



## A FRESH START ON IMPROVING ECONOMIC COMPETITIVENESS AND PERIMETER SECURITY

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### SUMMARY

The perimeter security and economic competitiveness initiative is a bold undertaking – the first, potentially major, bilateral initiative in more than two decades. The agenda for negotiations is intended to streamline access for people, goods and services, improve cooperation between border agencies and law enforcement officials, and alleviate the regulatory over-burden that stifles the efficiency of a highly integrated North American economy.

Border issues have languished for the past decade. New monitoring and surveillance technologies, all in the name of enhanced security, frustrate rather than facilitate trade. New inspection procedures and reporting mechanisms were introduced, contributing to long line ups at border crossings and undermining the practical advantage of “Just-in-time” deliveries for tightly organized cross-border supply chains.

In an age of new security threats, including from cyberspace, it makes sense to heighten surveillance and joint monitoring capacities. Likewise, the forces of globalization oblige countries like Canada and the U.S. to revitalize trade flows and break down regulatory barriers.

There are no guarantees of success and much hard negotiation lies ahead. A key ingredient will be firm, persistent political prodding from the top. The new majority government in Ottawa should help.

## INTRODUCTION

Canadian Prime Minister Stephen Harper and United States President Barack Obama's announcement of the Joint Action Plan on perimeter security and economic competitiveness is a bold undertaking; the first potentially major bilateral initiative in more than two decades. The wording in the Declaration is precise and ambitious, outlining an agenda for negotiations intended to streamline access for people, goods and services, improve cooperation between border agencies and law enforcement officials and alleviate the regulatory burden that stifles the efficiency of the highly integrated North American economy.

For too long, U.S. security concerns, some real, some mythical, have trumped trade at the border. Worst of all, many Americans, including some in Congress and in the Administration, were mistakenly convinced that several of the 9/11 terrorists had entered the U.S. from Canada. Meanwhile, attempts to address border and trade issues trilaterally through the Security and Prosperity Partnership laboured mightily, generating lengthy communiqués and glossy photo ops but delivering few practical results.

Along with the grim economic fallout at home from the Great Recession, Washington became preoccupied by other, more urgent global issues from Iraq to Afghanistan, Iran, currency disputes with China and more recent challenges in North Africa and the Middle East. Ottawa was also fixated on the challenge of coping with the recession and the day-to-day political dynamics of minority government. Foreign policy, including relations with the U.S., was rarely at the top of the agenda.

In the absence of firm political leadership, and despite the initial enthusiasm generated by President Obama's visit to Ottawa in February 2009, border issues languished for the past decade. New monitoring and surveillance technologies, all in the name of enhanced security, worked to frustrate rather than facilitate trade. New inspection procedures and reporting mechanisms were introduced, contributing to long lineups at border crossings and undermining the practical advantage of just-in-time deliveries for tightly organized cross-border supply chains. These regressive actions at the border simply aggravated rising competitive pressures from the burgeoning Asian economies.

That is essentially why it is timely to reconsider and recalibrate the management of North America's shared economic and security environment and seek to establish a better balance between legitimate concerns about security and the need to strengthen the competitiveness of our economies. The political and economic challenges are daunting. Because Canada stands to gain more from a positive outcome, success is more important for Harper than for Obama. The political consequences of failure are similarly lopsided. America, meanwhile, faces extraordinary structural economic and budgetary problems that are unprecedented in its history and may distract it from bilateral initiatives.

But the Joint Action Plan represents a refreshing outbreak of common sense in both capitals, one that recognizes fundamentally, as the Prime Minister said at the time that, "while a border defines two peoples, it need not divide them." In an age of new security threats, including from cyberspace, it makes sense to heighten surveillance and joint monitoring capacities. Likewise, the forces of globalization oblige countries like Canada and the U.S. to revitalize trade flows and break down regulatory barriers. The new majority government in Ottawa should help focus attention on these twin challenges.

The purpose of this paper is to examine what prompted this initiative and what challenges lie ahead.

## THE REASONS WHY

Although Canada and the U.S. enjoy one of the largest commercial relationships in the world, the flow of goods, services and people across our shared border changed abruptly following the terrorist attacks of September 11, 2001. Ten years later, the trade and travel data for 2000 remain the high-water mark of cross-border commerce. Not surprisingly, Americans became preoccupied with the potential for security lapses on their borders. While bilateral trade rapidly doubled following the conclusion of the Canada — U.S. Free Trade Agreement (FTA) in 1989 and the North American Free Trade Agreement (NAFTA) in 1994, trade volumes stalled in the past decade. Cross-border trade amounted to \$601 billion in 2002 but only \$555 billion in 2010. Nonetheless, Canada and the U.S. are still each other's largest market. Canada is actually a larger market for U.S. exports than all 27 members of the European Union combined and larger than China as well — a fact worth underlining given Obama's recent pledge to double U.S. exports in five years.

