

SUMMARY

The terrorist attacks of September 11 and their immediate aftermath along the U.S.-Canadian and U.S.-Mexican borders focused sudden attention on border management strategies. Recognizing that existing systems and processes were not particularly effective either at protecting security or facilitating legitimate traffic, the U.S., in conjunction with the Canadian and Mexican governments, demonstrated an uncharacteristic openness to reconceptualizing its approach to physical borders.

While initiating a series of internal policy adjustments to secure themselves against terrorist threats, the U.S., Canadian, and Mexican governments also signed two bilateral agreements - the December 12, 2001 United States-Canada Smart Border Declaration and the March 22, 2002 United States-Mexico Border Partnership Agreement. These agreements represent an important development in the U.S.'s relationship with each of its North American neighbors, acknowledging not only the deep economic, social, and cultural ties, but also the new reality that the U.S. cannot attain the additional security it desires through unilateral actions alone. Put differently, while September 11 forced a reassessment of land borders and their vulnerability, it simultaneously pointed to the security benefits of the U.S. working ever more closely with its contiguous neighbors. This realization is likely to spill-over into other areas where the benefits of cooperation eclipse those of unilateralism.

This paper analyzes the first year of the two border accords, tracking their implementation and evaluating their successes and failures. More importantly, the paper outlines outstanding challenges, highlights steps that the governments should take to achieve additional border security and efficiency, and draws conclusions regarding factors likely to make their efforts more, or less, successful.

DOES "SMARTER" LEAD TO SAFER?

An Assessment of the Border Accords with Canada and Mexico

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Among the most immediate impacts of the September 11 attacks was a heightened state of alert at U.S. land, air, and sea borders. Although the border technically was not closed, lines at U.S. land ports of entry along both the Canadian and Mexican borders stretched for miles, lasting for hours and disrupting the regular flows of people and goods. Students could not make it to school, workers could not make it to their jobs, and automobile assembly lines had to be stopped for hours at the cost of millions of dollars. Given that a country's borders physically and symbolically represent notions of sovereignty and security, the inclination to tighten dramatically border inspections and controls was understandable, particularly since it was unclear whether or not more attacks were imminent and how and where the terrorists had entered the country. Government officials quickly realized, though, that the situation at the border was untenable even in the short-term. After all, there are approximately 500 million crossings at U.S. borders with Canada and Mexico annually, and Canada and Mexico are the U.S.'s two largest trading partners, with trade averaging well over one billion dollars per day.

Policymakers quickly understood that changes at the border would be necessary to resume the flow of traffic and trade so vital to the United States and its NAFTA neighbors. These changes would enhance physical security while simultaneously facilitating legal traffic. Moreover, U.S. policymakers began to realize that a unilateral approach to security needs would not be effective; unless the U.S. literally walled itself off from its neighbors, Canadian and Mexican cooperation would be required in order to protect tourism and trade while preventing terrorism. As then-Director of the White House Office of Homeland Security Tom Ridge said, "We are working with Canada and Mexico to institute smart borders that will keep terrorists out, while letting the flow of commerce in... We're working toward a more orderly 21st century manner, which includes...pre-certifying people and commerce far away from the border so you can move across quickly..."¹

At the same time, Canada and Mexico realized that for various reasons, cooperation with the United States in the war on terrorism was in each of their national interests as well. For Canada, the reasons largely were economic, though they also reflected the long history of friendship and cooperation between the two countries and many shared values. Canada's economy is highly integrated with, and dependent on, the United States, with \$475 billion in two-way trade and 85 percent of all Canadian exports headed to the United States annually.² Further, well over 100 million people cross the U.S.-Canadian border each year, and ninety percent of the Canadian population lives within 100 miles of the border.³ For Mexico, the economics of the situation also played a large role, with two-way trade nearing \$300 billion annually, as did the desire to earn the respect of the Americans in law enforcement situations and to earn good will that would bode well for a future migration agreement. Over 300 million people cross the U.S.-Mexico border each year, approximately 10 million people live in the U.S.-Mexico border area, and Mexico is the single largest sender of legal migrants to the U.S. each year. Moreover, approximately half of the U.S.'s undocumented population is believed to be comprised of Mexican nationals, and many communities along the border truly are binational, with family members living on both sides.⁴ At a minimum, neither Canada nor Mexico wanted to be victims of the next major terrorist attack, nor did either want to be a country of transit for would-be terrorists. Clearly, a more secure North America would benefit all three countries.

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Thus, in December 2001 and March 2002, the U.S. signed Smart Border agreements with Canada and Mexico, respectively. Having passed the one-year anniversary of these accords and their action plans, it is time to begin evaluating government actions in this arena. What changes have facilitated cooperation between the U.S. and its neighbors with regard to border management? What bilateral or multilateral agreements have been reached between the countries, and what, if any, internal changes have Canada and Mexico made to secure their own countries against the terrorist threat before it can even reach the United States? To what extent have action items been implemented? Can their relative effectiveness be measured in any tangible way? Are U.S. borders with Canada and Mexico more secure than they were one and a half years ago, recognizing that by nature borders never will be fail-safe?

This paper seeks to answer some of these questions, taking into account the context of the discussion. Drawing on both public documents and informal interviews with current and former government officials, the paper provides a status report on policy changes, with a focus on the immigration-related components of the agreements, and analyzes the relative successes and failures of the past year. Finally, it highlights some of the issues that should be addressed in the next phase of the process, including recommendations on how to proceed.

CONTEXT

Following the horrific events of September 11, 2001, both Canada and Mexico took unilateral and bilateral legislative, regulatory, and/or policy steps within their countries to increase their own security and that of the U.S. population as well. These policies, however, did not emerge solely as reactive measures, though the attacks clearly drew the high-level attention and political will necessary to accelerate the pace of action. For instance, the 2001 U.S.-Canada Smart Border Declaration built on many previous agreements, including the 1995 Shared Accord on Our Border, the 1997 Border Vision, the 1997 Cross-Border Crime Forum, and the 1999 Canada-U.S. Partnership process.⁵ Of course, the U.S.-Canada Smart Border Declaration also is based on the long-standing cooperation between the two governments, both at the federal and local levels,

and a strong, trusting relationship. In December 2001, the same month that the agreement was signed, the two countries already had announced a Joint Statement on Cooperation on Border Security and Regional Migration Issues. That Joint Statement included placement of Canadian officials on the U.S. Foreign Terrorist Tracking Task Force, agreement to engage in visitor visa policy review and development of common biometric identifiers for documents, expansion of the Integrated Border Enforcement Teams, and an increase in the number of immigration officers overseas.⁶

Similarly, in the case of Mexico, the 2002 U.S.-Mexico Border Partnership Agreement also built on previous discussions on border management, particularly those that occurred throughout the 1990s, such as the various reports of the Working Group on Migration and Consular Affairs of the U.S.-Mexico Binational Commission, the 1996 Memorandum of Understanding on Consular Protection, the 1997 Joint Declaration on Migration by the two Presidents, the 1998 Memorandum of Understanding between Mexico's National Population Council (CONAPO) and the U.S.'s Immigration and Naturalization Service (INS), and the 1999 Memorandum of Understanding on Cooperation Against Border Violence.⁷ The discussions on border safety and security had intensified greatly following the election of President Vicente Fox in Mexico in the context of a broader approach to the U.S.-Mexico migration relationship and in an era of growing U.S. trust in the new Mexican government. Although many of the initiatives included in the agreement with Mexico were new, unlike the case with the Canadian agreement where many of the initiatives were off-the-shelf ideas or expansion of existing programs, the recent history of increasing cooperation between the U.S. and Mexico certainly made the probability of an agreement much more likely than it would have been in the past.⁸

U.S.-CANADA STATUS REPORT

Internal Changes. Immediately following the terrorist attacks, the Canadian government implemented an Anti-Terrorism Plan which ultimately provided an extra \$5 billion through Budget 2001 to increase Customs, Immigration, and Royal Canadian Mounted Police (RCMP) staffing; improve screening of immigrants, refugee claimants and visitors; enhance infrastructure protection and emergency preparedness; address border-security issues; and increase the use of detention.⁹ The government engaged in more front-end screening for refugee claimants, increased detention and deportation capacity, fast-tracked the already planned new permanent resident card, redeployed federal police officers, hired additional staff for ports-of-entry, and upgraded technology and detection equipment. The government also deployed additional intelligence officers, improved coordination among law enforcement, intelligence, and security agencies, enhanced background checks, imposed additional documentation requirements, placed undercover police officers on aircraft, and activated better trained personnel and new explosives detection systems at Canadian airports.¹⁰

