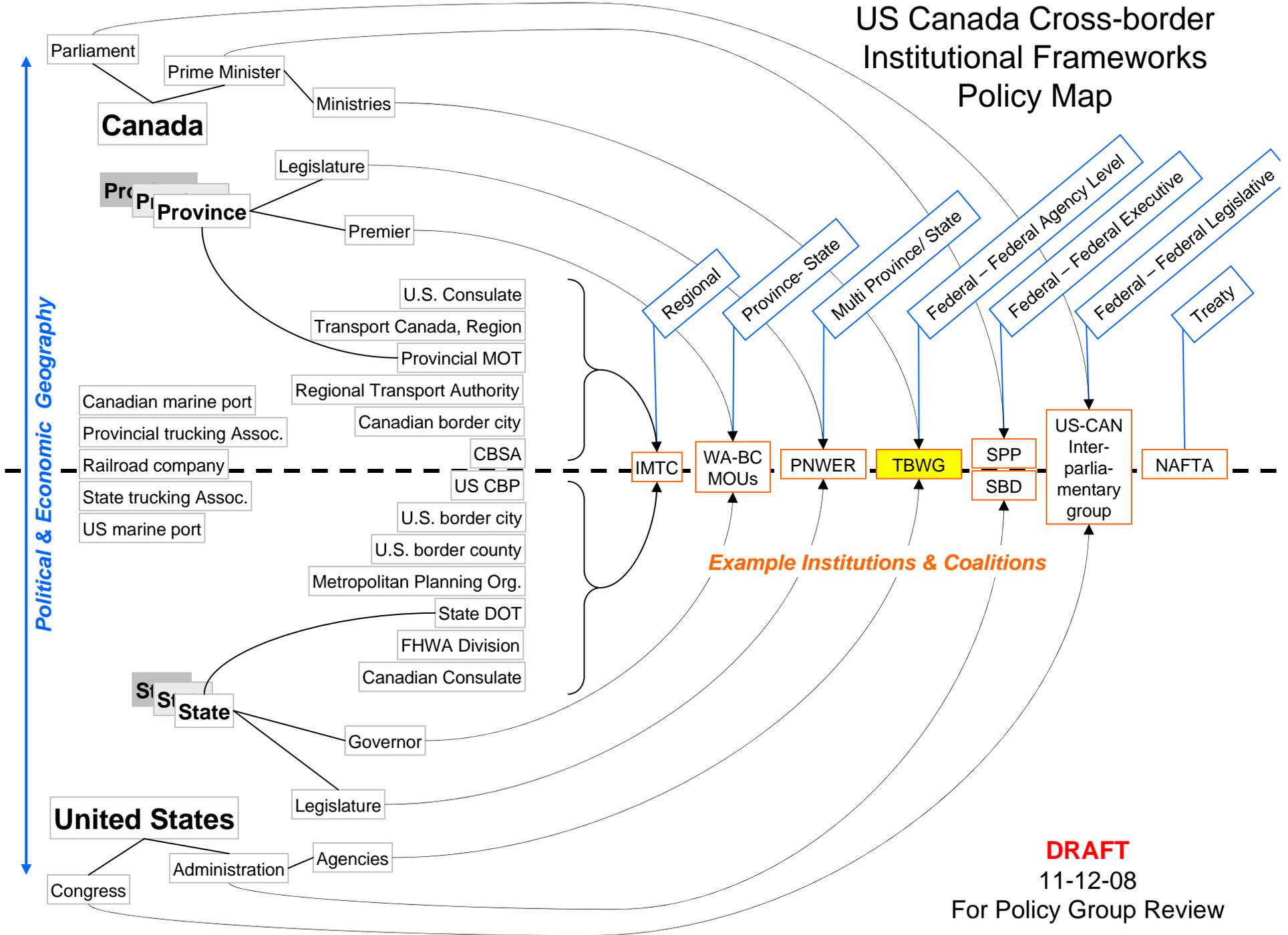


**TBWG Policy Subgroup  
Issues & Status List  
Updated: November 14, 2008**

<b>Objective 1</b>		<b>Monitor the interaction of binational, TBWG objectives and national agency policies.</b>		<b>ACTOR Full TBWG</b>
<b>Issue</b>		<b>Related Action Plan Objective</b>		<b>Status</b>
1.1	U.S. Western Hemisphere Travel Initiative	All		Active
1.2	Security Prosperity Partnership	All		Active ITS, Border Infrastructure, Cross-border cargo
1.3	US FHWA's Transportation Border Congestion Relief (TBCR) program and US DoT's National Strategy to Reduce Congestion	Planning & Programming		Active
1.4	Canada's Gateway & Corridor Initiatives (3) (link below)	Planning & Programming		Active <a href="http://www.gateway-corridor.com/">http://www.gateway-corridor.com/</a>
1.5	Smart Border Declaration	All		Idle
<b>Objective 2</b>		<b>Assess the fit of existing policies with TBWG Action Plan objectives.</b>		<b>ACTOR Policy Subcommittee</b>
<b>Issue</b>		<b>Related Action Plan Objective</b>		<b>Status</b>
2.1	Develop a cross-border transportation institutional policy map.	Policy		Active Draft template to document policy assessments. <a href="http://resources.wcog.org/border/tbwgPolicyMap.pdf">http://resources.wcog.org/border/tbwgPolicyMap.pdf</a>
2.2	Develop a Cross-border Arrangements Toolkit to give working examples of US-Canada mechanism for facilitating planning & programming, operations, information sharing, infrastructure, emergency response, etc.	Policy		Active Document online at: <a href="http://docs.google.com/Doc?docid=dhtvqxqx_Or6gsxm&amp;hl=en">http://docs.google.com/Doc?docid=dhtvqxqx_Or6gsxm&amp;hl=en</a>
2.3	U.S.-Canada information-sharing policies/privacy rules etc. affecting ITS initiatives.	Technology		Pending Will evaluate need based on BIFA.
2.4	U.S. & Canadian intermodal strategies	Planning & Programming		Pending U.S. and Canadian strategy proposals have not advanced cross-border intermodalism to the extent that past binational initiatives have envisioned. <a href="http://ostpxweb.dot.gov/freight_policy_framework.html">http://ostpxweb.dot.gov/freight_policy_framework.html</a> <a href="http://www.councilofthefederation.ca/pdfs/NTS_Booklet.pdf">http://www.councilofthefederation.ca/pdfs/NTS_Booklet.pdf</a> <a href="http://www.dot.gov/affairs/dot5706.htm">http://www.dot.gov/affairs/dot5706.htm</a>
