

2006

Overview of the Perimeter Clearance Paradigm

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Recommended Citation

Border Policy Research Institute, "Overview of the Perimeter Clearance Paradigm" (2006). *Border Policy Research Institute Publications*. 52.

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BORDER POLICY BRIEF

Focus: Overview of the Perimeter Clearance Paradigm

Volume 1, No. 6, November 2006

Web Address: www.ac.wvu.edu/~bpri

Introduction. This article discusses the perimeter clearance paradigm (“PC Paradigm” hereafter), with emphasis upon how the paradigm relates to current and proposed U.S. and Canadian border-control programs and policies.

In essence, the PC Paradigm involves development of a security perimeter encircling the North American continent, applicable to both people and goods. If effective clearance can be achieved at the continental perimeter, security should be enhanced for the residents within. As a corollary, if all inbound goods and persons are vetted upon crossing the perimeter, there should be a reduced need to perform inspections at the internal borders separating the allied nations that together guard the perimeter.

The U.S. and Canada have implemented some programs consistent with the PC Paradigm for several decades, but the concept has received greater emphasis in the aftermath of 9/11. The rigorous inspections conducted at the Canada – U.S. border in the days immediately following 9/11 were tremendously disruptive to cross-border trade. In light of the crucial importance of that trade to both nations’ economies, a security paradigm was needed that would enable timely border-passage for legitimate goods and travelers. In December 2001, just three months after the disruptions, the U.S. and Canada signed the *Smart Border Declaration*, committing to the development of a “zone of confidence against terrorist activity” and a “border that securely facilitates the free flow of people and commerce.”¹ More recently, the *Security and Prosperity Partnership of North America* was announced by Mexico, Canada, and the U.S. in March 2005. Through this initiative, the three countries commit to “ensure the highest continent-wide security standards and streamlined risk-based border processes.”²

While security may be its paramount goal, the PC Paradigm is also intended as a remedy for historic border “friction” that has hampered the movement of people and goods. If time-consuming tasks necessary to comply with border-related regulations (e.g., visas, tariffs) can be accomplished prior to arrival at the border, the act of crossing the border can conceivably be streamlined. One advocacy group known as the Perimeter Clearance Coalition was formed *prior* to 9/11 to pursue such a vision. The coalition includes over 400 members, representing ports, airports, border communities, airlines, and tourism groups. The coalition believes that the economic and social importance of Canada – U.S. trade underscores the “need for improved and new processes to expedite the movement of known low-risk people and goods across our borders.”³

Issues and Challenges. To be of use, the PC Paradigm must be able to cope with the various travel paths that are regularly traversed today by people and goods. The simplest path involves travel from outside the perimeter solely to one nation within. In this “one-border” scenario, the guardian at the perimeter need be concerned only with the laws of the des-

tinuation country – i.e., a traveler must comply with that country’s visa regulations, and a shipment must comply with that country’s import restrictions. A more complicated path involves crossing the perimeter into one nation and traveling onward to an allied second nation across an internal border. In this “two-border” scenario, if the crossing of the internal border is to be streamlined, the guardian at the perimeter must act in accordance with the needs of both of the allied nations.

As revealed in the following examples, the efficient handling of the two-border scenario is complicated by issues such as geographic jurisdiction and inconsistency of laws:

- ♦ *Enforcing another country’s laws.* Imagine a Canadian inspection agent located at a Canadian port-of-entry distant from the U.S., but tasked with enforcement of U.S. law. An inbound person is in violation of U.S. law, but not Canadian. Absent any violation of Canadian law, on what basis could an arrest be made? How could the case proceed through a Canadian court? Should the person instead be delivered to U.S. custody? If the situation results only in a notification to U.S. authorities, accompanied by release of the person within the perimeter, then isn’t it necessary to retain a substantial internal border between the U.S. and Canada? If real-time access to a U.S. database is provided to the agent to facilitate his efforts, would public inspection of the database be possible pursuant to Canada’s freedom-of-information laws?
- ♦ *Posting guards on foreign soil.* Imagine now the same scenario, except that a U.S. agent is posted at the distant Canadian port. In addition to the issues already posed, a new set of issues arises. Is the U.S. agent subject to Canadian workplace regulations? Can the U.S. agent carry a gun when his Canadian counterparts cannot? Can the U.S. agent conduct a search that would be legal in America, but that violates Canadian law?