The Anti-Terrorism Act (Bill C-36) was introduced only a month after the attacks, a similar timeframe to that of the U.S.A. Patriot Act (P.L. 107-56), and it was followed by the Public Safety Act in 2002. These pieces of legislation provided new investigative tools to law enforcement and national security agencies (such as facilitating electronic surveillance, intergovernmental information sharing, and criminalizing knowing contributions to a terrorist group) and facilitated the freezing of assets and information-gathering regarding terrorist financing, even creating a Financial Action Task Force (FATF) on Money Laundering. The long planned re-write of Canada's immigration laws (Immigration and Refugee Protection Act, Bill C-11) became effective in June 2002 and included some provisions that will be helpful in the post-September 11 environment, such as a new fraud-resistant, tamper-proof permanent resident card.¹¹ In addition, the new law created additional inadmissibility provisions, made it easier to arrest and detain permanent residents and foreign nationals, streamlined appeals, and broadened the government's ability to use secret evidence in admissions hearings, detention reviews, and immigration appeals.¹²

The Smart Border Declaration. In conjunction with the internal changes described above, however, Canada undertook a major bilateral initiative with the United States. The Smart Border Declaration between the United States and Canada, a 30 point plan, was signed on December 12, 2001 by Director of the Office of Homeland Security Tom Ridge and Minister of Foreign Affairs John Manley.¹³ It was organized into four categories: The Secure Flow of People; The Secure Flow of Goods; Secure Infrastructure; and Coordination and Information Sharing in the Enforcement of These Objectives. The Declaration was quite specific in many areas, with a clear expectation from senior officials that progress would be made; the status quo ante was not an option. The work initially was coordinated by the Office of Homeland Security on the American side and by the Privy Council Office on the Canadian side.

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Senior-level officials have devoted significant time to the issue and have held numerous public progress reports, including at the six month and one year marks. At the former, Governor Ridge and then-Deputy Prime Minister John Manley (meeting for the fourth time since the attacks) cited an increased ability to intercept high-risk travelers before they arrive in the U.S. or Canada, deployment of the jointly operated NEXUS fast-lane program for pre-approved frequent travelers (previously a pilot), and the launch of a NEXUS air pilot program.¹⁴ They also announced a planned expansion of the binational Integrated Border Enforcement Teams (IBETs) which had proven successful in the Pacific Northwest, a then-draft agreement regarding Safe Third Countries for asylum seekers, a new program for Free and Secure Trade for commerce (FAST), and a binational steering group on shared critical infrastructure.¹⁵

The additional IBET locations in Quebec and Ontario were announced the following month when Attorney General Ashcroft and Solicitor General Lawrence MacAulay met in Alberta at the 6th Annual Cross-Border Crime Forum.¹⁶ Then in September 2002, President George W. Bush and Prime Minister Jean Chrétien met at the Ambassador Bridge in Detroit, Michigan and announced the opening of the registration for the FAST program and expansion of the NEXUS program.¹⁷ Their meeting was significant not only in terms of appearing at the largest commercial land border crossing and lending symbolic support from the highest possible levels for continuing work on the issue, but also because they released an item-by-item status report of the substantive progress on the Smart Border Declaration Action Plan.¹⁸

Governor Ridge and Deputy Prime Minister Manley marked the one-year anniversary of the signing of the Smart Border Declaration and its Action Plan in early December 2002 in Washington, D.C. They highlighted the year's progress, particularly the upcoming opening of FAST lanes at the major crossing points, the signing of the Safe Third Country Agreement, and Canadian participation in a counterterrorism exercise. Also mentioned were detailed binational workplans on protecting shared critical infrastructure and the inclusion of private sector leaders in the annual meetings of the Shared Accord on Our Border.¹⁹

The signing of the Declaration was merely another step in the long-standing cooperation between the two countries, not a final, stagnant product, as demonstrated by the Prime Minister's May 2002 creation of a Task Force on Canada-U.S. Relations to explore means of strengthening the dialogue between elected officials of the two governments.²⁰ Additional changes to enhance Canadian security also continue, such as the November 2002 initiative to modify the pass system for restricted areas at airports and screen non-passengers entering those areas and the January 2003 announcement regarding improvements in maritime security.²¹

Successes. The Canadian government has been very active in publicizing the achievements of the Smart Border Accord. On the passenger side, the expansion of an alternative inspection program called NEXUS, with its

dedicated lanes for pre-approved low risk travelers, may be the most visible accomplishment, but others, which likely will have a large impact behind the scenes, are equally important. These include the creation of Joint Passenger Analysis Units (JPAUs), compatible immigration databases, officer deployment overseas, and coordination of visa requirements. The JPAUs co-locate immigration and customs officers to identify potentially high-risk travelers prior to their departure for either country, thus increasing the number of checks in the process, reducing duplicative efforts, and effectively engaging in border-related functions from the ports-of-entry themselves. The U.S. and Canada currently have common visa policies for 144 countries, leaving only a handful of countries for which differences are of any significance, and they have agreed to consult each other when considering a third country for visa imposition or visa exemption. Also, for the first time, Canada began requiring advance passenger manifests for incoming flights in Fall 2002, and automated data-sharing with a similar U.S. system was expected to begin in Spring 2003. Such initiatives allow government officials to use a risk management approach, emphasizing the role of intelligence and focusing resources on high-risk or unknown travelers, rather than wasting energy on the known, frequent crossers.

On the commercial side, major accomplishments include the opening of registration for a harmonized commercial processing program (FAST) at major ports-of-entry and the placement of Customs officers from each country in each other's ports.²² Importers, carriers, and drivers who qualify for the program will benefit from joint and streamlined registration, expedited clearance at the border, dedicated account managers, dedicated lanes, technology that is compatible in both countries, and reduced financial and time-related costs. The Customs agencies not only have agreed to expand the scope of information shared, but also they have created joint enforcement teams to aid in targeting container searchers at five key marine ports (Vancouver, Montreal, Halifax, Newark, and Seattle-Tacoma), measures likely to have significant impact in enhancing security.

Other notable successes include progress on common biometric standards, interoperable technology that can read the biometrics, feasibility studies on joint or shared facilities at agreed upon ports-of-entry,²³ and as mentioned earlier, the sharing of data and intelligence, particularly through the development of interoperable technology. The sharing of information is never easy due to issues such as who controls the information, the confidential nature of the information involved, and the technical aspects of integrating systems. The countries also have worked together to provide technical assistance to third countries on such issues as document fraud and border controls. Canadian government officials regarded the agreement on a safe-third-country accord for asylum seekers as a major accomplishment (they estimated that 40 percent of Canadian asylum seekers were entering via the United States), but it has proven more controversial among refugee advocacy groups in both the United States and Canada. Nonetheless, its signing was announced at the December 2002 issuance of the one-year status report. The U.S. and Canada also have agreed to share information regarding asylum seekers to better identify potential security and criminal threats.

Finally, a notable success is the commitment by both countries of funds for infrastructure improvements at the border. The U.S. already had funds from the Transportation Efficiency Act for the 21st Century (TEA-21),²⁴ and Americans and Canadians had long urged the federal and provincial governments in Canada to dedicate similar funding for the border. The Canadian government now has a Border Infrastructure Fund which will provide \$600 million over five years for physical and technological improvements. Prime Minister Chrétien went to Windsor, Ontario in September 2002 to announce that at least \$300 million of those funds would be focused on remedying the border-related traffic problems in Windsor based on a plan developed by a committee of federal and provincial officials. Two months later, \$30.4 million in federal and provincial funding was announced for 11 border crossing transportation initiatives in British Columbia.²⁵

Frustrations. Despite the clear progress that has been made on the action items, key actors also have experienced some frustrations in the process. First, the lack of measurable change on-the-ground on some of these issues, such as delays at ports-of-entry, has been the most evident and is extremely important. Second, Congressional and Executive Branch policies have focused primarily on the land border (to the exclusion of the air and sea ports-of-entry) and on programs that likely will have little real impact on security, despite the fact that some action items specify moving clearance away from the border. As an example, how would the proposal to prevent students in border communities from attending school part-time in the other country really have increased the safety of the U.S.? Similarly, how would the proposal to limit the stay of most tourists to 30 days have increased U.S. security? While neither was adopted due to strong opposition by border communities, business communities, universities, and others, these are perfect examples of ill-advised policy initiatives. Both were broad measures which would have burdened legitimate travelers but were unlikely to catch those aiming to do harm. Questions also were raised as to why countries that are party to a free trade agreement even continue to have Customs officers stationed at the border, and there were serious concerns regarding the advisability, in practical terms, of documenting every entry and exit to/from the U.S.,²⁶ as well as skepticism about the government's ability to implement such a system.

