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## The Canada Gambit: *Will it Revive North America?*

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# The Canada Gambit

*Will the Washington Declarations on U.S.-Canadian Border and Regulatory Cooperation Revive North America?*

## Executive Summary

On Friday, February 4, 2011, U.S. President Barack Obama and Canadian Prime Minister Stephen Harper met in Washington and launched a new initiative on regulatory cooperation, establishing a United States-Canada Regulatory Cooperation Council.<sup>1</sup> The president and the prime minister also issued a joint declaration on the U.S.-Canadian border – not a new agreement, but a list of principles and objectives for future action.<sup>2</sup>

For the United States, and for the Obama administration, these two declarations embody a new approach to North America. After the termination of the Bush administration's Security and Prosperity Partnership (SPP) at Guadalajara in 2009, President Obama's alternative process has stalled. Worsening drug violence in Mexico and the failure of efforts at immigration reform have soured U.S.-Mexican relations.

The Obama administration is now attempting to make progress on North American border security and regulatory cooperation bilaterally with Canada. The Canada Gambit is that greater progress is possible without Mexico, and that the U.S.-Canada negotiations will improve North American security, productivity and competitiveness. It is also a gamble that Mexico can be accommodated later, and that bilateral talks with Canada will be enough to sustain interest and generate concessions from interested parties.

This Canada Gambit is crucial for Canada as well. Prime Minister Harper hopes to regain momentum on regulatory cooperation and facilitate border crossing to improve Canada's global competitiveness and to enhance Canadian access to the United States market which accounts for more than 70 percent of Canadian exports. Canadian firms have struggled with unpredictable border security delays and regulatory and inspection changes related to environmental impact, consumer safety, and user fees that have had a discriminatory effect on Canadian trade in energy, manufacturing, commercial services, and tourism as well as in other sectors. Many Canadians resented Mexican participation in the SPP, considering Mexico's problems a distraction and a drag on progress that might otherwise be achieved by the United States and Canada together.

The Washington Declarations emerged from this crossroads in U.S. North American diplomacy and from Canada's frustration and desire to make progress. Both established frameworks for future action rather than indicate any immediate changes or reforms.

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<sup>1</sup> The text of the statement on the new United States-Canada Regulatory Cooperation Council is included in an appendix to this report and is also available here: <http://www.whitehouse.gov/the-press-office/2011/02/04/joint-statement-president-obama-and-prime-minister-harper-canada-regul-0>

<sup>2</sup> The text of the new Washington Declaration on the U.S.-Canadian Border is included in an appendix to this report and is also available here: <http://www.whitehouse.gov/the-press-office/2011/02/04/declaration-president-obama-and-prime-minister-harper-canada-beyond-bord>

What explains the specifics of these proposals, and why have they been issued now? The rationale for the contents and structure of the Washington Declarations was a confluence of four factors:

1. Progress of bilateral talks on the U.S.-Canadian border amid increasing criticism of border management
2. The opportunity for a breakthrough regarding entry-exit controls at the border
3. Collapse of trilateral talks on regulatory and inspection harmonization and the Obama administration's unveiling of a domestic regulatory reform initiative
4. Leaked information on bilateral border negotiations had placed political pressure on the Harper government to make public some sense purpose and scope of the negotiations

The Washington Declarations mark a departure from past practices and are worthy of note for several reasons.

- First, they reflect discussions between the two governments on how to jointly manage the deep integration of their economies during a recession; in the past, economic downturns often pitted governments in Canada and the United States against one another as competitors for economic growth, investment and jobs.
- Second, while the two elements of the Washington Declaration are only briefly detailed, they are an indication of the Obama administration's desire to depart from the preceding administration's approach on these issues and on relations with Canada.
- Third, with the Washington Declaration, Canada has successfully excluded Mexico from regulatory harmonization negotiations to which it had been a party during the Bush period, and persuaded the United States to proceed to improve its border with Canada independently; this formal decoupling of northern border policy from southern border policy has been a Canadian objective since 2001.
- Fourth, the United States is now within reach of effective entry-exit controls at its longest land border. Bipartisan congressional majorities have legislated this objective consistently since 1996, but the potential for Canadian cooperation (after years of explicit and tacit resistance) has the potential to overcome significant obstacles to implementing this objective from a cost and enforcement perspective, and the potential to serve as a model for future international collaboration that would greatly enhance U.S. national security.
- Fifth, business leaders and trade associations in the United States and Canada have advocated expanded regulatory alignment and lower regulatory compliance costs. Mexican businesses had similar goals but in 2009-2010, many in the U.S. business community appeared willing to proceed separately with Canada, and that now becomes the U.S. approach with the formation of a bilateral process.

Further negotiations will be necessary to implement the policy shifts identified in the Washington Declaration, and these are not certain to be completed before the 2012 U.S. presidential and congressional elections. A change in the political configuration of Washington officeholders might again prompt a change in U.S. border and regulatory reform policies, altering or even reversing this new direction.

At the same time, the Washington Declarations on the U.S.-Canadian border and on regulatory reform establish working groups to implement and oversee changes that fail to address the weaknesses that doomed prior efforts, most notably the Security and Prosperity Partnership. By excluding Mexico and retaining the poor transparency, exclusively federal bureaucratic model, and exclusion of the U.S. Congress and civil society groups, the Washington Declarations by President Obama and Prime Minister Harper may be unable to counter the inertia and resistance to liberalization of regulation and border inspection within both governments.

Despite these dangers, the Washington Declarations are agreements on principles, and the governments of the United States and Canada can still fix many of these problems as they proceed to implementation. The United States might launch parallel dialogues with Mexico, and President Obama and Prime Minister Harper could insist that the new working groups of federal officials created to oversee border and regulatory cooperation seek and incorporate stakeholder input. The revival of the North American economy and the security of the continent are vital national interests for the United States and Canada, and it is important that as the governments embark on these new initiatives that they learn from past experience, and get it right this time.

## **Part 1: Origins and Urgency of the Washington Declarations**

For the United States, and for the Obama administration, the Washington Declarations embody a new approach to North America. After the termination of the Bush administration's Security and Prosperity Partnership of North America (SPP) at Guadalajara in 2009, President Obama's alternative process of bilateral and trilateral discussions on a limited agenda failed to gain momentum. Canada was to have hosted the follow up trilateral meeting in 2010. When a mutually convenient date could not be found, the North American leaders were unable to hold an annual trilateral meeting for the first time since 2005.

At the same time, worsening drug violence in Mexico and the failure of efforts at immigration reform in late 2010 complicated U.S.-Mexican relations. The Obama administration is now attempting to make progress on North American border security and regulatory cooperation bilaterally; with Canada and without Mexico. A separate bilateral process with Mexico may yet emerge, but the Washington Declarations of February 4, 2010 marked the end of a period of tripartite North American regional cooperation.

This Canada Gambit is crucial for Canada as well. Prime Minister Harper hopes to regain momentum on regulatory cooperation and facilitate border crossing to improve Canada's global competitiveness and to enhance Canadian access to the United States market which accounts for more than 70 percent of Canadian exports. Canadian firms have struggled with unpredictable border security delays and regulatory and inspection changes related to environmental impact, consumer safety, and user fees that have had a discriminatory effect on Canadian trade in energy, manufacturing, commercial services, and tourism as well as in other sectors. Many Canadians resented Mexican participation in the SPP, considering Mexico's problems a distraction and a drag on progress that might otherwise be achieved by the United States and Canada together.

The Washington Declarations emerged from this crossroads in U.S. North American diplomacy and from Canada's frustration and desire to make progress. Both establish frameworks for future action rather than indicate any immediate changes or reforms. The potential and limitations of the new approaches signaled in the Washington Declarations are tied to the recent history of U.S.-Canadian interaction on border security and regulatory cooperation.

### **U.S. Border Policy Review**

The Washington Declaration on border security is an agreement on principles that will guide future negotiations between the governments of Canada and the United States regarding their shared border. It is the product of a review of northern border policy initiated by U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano in 2009.

A former governor of Arizona, a southern border state, Secretary Napolitano asked staff why the Canadian border was so often described as different from the southern border, and whether these differences would justify a change in the “One Border” approach that had been DHS policy during the George W. Bush administration. Napolitano made the request shortly after the inauguration of President Obama in January 2009, and asked for a final report by February 17, 2009.<sup>3</sup> The “One Border” policy held that the level of scrutiny for individuals and cargo entering the United States should be the same at all points of entry, and at a high standard based on risk assessment rather than the value of commerce or inconvenience to travelers that might be involved. The DHS “One Border” policy had the effect of linking U.S. approaches to its land borders with Canada and Mexico.

At the same time, the Hudson Institute was involved in a comprehensive review of changes to U.S. policy for the northern land border that produced recommendations for the Obama administration in a report entitled *Toward a New Frontier: Improving the U.S.-Canadian Border* commissioned and published by the Brookings Institution and the Canadian International Council in July 2009.<sup>4</sup>

The recommendations in *Toward a New Frontier* were grouped into three categories: the need for greater *precision* in identifying problems and solutions; the need for greater consultation with border community stakeholders; and the need for improved and formalized cooperation with Canada to envision and enact border-related reforms.

Specifically, *Toward a New Frontier* called for:

- The creation of committees at each customs port of entry involving local stakeholders, including those from communities along trade corridors that lead to individual ports of entry. The committees would foster better communication and potential innovation and adaptation to meet port-specific needs related to particular geographic, infrastructure, and commodity and trade pattern challenges.
- Leadership and better coordination by local federal officials at each border port of entry, to restore flexibility and adaptability to border operations and reduce friction among federal agents with overlapping missions.
- The adoption of a Total Quality Management approach to border inspection and clearance to improve the efficiency of these processes and reward front-line officers for suggestions made that lead to improved effectiveness in performance of the DHS mission.
- Funds to allow customs port directors to experiment and innovate through pilot projects, and a mechanism for spreading proven best practices to other border crossings.

