

The Joint Canadian Chamber of Commerce –U.S. Chamber of Commerce Submission to the Beyond the Border Working Group

This submission is in response to the government of Canada’s request for input on industry priorities for the Canada-U.S. border and the joint action plan for perimeter security and economic competitiveness.

Canada and the U.S. enjoy one of the most prosperous relationships in the world. Approximately 11 million jobs on both sides of the border depend on bilateral trade. In 2010, \$645 billion worth of goods and services crossed the border. Approximately a third of this trade is the intra-company delivery of input materials—we *literally build things together*. The success of this unique economic partnership depends on a smart, secure border.

Unfortunately, since 9/11 the Canada-U.S. border has become increasingly inefficient. Businesses point to the growing number of inspections and fees, wait times and infrastructure constraints all of which cause significant delays, hurt productivity and competitiveness. Security personnel point to a lack of resources and funding for the staffing models and technology needed to make our border more secure.

The Canadian Chamber of Commerce and the U.S. Chamber of Commerce were pleased by the February 4, 2011 joint announcement. With the right dedication, this initiative will provide a badly needed opportunity to improve the efficiency of our shared border and increase the competitiveness of both our economies. To move this process forward we believe that it is imperative to identify several key priorities where progress is needed immediately.

The Canadian and U.S. Chambers believe that a 21st century border policy must be based on risk-management to better assess threats, differentiate between low-risk and high risk trade and travel, maximize the use of technology and lower transaction costs. This submission contains practical recommendations to make our border more trade efficient without diminishing our security.

Centralization and Oversight

The Canada-U.S. border has become smothered in different policies, regulations and procedures. Current border processes involve intersections between various government agencies each with individual requirements and responsibilities. There is no one agency that holds full responsibility for the border. A host of different agencies and departments execute their mandates there, reporting to different leaders and measuring success by different standards. To effect change, Canada and the U.S. need leadership to ensure the adoption of appropriate policies and efficient allocation of resources and at a level which incorporates all relevant departments and agencies.

While the creation of the Beyond the Border Working Group is a positive step in the right direction, a senior level committee is needed to provide oversight and coordinate cross-jurisdictional implementation of the resulting action plan.

A temporary cabinet-level border subcommittee should be created and specifically empowered to review border process and streamline operations where possible. This subcommittee would not only provide leadership but would have the authority to task relevant agencies with full reviews of existing and envisioned border procedures. While we do not envision this subcommittee to be a permanent structure, its existence would prove beneficial during the initial stages of implementation of a new border framework.

To understand how to improve the efficiency of the border, we must first have an excellent understanding of existing border operations. The cabinet subcommittee should also spearhead the development and centralization of border related metrics and serve to monitor progress of efforts to improve the efficiency and security of the border.

Key Deliverables:

1. Create a temporary cabinet-level subcommittee to provide centralized oversight and to review border operations across various government departments.
2. Increase border-related metrics to identify existing border policies and limitations so as to increase border efficiency.
3. Undertake a review of border processes with the goal of removing redundancies where possible.

Procedures and Operations

Aside from centralized leadership, there is a real need to review border operations and procedures to ensure that the border is operating at peak efficiency. It is imperative that the Canada-U.S. border separate “trusted” trade and travel from high risk goods and people. Over the years various programs have been developed with this in mind, however unnecessary overlap is eroding many of the potential benefits. North American firms are also concerned by complex border procedures and inefficient staffing models. The following is a list of some of the most critical areas in need of attention.

