumstances and close working relationships with local law enforcement. Local institutional memory allowed officials to make common-sense judgments. Officials in Washington and Ottawa, in turn, had confidence in the exercise of local discretion and in each other. Since 9/11, both CBSA and CBP have insisted on national enforcement standards and centralized control, have reduced the scope for local discretion, and seem less

willing to rely on the judgment of their colleagues on the other side of the border (Sands 2009).

Standardization relies on rules-based compliance rather than risk-based protection, an approach that is proving expensive and tends to erode trust based on demonstrated competence. Israeli airport security, for example, relies on risk assessments by officials trained in making such assessments; North American airport security relies on the application of minute rules to all passengers, whether or not they pose risks. The Canada-US border was formerly managed on the Israeli model, relying on the experience and judgment of local border officials; it is now reverting to the North American airport model.

Finally, CBP's approach conflated the problems experienced and the solutions pursued at the border with Mexico into a single-minded, standardized approach to both borders. Recognition of the significant differences between the northern and southern borders, while uppermost in the minds of Canadian officials, has been resisted by US officials.

Since 9/11, therefore, border clearance has become less certain and more unpredictable for commercial users, in part due to the erosion in levels of trust between local and national officials and between Canadian and American officials at both the supervisory and operational levels.<sup>18</sup> Programs aimed at restoring that trust, and extending it to as many users as possible, should be aimed at creating greater certainty and predictability at the border and at making the border more secure, economically efficient, and less costly to both governments and users.

Trusted traveler and shipper programs have to some extent facilitated the ability of regular users to reduce the time spent at the border by ensuring that all information requirements are satisfied before they arrive. Nevertheless, industry spokesmen indicate that the potential effectiveness of these programs has been undermined by increasing and redundant documentation requirements, incompatible databases, insufficient intra-agency coordination, insufficient coordination and harmonization

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17 In the words of the spokesperson for the Buffalo field office of the CBP, the 15 people denied entry in fiscal 2008/09 for security reasons "were individuals that had some derogatory information, maybe lookouts (security notices), as possible threats to our national security. ... There was no hard evidence. These were just potential people that we wanted to conduct some further investigation on" (MacLeod 2009).

18 Points made in discussions with officials of the Canadian Association of Manufacturers and Exporters, the Canadian Association of Importers and Exporters, and the Canadian Trucking Association, and confirmed in confidential discussions with border officials.

between Canadian and US programs, inadequate infrastructure (e.g., dedicated FAST lanes and booths), overly frequent spot checks, zealous prosecution for minor offences, bureaucratic rent-seeking and similar problems. These programs can be made more effective by applying lessons from North American and European experience with preclearance models.

## Preclearance – A Once and Future Solution

Preclearance provides an approach that can inform and expedite every aspect of customs and immigration clearance, providing border officials with reliable advance information that will allow them to make better-informed determinations of risk and compliance. Members of the European Union have enjoyed considerable success in implementing progressively more comprehensive cooperative approaches to customs and immigration clearance; preclearance is central to that success. There are important aspects of the EU approach that Canada and the United States could use in their quest for a more secure, efficient, and cost-effective border regime. The European model required that participating governments solve a number of problems, particularly the establishment of mutually agreeable and recognized enforcement and risk-based standards, protocols for police and intelligence cooperation, and dependence on post-movement auditing of routine customs requirements.

Similarly, Canada and the United States already boast considerable experience in implementing preclearance. Air preclearance has been around for more than 50 years, and the two governments began to experiment with cooperative preclearance

programs at the perimeter and at the land border following the adoption of the Shared Border Accord in 1995. Their efforts were interrupted by the tragedy of 9/11. Nevertheless, both the 2001 Smart Border Declaration<sup>19</sup> and the 2005 Security and Prosperity Partnership contained many ideas predicated on the preclearance concept and based on the preliminary work done as part of the 1995 Shared Border Accord. As described above, some of these initiatives have been implemented, but there remains considerable scope to apply preclearance more widely and thoroughly.

The appeal of preclearance for both governments and users is that it reduces the need for physical inspection at the land border by preclearing the shipper or the traveler on the basis of information and documentation provided:

- at the perimeter or at points of departure in third countries;
- earlier than physical arrival at the border at designated ports of entry – as is the case with trusted traveler and shipper programs such as NEXUS and FAST; or
- at a point away from the physical border before proceeding to the border within a secure vehicle or along a secure road – as is the case with air, marine, and rail preclearance, or as a result of factory-gate or similar behind-the-border inspections.

