



THE FRAGMENTATION AND  
INTEGRATION OF NORTH  
AMERICAN GOVERNANCE:

## **BORDER SECURITY AND ECONOMIC POLICY FOR THE OBAMA ADMINISTRATION**

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### **SUMMARY**

A change of administration in Washington, D.C. in early 2009 will not represent a significant departure from recent approaches to border management in North America. The post-9/11 marriage of economics and security will continue to make border management difficult in security and economic terms for all three NAFTA countries. With no political momentum for new trade liberalization initiative in North America and security remaining as an overriding priority, the status quo will prevail. That means policy largely driven from Washington and the Department of Homeland Security (DHS). However, the evolution of federalism in all three countries and proposals for reform of DHS offer hope for progress in border management driven by cross border necessities rather than dictates from Ottawa, Washington, or Mexico City.

## INTRODUCTION

The early months of President Barack Obama's administration obviously represent an opportunity for a re-evaluation of all aspects of border management in North America. Since the launch of the North American Free Trade Agreement (NAFTA) in 1994, policy-makers, academics and policy wonks of all stripes have been involved with the search for “next steps” in North American governance. That pursuit is littered with the policy recommendation wreckage of numerous blue ribbon panels, “eminent persons groups,” and government reports, all of which have recommended picking up where NAFTA left off and moving towards deeper stages of economic integration and political co-ordination in North America.<sup>1</sup> Throughout the 1990s, initiatives were launched, shelved, and sometimes launched again, in an effort to deal with NAFTA's perceived shortcomings, nearly all of which came to naught.

Not until the Sept. 11, 2001 terrorist attacks on the United States did any of this activity produce movement toward more co-ordinated North American governance. Unfortunately, much of that movement was in the direction of trying to mitigate the negative effects of enhanced security on trade. In the process, economic policy has largely been wedded to security in North America. The 2005 Security and Prosperity Partnership of North America (SPP) was designed to manage the new nexus, but in fact was an imperfect byproduct of many unsuccessful initiatives seeking to deal with NAFTA's lingering imperfections.

One of the main challenges confronting North America over border management has been the U.S. implementation of the Security and Prosperity Partnership by the Department of Homeland Security (security agenda) and the Department of Commerce (prosperity agenda). Since the creation of the Department of Homeland Security in 2003, management of policies concerning America's two borders has converged around security and law enforcement. Moreover, ineffectual mechanisms for border management, including the Security and Prosperity Partnership, have actually served to bury large parts of the greater North American agenda within each country's bureaucracies, making it more difficult to deal with those issues. All of this stimulated new rounds of initiatives and policy proposals designed to garner the attention of new leadership in Washington and Ottawa, as well as the Calderon government in Mexico City.

These include sweeping integration projects, such as a Customs Union<sup>2</sup> or the creation of a binding joint commission to manage border issues,<sup>3</sup> and a proposal to delegate border management to local and regional interests such as states, provinces or public-private partnerships.<sup>4</sup>

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<sup>1</sup> John Manley, Pedro Aspe, and William Weld, Chairs, *Building a North American Community*, (New York: Council on Foreign Relations, 2005); Canada, House of Commons, Standing Committee on Foreign Affairs and International Trade, *Partners in North America: Advancing Canada's Relations with the United States and Mexico*, (Ottawa: Supply Services, December 2005); Wendy Dobson, “Shaping the Future of the North American Economic Space,” *C.D. Howe Institute Commentary 162* (Toronto: C.D. Howe Institute, 2002). Dobson's piece in particular was perhaps the most prominent of a series of “Border Papers” published by C.D. Howe 2002-2005.

<sup>2</sup> See Robert Pastor, “The Future of North America,” *Foreign Affairs* 87 (4) (July/August 2008). See also Manley, Aspe, and Weld, *Building a North American Community*, (New York: Council on Foreign Relations, 2005).

<sup>3</sup> Michael Kergin and Birgit Matthiesen, “A New Bridge for Old Allies,” *Border Issues Report*, (Toronto: Canadian International Council, 2008).

<sup>4</sup> See for example, Pacific North West Economic Region ([www.pnwer.org](http://www.pnwer.org)). See also David Heyman and James Jaw Carafano, *Homeland Security 3.0: Building a National Enterprise to Keep America Free, Safe, and Prosperous*, (Washington, D.C.: Heritage Foundation and Center for Strategic and International Studies, 2008).

This paper will make two assertions about how the Obama administration will deal with the governance of borders and economic policy in North America. First, most observers agree the connection between security and economics will make it difficult to bring in any new initiative that can substantially alter the system already put in place at border crossings entering the United States. Second, the paralysis generated by the security-economics nexus may have created new opportunities that complement the broad evolution of federal politics in all three NAFTA countries. In short, the dynamics emanating from the national capitals will likely continue, but momentum toward shared governance is going to be increasingly driven more by regional and local participants than from Ottawa, Washington or Mexico City.