Implementation of the PC Paradigm requires some degree of resolution of such issues. One solution involves creation of “Processing Zones” that would allow agents from one country to enforce that country’s laws at sites that are otherwise out of jurisdiction. A second solution involves “Cross Designation” of enforcement agents, such that an agent of one country could enforce laws on behalf of another country. Other suggestions involve harmonization of laws and integration of information systems. The process of negotiating functional and politically acceptable mechanisms is lengthy, given that it touches upon sovereignty and the social, political, and economic differences that underlie differing legal standards and national doctrines. Some researchers argue that harmonization is unlikely to be achieved unless nations share a common assessment of threat, and that the U.S. and Canada have yet to clear that hurdle.

Enacted in 1974 and renegotiated in 2001, the *Agreement on Air Transport Preclearance Between the Government of the United States of America and the Government of Canada* exemplifies the extent to which Canada and the U.S. have thus far tackled the complexities of processing zones.⁴ It touches upon many of the above issues, as evidenced by the following sample of its provisions:

- ♦ Defined “preclearance areas” are established at Canadian airports, within which U.S. agents can perform inspections. The areas must comply with both U.S. and Canadian standards applicable to traveler-inspection zones. Canadian police officers are tasked with guaranteeing the security of the areas and the safety of the U.S. agents.
- ♦ Enforcement actions undertaken by a U.S. agent can relate only to U.S. laws applicable to customs, immigration, public health, food inspection, and plant and animal health, and only to civil (i.e., non-criminal) infractions of those laws. A U.S. agent may deny entry to a traveler and issue a civil fine or citation, but a Canadian agent must handle any suspected criminal infraction and will do so in accordance with Canadian law. A U.S. agent may “pat down” a clothed person, but only a Canadian agent may conduct a “strip search.”
- ♦ The allowable content of electronic “Passenger Name Record” data used by U.S. agents is specified, and the data must be destroyed within 24 hours after use. Both the U.S. and Canada must take all reasonable steps to ensure that data is protected from misuse and disclosure.
- ♦ A U.S. agent enjoys immunity from the civil and administrative jurisdiction of Canada “with respect to acts performed or omitted to be performed in the course of his/her official duties.” A U.S. agent is exempt from Canadian federal taxes, and his dependents are exempt from Canadian employment and education authorization fees.

Clearance of Goods. This section discusses how a number of U.S. and Canadian freight-oriented programs relate to the PC Paradigm. While some programs have clearly been designed to pursue *security* goals in response to 9/11, other programs were in existence well before 2001, with their genesis driven by the desire to facilitate *tariff administration* and freight clearance at the Canada – U.S. border. The meanings of acronyms can be found in shaded boxes that follow.

A brief explanation of tariff policies is in order. NAFTA allows for the free passage of goods between Canada and the U.S., but only to the extent that the goods “originate” within North America. For goods reaching the continent from overseas, external tariffs are in place, consistent with the terms of treaties that Canada and the U.S. have separately negotiated with other nations. The tariff that the U.S. imposes upon the import of a particular good from a particular non-NAFTA country may therefore differ from the one imposed by Canada. Complex “rules of origin” apply to goods crossing the Canada – U.S. border, so that an overseas supplier cannot avoid tariffs simply by shipping goods first to whichever NAFTA nation has the lowest external tariff.

The two-border shipping pattern is common today (e.g., goods destined for the U.S. often first reach North America at a Canadian port), so tariff-related processes that can accommodate the pattern have been devised – i.e., goods can be placed in bond at the port of first arrival and later released from bond upon crossing the Canada – U.S. border to reach the final destination. Note that this arrangement runs *exactly counter* to the PC Paradigm. Processing of the shipment must occur at *both* the perimeter and the internal border, with the most significant process occurring at the latter border.