Trade with the U.S. drives more than 30 percent of Canada's Gross Domestic Product (GDP), representing one-half of all imports and three-quarters of all exports. More trade flows between one border crossing — Windsor and Detroit — than through any other single border crossing in the world. Strengthening the architecture of our shared economic space should always be the top priority for any Canadian government. By doing so, both countries also enhance their respective abilities to take advantage of growth opportunities elsewhere. Trade diversification is a useful objective but as a complement, not an alternative to improving Canada — U.S. economic relations.

Canada and the U.S. also have one of the world's largest investment relationships. In 2009, direct U.S. investment in Canada was more than \$288 billion whereas Canadian investment in the U.S. was over \$260 billion.

The people flow is similarly large. Canadians made almost 40 million trips to the U.S. in 2009 while over 20 million U.S. travellers came to Canada, constituting 83 percent of all foreign arrivals.

However, since 9/11, and despite initial attempts to ensure a “smart border,” a steady increase in inspection procedures and compliance or transaction costs for North American companies operating on either side of the border not only reduced competitiveness but also introduced uncertainty for deliveries, undermining both productivity and the attraction of Canada and the U.S. for investment. Just-in-time deliveries too often became just-in-case. The fact is that Canada's most successful companies tend to regard the North American economy as a single platform from which to compete in a global economy using the FTA and NAFTA as a basic platform from which they “make things together.”<sup>1</sup> Impediments to cross-border trade weakened this advantageous method of production. The Canadian Chamber of Commerce estimated that these new provisions added an average of \$800 in cost to autos produced in North America, parts and sub-assemblies which cross the border several times.

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<sup>1</sup> Glen Hodgson, “Making Integrative Trade Real: Creating a Value-Chain Trade Policy for North America”; Carleton University, Canada — U.S. Project: From Correct to Inspired: A Blueprint for Canada — U.S. Engagement, January 2009.

For more than a decade, Canada — U.S. relations more generally languished, suffering from a lack of resolve and purpose, little mutual respect and sporadic but rarely productive trilateral sessions. Neglect and inattention paid no dividends. The fractious mood engendered by differences over Iraq, the Ballistic Missile Defence program and softwood lumber, along with unflattering public comments about the U.S. President by senior Canadian officials, only made matters worse. As the bilateral relationship drifted, protectionist sentiments, notably in Congress, along with hyper-sensitivity to security, increased. The zeal for any major bilateral initiative was also hamstrung by the customary wariness of Canadians about “getting too close” to the U.S. and by America’s chronic indifference to the importance of relations with its northern neighbour. A prolonged period of minority government in Canada did not help. The advantages of proximity were either taken for granted, neglected or ignored.

While both the U.S. and Canadian Chambers of Commerce clamoured for action to thwart the border-thickening measures, stakeholder pressure was inconsistent. North American auto companies were overwhelmed by larger problems, leading ultimately to the bankruptcy of two of the Big Three. Meanwhile, Canadian energy companies, which now make up 32 percent of bilateral trade, were not as bothered by border troubles primarily because most shipments travel by pipeline or transmission lines.

Bottlenecks at key transit points such as the Ambassador and Peace Bridges rapidly became the norm. Increased security meant longer wait times at the border and slower shipments. Increased inspection procedures and fees slowed shipments further and added additional costs. A Fraser Institute study, which summarized several other analyses, estimated “the cost of waiting, processing and security measures at two to three percent of total trade.”<sup>2</sup> New inspections of hogs and cattle and their by-products became some of the most egregious examples of how border security concerns can be used to justify thinly disguised protectionist measures.

Industry and shipper compliance with new reporting rules for cargo actually became less onerous for transoceanic shipments from the Pacific Rim than for truck shipments from Ontario to Michigan.<sup>3</sup> Dubious customs’ user fees, calculated on a per-vessel or per-entry basis gave ships carrying 4,000 containers a significant competitive advantage over 4,000 trucks carrying an equivalent load. Agriculture inspection fees imposed on industrial shipments offer an even more egregious example of misplaced zeal. As *The Economist* noted, “It takes three times as long to process a lorry-load of goods crossing the Canadian-American border as it did before September 11, 2001.”<sup>4</sup>

A thicker border even puts the advantages of the Pacific Gateway at risk, especially efforts to connect the Asian heartland to North American markets. A shipment from Asia to Chicago via Prince Rupert, B.C. instead of through Los Angeles or Seattle would cut two days from travel times, but only if it can be pre-cleared and transhipped smoothly from Prince Rupert to both markets. Smart x-ray technology (like that used now for all rail shipments) and sealed cargo from the port to the ultimate destination would expedite matters significantly.

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<sup>2</sup> Cited by Patrick Grady, “A More Open and Secure Border for Trade, Investment and People,” Carleton University, Canada — U.S. Project: From Correct to Inspired: A Blueprint for Canada — U.S. Engagement, January 2009.

<sup>3</sup> Shirley-Ann George, “A New Canada-US Border Vision”, Carleton University, Canada — U.S. Project: From Correct to Inspired: A Blueprint for Canada — U.S. Engagement, January 2009.