Improving Trusted Shipper and Trusted Traveller Programs

Trusted Shipper

Trusted shipper and trusted traveller programs such as Free and Secure Trade(FAST), Partners in Protection (PIP), NEXUS, Customs Self-Assessment (CSA) and Customs-Trade Partnership against Terrorism (C-TPAT) allow government agencies to focus their resources where they are most needed—unknown trade and travel. Unfortunately, participation in these programs can be difficult, the costs remain high and the benefits can be limited. For example, certification as a trusted shipper can take years and cost hundreds of thousands of dollars in upfront costs. In the long term, continued compliance in these programs often requires oversight by dedicated

staff. To make matters worse, despite paying for membership in multiple programs, companies are still subjected to costly inspections. In one instance a company reported having to pay over \$1 million because of increased security measures, participation dues and border fees. Furthermore, many of these programs are created for big business and are not viable options for small- and medium-sized enterprises. One way to make these programs more accessible to smaller firms is by creating a single window for them to access information about border and trade issues.

Another way to improve the benefits of trusted trader programs is to align interagency requirements between Canada and the U.S. Overlap in these programs in areas like risk assessment, client interactions and program conditions complicates participation. Integrating these programs would reduce redundancies and help to streamline processes. Mirror programs, such as C-TPAT and PIP, should only require one application and fee for both programs since U.S. and Canadian customs already share and cooperate on aspects of cross-border trade security.

Harmonization of trusted trader programs would further assist both border agencies to streamline and reallocate resources from managing lower risk cross-border trade and focus on higher risk transactions. Resources could also be rationalized towards joint security initiatives in order to better serve bi-national security interests and to more adequately meet global security challenges common to both countries.

There are other issues that can be addressed. Currently, other than with CBSA's CSA program less-than-truckload (LTL) carriers are not able to participate in trusted shipper programs unless all shipments on the trailer originate from trusted importers. For example, LTL carriers are unable to access FAST lanes because doing so would require the driver, the carrier and all shipments to be FAST compliant. This presents a challenge for courier companies and others that send small packages across the border. Our governments should strike a working group

comprised of relevant government and industry stakeholders to examine the feasibility of expanding the trusted shipper benefits to LTL carriers. One way that this might be accomplished is by using one hour prearrival notification to assess the risk levels associated with shipments before arrival at the border. There is also a need for trusted shipper programs designed for companies regulated by government agencies besides CBSA and CBP, such as low-risk food importers from Canada and the United States. The inclusion of other agencies like the Canadian Food Inspection Agency and the U.S. Food and Drug Administration would provide incentive to more companies to join these programs.

Finally, businesses continue to express concern about direct fees for using the border. For example, this year the proposed U.S. federal budget included a new passenger inspection fee for Canadian air passengers flying to the U.S. Another example is the U.S. Animal and Plant Health Inspection Service (APHIS) fee which is applied to all shipments entering the U.S. but whose revenue is used to cover the cost of agricultural inspections. There is also the U.S. Merchandise Processing Fee (MPF) which is charged on most U.S. imports including direct imports from Canada that are accompanied with NAFTA certificates of origin. Although most direct imports from Canada, including goods of Mexican origin, are eligible for MPF exemptions, the cost, complexity and time required to obtain such NAFTAs outweigh the value of the MPF exemption. The United States is the only NAFTA partner that charges importers MPF. What is worse is that these fees are applied to trusted trader and travellers who have already paid for certification as low-risk traffic. Any fees levied at the border must be directly tied to related services and not funnelled into general revenue. In addition, trusted trader and travellers should be granted some relief from these fees. Removing these fees will not only reduce the administration burden associated with the collection of fees but will also increase the amount of revenue available to industry to conduct R&D.

Trusted Traveller

While, NEXUS is an excellent way to improve the flow of trusted travellers across the Canada-U.S. border, the program remains underutilized. There is a need for greater marketing of NEXUS and continued expansion of the benefits of participation. For example, the Canadian government has launched a program which allows NEXUS card holders to fast-track domestic security lines at certain Canadian airports. This is a welcome initiative that should be expanded beyond the current limited number of participating airports.

Another way to improve the benefits of participation is to make NEXUS more transparent. For example NEXUS cards can be revoked or renewals denied without explanation. Granting card holders the option for appeal would make the program fairer without jeopardizing security.