In most instances the information gained this way is sufficient to allow officials to address regulatory compliance and other traditional customs requirements on a post-movement audit basis. Additionally, for regular users, the information is usually sufficient to make an informed risk

19 In the 2001 Smart Border Declaration, the two governments pledged to explore: clearing goods arriving from third countries at the first port of entry; adopting compatible security standards at production and distribution facilities to minimize security threats; expediting the flow of low-risk traffic by establishing compatible commercial processes at the border; expediting the flow of low-risk goods by establishing secure procedures to clear goods away from the border, including at rail yards and at marine ports; putting the necessary tools and legislative framework in place to ensure that information and intelligence is shared in a timely and coherent way within each country as well as between them; and strengthening coordination among enforcement agencies for addressing common threats.

Many of these ideas resurfaced in the 2005 SPP, and have featured prominently in submissions by business groups, including by the North American Competitiveness Council. For one reason or another, the officials charged with translating these political statements of intent into concrete programs have found it difficult to meet this challenge. It is hard to accept that the problems are technical. All seem reasonable from either an operational or a security perspective. Rather, lack of progress seems to reflect a lack of trust and will to succeed.

assessment prior to the arrival of the goods or the individual at the physical border and allow expedited passage. Expanding preclearance thus makes sense from both security and economic efficiency perspectives. The greater the number of firms and individuals that become trusted shippers and travelers, the greater the security of both Canadians and Americans. Properly designed and implemented, it should also be more cost-effective than a system that still relies to a large extent on real-time inspection at the physical border.

At the perimeter, for example, there is scope for greater cooperation in clearing cargo containers either at third-country ports of departure or at first arrival in Canada or the United States, allowing such containers to proceed to a final destination in either country. Officials already cooperate in inspecting cargo at each other's ports and at third-country ports of departure. Cargo containers, however, are still routinely inspected when crossing the internal Canada-US border, adding costs and reducing efficiency. If there are elements that one or the other country believes are not satisfied on the basis of clearance at the first port of entry, then it would make sense to address and remedy these deficiencies at the perimeter. As discussed further below, one such step would be to integrate the US and Canadian advance-cargo notification regimes into readily shared and harmonized databases. Another would be to develop a common, consistent risk assessment process based on agreed threat profiles. A third step would be to deploy tamper-proof seals applied at the point of inspection whose continued integrity could be verified by radio-frequency identification (RFID) or similar technologies. As a fourth step, it is important that drivers and rigs conveying third-country cargo containers across the land border be enrolled in the FAST program. Finally, nothing can take the place of having representatives from both countries working together, as a result of cross-designation and exchange programs, either during operations or under an integrated audit program.<sup>20</sup>

More generally, alternative trade compliance, product safety inspection and risk assessment policies can be accomplished at offsite venues, such as inland manufacturing and assembly facilities, warehouses, or other clearance sites. Expanding the border this way would go a long way to relieving traffic congestion at larger ports of entry, improving supply chain delivery, and reducing costs for both the public and private sectors. Many inspections conducted at ports of entry could be done at processing facilities. For example, CFIA inspectors, operating under Memoranda of Understanding with the FDA and US Department of Agriculture, are often present at processing facilities and could satisfy border-related inspections on site. Many plants in both Canada and the United States now operate as part of sophisticated value chains in which value is added at one plant before products proceed to another plant. Many also participate in FAST and are members of Canada's Partners in Protection and the US Customs-Trade Partnership against Terrorism. As a result, their inter-plant shipments can be subject to multiple inspections, typically at the same point of entry. Random inspections of facilities of these trusted shipper programs could be conducted in order both to strengthen security confidence and to reduce the need for border inspections.

## Prospects for Improving and Expanding Preclearance

In May 2009, US Secretary of Homeland Security Janet Napolitano and then-Public Safety Minister Peter Van Loan pledged "to leverage resources where possible by exploring models for joint or shared border facilities, equipment, and technology, as well as for cross-designation of personnel as appropriate."<sup>21</sup> The most immediate prospect for progress along these lines consists in building on the two most prominent existing preclearance initiatives: NEXUS and FAST. The two governments can

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20 Canadian and US military personnel have built extensive networks of trust as a result of liaison and other exchange programs. Many senior Canadian and US military officers can point to an operational assignment in a unit in the other country as part of their career development. The result is a high degree of interoperability, evident in recent military operations in Iraq, Afghanistan and the Persian Gulf.