<sup>4</sup> *Economist*, April 24, 2011.

Inordinate amounts of money and resources have been spent to strengthen border security — in some instances with each side seeking to emulate or better the other — while border infrastructure, much of it dating to the first half of the last century, has been woefully neglected. Too often, modern technology has been used to impede rather than facilitate open trade. Investments for upgrades are urgently needed, as is a joint commitment to move a lot of commercial administration away from the border to ease congestion.

In June 2008, the Competition Policy Review Panel recommended that “addressing the thickening of the border should be the #1 trade priority for Canada,” adding that Canada “should seek to create a more seamless U.S. border crossing process ... while responding to legitimate U.S. security needs.”<sup>5</sup> A comprehensive study of Canada — U.S. issues concluded by Carleton University just before Obama’s February 2009 visit took a broader view, asserting that “the most pressing issue is the need to rethink the architecture for managing North America’s common economic space.” Re-imagining the border and integrating national regulatory regimes were among this report’s main recommendations.<sup>6</sup>

Both countries have now pledged to establish binational port-of-entry committees to coordinate planning and funding for building, expanding and modernizing shared border management facilities and border infrastructure. The leaders also pledged in their declaration to focus investment in modern infrastructure and technology at our busiest land ports of entry. Should the new Windsor-Detroit bridge ever become a reality, it could serve as a pilot project to take this cooperation one step further with a single, binational facility for customs and immigration inspection.

An integrated cargo security strategy that would provide compatible methods for screening goods before they leave foreign ports enroute to Canada and the U.S. is also being contemplated. Expanding methods of pre-clearance and using advanced technology to move as many of the pre-clearance procedures as possible away from the narrow border would benefit travelers and shippers alike and would go a long way to ease access. We already have U.S. pre-clearance for travelers at major Canadian airports while Canada and U.S. border officials work side-by-side at five major ports. Both are examples to build on, along with other “Trusted Traveler” programs like NEXUS, FAST and “Trusted Shipper” techniques now in use. Fully one-third of all cross-border shipments are pre-vetted and security-validated. Over 70 percent of truck drivers and all Class 1 railroads have passed security credentialing. But both sides will have to compromise on extraterritoriality if we expect to enhance pre-clearance provisions beyond what exists today.<sup>7</sup>

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<sup>5</sup> Compete to Win, June 2008, Competition Policy Review Panel — Final Report, submitted to Minister, Industry Canada.

<sup>6</sup> From “Correct to Inspired: A Blueprint for Canada — U.S. Engagement,” Carleton University, January 2009.

<sup>7</sup> For a more detailed discussion of pre-clearance and trusted traveler and shipper programs, see Michael Hart, “A Matter of Trust: Expanding the Preclearance of Commerce between Canada and the United States,” *C.D. Howe Institute Commentary*, No. 309. Toronto: C.D. Howe Institute. September 2010.

Following the June 2009 introduction of the Western Hemisphere Travel Initiative (WHTI), which requires everyone entering the U.S. by land and sea as well as departing Americans to have a passport, the number of U.S. tourists to Canada dropped 42 percent (from 2007 to 2009). Some of this decline was undoubtedly attributable to the slumping U.S. economy. But the fact that each country has different visa requirements for third-country nationals arouses genuine concerns about security and adds greater complexity to border scrutiny. Canada requires visas from nationals from 27 countries who also need visas for the U.S., whereas nationals from 25 other countries require visas for the U.S. but can enter Canada visa-free, (notably arrivals from Hong Kong and several Commonwealth and francophone countries.)

Canada also takes in thousands of immigrants annually from countries both Canada and the U.S. regard as having significant problems with terrorism. A genuine part of American concern stems from doubts about the adequacy of Canadian security checks in those countries. Canada's Auditor General observed in 2007 that the Canadian Border Services Agency's "lookout system, which was designed to identify and intercept high-risk individuals and shipments, is not working as intended."<sup>8</sup> Undoubtedly, some U.S. officials noticed. The work plan designed to enhance security and law enforcement cooperation is aimed at alleviating this concern. The two countries will work together to establish and verify the identities of travellers and conduct screening at the earliest opportunity. Technology like fingerprinting and retinal scans will be used to meet this objective, stimulating predictable sensitivities about the sharing of personal information. Common ground is more likely to be found in better perimeter screening — electronic travel authority, biometric enhancements and better overall information sharing — rather than through convergence of immigration and visa policies.

The concept of a perimeter approach to security will enable the two governments to work together "within, at and away"<sup>9</sup> from the borders to enhance security and accelerate the legitimate flows of people, goods and services between both countries. The two go hand-in-hand and maintaining a healthy balance will be critical to success. It means, in effect, that Canada is ready to work more collaboratively on U.S. security concerns like threats from terrorists, organized crime and cyberspace to gain quicker entry across the shared border.