		Current policy document links: <i>USDOT Framework for a National Freight Policy Looking to the Future: A Plan for Investing in Canada's Future (Dec05); Council of the Federation</i>		
		<i>USDOT National Strategy to Reduce Congestion on America's Transportation Network, May06</i>		
2.5	2006 trilateral Declaration regarding a North American shortsea shipping strategy & this documents' specific mention of "cross-border short sea shipping business case proposals from industry." (link below)	Planning & Programming		IDLE <a href="http://www.tc.gc.ca/POL/EN/acf/shortseaS/namc2006/declaration">http://www.tc.gc.ca/POL/EN/acf/shortseaS/namc2006/declaration</a>
2.6	Binational project administration: guidance on navigating regulations, permitting, contracting, and other functions in a cross-border environment.	Planning & Programming		Complete <a href="http://ebtc.info/PDF/consultationguide.pdf">http://ebtc.info/PDF/consultationguide.pdf</a>
2.7	Compilation of policies affecting cross-border transit	Planning & Programming		Pending Possible interest in regional assessments of Detroit-Windsor and BC-WA
<b>PURPOSE 3 (Ties to Action Plan policy section)</b>		<b>Assess the fit of new and proposed policies with TBWG Action Plan objectives.</b>		<b>ACTOR Policy Subcommittee</b>
<b>Issue</b>		<b>Related Action Plan Objective</b>		<b>Status</b>
3.1	Emerging national freight policies: U.S. National Freight Policy & Canadian Multi-modal plan.	Planning & Programming		Pending (see links under 2.7)
3.2	Economic recovery programs	Planning & Programming		Monitoring
3.3	Greenhouse gas emissions reduction policies	Planning & Programming		Monitoring <a href="http://resources.wcog.org/border/tbwgWA-BCGreening.pdf">http://resources.wcog.org/border/tbwgWA-BCGreening.pdf</a>
3.4	Trilateral Transportation Ministerial Declaration - Meech Lake QB, June 10, 2008	Planning & Programming		Monitoring <a href="http://www.tc.gc.ca/mediaroom/statements/2008/2008-06-10.htm">http://www.tc.gc.ca/mediaroom/statements/2008/2008-06-10.htm</a>
		<i>Link to media statement</i>		
2.8	Pre-clearance 2005-2007 CBSA-US DHS negotiations to establish highway pre-clearance for trucks and implement at Buffalo-Fort Erie. Negotiations unsuccessful.	Planning & Programming & BIFA		IDLE US GAO report linked below: <a href="http://www.gao.gov/new.items/d081038r.pdf">http://www.gao.gov/new.items/d081038r.pdf</a>
2.9	Pre-clearance; Rail			IDLE