21 Joint statement on the Canada-US border, May 27, 2009, accessed at <http://www.publicsafety.gc.ca/media/nr/2009/nr20090527-eng.aspx>.

consider a number of improvements to make them both more user-friendly and secure, including:

- Standardizing the programs in both countries and providing for mutual recognition of FAST- or NEXUS-approved shippers and travelers in either country, as agreed in 2008 but not yet fully implemented. Preclearance will work best on the basis of integrated, standardized data, shared by agencies on both sides of the border, but will require a commitment to much enhanced interagency cooperation to reduce the silo effect. To make the land-border preclearance programs fully effective, all agencies on both sides of the border need to be on the same page. CBSA and CBP need to work out mutually satisfactory operational policies, standards and procedures for trusted shipper programs and integrate them into two fully compatible online systems. A single portal to access both systems would be ideal. The temptation to develop and maintain unique systems must be avoided at all costs. In addition, the data and information requirements of the Food and Drug Administration (including the APHIS and FSIS) and the Canadian Food Inspection Agency, and others need to be fully compatible with and integrated into the core data programs administered by CBSA and CBP.
- Providing 24-hour service for all requirements at ports of entry that offer FAST-approved transit, a service that may be more easily extended at medium-sized points of entry through shared facilities, co-location, and cross-designation. Border crossings that offer 24-hour CBSA and CBP inspection, but provide APHIS, FSIS, FDA, CFIA, or other agency inspections over more limited hours, are a major source of industry dissatisfaction. Full integration of border procedures, particularly at FAST sites, should include all required inspectors, either by extending their hours or delegating their responsibilities to CBSA and CBP officers during off-peak hours.
- Reducing the cost of gaining FAST or NEXUS status. A frequently voiced complaint is that the costs – both direct and indirect – are in many

cases not commensurate with the benefits. In calculating costs, the two governments should take into account that a larger uptake in these programs will reduce the need for costly at-the-border clearance procedures. Cost and efficiency are also more than a matter of cost and efficiency for governments. Perhaps even more important are the costs to users and the long-term effects of such programs on trade and investment patterns, part of which flow from the direct and indirect costs to major users of the border, as well as the nuisance factor – real or perceived – and their impact on both frequent and casual users of the border. If trusted shipper or traveler programs fail to meet interests, then frequent border users will not join them, thereby undermining the purpose of these programs in enhancing information flows to strengthen informed risk assessment.<sup>22</sup>

- Reducing border-related fees for FAST participants. Having made an investment in becoming first a PIP or C-TPAT member and then FAST eligible, participants expect the payoff to include not only expedited border clearance but also a reduction in the growing number of fees. Many of these fees are based on each individual movement, already placing truck-based trade between Canada and the United States at a disadvantage compared to marine-based trade from other parts of the world. The burden is particularly high for the integrated cross-border production of goods. As the automotive industry has pointed out, a shipload of 4,000 cars from Japan or Korea faces the same fee as a trainload or truckload moving from Windsor to Detroit. That train or truck contains cars that have already paid fees many times over as components crossed back and forth, adding considerably to the cost of doing business across the border. Imposing a fee on industrial users to pay for APHIS services is little more than a disguised border tax and is unlikely to meet a World Trade Organization challenge.
- Relying increasingly on post-movement auditing for compliance with routine customs and regulatory requirements. Most of these requirements have little to do with public safety and risk, and are analogous to normal domestic

<sup>22</sup> For a more detailed discussion of possible improvements of FAST, see W. Anderson (2010).

regulatory requirements that are subject to routine inspection and verification. Border inspection provides a convenient way to verify regulatory compliance, but can in many instances be discharged through post-movement audits, particularly for enrollees in trusted shipper programs.

