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BEYOND THE BORDER: A NEW CHAPTER IN NORTH AMERICAN TRADE

*By: Congressman William L. Owens (NY-21)**

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INTRODUCTION

In today's increasingly connected and global market, North America's ability to move pre-approved, low risk travelers and goods across its borders both safely and efficiently is crucial to the continent's economic competitiveness. The development of technologically advanced processes and enhanced regulatory collaboration along the United States-Canada border is critical to expanding American-made goods and services in consumer markets in Canada and throughout the world.

On December 7, 2011, President Obama and Canadian Prime Minister Harper announced an Action Plan for *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness* ("Plan").² This joint partnership between the United States and Canada will expedite the movement of people and goods across the northern border while enhancing security. The Plan focuses on four key areas of cooperation: 1) addressing threats early; 2) trade facilitation, economic growth, and jobs; 3) integrated cross-border law enforcement; and 4) critical infrastructure and cybersecurity.³ Responsibility for implementation and oversight of the Plan falls to the Beyond the Border Working Group, which is composed of

* Congressman William L. Owens has represented New York's 21st Congressional District since November of 2009. Before being elected to Congress in a special election to fill the vacancy created by former-Rep. John McHugh's appointment to Secretary of the Army, Bill had never run for public office. Now, as the Representative for the second largest congressional district east of the Mississippi, Bill is working with his colleagues on both sides of the aisle to help create jobs and economic opportunity for hardworking New York families.

1. Legislative Assistant to Congressman William L. Owens (NY-21), Washington D.C.
2. THE WHITE HOUSE, UNITED STATES - CANADA BEYOND THE BORDER: A SHARED VISION FOR PERIMETER SECURITY AND ECONOMIC COMPETITIVENESS (2011), *available at* <http://www.dhs.gov/xlibrary/assets/wh/us-canada-btb-action-plan.pdf> [hereinafter BEYOND THE BORDER ACTION PLAN].
3. *Id.* at ii-iv.

representatives from the relevant federal agencies of both countries.⁴ The two governments also commit to enhancing the existing Binational Port Operations Committees by creating additional local committees at the eight international airports in Canada that provide U.S. pre-clearance.⁵

The Plan is a significant milestone in the United States-Canada relationship. Canada is the United States' largest trading partner and an important NATO ally. The 5,525-mile shared border is the longest international border in the world.⁶ In 2010, bilateral trade between the United States and Canada rose to nearly \$645 billion with more than \$1.7 billion crossing the border each day.⁷ Last year alone, Canada imported more than \$280.9 billion in goods and \$56 billion in services from the United States, making it the nation's largest export market and the top export destination for 35 U.S. states.⁸

This trading relationship supports an estimated eight million U.S. jobs, with Canadian-owned companies responsible for employing over 500,000 American workers.⁹ In the 21st congressional district alone, there are 13 border crossings that are responsible for the movement of more than \$13 billion in annual bilateral trade, supporting nearly 20,000 jobs in the region and more than 500,000 jobs across the State of New York.¹⁰ The movement of commercial goods and people across the northern border is one of the critical issues we face in terms of economic development from Jefferson County, New York to Clinton County, New York and throughout the Northeast Corridor of the United States. Conversely, the risks of not investing now in greater efficiencies, infrastructure, and technological improvements at the border will cede economic opportunities to competitors in the

4. *Id.* at v.

5. *Id.* at 18-19.

6. See U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, U.S. CENSUS BUREAU, 225 tbl.363 (2011), available at <http://www.census.gov/prod/2011pubs/12statab/geo.pdf>.

7. *A Unique and Vital Relationship*, GOV'T OF CAN., <http://www.canadainternational.gc.ca/can-am/offices-bureaux/welcome-bienvenue.aspx?lang=eng&view=d> (last modified Aug. 20, 2012).

8. Press Release, The White House, Joint Statement by the U.S. and Canada (June 19, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/06/19/joint-statement-united-states-and-canada>.

9. LAURA M. BAUGHMAN & JOSEPH FRANCOIS, U.S.-CANADA TRADE AND U.S. STATE-LEVEL PRODUCTION AND EMPLOYMENT: 2008 1 (2010), http://www.canadainternational.gc.ca/washington/assets/pdfs/Jobs_Study_2008_FINAL-en.pdf.

10. Press Release, Office of Congressman Bill Owens, Owens Applauds Canadian Inclusion into Trans-Pacific Partnership (June 19, 2011), <http://owens.house.gov/news/documentprint.aspx?DocumentID=30005>.

European Union and the comparatively high growth economies in the so-called BRICS (Brazil, Russia, India, China, and South Africa). According to Garry Douglas, Executive Director of the North Country Chamber of Commerce in Plattsburgh, New York, the Plan, represents a “major commitment to addressing threats beyond the U.S.-Canada perimeter, relieving pressure on our shared border and enhancing the flow of goods and people.”¹¹ Clearly, it is critical that policy makers and private industry stakeholders understand and engage in implementation of the Plan.

One of the most significant initiatives under the Plan is a commitment to negotiate a pre-clearance agreement for land, rail, and sea. This agreement will provide the legal framework necessary for U.S. Customs and Border Protection (“CBP”) and the Canada Border Services Agency (“CBSA”) to carry out cross-border traffic inspections.¹² The central goal of the Plan is to move both countries in the direction of an integrated entry-exit system whereby clearance and inspection by authorities in one country will ultimately serve as entry into the other.¹³ Under this framework, generally referred to as *inspect it once, clear it twice*, inspections of certain low-risk passengers and goods can take place before they reach the physical border, making cross-border travel more efficient and cost-effective for goods and travelers alike.

Part I of this article evaluates the Plan’s impact on inspecting and clearing cargo that arrives in North America, including several new pilot programs; harmonization of supply chain security programs; and efforts to bring greater transparency and harmonization to fees assessed at the border. Part II discusses the Plan’s impact on so-called Trusted Traveler Programs, which facilitate the movement of low-risk travelers across the U.S. border, and proposals to lower wait times. Part III reviews the proposed joint investments by the United States and Canada in infrastructure and technology at border crossings.

I. EXPEDITING CARGO

A. Pilot Programs

The Plan establishes a number of pilot projects on both sides of the border that move the two countries in the direction of a unified North American cargo inspection system. An oft-cited example of binational regulatory coordination is the Trans-Tasman Mutual Recognition Act of 1997 between the governments of New Zealand

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11. E-mail from Garry Douglas, Executive Director, Plattsburgh North Country Chamber of Commerce, to author (May 3, 2012) (on file with author).
 12. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 14.
 13. *Id.* at 10.

and Australia.¹⁴ Under this agreement, goods that have been approved by federal regulators from either government can be sold in both countries.¹⁵ While the Plan is not quite as ambitious, it will achieve similar aims in terms of lowering costs for businesses, providing greater choices for consumers, and enhancing cooperation between our respective regulatory authorities.