<b>PURPOSE 4 (Ties to Action Plan policy section)</b>		<b>Evaluate research by a variety of entities for inclusion, as appropriate, in the TBWG dialog.</b>		<b>ACTOR Research Institutions</b>	
<b>Issue</b>		<b>Related Action Plan Objective</b>		<b>Status</b>	
4.1	FHWA study on economic impact of border delay	Policy Subcommittee & all		Active	
4.2	Industry Canada study: Cross-border Flow Analysis - Value Stream Mapping	Policy Subcommittee & all		Active (rfp)	
		text of RFP		<a href="http://resources.wcog.org/border/tbwgFlowRFP.pdf">http://resources.wcog.org/border/tbwgFlowRFP.pdf</a>	
4.3	System consequences of observed and forecasted trends in Canada-U.S. trade, trade policy, economies, etc.	All		Ongoing	
4.4	Environmental issues at/near land-border ports of entry (i.e. air quality)	All		Ongoing	
<b>PURPOSE 5 (Ties to Action Plan policy section)</b>		<b>Suggest research topics, for possible undertaking by external research bodies.</b>		<b>ACTOR Research Institutions</b>	
<b>Issue</b>		<b>Related Action Plan Objective</b>		<b>Status</b>	
5.1	Intergovernmental agreements between states and provinces.	Policy subcommittee		Underway	
		<i>Project overview &amp; initial findings</i>		<a href="http://resources.wcog.org/border/tbwgCUSLIRearch.pdf">http://resources.wcog.org/border/tbwgCUSLIRearch.pdf</a>	
5.2	Advise research bodies (WWU BPRI, etc.)	All		Ongoing	
5.3	A compilation of border-delay studies.	Planning & Programming		Complete	
5.4	Port-by-port operational review and summary—with regard to U.S.-Canada operational symmetry.	Planning & Programming		Pending	
5.5	Research impacts of policy changes on border operations and resulting impacts on communities and industry sectors	All		Pending (ties to econ study 4.1)	
5.6	Conduct a test of the use of scenario-planning tools for border communities	Planning & Programming		Pending	

# US Canada Cross-border Institutional Frameworks Policy Map



**DRAFT**  
 11-12-08  
 For Policy Group Review

Statement

CANADA-MEXICO-UNITED STATES

Trilateral Transportation Meeting

Meech Lake, Québec
June 10, 2008

MINISTERIAL DECLARATION

Efficient and integrated transportation systems have been a vital underpinning of the North American success story. Indeed, these systems have supported unprecedented trade flows and have helped to define the strength of our position within the global economy.

Ensuring that the benefits that have accrued with the NAFTA endure requires our ongoing commitment to enhance the safe, secure, and efficient flow of goods and people, but will also need a continued focus on sound policies and strategic approaches to the continental transportation system in order to facilitate trade and economic growth among our countries.

Recognizing this, we, the Ministers responsible for transportation in North America, convened our first meeting in Tucson in 2007 in order to better coordinate compatible transportation policies and systems.

Already, real strides have been made:

- We are working to enhance safety across transportation modes and to share best practices.
• On trade facilitation, our governments have launched important national transportation infrastructure initiatives that, taken together, will develop our gateways and trade corridors, better allowing us to maximize the opportunities associated with global supply chains.
• Canada and the United States have strengthened collaboration to enhance crossing capacity at the Windsor-Detroit Gateway, while the United States and Mexico have taken important steps toward fulfilling components of the NAFTA's trucking provisions.
• Canada and the United States signed an Open Skies agreement in 2007.
• To improve regulatory cooperation and information exchange, the United States has designed a system to provide early notification to Canada and Mexico of the United States Department of Transportation rulemaking in progress.

To build on these achievements, at Meech Lake we engaged in discussions to explore future enhancements to North America's transportation system and shared perspectives on the challenges of infrastructure renewal.

NEXT STEPS

We reaffirm today the objectives set in Tucson, namely: (1) to continue to improve the safety, security, and efficiency of North American transportation systems; (2) to ensure the adoption of new technologies and procedures, and investments in infrastructure improvements; (3) to improve intermodal connections; and (4) to expand the capacity of our freight and passenger transportation systems in partnership with other stakeholders, while minimizing transportation's effect on the environment.

- We have identified the harmonization of vehicle safety regulations, such as "electronic stability control," to serve as a pilot project to study the feasibility of a joint regulatory cooperation among the three countries, taking into account cost-benefit analyses, while, further to their Memorandum of Cooperation on Motor Vehicle Safety, Canada and the United States will identify additional specific areas for collaborative regulatory research geared toward improved crash avoidance and crashworthiness of light and heavy-duty vehicles and harmonized regulations at the bilateral and multilateral levels.
• Working to find ways to reduce congestion at major border crossings, Canada, Mexico, and the United States will undertake pilot projects using a new framework to guide the implementation of intelligent transportation systems technology at border sites designated as priorities by each country pair.
• We recognize the importance of supporting and promoting strategic infrastructure projects at borders to improve competitiveness of North America. Close coordination/cooperation is key to the successful development of these projects.
• In the area of regulatory cooperation, our officials will convene a trilateral multimodal regulatory cooperation meeting in the coming months to discuss the United States Department of Transportation's recent pre-notification innovations and other potential collaborative strategies.
• Under the NextGen Trilateral Strategy Group (NTSG) of the North American Aviation Trilateral, we will, through our respective aviation agencies or organizations, identify the current status of continental NextGen key capabilities in order to make recommendations on harmonization, priorities, and pilot projects.
• We will continue to share research, information, and lessons learned on Public Private Partnerships and other innovative infrastructure finance and development approaches so as to enable, facilitate, and encourage the use of private capital.
• Finally, we recognize that improving freight mobility is one of the keys to maintaining our competitive position in a globalized economy and we are developing policies, programs, and strategies to enhance the efficient movement of freight.