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<sup>3</sup> Details of Napolitano’s request for information are available here: [http://www.dhs.gov/ynews/releases/pr\\_1232725181516.shtm](http://www.dhs.gov/ynews/releases/pr_1232725181516.shtm)

<sup>4</sup> This report was written by Hudson Institute Senior Fellow Christopher Sands (author of this assessment) and is available at: [http://www.hudson.org/files/publications/Toward\\_New\\_Frontier\\_Sands.pdf](http://www.hudson.org/files/publications/Toward_New_Frontier_Sands.pdf)

- A two-speed approach to U.S. border management that would de-couple the U.S. borders with Canada and Mexico from a policy perspective so that the United States and Canada could advance, while leaving open the potential for the United States and Mexico to gradually move to the same standards.
- Recommends a cross-border stakeholder dialogue on security priorities to defuse opposition to specific measures from the bottom-up, citing Canadian success in lobbying against the implementation of entry-exit controls at the shared land border.
- Reform but not abandonment of the Security and Prosperity Partnership approach to regulatory alignment and harmonization.
- The establishment of a U.S.-Canada (or North American) joint infrastructure planning commission to facilitate the coordination of public infrastructure investments and expedite permitting and project reviews.

In July 2009, Napolitano spoke at the Brookings Institution at a conference honoring the launch of *Toward a New Frontier*.<sup>5</sup> The Secretary indicated then that her staff review had suggested that cooperation by Canadian border security officials and with the Canadian government was close and beneficial and that the Canadian federal and provincial governments were open to deepening cooperation further. This finding was sufficient to warrant the exploration of a distinctive northern border strategy based on shared responsibility and joint action.

In 2009 and 2010, U.S. border communities and business groups applauded the idea of de-linking DHS policies for managing the northern and southern land borders, based in part on concern that the higher incidence of drug smuggling and illegal immigration at the southern border was an impediment to border security policy innovation. Canadian businesses and government officials sought to work with DHS to shape a constructive set of border reforms that could be adopted jointly.

At DHS, Napolitano assigned Alan Bersin the responsibility for consulting within DHS and with border stakeholder groups on the development of a northern border strategy that would be used to direct departmental resources in meeting the homeland security mission at the land border with Canada. Bersin, a Yale Law School graduate and Rhodes Scholar, is a former United States Attorney for the southern district of California, and during the Clinton administration served as the U.S. Attorney General's Southwest Border Representative, coordinating law enforcement on the border between the U.S. and Mexico.

In February 2009, Secretary Napolitano asked Bersin to serve as Assistant Secretary for International Affairs and Special Representative for Border Affairs, her department's "border czar." In September 2009 while Bersin worked on the development of a DHS northern border strategy, President Obama nominated Bersin to become U.S. Customs Commissioner and head of the U.S. Customs and Border Protection unit within DHS.

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<sup>5</sup> The transcript of the event, including Secretary Napolitano's remarks is available here: [http://www.brookings.edu/~media/Files/events/2009/0325\\_us\\_canada/20090325\\_canada\\_transcript.pdf](http://www.brookings.edu/~media/Files/events/2009/0325_us_canada/20090325_canada_transcript.pdf)



When the U.S. Senate did not act on Bersin's confirmation, President Obama gave Bersin a recess appointment to the position of U.S. Customs Commissioner in March 2010, and sent his nomination back to the U.S. Senate for confirmation in September 2010 and again in January 2011, indicating the administration's strong support for Bersin's work.

Bersin's draft northern border strategy is currently in interagency clearance, and is expected to become public sometime later this year. When adopted as policy, the northern border strategy will guide U.S. government actions, budgetary requests to Congress, and resource allocations in support of the DHS mission to secure the U.S.-Canadian border. The northern border strategy is likely to contain at least two different types of policy guidance: steps to be undertaken by DHS and U.S. government agencies alone; and steps that would require Canadian cooperation. The latter would be the subject of negotiations with Canada at a future date, and Canada would have the sovereign right to offer or to withhold cooperation in response to U.S. requests; the value of the northern border strategy will be to provide a rationale and justification for the U.S. request for Canadian cooperation that would also support U.S. concessions to Canada if necessary to secure cooperation.

In September 2010, six U.S. senators requested an analysis from the Government Accounting Office (GAO), a congressional research organization, of the U.S. federal government's efforts to secure the northern land border.<sup>6</sup> This request led to a draft report circulated to federal agencies named in the report for comment in November, and a completed draft including agency comments was completed in December. The GAO report, entitled *Border Security: Enhanced DHS Oversight and Assessment of Interagency Coordination Is Needed for the Northern Border* was completed in December 2010 and launched at a press conference by Senator Lieberman and Senator Collins in February 2011, just days before the Obama-Harper meeting.

The GAO report was critical of conflicts among federal agencies over resources and credit for accomplishments.<sup>7</sup> Conflicts between the U.S. Border Patrol and the U.S. Forest Service, Immigration and Customs Enforcement, and Drug Enforcement Administration were cited in the report. These conflicts were found by the GAO to have led to impediments to data sharing, cooperation, and increased costs to taxpayers. Moreover, the GAO reported that the Canadian efforts to secure the border were not accounted for in the risk assessments of certain agencies, underestimating the value of close cooperation with Canadian border agencies and the contributions of Canadian efforts to U.S. national security.

The GAO report raised public awareness of the need to make improvements to federal operations along the U.S. northern land border with Canada. It also provided an

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<sup>6</sup> The U.S. Senators requesting this report from the GAO were Sen. Joseph Lieberman, Chairman of the Senate Committee on Homeland Security and Governmental Affairs; Sen. Susan Collins, ranking member on the Committee; as well as Senators Daniel Akaka, George Voinovich, Carl Levin, and John Tester.

<sup>7</sup> The GAO report, *Border Security: Enhanced DHS Oversight and Assessment of Interagency Coordination Is Needed for the Northern Border* (GAO-11-97) is available here: <http://www.gao.gov/new.items/d1197.pdf>

indication of bipartisan interest in the U.S. Senate in the future security of the northern border; such interest is a necessary precondition for securing funding for the implementation of a DHS northern border strategy in the current constrained fiscal environment. At the same time, as negotiations begin between the Obama administration and the 112<sup>th</sup> Congress over the federal budget, it is prudent for the Obama administration to take the initiative to address northern border security concerns identified by the GAO.

The U.S.-Canadian border has not been a political flashpoint in the United States in the way that the U.S.-Mexican border has been. There has been virtually no domestic criticism of the Obama administration for the initiation of a process that would lead to a northern border strategy distinct from the policy at the southern land border with Mexico. Commissioner Bersin has consulted widely with northern border stakeholder groups and invited suggestions and comments from them.

It has been anticipated that a DHS northern border strategy would be adopted prior to the launch of formal negotiations with the Government of Canada; the U.S. needs to know what it wants before it can negotiate with Canada to get it. The Bersin draft strategy is under review but has not been adopted as the policy of the U.S. government yet.

### **Entry-Exit Controls**

The orderly evolution of bilateral talks on improvements to the U.S.-Canadian border explains the issuance of the Washington Declarations of February 4 only partially.

In the U.S. midterm elections in November 1994, voters in the United States elected a Republican majority in the House of Representatives led by Newt Gingrich, and voters in California approved Proposition 187 which denied public services to illegal immigrants in that state. Proposition 187 was challenged in court and never took full effect, but it recast immigration as one of the most politically-charged and contentious issues on the national agenda, where it remains today.

One consequence of the charged atmosphere surrounding immigration in the United States after the 1994 election was the tougher language in the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act* that required that a record be kept of every person who exits or enters the United States. This requirement became known by the relevant U.S. Immigration and Naturalization Service statute number, as “Section 110.” *The INS Data Management Improvement Act* of 1997 rewrote Section 110 to require the development of a system using data currently collected with no new documentary requirements. *The Visa Waiver Permanent Program Act* of 2000 required the development and implementation of a “fully automated entry and exit control system” covering all aliens who enter the United States under the Visa Waiver Program (VWP) at airports and seaports.

The congressional rationale for establishing records of entry and exit from the United States was that such record would provide evidence that individuals deported for felony crimes had actually left the country, and could subsequently be denied re-entry. The

difficulties involved in implementing such controls at all U.S. border points of entry are significant. Individuals crossing U.S. borders in 1996 did not require passports or other secure identification, making fake I.D. a potential loophole for those attempting to cross. In addition, while visitors arriving by air and sea could be requested to fill out the traditional Form I-94 Arrival/Departure cards for non-immigrant travel, U.S. officials worried about the implementation of even these measures along U.S. land borders with Canada and Mexico due to potential delays in cross-border traffic that could affect trade.

The Section 110 requirement for U.S. entry-exit controls at the border sparked a strong reaction in Canada. NAFTA seemed to presage an era of open access for Canadians to the United States, and so the 1996 immigration legislation came as a surprise to Canadians, 90 percent of whom live within 150 miles of the U.S. border and cross frequently for business and pleasure. The government of Prime Minister Jean Chrétien reacted to this unexpected challenge by encouraging a series of domestic and bilateral discussions on border management and security between 1996 and 2000, including: the Shared Border Accord, the Border Vision Initiative, the Cross-Border Crime Forum, the Canada-U.S. Anti-Smuggling Working Group, and the Canada-U.S. Partnership which held two meetings between federal officials in both countries and local stakeholders in 2000.

Following the terrorist attacks of September 11, 2001 the U.S. Congress again addressed the problem of entry-exit controls at U.S. borders. Provisions in the *USA PATRIOT Act* of 2001 and the *Enhanced Border Security and Visa Reform Act* of 2002 sought to improve identification documents including passports through the mandated incorporation of biometric information. Both laws repeated the call for entry-exit controls at U.S. borders.