By directing greater cooperation among law enforcement personnel, the two governments intend to emulate NORAD-style surveillance "to address threats before they reach our shores."<sup>10</sup> To facilitate greater mobility between the two countries, the plan is to develop an integrated Canada — U.S. entry and exit system so that documented entry into one country serves to verify exit from the other. The two leaders pledged to track potential threats before they reach North America while eliminating many of the hurdles that currently impede the flow of goods and people at the Canada — U.S. border itself. In other words, efforts will be made to identify and closely screen those posing a risk as opposed to those who pose no risk whatsoever.

The two governments plan to establish "common technical standards for the collection, transmission and matching of biometrics"<sup>11</sup> to screen travelers. Officials will also explore the feasibility of "joint border facilities within and beyond Canada and the U.S., opening the possibility of shared customs facilities at overseas ports."<sup>12</sup> The two leaders also committed to work toward "the next generation of integrated anti-terror and anti-crime operations with cross-designated officers to intercept potential threats."<sup>13</sup>

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<sup>8</sup> Auditor General of Canada (2007) Report, "Chapter 5, Keeping the Border Open and Secure — Canada Border Services Agency," October.

<sup>9-13</sup> Beyond the Border Declaration: A Shared Vision for Perimeter Security and Economic Competitiveness, February 4, 2011.

One thing that will not happen is a return to the pre-9/11 border. The globalization of both trade and risk mean that security concerns are permanent. The key is to find ways to manage the contemporary demands of security much more intelligently and to do so together with the U.S. and not independently, using technology to reduce transaction times and costs and deploying more effective risk management so that trusted traders and travelers are treated distinctly.

Geography ensures that Canada will always occupy a unique position in U.S. strategic and defence considerations. Cooperation needs to be nurtured to be effective and a perimeter approach to security offers a more effective basis to meet 21st century threats. More fundamentally, a constructive partnership in resolving economic problems often hinges on U.S. perceptions that Canada is, and will remain, a reliable security partner. Our commitments in Afghanistan and, more recently, in Libya underscore that broader linkage.

The Beyond the Border Working Group (BBWG) led by senior officials is expected to report annually to the leaders on the implementation of its Work Plan and the mandate is to be reviewed after three years.

## **REGULATORY COUNCIL**

The Beyond the Border Working Group is joined at the hip by the creation of a Regulatory Cooperation Council (RCC) with a two-year mandate to improve regulatory cooperation and adopt more compatible approaches that, in turn, are meant to drive greater efficiency and fuel prosperity for both countries. This is a tall hill to climb and one that has frustrated many initiatives in the past.

As much as 40 percent of bilateral trade is now intra-firm, meaning much is based on “value chains” where products are assembled from a wide range of different components made by suppliers scattered across North America and the world. This is especially true of the automobile, telecommunications and aerospace industries. Yet integrative trade is hampered by needlessly divergent standards and inspection procedures from different jurisdictions compounded by burdensome border administration.<sup>14</sup> It is at the border that compliance is monitored most meticulously, adding to time and cost.

John Noble and Michael Hart estimated that in 2003, Canadian border officials were charged with ensuring compliance with almost 100 statutory instruments on behalf of dozens of federal departments and agencies. Their U.S. counterparts administered roughly 400!<sup>15</sup> Patrick Grady has observed that the number of U.S. agents at the border increased six-fold from 340 in 2001 to 1845 in October 2009.<sup>16</sup>

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<sup>14</sup> The food industry is rife with incompatible grading, inspection and packaging requirements that hobble trade. Some, e.g., on beef, are blatantly protectionist and have nothing to do with food safety.

<sup>15</sup> Cited by Kathleen Macmillan in paper, “A Canada — U.S. Regulatory Accord,” Carleton University, Canada — U.S. Project: From Correct to Inspired: A Blueprint for Canada — U.S. Engagement, January 2009.

<sup>16</sup> Patrick Grady, “A More Open and Secure Border for Trade, Investment and People,” Carleton University, Canada — U.S. Project: From Correct to Inspired: A Blueprint for Canada — U.S. Engagement, January 2009.

As Kathleen MacMillan has written, “regulatory incompatibility means reduced trade, higher compliance costs for business, extra expenses for consumers and less than optimal outcomes... that damage our competitiveness unnecessarily.” She added, more pointedly, that Canadians are simply “shooting themselves in the foot” by maintaining and even expanding minor but wasteful regulatory differences.<sup>17</sup> The differences are particularly damaging for smaller companies, and because Canadian companies tend to be smaller, the burden on Canada is lopsided.

