

TBWG policy subgroup
Meeting summary
October 25, 2005, 8:30 AM -10:15 AM
Niagara Falls, Ontario

Attendees

This meeting was a day-three session of the biannual TBWG meeting. Numerous attendees of the general meeting were in attendance at this session. A separate sign-in sheet was not circulated. Many names of those present will appear in the following summary. Please tell me (Hugh Conroy – hugh@wcog.org) if you were at this session and would like to have your name added to this summary.

Agenda (not discussed in this order)

1. Introductions
2. Brief updates
3. Updated worker-access research findings—policy assessment
4. Review/update of FMCSA project
5. Consideration of potential policy-subcommittee actions with the U.S. pooled fund work-plan.

Updates

Michael Avery (FHWA) reemphasized earlier discussions about changes at the US DOT and added that the FHWA office of Policy and Governmental Affairs has a new administrator, Mary Phillips.

Gordon Rogers (WCOG) noted the recent conference hosted by EBTC on cross-border infrastructure, and, noting one of the outcomes of that meeting being a white paper or catalog of regulatory requirements, emphasized the interest of the International Mobility and Trade Corridor coalition (on the BC-WA border) in participating and assisting with that effort.

Review of FMCSA Canadian Trucking study

Discussion on this topic started as an individual update so we just ran with it.

Benoit Cayouette noted that he was contacted by FMCSA and given documentation and a survey for the study. Benoit read the scope of work from an e-mail on his Blackberry™ hand-held device.

Elements of the scope were discussed along with opportunities for improved regulatory reciprocity (not just internationally but province-province and province-state).

Hugh Conroy asked how the policy-group/TBWG would expect to contribute to this project? What should we do?

Benoit responded that he felt we should wait until the work is completed. Tony Shallow added that it is useful to have a window on what the study is doing. Other comments were made (poor notes).

Hugh summarized the apparent conclusion being that the policy-subgroup should treat the results of the FMCSA project as a set of policy tools to use in the advancement of harmonization and policy coordination.

Issabelle Trepanier indicated some concerns about CCMTA (poor notes here) having a ministerial connection to the Transport Canada Border Policy office.

Benoit recommended that the policy group contact Milt Schmidt at FMCSA and ask if this subgroup could be of any help for research, etc. Jill Hochman noted that she would contact Milt and ask him to attend the next (Chicago) TBWG meeting.

Don Melcher (US GSA) noted his interest in whether findings of the FMCSA project would have any implications for facilities.

Hugh noted some follow-up items: information on the FMCSA project time-line, scope detail, and a possible presentation in Chicago.

Update on border-project cross-border worker access

Hugh Conroy briefly reviewed this issue and put some excerpts of WA State, BC Province, and Canadian federal laws on the screen as illustration of existing codes that acknowledge a role for cross-border arrangements.

With regard to the specific example of BC and WA's need to accommodate near-border access to each others transportation agencies for the purpose of maintaining in-road traffic sensors, Hugh recounted recent confirmation from Pedro Erviti that existing law affords this kind of access to workers who would want to perform these function around the U.S. facilities. Specific access to inspection-agency facilities would need to be separately accommodated (as would be the case for WA highway right-of-way), but there are not immigration laws that preclude this kind of activity. A similar clarification for Canada was not determined yet.

Noting recent e-mail with Pedro Erviti, Hugh asked Pedro for more information on how agencies could use the US C-175 international agreement authorization process to sanction better integrated delivery of border improvements. Pedro clarified and emphasized that C-175 is not a standardized process at all. Each case is separately evaluated at length. The easy conclusion here was that C-175 would not be an appropriate process to generally improve the ability for U.S. and Canadian agencies to partner on cross-border transportation system improvements.

Don Melcher noted GSA's experience with Sault Ste. Marie. They looked at NAFTA accommodations but ended up working with a Canadian contractor that had U.S. offices.

Birgit Mattheisen noted a report completed on joint facilities that addresses some of the same questions being addressed here. She indicated that she would track down a copy. (*Note: Paul Arvanitis followed up on this and while able to confirm that such a study was initiated, no one has been able to locate a copy of it.*)

Jonathan Sabeau asked if arrangements or agreements to facilitate maintenance of cross-border ITS satisfy elements of the SPP? Pedro Erviti noted SPP item 3.1 would cover this kind of activity.

Tony Shallow noted that this examination should include possible liberalization of cabotage. Ted Mackay mentioned the potential application to things as simple as snow removal. Pedro Erviti noted additional pertinence to open-skies agreements.

Isabelle Trepanier noted bridge and tunnel authorities. There was interest in research to compile the set of arrangements (sections of law and other regulations) that underlie the ability of Canadian and U.S. bridge employees to work on either side.

There was further discussion of and agreement to the need to research and develop a hierarchy of cross-border arrangements – instruments for facilitating cooperation and partnership that avoid constituting an international agreement.

Ted Mackay reiterated that a treaty (i.e. and international agreement?) comes with an expectation that the terms are enforceable under international law.

Alicia Nolan questioned whether federal agencies would be able to validate agreements on a state's or province's behalf.

Additional discussion took place about the fact, as illustrated earlier, that states and provinces have laws that support formation of cross-border arrangements. Hugh proposed that the policy-group support a compilation of existing state and province laws across the U.S.-Canada border because, on a regional basis, better knowledge of these things would be advantageous.

David Davidson (WWU Border Policy Research Institute) noted interest in conducting research into state and province laws.

John Reed also noted resources at State University of New York.

Tony Shallow noted his familiarity with students working on cross-border mitigation curriculum.

Jill Hochman noted the relevance of such activity to the research aspect of TBWG.

Wrap up

Roger Petzold noted that in 2008/2009, reauthorization of transportation-funding legislation will be introduced. White papers for the next iteration of the Coordinated Border Infrastructure program are being drafted now and there is an opportunity for feedback on what changes should be considered.

Hugh Conroy noted that this would be of interest to the full TBWG but the policy group could help facilitate input on this topic. Hugh also noted interest in any similar opportunity to consider similar types of feedback on Canadian cross-border programs.

Adjourned

Summary of follow-up items, new questions, etc.

1. FMCSA Canadian trucking project: See if Milt Schmidt can present at Chicago. Also, an interest in obtaining basic information on scope of work and timeline. (Hugh Conroy, Jill Hochman)
2. Research into and compilation of a hierarchy of cross-border instruments for supporting cross-border partnerships (Ted Mackay, Pedro Erviti, Hugh Conroy)
3. Question if federal agencies have authority to validate cross-border arrangements on behalf of states or provinces who might lack legal authority or prefer this approach.
4. There is a standing interest in continued work on a compilation of existing state and province laws that identify and support cross-border arrangements (i.e. cooperation, financing, and enforcement) and their various applications.
5. Limited opportunity to submit input to white-papers being developed by FHWA with regard to the next version of the Coordinated Border Infrastructure program.