Congress again called for entry-exit controls in the *Intelligence Reform and Terrorism Prevention Act of 2004* which responded to recommendations by the bipartisan *National Commission on Terrorist Attacks Upon the United States* (also known as the 9-11 Commission), created the position of U.S. Director for National Intelligence, and established the Western Hemisphere Travel Initiative (WHTI). Under WHTI, all U.S. citizens would be required to present passports for re-entry to the United States from Canada and a short list of other countries in the Americas that had previously been exceptions to the rule for most foreign travel. WHTI addressed the problem of identification fraud at the U.S. borders. Since Canadians had traveled to the United States for decades without passports, informally receiving the same treatment as U.S. citizens presenting photo I.D. and a birth certificate upon request, the WHTI also placed a new burden on Canadian travelers and improved the standard of identification for travelers at the U.S.-Canadian border significantly.

Nonetheless, Canadian governments protested the WHTI requirements imposed by the *Intelligence Reform and Terrorism Prevention Act of 2004* using many of the same arguments that they had employed in opposition to the Section 110 changes mandated by the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* principally by citing the effects of the new documentation requirements for travelers on trade.

By 2008, over 15 years of U.S. legislation supported by bipartisan majorities and signed by Democratic and Republican presidents had resulted in the establishment of entry controls only. Exit controls and record keeping were considered difficult and costly at land borders, in part because without Canadian cooperation, U.S. officials would need to collect entry and exit data, doubling the demands on personnel and infrastructure at already busy and often congested border crossings.

However in May 2008, Canada's position on the merit and advisability of entry-exit controls began to shift. The change began with the release that month of a report by the Auditor General of Canada to the House of Commons on "Detention and Removal of Individuals" by the Canada Border Services Agency (CBSA).<sup>8</sup> Canada's Auditor General functions like the Inspector General of a federal department or agency in the United States. This report criticized the CBSA for having no way of knowing whether individuals ordered deported from Canada had in fact left the country except in cases where removal was conducted by the CBSA itself. As a result, an estimated 40,000 deportation orders and immigration bench warrants issued by judges remained open and the Government of Canada could not be certain of the whereabouts of these individuals.

The uncertainty about the status of deportations from Canada was similar to the original motivation for Congress to attempt to mandate entry-exit controls in 1996, and the Harper government began to consider these as well.

In 2010, for the first time border discussions between the governments of the United States and Canada raised the potential for a breakthrough on entry-exit controls: both countries would implement entry controls at the land border, and exchange entry data to provide each other with a record of exit. In addition to an enormous cost savings, a U.S.-Canada agreement on entry-exit would satisfy the longstanding desire of the U.S. Congress for exit controls and thereby address one of the outstanding goals of post-2001 U.S. homeland security planning. This potential alone justifies the interest of the Obama administration in pursuing talks with the Canadians on border security as outlined in the Washington Declarations.

### **Collapse of Trilateral Process**

The demise of the George W. Bush administration's Security and Prosperity Partnership (SPP) initiative at the Guadalajara summit in August 2009 went largely unlamented by Congress, the media or the business community (at least in public). Private sector concern about burdensome regulation has been focused on domestic regulatory burdens and compliance costs, rather than appeals for renewed talks on regulatory alignment with the governments of Canada or Mexico.

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<sup>8</sup> The *Report of the Auditor General to the House of Commons: Chapter 7 concerning Detention and Removal of Individuals by the Canadian Border Services Agency* (Government of Canada, May 2008) is available here: [http://www.oag-bvg.gc.ca/internet/docs/aud\\_ch\\_oag\\_200805\\_07\\_e.pdf](http://www.oag-bvg.gc.ca/internet/docs/aud_ch_oag_200805_07_e.pdf)

The Security and Prosperity Partnership of North America was a process of technical negotiations on economic and security rules and regulations conducted by working-level counterparts in the governments of the United States, Canada and Mexico.<sup>9</sup> It was launched in March 2005 at a summit hosted by President George W. Bush in Waco, Texas and evolved over the course of 5 years with subsequent leaders meetings in Cancún (2006), Montebello (2007), New Orleans (2008), and Guadalajara (2009, attended by President Obama). The SPP process was the vehicle for the discussion of future arrangements for economic integration to create a single market for goods and services in North America, and future arrangements for security against potential terrorist attacks on this continent.

The design of the SPP was innovative, eschewing the more traditional diplomatic and trade negotiation models in favor of talks among civil service professionals and subject matter experts within each government. This design placed the negotiation fully within the authority of the executive branch in the United States to enforce and execute the law and statutes, and follows to a certain extent the nature of the subjects of the negotiation (regulatory approvals, standards, and security procedures and requirements).

The SPP was the successor to two previous efforts that had stalled or expired prior to 2005. First, a set of trilateral working groups established in the NAFTA to look at harmonizing standards and eliminating differences in regulation among the three governments and their agencies that, while costly for businesses and for consumers, could be reconciled without harming public health or safety. The NAFTA Working Groups had a mixed record of success, and it was hoped that the SPP would re-establish momentum for these talks. Second, the United States had largely accomplished the tasks set out in separate U.S.-Canada and U.S.-Mexico Smart Border Action Plans signed in the wake of the September 11, 2001 terrorist attacks. Officials in all three governments sought a way to renew these Action Plans with new items and to continue the progress toward greater security cooperation at, and beyond the U.S. land borders.

At the August 2009 meeting of the North American leaders in Guadalajara, the SPP was formally ended. President Obama endorsed ongoing negotiations among the three governments on regulatory and inspection cooperation, but under a new procedure. The post-Guadalajara process would involve an agreement among the leaders on a limited agenda of action items, which would be assigned for cabinet-level follow-up. Cabinet members assigned to work together on tasks formed ad hoc staff teams to handle technical issues. A progress report on each issue would be given to the leaders by their own officials prior to an annual leaders meeting and additional steps could then be taken by the leaders as appropriate to advance toward an agreement or to abandon the agenda item in question.

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<sup>9</sup> For a detailed history and analysis of the SPP, see *Negotiating North America: The Security and Prosperity Partnership* by Greg Anderson and Christopher Sands (Hudson Institute, 2007) available here: <http://www.hudson.org/files/publications/Hudson%20Negotiating%20North%20America%20FINAL.pdf>

The top-down design of the post-Guadalajara process was a response to public criticism in all three countries that the SPP working groups had been insufficiently transparent and accountable. A more limited governance agenda for North America was intended by the three governments to produce concrete results to win support over time for future negotiations.

Although Prime Minister Harper agreed to host the 2010 leaders meeting in Canada, no trilateral meeting ultimately took place. Canada hosted G-8 and G-20 summit meetings in July 2010 and each brought the U.S. and Mexican leaders to Ontario (Mexico is an observer at the G-8, part of the G-8 plus 5 initiative). It was expected that the three North American leaders might find time for a discussion of their Guadalajara agenda at some point during these summits but this proved impossible to schedule.

As of this writing, there has been no announcement of a North American leaders meeting in 2011. Even when scheduling problems caused the Harper government to fail to organize a North American leaders meeting to follow-up on the Guadalajara meeting there was no discernable public outcry apart from a few academic observers. The North American consultation mechanisms Bush had launched in response to Canadian and Mexican requests for dialogue had not produced enough for trilateral talks to be seen to have much of a future. Following the Guadalajara meeting, the North American dialogue on regulatory and security cooperation collapsed.

At the same time, continued poor U.S. economic performance and persistently high unemployment levels were a leading concern for U.S. midterm election voters in 2010. President Obama's desire to address these concerns and to reach out to the business community led to the launch of a U.S. federal regulatory reform initiative in January 2011. The president introduced the effort with an op-ed in the *Wall Street Journal* published on January 18.<sup>10</sup>

The op-ed coincided with the issuance of a presidential executive order, *Improving Regulation and Regulatory Review* establishing a regulatory reform process with guidelines for agency and department heads throughout the federal government emphasizing transparency, evidence-based cost-benefit analysis to show necessity to regulate, flexibility in application based on circumstances and conditions, and efforts to reduce compliance costs especially for small businesses.<sup>11</sup>

The president further highlighted his regulatory reform initiative in the 2011 State of the Union address to Congress.<sup>12</sup>

President Obama's domestic initiative to reform and review regulations affecting the economy has implications for Canada, the largest U.S. trading partner. It also takes the

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<sup>10</sup> "Toward a 21<sup>st</sup>-Century Regulatory System" *Wall Street Journal* January 18, 2011

<sup>11</sup> The text of the executive order is available here: <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>

<sup>12</sup> Full text of the 2011 State of the Union address is available here: <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-barack-obama-state-union-address>

place of the international effort to reform economic regulations with a view to streamlining them to facilitate cross-border commerce. In the near term, the U.S. regulatory reform process creates greater uncertainty for business that could hinder Canadian exports to the United States.

Without somehow participating in the Obama regulatory reform initiative, Canada could eventually face the prospect of numerous changes in U.S. regulations responding solely to U.S. needs, and potentially widening the gap between U.S. and Canadian regulation. Once complete, Canada would have to relaunch negotiations on aligning Canadian and U.S. regulations, or risk a de facto “Americanization” of regulatory standards as Canadian businesses move to comply with new U.S. regulations and Canadian regulations remain unchanged.

By engaging the United States in a bilateral regulatory reform effort as specified in the Washington Declarations of February 4, 2011, Canada hopes to participate in setting the governance standards for commerce in and between the two countries, obtain a means to challenge U.S. regulatory proposals that might harm Canadian businesses, and fill the vacuum created when the SPP was dissolved.

