

CHAPTER 6 – BORDER SECURITY, TRADE AND TRAVEL FACILITATION

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Border management policies in both Canada and the United States seek to combine security measures to regulate migration, enable the more efficient management of border traffic, ensure compliance with trade agreements and related commercial regulations, and combat criminal activities. Critically since 9/11, they seek to provide **layered security** to defend against potential terrorist attacks, with the facilitation of “low-risk” trade and travel across national borders. (Macleod, 2007.)

This chapter explores the central challenges of Canadian border management policies in the context of post-9/11 security requirements. To what extent have Canadian governments succeeded in achieving their four key policy goals: ensuring Canada does not become a platform nor conduit for attacks against the United States, securing effective cooperation with the United States to facilitate cross-border trade and travel, developing security measures that strike an effective balance among security, facilitation, and the protection of civil liberties, and maintaining policy discretion in other areas that respond to broader domestic policy requirements and public expectations?

These political challenges have required a wide variety of administrative responses that engage the full range of policy measures explored in this volume: independent policy action, parallelism, coordination, collaboration and, in selected cases, harmonization. These responses are enforced by two central realities: the different political priorities driving border security and management issues in the United States and Canada and, following Anderson and Sands, the administrative “fragementation” of border management and modes of security administration.

The dynamics of globalization and North American integration mean that border management policies apply not only at national borders or “ports of entry” – but well beyond them, requiring substantial cooperation not only with other North American governments but on other continents as well. These arrangements may be structured on multilateral lines – as with conventions governing ocean freight, customs clearance and air travel, or bilaterally, especially on travel and immigration issues. Although governments have extensive dealings with businesses, economic and other societal interests on issues of trade, travel and migration, the much greater emphasis on security dimensions of border management since 2001 has tended to make these dealings more hierarchical and authoritative, and less transparent or responsive to particular societal interests – especially in the United States.

Reconciling border security and facilitation within North America has been described by one former senior Homeland Security official as “finding the needles (while) facilitating the haystack”. (Verdery, 2004.) Historically, the needles, the haystacks, and the outlook of the searchers and sorters have varied significantly on the US-Canada and US-Mexico borders – as

have relations between US government officials and their counterparts in Canada and Mexico. This phenomenon of **dual bilateralism** is a central reality of inter-state relations in North America, especially on security cooperation and border management issues.

However, although cross-border relations have been characterized by extensive *administrative* collaboration, political collaboration has been limited by the primacy of domestic security imperatives in the United States. Other relevant factors include executive or Congressional initiatives, the interests of Canadian governments in maintaining some degree of political and policy discretion in the face of American unilateralism, or competing domestic political pressures in both countries.

This chapter examines the political and institutional environments for managing national policies governing border security, trade, and travel facilitation in the United States and Canada, and for coordinating bilateral policy policies and processes along the US-Canada border. It considers the post-9/11 development of competing security paradigms to guide these processes, and the ways these processes reflect both continuity and changes from historical patterns of interaction. It explores the interaction of these processes with domestic forces in each country, along with broader international patterns. Finally, it assesses the potential and prospects for border management during the post-Bush era.

ONCE UPON A TIME AT THE BORDER

Border management between the US and Canada is largely defined by issues of proximity and asymmetry: the significant differences in perceptions of the border and of the relative importance of particular border-related issues to policy-makers, assorted government agencies, interest groups, economic actors, and ordinary citizens in each country. The border's exceptional length – 6,416 kilometers (3,961 miles) along Canada's border with the Lower 48 states – along with major regional differences in topographical features and population densities, create multiple policy and administrative challenges for governments in both countries. Not least among these is the challenge of implementing consistent staffing policies and technological innovations at 121 ports-of-entry along the Canada-US border and, for US officials, 55 ports-of-entry along the US-Mexican border, along with arrangements at airports, other "inland ports", and points between official border crossings in all three countries. (Jones and Davidson, 2008; Benitez Manaut and Rodriguez Ulloa, 2006:31.)

Border issues are typically more important for Canadians, about two-thirds of whom live within 200 km. (120 mi.) of the border, than for most Americans. By comparison, only about five percent of Americans live within a two-hour drive of the Canadian border. (Hale, 2009.) Similar patterns apply in trade and cross-border travel. About 79 percent of Canadian goods exports were shipped to the US in 2006, compared with about 22 percent of US merchandise exports to Canada.

Cross-border traffic on the US-Canada border is heavily concentrated in major **trade corridors** – particularly in the Windsor-Detroit, Buffalo-Niagara, and Pacific Coast / Lower B.C. Mainland areas and the St. Lawrence Valley, although regionally significant gateways exist in other areas.