I cite **six** broad pieces of evidence:

- 1) A large U.S. agenda and the effective delegation of North American issues to the Departments of Commerce and Homeland Security.
- 2) Recent trends in U.S. trade policymaking, including the absence of political will for any kind of economic liberalization project.
- 3) The inability of the Canadian government to make headway on North American issues, complicated by the paralysis of leadership in Ottawa.
- 4) Futile hopes for a return to bilateral pacts.
- 5) The immigration debate in the United States and its impact on labour mobility.
- 6) Regionalization of domestic politics in Canada, the United States and Mexico.

This paper will elaborate on these points.

### **1) Large U.S. Agenda**

A major problem confronting Canadian and Mexican leadership is the lack of profile for common issues involving the United States. Except for periods in which there have been serious bilateral conflicts or common problems needing resolution (acid rain, drug violence or illegal immigration), Ottawa and Mexico City have often found it difficult to get on the Washington program. This has only become more difficult since Sept. 11, 2001. Only matters requiring immediate attention, such as border security, have been placed at the top of the enormous U.S. agenda that until recently was focused on wars in Iraq and Afghanistan. Those concerns have been superseded by the need to combat a global economic crisis, the roots of which are found in the United States. Attempts to cope with that emergency, including a U.S. economic stimulus package, have consumed most of the policy oxygen during the first months of President Obama's administration. All of this leaves limited space for broader North American concerns, which will continue to be a tough sell in Washington.

In the eight years since the 9/11 terrorist attacks, North America as an entity actually ranked high on the U.S. agenda, but the outcome has made the operation of North America more difficult. Smart Border Accords put in place in late 2001 and early 2002 were largely the product of older initiatives dealing with NAFTA's unfinished business from the 1990s. Those practices were folded into the Security and Prosperity Partnership, which was launched in March 2005.<sup>5</sup> While the partnership was designed to help manage the large number of issues created by connecting security and economics, results have been modest. Apart from establishing annual leaders' summits, the partnership has essentially buried North American issues within each country's bureaucratic apparatus. Moreover, we have seen an "Alphabet Soup" of programs for preferred travellers, advance cargo screening and reporting (see Appendix A).<sup>6</sup> Each of these new programs is intended to mitigate the economic effects of enhanced security measures. Yet with each new layer of security and each new measure to smooth its effects, many worry that we are adding to the "thickening" of North America's borders. Direct evidence of such "thickening" uncovered by researchers has been mixed. Still, data is growing<sup>7</sup> and the potential impact of enhanced security could be much broader than waiting times at border crossings.

This is especially problematic in the United States, where the Department of Homeland Security manages the security agenda. The growing pains of Homeland Security since its creation in 2003 are well known.<sup>8</sup> Recent assessments of the department's work have shown an improvement, noting that much work must be done in areas of risk management and consolidated congressional oversight.<sup>9</sup> In 2007, Homeland Security officials appeared more than 200 times before 86 committees and subcommittees, attended 2,242 briefings for members of Congress, wrote 460 mandated reports and answered thousands of queries from individual members.<sup>10</sup> A diagram at the end of this paper, borrowed from a 2004 report by the Center for Strategic and International Studies, suggests the extent of oversight and policy co-ordination problems confronting Homeland Security.<sup>11</sup>

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<sup>5</sup> See Greg Anderson and Christopher Sands, "Negotiating North America: The Security and Prosperity Partnership," *Hudson Institute White Paper* (Washington, D.C.: Hudson Institute, 2007).

<sup>6</sup> See also Greg Anderson, "North American Economic Integration and the Challenges Wrought by 9/11," *Journal of Homeland Security and Emergency Management* Vol. 3(2) (2006), Article 2.

<sup>7</sup> *Ibid.*; Alan S. Alexandroff, Gary C. Hufbauer, and Krista Lucienti, "Still Amigos: A Fresh Canada-US Approach to Reviving NAFTA," *C.D. Howe Commentary No 274*, (Toronto: C.D. Howe Institute, 2008); Edward Chambers and Williams Shaw, "Reaching Out: Exploring SME Exporting Opportunities and Challenges," *Information Bulletin* 109 (Western Centre for Economic Research, April 2008); Joel Webber, *Network-Centric Security for Canada-U.S. Supply Chains*, (Vancouver and Washington: Fraser Institute and Center for Strategic and International Studies, May 2005); Danielle Goldfarb, *Reaching a Tipping Point: Effects of Post-9/11 Border Security on Canada's Trade and Investment*, (Toronto: Conference Board of Canada, June 2007).