### **Canadian Domestic Politics**

Discussions on border security improvements between U.S. and Canadian government officials were the subject of a leaked memo prepared by Harper government officials outlining a political communications strategy for a potential deal on December 14, 2010. As described above, the existence of bilateral discussions was not a secret and logically followed from Secretary Napolitano’s decision to develop a northern border strategy for the U.S. government. However, Canadian opposition parties speculated wildly on the potential contents of a final agreement between Canada and the United States on border security, demanding that the Harper government publicly confirm or deny these claims about the contents of bilateral discussions. Opposition claims that an agreement was imminent, and that Canadian sovereignty would be sacrificed in order to placate demands from Secretary Napolitano and President Obama were reported widely in the Canadian media.

Relations with the United States are always a central topic in Canadian politics, and the debate over current border talks has a long history. The Progressive Conservative Party government of former Prime Minister Brian Mulroney negotiated the Canada-United States Free Trade Agreement and called a federal election to win a mandate to ratify it in 1988. During the 1988 election, Liberal Party and New Democratic Party candidates charged that Mulroney’s initiative would lead to the erasure of the U.S.-Canadian border and, by implication, the assimilation of Canada into the United States.

After the September 2001 terrorist attacks on the United States, the Bush administration took stock of the state of the U.S.-Canadian border and found that after years of U.S. underinvestment in infrastructure and personnel, the border was inadequate to protect U.S. citizens against the infiltration of potential terrorists from (or traveling through)

Canada. Upgrading the border would cost billions of dollars and, more importantly, take time. To expedite matters, Bush proposed to Canadian Prime Minister Jean Chrétien that the two countries establish a security perimeter to keep threats out of both countries. A potential joint security perimeter would involve common standards for inspecting and admitting persons and cargo entering either country from outside, significant intelligence sharing and law enforcement cooperation, and continental defense cooperation. However, it would also allow the United States to focus its resources and energies away from the neglected U.S.-Canadian border.

Chrétien, a Liberal who had opposed the Canada-United States Free Trade Agreement and its successor the North American Free Trade Agreement, rejected the Bush proposal to negotiate a perimeter security agreement in 2001. The Chrétien government had also lobbied in Washington against the adoption of the Section 110 changes to entry-exit record keeping during the Clinton administration, and his successor Prime Minister Paul Martin, also a Liberal, would later oppose the U.S. passport requirement instituted as part of the Western Hemisphere Travel Initiative by the *Intelligence Reform and Terrorism Prevention Act of 2004*.

Canada's rejection of the perimeter security option in 2001 left the Bush administration to fortify U.S. borders and in particular to correct for decades of neglect at the U.S.-Canadian border by investing in physical infrastructure, border inspectors and technology.

At the same time, the Bush administration pursued elements of a security perimeter with Canada in a piecemeal fashion, and without referring to them as part of a perimeter strategy out of respect for Canadian sensibilities. The Container Security Initiative, first launched by the United States with Canada and subsequently expanded to include allies in Europe, Asia, and elsewhere provides for U.S. Customs inspectors at major ports (and Canadian and other foreign customs officials at selected U.S. ports). Integrated Border Enforcement Teams (IBETs) and Integrated Maritime Enforcement Teams (IMETs) were established to serve as standing joint task forces of U.S. and Canadian federal, state/provincial and local law enforcement and security agencies. Terrorist watch lists were integrated, and immigration officials shared information. Intelligence sharing was enhanced. Airlines and cruise lines provided advanced passenger information, and programs were set up to allow trusted travelers and shippers to provide detailed information to both governments in order to cross the border more efficiently. U.S. continental defenses were reorganized into a new regional all-service command, US NORTHCOM, which coordinated U.S. involvement in NORAD, the joint-U.S.-Canadian air defense organization established during the Cold War.

The Bush administration's de facto perimeter around the United States and Canada was in fact the first ring of many, a set of concentric circles of defense around the United States. The innermost defensive line, however, was a significantly enhanced U.S. border that included the U.S.-Canadian and U.S.-Mexican land borders as well as approaches by air, space and sea. The enhanced U.S. border security measures were criticized in Canada as a "thickening" of the border that served to impede trade and travel.



The most comprehensive assessment of the economic costs of the increased U.S. border security measured in terms of U.S.-Canadian trade was performed by economists Steven Gliberman and Paul Storer at Western Washington University.<sup>13</sup> They concluded:

“The results of our study indicate that increases in border costs may have had significant impacts on trade. An inference of this observation is that the long-run real living standards of both Canadians and Americans have been adversely affected by post-9/11 border security developments.” (p. 2)

In 2006, a Conservative government headed by Prime Minister Stephen Harper replaced the Liberal one headed by Paul Martin. Harper was open to re-evaluating border security cooperation with the United States in order to counter the increased transaction costs associated with compliance with enhanced border security measures instituted by both the United States and Canada. The aforementioned 2008 report of Canada’s Auditor General inclined the Harper government to revisit Canadian opposition to entry-exit records at the border, perhaps as part of a grand bargain to exchange data with the United States. This, combined with the collapse of the trilateral SPP talks on border security that had included Mexico prompted bilateral discussions about a possible bilateral agreement.

The leak of a Harper government communications memorandum concerning talks with the United States triggered charges from Opposition parties that the Harper government was pursuing a perimeter agreement with the United States that might again lead to the erasure of the U.S.-Canadian border and the assimilation of Canadians into the United States. Other critics charged that Canadian sovereignty, the privacy of Canadian citizens, and even the human rights of Canadians crossing the border would be sacrificed by the Harper government in order to secure an agreement with the Obama administration.

At the same time, in the absence of any public information on the scope of discussions between the United States and Canada, even those inclined to view U.S.-Canadian cooperation in a positive light expressed heightened expectations of a potential reversal of the U.S. thickening of the border and a return, at least in part, to the pre-2001 status quo ante of border security.

The Harper government is a minority government, meaning that while the Conservatives hold more seats in the Canadian House of Commons than any other party they lack an outright majority of seats. This increases the vulnerability of the government to criticism and public alarm, and as 2011 began the Harper government was in an increasingly precarious position regarding its border discussions with the United States due to the lack of transparency to the discussions – which had not even been acknowledged in Parliament – and the speculative furor that had ensued. Although Harper could belatedly

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<sup>13</sup> *The Effects of 9/11 on Canadian-U.S. Trade: An Update through 2008* by Steven Gliberman and Paul Storer (Metropolitan Policy Program, Brookings Institution, 2009) is available here: [http://www.brookings.edu/papers/2009/0713\\_canada\\_gliberman.aspx](http://www.brookings.edu/papers/2009/0713_canada_gliberman.aspx)

explain the aims of his governments' discussions with the Obama administration, a joint statement by Harper and Obama would carry greater credibility with Canadian voters and stand a better chance of squelching rumors about the talks.

Canadian domestic politics therefore contributed to the timing of the Washington Declarations of February 4, 2011. Although both Washington Declarations outline only the principles under which the two governments intend to cooperate, and leave the content of that cooperation to new bilateral working groups to determine, these Declarations were necessary primarily because without them Harper's ability to continue to negotiate with the Obama administration would have been constrained by growing domestic criticism and unrealistic expectations on the part of domestic supporters.

## Part 2: Contents of the Washington Declarations

The complete texts of the two Washington Declarations of February 4 have been included in an appendix to this paper. These two documents are brief enough to be included in this report, and so this summary will focus on the most significant proposed changes in the patterns of cooperation by the two governments, and proceed to assess the significance and potential of these changes should they transpire as intended by the leaders.

### Proposed Border Policy Changes

The Washington Declaration on the U.S.-Canadian border is entitled *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*. It includes a set of principles, identifies specific areas where bilateral cooperation could be improved upon, and sets up a binational working group to provide oversight to the process.

*Principles:* For the most part, the principles set out in the Washington Declaration on the U.S.-Canadian border are salutary and intended to address the charges being leveled by Harper's domestic political critics. The Declaration pledges respect for each country's respective constitutions, the virtues of cooperation, the valuable contributions of many partner agencies that are non-federal in each country, respect for the sovereignty and independence of each country, and openness to working with other countries around the world (an oblique acknowledgment perhaps that Mexico may have a part to play in North American security, eventually).

More substantively, the Washington Declaration emphasizes an ongoing commitment by both countries to the risk management approach to border and supply chain security. This approach was adopted by the United States soon after 2001 and has been central to DHS planning and operations. It also requires intelligence gathering and information collection on a massive scale in order to assess risk. Canada has joined the United States in accepting this approach, and on consequence of this is that an increased amount of data sharing among the agencies of the two governments will be required. Canadian opposition critics have flagged citizen privacy concerns where increased information sharing has been proposed in the past – as have European countries during negotiations on the visa waiver program. Canada currently shares less than many visa waiver program partners of the United States – a concern raised by former DHS Assistant Secretary for Policy Stewart Baker in his memoir.<sup>14</sup> Information sharing, specifically, the exchange of individual entry records, will be central to a future deal on entry-exit information.

The Washington Declaration also emphasizes the commitment of both governments to improving the resilience of each country's critical infrastructure; that is, its ability to bounce back after an attack or disruption due to a natural disaster. A high degree of interconnectedness characterizes U.S. and Canadian energy, transportation, public health, telecommunications and other systems and several recent incidents, from the 2003 SARS outbreak in Toronto to the 2007 electricity blackout affecting the U.S. Midwest and

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<sup>14</sup> Stewart A. Baker *Skating on Stilts: Why We Aren't Stopping Tomorrow's Terrorism* (Hoover Institution Press, 2010)

Northeast, have served to underscore this fact. While both governments have been publicly committed to improving emergency response and preparedness, the Washington Declaration notes the role that private sector owners and operators of critical infrastructure must be prepared to undertake. At a time when automotive manufacturing, public health and energy sectors are facing significant new regulatory mandates in the United States, the hortatory call for action here may not be enough to prompt an adequate response. Still, in the wake of the U.S. experience during the BP oil spill in the Gulf of Mexico, it is significant that the two governments are recognizing here the limits of their ability to prepare for emergency response without private sector contributions. For now at least, the private sector is being urged but not required to invest in greater resilience.