Many smaller communities also have high levels of localized cross-border travel for tourism, shopping and family outings. (Hale, 2009.)

By contrast, US policies have been focused far more heavily on the southern border with Mexico during the past decade. Several major metropolitan areas, including Tijuana, Nogales, Ciudad Juarez, Nuevo Laredo, and Matamoros have grown up along the border, most of them larger than neighbouring US cities. The most politically sensitive issue has involved high levels of illegal migration – driven by disparities in living standards, slow economic growth in Mexico, and the rapid growth (until recently) of employment opportunities north of the border – both in the formal and informal economies. Although drug trafficking is a problem along both borders, organized crime has progressed from being a major societal problem to an armed challenge to the Mexican state in recent years. (Chabat, 2006.)

Canada-US Border Management before 9/11

Americans and Canadians have enjoyed relatively unimpeded historical access to one another's countries. The US made few serious attempts to control migration before the 1920s while, after Confederation, Canadian governments generally encouraged American settlement under the authority of the Crown. (Stuart, 2007: 73-95.) Cross-border tourism followed the spread of the automobile and paved highways, and citizens of each country were largely exempted from one another's border controls – except for the payment of customs duties and, more recently, the application of more stringent Canadian gun controls and US drug laws.

Two key policy developments during the 1980s and 1990s helped to shape the more recent evolution of border management policies: economic deregulation of the trucking industry, which spread from the US to Canada during the 1980s, and the negotiation of the Canada-US free trade agreement in 1986-88. These changes – discussed further in Blank and Prentice's chapter – opened the floodgates for cross-border truck traffic. National railway networks have evolved into continental ones through a combination of Canadian acquisitions of and strategic alliances with US railways. The rapidly growing use of shipping containers speeded the integration of maritime cargo shipments with truck and rail networks.

These trends led to growing challenges for border infrastructure, information management systems of customs and law enforcement agencies, and a wide range of regulatory functions. The Shared Border Accord, signed in February 1995, committed the two governments to working on a wide range of border initiatives to “promot(e) international trade, facilitat(e) the movement of people, provid(e) enhanced protection against the illegal and irregular movement of people, and reduc(e) costs to both governments and the public”. (Canada, 2000: 3.) Other initiatives included the Cross-Border Crime Forum, which led to the creation of the first Integrated Border Enforcement Team (IBET) in 1999, and efforts by immigration officials in both countries to cooperate in managing migration issues – including refugee claims and “asylum shopping”. These discussions produced many of the policy proposals and technological developments which became the basis for close cross-border cooperation between law enforcement and border services / protection officials after 9/11.

US-Mexico Border Management before 9/11

US-Mexico border management has functioned in a very different context since the 19th century. Between 1942 and 1964, the United States negotiated a series of guest worker agreements with Mexico to regulate the supply of seasonal farm workers – the *bracero* programs that have inspired more recent discussions of “guest worker programs” as a way of managing migration issues. Mexican migration began to grow again in the 1980s, and still further in the mid-1990s, as a result of internal economic turmoil and a rapidly growing US economy. Despite a more restrictive 1986 US immigration law, the share of Hispanics – US-born, naturalized and recent immigrants, mainly from Mexico, in the US grew 44 percent between 1994 and 2004. (Martin, 2005.) While many of these workers were legal immigrants, the rapid growth of illegal immigration – estimated at between 12 and 14 million by mid-decade – became a serious political issue.

Even before 9/11, the US government invested significantly greater resources in attempting to police its southern border in response to both illegal migration and widespread drug smuggling than to its northern borders. Cross-border cooperation was complicated not only by political factors, but by inter-agency competition in both countries, and widespread official and police corruption in Mexico – much of it fostered by the drug trade – which reinforced historic weaknesses within its judicial system. Extraterritorial application of American laws intended to combat organized crime, while responding to these realities, reinforced existing tensions. (Davidow, 2005: 19-29, 45-66.)

Efforts to control illegal migration led to Congressional legislation in 1996 to impose a mandatory entry-exit controls system on *both* northern and southern borders. These measures prompted a vigorous response from Canadian officials and outrage from businesses in US border communities, north *and* south, who immediately perceived the risks of massive traffic backups at the border and a corresponding loss of business. Intensive lobbying led to the measure’s dilution and eventual repeal. However, the proposals resurfaced again in the very different political atmosphere that followed the events of September 11, 2001. (Sands, 2007.)