- Working with state and provincial governments to implement and market enhanced driver's licences (EDLs).<sup>23</sup> Under the US Western Hemisphere Travel Initiative, enhanced driver's licences are a preferred document for border crossers. In states and provinces that offer them, the uptake has been much higher on the US than on the Canadian side of the border. The information embedded in EDLs is similar to that in NEXUS cards and thus contributes to faster border passage and lower risk.
- Integrating NEXUS with the more widely applicable US Global Online Enrollment System (GOES), the SENTRI program for the Mexico-US border, and the Fast Low Risk Universal Crossing (FLUX) program being developed by a number of participating countries. The proliferation of an alphabet soup of trusted traveler programs is confusing and costly. NEXUS-approved travelers should be eligible to enter at any NEXUS- or GOES-enabled port of entry in either country on the basis of their NEXUS status. Canada should investigate the benefits of the GOES and FLUX programs and participate.
- Ensuring that both NEXUS and FAST are available at as many land ports of entry as can justify the cost of the necessary additional equipment, with either dual purpose or exclusive NEXUS and FAST lanes available at these points of entry. Industry spokesmen note that there are more FAST lanes available for southbound than northbound traffic. This may also require Canada to invest more rapidly in RFID technologies, preferably technologies that are wholly compatible with existing US technologies. Compatibility is critical to the need to develop and maintain cross-border trust.

- Relying on jointly administered perimeter clearance programs, as outlined above, for all shipments originating in third countries, and eliminating redundant secondary inspections at the land border, other than for cause, such as evidence of tampering with seals.

To make the FAST program attractive to more users and increase the number of shippers whose precleared status reduces the need for routine inspection at the border, the two governments could experiment with some additional features, including:

- Establishing a tiered approach to FAST status, allowing some shippers and carriers now not considered eligible to start at a lower level and graduate to a higher level once they have established a record of compliance. For-hire carriers of less-than-full loads, for example, are currently unable to participate. A tiered system would also provide scope for a more realistic approach to enforcement, allowing penalties to suit the severity of the infraction. Sanctions need to be sufficiently severe to deter rogue behavior and to encourage high levels of compliance, but not so high as to discourage participation.
- Upgrading the benefits for well-established FAST participants by introducing a Green-FAST Lane as a pilot project at one of the major points of entry, offering FAST-approved shippers with a clean record a presumption of rapid transit and no secondary inspections except in clearly defined and rare circumstances, and for cause.
- Providing for factory-gate clearance of shipments that attract a higher level of secondary inspections and thus develop a higher level of trust. For example, FAST-approved shippers of food and other products subject to consumer safety requirements experience a high level of redundancy, required to satisfy not only CFIA and Health Canada inspectors in their plants, but CBP and APHIS/FIS/FDA inspections at the border, and vice versa. This would also be a good area to experiment with expanding preclearance by relying on reverse inspection protocols at the factory or warehouse gate; i.e., CFIA inspects food products for the US in

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23 There have been some glitches with EDLs, particularly problems arising from privacy concerns and database integrity (CBC 2009). The solution is to ensure that all databases are used for their intended purpose only. This is achieved by clear doctrine and training, and effective oversight by line managers.

Canada and APHIS/FIS for Canada in the United States, at specified sites away from the border, reducing the need for US and Canadian officials to operate in the other country.

Protocols providing for reverse inspection already exist to some extent, but could be expanded to cover more products and circumstances and reduce redundancy.

- Accelerating the establishment of shared facilities at smaller points of entry in order to reduce costs and promote a culture of mutual trust and cooperation.
- Introducing a formal program of cross-accreditation of US and Canadian border personnel, particularly at shared facilities. Again, working together can contribute to the development of a culture of trust.
- Introducing one or two pilot projects that rely on reverse inspection protocols for all cargo or for certain kinds of cargo, e.g., automotive parts and components, which form part of well-established supply chains. Deploying tamper-proof seals on this kind of cargo to ensure its integrity from factory gate to destination would further enhance security.

Longer-term, pursuing a number of steps that would either eliminate or simplify customs clearance can steadily reduce the need for customs-related inspection and data processing. For example, cumbersome rules of origin can be eliminated for all goods for which the difference between the Canadian and US tariff levels is less than 2 percent.<sup>24</sup> The two countries can further reduce the need for rules of origin by harmonizing as many tariff lines as possible to the lower of either the US or Canadian level. Most tariffs now reflect an earlier era of industrial organization (Hart and Dymond 2008) and serve neither politically nor economically persuasive goals; in an era of floating exchange rates,

currency fluctuations have significantly larger impacts than the protection afforded by remaining tariffs on industrial products.<sup>25</sup>

Similarly, the two governments could take a more aggressive approach to regulatory cooperation and mutual recognition and reduce remaining differences between US and Canadian domestic product and consumer safety regulations (Hart 2006 and Hart 2009). Regulatory convergence should contribute both to trust-building and to reducing the burden of border administration. Canada should review its regulations in critical sectors and take unilateral action wherever the tyranny of small differences increases costs with small, if any, benefits to producers and consumers. A good decision rule to apply in both countries in considering new or amended regulations is to require justification for any regulations that are not compatible with those in the other country (Hart 2006 and Macmillan 2008).