CONCLUSION

We, the Ministers responsible for transportation in North America, recognize that the challenges and opportunities of trade and transportation require our sustained attention in order that we may effectively anticipate future transportation needs, and assure North America's place in global trade.

passenger primary inspection lanes and booths, which is the standard for a large port of entry, according to CBP officials. In addition, DHS stated that shared border management would have also enabled informal information sharing between U.S. and Canadian border inspection officials because the inspection facilities would be located adjacent to each other. According to the PBA, another benefit of shared border management was that constructing a new U.S. inspection facility in Fort Erie would cost approximately \$100 million less and take less time than expanding the inspection facility in Buffalo. Local community officials we spoke with also noted that relocating the U.S. inspection facility to Fort Erie would allow for better accommodation of future growth or new security measures that may be added, as more space is available for facility expansion.

### **The United States and Canada Were Unable to Find an Acceptable Framework for Shared Border Management**

According to U.S. and Canadian officials, shared border management negotiations were terminated in April 2007 because an acceptable agreement that would satisfy both countries could not be accomplished. Specifically, DHS stated that it would not have been able to exercise the same law enforcement authorities in Canada that it currently has at ports of entry in the United States. Officials from both countries agreed that negotiations were conducted in good faith, and the two governments were able to reach accommodations on several key issues raised during the negotiations. For example, all of the authorities sought by Canada for its preclearance area—which would have been located on U.S. soil—could be provided with minimal changes to U.S. laws, according to DHS. Another issue that was resolved was the arming of CBP officers at the preclearance site. When negotiations began in 2005, CBP officers would not have been permitted to carry firearms at the preclearance site because Canadian border officers did not carry firearms. This was a concern for U.S. officials because CBP officers carry firearms at U.S. ports of entry. During negotiations, this issue was resolved as a result of a change in Canadian government policy that permitted the arming of Canadian border officers which allowed for the arming of CBP officers, according to Canadian officials.

Despite agreement on the authorities sought by Canada and the arming of CBP officers, officials stated that an acceptable agreement that would satisfy both countries' sovereignty could not be accomplished. According to DHS, the overarching issue was the subordination of U.S. law enforcement personnel and authorities to Canadian law rather than U.S. law and the inability to ensure necessary U.S. law enforcement authorities under Canada's legal framework. One of the guiding principles of shared border management was that the inspecting country's operations would be consistent with the constitutional and legal frameworks of the host country. However, DHS officials stated that for shared border management to meet their requirements, U.S. border inspection personnel would require full legal authority, comparable to that provided under U.S. law, to replicate the inspection and enforcement activities DHS engages in today. DHS officials stated that operating under Canadian law would have limited DHS's ability to manage and secure the border. The following are key issues that surfaced during negotiations:

- **Arrest authority:** According to officials from both countries, the host country would have sole authority to make arrests at the preclearance site, because of the sovereignty of the host government. These officials stated that for the majority of possible scenarios, negotiators agreed on how these arrests might work. However, U.S. officials told us they were concerned that the U.S. government would not have the ability to arrest and then prosecute high profile/high value terrorists or criminals who might present themselves at the border. For example, if a high value target of interest to the United States presented himself at the preclearance site, U.S. authorities could not arrest him; rather, Canadian authorities would make the arrest. The individual would then have to be extradited to the United States for prosecution. Canadian officials told us that they offered the United States the ability to prioritize cases in order to expedite the extradition process in such circumstances.
- **Right of withdrawal:** Under Canadian law, individuals have the right to withdraw an application to enter Canada at a port of entry, according to Canadian and U.S. officials. For example, in a land preclearance scenario if an individual begins the inspection process at the port of entry and then decides that he or she no longer wants to enter into Canada, under Canadian law that person has the right to withdraw from inspection. However, U.S. negotiators wanted the ability to inspect and fingerprint individuals who present themselves to CBP officers for admission into the United States and then request to withdraw their application to enter the country. Under U.S. law, CBP officers have the discretion to allow an individual they have determined to be inadmissible to withdraw an application for admission in place of formal removal proceedings, but the individual does not have the right to withdraw from inspection and fingerprinting. U.S. officials stated that they were strongly opposed to providing a guaranteed right to withdraw because doing so could allow individuals to "probe for weaknesses" at the preclearance site. According to Canadian officials, they proposed an alternative whereby U.S. Customs and Border Protection would be permitted to search and question individuals who request withdrawal, but not take fingerprints. To address this point of disagreement, Canadian officials stated that they offered U.S. negotiators a compromise position whereby Canadian border authorities would investigate any suspicious person who requests withdrawal. However, U.S. officials told us that this approach was not satisfactory. Officials from both countries noted that the right of withdrawal issue was a major issue during negotiations.
- **Fingerprinting:** According to officials involved, both countries differed on how and when fingerprints could be taken at the preclearance site. Currently, CBP has the authority to fingerprint any individuals who present themselves to CBP officers for admission into the United States, and CBP wanted to maintain this ability at the preclearance site. For example, CBP may fingerprint individuals who cross the border to determine if a person may be a wanted felon. However, according to Canadian officials, in a land preclearance scenario, fingerprints could not be taken unless the individual volunteers or has been charged with a crime. According to Canadian officials, they proposed that CBP would have the ability to take fingerprints only if certain criteria had been met. According to officials involved in the

negotiations, this was not a viable alternative to U.S. negotiators, and this issue was not resolved.