Several pilot initiatives intended to harmonize the inspection process for cargo arriving to North America by sea. For example, marine cargo arriving at the shores of Canada destined for the United States by truck will be vetted and examined once by the Canadian border authorities and cleared for entry into the United States.¹⁶ Currently, these goods must undergo a second inspection at the physical border. The Canadian government also plans to build new cargo examination facilities in Halifax and Vancouver and implement a truck cargo facilitation project in at least one location in Canada.¹⁷ In October 2012, an integrated marine cargo screening pilot was established in Prince Rupert, British Columbia to inspect marine cargo arriving to Canada that is destined for Chicago by rail.¹⁸ Similarly, the U.S. government will launch pre-vetting and examination pilots to inspect cargo arriving at a major U.S. port and destined for Canada by truck.¹⁹

In addition to expediting the movement of cargo arriving by sea, there are several initiatives benefitting the meat, pharmaceutical, and food industries. For the meat industry, the Canadian Food Inspection Agency and the U.S. Food Safety and Inspection Agency will initiate a one-year pilot for advance review and clearance of official certification and alternative approaches to inspecting imported meats.²⁰ The Canadian government has also conducted a one-year pilot to enable certain participants from the processed-food sector in the United States to provide transactional post-entry data to Canadian regulatory authorities in return for expedited clearance at the border entering into Canada.²¹ The two governments will also

14. *Trans-Tasman Mutual Recognition Act 1997* (Cth) (Austl.), available at <http://www.legislation.act.gov.au/a/1997-30/current/pdf/1997-30.pdf>

15. *Id.* at 12.

16. See BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 6 (stating that the Canada Border Security Agency will vet and examine inbound marine cargo arriving at Montreal destined to the United States by truck).

17. *Id.* at 6 & 14.

18. *Id.* at 6.

19. *Id.*

20. *Id.* at 14.

21. *Id.* at 12.

initiate pilots to lower inspection rates for the agri-food and pharmaceutical sectors.²² In addition, the Canadian Food Inspection Agency has also established a working group with its U.S. counterpart, the Animal and Plant Health Inspection Service, and completed a final draft version of a wood packaging material feasibility study in December 2012.²³ The study is intended to identify and address any policy, program, or operational changes needed to move inspections for wood packaging material away from the U.S.-Canada border to the perimeter.²⁴

To measure the progress of these pilot programs, the two governments plan to measure increased membership for Trusted Trader Programs, examination rates for program participants, and the volume of goods that cross the border.²⁵ While cargo tampering between initial inspection and arrival at the border is an obvious risk, this issue can be addressed by ensuring the container remains sealed throughout the process. The federal agencies with oversight authority will be responsible for ensuring goods are not tampered with once they have been inspected by customs authorities and regular audits should be conducted to ensure compliance.

Some industry stakeholders have taken issue with a perceived lack of attention to establishing new pre-clearance programs for air cargo, noting the Plan primarily focuses on expediting the movement of people and goods by land and sea without acknowledging the growing air traffic business.²⁶ Over 27 billion dollars worth of goods were imported and exported by air between Canada and the U.S in 2010, an increase of approximately 3 billion dollars over 2009.²⁷ However, steps have been taken under the Plan to expedite the inspection process for air cargo arriving in North America. On May 31, 2012, a new mutual recognition initiative was announced that enables both countries to recognize each other's air cargo security programs.²⁸

22. *Id.*

23. *Id.* at 14.

24. *Id.* at 12.

25. *Id.*

26. *Id.* (stating that the Beyond the Border Action Plan will “accelerate the legitimate flow of people, goods, and services,” but fails to address the air traffic business).

27. *Fact Sheet: Air Cargo Shipping Simplified Between Canada and the U.S.*, U.S. DEP'T OF HOMELAND SEC., <http://www.dhs.gov/ynews/fact-sheets/btb-air-cargo-shipping-simplified-between-cananda-and-the-united-states.shtm> (last visited May 31, 2012).

28. Press Release, U.S. Department of Homeland Security, The United States and Canada Announce Air Cargo Security Improvements (May 31, 2012) *available at* <http://www.dhs.gov/news/2012/05/31/united-states-and-canada-announce-air-cargo-security-improvements>.

Under this new arrangement, cargo shipped on passenger aircraft will be screened only at the point of origin, saving shippers the time and money involved in rescreening shipments a second time when they arrive at the destination.²⁹

A new single online window that will allow importers to electronically submit all information to comply with customs and other regulatory authorities will also improve efficiency for shippers and customs brokers.³⁰ According to some industry estimates, approximately seventy-five percent of all cargo currently requires approval by multiple federal agencies, including the Food and Drug Administration, Environmental Protection Agency, Department of Transportation, Department of Agriculture, Federal Communications Commission, and the Consumer Product Safety Commission, among others.³¹ As an interim milestone, all participating government departments and agencies will convert their data requirements to electronic format and the top four priority departments and agencies will convert border-related decision processes to electronic format by December 2013.³²

If implemented properly, the creation of a single online window will move our two countries toward smarter, more efficient coordination across federal agencies. While the safety of products imported to the United States must not be compromised, the current system of subjecting goods to separate approval processes with multiple U.S. agencies is inefficient and increases costs to the shipper and ultimately the consumer. One challenge will be ensuring new reporting and regulatory requirements are not imposed on shippers. For example, one open question remains, whether a customs broker who files for approval of certain goods with multiple agencies will be able to provide the information required through a platform that is more user-friendly than what is currently used. If each agency requires importers to submit an unreasonable amount of unique information through a complicated submission process, the initiative will prove to be inefficient and may undermine the goal of expediting cargo shipments. Participants must also be assured their data will be protected and used by those agencies solely for the purpose of the clearance of goods. Collaboration between federal agencies and private sector stakeholders in both countries will be critical to the success of this initiative.

29. *Id.*

30. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 15-16.

31. E-mail from Robert DeCamp, Director of Regulatory Affairs and Consulting, A.N. Deringer, Inc., to author (May 29, 2012) (on file with author).

32. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 16.

B. Supply Chain Security

The United States and Canada both operate multiple programs catering to different types of companies that allow shippers to voluntarily submit information about their supply chain security to customs authorities in exchange for recognition as trusted traders to expedite movement of their goods. Under the Plan, efforts will be made to harmonize and improve the so-called Trusted Trader Programs in both countries and expand membership by making it easier for companies that operate on both sides of the border to become members.