DIFFERENT COUNTRIES, DIFFERENT EMPHASES – MANAGING BORDERS SINCE 9/11

The terrorist attacks of 9/11 proved a transformative event in the politics and management of borders within North America and beyond. Almost immediate border closures resulted in miles-long lines of trucks along major highways near both borders and closures of factories dependent on their shipments in all three countries. As a result, the politics of border management in Canada faced competing political imperatives. How could Canadian governments secure the accustomed access of Canadian businesses and travelers to the United States? And to the extent that Canada adapted security measures paralleling US initiatives, how could they maintain sufficient discretion to respect traditional guarantees of civil liberties, as well as the interests of Canadian citizens when they came into conflict with US security measures?

The events of 9/11 prompted a sharp realignment in border security policies in the United States, Canada and, to some extent, Mexico. The **Smart Border Accord** of December 2001 softened

the edges of these changes along the Canada-US border and created a basis for ongoing collaboration based on shared, if not identical interests. Security rapidly came to “trump” issues of trade or economic competitiveness in discussions between Canada and the United States. (Cellucci, 2005: 15, 131-46.) However, post-9/11 security concerns largely side-tracked efforts to work out the very different challenges of the US-Mexico border, particularly as the politics and economics of migration became increasingly intractable, and organized criminal violence grew to crisis proportions in many parts of Mexico. (Davidow, 2005; Roig-Franzia, 2007)

The United States has taken a complementary, multi-track approach to its homeland security policies. Cross-border relations with Canada and Mexico are integrated to greater or lesser degrees with domestic and international policy initiatives – with varying degrees of unilateralism, bilateral and multilateral cooperation depending on the subject matter, Executive Branch or Congressional impetus for particular policies, and the particular agencies of the US government responsible for their implementation.

This section examines institutional responses to 9/11 and approaches to border management – primarily in Canada and the United States. It discusses the search for “smart borders” in discussions following 9/11, subsequent institutional reorganization of border management functions, the growing politicization of border issues in Congress, and the political implications of these trends for policy developments in both countries.

Homeland Security, the 9/11 Commission and Congress: Security First, Last and Always?

Comparing US and Canadian approaches to homeland security and border management since 9/11 may be viewed as analogous to looking through different ends of a telescope – although, on the American side, there has been considerable competition over which set of political, bureaucratic and societal interests would get to hold and focus that telescope. As a result, while border facilitation has at least an equal priority to security for Canadian governments, the combination of multiple mandates and the primacy given to security goals by Congress, the US Department of Justice and the newly-created Department of Homeland Security (DHS) contribute to significant differences in priorities despite efforts at improving border facilitation, discussed later in this chapter.

The Bush Administration’s exploitation of national and homeland security as dominant issues of the 2002 and 2004 election cycles contributed to an environment of security one-upsmanship in Congress between 2003 and 2007. Elements of the Republican Party exploited this agenda to pursue their own domestic priorities, sometimes in direct opposition to the White House, while congressional Democrats responded by adopting more aggressive port and border management strategies than they might otherwise have done.

These pressures were reinforced by the bi-partisan National Commission on Terrorist Attacks upon the United States (the 9/11 Commission) established by Congress to investigate “how 9/11 happened” and to make recommendations to avert similar tragedies in future. The Commission’s July 2004 report made 40 recommendations. However, only three of them addressed border security issues – as distinct from measures related to freight, ports, or weapons of mass destruction. The first called for creation of a comprehensive screening system for travelers with

common standards at all US ports-of-entry. The second mandated a **biometric** entry-exit program to monitor persons entering and leaving the US. The third urged greater collaboration with “trusted allies” and other governments in exchanging terrorist information and raising screening and security standards. (United States, 2004: 387-90.)

Many of the Commission’s recommendations were embodied in the Intelligence Reform and Terrorism Prevention Act of December 2004 – including the **Western Hemisphere Travel Initiative (WHTI)**, discussed later in this chapter. Other resultant legislation included the REAL ID Act of 2005, which imposed federal standards for drivers’ licences. These measures had significant spillover effects for Canadian travelers, businesses and governments which have affected Ottawa’s evolving approach to border management since 2001.

Canadian border management policies after 9/11

The primary goal of Canada’s international economic policies since the mid-1980s, as noted in Chapter 2, has been to maximize the advantages to be derived from open trade, investment and travel with the United States while maintaining policy discretion in dealing with broader economic issues and trends. An effective condition of securing these benefits since 2001 has been to reduce the real or perceived risks that political indifference or administrative negligence could allow Canada to become a conduit or staging point for terrorist attacks against the United States. (McLellan, 2004). These concerns are reinforced by periodic reports that foreign terrorist groups have developed extensive networks in Canada, and of the vulnerabilities of Canada’s systems for processing refugees and screening new immigrants as well as employees working at ports and airports. (For example, Kurlantzick, 2006; Blumenthal, 2007; McCann, 2007).