The examples of inconsistency are legion, reflecting what Hart has characterized as the “tyranny” or the “narcissism of small differences”<sup>18</sup> — the obsession for maintaining difference to sustain distinction:

- In Canada, anti-theft immobilizers are required on all vehicles; in the U.S., lower-cost entry-level vehicles are exempt. This is just one of more than two dozen different standards undermining efficient production by North American auto companies;
- In Canada, cheese-flavoured popcorn, which is imported, must contain no more than 49 percent real cheese — perhaps with a nod to Canadian dairy farmers — whereas, in the U.S., no less than 53 percent;
- In Canada, fortified orange juice is classified as a “drug.” In the U.S. it is classified as “food;”
- Because of different labeling requirements and despite our colder weather, Canadians pay more for body deodorants than Americans;
- There are differences over the colouring and nutritional content of jellybeans, a distinction that David Ganong once highlighted at the top level of the two governments, to no avail.

Canada’s External Advisory Committee on Smart Regulations (CEASR) completed one of the most comprehensive studies on regulatory problems in 2004. The Committee stated that, “Canada must be more strategic in its regulatory relations with trading partners.” Minimizing differences, especially between Canada and the U.S. “would remove wasteful duplication and reduce costs for consumers, industry and government.”<sup>19</sup>

CEASR explicitly questioned the extent of duplication and the value of maintaining parallel processes and structures. It recommended that the government “work to achieve compatible standards and regulations in areas that would enhance the efficiency of the Canadian economy and provide high levels of protection from human health and the environment.” The Committee contended further that Canada should make a strategic judgement about where it wanted to be competitively and then decide whether it is best to achieve that “by being the same, being better or being different.”<sup>20</sup> This study also suggested that Canada might beneficially act unilaterally in some instances to arrive at the same goal.

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<sup>17</sup> Kathleen Macmillan, “A Canada — U.S. Regulatory Accord,” Carleton University, Canada — U.S. Project: From Correct to Inspired: A Blueprint for Canada — U.S. Engagement, January 2009.

<sup>18</sup> Michael Hart, “Steer or Drift: Taking Charge of Canada — U.S. Regulatory Convergence,” C.D. Howe Institute Border Papers, March 2006.

<sup>19,20</sup> “Smart Regulation, A Regulatory Strategy for Canada,” Report to the Government, Canada’s External Advisory Committee on Smart Regulations (CEASR), September 2004.



Ironically, going metric to serve European markets was a classic example of a wrong-headed but well-intentioned Canadian move on standards, one that would have been much more sensible had the U.S. (and the U.K.) decided to go metric.

Longstanding U.S. concerns about Canadian copyright and intellectual property protection have been a persistent thorn in the bilateral relationship. The Regulatory Cooperation Council can be expected to support efforts to gain Parliamentary approval to needed amendments.

For small and medium-sized businesses, which lack foreign subsidiaries or a presence in foreign markets, the cost of dealing with another country's regulatory and inspection regime can often dissuade them from trying to serve other markets, particularly the large one right next door. According to the Canadian Federation of Independent Business (CFIB), Canada spends 2.6 percent of total GDP annually on federal and provincial regulatory compliance. More than 4,500 new or amended regulations emerge each year.<sup>21</sup>

In July of this year, the CFIB underscored the particular problem for small and medium-sized enterprises trying to comprehend literally thousands of regulatory and paperwork requirements, processes intended for much larger companies. The CFIB recommended a border program, a one-stop, streamlined web portal tailored specifically to the needs of small businesses, most of which use the U.S. as their first export market.<sup>22</sup>

The solution is not wholesale harmonization with U.S. standards. For one thing, Americans may now realize that their banks would have been much better off with Canadian financial regulations. But an agreed bilateral program, even one that may require Canada to adapt and adjust more than the U.S., would have the advantage of bringing political pressure to bear on the biggest obstacle to progress in both countries — bureaucratic inertia.

Hart has suggested that, as a first step, the two governments should change the current practice of discretionary cooperation and a slow drift to greater convergence to a mandatory process of information exchange, consultation and coordination. The objective would be to eliminate duplication and redundancy, reduce regulatory differences, especially in highly integrated sectors (e.g., autos, pharmaceuticals and food) and stimulate a North American approach. A firm determination to rationalize regulatory and inspection differences would also go a long way toward alleviating border congestion.<sup>23</sup>

As regulatory regimes are already closely aligned, greater cooperation would not require radical change. Differences should be confined to those that serve distinctly identifiable and transparent public policy purposes. The goal should be to achieve greater compatibility and complementarity, not harmonization. The most critical ingredients for success will be mutual respect and confidence between those directly involved.

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<sup>21</sup> Canadian Federation of Independent Business, 2005, "Rated R: Prosperity Restricted by Red Tape."

<sup>22</sup> Corinne Pohlmann, "Border Barriers" Policy Brief, Canadian Federation of Independent Business (CFIB), July 2011.

<sup>23</sup> Michael Hart, "Steer or Drift: Taking Charge of Canada — U.S. Regulatory Convergence," C.D. Howe Institute Border Papers, March 2006.

Much will depend on adoption of a “mutual recognition” rule that would allow standards to differ without impeding trade. Mutual recognition should be the default standard for product, services and labour standards. It is more easily achievable because it would not require agreement to a single standard. This would also help overcome the “loss of sovereignty” lament. Both countries view autonomy in rule-making as an essential element of sovereignty. Canadians have no monopoly on sovereignty concerns. Many in Congress can be expected to oppose regulatory convergence in principle.