<sup>8</sup> Donald Kettl, *System Under Stress: Homeland Security and American Politics*, (Washington, D.C.: Congressional Quarterly Press, 2004); *Washington Post*, "Mission Was Undermined From the Start," December 22, 2005, A1.

<sup>9</sup> David Heyman and James Jaw Carafano, *Homeland Security 3.0: Building a National Enterprise to Keep America Free, Safe, and Prosperous*, (Washington, D.C.: Heritage Foundation and Center for Strategic and International Studies, 2008).

<sup>10</sup> *Ibid.*, 18.

<sup>11</sup> Thomas Foley and Warren Rudman, Co-Chairs, *Untangling the Web: Congressional Oversight and the Department of Homeland Security*, (Washington, D.C.: Center for Strategic and International Studies, December 2004).

Security concerns have reorganized the American bureaucracy and transformed border management into a law enforcement matter. The security agenda has increasingly overshadowed the Department of Commerce's control of the prosperity agenda. As such, the Department of Homeland Security has increasingly become *the* frontline agency handling most Mexican and Canadian affairs.

Although NAFTA famously contained “too few institutions,”<sup>12</sup> it did institutionalize many aspects of North American relations by depoliticizing them in legalistic dispute settlement mechanisms. It also clarified lines of responsibility within each bureaucracy. In other words, NAFTA actually made it more difficult to get most Mexican and Canadian issues on the White House agenda. The litany of the post-9/11 border regulations, entrenched by events and processes leading to the Security and Prosperity Partnership only exacerbated the situation. North American concerns were pushed deeper into a bureaucracy dominated by the law-enforcement culture of Homeland Security,<sup>13</sup> and there they stayed with little new legislative oversight and virtually no political momentum.

The Security and Prosperity Partnership is not without merit. To the extent the Obama administration keeps the process alive, there will be annual leaders' meetings to discuss North American concerns, something that wasn't done with NAFTA. However, the partnership arguably placed responsibility for resolving the “tyranny of small differences” into the hands of technocratic experts. This shielded difficult work from the complications of politics.

By turning much of border management over to Homeland Security, the Security and Prosperity Partnership has not served the interests of an overall North American agenda. North America has been transformed into a series of law enforcement measures driven by the U.S. Congress or by the rule-making capacity of Homeland Security. The department increasingly applies symmetrical approaches to both the U.S.-Mexico and Canada-U.S. borders. The uniformity of policy applied to very different borders, coupled with burying the North American agenda in a technocratic and law enforcement mentality, makes it difficult to push North America up the U.S. list of priorities.

The near-unanimous confirmation of Arizona Governor Janet Napolitano as secretary of homeland security is a potentially welcome shift. Unlike Secretary Michael Chertoff, who moved Homeland Security firmly toward being a law enforcement body, Napolitano appears positioned to better appreciate and balance the complicated politics of the many issues on the North American agenda. Secretary Napolitano also has a federal law-enforcement background (former U.S. Attorney) and a reputation as governor for being

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<sup>12</sup> Robert Pastor, *Toward A North American Community*, (Washington, D.C.: Institute for International Economics, 2001).

<sup>13</sup> See Anderson and Sands, *Negotiating North America*, 17-19

tough on security issues. She stunned fellow Democrats by declaring a state of emergency over illegal immigration so that more resources could be directed at tightening security at the U.S-Mexico border.<sup>14</sup> As governor, Napolitano was also sharply critical of federal inaction on border issues, especially funding to individual states. She has long been a supporter of U.S. immigration reform as a means of dealing with illegal crossings.<sup>15</sup>

In her confirmation hearings, Napolitano acknowledged that her understanding of the “northern border” was limited and that she looked forward to visiting Canada to gain an appreciation of its particular needs.<sup>16</sup> After confirmation, one of Napolitano's first acts was to order a review of the northern border.<sup>17</sup> The outcome of this review could result in Homeland Security approaching America's borders with less symmetry than has been the case thus far. However, it could also reaffirm worries over “thickening” if it identifies the need for additional security measures along the Canada-U.S. border.<sup>18</sup>

Whether Napolitano ultimately assumes more of a political or law-enforcement approach, it will remain very difficult for Canada and Mexico to pull border issues out of Homeland Security and onto the White House agenda, where many of those concerns need to be if any action is to be taken.

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<sup>14</sup> Janet Napolitano, “The Border Emergencies,” *Los Angeles Times*, August 20, 2005.

<sup>15</sup> Testimony of Janet Napolitano, Governor of Arizona, delivered before the Committee on Homeland Security, United States House of Representatives, October 19, 2005; Janet Napolitano, “Don't Forget the Border,” *New York Times*, June 1, 2007; Janet Napolitano, “The Myth of Amnesty: The Senate Immigration Bill vs. a Disastrous Status Quo,” *The Washington Post*, June 10, 2007.