At the same time, while generally responding to US concerns, Canadian governments have combined three major tactical approaches to cross-border relations on border security and facilitation issues to retain some measure of discretion in pursuing their own policy goals and responding to a wide range of domestic interests:

- the pursuit of reciprocity and mutual recognition of policies and systems – rather than merely copying these measures – as a tacit condition for accommodating US pressures for greater security coordination;
- avoiding or limiting the politicization of border management issues in both countries, unless Congressional action (as opposed to unilateral DHS initiatives) preempts this option; and
- attempting to avoid or minimize linkages between US border management practices with Canada and Mexico, except as US-Mexican practices may follow or parallel “best practices” along northern borders.

Responding to intense business pressures after post-9/11 border closures, the Canadian government assembled a government-wide task force under then Deputy Prime Minister John Manley. It pulled together several incomplete initiatives from the Shared Border processes of the 1990s for presentation to the newly appointed head of the White House Office of Homeland Security, former Pennsylvania Governor Tom Ridge. The result was the 30-point *Smart Border Accord* of December 2001: a series of measures intended to provide a basis for improved border security and cross-border cooperation. The Chrétien government also introduced a number of

legislative changes paralleling US security legislation – although some of these measures have subsequently been modified as a result of successful court challenges and the dynamics of negotiating legislative changes in minority parliaments since 2004. (Smith 2007)

The success of the Smart Border process became one model for managing cross-border relations: a centrally coordinated initiative by Canada's federal government that addressed American policy priorities in ways intended to protect and advance Canadian interests. This process inspired elements of the Security and Prosperity Partnership of March, 2005. However, as US inter-agency processes to coordinate and institutionalize homeland security policies gained momentum after 2004, reinforced by repeated Congressional interventions, Canadian concerns over border facilitation were pushed farther towards the margins.

One Building, Many Windows: The Department of Homeland Security

Another significant factor marginalizing cross-border policy collaboration on border management issues is the size and scope of policy and administrative challenges facing the US Department of Homeland Security (DHS). DHS' creation in 2003 from the amalgamation of all or part of 22 "legacy" agencies was the largest US government reorganization since the creation of the Department of Defense in 1947.

Congress appropriated \$ 46.3 billion for DHS activities in FY 2008 – including \$ 7.5 billion funded by user fees. About 20.3 percent of DHS spending was allocated to Customs and Border Protection, and a comparable amount to the Coast Guard. Even so, neither budgets nor employment levels have kept up with the department's growing mandate. As a result, it has become a major political football for Congress and elements of the news media. (Lake and Nunez-Neto, 2008: 8-9; Hsu, 2008.)

DHS' size and the diverse mandates of its legacy agencies have created major management challenges – not least that of answering to at least 86 different Congressional committees and sub-committees (Heyman and Carafano, 2004; Ignatius, 2008). They also complicate communication with many societal actors, particularly in integrating efforts to promote security with the day-to-day activities and operations of other governments, businesses, border communities and ordinary citizens.

These issues create numerous problems for border management. Effective cross-border cooperation depends heavily on close working relations between Canadian officials and their US counterparts. Media and public outrage over high levels of illegal immigration, drug smuggling and violence along the Mexican border, which prompted the (Democratic) Governors of Arizona and New Mexico to declare states of emergency in 2007, have drawn the bulk of new resources to the southern US border. Staff shortages on the northern border have contributed to growing waiting lines at major crossings – largely offsetting efforts to expedite "low risk" shippers and travelers (Goodchild, Globerman, and Albrecht, 2007; Timmermann, 2008).

One Face at the Border? Public Safety and Emergency Management Canada

The creation of DHS prompted a similar reorganization of Canada's Public Safety bureaucracies shortly after Paul Martin became Prime Minister in December 2003. The new Department of Public Safety and Emergency Preparedness (now Public Safety Canada) took responsibility for a reorganized Canada Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP), Correctional Services Canada, the Canadian Security and Intelligence Service (CSIS), and the federal emergency preparedness agency. Unlike the US, immigration policies remained in a separate Department of Citizenship and Immigration.

The Department of Public Safety was seen by many observers as a parallel institution to DHS - a logical way to negotiate border issues. Although its functions included national security, they also reflected Ottawa's "all-threats" approach to public safety, including crime prevention, policing, enforcement, and emergency preparedness. This difference of emphasis reflected both the pursuit of domestic policy discretion and efforts to persuade Canadians that federal policies were not simply a knee-jerk reaction to pressures from south of the border (Whitaker, 2005).