Also desirable would be a mutually agreed “show-cause” mechanism to ensure that any new or amended regulations meet the broad commitment to reduce differences and that the impact on bilateral trade is a standard feature of the approval process.

A constructive offshoot of regulatory reform would be moves to mutual or reciprocal recognition of one another’s health and safety inspection regimes. The negotiators should seek to agree on a system that would, where practical, recognize and accept the standards of one another’s agencies without compromising the health or safety of the product. Automobile crash tests would be one obvious example; time-consuming approvals for pharmaceutical patents (two – three years on average in each country) would be another.

There will undoubtedly be sensitive areas but either country can pick and choose where it makes sense to align or to develop new common standards. The two sides may also opt to keep some topics off the table; that is the nature of any negotiation. But there is scope for consensus and the potential for real benefit for businesses and consumers alike.

Sadly, although several studies and more than a few trilateral communiqués offered numerous prescriptions for greater regulatory compatibility, there have been few signs of concrete action. Progress on regulatory reform from the Security & Prosperity Partnership (SPP) was notoriously slow. Because plans were not ambitious enough and not sufficiently supported at the political level, low common denominators prevailed. The newly created Council offers the opportunity for concrete action. Early momentum in key sectors would help establish needed credibility to the exercise.

In the words of the Joint Declaration: “The Prime Minister and the President have taken this initiative because they believe that their citizens deserve smarter, more effective approaches to regulation that enhance the economic competitiveness and well-being of the United States and Canada, while maintaining high standards of public health and safety and environmental protection. Improving regulatory cooperation and adopting compatible approaches will lead to greater prosperity on both sides of the border and will in no way diminish the sovereignty of either Canada or the United States or the ability of either country to carry out its regulatory functions according to its domestic and legal policy requirements.”<sup>24</sup>

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<sup>24</sup> Beyond the Border Declaration: A Shared Vision for Perimeter Security and Economic Competitiveness, February 4, 2011.

## THE CHALLENGES

The Beyond the Border initiative provides a significant opportunity to recalibrate and improve both competitiveness and enhanced security cooperation between Canada and the U.S. The task is complex and the challenges are daunting. There is no shortage of good ideas on alleviating congestion at the border, aligning regulations and standards or on strengthening security. What is needed most is persistent engagement and prodding from the top to ensure that the objectives are transformed into tangible results. The two leaders will need to exercise personally the will to move the relationship to a higher level of trust and mutually beneficial cooperation. It will not happen by osmosis. But with clear political will and some degree of imagination, innovative procedures and solutions can be implemented to serve both partners' interests. Backed now by a solid majority government, Harper is in a strong position to drive the initiative forward. He will need to take the lead. Undoubtedly Obama injects a positive personal gloss and a cushion of sorts in Canada. His continuing popularity in Canada should facilitate acceptance of any ultimate agreement. Unfortunately, apart from announcing this initiative, Obama has rarely demonstrated a serious level of engagement on issues of importance to Canada. And he does have a host of more immediate and unrelated challenges to confront.

History, notably the FTA negotiations, illustrates that the personal involvement of the President will be critical to success. For almost 18 months, FTA negotiations were bedevilled by the lopsided approach taken by each country. Canada had a standalone negotiating team, headed by Simon Reisman, reporting directly to the Prime Minister through a special cabinet committee with a broad mandate to negotiate a full FTA. A second-tier trade official who had little mandate to negotiate much more than a list of U.S. grievances and no direct connection to the White House headed the U.S. team. Former U.S. president Ronald Reagan became engaged only at the 11th hour and gave the lead role to his treasury secretary, James Baker III. Even then, the successful result was, in Baker's words "a near-run thing." He acknowledged in March 2011 at a McGill conference that he had to "break a lot of china" to overcome resistance both from Congress and parts of the Reagan administration to conclude the agreement.

An important component of any advocacy campaign will be that the U.S.' role in addressing global problems will be easier to manage if America can count on constructive support from key allies such as Canada. The Prime Minister highlighted this point declaring, "Canada has no friends among America's enemies. And America has no better friend than Canada. A threat to the U.S. is a threat to Canada, to our trade, to our interests, to our values and to our common civilization."<sup>25</sup> History demonstrates that, when Canadian governments manage affairs with the U.S. with clarity and determination, they simultaneously enhance Canada's influence on global issues. Mutual respect and personal chemistry at the top are the sine qua non for such influence.

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<sup>25</sup> Remarks by Prime Minister Stephen Harper of Canada in Joint Press Availability with President Barack Obama, Washington, D.C., February 4, 2011.