NEXUS also has a role to play in improving the visa process for business travellers. Despite being regulated under NAFTA, the temporary entry of professionals continues to present problems. There are four criteria for temporary entry permits under NAFTA: traders or investors, professionals, intra-company transferees and business visitors. While rules are in place governing entry requirements, the growing red tape associated with temporary entry permits is an ongoing concern to businesses. The voluntary expansion of NEXUS to contain visa requirement information in its database would allow quick access by border agents to the necessary documentation for approval and verification. This would speed up processing times without reducing security.

Key Deliverables:

1. Put in place goals and metrics to ensure that participation in trusted shipper and traveller programs brings tangible commercial benefits.

2. Strike a bi-national working group to examine ways to expand the benefits of trusted trader programs to LTL carriers including the use of prearrival notifications for risk determination.
3. Create a trusted shipper program for small- and medium-size enterprises and ensure that existing programs are more accessible to smaller firms.
4. Ensure that border fees are directly tied to related services and not funnelled into general revenue and that MPF are removed or minimized for U.S.-bound shipments and for U.S. importers.
5. Expand CBP's Importer Self Assessment program to align more closely with the benefits offered by CBSA's CSA program.
6. Fully harmonize PIP and C-TPAT and extend the use of FAST lanes to PIP participants. Full benefits should be available to all approved companies and should be recognized across all government agencies to eliminate duplicate programs.
7. Create a pilot program to expedite the processing of goods that are regulated by other government departments and reduces border dwell time and risk of inspection holds.
8. Increase the marketing of NEXUS and examine ways to improve the benefits of participation. This includes the expansion of the NEXUS programs to include a voluntary option for business travelers who need NAFTA visa approval work in either country.

Preclearance

Many border processes can be accomplished just as efficiently offsite such as risk assessment and product health and safety inspections. Canada and the U.S. currently collaborate on pre-clearance options for the air mode which has been met with success. However, the preclearance options should be expanded to include other modes of transportation and passenger travel. Preclearance can also be conducted at processing and manufacturing facilities where goods are often sealed before arrival at the border. These goods could be inspected and sealed before being loaded on pre-cleared, sealed trucks. As well, truck, rail cars and

intermodal containers can be precleared in bonded carrier facilities at trip origins. These trucks, rail cars and containers can be expedited across the border through prearrival notification that includes data on the shipment and if the seal is still intact.

To reduce congestion at border crossings, both governments should examine the feasibility of conducting certain inspections away from the border. For example, thanks to demonstrated rail controls, CBSA allows rail import inspections to be conducted at destination terminals. This means that Canadian bound containers that have been vetted by CBP in the U.S. are tracked by CBSA and not inspected again until they arrive at the Canadian destination. This uninterrupted flow expedites trade, yet the same practice is not in place for U.S. bound goods. Containers arriving in Canada and bound to the U.S. must undergo inspection by CBP at the border. Another example that streamlines import inspections away from the border to the importers' facilities is the Canadian CSA program. CSA pre-identifies low-risk importers so that once accredited as a CSA member, they are no longer required to clear customs at the border and are instead allowed to clear customs at the importers' facilities. CSA also allows the approved CSA importer to make monthly payments of duties and taxes to CBSA, further freeing up CBSA resources to deal with higher risk transactions. Together these measures allow CBSA to re-allocate its resources to higher-risk importers and shipments. From a perimeter security perspective, a CSA-like program in the United States would further allow U.S. border resources to streamline their cross-border functions by focussing on higher risk transactions and reallocating resources towards perimeter security activities. While some limited programs exist such as the Automated Line Release, it is difficult for shippers to get new participation and more comprehensive programs for various modes are desired.

Key Deliverables:

1. Continue to invest in preclearance facilities and programs.

2. Put in place a preclearance process for trusted traders for manufactures and food processors with a pilot program run by CFID, FDA and USDA.
3. Put in place a process for truck and rail preclearance where Canadian or U.S. originated freight can be precleared at the carriers' bonded origin facility.
4. Put in place a process for preclearance and inspection at the first North American port of arrival for import containers.