The Martin government outlined this approach in a comprehensive national security policy published in April 2004. Released shortly after the end of Toronto's SARS outbreak, it addressed six key strategic areas, including Intelligence, Public Health Emergencies, and Border Security. Airport security is the responsibility of Transport Canada and the Canadian Air Transportation Security Authority (CATSA), responsible for screening airline passengers. CBSA's investments in border infrastructure also overlap with the transportation and infrastructure strategy managed by Transport Canada. Key projects include a new Windsor-Detroit bridge and border plaza, and Canada's Pacific Gateway strategy, as discussed by Blank and Prentice in their chapter on transportation policies. (Transport Canada, 2006).

As part of its broader security and border management strategy, the federal government has managed bilateral relations with the United States through a mix of personal diplomacy among cabinet officers and senior officials as well as extensive working level collaboration by multiple federal agencies. Deputy Prime Minister John Manley's close relationship with Homeland Security Advisor (later Secretary) Tom Ridge was reflected in the 2001 Smart Border Accord. Subsequent ministers responsible for public safety continued this relationship. Prime Ministers Chrétien, Martin and Harper have continued the practice of appointing high profile Ambassadors to the US to emphasize the importance of the relationship - usually with direct access to the Prime Minister and his senior advisors. Extensive working level collaboration takes place between federal agencies, occurring through bilateral, multilateral and informal channels with many of the cross border groups meeting at regular intervals. (Mouafo, Morales, Heynen, 2004).

The Security and Prosperity Partnership

The SPP has become a significant vehicle to advance bilateral and trilateral relations linking economic and security issues in North America, as noted by Sands and Anderson in Chapter 3 and by Kirton and Guebert in Chapter 4. Central to this approach are regular ministerial meetings of Ministers of Foreign Affairs, Public Safety, and Industry with their American (and Mexican)

counterparts – giving both Canada and Mexico opportunities to influence agendas for these discussions.

For Canada, the SPP represents an opportunity to structure regular discussions of North American issues with other heads of state and cabinet officers to secure high-level support for initiatives that might otherwise be lost in Washington's maze of bureaucratic politics. These processes complement Canada's broader priorities, particularly exerting influence with senior US policy makers while maintaining policy discretion at home. In particular, senior officials hoped that new opportunities for Canada-US border cooperation would emerge that could be used as models for the US/Mexican border, instead of allowing threats along the southern border to define the standard for all US borders. However, many observers are skeptical of the effectiveness of these processes in achieving these objectives.

BORDER MANAGEMENT: COOPERATION AMID COMPETING VISIONS AND PRIORITIES

The size and scope of border management issues and the different ways in which they are influenced by competing societal interests and political priorities have contributed to different policy approaches both within each country and in cross-border relations. Business groups and immigrant communities have generally exercised greater political influence in Canada, while groups seeking stronger immigration and border enforcement have often marginalized business interests in comparable US debates. In the United States, these debates are carried out both in public and within (or between) responsible government agencies. Canadian political debates have been more muted, reflecting Canada's traditionally executive-dominated political system, greater consensus among political leaders, and a desire to avoid the kinds of political polarization that have often characterized debates in the US.

The two principal approaches within the US homeland security community (as opposed to public or interest group opinion) may be characterized as the "security first" or "frontier defence" paradigm and a "**risk management**-based" paradigm – or as "cops vs. technocrats". (Alden, 2008: 80-146) The first perspective tends to be law enforcement oriented, emphasizing top-down, command-and-control approaches to regulation, and privileging security issues over other considerations – whether economic, societal or those related to civil liberties. Since 9/11, it has stressed the use of immigration policies and related enforcement measures to expand the reach of US security policies. (Alden, 2008: 102-16, 275-86.) The second perspective, based on principles of cost-benefit analysis, is more likely to apply a mixture of policy tools that seek to enhance security while accommodating the goals and activities of economic and societal interests that do not pose significant security risks. These approaches include the introduction of technologies and systems engineering to enable border agencies use a larger share of their resources to screen and combat higher risk and criminal activities. In practice, there are varying degrees of give-and-take between proponents of the two perspectives in response to pressures from interest and community groups and the availability of practical alternatives.

National policies governing border management, security and law enforcement tend to take on different forms in different contexts, partly in response to competing societal and media pressures. The climate of US public opinion on issues such as Mexican immigration, border and

port security might be very different in the absence of the persistent advocacy and agenda setting of cable news personalities such as CNN's Lou Dobbs. Aggressive media agenda-setting in Canada has been more likely to reflect agendas driven by concerns for civil liberties, as with the Maher Arar affair and related incidents, or broader desires to limit security cooperation between Canadian governments and the Bush administration – although the latter are more likely to be challenged by other media voices.