<sup>16</sup> See Testimony of Secretary-Designate Janet Napolitano before the Senate Homeland Security and Governmental Affairs Committee, January 15, 2009.

<sup>17</sup> See DHS Press Release, “Secretary Napolitano Issues Additional Action Directives on Cyber Security and Northern Border Strategy,” January 23, 2009. Secretary Napolitano's confirmation hearings featured a number of questions, particularly from Senator John Tester (R-MT) on the Northern Border that many have prompted the report's initiation. However, the report may also be the product of House appropriations process from 2008. See <http://appropriations.house.gov/pdf/HomelandHP.pdf>. See also text of S.1644, Department of Homeland Security Appropriations Act, 2008, Title II, sec. 10, U.S. Senate, 110<sup>th</sup> Congress.

<sup>18</sup> See Customs and Border Protection, Press release, “CBP Unmanned Aircraft Begins Operations in North Dakota,” February 19, 2009.

## 2) U.S. Trade Policy

This paper is supposed to be focused on border security, but the nexus of economics and security in North America make this difficult. Moreover, the trade agenda is synonymous with North American integration. Virtually any security action that deepens North American integration will impact trade and finance, so some comment is merited here. The U.S. trade policy agenda is in a shambles. Eight years of Bush administration activism on international trade issues have given way to populist acrimony over the direction and posture of U.S. leadership on trade liberalization.<sup>19</sup> After a first term in office that included the launch of the World Trade Organization's Doha round of negotiations, successfully reviving fast-track negotiating authority, and the launch of a slew of bilateral and regional trade initiatives, the Bush administration lost nearly all of that momentum. Few public officials are willing to defend trade liberalization.<sup>20</sup> The Doha round collapsed over rich-country agricultural subsidies, while several bilateral trade agreements have stalled (Peru, Colombia, South Korea). Fast-track negotiating authority has been allowed to expire.

The broad malaise that has seized the American trade agenda is arguably part of the politics of protectionism that often coincides with deteriorating economic conditions. However, the expiration of fast-track authority involved more than a timetable lapse and suggests a difficult period ahead for U.S. leadership in the international economy.

For most of the postwar period, Congress has delegated its constitutional authority to “regulate Commerce with foreign Nations...” to the President. The 1974 creation of so-called “fast-track” authority has meant increased consultation between the White House and Congress, a 90-day legislative timetable to bring agreements to a vote, and a Congressional promise that deals will not be amended.

This changed on April 10, 2008. Speaker of the House of Representatives, Nancy Pelosi, and the House Democratic leadership approved a change to House rules governing the legislative timetable by which trade agreements negotiated by the president had to be brought to a vote. The trade agreement in question was the U.S.-Colombia Free Trade Agreement. Completed in November 2006, the pact was effectively placed in legislative limbo because of the rule change.

The U.S. commitment to foreign nations that agreements will not be amended is effectively dead.

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<sup>19</sup> Greg Anderson, “End of the Renaissance? U.S. Trade Policy and the Second Term of George W. Bush,” in George A. MacLean ed., *Canada and the United States: A Relationship at a Crossroads*, *Bison Paper 7* (Winnipeg: Centre for Defence and Security Studies, 2005), 79-93.

<sup>20</sup> One exception is Pascal Lamy, Director General of the WTO, who has been sounding alarm bells over global protectionism as a means of restarting the stalled Doha round of multilateral talks. See, Pascal Lamy, “Keeping trade open: Resisting isolationism,” Speech given in Seoul, South Korea, February 23, 2009.

A new integration project on the scale of a North American customs union would certainly require a fast-track mechanism of some kind. Absence of such negotiating authority is a significant sign that the U.S. has little enthusiasm for tackling items on the broader North American agenda. Business leaders are also concerned security measures are “thickening” borders and that new legislation will be required to deal with a range of non-tariff barriers.<sup>21</sup> In the presence of a trade agenda in desperate need of repair, and given the bitterness and populism concerning trade policy exhibited during the U.S. presidential campaign, it is hard to see significant momentum being generated in favor of a new integration plan.

A related problem concerns the role of the Department of Commerce in managing the prosperity agenda of the Security and Prosperity Partnership. Like Homeland Security, the Department of Commerce is a leviathan agency whose economic divisions are engaged in export promotion for American business. Unfortunately, it is also the main U.S. agency responsible for defending American business from foreign competition through the International Trade Administration and its Import Administration implements U.S. trade remedy laws. Such competing interests leave the Department of Commerce inward-looking and defensive. While Commerce is part of the inter-agency team working on new liberalization initiatives, the more outward-looking United States Trade Representative leads these initiatives. The United States Trade Representative is not an important part of the Security and Prosperity Partnership.