Staffing Models and Service Standards

A secure and trade efficient border is critical to the well-being of the Canadian economy. While there has been some progress in recent years, businesses continue to be concerned with the fact that not all border booths are operating during peak commercial and tourist travel times causing lengthy wait times. Also of concern is the variation in service commitments and standards, particularly at major crossings. Traffic patterns—especially for commercial traffic—are largely predictable. It is these patterns and not time of day that should drive staffing models. Improved staffing models must be coupled with more effective training for customs officials.

More border crossings offering 24 hours of service will improve Canadian competitiveness by lowering transaction and transportation costs for Canadian businesses. Also of concern is the need for additional services—such as secondary inspectors—to be onsite as necessary. As the U.S. and Canada move forward with single window multi-agency processing, it is critical that the range of other government departments that can effect shipments have the necessary representation to mitigate any shipment holds or inspections issues as they occur. Increasing the hours of service offered by other government departments that conduct inspections at border crossings such as CFIA and FDA would bring significant benefits to businesses shipping goods that require inspections by these other departments.

Reducing processing overlap at many ports of entry would not only help to streamline operations but would also have a positive effect on operating costs. For example, the Canadian government should work with the U.S. to develop appropriate staffing models for preclearance processes at Canadian airports. Canadian airports have found that additional preclearance flights are often denied due to CBP staffing constraints. Properly addressing the processing overlap between CBP and CATSA could alleviate some of these constraints. For example, a bag leaving Canada for the U.S. is first screened by Canadian officials and then rescreened by U.S. officials. Removing such redundancies and improving coordination between the relevant border agencies would not only allow agencies to work more cohesively to address security concerns but would also significantly improve the movement of people and goods at ports of entry.

Key Deliverables:

1. Put in place real-time and accurate wait-times measurement system at all major ports of entry.
2. Work with the relevant agencies in both Canada and the U.S. to develop accurate staffing models and officer training for border services that reflect and respond to demand.
3. Undertake a high-level review of joint process border processes, particularly at Canadian airports with full participation by the relevant agencies and departments.

Border Contingency Plan

There are many factors that could lead to a partial or complete closure of the border including disruption due to weather, the outbreak of a pandemic or a terrorist attack. A massive closure of the border would have major effects on economic stability and the integrity of North American supply chains.

The Canadian government is in the process of putting in place a border contingency plan. While this is a welcome initiative, the Canadian government must continue to work with CBP on the development of a joint contingency plan. Both governments must work together and with relevant stakeholders to finalize a bilateral contingency plan and communications strategy.

Key Deliverables:

1. Immediately put in place a joint contingency plan to address a partial or complete closure of the Canada-U.S. border.

Alignment and Simplification of Customs Practices and Procedures

Redundant, unclear, inefficient, and unpredictable customs procedures and practices add financial costs and delays by increasing processing times, the frequency of inspections and adding confusion about admissibility requirements. Reducing these redundancies and improving efficiencies will greatly improve border operations and lower transaction costs. Both governments should work with industry to streamline these processes and improve the predictability and transparency of border operations.

Many of these policies and procedures are designed to meet similar security and commercial compliance issues. For example, both countries use border agencies to interdict on behalf of other government departments and both countries use similar technology for risk assessment. Unfortunately, minor differences in inspection criteria, regulations and approaches add unnecessary burdens and delays at the border.

While both governments continue to modernize protocols and procedures, they must look for areas to align and streamline these processes. Doing so would reduce the burden felt by traders and travellers while speeding up the clearance process.

Simplifying requirements:

Since 9/11 there has been significant layering of reporting requirements and administrative processes. Simplifying these requirements or removing outdated practices would greatly improve the flow of goods across the border. For example, the original Low-Value Shipments (LVS) process was developed to address the growing global demand for expedited packaged shipment of low-value goods. However, the current administrative processing in the accounting of LVS serves virtually no purpose and is an unnecessary burden to businesses. For example, the requirement of classifying goods to a 10-digit HS classification is unnecessary, making the customs clearance process for LVS shipments into Canada overly complex.