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Third, the agreement focuses only on ports-of-entry, while little remains known about what occurs in the significant land masses between ports-of-entry, particularly in rural locations or on Native American lands straddling the border. Fourth, some of those interviewed felt that the lack of a cabinet-level Department of Homeland Security that could have tasked the various relevant Cabinet agencies and better coordinated the process was difficult (a problem potentially remedied with the January 24, 2003 creation of the Department of Homeland Security [DHS]). While the Office of Homeland Security in the White House had authority to play this role, they had limited staff, leaving the relevant agencies such as the INS and Customs to take on these responsibilities and coordinate with a variety of government agencies in addition to their day-to-day work.²⁷

A fifth frustration relates to the privacy issues raised by the Canadian government in terms of their ability to share information. While the U.S. also has privacy laws, it has made changes to be able to accommodate the new national security needs. Some of those interviewed from both countries felt that the Canadian government has made this focus on privacy laws an obstacle toward further progress on information sharing, despite the fact that both countries stand to gain from doing so and that, indeed, a great deal of progress has been made in this area. In fact, this relates to a sixth common concern - a perception by Americans that Canadians think the security and border issues are only a U.S. problem and that Canadians are not taking seriously enough the security issues. In this view, Canadians are taking action only to humor the Americans and to achieve their other goals, particularly maintenance of a good relationship with the U.S. and complete and open access to the border, both crucial to their economy. Some have suggested that Canada should review its immigration and visa policies in a more comprehensive manner and also recognize its own reasons for engaging in security-related reforms.²⁸ Canadians, on the other hand, admittedly focused on their economy and the facilitation of people and goods, question whether the U.S. isn't overly focused on security to the exclusion of all other items, including economics and common sense. This issue gets increasingly complicated as it relates to perceptions of sovereignty, identity, and independence.

A final frustration, expressed by nationals of both countries, is that while the agreement accomplished what was needed at the time in terms of defining concrete action items in response to September 11, it failed to lay out the

next steps. More specifically, the agreement lacks an overall future vision of the border and the steps needed to get there. It may have failed to think broadly enough, although some officials in each government have in fact begun to conceptualize a border vision for the future. Each concrete action item might make more sense if understood as pieces of a puzzle, or part of a framework. There is some doubt as to whether progress on technical, mechanical items will be sufficient to lead to progress on a larger philosophy, or whether the philosophy and ideas, that broader framework, needs to come first.

Analysis. Overall, the achievements of the U.S.-Canada agreement mark important progress in terms of demonstrating new modes of operation. They begin to move away from the traditional paradigm of border management toward smarter and more innovative approaches, including risk management, intelligence-based programs, and joint programs with common standards and compatible systems (e.g., IBETs, biometric cards, or visa-related databases). They also provide models of these approaches that can be replicated elsewhere. Many of the action items involve engaging in border functions away from the border (as far away as overseas consulates); increasing the layers of security to increase the likelihood of catching potential security threats; increasing use of intelligence, specifically, knowing more about goods and people prior to entry at the land border; providing tangible benefits for those enrolled in such programs to facilitate legitimate movement; conceiving of borders as something other than simply a physical entity; reducing duplication between and within governments in terms of personnel, facilities, and databases; coordinating whenever possible (be it on rules regarding visa issuance, operations at ports-of-entry, or data-sharing); enhancing the use of technology to support these new approaches; and an increasing reliance on information sharing and coordination.

Provision of information in advance gives the advantage to the law enforcement community, rather than the entrants. Doing so makes it less likely that an individual will enter one country from the other, thus increasing the security of the continent and engaging the countries in a joint effort that is in each country's individual interest. Moreover, it emphasizes the role of intelligence in the process and promotes an effective and efficient, rather than primarily symbolic and insecure, border management system. These measures are likely to strengthen in a very real manner the management of the joint border and the security of both countries.

Not to be overlooked in this increase in security is the role of the improved working relations between the government agencies. The deepening cooperation between the parties was cited frequently, and it has facilitated progress on areas of common interest, such as third country nationals, local approaches, and harmonized ports-of-entry. The Customs and Immigration agencies of both countries had been meeting monthly prior to their demise (presumably these meetings will continue now that they work for the same agency), and interacting with each other, rather than with only their own counterparts. Relationships also have broadened beyond the federal level to include state, provincial, and local officials, as well as disparate groups who focus on the border.

The signing of the agreement was no mere symbolic gesture. Instead, it spurred new actions and ideas and infused energy into existing ones. Nevertheless, even those intimately involved note it has not been a panacea.

U.S.-MEXICO STATUS REPORT

Internal Changes. In Mexico, the press initially viewed government efforts to support the U.S.'s war against terrorism as an extension of the Mexican effort to secure a migration agreement with the U.S., a view reinforced by U.S. lawmakers who explicitly linked security and a legalization agreement.²⁹ Soon after the attacks, Mexican police secured airports, boosted surveillance and security of areas vulnerable to terrorist attacks (such as hydroelectric dams and oil installations), and more carefully monitored migration at all ports-of-entry, doubling inspectors and scrutinizing documents.³⁰ Mexico also augmented its monitoring of financial movements,

increased its security to prevent transboundary movement of arms, and facilitated a more comprehensive exchange of information among security agencies, as well as sharing information with Interpol and the U.S.³¹ Moreover, the government enhanced its staffing and surveillance along the Mexico-Guatemala border with specially trained personnel to focus on combating terrorism and organized crime.³²

To improve document security, Mexico's National Migration Institute (INM) began processing visa applications from certain countries prior to the consulates in those countries being allowed to issue individual visas and shared information with U.S. officials regarding the list of countries for which visas are or are not required prior to entry into Mexico.³³ In addition, although the project predated the September 11 attacks, nearly one million Mexican nationals in the U.S. have become better documented through new high-tech, fraud-resistant ID cards called *matriculas consulares*. A means of registering Mexican nationals overseas, the cards certify the name and date-of-birth of a Mexican national for \$29 each and reportedly are being accepted by over 800 U.S. police departments and 66 U.S. banks.³⁴ As a result of its enhanced border security, Mexico and the U.S. have increased their ability to catch drug smugglers, migrant traffickers, and corrupt officials,³⁵ which has strengthened the rapport between the two countries, increasing the level of trust that the United States has in Mexico, as well as strengthening information-sharing and joint operations.

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The Border Partnership Agreement. Supplementing these internal changes, Presidents Bush and Fox announced the signing of the 22 point U.S.-Mexico Border Partnership Agreement by Secretary of State Colin Powell and Interior Minister Santiago Creel on March 22, 2002.³⁶ Mexican government efforts on the action plan are being coordinated through the Ministry of Interior (*Gobernación*) via CISEN (*Centro de Investigaciones y Seguridad Nacional*) while the White House Office of Homeland Security (which predated the Department of Homeland Security) coordinated U.S. government efforts. Both sides, however, noted an asymmetry in terms of government contacts, with agencies often lacking a true counterpart. The Mexican Interior Ministry has long coordinated law enforcement and security issues for Mexico and has staff to work the issues, whereas the Office of Homeland Security was thinly staffed and had to coordinate the various government agencies involved in the action items, relying on them to do the work. Prior to the March 1, 2003 transfer of various agencies into DHS, the INS had the lead on the secure flow of people items, Customs had the lead regarding the secure flow of goods, and the State Department was involved on infrastructure issues. There also were concerns that certain agencies were working only with their relevant counterparts in the other country, rather than also coordinating with other agencies in their own government.³⁷

Few formal meetings have taken place between the principals since the agreement was signed, and Mexico has lacked a high profile coordinator as Governor Ridge's counterpart, the role played by Deputy Prime Minister Manley in Canada. However, Governor Ridge and Interior Minister Creel finally did meet in April 2003, just after the one-year anniversary of the agreement. At that time they publicly issued a formal overview of the progress to date on the 22-point agreement.³⁸ They also highlighted their plans for the next year, including expanding access to high-tech lanes for certain crossers, expanding the Border Safety Program, and creating a FAST lane in El Paso.³⁹ In the interim, inter-governmental groups, including working groups on each of the 22 points, were meeting regularly (including not only immigration issues, but also energy, telecommunications, and transportation), and each government was tracking the status of the action items on a monthly basis.

The Agreement focused on three categories -- the Secure Flow of People, Goods, and Infrastructure -- and progress needs to be evaluated on its own terms in view of what the expectations were and whether they have been met. As an example, in the category of Secure Flow of People, the Mexican agreement stated rather vague action items:

- "Establish a joint advance passenger information exchange mechanism,"
- "Explore methods to facilitate the movement of NAFTA travelers,"
- "Reaffirm mutual commitment to Border Safety Initiative," and
- "Continue frequent consultations on visa policies..."