Airport and airline security are characterized by a variety of parallel measures, with national variations. The Smart Border Accord facilitated the development of common electronic and biometric identifiers in key travel documents, particularly passports – measures later internationalized through the International Air Transport Association (IATA). Other measures included the prescreening of air passengers, and joint passenger analysis units, building on existing pre-inspection of travelers at seven Canadian airports. (Seghetti, 2004). Ottawa also created a no-fly list in 2005, paralleling earlier US measures but with more internal checks and balances.

Cross-border cooperation is probably most extensive on issues relating to law enforcement and cross-border freight shipments. The latter is discussed below in the specific context of container security and **trusted shipper programs**. The RCMP and the CBSA work closely with their US counterparts in monitoring the activities of organized crime, and attempting to limit cross-border smuggling of drugs, people and guns – although police admit that they block only a fraction of the illegal traffic in both directions.

Cooperation and trust among law-enforcement and intelligence agencies in both countries are heavily dependent on the observation of “third party rules” governing the sharing of information with outside parties, including the courts, without the permission of the originating agency. These arrangements affect both the admissibility of evidence before the courts, and the timing and location of decisions to arrest or prosecute alleged criminals, terrorists and other suspects. (Duffy, 2008, A1.) Canadian judicial rulings on the disclosure of police methods to defence lawyers have apparently limited the willingness of the FBI and other police agencies to conduct joint investigations with Canadian police. Instead, Palango (2008: 133-34) suggests that these developments have led foreign police and intelligence agencies to hire Canadian lawyers as fronts for their investigations, with the support and protection of Canadian laws.

Rules governing the screening and inspection of travelers have proven the most controversial. Both Canada and Mexico reached agreement with the United States on the creation of “**trusted traveler**” programs – “NEXUS” and “SENTRI” – on each border in 2001-02 involving fairly intrusive, but voluntary screening processes. However, different arrangements for land and air travelers have limited enrollment until quite recently. By mid-2008, participants accounted for only 9 percent of crossings on the “northern” border. (Neinast and James, 2008: 8.)

US mandates for traveler screening respond not only to risks of terrorism, but also to the more pervasive problem of illegal immigration. Immigration statistics suggest that persons overstaying legal visitors' visas account for up to 55 percent of illegal migrants. (Koslowski, 2006:9). Such estimates led the 9/11 Commission to recommend, and Congress to enact legislation tightening

identification requirements both for citizens and foreign visitors, including Canadians. These measures include:

- the REAL-ID Act, tightening and standardizing requirements for state drivers' licences to be recognized as "secure ID" in entering federally regulated facilities, including airports and financial institutions;
- the US-VISIT program – providing for the introduction of **biometric** entry-exit **screening** systems, in effect, fingerprinting, for most aliens (not yet including Canadians, except those requiring visas) entering the United States – less than 5 percent of cross-border traffic; and
- the Western Hemisphere Travel Initiative's (WHTI) requirement for all persons (US citizens or otherwise) entering the United States after specified dates to carry a passport or "other secure identification". (Hale, forthcoming, 2009).

These issues overlap with others, such as the coordination of visa waiver policies for citizens of third countries, which will be discussed in Woroby's chapter on immigration policies.

Most of these debates take place outside the public eye – with civil liberties and privacy advocates being most vocal in criticizing elements of certain security measures, and most travelers complying willingly or grudgingly. The reality of attempting to manage border security risks in both countries is that that demands on staff, technical and financial resources resulting from the expanded and continually growing mandates of the post-9/11 era far exceed the resources provided by governments in either country. (Bronskill, 2008; Hsu, 2008.)

The WHTI debate of 2005-07 reflects both these realities. Canadian governments were reluctant to challenge directly a US domestic security measure applying to American citizens – whatever potential inconveniences it might create for Canadians. However, Canadian diplomats repeatedly called attention to the management challenges of implementation, including sizeable investments in infrastructure, technology, staff training, and public information – including the printing of millions of passports or related documents. They also quietly encouraged an extensive lobby by US border communities and related business interests, which was successful in persuading Congress to delay WHTI implementation by 18 months from early 2008 to mid-2009. These delays, reinforced by a massive backlog in passport production in both countries, allowed state and provincial governments to lobby successfully for "Enhanced Driver's Licences" (EDLs) as an alternative form of "secure identification". Initially approved as a pilot project in Washington state in February 2007, several major northern border states and five Canadian provinces had announced plans to adopt similar measures by mid-2008. (Luce, 2007; Hale, forthcoming 2009.)