In any negotiation with the U.S., Canada will have to do more of the heavy lifting. As the smaller partner we have, proportionately, much more to gain. Similarly, failure carries more negative fallout for Canada — economically and politically — than success. In terms of trade, and despite the weakened state of the U.S. economy, measures to increase access and streamline regulations are certain to improve the economic competitiveness of both North American economies. Meanwhile, enhanced security within a shared perimeter in a more turbulent, unpredictable world, combined with improved competitiveness, goes to the very heart of the role of government — preserving the safety and well-being of its people. Canada will have a herculean challenge trying to maintain a positive focus on, and public support for, the negotiations. It will require sustained political dialogue at all levels along with vigorous vocal and analytical support from the private sector and public-interest advocates.

One of the biggest challenges for any major bilateral initiative is to separate emotional or attitudinal undercurrents in Canada favouring a “safe distance” or differentiation from practical considerations obliging us to harness proximity to our advantage. Customary indifference, apathy or inattention by American leaders to the importance of links to Canada only compounds the problem. Convincing U.S. leaders that Canadian issues are potentially of mutual benefit will be a persistent challenge, one requiring action at many levels aimed at stimulating and articulating agreements derived from interests, not sentiment. What is certain is that a major terrorist incident linked directly to Canada would be lethal and put the whole initiative in jeopardy.

Along with firm leadership from the top, the best antidote to attitudinal impediments in both countries will be overt support from credible stakeholders who stand to benefit from new arrangements — exporters, importers, investors, truckers, professionals and travelers. Broad advocacy efforts can strengthen the hands of the negotiators and the legitimacy of the process while mustering essential public support for the result. A formal consultative structure embracing not only the private sector but also unions and experts on regulatory standards will be of critical importance to success. The more open the process of negotiation, the less scope there will be for protect-our-sovereignty-at-all-costs attitudes to take hold.

Concerns — real or perceived — about sovereignty will undoubtedly dog the negotiations in Canada. Some decry any negotiation with the Americans as a threat to Canadian sovereignty. Any changes affecting immigration and refugee policy would automatically become a lightning rod for political attacks as invasions of sovereignty. David Bradley, President and Chief Executive of the Canadian Trucking Alliance, offers a more balanced counterpoint: “Joint decision-making, better coordination and cooperation in terms of managing our shared border, and synchronized infrastructure, investment and construction, leading to a stronger economy, enhances our sovereignty.”<sup>26</sup> Former cabinet minister John Manley put it even more plainly: “Sovereignty is enhanced when prosperity is enhanced.”<sup>27</sup> Nonetheless, NDP leader Jack Layton and his party along with the remaining Liberals in Parliament, can be expected to claim that the negotiations have the potential to betray Canadian values or compromise sovereignty which is why Harper is emphasizing that the negotiations are really about jobs and the economy.

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<sup>26</sup> Cited by National Post, February 5, 2011.

<sup>27</sup> Quoted by John Ivison in National Post, February 5, 2011.

Because any agreement will be perceived in some quarters either as an assault on Canadian sovereignty or a watering down of Canadian regulatory standards, the government will need to reinforce the process systematically, demonstrating persuasively that better access and improved security measures can actually strengthen sovereignty. Similarly, a closer alignment of regulatory standards can not only enhance efficiency but also provide a stronger foundation of certainty regarding public safety and health concerns. The essential ingredient will be a platform of mutual trust.

The U.S. penchant for dealing with Canada primarily through trilateral leaders' summits poses an obstacle to any bilateral initiative. Mexico is not a party to NORAD or NATO, nor is it a shared partner in the Arctic. On matters of fundamental security, these differences are acute. But giving greater and specific attention to bilateral border issues does not preclude doing more trilaterally when it makes sense to do so. After all, the initial Canada — U.S. FTA led eventually to NAFTA.

There is certainly scope for trilateral cooperation on differences in regulations and standards. The difficulty for Mexico stems less from inconsistency on definitions but more from the relative weakness of enforcement capability — a deficiency that manifested itself much earlier when environmental accords were being negotiated. For an administration under relentless assault from organized crime and drug traffickers, the enforcement of safety and health measures inevitably becomes secondary. That is why it would be easier and more practical to begin with greater convergence bilaterally and move to a trilateral approach over time. A troubled America beset with seemingly intractable political and economic challenges and with new undercurrents of isolationism is not good news for either of its immediate neighbours. Canada and Mexico both need a more resilient and more confident America as a necessary basis for avenues of new cooperation.

In their declaration Harper and Obama acknowledged that privacy and civil liberty concerns would be valued and respected through the separate constitutional and legal frameworks already in place. As Obama observed at the time, “I have great confidence that Prime Minister Harper is going to be very protective of certain core values of Canada, just as I would be very protective of the core values of the U.S.” (It may come as a surprise to some Canadians that some Americans actually care deeply about privacy and civil liberties.) He added: “Obviously Canada and the U.S. are not going to match up perfectly on every measure with respect to how we balance security issues, privacy issues, openness issues but we match up more than probably any country on Earth.”<sup>28</sup>

An ambitious result would inevitably require legislation from Parliament and Congress, raising political challenges of a different order. The NDP can be expected to oppose any result, both for ideological and political reasons. The Liberals campaigned against both the FTA and NAFTA and yet, subsequently learned to live with and actually champion both. While opposition parties' concerns will need to be addressed, they no longer have the potential to derail this initiative.