By contrast, the action items in the Canada agreement specified:

- "Jointly develop...common biometric identifiers in documentation,"
- "Resume NEXUS pilot project...and expand a single program to other areas along the land border. Discuss expansion to air travel,"
- "Share Advance Passenger Information..."
- "Establish joint [passenger analysis] units at key international airports," and
- "Develop jointly an automated database...as a platform for information exchange..."⁴⁰

Successes. Major accomplishments on the accord have occurred both within and between the governments. The Mexican government, for instance, points to deeper cooperation with the U.S. government. It also cites its own inter-governmental meetings, the creation of working groups and task forces, the training of officials on fraudulent document detection, and a focus on infrastructure protection, enhanced surveillance, and contingency planning. Moreover, Mexico has increased its tracking and information sharing regarding nationals from particular countries in the Middle East and South Asia and expanded private sector partnerships to expedite commercial clearance while increasing security. Although it was not part of the agreement, Mexico's efforts and the growing trust within the law enforcement community because of its efforts have led to its participation in the TIPOFF system, the State Department's database of known and suspected terrorists and a key law enforcement tool (Canada already participates with this system).

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In fact, individuals in both governments agree that one of the primary successes of the U.S.-Mexico Border Partnership Agreement has been the increased cooperation and coordination between the governments.

Mexico has demonstrated a genuine willingness to cooperate, in part because it has its own reasons for wanting to increase security at the border, which has strengthened relations (particularly between the customs and immigration agencies) and allowed discussion of topics never previously on the table. Despite its willingness, however, most of the work on these issues has fallen on U.S. shoulders, since Mexico lacks the budget and resources for implementation of initiatives. In important progress, the Congress approved a supplemental appropriation to the State Department in late 2002 that included \$25 million dedicated for spending in Mexico to help Mexico implement the agreement.⁴¹ Nevertheless, some stakeholders in both countries believe those funds are too small to be more than a token gesture, compared with the massive amount of resources that would be required for genuine improvements.

Noteworthy progress has been made on specific action items, however, particularly those items that did not require a significant influx of resources.⁴² The two countries have exchanged information regarding land ports-of-entry as a first step in working toward better coordinated ports-of-entry (in terms of hours of service, traffic patterns, and infrastructure), have met to discuss joint financing of border-related projects, have consulted on a low-risk traveler

plan for NAFTA travelers, and have agreed to expand the Secure Electronic Network for Travelers Rapid Inspection program (SENTRI).⁴³ They are working on exchanging core data electronically, testing technology, and expanding private sector partnerships as well. Further, Mexico will develop an Advance Passenger Information System (APIS), and the two countries will be able to share these key pieces of information. Similarly, coordination on visa policy, in terms of comparing U.S. and Mexican laws, the lists of nationals required to obtain a visa prior to travel, visa waiver requirements, lookout lists, etc., likely will have significant impact on the security of both countries, although most of the work occurs below the political and press radar screens. The U.S. and Mexico also have established bilateral alien smuggling and trafficking task forces, and Mexico is taking its own steps to improve its passports and moving toward machine-readable visas. Combined with the above-mentioned U.S. financial support for computer systems improvements, these improved passports and visas will enhance security.

Significant improvements have occurred on the commercial side in particular, especially between the countries' customs agencies; their cooperation was cited as a model for the type of cooperation possible in other arenas. United States and Mexican Customs had been discussing a multiple-point plan on their specific issues prior to the signing of the broader agreement, so the agreement was perceived as a joint effort consistent with previous ones, rather than an initiative imposed upon either party. Officials acknowledged that the deep cooperation and coordination has been more difficult to achieve with regard to the movement of people rather than the movement of goods.

Frustrations. Despite the progress that has been made in laying the groundwork for future initiatives and in achieving some short-term goals, this past year also has been one of frustration for those who work on these issues. First, and apparent even to the most casual observer, has been the lack of change on-the-ground in terms of border safety or border traffic. Specifically, waiting times for passenger and commercial vehicles has increased, cross-border traffic has decreased due to the unpredictability of the crossing, commuters and students have had to significantly modify their routines, and shipping costs have increased, as has pollution at the border due to the extended waiting times. Moreover, the ports-of-entry still lack machines to read the new high-tech laser visa cards.

The heightened border security post-September 11 has had a particularly negative impact on border communities. It has been difficult for students to commute to school, for employees to get to work, for tourists to take a quick shopping trip, or for family members to visit each other. Border communities continue to desire greater involvement in the discussion since decisions frequently affect their daily lives. The lack of visible improvements in the safety or ease of crossing is demonstrated by the continued reports of extended waits at ports-of-entry, deaths at the border, a return of apprehensions to pre-September 11 levels, and an apparent doubling of smuggling fees (from \$1,000 to \$2,000) due to the enhanced border security.⁴⁴ This lack of real, measurable change has been very disheartening to Mexicans and Americans alike.

A second frustration focuses on process-related items, which often are overlooked. These include the slow nature of the funding process (even when the U.S. wanted to give Mexico money, it took six months for approval, which was pretty quick by U.S. government standards), the lack of symmetry between governments in terms of institutional structure, and the need by both Mexico and the United States to dedicate additional staff to work on these issues. Currently, the government officials who staff these issues are the same ones who worked on the previous cooperative border efforts and also handle the daily management issues. A recurrent theme was that it is difficult to make progress when lacking necessary institutional capacity, resources, and/or an ability to deliver. Ironically, these process-related items may be further complicated by the folding of immigration-related functions into DHS, at least until there is greater clarity in terms of contacts for immigration issues.

Third, parties in both countries have complained that the focus on the 22 points has redirected most of the energy away from previous efforts, which took years to develop. Such efforts include not only border safety issues and locally based solutions such as the Border Liaison Mechanism, but also the bigger issues, such as a broader migration agreement between the U.S. and Mexico. Respondents noted that the Border Partnership Agreement did not make any attempt to address the underlying issues that have contributed to the current situation at the border, an increasingly risky and heavily enforced border, replete with smugglers, violence, death, and unpredictable crossing times.⁴⁵ Although there was not a formal *quid-pro-quo*, it was understood that Mexico would need to act as a true partner, an equal partner, on security issues and would need to improve its institutional capacity, reliability, and ability to deliver in order to have any chance at facilitating progress on such issues as regularization of status of the unauthorized population in the U.S. and/or temporary worker programs. Having been an enthusiastic partner, as much as its capability has allowed, on security issues and coordination with the U.S., it is difficult for Mexico to understand why it has been unable to achieve its goals of making measurable progress on the broader migration agenda, an agenda in which the government had invested a lot of energy and for which public expectations had been raised prior to September 11.

This relates to a final set of frustrations by parties in both countries, which is that the agreement remains too focused on U.S. interests, disregarding some Mexican priorities. There is agreement that Mexico has demonstrated dedication to these issues at the working level to the extent of its abilities (despite the lack of a high profile coordinator or frequent public progress reports), but Mexicans strongly articulate their desire for more of the partnership implied in the agreement's name. In particular, this would include an integrated approach of safety and security compared to the U.S. focus solely on security. Part of this difference may actually be explained by the literal translation of the word security into Spanish, where *seguridad* means not only security but also safety. For Mexico, the two issues are of equal importance.

Moreover, Mexico has had to deal with more frustrations than the U.S. in terms of lack of progress on-the-ground at border crossings. A greater focus on visible changes important to Mexico might include additional staffing and open lanes at land borders, expansion of pre-clearance programs, enhanced focus on border safety, and progress on day-to-day facilitation concerns that take into account binational border communities and the deeply connected local and national economies. Nonetheless, even Mexicans agree that the existence of the agreement has pushed Mexico to engage in tasks that needed to be addressed anyway, including strengthening institutional capacity and improving security. Finally, as with the Canadian agreement, the U.S.-Mexico agreement lacks a broader vision of the border's future.

...the agreement marks a readiness to think in new ways, to move away from the traditional, and unilateral approaches that have not proven successful, and toward a smarter, rather than showcase, border.

Analysis. Overall, the existence of this bilateral agreement, initially broached by the United States but responded to enthusiastically by Mexico at the direction of President Fox, reveals important progress in the bilateral relationship in at least five ways. First, the mere nature of the joint agreement, and of a purported partnership, is an important step that recognizes some dependence by each country on the other in order to meet its needs. Second, the agreement, and the resultant information sharing, demonstrates a growing trust between the two countries, which will make a positive contribution to every component of the bilateral relationship. Third, the agreement shows a genuine recognition of Mexico's efforts to assist the United States and the U.S.'s willingness to pay to help Mexico implement some of the action items, which reflects a growing number of shared interests. Fourth, the agreement marks a readiness to think in new ways, to move away from the traditional, and unilateral approaches that have not

proven successful, and toward a smarter, rather than showcase, border. Finally, the agreement takes specific steps to attempt to address the on-the-ground day-to-day challenges through the use of new and innovative programs.