The Smart Border Accord also enabled Canadian officials to secure one long-sought objective from the United States: the negotiation in 2004 of the so-called "Safe Third Country Agreement" intended to prevent asylum shopping by aspiring refugees due to Canada's more liberal regime. Immigration officials estimate about 10,000 refugee applicants entered Canada annually through the United States during the 1990s – further clogging an overburdened domestic refugee appeals system. Although the agreement cut this number by half, it had returned to 2002 levels by 2008, largely as a result of rising numbers of Mexican and other Latin American claimants. (Confidential Interviews, DFAIT, March 2006, May 2008; Tibbetts, 2008.)

Not So “FAST”: Freight and Travel Security, Immigration and Thickening Borders

Facilitating low risk trade and travel has been a key part of the layered security approach to border management on the Canada-US and, to a lesser extent, the US-Mexico borders. Most facilitation programs are in the form of bilateral or trilateral joint trusted shipper and traveler programs – illustrating the degree to which cross-border collaboration and harmonization are more likely to occur on relatively technical, administrative issues, particularly those enjoying a supportive constituency on each side of the border.

In theory, such programs reduce the size of the proverbial haystack of growing cross-border shipments and travel and allow border officials to focus their resources more effectively on those travelers about whom they know little. Unfortunately, as this appears to be about 90 percent of crossings even in 2008, this approach has resulted either in growing lines at major border crossings or perceptions of reduced security as border officials respond to pressures to reduce delays. (Neinast and James, 2008; Timmermann, 2008).

The FAST program (Free and Secure Trade) is a joint commercial clearance (or “trusted shipper”) program for importers, shippers, and truck drivers that provides expedited clearance at 14 locations on the US-Mexican border, and 19 locations on the Canada/US border – although only four of the latter are supported by dedicated FAST lanes on highways approaching the border.) The program has been marketed to businesses as a competitive advantage by allowing them, at least in theory, to move their cargo over the border faster.

NEXUS and SENTRI are the equivalent of FAST for travelers and commuters along the Canadian and Mexican borders respectively. NEXUS was created in 2002 as part of the Smart Border Accord and can now be used at land, sea, and air borders. SENTRI was first implemented in 1995. NEXUS enrollment almost doubled in 2007-08 to more than 355,000 persons, including about 210,000 Canadians. (Pearson, 2008; interview, Canada Border Services Agency.)

Problems for trusted shipper and traveler programs arise in the slow adaptation of staffing and infrastructure to growing traffic volumes and other administrative constraints. Firms may incur substantial costs to comply with eligibility rules under these programs only to find that they confer relatively limited advantages. Although some studies have found that FAST shipments takes an average of one hour less to cross the border (Goodchild et al, 2007), long and unpredictable delays approaching the border and other administrative complications often reduce this advantage. Problems cited by business groups include duplication resulting from separate DHS and CBSA background checks on applicants, cumbersome application requirements, and additional layers of inspection mandated by Congress. (US and Canadian Chambers of Commerce, 2008.) Without dedicated lanes, FAST-approved trucks are often snarled in traffic for long periods before reaching the border. After six years, however, NEXUS has finally been harmonized and integrated into a single program with a single fee.

A key element in intergovernmental cooperation involves the development and applications of new technologies in efforts to combine greater security and reduce labour-intensive inspection processes for qualifying travelers and companies. The latest NEXUS and SENTRI cards – along with newly issued passports – represent the next generation in secure travel documents. They

have a photo id of the traveler and are equipped with a Radio Frequency Identification (RFID) chip which transmits a code to the border agent as the traveler approaches equipped border crossings.

There has been some progress in upgrading border infrastructure, although this is much easier in lightly populated areas than in major urban centres such as Buffalo-Niagara and Windsor-Detroit, where complex local political and regulatory conditions involving numerous federal, provincial/state and local government agencies can result in years of negotiations to reduce border bottlenecks.

BORDERS OF THE FUTURE: ONE SPEED OR TWO?

The transition to the Obama administration in the United States provides a useful opportunity to evaluate the relative success of Canada's border management policies – both as domestic initiatives and as expressions of cross-border cooperation. It also raises several questions relevant to future cooperation on border management and security issues – whether bilateral or in broader North American contexts.

At the outset, we outlined four broad objectives against which Canadian border management and security policies since 9/11 could be evaluated. These policies do not exist in isolation. Broader security measures, combined with international police cooperation, have been successful in preventing Canada from becoming a platform or conduit for attacks against the United States. Although several domestic prosecutions have received widespread media attention, and the Senate Committee on National Security and Defence (2004, 2007) continues to publish periodic reports emphasizing the need for continuing administrative improvements and more resources for Canada's border and security agencies, most of these measures involve the incremental extension of existing policies.