- **Information sharing:** According to officials from both countries, there was disagreement over how information collected by U.S. officials at the land preclearance site could be shared. U.S. officials told us they wanted to maintain the ability to share information collected at the preclearance site with appropriate U.S. law enforcement agencies, which they can do under U.S. law. However, Canadian officials told us that the ability of U.S. authorities to share information collected in Canada would be guided by Canadian laws. As a result, under Canadian law, DHS would not be permitted to share all information collected at the preclearance site with U.S. law enforcement agencies, according to DHS officials.
- **Canadian Charter:** According to DHS officials involved in the negotiations, future interpretations of the Canadian Charter could adversely impact U.S. authorities at the preclearance site. In addition, DHS officials stated that the Canadian Charter, as it has been interpreted by Canadian courts, would limit the use of certain law enforcement tools available to CBP. For example, under U.S. law, CBP officers can search individuals, conveyances, and cargo at the border without a warrant or probable cause. However, according to Canadian officials, under Canadian law, reasonable grounds are needed to conduct searches. According to DHS, these limitations would make it difficult for CBP officers to fully carry out their duties.

Officials from both countries stated that these issues could not be resolved through negotiations because operating a U.S. port of entry in Canada under land preclearance/shared border management would have required the United States to abide by Canadian law—which U.S. officials stated would have limited the ability of U.S. law enforcement personnel to secure the border. DHS wanted to operate the shared border management facility according to the same standards as all other U.S. ports of entry, but to operate in Canada would have meant that those standards could not have been achieved, according to officials from both governments.

According to officials from both countries, the best way to address U.S. concerns related to having a U.S. inspection facility located on Canadian soil would be to conduct what they termed a “land swap.” Under a land swap, the United States would be granted land in Canada to place the inspection facility and Canada would be granted reciprocal land in the United States for placement of its inspection facility. Since the U.S. inspection facility would therefore be technically located on U.S. soil, CBP would be able to conduct its inspections with full U.S. legal authority and could operate the port of entry according to the same standards as all other U.S. ports. However, both U.S. and Canadian officials told us a land swap was never seriously pursued as an option because of the legal and political issues involved. Therefore, officials involved in the negotiations did not believe this was a realistic possibility.

In June 2008, Canadian and U.S. officials told us there are currently no plans to re-open negotiations regarding shared border management at the Peace Bridge site. With the conclusion of the negotiations, the PBA, with the support of DHS, is moving forward with its plans to improve and expand the U.S. inspection facility in Buffalo. According to the PBA, the timeline for beginning construction on the new facility has not been finalized.

We provided a draft of the report to DHS for its review and comment. CBP provided technical comments, which we incorporated as appropriate. We also met with relevant officials within the Canadian Government who confirmed the accuracy of the report and provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the Secretary of Homeland Security. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8777 or by e-mail at [Stanar@gao.gov](mailto:Stanar@gao.gov). Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in the enclosure.



Richard M. Stana  
Director, Homeland Security and Justice Issues

Enclosure

 The Government of Canada is now providing funding so that potential suppliers can access electronic documentation relating to federal opportunities on the Government Electronic Tendering Service (GETS) free of charge. GETS supports the federal government's sustainable development practices as it encourages moving procurement from a paper-based to an expanded electronic service.

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Associated Components: [Order](#)

Document Request List: N/A

## Cross-Border Flow Analysis - Value Stream Mapping

[Disclaimer](#)

### Header

Reference Number	159062
Solicitation Number	IC400769
Organization Name	<b>Industry Canada / Industrie Canada</b>
Source ID	FD.DP.ON.6876.C49668
Associated Components	Yes

### Dates

Published	2008-09-23
Revised	
<b>Closing</b>	<b>2008-11-03</b> 02:00 PM Eastern Standard Time EST

### Details

Category	Special Studies and Analysis - (Not R&D)
GSINS	B: Special Studies and Analysis
Region of Delivery	National Capital Region
Region of Opportunity	World
Agreement Type	WTO-AGP/NAFTA/AIT
Tender Type	Request for Proposal (RFP)
Estimated Value	\$100,001 - \$500,000
Solicitation Method	Open

**Notice Description****Cross-Border Flow Analysis - Value Stream Mapping**

## 1.0 PURPOSE

Industry Canada (IC) requires services to identify, quantify, and analyze the challenges faced by companies with significant operations in Canada (companies) when they need to cross the Canada-United States border. The services will be required for a period commencing from contract award to October 2009.