Even in areas where the governments are citing progress, however, it does seem that the progress has been limited. For example, the action item relating to harmonized ports of entry has succeeded only in the exchange of information regarding hours of service, the demonstration project for a smart port-of-entry has been limited to a few working group meetings, the revitalization of existing bilateral coordination mechanisms remains in the planning stage, and the development of compatible databases for information exchange has moved only as far as designating lead officials and discussing formation of a working group. We have not yet reached the stage where the governments are ready to move border functions away from the border, nor has as much progress been made as was hoped even on common issues such as interdiction of third-country nationals and use of existing technologies.

Items already in the agreement with Mexico that deserve additional focus because they hold the potential for substantial progress include: joint financing of development and infrastructure at the border (this will help each country achieve its own goals); an advance passenger information system (providing better data regarding entries into its own country and prevention as a point of transit); and a low-risk NAFTA traveler program at airports (facilitating its citizens' travel and reducing the size of the haystack in which it is looking for security risks). Also included in this priority list are consultation and coordination on visa policy (to push the border outward and increase the security of initial entries) and coordinated detection and interdiction of third country nationals. Of course, Mexico simultaneously will need to continue working on its own internal changes, such as strengthening the rule of law, improving governmental capacity and professionalism in its immigration and border policing efforts, attacking corruption, and focusing on criminal organizations and smuggling.

...the three countries need to expend an even greater effort in addressing the day-to-day challenges at the borders themselves.

One of the major accomplishments simply may have been to agree to move forward jointly toward a "smart" border, setting the stage for future progress while understanding that goals would not be achieved overnight but that the process was of equal importance. The responsibility for lack of progress, however, should be divided evenly on both sides. It appears that the challenges posed by the combination of a lack of resources, a lack of investment in the process by both countries, a learning curve, a slow U.S. bureaucracy, unhappiness with the uneven nature of the agreement, and frustration with a lack of on-the-ground improvements have proven difficult to overcome. It is ironic, in fact, that the agreement with Mexico seems to have drained energy from previous and ongoing efforts, while the Canadian agreement seems to have built on and propelled previous efforts.

NEXT STEPS

- **Define A Vision For The Future**

In many ways, the next steps are similar for the three countries. First, all need to define an endgame, perhaps a long-term vision of North American integration that finally moves away from a focus on the physical land border, and then work backwards to figure out the steps that can take them there. This is a vision that ideally would be developed both by government leaders and by other interested parties, including citizens of the various countries. Preliminary steps could include a vision for each of the two borders or it could involve a trilateral approach to border management.

Bilateral Approach. With a bilateral approach, the vision might include an immigration equivalent of a free trade agreement (particularly much freer movement for border community residents and professionals) for each of the countries, enhanced overseas cooperation and datasharing between two separate systems, full embrace of a risk management approach (complete with expansion of joint pre-clearance/pre-inspection programs), or local agreements for reverse inspections, where the physical geography and infrastructure allow. A bilateral approach also could address the specific history and challenges of each of the U.S.'s borders, such as addressing the continued flow of undocumented Mexicans to the U.S. for jobs and the existing stock of undocumented in the U.S. or the cross-border movement of Canadian professionals and the annual trek by Canadian snowbirds to Florida.

Trilateral Approach. Alternatively a trilateral approach might include a move toward increased labor mobility between the three countries, facilitation of student exchanges and tourism between the three countries, a joint database into which all three countries can input and access data regarding potential threats, enhanced coordination and common standards at North America's perimeters (including overseas consulates and international airports), a North American travel card, etc. To date, a trilateral approach has been avoided not only because the populations of the three countries do not yet seem ready to take that step and are very focused on sovereignty issues (they should be assured that each would continue to be able to make its own immigration policies), but also because American and Canadian leaders in particular have felt able to achieve their goals through bilateral discussions. To the extent they realize that they can achieve additional successes in enhancing security only through trilateral efforts, Americans and Canadians may be more open to crafting trilateral efforts, an approach already openly broached by Mexican leaders, though not necessarily embraced by its public.

- **Make A Visible Difference On The Ground**

Second, the three countries need to expend an even greater effort in addressing the day-to-day challenges at the borders themselves. Frustrations regarding delays and other problems at ports-of-entry are prevalent with regard to both borders, and it is very important for the credibility of the agreements that stakeholders see a real difference at the border. Each border has its challenges, be it the deaths of undocumented migrants, vast terrain between ports-of-entry, long waits, outdated infrastructure, heavy commercial use, or experienced smugglers. These will need to be addressed methodically, one by one, requiring resources and the political will to do so. Finally, many of the efforts to date have focused on cargo-related issues - a similar, and equally creative, effort now needs to focus on the movement of people. Solutions to some of these obstacles can be addressed directly at the border, such as increasing staffing, harmonizing hours of operation at ports, investing in infrastructure improvements, taking advantage of technological advances, and increasing dedicated commuter lanes. Others may need to be addressed over time and perhaps most effectively away from the border, such as a shared entry/exit system, advance passenger (and cargo) information, more accurate and more timely intelligence, compatible information systems, increasing data sharing, a voluntary international travel card, expanded means for legal entry, and better interior enforcement. Many of these items are complicated by legal and administrative differences between the countries, such as union issues, privacy laws, health and safety issues, differences in gun laws, database incompatibilities, legislative requirements, constitutional and privacy concerns regarding information sharing and electronic databases, and, not to be overlooked, a lack of sufficient funding for these initiatives.

- **Strengthen Institutional Capacity**

September 11 demonstrated that border management issues are not peripheral; they are an integral component of our national security and of the way in which we represent ourselves to others and treat others. Prior to the attacks, border issues had been of greater importance to Canadians and Mexicans than to Americans in the policy arena, and those officials had complained that they lacked appropriate counterparts at senior levels; this now can be remedied. The creation of the Department of Homeland Security provides an opportunity for the U.S. to organize itself effec-

tively on these issues. As demonstrated by the confusion alluded to earlier, the merger of agencies into DHS, in and of itself, will not solve all pre-existing bureaucratic problems. Addressing these issues will require a real effort. The relevant agencies must have experienced and effective leaders with the authority necessary to do their jobs, as well as sufficient and well-trained employees who understand their mission. Dedicated high level attention and resources to this issue, along with some creative thinking and a willingness to experiment and cooperate, will be key in creating an environment for real progress.

In addition, employees from top to bottom must be working in unison. Unilateral approaches and continued enactment of disproven paradigms no longer are acceptable. All programs and new approaches automatically should include regular mechanisms for internal evaluation, with a focus on gauging their effectiveness relative to the policy's desired end goals (in this case enhanced homeland security). It may well be that the most effective mechanisms are the ones invisible to the public (e.g. coordination and information sharing), and if so, then resources should be allocated to them, even if doing so deprives politicians of good photo opportunities or more jobs for their districts.

- **Engage In Public Education**

Finally, each of the three countries will need to address public attitudes through a public education campaign. Longstanding assumptions and misperceptions only complicate genuine efforts to make all three countries safer. Canadians and Mexicans (both public officials and the general public) need to be convinced that the threat is not only to Americans or to their economy but to themselves and their way of life as well. They need to stop thinking that they are doing the U.S. a favor by cooperation and that the U.S. owes them something in return.

Similarly, the American public and its government needs to reduce its tendency to react unilaterally and needs at least to consider the interests of its neighbors when developing new policies, as well as its own interests in economic security and freedom to travel. It also should incorporate the views of both public and private sector stakeholders in this effort.⁴⁶ It does not help to point fingers at our neighbors for perceived security lapses when we remain reluctant to be honest about the flaws in our own systems. Security obviously is crucial, but it cannot be dealt with in a vacuum, especially because there is no single realistic action that can be taken at borders that can prevent, with one hundred percent certainty, another terrorist incident. All three countries need to think more strategically about how best to achieve their policy goals; the sooner we realize that we are all in this together, the more likely we are to have a genuine, and successful, partnership.

Moreover, Americans need a greater national discussion on how to balance domestic security and an immigration policy that continues our longstanding tradition as a nation of immigrants. While acknowledging the possibility of future attacks and taking every reasonable action that might prevent them as well as prepare to respond to them, we must remain a society open to visitors and true to our democratic heritage. Immigration policy is not the only, and certainly not the best, way to address terrorist threats. In fact, information, intelligence, and multilateral cooperation may be far more effective, and engaging in these types of collaborative efforts need not impede on the sovereignty of any of the three countries. Coordination of policies does not mean subordination of policies, just as closing borders does not guarantee security.