Two of these programs, the U.S.-based Customs Trade Partnership Against Terrorism (“C-TPAT”) program and the Canadian Partners in Protection (“PIP”) program, are designed to enlist the voluntary cooperation of private industry to help provide the highest level of cargo security in exchange for lower rates of examinations of their goods.³³ Under the Plan, both programs will be further integrated to the benefit of industry and inspectors alike.³⁴ Canada also expects to fully implement its Partners in Compliance (“PIC”) program, a pilot risk-management project that allows approved Customs Self-Assessment participants to be given greater recognition of their internal controls and business systems in return for voluntarily providing supply chain information to CBSA.³⁵ In 2009, the U.S. and Canadian governments announced an initiative to align these two programs. Under the Plan, the two governments are working toward a single application process for both programs that would standardize policies, procedures, and information sharing, and introduce an automated enrollment system.³⁶

33. See *Security*, PACIFIC COAST EXPRESS, <http://www.pcx.ca/security/security.asp> (last visited Oct. 24, 2012) (explaining that the programs enlist the cooperation of private industry to enhance border security, in exchange for lower examination rates for shipments).

34. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 11 (stating that the Plan will “[h]armonize the U.S.-based Customs-Trade Partnership Against Terrorism (C-TPAT) program and the Canada-based Partners in Protection (PIP) program and offer new benefits”).

35. See *Partners in Compliance*, CAN. BORDER SERVICES AGENCY, <http://www.cbsa-asfc.gc.ca/import/pic-pemo-eng.html> (last visited June 25, 2012) (“PIC allows approved CSA importers to voluntarily demonstrate to the CBSA that their business systems, internal controls and self-testing processes are effective and reliable at ensuring their trade program compliance”).

36. See *Partners in Protection*, CAN. BORDER SERVICES AGENCY, <http://www.cbsa-asfc.gc.ca/security-securite/pip-pep/menu-eng.html> (last updated June 27, 2012) (“PIP and C-TPAT are collaborating on a single application process for those applying to both programs and are

There is also a commitment under the Plan to extend the Free and Secure Trade (“FAST”) program, a joint commercial clearance initiative between CBP and CBSA that allows pre-approved drivers, carriers and importers to move more quickly across the northern border.³⁷ A pilot has already been launched extending FAST benefits at the Sarnia, Ontario border crossing into Canada to members of U.S.-based CTPAT and Canada-based PIP.

Two other programs to be aligned are the Canadian Customs Self-Assessment (“CSA”) program and the American Importer Self-Assessment (“ISA”) program.³⁸ Both offer trusted importers the benefits of pre-authorized, expedited clearance of their goods across the border.³⁹ Integrating the accounting processes and risk-based examination rates of these two programs will reduce wait times for commercial vehicles at the border. Membership in these self-assessment programs will also be extended to “non-resident” importers between the United States and Canada. Many stakeholders have expressed hope, privately and publicly, that by aligning these two programs, the United States will begin offering the same benefits to American shippers that are currently available to their neighbors to the north under the CSA program.⁴⁰ One participant privately described to my office that ISA is viewed by many in the private sector as the back end of CSA, allowing for self-assessment of the entry for duty and tax accounting purposes, but nothing more. A detailed comparison and review of the two programs has already been conducted in anticipation of eventual alignment.

Since the Plan’s announcement, U.S. officials have also suggested the possibility of merging the ISA and C-TPAT programs in an effort to reduce costs for participants of both programs.⁴¹ At a U.S. House of Representatives Ways and Means Trade Subcommittee hearing in May 2012, acting CBP Commissioner David Aguilar noted combining these two programs could reduce the number of inspections and

examining the standardization of their policies and procedures and the sharing of information”).

37. *Free and Secure Trade*, CAN. BORDER SERVICES AGENCY, <http://www.cbsa-asfc.gc.ca/prog/fast-expres/menu-eng.html> (last visited June 27, 2012).

38. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 11-12.

39. *Id.* at 11.

40. *Id.*

41. *See, e.g., Acting CBP Commissioner Aguilar Announces Alignment of C-TPAT and ISA*, J.O. ALVAREZ, INC. (May 18, 2012), <https://www.joalvarez.com/wordpress/?p=647> (stating that David Aguilar, acting CBP Commissioner, proposed such a merger).

audits for participating companies.⁴² C-TPAT currently has over 10,000 certified partners, while ISA has approximately 231 participating companies.⁴³ One of the keys to successfully aligning these programs will be CBP and CBSA's outreach to industry and ability to identify and implement incentives for participation. The National Customs Brokers and Forwarders Association of America ("NCBFAA") and the U.S. Chamber of Commerce have both noted the costs associated with participating in these programs are prohibitive for many small and midsize shippers. A joint report published by the U.S. Chamber of Commerce and the Canadian Chamber of Commerce in 2009 noted the cost of becoming a trusted shipper was estimated at more than \$100,000 in up-front expenses, in addition to long-term costs associated with full time staff to ensure global trade compliance and security upgrades.⁴⁴ One suggestion made by the NCBFAA to reward importers who cannot afford to join a Trusted Traveler program, but have good compliance records, would be to lower the examination rates for their products.⁴⁵ The Beyond the Border Working Group should consider developing a program for smaller shippers with a good compliance record that would permit expedited entry for their goods. The premise that smaller shippers should also have the opportunity to access the same level of benefits as their larger competitors is legitimate. At the very least, this proposal and other alternatives merit further consideration and cost-benefit analysis.

42. *See id.* (stating that the merger would "reduce inspections and the number of audits" thereby decreasing costs to participants).

43. *C-TPAT: Program Overview*, U.S. DEP'T OF HOMELAND SEC., http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/ctpat_program_information/what_is_ctpat/ctpat_overview.ctt/ctpat_overview.pdf (last visited Oct. 24, 2012); *Written testimony of U.S. Customs and Border Protection Acting Commissioner David Aguilar for a House Committee on Ways and Means, Subcommittee on Trade hearing titled "Supporting Economic Growth and Job Creation through Customs Trade Modernization, Facilitation, and Enforcement"*, U.S. DEP'T OF HOMELAND SEC. (May 17, 2012), <http://www.dhs.gov/news/2012/05/17/written-testimony-us-customs-and-border-protection-house-ways-and-means-subcommittee>.

44. U.S. CHAMBER OF COMMERCE & CAN. CHAMBER OF COMMERCE, *FINDING THE BALANCE: SHARED BORDER OF THE FUTURE 10* (2009), available at https://www.uschamber.com/sites/default/files/reports/0907_sharedborder.pdf.

45. NCBFAA, *CARGO SECURITY WHITE PAPER* (2012), available at <http://www.ncbfaa.org/images/ncbfaa/PDFs/cswhitepaper.pdf>.

C. *Border Fees*

The Plan will also bring greater transparency and cost-benefit analysis to the fees charged by both governments at the border. Both governments have completed a preliminary inventory of fees and charges at the border. A forthcoming report is expected to be released in the first quarter of 2013 that provides an overview of all existing border fees and explain each fee's purpose and legal basis, how it is collected, its intended use, and a rationale for its collection.⁴⁶ Additionally, a third party will be tasked with conducting an economic impact assessment of each of these fees and issuing a report to the public.⁴⁷ This initiative will not only result in transparency to the regulatory structure that governs cross-border trade, but will provide an opportunity for local communities and businesses to work with their elected representatives to identify which fees are impeding trade and global competitiveness.