More generally, there are some important areas where Canadian customs administration can be upgraded to ensure greater compatibility between Canadian and US programs and practices.<sup>26</sup> Given the extent and importance of cross-border trade and investment to Canadian economic well-being, and its asymmetric nature, a presumption that Canada will adopt US best practices and thus avoid future headaches would seem a prudent default position, provided, of course, that these practices are cost-effective and operationally functional. The idea that Canada should adopt made-in-Canada technologies and practices, while often superficially attractive, has typically proven to be a recipe for additional costs, direct and indirect, and future frustration. The extent to which there remain serious incompatibilities between Canadian and US advance-cargo information systems provides a good example. The sooner these incompatibilities are resolved, the sooner some of the improvements discussed in this paper can be pursued and implemented.

24 For a recent discussion of the benefits that can flow from reducing rules-of-origin requirements, see Hayman and Storer (2010).

25 G. Anderson (2010) sets out a number of additional reforms that can be undertaken to simplify customs procedures and requirements.

26 For example, Canada remains on the USTR watch list for its inadequate attention to counterfeit goods arriving from third countries. It is difficult to develop greater cross-border trust and confidence in circumstances that allow a Canadian company to import, legally, questionable brake pads from China, repackage them and then re-export them to the United States in boxes that identify them as brake pads from Canada. US Customs, understandably, considers them to be counterfeit goods and the Canadian re-exporter to be engaged in fraud; it expects Canadian authorities to take steps to interdict the goods coming from China and bring charges to the Canadian re-exporter. Such is currently not the practice. Veterans of Canadian cross-border business recount these and other examples suggesting that there is room for Canada to address some of these issues on a pre-emptive basis.

Finally, with a view to engaging frequent users and building inter-agency and cross-border confidence, the two governments could appoint a joint, independent commission to provide the two governments with advice on implementation and other issues and provide users with a place to voice complaints. Such a commission should enjoy quasi-judicial status and be able to hear complaints from users on abuses of trusted shipper and traveler programs. Denial of status or demotion to a lower level could then be subjected to challenge and review and strengthen user confidence in the programs. It could also be used to review programs, hold hearings and single out areas for improvement. Canada and the United States have gained considerable benefits from such joint tribunals as the Permanent Joint Board on Defence and the International Joint Commission, each of which has contributed to providing the two governments with sensible advice on the maintenance of joint programs and interests. Given the critical importance of the border to their security and economic well-being, a similar tribunal should pay even larger dividends.

In the medium term, the objective should be to create a modern border that meets the needs of a modern supply chain, staffed 24/7 by representatives of all necessary border agencies from both countries. Most shippers and travelers would cross the border on the basis of well-functioning preclearance programs at major ports of entry; i.e., on the basis of pre-established risk profiles, prior electronic documentation, post-movement audit of routine customs requirements and continuous electronic monitoring for compliance. Only unknown, casual users would then require routine inspections and assessments at the border. The level of secondary inspections extended to regular users would depend on their preclearance profiles, which in turn should be made subject to challenge and oversight by a jointly administered quasi-judicial commission.

### **Trust and the Canada-US Border: Harnessing Political Will**

In the absence of confidence that both governments are prepared to make every effort to meet each other's most important objectives, there is unlikely to be progress in expanding preclearance. The ability to

expand joint programs such as NEXUS and FAST and to rely more and more on these and similar preclearance programs depends critically on the confidence that each government is prepared to extend to the other's application of such programs. It will require that key leaders commit to a culture of trust and ensure that their principal subordinates extend that trust to the working levels on both sides of the border. Lack of trust, on the other hand, will lead to an ever-expanding demand for resources and an erosion in the goodwill of the two countries' best corporate citizens. Without that goodwill, costs will escalate and security will suffer.