*Key Areas of Cooperation:* The Washington Declaration on the U.S.-Canadian border cites four areas where the federal governments of Canada and the United States intend to improve their cooperation: addressing threats early; trade facilitation, economic growth and jobs; integrated cross-border law enforcement; and critical infrastructure and cyber-security.

The United States and Canada intend to improve their pre-emptive threat actions in the areas of natural disasters and what the Obama administration refers to as “man-made threats, including terrorism.” In this section of the Washington Declaration, the governments agree to improve cooperation in emergency preparedness and response explicitly for future pandemic outbreaks and post-disaster recovery. Because this builds on similar pledges at North American leaders summits in Montebello, New Orleans and Guadalajara as well as the *U.S.-Canada Agreement on Emergency Management Cooperation*<sup>15</sup> (most recently updated in 2008) it is significant here mainly as a confirmation that the two countries intend to proceed to enhance bilateral cooperation where they had previously made such pledges in a trilateral framework.

In the area of counterterrorism cooperation, the two governments pledge to identify, prevent and counter violent extremism in both countries. This recognition of the rising concern over domestic “home-grown” terrorism follows recent al Qaeda statements on recruiting Americans and other western citizens to commit acts of terrorism since international law enforcement and military efforts have made it more difficult (though not impossible) for foreigners to infiltrate western countries to engage in terrorism. The two governments intend to work together at the community level, which will provide greater intelligence on the linkages between extremist groups in each country. This prompts the two governments to state that they will develop joint privacy and human rights protections to safeguard the constitutional rights of persons of interest and innocent bystanders who fall under surveillance. This enhanced depth of cooperation is both welcome and necessary, but the emphasis that the two governments have placed on civil rights reflects the challenges of action as well as expanded cooperation in this area.

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<sup>15</sup> The full text of the *Agreement Between the Government of the United States and the Government of Canada on Emergency Management Cooperation* is available here: <http://www.state.gov/documents/organization/142916.pdf>

Part of the early assessment of threats and the risk management approach that are central to the Washington Declaration on the U.S.-Canadian border is better information on border crossers. The two governments expressly pledge cooperation on entry-exit record keeping, noting its importance (a departure for Canada) and also calling for new standards for common technical standards to support identification documents required for border crossing. It is rumored that the Harper government is considering implementing a passport requirement for Canadians returning home from the United States, a policy that mirrors the U.S. approach and this pledge in the Washington Declaration is consistent with this possibility.

The identification of trade facilitation, economic growth and jobs as a key area for improving cooperation between the two countries is a reflection of the lagging economic recovery in the United States, which affects Canada as well through lower export revenues even though Canada's recent economic performance has been much improved since the downturn began in 2008. Canadians have often been criticized in the United States for their perceived focus on trade facilitation at the expense of security, but the times augur for the Canadian approach acknowledged here. Significantly, the two governments emphasize facilitation here in terms of reductions in compliance costs and border crossing delays; this formulation is more compatible with the security mission and is more likely to win support within DHS and the U.S. Congress.

Infrastructure at the border is much improved since September 2001, but the two governments pledge in the Washington Declaration to address some of the remaining chokepoints where traffic is vulnerable to congestion and room for inspections by border officials is constrained. Although it is not explicitly mentioned here, the two governments are clearly referring to the need to complete the planned Detroit River International Crossing, a major new bridge connecting Detroit and Windsor that has been in the planning and permitting stages for years. The State of Michigan is debating how it will pay for its portion of the construction cost and the owner of the nearby rival Ambassador Bridge continues to try to block construction. The two governments also pledge to explore opportunities for shared facilities at lower-traffic crossings such as those built at Sweetgrass, Montana and Coutts, Alberta and at Alburgh, Vermont and Noyan, Quebec.

Perhaps the most promising new pledge in the Washington Declaration on the U.S.-Canadian border from an economic point of view has the governments establishing bi-national point of entry committees – a step strongly endorsed in the Brookings-Canadian International Council study *Toward a New Frontier: Improving the U.S.-Canadian Border*. These committees would include the local business community and other stakeholders and give them input on port operations. This will provide Customs port directors with valuable intelligence on traffic fluctuations and generate ideas for improvements and pilot projects to test future improvements. The port of entry committees also introduce at least potentially an element of flexibility in border crossing management that could allow adaptations to local conditions rather than a rigid adherence to the “One Border” approach.

The Washington Declaration's commitments to binational cooperation in integrating cross-border law enforcement and protecting critical infrastructure and providing cybersecurity are understandably less specific. There is already an extensive amount of cooperation among the responsible agencies in the United States and Canada in these areas and so this brief mention is either an acknowledgement of the importance of ongoing cooperation or a signal of further deepening of collaboration that will become clearer in time.

*Implementation and Oversight:* The great weakness of initiatives such as this is the follow-through; political capital may be needed to press for action or compromise and in the U.S.-Canadian relationship the attentiveness of political leadership the United States is unreliable. Canadian politicians have tended to focus on process at the expense of effectiveness in the past, and have established a process without a committed political component with the announced formation of a "Beyond the Border Working Group" or BBWG that will be composed of representatives of the relevant departments and agencies of the federal governments in both countries. The president and prime minister pledge to "ensure" interagency coordination, although it is likely to be a last resort when talks on a particular subject break down. The mandate of the BBWG is to be reviewed and potentially renewed in three years time.

This is the weakest and least convincing aspect of the border policy reform effort announced in the Washington Declaration on the U.S.-Canadian border. Recent experience with the NAFTA Working Groups (1994-present), the U.S.-Canada Anti-Smuggling Working Group (1997-present) and the U.S.-Canada Smart Border Declaration and Action Plan (2001-2004), and the Security and Prosperity Partnership of North America (2005-2009) strongly indicates that political engagement is required on both sides in order to press bureaucracies inclined to err on the side of caution in security matters to make any kind of concessions to efficiency or collaboration with other governments. This is particularly so for U.S. officials who have focused on global or at least trans-Atlantic and trans-Pacific discussions, preferring to invest time and resources in multi-party negotiations rather than strictly bilateral ones.

In addition, the BBWG does not include state or local governments, and excludes civil society groups. As the Canada-United States Partnership (1999-2000) demonstrated, the input of local stakeholders is important for investing border policy changes with political support, and state and local governments can be a drag on progress if they are not involved. Moreover, critics of the antecedent Security and Prosperity Partnership process raised serious concerns about the transparency and accountability of cross-border negotiations. Keeping them away from the new BBWG process will do nothing to allay their concerns.

If by oversight the two governments offer only self-policing and intervention by the president and/or prime minister only to ensure interagency bickering stops, it is unlikely that the Washington Declaration will result in anything more than what U.S. border security officials within DHS are willing to do of their own volition and in their bureaucratic interest. Despite the ambitions expressed in the Washington Declaration, it

is here that the leaders have undermined the potential of this new process to produce meaningful reform or change.

### **Proposed Regulatory Policy Process Changes**

The Washington Declaration on the U.S.-Canadian regulatory cooperation is a joint statement by the two leaders, the full text of which is included in the appendix to this report. It is just over 450 words long, and indicates the establishment of a new United States-Canada Regulatory Cooperation Council (RCC) made up of federal officials responsible for “regulatory, trade and foreign affairs” from both countries. The RCC is an explicitly temporary two-year creation, and the Washington Declaration on regulatory cooperation does not include any hint that it might be renewed after 2012. The only other specific commitment of the two leaders is that the first meeting of the RCC should take place by Thursday, May 5, 2011.

The need for regulatory cooperation has grown as the national economies of the NAFTA partners have integrated more deeply in recent years. Duplicative testing and technical standards that differ in minor details unrelated to health and safety have led to inefficiencies and a drag on private sector productivity. The president and the prime minister acknowledge in the Washington Declaration on regulatory cooperation that ironing out these differences to make compliance simpler will redound to the benefit of productivity and competitiveness, which they hope will result in employment growth. The urgency of this declaration is underscored by an acknowledgement of the continued economic challenges both countries face.

The need for regulatory cooperation was anticipated in the NAFTA text, which calls on counterpart officials to work together to address regulatory barriers to the creation of a single North American market for goods and services. A decade later, the Bush administration launched the Security and Prosperity Partnership (SPP) with ten working groups on security regulations and ten working groups on economic regulations, all trilateral and interagency. The SPP working groups were overseen by a ministerial committee made up of three cabinet members from each country, and the presidents and prime minister met each year to review progress and add topics to the agendas of the working groups.

The SPP process proved controversial because it was not transparent to civil society groups, from businesses to NGOs, many of which had vested interests in particular regulations and sought transparency to protect their interests. Although Canada and Mexico kept their federal legislatures apprised of the progress of the SPP working groups, the United States administration provided minimal information to the Congress on the SPP.

President Obama chose to scrap the SPP at the trilateral leaders meeting in Guadalajara in August of 2009 in favor of a stripped down, ad hoc process by which the leaders would identify a handful of action items and assign them to cabinet-level officials for follow-up.

The leaders at Guadalajara pledged to assess the progress at their next summit in 2010, but never met to do so. The Washington Declaration on regulatory cooperation is an indication that the Guadalajara process has failed and that President Obama is now willing to proceed on regulatory issues bilaterally, without Mexican participation.