CONCLUSIONS

Returning to one of the paper's initial ideas, the three countries, and particularly the United States, seem to be recognizing that attempting to shut the borders has major negative economic and social implications. Given that conclusion, the question then becomes not whether to keep the border open but how to do so; it means efficiently facilitating trade on a secure border, and it means understanding why certain measures are or are not successful in doing so. To date, the border is a work in progress.

- **Key Ideas: Movement Away From Physical Borders, Primacy of Information, and Maximizing Technology**

There has been a growing consensus of some key concepts by North America's governments (as well as by countries who send their goods and people to North America) which is extremely important in helping the United States shift from a unilateral approach to a more multilateral one. First and foremost is the growing consensus that it is easier, more effective, and cheaper to prevent unwanted entries farther away from one's physical borders. Engaging in border functions away from the border not only increases security (the ultimate goal of any border policy) but also simultaneously facilitates legitimate border traffic. The more layers of the border that exist (e.g., at overseas consulates, through document examination at airports), the greater is the likelihood of catching people prior to their arrival at U.S. land borders. Second, and equally important, is agreement that information is key. Having timely intelligence and then being able to share that information (preferably prior to entry) is the key to successful border management. This includes both information sharing within and between governments. Third, technology, while insufficient on its own, can provide significant benefits in terms of accurate information, advance information, and shared information, as well as minimizing inconveniences and delays for legitimate travelers and increased effectiveness at finding those who pose risks. All these concepts are included in a Smart Border approach - an intelligence-based strategy that aims to do a better job at catching those who should be caught while not bothering legitimate travelers, be it through better overseas work, clearance away from the border, alternative inspection functions, or a wiser investment of resources. Basically, this means a border management strategy that is more effective at achieving its ultimate policy goals, rather than effective at appearing to do so.

- **Factors in Success: Dedication, Pragmatism, and Previous Cooperation**

The many successes of the Smart Border Accords, as described in this paper, are among the most significant steps taken by the three governments in moving toward a new, and more regional, security paradigm in the post-September 11 world. Their success can be attributed not to luck but to three primary factors. First, they required serious efforts by all three countries, since each has much to gain and items were included that address each country's interests. Moreover, recent events have focused political attention and will on many of these long-standing, but overlooked, issues. The agreements with Canada and Mexico were able to build on previous relationships and agreements, and they accelerated a trend toward a smarter border. Second, they have had successes because the agreements are pragmatic, focusing on cooperation and information sharing whenever possible. Third, they resulted from agreements and cooperation that pre-dated the accords. That is, they were based on solid foundations, as well as an understanding that retention of strong partnerships and relationships with the United States would require changes. Americans needed to be reassured that they were not under threat from the borders and, in fact, that their neighbors cared about American security and were engaging in proactive steps to help protect it. Had previous discussions not occurred and had personal relationships at the working level not been well established, it would have been nearly impossible to begin from scratch and develop principles and action plans for these two bilateral agreements so quickly, if at all.

- **Factors in Frustration: Vision, Political Will, and Resources**

Conversely, the accords have been frustrated by a lack of vision or roadmap detailing next steps, by a slow bureaucracy, by limited progress on-the-ground, by a somewhat limited focus on land borders, by ingrained attitudes, and by a lack of attention to the meaning of a true partnership and resolution of broader, but related, issues. One key challenge will be maintaining the political will and attention to address many of these issues over the long term. This includes finding sufficient resources, developing the necessary institutional capacity to support them, and overcoming the significant differences among the countries, such as type of government (centralized v. decentralized), privacy regulations, bureaucratic lawyers, and sensitivities to sovereignty. A second primary challenge will be main-

taining a realistic recognition that success at the border cannot be guaranteed. In fact, with the tremendous volume of crossings it is nearly certain that there will be a "failure" at some point. Nevertheless, a single incident should not invalidate the Smart Border approach if it has reduced the likelihood of future terrorist or criminal infiltrations and has replaced an outdated system that relied as much on luck and intuition as anything.

- **Requirements: Parallel Processes and Mutual Cooperation**

A two-track approach -- near-term and long-term -- will be required on these issues. Much of the easiest work already has been done, with the ideas having been suggested from the bottom-up (agencies to White House), rather than top-down, though not necessarily incorporating the perspective of local communities. On these "easier," more technical, issues, the day to day work needs to continue, and verification of measurable change on the ground is the next step. Broader concepts such as bilateral alternative inspection regimes or a trilateral passenger analysis database now need to be the focus of the second, and simultaneous track, as senior policymakers develop and implement a vision for border management. Additionally, the progress that is being made in the commercial cargo area needs to be matched with regard to the movement of people.

Senior policymakers also need to emphasize to mid-level bureaucrats and to their publics that no country will get a free-ride in this process. Each stands to benefit from increased cooperation, coordination, and information sharing in terms of both security and facilitation, but the process will take work, with each needing to make an investment in attention, personnel, financial resources, and brainpower to achieve those benefits. Only an intelligent, common approach will help us reach the point where we have a safer continent and mature borders among true and equal partners.

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ENDNOTES

- 1) Remarks to the U.S. Conference of Mayors. Washington, D.C. January 23, 2002.
- 2) Remarks by Prime Minister Jean Chrétien at the Canada-U.S. Border Summit. September 9, 2002.
http://www.pm.gc.ca/default.asp?Language=E&Page=newsroom&Sub=Speeches&Doc=border20020909_e.htm.
- 3) Papademetriou and Meyers. *Caught in the Middle: Border Communities in an Era of Globalization*. Carnegie Endowment for International Peace. Washington, DC, 2001. p. 62.
- 4) Ibid. See also Migration Policy Institute. "U.S.-Canada-Mexico Fact Sheet on Trade and Migration."
www.migrationpolicy.org/pubs/us_mex_can_facts.html.
- 5) Department of Foreign Affairs and International Trade. "Building a Border for the 21st Century: CUSP Forum Report." December 2000.
- 6) Government of Canada. "Canada-United States Issue Statement on Common Security Priorities." News Release. December 3, 2001.
- 7) Ministry of Foreign Affairs. U.S.A. and Mexico Working Group on Migration and Consular Affairs Meeting: Documents. September 1999.
- 8) In fact, Mexico's then-National Security Advisor Adolfo Aguilar Zinser met with Governor Tom Ridge only two months after the attacks. This was followed by a meeting between Secretary of State Powell and Foreign Minister Castañeda in January 2002 and Governor Ridge's visit to Mexico two months later to finalize the agreement.
- 9) Department of Foreign Affairs and International Trade, "Canada's Actions Against Terrorism Since September 11 - Background." www.can-am.gc.ca/menu-e.asp?act=v&mid=1&cat=10&did=1250. The plan's goals were: 1) to prevent terrorists from getting into Canada; 2) to protect Canadians from terrorist acts; 3) to bring forward tools to identify, prosecute, convict, and punish terrorists; 4) to keep the Canada-U.S. border secure and open to legitimate trade; and 5) to work with the international community to bring terrorists to justice and address the root causes of terrorism.
- 10) Government of Canada. "Protecting Our Borders and Skies." www.bordersandskies.gc.ca/en/brochure.htm.
- 11) Among other changes, the law modernizes and facilitates the selection of skilled workers, allows spouses of work permit holders to work, strengthens family reunification provisions, strengthens refugee protection, and imposes new penalties for the trafficking of migrants and the use of fraudulent documents.
- 12) Citizenship and Immigration Canada. June 28, 2002.
- 13) See the Appendix and www.canadianembassy.org/border/declaration-en.asp and www.canadianembassy.org/border/actionplan-en.asp for the action points and agreement.
- 14) In NEXUS, applicants apply once, are checked by both governments, and receive one card that allows them to cross into either country. NEXUS has been a pilot program at Port-Huron/Sarnia since November 2000, opened at Blaine/Pacific Highway, Blaine/Douglas, and Point Roberts/Boundary Bay in the summer of 2002, and opened in Detroit/Windsor and Buffalo/Fort Erie in early 2003. It will expand to additional crossings by the fall. See www.customs.gov/xp/cgov/travel/inspections/nexus.xml.
- 15) See <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=v&mid=1&cat=10&did=1480> for the press release.
- 16) See http://www.sgc.gc.ca/publications/news/20020722_e.asp for relevant news release. There are now ten IBETs that are operational in various geographic areas along the border, with an additional four planned by December 2003.
- 17) See <http://www.whitehouse.gov/news/releases/2002/09/20020909-2.html> and <http://www.canadianembassy.org/border/index-en.asp> for information regarding their meeting.
- 18) For detailed status report, see <http://www.canadianembassy.org/border/status-en.asp>.
- 19) See <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=v&mid=1&cat=10&did=1671> for more information.
- 20) Press Office of the Prime Minister. "Prime Minister's Task Force on Canada-United States Relations Announced." Press Release May 29, 2002.
- 21) Office of the Minister, Transport Canada. "Canadian Transport Minister Announces Further Enhancements to Aviation Security." News Release. November 5, 2002, http://www.tc.gc.ca/mediaroom/releases/nat/2002/02_h120e.htm and "Government of Canada Announces Up to \$172.5 Million in New Marine Security Projects." News Release. January 22, 2003 <http://www.tc.gc.ca/mediaroom/releases/nat/2003/03-gc001.htm>.
- 22) FAST builds upon pre-existing American and Canadian customs programs with the private sector (U.S. Customs-Trade Partnership Against Terrorism and Canada's Partners in Protection, respectively) to help secure the supply chain. FAST is open at Blaine/Douglas, Port Huron/Sarnia, Detroit/Windsor, Buffalo/Fort Erie, Lewiston/Queenston, and Champlain/Lacolle, and it will expand further by the end of 2003.
- 23) Most of these locations are along the New Brunswick/Maine border, the Quebec/Vermont border, the Manitoba/North Dakota border, and the British Columbia/Washington border.
- 24) Papademetriou and Meyers. *Caught in the Middle: Border Communities in an Era of Globalization*. Carnegie Endowment for International Peace. Washington, DC, 2001. pp. 70 and 87.