### **3) Leadership from Ottawa**

Even before the events of early December 2008 in Ottawa that led to the proroguing of Parliament, the lack of leadership from Canada in North American governance was clearly evident. Federal budget cuts in the early 1990s severely curtailed Canada's policy capacity in international affairs, most noticeably with respect to the United States. A string of diplomatic miscues in the 1990s and an inability to interpret shifts in the American polity left Ottawa scrambling for solutions after 9/11 brought about significant changes to the U.S. security posture. Dusting off the Smart Border process of the late 1990s and pushing for its implementation as the Smart Border Accords of 2001 and 2002 was constructive. Yet these measures were inherently defensive, designed to mitigate the economic effects American security imperatives would have on Canada. Since then, Canada has adopted a defensive posture to U.S. legislation involving cargo reporting (2002 Bioterrorism Act), immigration (US-VISIT, WHTI), security at borders (“thickening”), and most recently, the “Buy America” provisions of the U.S. stimulus bill.

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<sup>21</sup> Edward Chambers and Williams Shaw, “Reaching Out: Exploring SME Exporting Opportunities and Challenges,” *Information Bulletin* 109 (Western Centre for Economic Research, April 2008); Joel Webber, *Network-Centric Security for Canada-U.S. Supply Chains*, (Vancouver and Washington: Fraser Institute and Center for Strategic and International Studies, May 2005); Danielle Goldfarb, *Reaching a Tipping Point: Effects of Post-9/11 Border Security on Canada's Trade and Investment*, (Toronto: Conference Board of Canada, June 2007).

A consistent vision of North America and Mexico's place in it has emanated from Mexico City since President Carlos Salinas de Gortari proposed free trade with George H.W. Bush in 1990. Meanwhile, Ottawa has been preoccupied with defending existing preferences without articulating its own view of North America. For a country so heavily dependent on open markets for its standard of living (roughly 40 per cent of GDP is derived from exports, and more than 80 per cent of those exports are destined for the United States), Canada has been complicit in failing to develop a comprehensive approach to North America. Getting Canadian issues put high on the American agenda will continue to be difficult.

Ottawa's path to getting what it wants in Washington, D.C., actually starts in Mexico City.

#### **4) The Futility of “Re-Bilateralization”**

Frustration with the lack of progress on increasing security or prosperity has led to heightened discussion of “re-bilateralizing” the entire North American agenda.<sup>22</sup> From Ottawa's perspective, going back to bilateral pacts makes considerable sense. There appear to be many North American agenda items that could be more rapidly and comprehensively dealt with in a Canada-U.S. context. North America's two borders are quite different and Canada's relationship with Washington is very different than Washington's connection with Mexico City. Making such disparate sets of needs a trilateral discussion unnecessarily complicates and limits what can be accomplished.

Yet talk of going back to bilateral deal making within North America is virtually a non-starter to U.S. leadership. NAFTA and the Security and Prosperity Partnership have entrenched U.S. policy-making, especially where borders are concerned, in a trilateral framework that will be difficult to undo. Desk officers at the Department of State or Homeland Security will still be dedicated to bilateral issues. However, Washington invested heavily in political and economic reform in Mexico City when it supported NAFTA and a new administration is not going to allow this to be eroded through a return to bilateral relations. North America has always been a tale of two bilateral relationships that NAFTA pushed in an increasingly trilateral direction.

The 2008 presidential campaign re-affirmed the importance of the desert southwest as an epicenter of the American political system. Migration (internal and from outside) has transformed the southwestern states into political battlegrounds. Mexico and the political influence of Latino-Americans loom large in all of these states. In spite of the obvious differences between Canada and Mexico, trilateral forums have become accepted mechanisms in Washington for dealing with its NAFTA partners. There are undoubtedly policy areas in which Ottawa and Washington could move with greater speed than can be attained trilaterally. But as Robert Pastor has argued, returning to bilateral dealings would merely reinforce the huge asymmetries of power among the three countries; something

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<sup>22</sup> See Alan Alexandroff, Gary Clyde Hufbauer and Krista Lucenti, “Still Amigos: A Fresh Canada-US Approach to Reviving NAFTA,” *C.D. Howe Institute Commentary No. 274* (Toronto: C.D. Howe Institute, September 2008); Michael Kergin and Birgit Matthiesen, “A New Bridge for Old Allies,” *Border Issues Report*, (Toronto: Canadian International Council, 2008).

Ottawa cannot possibly want.<sup>23</sup> In addition, the pull of Latin America in Washington is far too strong to allow even unofficial bilateral deals that could marginalize Mexico City given the joint challenges along the U.S.-Mexico border. Canadians feel the Merida Initiative, designed to combat the drug-fuelled violence along the U.S-Mexico border, is none of Ottawa's business.<sup>24</sup> However, the challenges of development and drug violence are not simply bilateral. These issues should concern Canada because they seriously complicate Washington's ability to move trilaterally on border security and immigration reform.