The Plan will also harmonize several duty exemptions at the border. For example, the low-value shipment threshold, which is also referred to as the Informal Entry level, will be raised to \$2,500 and the exemption from NAFTA Certificate of Origin requirements will be increased by both countries.⁴⁸ Informal Entries of merchandise, which may be used for both personal and commercial importations, do not require filing a CBP Form 7501 (Entry Summary) or posting of Customs bonds and are liquidated at the time of release.⁴⁹ Increasing these exemptions will reduce paperwork and delays for the collection of duties at the border without jeopardizing security, as full manifest detail and pre-arrival information will still be required on all shipments.⁵⁰ In April 2011, I teamed with Representatives Aaron Schock (R-IL) and Joseph Crowley (D-NY) to introduce legislation

46. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 16.

47. *Id.*

48. *See id.* ("Canada will increase the value threshold to \$2,500 for exemption from North American Free Trade Agreement Certificate of Origin requirements" ; "We will increase and harmonize the value thresholds to \$2,500 for expedited customs clearance from the current levels of \$2,000 for the United States and \$1,600 for Canada").

49. *Filing an Informal Entry*, U.S. CUSTOMS & BORDER PROT., [https://help.cbp.gov/app/answers/detail/a_id/215/-/filing-an-informal-entry-%28for-goods-valued-at-less-than-\\$2000%29](https://help.cbp.gov/app/answers/detail/a_id/215/-/filing-an-informal-entry-%28for-goods-valued-at-less-than-$2000%29) (last visited June 27, 2012).

50. *See* Gary Clyde Hufbauer & Yee Wong, *Logistics Reform for Low-Value Shipments*, PETERSON INST. FOR INT'L ECON. 2 (June 2011), <http://www.piiie.com/publications/pb/pb11-07.pdf> ("It is important to emphasize that raising these value thresholds would not undermine US security at the border. Full manifest detail and pre-arrival information is required for all shipments, regardless of declared value").

that would raise the U.S. Informal Entry level from its current level of \$2,000 to \$2,500 and the Section 321 *de minimis* level from \$200 to \$1,000.⁵¹ As the Express Association of America noted in a letter addressed to the House Ways and Means Committee dated May 23, 2011, raising these amounts would simplify and streamline the customs entry process and benefit both the trade community and government.

Some industry advocates may urge for the elimination of all fees that impact their business. It will be important for the Beyond the Border Working Group to distinguish between *de minimis* fees that are necessary for funding operations and personnel at the border from those that stifle trade and impose burdensome costs on businesses. The Merchandise Processing Fee (“MPF”) is one example of a fee that merits further examination. The MPF is assessed by CBP on importers and carries a minimum fee of \$25 and a maximum fee of \$485 on formal entries, which are required for many commodities with a value in excess of \$250, including textiles, apparel and footwear.⁵² While large importers realize a relative benefit from the \$485 MPF cap when shipping high value goods, a small or medium sized business importing \$250 worth of certain commodities are subject to the \$25 minimum fee, representing a 10% increase in cost.⁵³ The MPF is waived for any goods that have a NAFTA Certificate of Origin.⁵⁴

Although not included in the Plan, a related area of interest is the Canadian government’s decision earlier this year to increase the personal exemption limit for Canadian residents traveling outside the country for more than twenty-four hours and forty-eight hours, effective June 1, 2012. The decision to increase the personal exemption value from \$50 to \$200 after 24 hours and from \$400 to \$800 after 48 hours is an important step towards aligning customs levels at our shared border and fits within the goals articulated in the Plan.⁵⁵ However, a discrepancy still exists in the amount Canadian

53. *Id.* at 3.

52. *User Fee: Merchandise Processing Fee*, U.S. CUSTOMS & BORDER PROT., https://help.cbp.gov/app/answers/detail/a_id/334/~/~user-fee---merchandise-processing-fees (last updated Dec. 7, 2011).

53. *Id.* (stating that “the maximum amount of the fee shall not exceed \$485 and shall not be less than \$25”).

54. NAFTA: Merchandise Processing Fee Exemption and Technical Corrections, 72 Fed. Reg. 52780 (Sept. 17, 2007) (amending 19 C.F.R. pts 103, 178, & 181) available at <http://www.gpo.gov/fdsys/pkg/FR-2007-09-17/pdf/07-4551.pdf>.

55. See BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 16 (explaining that a major goal of the Plan is to “[b]ring greater public transparency and accountability to the application of border fees and charges, with a view to reducing costs to business and promoting trade competitiveness”).

and U.S. residents can claim if they have been outside the country for less than twenty-four hours. U.S. residents returning from Canada who were abroad for less than 48 hours may claim up to \$200 worth of items duty and tax free for their personal or household use and an \$800 monthly exemption after a 48 hour stay.⁵⁶ Canadian residents, on the other hand, may not claim any exemptions at the border if they have been abroad for less than twenty-four hours.⁵⁷ Most Canadian residents crossing the border into New York are either day shoppers or hold a temporary worker visa, such as an L-1, and will therefore not be able to take advantage of these new exemption levels.

While the opposition to parity on the personal exemption level is understandable given Canadian retailers' fear of losing business, both countries will have to make certain concessions to harmonize processes at the border. Dr. Colin Read, a professor of Business and Economics at the State University of New York at Plattsburgh, has observed that greater liberalization of consumer trade across our border will likely stimulate competition and reduce inefficiencies on both sides of the border, while better serving taxpayers who have grown frustrated with border restrictions following September 11.⁵⁸

II. EXPEDITING TRAVELERS

A. Pilot Programs

Developing a framework that allows people to travel more easily between the United States and Canada is important to economic growth in North America. By the end of 2012, the Department of Homeland Security plans to establish a pilot screening facility in Vancouver, British Columbia for Amtrak and cruise ship passengers traveling from Canada to the United States.⁵⁹ Establishing this pre-clearance process will cut down on delays for passengers traveling between Washington State and Canada, and on the Adirondack Line connecting Montreal and New York City. The total travel time between Montreal and New York City along the Adirondack Line is currently at least eleven hours, including stops of up to two hours for processing passengers at the U.S.-Canada border. These delays

56. *Customs & Duty Free*, CAN. TOURISM COMM'N, <http://us.canada.travel/aboutcanada/customs-duty-free> (last visited Nov. 5, 2012).

57. *Fact Sheet: Travelling Outside Canada?*, CAN. BORDER SERVICES AGENCY, <http://www.cbsa-asfc.gc.ca/media/facts-faits/060-eng.html> (last updated May 2012).

58. E-mail from Dr. Colin Read, Professor of Business and Economics, State University of New York at Plattsburgh, to author (May 23, 2012) (on file with author).