- 25) Battagello, Dave. "\$300 M for Traffic Woes." Windsor Star. September 26, 2002. See also Transport Canada. News Release November 19, 2002. www.tc.gc.ca/mediaroom/releases/nat/2002/02-h124e.htm.
- 26) This was mandated under the Data Management Improvement Act of 2000 (P.L. 106-215).
- 27) Although DHS now exists, the INS and Customs do not. Foreign government officials, advocates, researchers, and others who have interacted with DHS note confusion in terms of which bureau has the lead on various issues, turf wars as functions get redistributed, and a lack of familiarity by senior level management on immigration-related issues.
- 28) A Canadian research institute expressed a similar sentiment. See Reikai, Peter. "U.S. and Canadian Immigration Policies: Marching Together to Different Tunes," C.D. Howe Institute Commentary 171 (November 2002). <http://www.cdhowe.org/english/publications/currentpubs.html>.
- 29) Watson, Julie. "U.S. and Mexican Legislature Meet to Discuss Bilateral Issues." Associated Press (May 17, 2002).
- 30) "Le Mexique Renforce Son Plan Anti-Terrorisme." Sistema Internet de la Presidencia de la Republica (October 4, 2001) and "Anti-Terrorism: U.S. Police Training in Mexico May Clash with Human Rights." Pacific News Service (September 26, 2001). See also "Measures Taken by Mexico in Response to the September 11th Attacks." Government of Mexico document (received from National Journal on January 24, 2002).
- 31) "Statement of Mexico's Permanent Representative, Ambassador Jorge Eduardo Navarrete on the Debate on Item 166 "Measures to Eliminate International Terrorism." Plenary 56 General Assembly (New York: October 1, 2001).
- 32) "Update on Post-September 11 Situation: Impact on Migrants in Mexico and Central America." Mexico-U.S. Advocates Network (Chicago: Heartland Alliance, October 10, 2001).
- 33) Countries include some in Central America, Asia, the Middle East, as well as Cuba, Colombia, Taiwan, Turkey and the Ukraine. See also www.enlacesamerica.org/news/newsarchives%20pdf%20files/post911_migrants_mexca.pdf.
- 34) Migration News. December 2002. Vol. 9. No. 12 <http://migration.ucdavis.edu>.
- 35) CBC News. June 27, 2002, <http://cbc.ca/stories/2002/06/27/mexico020627>.
- 36) See the Appendix and www.whitehouse.gov/infocus/usmxborder/22points.html for the action points.
- 37) It remains too early to tell how these issues will be resolved, but the merger of INS and Customs in DHS may, in the long-term, facilitate coordination on these types of action items.
- 38) See www.dhs.gov/dhspublic/interapp/press_release/press_release_0137.xml for a joint statement from the April 2003 meeting. The plan previously had been discussed at the November meeting of the U.S. Binational Commission, attended by Secretary Creel, as well as Secretary of State Powell and Attorney General Ashcroft.
- 39) See www.dhs.gov/dhspublic/display?theme=43&content=571&print=true for press release.
- 40) See the Appendix for the action plan items or www.canadianembassy.org/border/actionplan-en.asp or www.whitehouse.gov/infocus/usmxborder/22points.html.
- 41) A formal letter of agreement was signed on November 25, 2002 in Mexico City by Secretary of State Powell and Interior Minister Creel delineating the general use of the funds, but more specific parameters now will need to be set. It is expected that the money will fund equipment for an Advance Passenger Information System, expansion of SENTRI lanes, and software for information exchange.
- 42) See www.dhs.gov/dhspublic/interapp/press_release/press_release_0137.xml for an overview of progress.
- 43) SENTRI uses technology to allow low-risk travelers to cross at dedicated lanes at the border, while still being subject to random inspection. The program exists at the Otay Mesa, San Ysidro, and El Paso ports-of-entry.
- 44) Migration News. December 2002. Vol. 9 No. 12. <http://migration.ucdavis.edu>.
- 45) Examples of these underlying issues include the continued demand for labor by U.S. employers, insufficient and untimely legal channels for entry, a black market in fraudulent documents, the lack of well-paying jobs in Mexico, social networks that support continued migration, and the lack of a serious interior enforcement policy in the U.S.
- 46) One good model for such a process might be the Task Force created by the Data Management Improvement Act relating to an entry-exit system. See <http://www.bcis.gov/graphics/shared/lawenfor/bmgmt/inspect/dmia.htm> for its December 2002 report.

APPENDIX

THE U.S.-CANADA SMART BORDER DECLARATION *Action Plan for Creating a Secure and Smart Border (30 points)*

The Secure Flow of People

1. Biometric Identifiers
Jointly develop on an urgent basis common biometric identifiers in documentation such as permanent resident cards, NEXUS, and other travel documents to ensure greater security.
2. Permanent Resident Cards
Develop and deploy a secure card for permanent residents which includes a biometric identifier.
3. Single Alternative Inspection System
Resume NEXUS pilot project, with appropriate security measures, for two-way movement of pre-approved travelers at Sarnia-Port Huron, complete pilot project evaluation and expand a single program to other areas along the land border. Discuss expansion to air travel.
4. Refugee/Asylum Processing
Review refugee/asylum practices and procedures to ensure that applicants are thoroughly screened for security risks and take necessary steps to share information on refugee and asylum claimants.
5. Handling of Refugee/Asylum Claims
Negotiate a safe third-country agreement to enhance the handling of refugee claims.
6. Visa Policy Coordination
Initiate joint review of respective visa waiver lists and share look-out lists at visa issuing offices.
7. Air Preclearance
Finalize plans/authority necessary to implement the Preclearance Agreement signed in January 2001. Resume intransit preclearance at Vancouver and expand to other airports per Annex I of the Agreement.
8. Advance Passenger Information / Passenger Name Record
Share Advance Passenger Information and agreed-to Passenger Name Records on flights between Canada and the United States, including in-transit flights. Explore means to identify risks posed by passengers on international flights arriving in each other's territory.
9. Joint Passenger Analysis Units
Establish joint units at key international airports in Canada and the United States.
10. Ferry Terminals
Review customs and immigration presence and practices at international ferry terminals.
11. Compatible Immigration Databases
Develop jointly an automated database, such as Canada's Support System for Intelligence, as a platform for information exchange, and enhance sharing of intelligence and trend analysis.
12. Immigration Officers Overseas
Increase number of Canadian and U.S. immigration officers at airports overseas and enhance joint training of airline personnel.
13. International Cooperation
Undertake technical assistance to source and transit countries.

The Secure Flow of Goods

14. Harmonized Commercial Processing
Establish complementary systems for commercial processing, including audit-based programs and partnerships with industry to increase security. Explore the merits of a common program.
15. Clearance Away From The Border
Develop an integrated approach to improve security and facilitate trade through away-from-the-border processing for truck/rail cargo (and crews), including inland pre-clearance/post-clearance, international zones and pre-processing centers at the border, and maritime port in-transit pre-clearance.
16. Joint Facilities
Establish criteria, under current legislation and regulations, for the creation of small, remote joint border facilities. Examine the legal and operational issues associated with the establishment of international zones and joint facilities, including armed protection or the arming of law enforcement officers in such zones and facilities.
17. Customs Data
Sign the Agreement on Sharing Data Related to Customs Fraud, exchange agreed upon customs data pursuant to NAFTA, and discuss what additional commercial and trade data should be shared for national security purposes.
18. Intransit Container Targeting at Seaports
Jointly target marine in-transit containers arriving in Canada/U.S. by exchanging information and analysts. Work in partnership with the industry to develop advance electronic commercial manifest data for marine containers arriving from overseas.