## 2.0 TITLE OF PROJECT

Cross-Border Flow Analysis - Value Stream Mapping

## 3.0 BACKGROUND

Increased cross-border trade and the expansion of global value chains are contributing to a higher level of traffic across the Canada-U.S. border (more than a million dollars a minute). On average, there are more than 400,000 people a day crossing the border and one in five jobs in Canada relies on international trade, most of which is with the United States. The efficiency of integrated supply chains that cross the Canada-US border can have a substantial influence on the global competitiveness of North-American companies.

Particularly since 9/11, there is a general perception that the efficient transfer of goods and people across the Canada-U.S. border has become more difficult, resulting in delays and additional costs. Any "thickening" of the border due to the increased volume of trade, wait times, direct fees, and increased inspection times could negatively impact the competitiveness of Canadian industry. Some companies are responding by shifting from just-in-time scenarios to just-in-case scenarios (stockpiling inventories on both sides of the border) and by pre-shipping goods to ensure their timely arrival.

Despite extensive debates on whether borders impact trade and investments, and in spite of anecdotal information regarding border issues, there is a lack of evidence-based research identifying precise challenges and related opportunities for the easing of border challenges.

It has been suggested that some sectors are impacted by stringent security rules that can delay shipments; that safety inspections may cause the loss of contracts due to delays occasioned by the need to obtain test results and safety certificates; and that programs such as the Free and Secure Trade Program (FAST) do not reduce the frequency of secondary inspections. While useful in pointing out the nature of the problems faced at borders, it is not clear whether the available information is representative of the full reality. For this reason, there is a need to obtain an objective evaluation of the frequency, length and cost of transactions at borders, as well as the reason for any delays.

Among the solutions currently being implemented by governments, automatic filing and electronic submissions need to be further developed to ensure compatibility across North American agencies. **Assessing costs and delays at borders in a systematic manner will support the development of these systems by highlighting the potential cost saving and reduction in delays that could be derived from improved communication technologies and regulatory cooperation where appropriate.**

This study will contribute to filling the information gap by providing detailed evidence regarding delays and costs at borders, by identifying weak links in border processes and by considering and assessing the merit of potential solutions to address them.

## 4.0 PROJECT REQUIREMENTS/OBJECTIVES

This study will contribute to identifying the causes of delays at borders and proposing potential solutions to reduce such delays and **transaction costs**. The study will use **Value Stream Mapping**, which is a tool originally developed to streamline a manufacturing production chain by mapping all processes involved in the chain and to identify and address weak links and unnecessary delays. The study will apply this mapping tool to examine the process of exporting a product across the border, from the preparation for border crossing, including notification, to clearing the border. The study will not only identify when delays occur (e.g. at the point of first or secondary inspections); **it will also identify the source of the delay** (e.g. Food and Drug regulations; security rules, etc.).

**Case studies conducted over a period of one month** will enable comparisons across industry sectors on: how government-wide regulatory requirements are applied at borders; whether there is consistency among officers and across industry sectors in the application of regulatory and security requirements; whether regulatory divergence between Canada and the U.S. may cause unjustified delays in certain sectors; and which areas cause more problems and should therefore be prioritized.

In addition, the study will identify challenges and measure delays and costs and evaluate potential solutions/options to improve border management. These options should maintain the security of our borders and, at the same time, minimize the impact of border issues (e.g. delays and compliance measures) on the competitiveness of these value chains.

**The objectives of this project are as follows:**

1. Identify the underlying causes of border challenges (regulatory/logistics/security) that negatively impact the competitiveness of companies.

a. Identify and quantify logistics, security (certification, guidelines) and compliance costs for businesses at the border (including pre-border costs);  
b. Identify and quantify the frequency of secondary inspections and list the type of regulatory issues (e.g. rules of origins requirements, sanitary issues, and information requirements) that lead to secondary inspections.  
Compare the frequency of secondary inspections due to regulatory requirements versus border protection requirements across sectors.  
c. Estimate the duration of delays comparatively across industry sectors.

2. Propose possible solutions (including business strategies, improved logistics, value added services and policy options) to address them (i.e. where are the gaps and what could be done). This will include evaluating whether and how issues leading to secondary inspections could be solved away from the border, or the identification of alternative policy solutions.

3. Understand and assess the value and criticality of maintaining efficient border crossings.

## 5.0 SCOPE OF WORK

Problems and delays at various border crossing points, such as those experienced at the Windsor-Detroit crossing, are affecting companies that rely on secure and seamless borders to maintain their competitiveness, efficient logistical operations and market access.

This project will examine an important issue for industry, that of ensuring an efficient border. **The study will identify and measure challenges and evaluate potential solutions/options to improve border management.** These options need to maintain the security of our borders and, at the same time, minimize the impact of border issues (e.g. delays and compliance measures) on industry's competitiveness.