Hence, expect U.S. border policy to continue its immigration and security concentration on both borders.

## 5) Labour Mobility

Many Canadians look at labour mobility as a bilateral problem between the United States and Mexico. This is a mistake, since the U.S. immigration debate complicates the entire North American agenda. As demonstrated by the 2007 failure of comprehensive immigration reform legislation in the United States, labour mobility will be a significant barrier to any overall North American plan. Yet, immigration/labour mobility is part of any obvious “next steps” in revitalizing that agenda. NAFTA never contemplated labor mobility except in terms of a narrowly defined list of professionals eligible for a new class of temporary work visas (NAFTA Chapter 16, Temporary Entry). However, while Canadians can apply for TN (Trade NAFTA) visas at U.S. ports of entry, Mexicans have had to apply through U.S. consular offices in Mexico, significantly complicating the process. As a result, Canadian professionals have made full use of temporary work visas while Mexico has never maximized its allotted quota. Moreover, the list of professionals qualifying under the work visa has never been amended and does not reflect the emergence of new professions such as information technology.

Finally, the alphabet soup of new procedures in North America has applied as much to the movement of people as to cargo. Entry-exit provisions of the Patriot Act now enshrined in the U.S.-VISIT program have had additional layers of security applied with implementation of the Western Hemisphere Travel Program (WHTI), the REAL ID ACT for enhanced driver's licenses, and most recently the Electronic System for Travel Authorization.<sup>25</sup>

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<sup>23</sup> Pastor, “The Future of North America,” 93.

<sup>24</sup> See “North America Next: A Report to President Obama on Building Sustainable Security and Competitiveness,” (Tempe, Arizona: North American Center for Transborder Studies, Arizona State University), 11.

<sup>25</sup> Technically Section 110 of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, (PL 107-56), WHTI found in Intelligence Reform and Terrorism Prevention Act of 2004 (PL 108-458), REAL ID ACT of 2005 (PL 109-13). The ESTA requires travelers to the U.S. to submit personal information online after which they will receive a travel authorization number via e-mail. However, none of this replaces existing immigration and customs inspection procedures at ports of entry.

Immigration is not just about new rules for guest workers or relaxing visa requirements. A major source of immigration pressures between the United States and Mexico revolves around the disparities of wealth on either side of the border. The North American Development Bank was established in 1994 by Mexico and the United States to help address these issues with development projects and environmental cleanup. The bank's effectiveness has been hamstrung by a lack of full capitalization. It has also been limited by a rule that funds be directed at projects with a major environmental component rather than those which may have positive effects on the environment.

However, the development bank has been hamstrung by Canada's refusal to join its governance structure or contribute to its capital fund. If Canada really wanted to advance its North American agenda with Washington, it would invest more political and economic resources into engaging Mexico City. The challenges of development for Mexico are of critical importance to North America to function effectively as an engine of economic growth for everyone. Labour mobility and immigration issues are not just American or Mexican problems. These are also Canadian concerns, since they complicate and slow the pursuit of Ottawa's interests in North America.

## **6) Regionalization/Localization**

One potential bright spot for revitalizing the North American agenda actually resides outside the national capitals in the states and provinces. North America's list of priorities is packed full of pressing issues. But it is questionable whether those should be dealt with in a single undertaking like the NAFTA negotiations. Packaged together, outstanding issues in North America are daunting. If we add climate change, development, migration or energy security to ideas covered in the Security and Prosperity Partnership, the plate of North American concerns becomes piled even higher. There is no political will in any of the national capitals for dealing with all of this in a single undertaking. This is especially true in the United States, where anti-trade rhetoric during the presidential campaign poisoned any further debate over the merits of economic openness. There have been numerous efforts to outline the major issues on the North American security and economic agenda. An abundance of possible solutions has been put forward, from reviving old strategies to establishing commissions that would define a new game plan. There are proposals for moving North America close to the European Union in terms of formal institutionalization, others focusing on augmenting existing processes. North America is emphatically not the EU. North America has a unique history. Its complex, contemporary concerns cannot be addressed with cookie-cutter application of rules to all regions of the continent.