Much of the documentation needed to move freight across the Canada – U.S. border relates to tariffs, so a tariff regime more in keeping with the PC Paradigm would facilitate the crossing. One proposal is that the NAFTA nations adopt common external tariffs, thereby eliminating the need to apply rules of origin at national borders within the perimeter. However, given that tariffs are established within the framework of numerous trade treaties negotiated between sovereign nations, driven by internal politics and with varying terms, realization of this proposal would only be attainable many years hence.

Canada and the U.S. have developed parallel and equivalent freight-processing systems in an effort to facilitate trade across their shared border and to assure security with respect to shipments loaded at ports outside the continental security perimeter. One system involves advance notification of shipment contents. Both Canada’s ACI program and America’s CSI program require that shipment contents be reported 24 hours prior to loading of a ship at an overseas port, and both countries deploy customs agents at certain foreign ports to support

U.S. Agencies and Programs, with Web References

CBP	U.S. Customs and Border Protection
TSA	U.S. Transportation Safety Administration
DHS	U.S. Department of Homeland Security
ACE	Automated Commercial Environment http://www.cbp.gov/xp/cgov/toolbox/about/modernization/ace/
CSI	Container Security Initiative http://www.cbp.gov/xp/cgov/border_security/international_activities/csi/
CTPAT	Customs-Trade Partnership Against Terrorism http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/
WHTI	Western Hemisphere Travel Initiative http://travel.state.gov/travel/cbpmc/cbpmc_2223.html
US VISIT	U.S. Visitor and Immigrant Status Indicator Technology http://www.dhs.gov/xtrvlsec/programs/content_multi_image_0006.shtm
SENTRI	Secure Electronic Network for Travelers Rapid Inspection http://www.cbp.gov/xp/cgov/travel/frequent_traveler/sentri/

Canadian Agencies and Programs, with Web References

CBSA	Canada Border Services Agency
ACI	Advance Commercial Information http://www.cbsa-asfc.gc.ca/import/advance/menu-e.html
PIP	Partners in Protection http://www.cbsa-asfc.gc.ca/general/enforcement/partners/menu-e.html
CSA	Customs Self Assessment http://www.cbsa-asfc.gc.ca/import/csa/menu-e.html

Joint U.S. – Canadian Programs, with Web References

FAST	Free and Secure Trade http://www.cbsa-asfc.gc.ca/import/fast/menu-e.html
NEXUS	not an acronym http://www.cbp.gov/xp/cgov/travel/frequent_traveler/nexus_prog/nexus.xml

the offshore inspection of suspect shipments. Both nations use software-based targeting systems to automatically identify high-risk container shipments while they are in transit. At the heart of these programs is the concept that certain security threats are too dangerous to interdict at a port within the security perimeter.

The ACI program and the American ACE program are also applicable to truck and rail shipments across the Canada – U.S. border. The programs have parallel provisions requiring that certain paperwork be submitted to customs agencies at least one hour prior to the arrival of a shipment at the border. During that hour agents can perform security screenings, as well as identify irregularities with regard to tariffs and other regulations. Processing of the shipment upon its arrival at the inspection booth is thus more rapid.

Both nations have likewise implemented programs designed to verify the integrity of entire supply chains. These Canadian and American programs, respectively known as PIP/CSA and CTPAT, are available to importers by voluntary enrollment. The programs require the assessment of every link in a supply chain: offshore manufacturers must adopt security measures to ensure that only valid goods are loaded into containers; trucking and shipping companies must adopt measures to preserve container integrity in transit; all such security measures are subject to audit. For the importer electing to undertake this rigorous and continuous compliance process, the benefit is access to expedited freight clearance at the Canada – U.S. border, via the jointly implemented FAST program. At the time a FAST shipment reaches the border, a customs agent knows that the driver, the trucking company, the upstream shippers, the manufacturer, and the importer have all been through a vetting process. Dedicated FAST lanes are available at a number of border crossings, allowing FAST shipments to bypass otherwise lengthy queues. Given the rigor and complexity of the enrollment process, the PIP/CSA and CTPAT programs are thus far used only by large and sophisticated importers. In concept, such programs push the security perimeter outward along tentacles extending into distant countries.