In an article published by the *Wall Street Journal* on January 18, 2011, President Obama outlined a domestic regulatory reform process as part of an effort to promote economic growth and job creation.<sup>16</sup> The February 4 Washington Declaration on regulatory cooperation creates a parallel, bilateral process that should be complementary. It is likely that the domestic U.S. effort will determine the pace of regulatory change, but through the RCC Canada will gain a window on the U.S. domestic effort that could allow Canada to align its regulations with those of the United States as the latter change. This was the approach taken by the Harper government with regard to vehicle emissions regulations: a U.S. process led by the Environmental Protection Agency and the U.S. Department of Transportation developed new standards between 2009 and 2010, and Canadian federal authorities monitored this process and adopted compatible regulations to accommodate the concerns of auto manufacturers seeking to avoid two sets of standards.

If the RCC is able to provide the Canadian federal government with the ability to Americanize its regulations voluntarily and in a synchronized fashion, even within its two year mandate it may yet be judged worthwhile by the private sector. This will be particularly important if President Obama's domestic regulatory reform efforts generate significant changes.

Yet the downside risk of the Canada gambit when it comes to regulatory cooperation is that in the absence of transparency (the lack of which undermined the SPP) and no more than periodic political engagement (something the SPP had, but proved insufficient) the RCC will sunset in 2012 without significant results.

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<sup>16</sup> Barack Obama "Toward a 21<sup>st</sup>-Century Regulatory System: If the FDA deems saccharin safe enough for coffee, then the EPA should not treat it as hazardous waste" *Wall Street Journal* January 18, 2011. Available at: <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html>



### **Part 3: Analysis and Preliminary Conclusions**

The Canada Gambit is a bet that the United States and Canada can make more progress bilaterally than with Mexico participating, and that this progress will be sufficient to accommodate or enable North American economic growth. The Washington Declarations that have resulted from this bet mark a departure from past practices and are worthy of note for several reasons.

- First, they reflect discussions between the two governments on how to jointly manage the deep integration of their economies during a recession; in the past, economic downturns often pitted governments in Canada and the United States against one another as competitors for economic growth, investment and jobs.
- Second, while the two elements of the Washington Declaration are only briefly detailed, they are an indication of the Obama administration's desire to depart from the preceding administration's approach on these issues and on relations with Canada.
- Third, with the Washington Declaration, Canada has successfully excluded Mexico from regulatory harmonization negotiations to which it had been a party during the Bush period, and persuaded the United States to proceed to improve its border with Canada independently; this formal decoupling of northern border policy from southern border policy has been a Canadian objective since 2001.
- Fourth, the United States is now within reach of effective entry-exit controls at its longest land border. Bipartisan congressional majorities have legislated this objective consistently since 1996, but the potential for Canadian cooperation (after years of explicit and tacit resistance) has the potential to overcome significant obstacles to implementing this objective from a cost and enforcement perspective, and the potential to serve as a model for future international collaboration that would greatly enhance U.S. national security.
- Fifth, business leaders and trade associations in the United States and Canada have advocated expanded regulatory alignment and lower regulatory compliance costs. Mexican businesses had similar goals but in 2009-2010, many in the U.S. business community appeared willing to proceed separately with Canada, and that now becomes the U.S. approach with the formation of a bilateral process

The United States has taken some important steps away from the "One Border" policy and toward flexibility and local community stakeholder engagement in federal border operations that will be beneficial if realized. The notion of a northern border policy responsive to conditions unique to the U.S.-Canadian border is wise and overdue. The potential exchange of entry record information by the United States and Canada would be the single most significant step toward entry-exit controls since 1996 and provide a boost to both countries' security.

Canada will benefit by belatedly acknowledging the perimeter security paradigm in public, which is the first step toward obtaining a better bargain for the existing Canadian security cooperation that has resulted in the de facto perimeter in place today. It is not likely that this bargain will “thin” the current security at the U.S.-Canadian border, but it may allow for the shared border to become more efficient and more predictable to cross. This efficiency and predictability would pave the way to productivity improvements for firms in both countries, and boost North American competitiveness.

Similarly, the already deep economic integration among the North American countries is placing pressure for regulatory alignment to lower compliance costs and make governance of the trade flows that cross U.S. borders with Canada and Mexico more effective and efficient. This would make North America a more competitive location for investment and job creation within the global economy. The Obama administration’s hopes for reviving the U.S. economy would improve if regulatory reform extended throughout our own regional neighborhood.

The previous administration’s process for achieving regulatory cooperation with Canada and Mexico was abandoned by the Obama administration in 2009 in favor of a more limited process, and this has now stalled. On balance, it would be better to find a way to revive a tripartite process that would incorporate more consumers and producers; making progress with Canada bilaterally is better for the United States than proceeding unilaterally and better for Canada than no dialogue on streamlining regulations with the United States, its largest market.

However, there are several potential problems in the processes that President Obama and Prime Minister Harper initiated with their February 4, 2011 Washington Declarations.

### **Limited political engagement**

The two leaders have invested a limited amount of political capital in these declarations, and have delegated the responsibility for action and oversight to two committees of federal officials. There is no clear schedule for reporting back to the leaders and no commitment to meet to discuss progress or obstacles. Each leader is responsible for ensuring interagency cooperation within their own bureaucracy, but neither can do anything except complain about intransigence on the other side.

President Obama is more heavily invested in his own domestic regulatory reform initiative than in this new bilateral process; he has directed agency heads and cabinet secretaries to report back to him on a regular schedule and has opened up a dialogue with business and civil society groups to identify onerous federal regulations and compliance burdens.

Prime Minister Harper heads a minority government (with less than half the seats in the House of Commons, he must win votes from opposition members in support of legislation and if he loses, or if he decides that he could better his position, an election could preoccupy Ottawa and changes political calculations as to what can be

accomplished with Washington). Opposition criticism of the rumored talks between the Harper government and the Obama administration preceded the Washington Declarations, and continue now to raise expectations for the border and regulatory cooperation initiatives that have only been tentatively outlined here.

In the past, progress in U.S.-Canadian relations has required significant and sustained political engagement at the highest levels that is included only minimally in the Washington Declarations. Unless this changes the only result is likely to be a few “low-hanging fruit” accomplishments, including items that were nearly ripe when the SPP was terminated.

### **Bureaucratic-led reform processes have failed in the past**

Absent political engagement from senior leaders in either government, the mandate for each country’s respective bureaucracies is likely to prove insufficient to deliver on the promises of change. Easier border crossings and lighter regulatory burdens are popular goals with the private sector in both countries; it is worth considering why governments fail to respond. The fact is that there are reasons behind security procedures, regulatory and inspection burdens and these in turn trump the pressure for change. Irksome as regulation and inspection can be, it is rare for a civil servant to be fired for enforcing the rules; however if officials are lenient or liberalize the rules and there is a problem later – be it contaminated food or a terrorist attack – heads will roll. The result is bureaucratic inertia that makes change difficult without sustained political pressure.

The NAFTA negotiators hoped civil service counterparts would take the initiative to harmonize regulations and realize a single North American market; they didn’t, after the political controversy surrounding NAFTA ratification in the United States raised questions about the political support for U.S. concessions. The U.S.-Canada Smart Border Action Plan was regularly monitored and pressure for action was consistent, driven by the momentum of post-2001 security reform. The SPP was begun in the hope that reform and harmonization would develop from the bottom-up (that is from the civil service to the political leadership within each respective executive branch), but the political support was intermittent and vocal critics of the SPP outside government cast doubt on the political commitment of any of the three countries to foster further integration.

Rather than learning from these past experiences, in taking the Canada Gambit route to North American governance negotiations the United States and Canada have embarked upon two new processes that rely mainly on civil service initiative and risk-taking in order to generate progress and potential gains. Given the asymmetry of need and vulnerability between Canada (which relies more on bilateral trade) and the United States, the most likely outcome of the border and regulatory cooperation processes initiated by the Washington Declarations is that nothing will happen except what the U.S. bureaucracy is willing to do, plus any concessions contributed by Canadian officials. There is no mechanism or incentive in the Washington Declarations that would justify higher expectations.

## **Exclusion of Mexico**

Mexico faces significant domestic challenges including the escalation of the conflict with drug traffickers. It is also true that Mexico is poorer than either the United States or Canada, and that the U.S.-Mexican border cooperation is complicated by human smuggling and illicit migration.

Despite this, the economy of Mexico has become highly integrated with that of the United States and, to a lesser extent, Canada. Mexico is the third largest trading partner of the United States, after Canada and China. The United States does not have the luxury of indifference toward Mexico; Mexico's problems and potential will command the attention of U.S. politicians and policymakers for the foreseeable future.

Since NAFTA took effect, U.S. administrations have sought to combine discussions of issues with Canada and Mexico. Relations with the two countries are managed by North American Affairs offices from the White House to the State Department and in many domestic agencies that have limited international interaction, but which work with the immediate neighbors.

To an extent, Canada does have the luxury of greater (but not complete) indifference toward Mexico. Canada has also been reluctant to admit Mexican intrusion into what Canadians regard as an exclusive "special relationship" with the United States. Canada agreed to take part in trilateral NAFTA talks defensively, to protect its gains in the Canada-United States Free Trade Agreement. Canada insisted on a separate, bilateral "smart border" action plan, leaving the United States to develop a parallel action plan with Mexico. In recent years, Canadian officials have rushed to arrange bilateral meetings for the prime minister with the U.S. president every time the Mexican president is able to secure a meeting of his own.

The exclusion of Mexico from what had been since 1994 tripartite discussions of border security and regulatory cooperation will complicate U.S. relations with both of its neighbors. U.S. officials have finite time and energy for international liaison, let alone negotiation with foreign governments. Working with Canada and Mexico together complicated matters, but provided broader political support for cooperation from northern border states (which have more U.S. senators and border governors) and southern border states (which have more seats in the U.S. House of Representatives and a larger Mexican-American population which will lobby in favor of cooperation).