## THE DECENTRALIZATION OF NORTH AMERICA

Another model for the future of North American governance is much more decentralized than most analysts have proposed. It would reduce the dominance of Ottawa, Washington and Mexico City in discussions for the continent's next steps. Canada, the United States and Mexico are all federal systems with a range of statutory and evolutionary patterns of exclusive and shared federal or sub-federal powers. In Canada, federalism has increasingly seen more powers shift to the provinces from Ottawa. Federalism in the United States has evolved in a slightly different direction, but still involves significant delegation of federal responsibility to the states. Even in areas where federal primacy has a long history, such as national security, implementing federal spending initiatives have often been left to the states. This is especially true in terms of U.S. homeland security since the creation of the Department of Homeland Security in March 2003.<sup>26</sup>

Shared North American governance could build upon these patterns of shared responsibility. Engage local and regional stakeholders in the search for solutions to shared problems in security, the environment, development, or border facilitation. Indeed, proposals for further reform of Homeland Security strongly support regionalization of the agency's approach to many issues.<sup>27</sup> None of North America's borders is identical in terms of infrastructure, security risk, migratory pressures or economic importance.<sup>28</sup> So why treat them as such from a policy perspective?

A decentralized governance structure would require significant deference from each national capital to regional initiatives where federal-provincial/state jurisdiction have clashed or overlapped. The arrangement would also build upon long-standing traditions in federalism in each country, places where competition between jurisdictions and between federal and sub-federal entities generated creative solutions to local problems that were later adapted elsewhere. For example, the long-running Canada-U.S. softwood lumber dispute might be best resolved through a regionalized mechanism of problem solving that minimized the roles of Ottawa and Washington. Natural resources fall under provincial jurisdiction in Canada and market conditions in Canada's four main timber-producing provinces are markedly different. Why not allow the provinces slightly more autonomy in the search for a solution?

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<sup>26</sup> See Christopher Sands and Greg Anderson, "The Fragmegration of Canada-U.S. Relations," in Geoffrey Hale and Monica Gattiner eds., *Borders and Bridges* (Toronto: Oxford University Press, 2009).

<sup>27</sup> See David Heyman and James Jaw Carafano, *Homeland Security 3.0: Building a National Enterprise to Keep America Free, Safe, and Prosperous*, (Washington, D.C.: Heritage Foundation and Center for Strategic and International Studies, 2008), 7

<sup>28</sup> See "Diversity of Ports-of-Entry Along the 49<sup>th</sup> Parallel," Border Policy Brief, Border Policy Research Institute, Western Washington University, September 2007; Peter Andreas, "A Tale of Two Borders: The U.S.-Mexico and U.S.-Canada Lines After 9/11," *Working Paper 77* (San Diego, California: Center for Comparative Immigration Studies, 2003).

Numerous regional bodies and consultative mechanisms exist that should be given increased responsibility for initiating and testing solutions to bilateral or trilateral problems. Provincial premiers and state governors are powerful voices within each country's federal system. In many instances, agenda setting and initiation already take place within regular bilateral meetings of a plethora of groupings and organizations:

- Western Governors and Western Canadian Premiers
- Council of State Governments and its regional bodies
- Great Lakes Legislative Caucus
- Conference of New England Governors and Eastern Canadian Premiers
- Border Legislative Conference (U.S.-Mexico)
- Ten States Retreat (U.S.-Mexico)
- Arizona-Mexico Commission
- Border Governors Conference
- CANAMEX Corridor Coalition
- Center for Research on North America, UNAM
- Center for North American Studies, American University
- Consortium for North American Higher Education Collaboration
- North American Forum on Integration
- Transborder Institute, University of San Diego
- North American Center for Transborder Studies, Arizona State University

Also influential are non-governmental organizations such as the members of the Pacific Northwest Economic Region. The group has been an important backer of government-led initiatives such as the Washington State-British Columbia program piloting enhanced driver's licenses. This program was a response to the federal government's inaction implementing standards and directives for secure forms of acceptable identification for moving across borders under the Western Hemisphere Travel Initiative (Intelligence Reform and Terrorism Prevention Act of 2004) and the REAL ID Act in 2005. Although the Department of Homeland Security reluctantly gave this program its blessing in 2007, this is precisely the kind of initiative that North America's federal governments should be encouraging. Not every initiative will be successful, nor should it be. However, increasing the input of local officials and regional experts on the unique problems each region confronts is eminently sensible. Where local initiatives seriously infringe upon federal prerogatives, a simple test of reasonableness ought to be applied in determining whether initiatives ought to be applied nationally or trilaterally.

Ottawa, Washington and Mexico City should increasingly make use of local resources for solutions to shared regional problems across North America. Deference to these sub-federal and non-governmental bodies will be a challenge in light of each country's federal dynamics. However, matters addressed by these groups seldom rise to the level of high politics that require the attention of the NAFTA's leadership. A host of issues related to infrastructure, security, immigration or the environment may technically be federal in jurisdiction. However, each federal government could encourage a strong preference for best practices and regional solutions.