Secure Infrastructure

19. Infrastructure Improvements
Work to secure resources for joint and coordinated physical and technological improvements to key border points and trade corridors aimed at overcoming traffic management and growth challenges, including dedicated lanes and border modeling exercises.
20. Intelligent Transportation Systems
Deploy interoperable technologies in support of other initiatives to facilitate the secure movement of goods and people, such as transponder applications and electronic container seals.
21. Critical Infrastructure Protection
Conduct binational threat assessments on trans-border infrastructure and identify necessary additional protection measures, and initiate assessments for transportation networks and other critical infrastructure.
22. Aviation Security
Finalize Federal Aviation Administration-Transport Canada agreement on comparability/equivalence of security and training standards.

Coordination and Information Sharing in the Enforcement of these Objectives

23. Integrated Border and Marine Enforcement Teams
Expand IBET/IMET to other areas of the border and enhance communication and coordination.
24. Joint Enforcement Coordination
Works toward ensuring comprehensive and permanent coordination of law enforcement, anti-terrorism efforts and information sharing, such as by strengthening the Cross-Border Crime Forum and reinvigorating Project Northstar.
25. Integrated Intelligence
Establish joint teams to analyze and disseminate information and intelligence, and produce threat and intelligence assessments. Initiate discussions regarding a Canadian presence on the U.S. Foreign Terrorist Tracking Task Force.
26. Fingerprints
Implement the Memorandum of Understanding to supply equipment and training that will enable the RCMP

to access FBI fingerprint data directly via real-time electronic link.

27. Removal of Deportees
Address legal and operational challenges to joint removals, and coordinate initiatives to encourage uncooperative countries to accept their nationals.
28. Counter-Terrorism Legislation
Bring into force legislation on terrorism, including measures for the designation of terrorist organizations.
29. Freezing of Terrorist Assets
Exchange advance information on designated individuals and organizations in a timely manner.
30. Joint Training and Exercises
Increase dialogue and commitment for the training and exercise programs needed to implement the joint response to terrorism guidelines. Joint counter-terrorism training and exercises are essential to building and sustaining effective efforts to combat terrorism and to build public confidence.

THE U.S.-MEXICO BORDER PARTNERSHIP AGREEMENT *U.S.-Mexico Border Partnership Action Plan (22 points)*

Secure Infrastructure

1. Long Term Planning
Develop and implement a long-term strategic plan that ensures a coordinated physical and technological infrastructure that keeps pace with growing cross-border traffic.
2. Relief of Bottlenecks
Develop a prioritized list of infrastructure projects and take immediate action to relieve bottlenecks.
3. Infrastructure Protection
Conduct vulnerability assessments of trans-border infrastructure and communications and transportation networks to identify and take required protective measures.
4. Harmonize Port-of-Entry Operations
Synchronize hours of operation, infrastructure improvements, and traffic flow management at adjoining ports-of-entry on both sides of the U.S.-Mexico border.
5. Demonstration Projects
Establish prototype smart port of entry operations.
6. Cross-Border Cooperation
Revitalize existing bilateral coordination mechanisms at the local, state, and federal levels with a specific focus on operations at border crossing points.
7. Financing Projects at the Border
Explore joint financing mechanism to meet the main development and infrastructure needs.

Secure Flow of People

8. Pre-Cleared Travelers
Expand the use of the Secure Electronic Network for Traveler's Rapid Inspection (SENTRI) dedicated commuter lanes at high-volume ports of entry along the U.S.-Mexico border.
9. Advanced Passenger Information
Establish a joint advance passenger information exchange mechanism for flights between Mexico and U.S. and other relevant flights.

10. NAFTA Travel
Explore methods to facilitate the movement of NAFTA travellers, including dedicated lanes at high-volume airports
11. Safe Borders and Deterrence of Alien Smuggling
Reaffirm mutual commitment to the Border Safety Initiative and action plan for cooperation on border safety, established in June 2001. Enhance authorities and specialized institutions to assist, save and advise migrants, as well as those specialized on curbing the smuggling of people. Expand Alien Smuggling and Trafficking Task Establish a law enforcement liaison framework to enhance cooperation between U.S. and Mexican federal agencies along the U.S.-Mexico border.
12. Visa Policy Consultations
Continue frequent consultations on visa policies and visa screening procedures. Share information from respective consular databases.
13. Joint Training
Conduct joint training in the areas of investigation and document analysis to enhance abilities to detect fraudulent documents and break up alien smuggling rings.
14. Compatible Databases
Develop systems for exchanging information and sharing intelligence.
15. Screening of Third-Country Nationals
Enhance cooperative efforts to detect, screen, and take appropriate measures to deal with potentially dangerous third-country nationals, taking into consideration the threats they may represent to security.

Secure Flow of Goods

16. Public/Private-Sector Cooperation
Expand partnerships with private sector trade groups and importers/exporters to increase security and compliance of commercial shipments, while expediting clearance processes.
17. Electronic Exchange of Information
Continue to develop and implement joint mechanisms for the rapid exchange of customs data.
18. Secure In-Transit Shipments
Continue to develop a joint in-transit shipment tracking mechanism and implement the Container Security Initiative.
19. Technology Sharing
Develop a technology sharing program to allow deployment of high technology monitoring devices such as electronic seals and license plate readers.
20. Secure Railways
Continue to develop a joint rail imaging initiative at all rail crossing locations on the U.S.-Mexico border.
21. Combating Fraud
Expand the ongoing Bilateral Customs Fraud Task Force initiative to further joint investigative activities.
22. Contraband Interdiction
Continue joint efforts to combat contraband, including illegal drugs, drug proceeds, firearms, and other dangerous materials, and to prevent money laundering.

U.S.-CANADA SMART BORDER DECLARATION

The terrorist actions of September 11 were an attack on our common commitment to democracy, the rule of law and a free and open economy. They highlighted a threat to our public and economic security. They require our governments to develop new approaches to meet these challenges. This declaration commits our governments to work together to address these threats to our people, our institutions and our prosperity.

Public security and economic security are mutually reinforcing. By working together to develop a zone of confidence against terrorist activity, we create a unique opportunity to build a smart border for the 21st century; a border that securely facilitates the free flow of people and commerce; a border that reflects the largest trading relationship in the world.

Our countries have a long history of cooperative border management. This tradition facilitated both countries' immediate responses to the attacks of September 11. It is the foundation on which we continue to base our cooperation, recognizing that our current and future prosperity and security depend on a border that operates efficiently and effectively under all circumstances.

Source: <http://www.canadianembassy.org/border/declaration-en.asp>

U.S.-MEXICO BORDER PARTNERSHIP AGREEMENT

In Monterrey, Mexico, President Bush and President Fox announced a 22-point agreement to build a smart border for the 21st century - one that better secures our borders while also speeding the free flow of people and commerce.

As our second-largest trading partner, Mexico and the United States share more than just a border - we share a unique history. The need for border infrastructure and border management systems that facilitate the continued integration of the North American economic region is vital.

These systems should protect the citizens of both nations from terrorism, illegal drugs, and other dangers; facilitate and expedite legitimate cross border travel and commerce; and allow our governments to determine who crosses the borders.

The specific measures that comprise our joint action plan with Mexico embrace technology and enhance bilateral cooperation to ensure a humane, efficient, and modernized management of the border that joins our peoples and our economies.

Source: <http://www.whitehouse.gov/infocus/usmxborder/>

MORE FROM MPI

- In April 2003, MPI launched its new *Insight* series with a groundbreaking report on the creation of the Department of Homeland Security and the reorganization of the Immigration and Naturalization Service. *Immigration Policy and the Homeland Security Act Reorganization: An Early Agenda for Practical Improvements*, by David A. Martin, Law Professor at the University of Virginia, can be ordered by contacting MPI at (202) 266-1940.
- In June 2003, MPI released *America's Challenge: Domestic Security, Civil Liberties and National Unity after September 11*, by Muzaffar Chishti, Doris Meissner, Demetrios G. Papademetriou, Jay Peterzell, Michael J. Wishnie, and Stephen W. Yale-Loehr. This seminal report offers important analysis and recommendations on how to incorporate immigration law and policy into comprehensive strategies that confront the threat of terrorism. Visit our website at www.migrationpolicy.org, for more information.

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