Clearance of People. This section discusses Canadian and U.S. programs related to clearance of people, looking first at those programs applicable to citizens within the perimeter, and thereafter at those applicable to visitors seeking to enter the perimeter from abroad. The article includes no discussion

of persons claiming asylum or seeking immigrant status.

In 1952, the U.S. Immigration and Nationality Act established a near-universal requirement that a person produce a passport to gain entry into the U.S. One exception applies to U.S. citizens and to visiting (i.e., non-immigrant) Canadian citizens making entry to the U.S. from certain countries in the Western Hemisphere. Canadian statutes likewise allow for Canadian citizens and for visiting U.S. citizens to enter Canada without a passport. American and Canadian citizens are thus able today to cross the Canada – U.S. border upon demonstrating citizenship using other documents, such as citizenship certificates, birth certificates, and driver's licenses.

The volume of cross-border visitation is of such magnitude that queues are (and historically have often been) a common occurrence at some crossing points. In an effort to expedite crossings for certain low-risk travelers, CBSA and CBP jointly offer the NEXUS program. Through this program, U.S. and Canadian citizens voluntarily submit to a vetting process that is more rigorous than that necessary to qualify for a passport, and are then issued a NEXUS card that supports two biometric identifiers (i.e., fingerprints and a facial photo). Participants are thereafter able to make use of dedicated NEXUS lanes, within which the inspection process can proceed rapidly with little risk to security. NEXUS is an example of a “trusted traveler” program, and similar programs are used elsewhere within the continental perimeter (e.g., NEXUS-Air at the Canada – U.S. border, SENTRI at the U.S. – Mexico border, TSA's proposed trusted air traveler program).

The trusted traveler concept has appeal because it holds the promise of expediting crossings for *all* travelers, at little cost to security. By removing trusted persons from the general passenger stream and speeding their passage, a smaller group remains within the standard inspection process, and the overall rate at which travelers can transit the border is raised. From the viewpoint of the Perimeter Clearance Coalition, trusted traveler programs are a central element of the PC Paradigm.

In 2004, the U.S. Intelligence Reform and Terrorism Prevention Act mandated a change to the status quo concerning passports.⁵ The waivers previously available to U.S. and Canadian citizens were rescinded, replaced by a new provision that every person entering the U.S. present a passport or an alternative secure document deemed by DHS to be sufficient to denote identity and citizenship.

Known as WHTI, the new documentation requirements become effective in January 2007 for air and marine travel, and no later than June 2009 at land borders. Thus far, two kinds of alternative documents appear likely to receive DHS approval. First, the U.S. State Department proposes to issue a wallet-size passport card, available to U.S. citizens and valid for travel by land and sea between the U.S. and Canada. The card will also support access to NEXUS lanes if the cardholder completes the additional vetting required to enroll in NEXUS. Second, a NEXUS card is itself likely to be acceptable.

An alternate means for compliance with WHTI is advocated by some, because of a separate piece of U.S. legislation known as the REAL I.D. Act of 2005. The act establishes new standards applicable to an I.D. card if the card is to be used for a federal purpose (e.g., entering a federal building, boarding a plane). The act envisions that state motor-vehicle administrations will adopt the new standards, so that driver's licenses compliant with the act will become widespread. Since the act mandates that an I.D. must contain validated information regarding citizenship, a driver's license that complies with REAL I.D. seemingly could fulfill the requirements of WHTI.

Disagreement exists about whether WHTI aids or impedes the process of crossing the Canada – U.S. border. Enforcement agencies expect that service times at inspection booths will be more rapid if agents need be familiar with only a small set of I.D. documents, and if the documents themselves are less subject to fraud. Opponents of WHTI fear that it will harm the economy and the social fabric of border communities, because the cost and inconvenience of compliance will reduce the number of persons choosing to cross the border. With respect to the PC Paradigm, WHTI appears likely to facilitate the crossing of an internal border for one group of travelers, but to figuratively “harden” that border by altering the travel choices of others.