Clashes are inevitable. Yet a decentralized approach to North American governance might also facilitate additional progress with the unruly process of the Security and Prosperity Partnership. The Washington State-British Columbia enhanced driver's license project is the most salient example of where sub-federal initiatives could be responsive to broader integration objectives.

#### **CANADA-U.S. SHARED BORDER FACILITIES**

In many ways, the alphabet soup of security initiatives at North America's borders pales in comparison to the problems generated by antiquated infrastructure. Border crossings delays were significant before the imposition of post-9/11 security measures. NAFTA stimulated an explosion of cross-border trade that was forced onto a transportation network and through ports of entry designed for the traffic of the 1950s.<sup>29</sup>

President Obama and Prime Minister Stephen Harper have pledged to direct some stimulus package money to border infrastructure. This is an area where a decentralized approach could be highly effective.<sup>30</sup> To some degree, we have seen this happen with respect to the much needed and much delayed construction of a new bridge at Detroit-Windsor. Yet this has not been without significant wrangling between levels of government in each country and private sector interests in control of the Ambassador Bridge.<sup>31</sup>

As part of the 1995 *Canada-United States Accord on Our Shared Border*, the border crossing at Coutts, Alta., and Sweetgrass, Mont., was one of three sites selected for re-design and construction as a wholly shared facility.<sup>32</sup> The initiative had a three-fold purpose. First, the structures would reduce duplication of space and make better use of areas not being used to maximum capacity. Second, border services agencies from both countries would use the building, increasing security for staff and the travelling public. Finally, the projects would strengthen the partnership and foster additional co-operation between Canada and the United States. Sharing facilities is one possible model for streamlining issues in security, economics and infrastructure along the Canada-U.S. border. Each facility is different, reflecting the particular dynamics of that border crossing. The same model would undoubtedly need to be adapted to suit busier crossings, and might be inapplicable along the U.S.-Mexico boundary. However, an increased emphasis on local input may improve options in design and operation of shared border-crossing facilities.

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<sup>29</sup> See "North America Next: A Report to President Obama on Building Sustainable Security and Competitiveness," (Tempe, Arizona: North American Center for Transborder Studies, Arizona State University), 16-20; CANAMEX Corridor Plan Working Paper, Task I: Existing Infrastructure, August 3, 2001.

<sup>30</sup> Canada's Economic Action Plan: Budget 2009 already provides \$14.5 million for new bridges at Sarnia and Fort Erie, but President Obama and Prime Minister Harper agreed at their February 19 meeting to direct more federal dollars from their respective stimulus packages toward border infrastructure.

<sup>31</sup> In 2008, construction on a new span across the Detroit River began as did a major redesign of inspection facilities on both sides of the Ambassador Bridge in an effort to relieve congestion.

<sup>32</sup> The other two were Poker Creek, Alaska/Little Gold Creek, Yukon and Oroville, Wash./Osoyoos, B.C.

Progress in a decentralized approach will be much less subject to the typical concerns over the broad loss of sovereignty connected to large integration projects. Local control over local solutions to shared problems is likely to be more politically palatable in the long term than anything directed out of national capitals. That kind of movement can be made on a range of pressing issues that will not require significant political capital expenditures by the Obama administration.

## CONCLUSIONS

The North American agenda is relatively clear, but its politics are complicated by both a deteriorating economy and the dominance of security. Unfortunately, security will continue to “trump” trade as the Department of Homeland Security solidifies its role as the primary agency responsible for North America's border management. A new U.S. administration that is distracted by an agenda overflowing with a deteriorating economy, two wars and a host of other concerns around the planet will continue deferring responsibility for North America to parts of the bureaucracy. The confirmation of Janet Napolitano as secretary of homeland security is a hopeful development in terms of border management. However, her ability to affect even some of the recommended changes to security management will be limited by Congressional oversight and direction of Homeland Security initiatives. In addition, any significant shift away from the alphabet soup approach of security programs and fixes may depend on the willingness of President Obama himself to expend precious political capital on a significant North American project.

More promising may be an approach that advances proposals for border management by focusing more on localized initiative and control. Such an approach builds upon the experience of federalism in all three countries, avoids raising the hackles of sovereignty a major undertaking would engender, but nevertheless constructively advances the North American agenda.

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SPP Briefing Papers are published by The School of Public Policy at the University of Calgary to provide timely studies of current issues in public policy. *Focus on the United States* is a collection of papers resulting from an initiative of the Institute for United States Policy Research within The School of Public Policy and the Canada Institute of the Woodrow Wilson International Center for Scholars. The intention of this ongoing collaboration is to cast light on critical issues pertaining to Canada-US relations.

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### ISSN

ISSN 1921-0078 SPP Briefing Papers (Print)

ISSN 1921-0086 SPP Briefing Papers (Online)

### DATE OF ISSUE

October 2009

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