59. GLOBAL ENTRY: TRUSTED TRAVELER NETWORK, <http://www.globalentry.gov/index.html> (last visited Nov. 5, 2012).

constitute a serious impediment to increasing the number of Canadian tourists and business travelers to the United States. A plan is already in motion to implement at Montreal's Central Station joint facilities staffed by U.S. and Canadian agents to conduct the pre-clearance process of passengers traveling to and from the United States. I have been working with my colleagues in the New York and Vermont Congressional delegations to advocate for the U.S. and Canadian governments to conclude an agreement for the pre-clearance of rail passengers in Montreal by the end of 2012.

B. Trusted Traveler Programs

There are several so-called Trusted Traveler Programs that provide expedited travel for pre-approved, low-risk travelers through certain dedicated lanes at specified border crossings and airport kiosks between the United States and Canada. The programs include Global Entry,⁶⁰ which provides expedited processing at airport kiosks, and NEXUS, a joint program with the CBSA that allows pre-screened, approved travelers faster processing.⁶¹ The NEXUS program was initiated under a joint partnership between the United States and Canada at major land crossings in 2001 and expanded in subsequent years to air, land and marine travelers. For travelers, the NEXUS card serves as an alternative to a passport under the U.S. Western Hemisphere Travel Initiative, otherwise known as WHTI.⁶² The Plan calls for initiatives to help expand the NEXUS program and make it more accessible to business and non-business travelers.⁶³ According to CBP, there are currently about 662,330 members of the NEXUS program.⁶⁴ Roughly seventy percent of these users are Canadian residents.⁶⁵ Currently, Canadian citizens traveling to the United States by air must present a valid passport or NEXUS card when

60. GLOBAL ENTRY: TRUSTED TRAVELER NETWORK, <http://www.globalentry.gov/index.html> (last visited Nov. 5, 2012).

61. *NEXUS Program Description*, U.S. CUSTOMS & BORDER PROT., http://www.cbp.gov/xp/cgov/travel/trusted_traveler/nexus_prog/nexus.xml (last modified June 5, 2009).

62. *Id.*

63. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 12-13.

64. *NEXUS Fact Sheet*, U.S. CUSTOMS & BORDER PROT., http://www.cbp.gov/linkhandler/cgov/travel/trusted_traveler/nexus_prog/nexus_facts.ctt/nexus_facts.pdf (last modified Mar. 15, 2012).

65. *NEXUS Highway and FAST Programs(Trusted Travelers) Evaluation Study*, CAN. BORDER SERV. AGENCY (May 2008), <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2008/nf-ne-eng.html> ("Of NEXUS Highway members, 62% are Canadian citizens and residents").

departing from a Canadian airport.⁶⁶ Canadian travelers arriving to the United States by land or sea must present a passport, Enhanced Driver's License or Identification Card, NEXUS, or FAST card.⁶⁷

Under the Plan, NEXUS lanes at specific border crossings will also be added and better harmonized to decrease wait times for travelers.⁶⁸ Jointly, the two governments will develop a plan to expand NEXUS lanes, booths, and access to the lanes at jointly identified ports of entry.⁶⁹ Wherever feasible, the number of NEXUS lanes and booths will also be aligned.⁷⁰ One border crossing singled out for expanded NEXUS lanes and booths is the St.-Bernard-de-Lacolle Port of Entry in Quebec, sister port to Champlain, New York, by June 2013.⁷¹ In 2011, the Champlain Port of Entry processed over one million personal vehicles and nearly 10,000 buses entering the United States from Canada, many of whom will be able to cross the border more quickly with the additional lanes.⁷²

Additionally, eligibility for the Trusted Traveler programs has been expanded to Canadian citizens living abroad. Effective June 30, 2012, the CBSA lifted the three-year residency requirement for Canadian applicants to the NEXUS program.⁷³ Lifting this requirement will extend membership eligibility to Canadian citizens who are currently living abroad or have only recently returned to North America. The United States amended this requirement in 2009.⁷⁴ Over the next two years, program enhancements will also be

66. *Documents for Entry into the U.S.: Air Ports of Entry*, CAN. BORDER SERVICES AGENCY, <http://www.cbsa-asfc.gc.ca/whti-ivho/air-aerien-eng.html> (last modified Dec. 17, 2010).

67. *Canadian-Citizens/Residents/Landed Immigrants Entering the U.S.*, U.S. CUSTOMS & BORDER PROT., https://help.cbp.gov/app/answers/detail/a_id/1192/~canadian--citizens%2Fresidents%2Flanded-immigrants-entering-the-U.S. (last updated June 4, 2012).

68. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 12-13.

69. *Id.* at 13.

70. *Id.*

71. *Id.*

72. *North American Transborder Freight Data, including Port, Commodity, or State Origin/Destination*, BUREAU OF TRANSP. STATISTICS, U.S. DEP'T OF TRANSP. http://www.bts.gov/programs/international/transborder/TBDR_QA.html (last visited Nov. 5, 2012).

73. *The Canada/U.S. Nexus Program Amends Three-Year Residency Requirement*, CAN. BORDER SERV. AGENCY (July 10, 2012), <http://actionplan.gc.ca/eng/media.asp?id=5731>.

74. *NEXUS Eligibility and Fees*, U.S. CUSTOMS & BORDER PROTECTION, http://www.cbp.gov/xp/cgov/travel/trusted_traveler/nexus_prog/nexus_eligibility.xml (last modified Dec. 3, 2009).

developed for all modes of travel that address enrollment, including via mobile device, and compliance.⁷⁵

NEXUS members traveling by air will also experience a number of benefits, including immediate recognition for Trusted Traveler lanes at passenger pre-board screening points for flights from Canada to the United States.⁷⁶ Canadian NEXUS members will also be included in a risk-based screening program developed by the Transportation Security Administration that provides differential treatment based on risk. Both governments will mutually recognize the passenger checkpoint screening measures for Trusted Traveler Program members.⁷⁷ In other words, travelers connecting on a flight through the United States whose bags have been cleared in Canada will no longer need to clear them a second time. CBP is also expected to improve pre-clearance operations at Canadian airports, such as the placement of Canada's Air Transport Security Authority ("CATSA") screening activities.⁷⁸

The Plan also includes several initiatives aimed at easing delays and processing requirements for business travelers crossing the border. The Department of Homeland Security and Canada's Ministry of Citizenship, Immigration and Multiculturalism have already initiated consultations with stakeholders in both countries to assess additional administrative, policy, regulatory, and operational improvements that could help facilitate the movement of business travelers.⁷⁹ The Plan also calls for more efficient processes to be implemented for business travelers seeking admission under work permits.⁸⁰ For example, the U.S. Department of Homeland Security currently does not permit Canadian nationals outside the United States seeking admission as a nonimmigrant temporary worker, known as a "TN" visa, to request advance adjudication of their eligibility.⁸¹ A report on the progress of these and several other business traveler initiatives will be completed and distributed to stakeholders.⁸² Since these initiatives can only be accomplished if a greater number of travelers enroll, both

75. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 12.