Similarly, the Power of Attorney (POA) requirements for LVS importers into Canada are overly complex and inefficient. Many LVS arriving in Canada are brought in by one-time commercial importers without a customs broker. For these small, one-time importers the POA requirements are onerous.

Electronic reporting of imports and exports:

The move towards electronic reporting of imports and exports for risk assessment purposes is an initiative welcomed by the trade community. However, as both governments move towards electronic collection of data, they must ensure that other government departments with border mandates are involved in this process. The lack of a single electronic system for reporting import and export means that businesses are required to submit duplicate reports to multiple agencies, sometimes in different formats.

While Canada is moving towards the adoption of single window framework, thus far, progress has been disappointingly slow. Canada's Other Government Department (ODG) Single Window Initiative has the potential to greatly increase the efficiency of cross-border trade and to reduce the red tape burden. The continued delay with ODG Single Window is frustrating businesses on

both sides of the border. The U.S. has experienced similar challenges with their own programs. It is very important that both governments get these important initiatives up and running as soon as possible.

Aligning requirements

In many instances, minor differences in customs policies impose unnecessary burdens on North American businesses. Both the Canadian and American governments should undertake a documentation review with the goal of aligning and simplifying requirements wherever possible. This applies to the need to harmonize U.S. and Canadian authorities' interpretations of HTS codes applicable to goods to the first six digits of HTS. Although the first six digits of U.S. and Canadian HTS codes are supposed to be harmonized in terms of chapter names and titles, differing interpretations of the same HTS code is difficult to manage and inefficient for cross-border trade purposes.

Minor variations in policies are also a problem for cross-border business. For example, there are currently differing benchmarks for CBSA and CBP import values. CBSA's Courier Import Release Order threshold is \$20CND while the CBP equivalent is set at \$200USD. Similarly, the current CBSA threshold for high value shipments is set at \$1,600CND compared to the U.S. limit of \$2,000USD. Increasing, the Canadian threshold to match the U.S. value would streamline the process and increase the efficiency of clearing higher-valued shipments.

There are other areas that are also in need of attention. For example, shipments arriving at a Canadian port and headed to a U.S. destination are inspected by Canadian officials upon arrival in North America and again by American officials at the border. A true North American perimeter approach to international container inspections is needed. One way that this can be accomplished is by expanding the Container Security Initiative and Joint Targeting Initiative to allow the inspection of containers at the first port of entry without the need for a second inspection at the border.

There is also a need to streamline and standardize security regulations at the Canada-U.S. border. For example, both countries currently rely on two different sets of screening requirements for air passengers and baggage. A bag screened in Canada must be re-screened in the U.S. Similarly, air passengers must remove footwear during the passenger screening process in the U.S. To remove duplicate screening and reduce complexity, the Canadian and U.S. governments should work towards the reciprocity of screening for passengers and baggage.

Key Deliverables:

1. Provide funding to the necessary government departments and agencies to ensure they put in place the OGD Single Window, a single electronic import and export filing system.
2. Ensure that the move towards advanced electronic reporting of trade data takes into account shipment risk, has clearly defined and consistent data elements and does not require data that companies cannot reasonably obtain.
3. Ensure that the rules governing the transmission of electronic data are clearly defined and are updated to reflect current practices.
4. Undertake a full review of security procedures adopted post 9/11 to determine the effectiveness and cost of each policy.
5. The Canadian and U.S. governments should work towards the reciprocity of screening for air passengers and baggage with the goal of removing duplicate screening.

Border Infrastructure and Technology

As a trade-dependent country, Canada's prosperity is closely tied to its international commerce. In recent years, Canada has been diversifying its international trade, yet our economic partnership with the U.S. will continue to form a cornerstone of our trade policy.