Without a North American dialogue on regulation and inspection, both Canadian and Mexican concerns will potentially be overshadowed by U.S. dialogue with China and the European Union, as well as by multilateral initiatives within the G-20 and other forums. One reason for this is that the United States presently has substantial market access in both the Canadian and Mexican markets, and in bilateral negotiations with either partner the asymmetries of power favor the United States, which therefore is normally able to get

what it wants from its neighbor to the extent that the neighbor can deliver. Market access in Europe and Asia is more problematic, and Washington can not always get its way without a sustained effort and significant concessions.

The Washington Declarations reflect Canada's desire to re-bilateralize its relationship with the United States, which many Canadians believe will allow talks with the United States to progress further because the countries are similarly developed and sophisticated. Some Canadians hanker for the return of a supposed golden age of bilateral partnership, and believe that the exclusion of Mexico will benefit its restoration.

The benefit of re-bilateralization for the United States is less clear. While there is ample justification for approaching the borders separately to respond to local conditions, in the past this has been done with the understanding that the U.S.-Mexican border would catch up eventually, and that Mexico would have the chance to observe U.S.-Canadian talks in order to anticipate future changes; in effect, a North America at two speeds. This balancing act kept the political coalition in support of economic integration in North America together in Congress, and within Democratic and Republican administrations. This coalition was not always sufficient for progress, but it was always necessary for dialogue.

The exclusion of the Mexicans through the Canada Gambit also increases the likelihood that U.S. domestic regulatory reform and border security debates will overshadow the bilateral initiatives launched in the Washington Declarations. By limiting the potential U.S. stakeholders in the process, the governments have also limited the appeal of concessions by the U.S. government on a bilateral basis. Canada will gain the chance to observe U.S. domestic debates in order to anticipate future changes; in effect, a North America at one speed, which will be the pace of Americanization.

### **Exclusion of civil society, including business**

Despite the major investment of political capital invested by President Bush and his administration in the SPP, its accomplishments were limited and the process generated a backlash from business and civil society groups that wanted a role in the process. After the private sector successfully organized itself and won access to the process for the North American Competitiveness Council in 2006, NGOs persisted in calls for a way to engage rather than seeking a moratorium on negotiations.

Common to the complaints about the SPP by business groups and NGOs in all three countries was the lack of access to the process, poor transparency, and the impossibility of accountability of this process to the public or other stakeholders. The three federal governments attempted to answer these concerns, but never dispelled the suspicion and public distrust of the SPP process that developed.

President Obama appeared attentive to this concern when he spoke at the Guadalajara leaders meeting in August 2009 of the need for transparency and accountability, and of building public trust and confidence through accomplishment of real results. At

Guadalajara, the three leaders called for stakeholder input and pledged to treat all stakeholders with equal attentiveness – a reaction to critics who charged the Bush administration with favoring business over other stakeholders.

Yet since the Guadalajara summit, all non-federal stakeholders have been equally marginalized. They have no formal role in the post-Guadalajara process. They have not been given a role by the Washington Declarations in the new, bilateral substitutes for the former tripartite discussions. Both the “Beyond the Border Working Group” and the “Regulatory Cooperation Council” have the potential to become as opaque as the SPP working groups, and without ministerial oversight or even leaders’ meetings, it will be difficult to monitor the new process.

This lack of transparency is likely to revive suspicions and calls for greater transparency and accountability; if these calls are not met, then the critics of the BBWG and RCC will become opponents and try to block the process. In fact, this dynamic has already been at work in Canada as opposition parties have made speculative charges against the Harper government for conceding too much sovereignty in talks with the United States.

### **Exclusion of Congress**

The Washington Declarations on the U.S.-Canadian border and regulatory cooperation make no mention of the U.S. Congress or the Canadian Parliament. Like the Bush administration, the Obama administration appears to be intent on restricting talks with Canada to areas within the statutory authority of administrative departments and agencies so that it is not necessary to seek prior congressional approval for negotiations.

Frustrated U.S. stakeholders frozen out of the new discussions on border and regulatory cooperation will inevitably complain to Congress, and seek congressional oversight of bilateral talks with Canada. This will both politicize the process and make concessions harder. It will also force the Obama administration to spend additional political capital to rescue bilateral talks when problems arise.

When President Bush launched the SPP in 2005, he had just won re-election and in Congress his fellow Republicans controlled the House of Representatives and the Senate. In the 2006 midterm elections, Democrats won control of Congress with majorities in both chambers and also won a majority of the governorships of U.S. states. Iraq strategy became the dominant foreign policy priority of the administration, which had little political capital left for other priorities. The momentum of the SPP fell noticeably afterward.

The resort to the Canada Gambit comes when the Obama administration now faces a Republican-controlled House of Representatives, a large minority of Republican U.S. senators, and a Republicans in a majority of the state governorships. Yet unlike President Bush after 2006, President Obama after 2010 faces the prospect of a campaign for re-election that will limit his available stock of political capital that can be invested in

international affairs, including the defense of border and regulatory cooperation talks with Canada.

### **Time Limitations**

The Washington Declarations on border and regulatory cooperation are further limited by the explicit deadlines for both initiatives: the BBWG must be renewed by both governments after three years, and the RCC is envisioned as a two-year effort.

The U.S. electoral cycle would have affected the potential for progress toward bilateral cooperation on borders and regulation eventually, but the time limits on these initiatives make them contingent upon a single U.S. administration, and the current term.

To accomplish meaningful changes, the BBWG and RCC will need to overcome limited political engagement by President Obama and his administration (particularly as re-election looms), bureaucratic inertia, congressional concerns, criticism from excluded stakeholders and potentially competition from similar initiatives between the United States and Mexico, China, the European Union, and others. Individuals currently reluctant to change will have to be persuaded to do so – but how, given the constellation of potential critics, the lack of political pressure and/or support for concessions to Canada, and enticing alternative partners? The Canada Gambit is a gamble in which the stakes may simply be too low to justify the risk involved in moving ahead.

The best hope for the initiatives of the Washington Declarations may be quiet, low-profile progress that builds momentum without raising the ire of prospective critics and opponents. This may have been the intention of the Obama administration and the Harper government before political pressures forced the two leaders to issue the Washington Declarations. Now it may not be possible for these talks to return to their previous low-profile.

Nonetheless, the Washington Declarations remain broad agreements on principles, and the governments of the United States and Canada can still fix many of these problems as they proceed to implementation. The United States might launch parallel dialogues with Mexico, and President Obama and Prime Minister Harper could insist that the new working groups of federal officials created to oversee border and regulatory cooperation seek and incorporate stakeholder input. The revival of the North American economy and the security of the continent are vital national interests for the United States and Canada, and it is important that as the governments embark on these new initiatives that they learn from past experience, and get it right this time.

Even as they are, the Washington Declarations should produce some benefits for both countries through enhanced cooperation. Without changes, however, expectations for the success of the Canada Gambit must remain low. Whether these low expectations will satisfy President Obama and Prime Minister Harper, who took the risk of excluding Mexico, Congress, and many politically-powerful stakeholders to launch these processes depends on whether their aim was to manage the issues of border and regulatory reform

until after their next respective elections, or to address the concerns to advance the productivity and competitiveness of North America as revive the U.S. and Canadian economies.

The texts of the Washington Declarations indicate the latter goal was intended. There is still time to make improvements, and increase the odds that the Canada Gambit will pay off.



**Appendix: Texts of the Washington Declarations on U.S.-Canadian Border Security and Regulatory Reform**

THE WHITE HOUSE  
Office of the Press Secretary

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FOR IMMEDIATE RELEASE

February 4, 2011

**Joint Statement by President Obama and Prime Minister Harper of Canada on Regulatory Cooperation**

Today, President Barack Obama and Prime Minister Stephen Harper President Barack Obama and Prime Minister Stephen Harper have directed the creation of a United States-Canada Regulatory Cooperation Council (RCC), composed of senior regulatory, trade, and foreign affairs officials from both governments. In recognition of our \$1 trillion annual trade and investment relationship, the RCC has a two-year mandate to work together to promote economic growth, job creation, and benefits to our consumers and businesses through increased regulatory transparency and coordination.

They have directed that the first meeting of the RCC be convened within 90 days by the relevant agencies in the United States and Canada.

The President and the Prime Minister President and the Prime Minister 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 the United States or Canada or the ability of either country to carry out its regulatory functions according to its domestic and legal policy requirements.

The President and the Prime Minister both recognize the crucial importance of such regulatory cooperation as the U.S. and Canadian economies pull out of the recession and confront the challenges of improving productivity and keeping a competitive edge.

They also believe that regulatory cooperation can spur economic growth in each country; fuel job creation; lower costs for consumers, producers, and

governments; and particularly help small and medium-sized businesses. The United States and Canada intend to eliminate unnecessary burdens on cross-border trade, reduce costs, foster cross-border investment, and promote certainty for businesses and the public by coordinating, simplifying and ensuring the compatibility of regulations, where feasible.

The United States and Canada are committed to working through the RCC to provide early notice of regulations with potential effects across our shared border, to strengthen the analytic basis of regulations, and to help make regulations more compatible.

Building on ongoing cooperation, both countries intend to work through the RCC to determine sectors on which to focus its work that are characterized by high levels of integration, significant growth potential, and rapidly evolving technologies.

Both countries are committed to evidence-based, predictable, cost-effective regulatory approaches carefully targeted to enable businesses to continue to innovate and grow.

The President and the Prime Minister believeThe President and Prime Minister that the United States and Canada must work together to make their economies stronger and more competitive, while meeting their fundamental responsibilities to protect the safety and welfare of their citizens.

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FOR IMMEDIATE RELEASE

February 4, 2011

**Beyond the Border:  
A Shared Vision for Perimeter Security and Economic  
Competitiveness**

**A Declaration by  
the President of the United States of America and  
the Prime Minister of Canada**

The United States and Canada are staunch allies, vital economic partners, and steadfast friends. We share common values, deep links among our citizens, and deeply rooted ties. The extensive mobility of people, goods, capital, and information between our two countries has helped ensure that our societies remain open, democratic, and prosperous.