76. *Id.*

77. *Id.* at 13.

78. *Id.* at 14.

79. *Id.* at 15.

80. *Id.*

81. *Backgrounder — Stakeholder Consultation on Facilitating the Conduct of Cross-Border Business*, GOV'T OF CAN., <http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-05-14a.asp> (last modified May 14, 2012).

82. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 15.

governments have begun several enrollment blitzes. During May and June of 2012, these efforts netted over 1,000 new NEXUS members.⁸³

C. Wait Times

The Plan also requires CBP and CBSA to identify reasonable and achievable border wait time service levels at major crossings.⁸⁴ Real time border information will be made available online to the public on the websites of CBP, the Department of Transportation, Transport Canada, and CBSA.⁸⁵ Additionally, a wait time measurement system will be completed over the next three years at the top twenty crossings.⁸⁶ On July 17, 2012, new sensor technology was installed at the Peace and Lewiston-Queenston Bridges in New York that will provide real time information to drivers regarding wait times at the border.⁸⁷ Wait times at other key border crossings will be made available to the public on websites and road signs by the end of 2013.⁸⁸ Having access to this information will help commuters, travelers, and traders assess wait times at the nearest border crossing before leaving home or while in transit by using a smart phone device.

At each major border crossing in the United States, the Port Director tracks wait times and report them to Customs and Border Protection headquarters. Wait times reflect the elapsed time beginning when a vehicle enters a lane at the border crossing and ending when the traveler reaches the primary inspection booth. At the end of each fiscal quarter, my congressional office requests from CBP the average monthly wait times for each of the three major border crossings in the congressional district: Alexandria Bay, Champlain, Massena, and Ogdensburg. My staff, in turn, communicates this data to the local Chambers of Commerce, Industrial Development Agencies, and Port Directors. If there is a spike in delays, the relevant Port Directors are asked to account for them. There are times when security requires additional screening or there is simply a dramatic increase in traffic during the summer months and holidays. However,

83. Press Release, Can. Border Serv. Agency, The Canada/U.S. NEXUS Program Amends Three-Year Residency Requirement (July 10, 2012), <http://www.cbsa-asfc.gc.ca/media/release-communique/2012/2012-07-10-eng.html>.

84. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 18.

85. *Id.*

86. *Id.*

87. Press Release, Gov't of Can., Canada and the United States Launch New Technology to Reduce Border Wait Times (July 17, 2012) (on file with author), *available at* <http://www.tc.gc.ca/eng/mediaroom/releases-2012-h079e-6796.htm>.

88. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 18.

making this information available to the public under the Plan provides additional levels of transparency and accountability for activity at the border, and is also a helpful way to encourage interested parties from the private sector and government to develop practical solutions that work for their region.⁸⁹

III. JOINT BORDER INFRASTRUCTURE INVESTMENTS AND TECHNOLOGY

A. *Infrastructure*

Under the Plan, both countries have developed a joint Border Infrastructure Investment Plan to ensure a mutual understanding of available funding for specific projects.⁹⁰ The coordinated investment and implementation plans at key crossings called for in the Plan, as well as infrastructure-specific actions at small, remote crossings will constitute the first bilateral five-year Border Infrastructure Investment Plan, to be reviewed annually.⁹¹ These initiatives will help the surrounding communities plan for the future and improve their ability to attract businesses and tourists.

The Plan has also established a working group that is focusing exclusively on improvements at small and remote ports of entry.⁹² This group will evaluate a bi-national approach to operational alignment measures such as mirroring hours, infrastructure investments, and improved service.⁹³ Recommendations will also

89. See BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 17 (stating that “CBSA also report on reductions in wait times at the border” as a requirement under the Plan); see generally *Border Wait Times*, CAN. BORDER SERV. AGENCY, <http://www.cbsa-asfc.gc.ca/bwt-taf/menu-eng.html> (last visited Nov. 20, 2012) (posting wait times for land ports of entry online).

90. See *Coordinate Border Infrastructure Investments and Upgrade Physical Infrastructure at Key Border Crossings*, CANADA’S ECON. ACTION PLAN, <http://actionplan.gc.ca/en/page/bbg-tpf/trade-facilitation-economic-growth-and-jobs#sect9> (last visited Nov. 2, 2012) (stating that by June 30, 2012, Canada will develop the first joint Border Infrastructure Investment Plan, which will run for a period of five years).

91. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 17 (“By June 30, 2012 we will develop coordinated project investment and implementation plans that will, together with infrastructure-specific actions at small/remote crossings, constitute the first bilateral 5-year Border Infrastructure Investment Plan to be renewed annually”).

92. See *id.* (stating that under the Plan, a small working group will be established to coordinate plans for physical infrastructure upgrades at small and remote ports of entry).

93. See *id.* (“We will better coordinate joint port of entry investment and enhance client service by . . . [e]stablishing a small and remote port working group to evaluate a binational approach to operational

include analysis of hours of operation, technology-only processing solutions, joint or co-managed facilities, and coordinated plans for expansions and closures.⁹⁴ These proposals, if implemented and funded fully, will have a significant impact on the region I represent, which includes nine small, relatively remote crossings.

The Plan also commits the U.S. and Canadian governments to significant investments in physical infrastructure at key border crossings.⁹⁵ Upgrades may include customs plaza replacement and redevelopment, expanded and new secondary inspection facilities and connecting roads, highway interchanges and bridges.⁹⁶ On the New York border, two ports that will be prioritized for upgrades include the Alexandria Bay Port of Entry and St.-Bernard-de-Lacolle Port of Entry in Quebec.⁹⁷ More than \$13 billion in goods and nearly 1,765,000 vehicles passed through the Alexandria Bay border crossing in 2011.⁹⁸

Given the desire by the public and political leadership in both countries to shrink the federal debt and deficits, both governments must also be flexible in approaching the challenge of financing

alignment (for example, mirroring hours), infrastructure investment, and improved service”).