This project is aligned with Industry Canada's objective of promoting competitive industry. **Identifying top border challenges that negatively impact companies relying on significant cross-border trade will provide critical information for identifying priorities.**

The contractor will select a minimum of seven (7) companies with significant cross-border trade, characterized by varying industries and company sizes, actively engaged in significant cross-border trade. As a proxy for wider sectoral characteristics, companies with networks operating within cross-border supply chains will be selected in order to map out linkages and determine the extent to which border issues affect their competitiveness. Each company will be the focus of a case study outlining, step by step, the shipping process – from the preparation for border crossing, including notification, to clearing the border – across the Canada-U.S. border. Deliverables are described in the next section.

## 6.0 MANDATORY REQUIREMENTS

6.1 The Bidder must provide the curriculum vitae (C.V.) of senior team members along with the supporting personnel whom are proposed to work on this project. Furthermore, the Bidder must identify the CV's of each senior team member(s). Among the senior team proposed resources, the bidder must identify one (1) senior resource that will act as the sole point of contact to IC during the course of the contract. CV of senior resources must provide supporting information demonstrating where and how relevant experience was obtained. The bidder must identify all other resources that are proposed to work on the project and identify their role within the project.

6.2 The Bidder must provide evidence of senior team members and supporting personnel's previous experience in cross border issues (regulatory, security and logistics issues) / value stream mapping to which the team members contributed by providing three (3) relevant reports (such as case studies, economic analysis or value stream mapping, either in the public or private sector) from the last 5 years.

6.3 The Bidder must demonstrate through a detailed work plan, its ability to meet the timelines as outlined in section 6.3, table 2 of the Request for Proposal (RFP).

6.4 The bidder must provide a list which includes the selection of a minimum of seven (7) companies with significant cross-border trade and represent different industrial sectors as identified below and in Part II, section 6.1. **The list of companies must include at a minimum:**

1. Company(ies) from the **food processing** industry;
  2. Company(ies) from the **consumer goods** industry;
  3. Company(ies) from the **service sector** involved in the movement of goods;
  4. Company(ies) from the **motor vehicle sector** (to account for Just-in-Time (JIT) features);
  5. Company(ies) from the **chemicals** sector (to account for exports of goods that could be considered dangerous);
  6. Company(ies) already registered with the Free and Secure Trade Program (**FAST**).
- Additional case studies can be selected by the Bidder in other industry sectors. **Companies should be selected from a cross-section of industrial sectors and geographic regions.** The Bidder must include an engagement strategy

6.5 The Bidder and all senior team members must have a minimum of three (3) years experience in developing case studies, economic analysis or value stream mapping

6.6 The Bidder must provide full cost breakdown as per Section 12 below, Financial Proposal of the RFP.

6.7 The Bidder's financial proposal must not exceed \$325,000.00 (including all applicable taxes and other related expenses, including travel and living expenses).

Furthermore, the cost of the project must not exceed \$200,000 for fiscal year 2008-2009 and \$125,000 for fiscal year 2009-2010 (including all applicable taxes and other related expenses, including travel and living expenses). Any proposal exceeding the specified amount will be deemed non-compliant and will not be evaluated.

6.8 The financial proposal must be submitted as a separate document to the technical proposal

(NO FINANCIAL INFORMATION FROM THE FINANCIAL PROPOSAL MAY APPEAR IN THE TECHNICAL PROPOSAL).



## INTERGOVERNMENTAL AGREEMENTS BETWEEN STATES & PROVINCES

Research Summary Prepared by Steven de Eyre, J.D. Candidate 2010, Case Western Reserve University School of Law.

Research conducted through an internship agreement between The Canada-United States Law Institute (CUSLI) at Case Western Reserve University School of Law and the Whatcom Council of Governments.

### OVERVIEW OF RESEARCH:

A comparative analysis of direct, “sub-national” agreements and arrangements between U.S. states and Canadian provinces. Specifically, research is being focused on what legislative authority authorizes the executive branches of these governments to enter into border and transportation related agreements with their counterparts. The constitutionality of these agreements from a federal perspective is also considered.

### SAMPLE OF PRELIMINARY FINDINGS:

**STATE LAWS AUTHORIZING AGREEMENTS:** The authority given by state legislatures for the state executive or state agencies to enter into agreements with Canadian provinces varies greatly from state to state:

- *Broad granting of authority:* Through their constitution or statutes, Michigan and North Dakota give broad authority for the state and its subdivisions to enter into such agreements:
  - **Michigan:** “*This state or any political subdivision thereof, [or] any governmental authority . . . may enter into agreements for the performance, financing or execution of their respective functions, with . . . the Dominion of Canada, or any political subdivision thereof unless otherwise provided in this constitution.*” MICH. CONST. art. III, § 5 (2008).
  - **North Dakota:** “*Any political subdivision of this state may enter into a joint powers agreement with . . . a political subdivision of a Canadian province if the power or function to be jointly administered is a power or function authorized by the laws of this state for a political subdivision of this state and is authorized by the laws of the other state or province.*” N.D. CENT. CODE § 54-40.3-01 (2007).
- *Ad-hoc granting of authority:* Most states have some statutes which authorize agreements to be made with Provincial Governments relevant to specific issues:
  - **All States:** The only common factor among all border-states is a variation of a statute which allows the governor, in the case of an emergency or disaster, to cooperate with or ask for assistance from neighboring provinces in relief efforts. See IDAHO CODE ANN. § 46-1010 (2008); N.H. REV. STATE. ANN. § 108:1 (2008).
  - **Washington:** “*The department [of licensing] may enter into an agreement with the Canadian province of British Columbia for the purposes of implementing a border-crossing initiative.*” WASH. REV. CODE § 46.20.202 (2007).
  - **Montana:** “*The public service commission may enter into reciprocal agreements with adjacent states and bordering Canadian provinces that Montana's inspectors may inspect trains while they are stopped in those states or provinces before they cross the Montana border.*” MONT. CODE ANN. § 10-3-1309(2) (2007).

### PROVINCIAL LAWS AUTHORIZING AGREEMENTS: (pending further research)

- Provinces appear to have fewer laws specifically authorizing cross-border agreements than their American counterparts. Similar to states, all provinces have statutes authorizing regional, cross-border cooperation in the case of disaster. Statutes also exist in most provinces that authorize reciprocal enforcement of traffic tickets and child support judgments from courts in bordering states.
- It has been suggested that provinces prefer to rely more on custom and tradition than formal arrangements with foreign jurisdictions.<sup>1</sup> This may be due to the fused executive-legislative structure of the parliamentary system, creating increased scrutiny on the premiers, and the belief that any formal arrangements may end up as political liabilities.

**CONSTITUTIONALITY OF AGREEMENTS:** For state/provincial agreements to be legitimate, they must occur within certain constitutional parameters of the U.S. and Canadian federal systems. Agreements (which can include contracts,

arrangements, compacts, and MOUs) must be differentiated from treaties, which in both countries may only be created or entered in to by the Federal government. Treaties can be defined as agreements between two or more states which are “governed by international law.” Agreements made between provinces and states are never governed by international law; rather, they may be considered either as contracts, governed by the national law of one of the parties, or simply informal understandings or arrangements which create no legal obligations.<sup>2</sup>

#### **U.S. Constitutional Restraints on Treaty Making:**

- “No state shall enter into any treaty, alliance, or confederation . . . No state shall, without consent of Congress . . . enter into any agreement or compact with another state or with a foreign power.” U.S. CONST. art. III, § 10.
- “[The President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur...” U.S. CONST. art. II, §2.
- Congress has deemed that not all transborder interactions require their consent, and will generally allow states to enter into agreements so long as the states do not erode the centrality of the U.S. federal government. During their 74th and 88th sessions, congress stated that “the terms ‘compact’ and ‘agreement’ do not apply to every compact or agreement . . . but the prohibition is directed to the formation of any combination tending to the increase of political power in the States which may encroach upon or interfere with the just supremacy of the United States.”<sup>3</sup>
- Congress may pre-authorize states to enter into agreements with Canadian provinces, as was done in the International Bridge Act of 1972. 33 U.S.C. § 535a (2008).
- The right to determine whether or not a particular agreement falls within the ambit of congressional jurisdiction under the Constitution remains the prerogative of Congress.<sup>4</sup>

#### **Canadian Constitutional Restraints on Treaty Making:**

- “The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.” Constitution Act, 1867, Ch. IX § 132.
- The former Canadian Department of External Affairs (now DFAIT) has acknowledged that “there are provincial interests in fields which involve dealings with foreign countries” but that these are or must be either “arrangements subsumed under agreements between Canada and the foreign government concerned” or “administrative arrangement of an informal character . . . not subject to international law.”<sup>5</sup>
- Provinces have generally come to have control over the implementation of treaties dealing with the powers under their purview (roadways, education, healthcare, enforcement of laws, etc).<sup>6</sup>

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<sup>1</sup> Gerard F. Rutan, *Micro-Diplomatic Relations in the Pacific Northwest: Washington State–British Columbia Interactions*, in PERFORATED SOVEREIGNTIES AND INTERNATIONAL RELATIONS, 163, 184-86 (Ivo Duchacek, Daniel Latouche & Garth Stevenson, eds., 1988).

<sup>2</sup> A.E. GOTLIEB, CANADIAN TREATY-MAKING 24, (Butterworths 1968).

<sup>3</sup> S. DOC. NO. 88-39, at 416-419 (1963).

<sup>4</sup> Richard H Leach, Thomas A. Levy & Donald E. Walker, *Province-State Trans-Border Relations: A Preliminary Assessment*, 16 CAN. PUB. ADMIN. 468 (1973).

<sup>5</sup> *Id.* at 471.

<sup>6</sup> ROGER F. SWANSON, INTERGOVERNMENTAL PERSPECTIVE ON THE CANADA-U.S. RELATIONSHIP 228, (NYU Press 1978).