Turning now to persons seeking to cross the security perimeter, it is useful to review the traditional visa-issuance process, which has long been deployed within the one-border framework. A nation's consular officers review visa applications, vet applicants against “watch lists,” examine travel documents, and interview most applicants. Visa particulars are entered into databases that are thereafter accessible to that nation's inspectors. Technology can be used to ensure that the traveler standing at the inspection booth is the same person vetted weeks earlier at a distant consulate – i.e., the biometric screening performed overseas can be duplicated at the port of entry, with all biometrics remaining under the control of the admitting nation. Note that this offshore screening model is the one that has just recently come to be applied to freight.

Difficulties arise, however, when processing visas within the two-border framework. The degree of harmonization that allied nations achieve with respect to their visa-issuance standards dictates what must occur at the borders inside their common perimeter. If allies were in total harmony, the visa issued by one nation could serve as a universal visa, valid for all countries within the alliance. The visitor could enter at any port on the perimeter and thereafter travel freely within; internal borders would become moot. Such a mechanism implies a completely integrated information system. The *Schengen* model employed in Europe embodies this concept.

Canada and the U.S. have achieved a degree of harmoniza-

tion, but are well short of concordance. One area of partial harmonization is with respect to the selection of “visa waiver” countries, which are countries whose citizens need not acquire a visa in order to make a visit. A visitor from a country granted visa-waiver status by both Canada and the U.S. can enter the perimeter through either country and thereafter travel freely throughout the two (albeit with no special privilege at the internal border). Canada and the U.S. consult with regard to selection of visa-waiver countries. There are 27 countries granted visa-waiver status by both Canada and the U.S., 18 additional countries granted waivers only by Canada (many of which are within the Commonwealth), and 149 countries upon which a visa requirement is imposed by both. In essence, harmony has been achieved only with respect to the 27 common visa-waiver countries. There is as yet no integration of the information systems used by the two nations to support visa processing.

The Perimeter Clearance Coalition advocates the concept of a jointly implemented “Perimeter Card” that would support both nations' processes. Visa issuance would continue to be performed independently, but a shared-platform “smart” card would be used to hold the particulars of visas. From a single card, a U.S. inspector could pull up the details of the U.S. visa issued to a given person, and a Canadian inspector could pull up the details of the Canadian visa. The card would support multiple biometrics and be highly resistant to fraud.

The US VISIT program, a unilateral American initiative, implements some parts of the Perimeter Card concept. While most Canadian citizens are exempt, US VISIT applies to virtually all other visitors to the U.S., regardless of whether they possess visas or are traveling on visa waivers. For persons seeking visas, enrollment in US VISIT begins at overseas consular offices, where a digital photo is taken and fingerprints are scanned. Upon arrival at a U.S. port of entry, the traveler's identity is confirmed by another fingerprint scan, and he is issued a paper form containing an embedded microchip. For a visa-waiver visitor, enrollment and biometric registration occur upon arrival at the U.S., aided by automatic transfer of data from the visitor's machine-readable passport to the smart form. For all visitors, the form is thereafter used to rapidly retrieve the traveler's records and, in theory, to automatically register (via remote chip reader) his departure from the U.S.

Canada and the U.S. have had difficulty implementing the PC Paradigm in the passenger clearance arena, as evidenced by the low degree of harmonization of visa standards and by the controversy surrounding programs such as WHTI. Greater success has been achieved in the arena of freight clearance.

Endnotes

1. The *Smart Border Declaration* can be retrieved from: http://geo.international.gc.ca/can-am/main/border/smart_border_declaration-en.asp
2. The excerpt is from the “Security Agenda” of the *Security and Prosperity Partnership*. It can be retrieved from: http://www.spp.gov/2005_launch.asp
3. The excerpt is from the executive summary of the “Strategy” of the Perimeter Clearance Coalition. It can be retrieved from: <http://www.perimeterclearance.org/>
4. The text of the preclearance agreement can be retrieved from: <http://foia.state.gov/documents/IntAgreements/0000B95B.pdf>
5. The text of the act can be retrieved from: [http://thomas.loc.gov/cgi-bin/query/z?c108:S.2845.ENR:Section 7209](http://thomas.loc.gov/cgi-bin/query/z?c108:S.2845.ENR:Section%207209) is the portion relevant to travel documents.