94. *See id.* (“We will better coordinate joint port of entry investment and enhance client service by . . . [a]rriving at consensus recommendations for all small and remote ports to include analyses of hours of operation, technology-only processing solutions, joint or co-managed facilities, and aligned plans for expansions and closures”).
95. *See id.* (stating that under the Plan, the U.S. and Canada intend to commit significant investments in physical infrastructure at key crossings to relieve congestion and increase the movement of traffic across the border).
96. *See id.* (“Examples of the significant infrastructure upgrades may include: customs plaza replacement and redevelopment, additional primary inspection lanes and booths, expanded or new secondary inspection facilities, and expanded or new connecting roads, highway interchanges, and bridges”).
97. *See id.* (“As initial respective priorities, the United States will put forward for approval Alexandria Bay, New York . . . for such investments . . . and Canada will put forward Lacolle, Quebec).
98. *See Thousand Islands Bridge*, 5 THE CONNECTION 1, 3 (2012), available at <http://www.thecapitalcorridor.com/wp/wp-content/uploads/2008/02/Vol-5-Issue-II.pdf> (stating that the value of goods crossing the Thousand Islands Bridge over Alexandria Bay was \$13 billion in 2011 alone); *see also Border Crossing/Entry Data: Query Detailed Statistics*, BUREAU OF TRANSP. STATISTICS, http://www.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BCQ.html (last visited Nov. 3, 2012) (stating that in 2011 approximately 1,765,000 trucks passed through the Alexandria Bay border crossing).

infrastructure upgrades. The Alexandria Bay Port of Entry in New York has been in the queue for several years for a \$173 million upgrade by the U.S. General Services Administration. Unfortunately, as a result of budget cuts at the General Services Administration in recent years, the project has been left without a source of funding for an indeterminate amount of time. Meanwhile, the Thousand Islands Bridge Authority, which connects the U.S.-Canada crossings, has for years expressed an interest in paying for the new port of entry upgrade and leasing the facility back to the federal government. The Bridge Authority has been repeatedly rebuffed by the General Services Administration, owing to the upfront spending commitments the U.S. Office of Management and Budget would require from Congress. In this budget environment, both governments must be more open to exploring the idea of public-private partnerships to help finance infrastructure upgrades.

U.S. and Canadian Port Directors stationed at adjacent border crossings on either side of the border should also consider shifting border personnel and the number of open passenger vehicle lanes during certain high traffic holidays and weekends. For example, if the port of entry in Champlain, New York is experiencing a high number of incoming vehicles on a Friday afternoon, the St.-Bernard-de-Lacolle crossing can reasonably expect to see an influx of travelers that Sunday or Monday of a holiday weekend. To help expedite that traffic and avoid a spike in wait times, it is imperative that the Canadian and U.S. Port Directors communicate with each other to plan accordingly and jointly implement measures like expanding lanes, adding additional personnel at primary inspection booths, and diverting campers and buses to cargo lanes.

B. Technology

During previous discussions with officials at CBSA and CBP about how to expedite the movement of people and goods, the use of advanced technology was a frequent topic of conversation. Under the Plan, the Canadian government will deploy Radio Frequency Identification (“RFID”) technology at a minimum of two lanes at eleven land ports of entry, including Cornwall, Ontario and St-Bernard-de-Lacolle.⁹⁹ RFID technology uses radio waves to wirelessly identify people or objects crossing the border to expedite the inspection process. Trusted Traveler programs including NEXUS, SENTRI and FAST have used the RFID technology at land ports of entry since 1995.¹⁰⁰ A joint plan to implement new technology at all

99. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 18.

100. See *Radio Frequency Identification (RFID): What is it?*, DEP’T OF HOMELAND SEC. (June 28, 2012), <http://www.dhs.gov/radio-frequency-identification-rfid-what-it> (stating that NEXUS, SENTRI, and FAST

identified border crossings will also be issued, followed by a report on associated reductions in wait times achieved through these investments.¹⁰¹

The Canadian government announced in May 2012 it was closing its consulate in Buffalo, New York as a result of budget cuts and a change in immigration rules. There was an understandable shift in the need for this consulate following a change in visa policy that will allow foreign students and temporary workers in the Toronto area wanting to extend their stay in Canada to apply online and conduct their interviews at an immigration office in Canada. Previously, these individuals had to renew their visas at the consulate in Buffalo. However, there are legitimate concerns that the closure of such a large diplomatic outpost near the border and shifting its responsibilities to a Canadian consulate in New York City will impact other border-related services vital to the region's economic growth. In addition to processing visas, the Buffalo Consulate was an invaluable partner on initiatives including the promotion of economic development and trade, enforcing water quality standards along the St. Lawrence River, and coordinating upgrades at the Champlain Port of Entry.

Another example that demonstrates the need for greater cooperation between the two countries stems from an announcement in April 2011 that the Canadian government was closing three ports of entry, just as the U.S. government was planning a significant upgrade at one of its adjoining Ports of Entry.¹⁰² Shortly after the Canadian government's announcement, I met with members of the Canadian Parliament and other Canadian border and trade officials at the time to voice my concerns about the lack of consultation between

have used vicinity RFID technology to speed travelers through land border entries since 1995).

101. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 13 (stating that by March 31, 2012, DHS, the U.S. Department of Transportation, and CBSA will report publicly on a plan toward implementing the new technology at all identified border crossings within the identified timeframes. Additionally, they will report on associated reductions in wait times achieved through these investments).

102. See *Fact Sheet: Closed (3 border locations)*, CAN. BORDER SERV. AGENCY (April 2011), <http://www.cbsa-asfc.gc.ca/media/facts-faits/094-eng.html> (stating that Canadian government closed three borders in April of 2011, including Jamieson's Line, QC, Franklin Centre, QC, and Big Beaver, SK); see also *New \$6.1 Million Easton Border Station Improves Safety, Security, Efficiency*, BANGDOR DAILY NEWS (Sept. 21, 2012) ("The port in Easton adjoins the Canadian port of River De Chute in New Brunswick. This new border facility replaces an outdated facility, strengthens security and facilitates legal travel and trade along the northern border").

U.S. and Canadian authorities and its impact on cross-border commerce. Several businesses in New York, including an apple orchard, used this two-way port to transport goods and a mutual aid agreement existed between adjacent towns on both sides of the border. Ultimately, the Canadian government went ahead with the closure, forcing these businesses to foot the bill for hundreds, if not thousands, of additional miles in travel per year. As an alternative to full and immediate closures, both governments should first explore jointly managed facilities or take advantage of new technology, such as remote screening at satellite border kiosks.

IV. CONCLUSION

The development and implementation of a legal framework to allow low-risk cargo and people to be inspected in one country and cleared for both is at the heart of a more effective and efficient northern border. Aligning our regulatory processes at the northern border is critical to the creation of jobs and the competitiveness of North American businesses in the global marketplace. For example, in my congressional district, this new framework will allow Canadian border authorities to use a facility in Massena, New York, to conduct full pre-clearance of goods and travelers destined for Canada.¹⁰³ Sharing facilities along the northern border has been a goal of both governments dating back to the George W. Bush Administration, when plans were announced for shared border stations at Buffalo-Niagara and Wellesley Island. Those negotiations ultimately unraveled when the two governments were unable to come to an agreement over the legal framework.¹⁰⁴

In addition to sharing personnel and facilities, greater regulatory collaboration is crucial to achieving the shared goals of reducing federal deficits while boosting exports and creating the conditions necessary for economic growth. The Plan is accompanied by the creation of a Regulatory Cooperation Council composed of regulatory, trade and foreign affairs officials from both countries.¹⁰⁵ The Council

103. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 14.