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<sup>28</sup> Remarks by President Obama and Prime Minister Stephen Harper of Canada in Joint Press Availability, Q&A Session, Washington, D.C., February 4, 2011.

There would be merit in institutionalizing the results under a new Bilateral Border Commission that, consistent with the prerogatives of Congress and Parliament, would monitor implementation of the results, providing a safety valve and ensuring that obligations undertaken are honoured in practice.

Congress is a very different beast and instinctively protective of its jurisdiction over trade issues. It is certain to be even more protective at a time when economic recovery remains fragile and the fiscal outlook is grim. Support for any concept of free trade is in sharp decline in Congress. That is why a constructive, systematic dialogue with key Congressional leaders throughout the process should be a matter of priority for Canada, one in which the mutual benefits are underscored. However, the most influential message of all for Congress needs to come from the American private sector.

The tepid degree of support to date from both the American and Canadian private sectors should be a matter of concern. No doubt jaded by the lack of progress on border and regulatory issues over the past decade, business firms and their associations have, thus far, reacted guardedly to the initiative. Clearly, the working groups of officials would benefit from a formal consultative process involving key private sector representatives, for use both as a guide and a sounding board for the negotiations as well as to help reinforce public support for whatever is agreed. Officials need to focus their negotiating efforts on solutions to what the private sectors identify initially as key obstacles, turning theory into practical solutions.

Because many of the regulations and standards to be addressed fall within provincial jurisdiction, it will be imperative to involve the provinces regularly and deliberately. For instance, wholesale food producers have indicated that differences between and among provinces pose a much more serious impediment to efficiency than those at the U.S. border. Provincial vacillation on government procurement practices limited success in both the FTA and NAFTA negotiations. It came back to haunt Canada when the U.S. introduced Buy America provisions at the state level and denied access by Canadian suppliers because of provincial restrictions. More agreements such as the TILMA (Trade Investment and Labour Mobility Agreement) between Alberta and B.C. are needed, moving beyond the rhetoric of repetitive communiqués about more open inter-provincial trade towards specific results. The bilateral initiative may be a helpful prod in that direction, as well as a basis to legitimize provincial involvement. Harper has already invited each Premier to name an interlocutor to work on the initiative. These representatives should be integral parts of both Canadian teams.

The absence of hard deadlines could prove fatal to the exercise, especially given the incessant U.S. election cycle. If not for the Fast Track deadline provided by Congress to the Administration for trade negotiations (obliging a simple up or down vote by Congress on the result), the FTA would never have happened. The Joint Action Plan has timelines for reports but nothing definitive. The risk of foot-dragging, indifference and bureaucratic game-playing are very real. Some early quick hits of success at the negotiating table and steady demands for action from the two leaders will be vital to sustain momentum, discipline and focus.

Given differences in law and the inherent jealousy of separate bureaucracies — what are often called “iron rice bowl” or “silo” mentalities — it will not be easy to drive enhanced cooperation. In fact, the chronic inertia of bureaucratic fiefdoms on each side of the border, which see their very existence as being dependent on preserving the status quo, will be a

pervasive obstacle to progress. As former British prime minister Tony Blair observed in his memoir, “change brings opposition and opposition is much easier to advocate than change.”<sup>29</sup> Many political leaders would heartily agree.

U.S. mindsets have been rigidly shaped by the horror of 9/11. Among these officials, interest in smoother access to boost the benefits of free trade or the advantages of economic integration is miniscule. The overriding objective for the U.S. will be to strengthen border security whereas Canada’s priority will be easier access for goods and services. The security “asks” from the U.S. may well be costly and could also be intrusive. Quantifying the value of improved access along the border poses a different challenge. That is why striking a healthy balance between the two objectives may prove to be the most daunting task of all for the negotiators.

The goal of the Beyond the Border Declaration is pragmatic, not theoretical, and the results must be tangible. Canada should never refrain from giving a clear priority to bilateral initiatives carrying the greatest potential for reward. That is a practical judgement, infused by geography, shared undertakings and a host of agreements that have worked to the advantage of Canada and the U.S. But the U.S. is rarely imbued with the same degree of pragmatic priority on relations with Canada and that can overwhelm the best of intentions. The political environment for bilateral initiatives is not as propitious in 2011 as it was in the halcyon days of former prime minister Brian Mulroney and former presidents Reagan and George H.W. Bush. That is why the prospects for success are fraught with difficulty and uncertainty. But with clear and consistent political will from the top, a persistent dose of determination from officials and stakeholders alike, Canada and the U.S. can conclude innovative solutions that will improve both countries’ security and economic interests.

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### ISSN

1919-112x SPP Research Papers (Print)  
1919-1138 SPP Research Papers (Online)

### DATE OF ISSUE

August 2011

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