Security measures have been adapted at the margins to balance measures intended to protect public safety with the protection of civil liberties within Canada's boundaries. (Smith, 2007.) Canadian security agencies have been sharply criticized for intelligence sharing practices with foreign governments that have led to the imprisonment without trial of Canadian citizens abroad. These challenges have led to the tightening of such practices.

The 2001 Smart Border Accord significantly extended cooperation on many border management policies and practices. Some of these measures, notably the Safe Third Party Agreement on refugees, have contributed to more efficient handling of refugee claims. Other reciprocity-based measures, particularly those relating to police cooperation, appear to have been successful in balancing operational effectiveness with the maintenance of policy discretion. However, the Accord's effectiveness has been limited by a series of unilateral measures, usually initiated by the US Congress, that have expanded the mandates of US security agencies faster than the resources available to implement them – further thickening the border as a result.

The principle of reciprocity is central to effective border management policies that facilitate cross-border trade and travel while enabling governments to address overlapping but often distinctive challenges of asserting their authority. Canada, the United States and Mexico are

independent, sovereign countries which may choose to share certain responsibilities in managing their shared borders. However, they cannot be expected to delegate these responsibilities under normal circumstances unless changes to border management regimes are negotiated, not unilateral. Political realities in each country suggest that any such initiatives are likely to be expressions of conditionally delegated authority, subject to the oversight and review of relevant legislative or administrative bodies.

Closer collaboration is conceivable and achievable on border-related economic issues to the extent that economic and related societal interests in each country have overlapping interests. An important step in this direction would provide for improved consultative mechanisms to engage representative groups of stakeholders. Given the diversity of economic activities and border regions in each country, these developments are arguably most likely to emerge from *regionally*-based processes which incorporate provincial and state governments and societal as well as economic stakeholders.

Harmonization is far less likely in two other areas: legal and constitutional issues of due process and migration policies, except perhaps in relatively specialized fields, based on mutual recognition of standards. The development of international soft law processes, as noted in Chapter 4 and currently applied in the context of international shipments and personal travel documents, is one approach to dealing with such arrangements. However, the very different demographic realities and immigration strategies of Canada and the United States respond to domestic political realities and policy choices.

The effectiveness of Canada's international policy relations on such issues will depend on the continued cultivation of mutual understanding and respect among senior political leaders, as well as border agencies and key stakeholder groups. Ultimately, the political environment for border policies will depend on recognition of two key realities. First, border issues are secondary, administrative considerations for the United States unless they become politicized over broader security issues. As such they are usually the responsibilities of Congress and administrative agencies than of the White House or its major inter-agency processes. Success in achieving Canadian goals will depend on limiting the degree to which Canada is seen as a source of security threats to the United States, and on cultivating domestic US alliances whose interests overlap with those of Canadian businesses, border communities and other major stakeholders.

Secondly, the large demographic presence of Hispanic Americans and the persistent structural and societal challenges that define US-Mexican relations will affect the political climate for US border management policies for some time. Under these circumstances, Canadian governments are likely to maintain their current insistence that Canada-US and US-Mexico border issues be addressed in the separate contexts of dual bilateralism. Under such circumstances, whether border issues are dealt with on a "two-speed" or "no speed" basis will depend on the effectiveness of Canadian diplomacy and the preoccupations of key American policy-makers. But, improvements to border management will depend largely on the willingness of both governments to accommodate a greater variety of stakeholders in policy processes capable of generating genuine communities of interest.

KEY TERMS AND CONCEPTS

Biometric Screening
 Layered Security
 Smart Border Accord
 Risk Management
 Trade Corridor
 Trusted Traveler and Shipper Programs
 Western Hemisphere Travel Initiative (WHTI)

QUESTIONS FOR CRITICAL THINKING

1. How have Canadian border management policies since 2001 reflected the interaction of domestic priorities and cross-border influences? To what extent has the 'risk management' perspective of border security enabled the reconciliation of these priorities? Provide examples of their successes and limitations.
2. What factors have facilitated or constrained administrative cooperation on border management and related security issues between the United States and Canada? Provide additional examples from your own experience or wider readings.
3. Discuss the interaction of border management and immigration policies, with reference both to this chapter and the chapter on migration policies.
4. What implications does the limited political importance of the US-Canadian border relative to the former's security or economic priorities have for Canadian efforts to influence related American policies towards Canada?

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