104. See Marc Heller & Brian Hayden, "Beyond The Border" Deal Includes Shared Station, DAILY COURIER OBSERVER (Dec. 9, 2011), <http://www.mpcourier.com/article/20111209/DCO01/312099952/-1/dco> (stating that shared facilities have been a goal of the U.S. and Canada for several years; during the George W. Bush administration, the governments announced plans for shared stations at Buffalo-Niagara and Wellesley Island, but those talks fell apart over issues related to putting U.S. law enforcement officers on Canadian soil).

105. See THE WHITE HOUSE, UNITED STATES-CANADA REGULATORY COOPERATION COUNCIL 3 (2011) http://www.whitehouse.gov/sites/default/files/us-canada_rcc_joint_action_plan3.pdf [hereinafter

is charged with eliminating unnecessary burdens on cross-border trade.¹⁰⁶ One area in need of greater regulatory collaboration is the differing speeds at which automobile air bags must be deployed in each country. This regulatory discrepancy makes it needlessly difficult for auto manufacturers in the United States and Canada to gain a foothold in each other's market.¹⁰⁷ Congress recently took a step towards addressing motor safety regulatory discrepancies when it reauthorized the Surface Transportation Extension Act on June 29, 2012.¹⁰⁸ One provision in this legislation authorizes the U.S. Secretary of Transportation to consult with officials from the Canadian federal, territorial or provincial government to provide reciprocal recognition of each country's "motor carrier safety fitness determinations."¹⁰⁹

While the benefits of the Plan for trade and economic development are evident, the threats to its successful implementation should not be dismissed. For example, the increased information sharing required of a shared entry-exist system is sure to become a target for some who claim it undermines civil liberties and national sovereignty. Additionally, the physical presence of Canadian customs authorities conducting inspections in the United States and vice versa is likely to rile some. Stakeholders from the public and private sectors must be prepared to aggressively and thoughtfully address these issues and explain what protections will be put in place to mitigate these concerns. At the same time, it must be acknowledged that one relinquishes a certain degree of privacy in return for faster entry and exit across the northern border. The two governments took an important step on May 30, 2012, by releasing a Statement of Privacy Principles intended to inform and guide all information sharing arrangements and initiatives in the Plan.¹¹⁰ The Principles establish a

REGULATORY COOPERATION COUNCIL] (stating that on February 4, 2011, President Barack Obama and Prime Minister Stephen Harper directed the creation of the United States-Canada Regulatory Cooperation Council, composed of senior regulatory, trade, and foreign affairs officials from both countries).

106. *See id.* (stating that through the Council, the U.S. and Canada intend to eliminate unnecessary burdens on cross-border trade).
107. Matt Glynn, *Canadian Envoy Cites Delicate Balance*, BUFFALO NEWS, Apr. 18, 2012, at B7.
108. *H.R. 6064: Temporary Surface Transportation Extension Act of 2012*, GOVTRACK.US (Jun. 29, 2012), <http://www.govtrack.us/congress/bills/112/hr6064>.
109. H.R. 4348, 112th Cong. § 2 (2012).
110. *See* GOVT. OF CAN., BEYOND THE BORDER ACTION PLAN, STATEMENT OF PRIVACY PRINCIPLES BY THE UNITED STATES AND CANADA 1 (2012), available at <http://www.dhs.gov/xlibrary/assets/policy/beyond-the-border-action-plan-statement-of-privacy-principles.pdf> (stating that Canada and the U.S. are committed to the Privacy Protection

structure to address naturally arising concerns such as accountability, transparency, information security, and a system for redress, among others.

Availability of funding also threatens to undermine implementation of the Plan. The threat of sequestration, a package of \$1.2 trillion in automatic across-the-board spending cuts, would exact a heavy toll on every federal agency and seriously hinder implementation of these initiatives. While there are no definitive cost estimates for implementation, upgrading and expanding technology, infrastructure, and other processes at the border will clearly require appropriated funds from Congress. On March 8, 2011, I testified before the House Budget Committee to emphasize the importance of funding the federal agencies responsible for implementing the Plan.¹¹¹ The U.S. Chamber of Commerce and the Canadian Chamber of Commerce note in their 2009 report that facilitating cross-border trade is a national responsibility and that government must play a critical role.¹¹² The report also calls for increased staffing, training, hours of service, infrastructure and technology upgrades at the border.¹¹³ Collaboration between public and private sector stakeholders in both countries will also be crucial. Both sides must communicate their policy positions in a consistent and open manner. In addition, industry stakeholders must be prepared to bear a reasonable cost for these additional services through user fees at the border. Ultimately, the private sector will reap the most significant

Principles that will inform and guide all Beyond the Border Action Plan information sharing arrangements and initiatives).

111. *See generally* Press Release, Owens Testifies Before Budget Committee on Importance of U.S.-Canadian Relationship, Congressman Bill Owens (Mar. 12, 2012), *available at* <http://owens.house.gov/news/documentsingle.aspx?DocumentID=284336> (stating that Congressman Bill Owens testified before the House Budget Committee, stressing the importance of providing the resources necessary to properly implement the Beyond the Border Action Plan).
112. *See* CAN. CHAMBER OF COMMERCE, FINDING THE BALANCE: SHARED BORDER OF THE FUTURE 3 (2009), *available at* https://www.uschamber.com/sites/default/files/reports/0907_sharedborder.pdf (stating that as business seek to tighten supply chains, reduce inventory, increase velocity, and improve product predictability, the two countries must recognize government plays a critical role in ensuring the efficient and secure movement of goods and people).
113. BEYOND THE BORDER ACTION PLAN, *supra* note 2, at 20 (stating that the United States and Canada will better coordinate joint ports of entry investments and enhance client service by establishing a small and remote port working group to evaluate a binational approach to operational alignment (for example, mirroring hours), infrastructure investment, and improved service).

financial rewards from these initiatives. In return, they, along with American and Canadian taxpayers, have a right to demand and receive transparency and accountability from the agencies that use these funds. Calls by some in the business community to increase personnel and services at the border are understandable and desirable to ensure an efficient and secure border.

However, increases in services and upgrades to infrastructure that are accompanied by significant increases in fees at the border will prove to be counterproductive to the aims of the Plan. The National Customs Brokers and Forwarders Association of America expressed concern to my office that examination rates for some importers have increased to over \$400 following CBP's installation of Container Examination Stations in Port Huron, Detroit, and Blaine. Previously, these exams were conducted at either no cost to the importer or, more often, closer to \$100. There must be greater consistency and reasonable funding alternatives offered by those who call for drastic cuts in user fees and deep cuts in federal agency funding while simultaneously calling for costly increases in personnel and infrastructure upgrades. While these risks should be acknowledged and addressed, the greater risk is that the Plan is not fully implemented. The Plan presents a smarter approach to the processing of goods and people across the northern border. By lowering delays at the border, reducing bureaucratic red tape, and investing in modern infrastructure and technology, these initiatives will create the conditions for businesses to invest in global supply chains and create jobs at home. Investing in North America's global competitiveness today is paramount to ensuring both the United States and Canada succeed in the global economy.