The ideas discussed in this paper are not new. They represent the collective wisdom of users and analysts of the border alike. Working them out in more detail may require extensive discussion and experimentation, based on a will to succeed. The critical ingredient needed to implement them, however, will be the same as that which explains the extraordinary level of cooperation that has long existed between Canada and the United States: that ingredient is trust. In the absence of a clear political commitment to explore the benefits of expanded preclearance and related collaborative programs, it will prove impossible to motivate the respective operational managers on both sides of the border to develop new strategies and convince middle managers to implement them. Progress will require leadership and demonstration that the two governments have the requisite trust in each other. Only then will it prove possible to instill the same sense of trust and collaboration in senior and middle managers who are critical to working out the details of joint and collaborative programs and putting them into effect.

For more than a century, Canadians and Americans have worked together to resolve common issues, based on the simple calculus that their interests intersect at so many points that it is hard to envisage solutions that do not involve cooperation. The geography of North America alone dictates that the territory of neither country can be fully defended without the active cooperation of the other. Similarly, intricate and intimate economic and family ties have created a dense web of day-to-day connections and interactions among Canadians and Americans. In response, the two governments have developed a long history of working together; the glue holding this

remarkable record together has been trust, a level of trust that has inspired political leaders in both countries to put aside narrow, immediate concerns and insist on joint solutions, and a level of trust that underpins the routine of thousands of officials in both countries as they go about managing and administering the hundreds of bilateral accords, understandings and institutions that make the Canada-US partnership a daily reality.<sup>27</sup>

Most Canadians and Americans see nothing extraordinary in this record. They regard it as a natural expression of their proximity and affinity for each other. While there are those in both countries who revel in celebrating differences, the truth is that there are no two other societies on earth as closely, and as comfortably, aligned and intertwined as Canada and the United States.

Despite the tremendous assault on trust and confidence resulting from the terrorist attacks of September 11, 2001, Canadian and American leaders came together to mandate the search for new solutions sensitive to this new, more menacing context in the 2001 Smart Border Accord and the 2005 Security and Prosperity Partnership. The new programs developed after 9/11 represent a major achievement, but remain works in progress.

## Conclusions

Preclearance already has a track record of success where it has been applied. It has proven to be a cost-effective way to provide air travelers with an economically efficient way to clear customs and immigration before entering the United States from Canada. EU members are satisfied that they have succeeded in guarding their security while promoting an integrated single market by relying on a perimeter approach to preclearance. Canada and the United States are relying on preclearance as the basis of trusted traveler and shipper programs. Building on these successful models, Canada and the United States should now proceed to designing and implementing more ambitious programs that rely on preclearance as a cost-effective way to ensure both a

secure and an economically efficient border for most travelers and shippers crossing by land.

Getting there, however, will require a determined effort to get beyond conventional wisdom and bureaucratic silos. The current division of administrative and political responsibilities makes it very difficult for the two governments to get beyond current practice. To overcome this problem, the two governments should each appoint a special envoy reporting directly to the President or the Prime Minister through the Secretary of Homeland Security or the Minister of Public Safety, respectively, with a mandate to develop a coherent, joint program of land preclearance as discussed in this *Commentary*

Given the recent global economic downturn, reducing border costs and facilitating the movement of low-risk goods and people should contribute to faster economic recovery. This can be accomplished by expanding participation and delivering measurable benefits through existing trusted shipper and traveler programs and introducing new, trusted programs based on operational consensus between the two countries' security specialists. Improvements such as providing 24/7 access and border services at major crossings, implementing an integrated "single window" or portal for entering all border-related importing and exporting data, and differentiating between regulatory compliance and risk, should also contribute to better security outcomes.

The land, sea, and air border points are shared strategic facilities, part of each country's critical national infrastructure. Designing the best way to deploy and protect these facilities needs increasingly to recognize that the management and strategic planning of the border must be a bilateral responsibility. The cooperative management model has worked well for everything from military security to the reduction of acid rain. This model has served, not impinged upon, both countries' national security interests. A similar relationship of trust, with a long-term vision, needs to be applied at the shared border. There is no better way to recognize and bridge security and trade facilitation concerns and interests than to work side-by-side on both the management and the delivery of border security.

<sup>27</sup> Some 400 of the nearly 700 treaties, memoranda, agreements and arrangements forged over the years remain in force, ranging from the protection of migratory bird species to the establishment of joint customs facilities.

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