The success of this partnership depends on our ability to effectively move people and goods more efficiently and cost effectively than our competitors. There has been good progress in

planning and investment into Canada’s border and transportation infrastructure over the past several years. While this progress is welcome, the prioritization of border infrastructure investments—both physical and technological—are needed to ensure that our main ports of entry are secure and able to adapt to increasing and shifting trade flows. Many companies that use the land border continue to experience delays thanks to infrastructure constraints. The government must continue to invest in Canadian ports, intermodal facilities, highways, bridges and border crossings.

Physical infrastructure

Canada must continue to invest in our ports of entry, including the construction of a second crossing in the Windsor-Detroit region. Almost half of our bilateral trade goes through the Ontario-Michigan border making it a significant international gateway. A New International Trade Crossing would reduce congestion along the busy trade corridor and increase our security by providing redundancy in case of a terrorist attack. Similarly, the plans to double the capacity of the Peace Bridge between Buffalo and Fort Erie should be accelerated. Construction of this span should include dedicated lanes from interstate to highway to handle various levels of qualified shipments.

Another priority is the extension of FAST lanes further away from the port of entry. The majority of these lanes only begin a few meters away from the primary inspection booths meaning that C-TPAT participants remain in the same lines as non-certified traffic. This issue could be resolved by extending FAST lanes further away from primary inspections.

Technology

The joint announcement presents a valuable opportunity for the Canadian government to change its approach to the collection of advanced commercial information and revitalize our security apparatus. One way that this can be accomplished is by investing in mandatory

electronic reporting regimes. Mandatory electronic reporting would not only enhance our cargo security by allowing for a more integrated security approach across government agencies but would also boost Canada's ability to participate in the WCO's SAFE Framework of Standards.

The government should also increase the use of technology such as the Global Entry Program and NEXUS programs and maximize the use of these processes where possible. Increasing the use of technology at the border will bring both economic and security benefits. For example, the U.S. has installed vicinity RFID technology at almost all land border crossings. The installation of this technology will drastically reduce border wait times by eliminating the need to process documentation as the passenger's information appears on the border officer's screen as the vehicle approaches the border.

Key Deliverables:

1. Build a second crossing in the Windsor-Detroit region.
2. Put in place a timeline for the installation of secure vicinity RFID technology in all lanes at major crossings that is compatible with the technology being used by the U.S.
3. Continue to enhance the infrastructure of our air, land and marine ports of entry in order to meet the demands of the integrated Canada-U.S. economy.
4. Ensure that there are a sufficient number of border crossings with 24/7 operations to facilitate cross-border trade and travel in all of Canada's provinces and territories.
5. Continue to promote and invest in all of Canada's gateways.

Protection of Intellectual Property Rights

The Canadian and U.S. Chambers of Commerce are very concerned about the weak enforcement of intellectual property rights in Canada. Not only is the theft of intellectual

property a drain on the economy, but it is responsible for loss of employment, reduces tax revenues for government and poses serious risks to consumer health and safety.

Over the past several decades, the trafficking in counterfeit goods has grown exponentially—so much so that almost every developed country has adopted legislation making the importation of counterfeit and pirated goods an offence and has empowered customs officials with the ability to seize these goods.

Canadian border agents need the ability to effectively combat the importation, manufacturing, distribution and sale of counterfeit goods. In particular, customs officials need to be granted the legislative authority and the additional resources to search and seize suspected shipments of counterfeit goods.

Both governments also need to do more to combat the illicit trafficking in weapons, people, drugs and tobacco products across the Canada-U.S. border. There is a need to enhance cooperation between Canada-U.S. enforcement agencies and border officials to address the problem of illicit trade along the Canada-U.S. border.

Key Deliverables:

1. Work with the U.S. to adopt an effective IPR border enforcement strategy to stem the flow of counterfeit and contraband items from coming into Canada. Such a strategy must include the empowerment of border officials with the legislative authority and resources to target, detain, seize and destroy these goods.