To preserve and extend the benefits our close relationship has helped bring to Americans and Canadians alike, we intend to pursue a perimeter approach to security, working together within, at, and away from the borders of our two countries to enhance our security and accelerate the legitimate flow of people, goods, and services between our two countries. We intend to do so in partnership, and in ways that support economic competitiveness, job creation, and prosperity.

We have advanced our prosperity through the *U.S.-Canada Free Trade Agreement* and the *North American Free Trade Agreement*. Over \$250 billion of direct investment by each country in the other, and bilateral trade of more than half-a-trillion dollars a year in goods and services create and sustain millions of jobs in both our countries. At the U.S.-Canada border, nearly one million dollars in goods and services cross every minute, as well as 300,000 people every day, who cross for business, pleasure, or to maintain family ties.

The United States and Canada share a long history of cooperation in defending our values and freedoms. We stand together to confront threats to our collective security as partners in the North Atlantic Treaty Organization. We work shoulder-to-shoulder in the defense of both our nations through the North American Aerospace Defense Command (NORAD).

We share responsibility for the safety, security, and resilience of the United States and of Canada in an increasingly integrated and globalized world. We intend to address security threats at the earliest point possible in a manner that respects privacy, civil liberties, and human rights.

## **I. Principles**

We intend to work together in cooperation and partnership to develop, implement, manage, and monitor security initiatives, standards, and practices to fulfill our vision. We recognize that our efforts should accelerate job creation and economic growth through trade facilitation at our borders and contribute directly to the economic security and well-being of both the United States and Canada.

We intend to strengthen our resilience – our ability to mitigate, respond to, and recover from disruptions. Success depends on readiness at all levels of our governments, within our communities, and among private sector owners and operators of our infrastructure, systems, and networks. We rely on secure communications and transportation networks, including our civil aviation system, and we intend to work together to make them resilient enough to continue operating in the face of a natural disaster or attack.

We expect to use a risk management approach where compatible, interoperable, and – where possible – joint measures and technology should proportionately and effectively address the threats we share. Effective risk management should enable us to accelerate legitimate flows of people and goods into the United States and Canada and across our common border, while enhancing the physical security and economic competitiveness of our countries.

We build on the efforts of many partners – from police and other emergency workers to our armed forces – who continue to safeguard us from the complex threats we face.

We also recognize that cooperation across air, land, and maritime domains, as well as in space and cyberspace, our enduring bi-national defense relationship, and military support for civilian authorities engaged in disaster response efforts and critical infrastructure protection, have all contributed significantly to the security of our populations.

We recognize that greater sharing of information will strengthen our ability to achieve the goals of this vision.

We intend to work together to engage with all levels of government and with communities, non-governmental organizations, and the private sector, as well as with our citizens, on innovative approaches to security and competitiveness.

We value and respect our separate constitutional and legal frameworks that protect privacy, civil liberties, and human rights and provide for appropriate recourse and redress.

We recognize the sovereign right of each country to act independently in its own interest and in accordance with its laws.

We expect to work together with third countries and with international organizations, and intend to facilitate security sector reform and capacity building around the globe, to enhance standards that contribute to our overall security.

### **Key Areas of Cooperation**

#### ***Addressing Threats Early***

Collaborating to address threats before they reach our shores, we expect to develop a common understanding of the threat environment through improved intelligence and information sharing, as well as joint threat assessments to support informed risk management decisions.

We intend to develop an integrated strategy that would enable us to meet the threats and hazards that both our nations face, including natural disasters and man-made threats, including terrorism.

We expect to continue strengthening our health security partnership, through existing mechanisms for cooperation on health emergencies, and by further enhancing our collective preparedness and response capacity to a range of health security threats, including influenza pandemics.

We intend to work together to uncover and disrupt threats that endanger the security of both the United States and Canada and to establish those agreements or policies necessary to ensure timely sharing of information for combined efforts to counter the threats. We intend to ensure we have the ability to support one another as we prepare for, withstand, and rapidly recover from disruptions. We intend to make the *Agreement Between the Government of the United States of America and the Government of Canada on Emergency Management Cooperation*, updated in 2008, a cornerstone of these efforts.

To increase security, counter fraud, and improve efficiency, we intend to work together to establish and verify the identities of travelers and conduct screening at the earliest possible opportunity. We intend to work toward common technical standards for the collection, transmission, and matching of biometrics that enable the sharing of information on travelers in real time. This collaboration should facilitate combined United States and Canadian screening efforts and strengthen methods of threat notification.

In order to promote mobility between our two countries, we expect to work towards an integrated United States-Canada entry-exit system, including work towards the exchange of relevant entry information in the land environment so that documented entry into one country serves to verify exit from the other country.

We intend to cooperate to identify, prevent, and counter violent extremism in our two countries. By working cooperatively on research, sharing best practices, and emphasizing community-based and community-driven efforts, we will have a better understanding of this threat and an increased ability to address it effectively.

We intend to formulate jointly United States-Canada privacy protection principles that should inform and guide our work in relation to facilities, operations, programs, and other initiatives contemplated by this *Declaration*.

We intend to work together to promote the principles of human rights, privacy, and civil liberties as essential to the rule of law and effective management of our perimeter.

### ***Trade Facilitation, Economic Growth, and Jobs***

We intend to pursue creative and effective solutions to manage the flow of traffic between the United States and Canada. We will focus investment in modern infrastructure and technology at our busiest land ports of entry, which are essential to our economic well-being.

We will strive to ensure that our border crossings have the capacity to support the volume of commercial and passenger traffic inherent to economic growth and job creation on both sides of the border.

To enhance our risk management practices, we intend to continue planning together, organizing bi-national port of entry committees to coordinate planning and funding, building, expanding or modernizing shared border management

facilities and border infrastructure where appropriate, and using information technology solutions.

We intend to look for opportunities to integrate our efforts and where practicable, to work together to develop joint facilities and programs – within and beyond the United States and Canada – to increase efficiency and effectiveness for both security and trade.

We aim to build on the success of current joint programs by expanding trusted traveler and trader programs, harmonizing existing programs, and automating processes at the land border to increase efficiency.

We will look for ways to reduce the cost of conducting legitimate business across the border by implementing, where practicable, common practices and streamlined procedures for customs processing and regulatory compliance.

We intend to work towards developing an integrated cargo security strategy that ensures compatible screening methods for goods and cargo before they depart foreign ports bound for the United States or Canada, so that once they enter the territory of either we can, together, accelerate subsequent crossings at land ports of entry between our two countries.

We recognize the importance of the U.S.-*Canada Framework for the movement of Goods and People across the Border During and Following an Emergency*, agreed to in 2009. It underscores the importance of coordinated, cooperative, and timely border management decision making to mitigate the impacts of disruptions on our citizens and economies.

### ***Integrated Cross-border Law Enforcement***

We intend to build on existing bilateral law enforcement programs to develop the next generation of integrated cross-border law enforcement operations that leverage cross-designated officers and resources to jointly identify, assess, and interdict persons and organizations involved in transnational crime.

We intend to seek further opportunities to pursue national security and transnational crime investigations together to maximize our ability to tackle the serious security threats that these organizations and individuals present.

We intend to improve the sharing among our law enforcement agencies of relevant information to better identify serious offenders and violent criminals on both sides of the border.

## *Critical Infrastructure and Cybersecurity*

We intend to work together to prevent, respond to, and recover from physical and cyber disruptions of critical infrastructure and to implement a comprehensive cross-border approach to strengthen the resilience of our critical and cyber infrastructure with strong cross-border engagement.

The United States and Canada benefit from shared critical and cyber infrastructure. Our countries intend to strengthen cybersecurity to protect vital government and critical digital infrastructure of national importance, and to make cyberspace safer for all our citizens.

We intend to work together to defend and protect our use of air, land, sea, space, and cyberspace, and enhance the security of our integrated transportation and communications networks.

## **II. Implementation and Oversight**

The United States and Canada intend to establish a Beyond the Border Working Group (BBWG) composed of representatives from the appropriate departments and offices of our respective federal governments.

Responsibility for ensuring inter-agency coordination will rest with the President and the Prime Minister and their respective officials.

We intend for the BBWG to report to their respective Leaders in the coming months, and after a period of consultation, with a joint Plan of Action to realize the goals of this declaration, that would, where appropriate, rely upon existing bilateral border-related groups, for implementation.

The BBWG will report on the implementation of this declaration to Leaders on an annual basis. The mandate of the BBWG will be reviewed after three years.

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## About the Author

Christopher Sands is a Senior Fellow at Hudson Institute, where he specializes on Canada and U.S.-Canadian relations, as well as North American economic integration. He is also a professorial lecturer at the Johns Hopkins University School of Advanced International Studies, an adjunct professor in Government at the American University School of Public Affairs, and lectures at the Foreign Service Institute of the U.S. Department of State and for the U.S. Department of Homeland Security.

In 2007, Christopher Sands was the co-author (with Dr. Greg Anderson, University of Alberta) of *Negotiating North America: The Security and Prosperity Partnership* (Hudson Institute, 2007) on Bush administration efforts to negotiate common standards for regulation and inspection with the governments of Canada and Mexico. In 2009, Sands was the author of *Toward a New Frontier: Improving the U.S.-Canadian Border* (published by the Metropolitan Policy Program of the Brookings Institution, 2009). Both studies are available on the Hudson web site.

Dr. Sands currently serves as treasurer and a member of the executive committee for the Canadian Politics Section of the American Political Science Association. He is a member of the research advisory board of the Macdonald-Laurier Institute in Ottawa, and a member of the advisory board of the Canada-United States Law Institute jointly-established by the law schools of Case Western Reserve University and the University of Western Ontario.

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