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Advancing U.S.- Canada Border Transportation Planning and Programming

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About the Border Policy Research Institute

The BPRI focuses on research that informs policy-makers on matters related to the Canada-U.S. border. Policy areas of importance include transportation and mobility, security, immigration, energy, environment, economics and trade.

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Introduction

1.1. The problem

Since NAFTA, the United States and Canada have initiated programs to address cross-border transportation and anticipated increases in North American trade and travel. In 1999, The United States, through its multi-year transportation authorization act, began the Coordinated Border Infrastructure Program (CBI). This program, focused on border transportation investments, also established federal support for regional, binational planning coalitions. In 2000, U.S. Secretary of Transportation Rodney Slater and Canadian Minister of Transportation David Collette signed a memorandum of cooperation to collaborate on transportation issues of mutual interest. This quickly led to the formation of the U.S.-Canada Transportation Border Working Group (TBWG) in the same year. In 2002, the Canadian federal government unveiled the Border Infrastructure Fund (BIF).

These initial efforts encouraged cooperation across the border, cooperation between agencies, and set up ongoing dialog to improve awareness of issues and best practices. The heightened level of collaboration resulting from these initiatives has been most beneficial at the project implementation stage. During construction of a project or installation of operational enhancements, recently improved awareness of cross-border system dynamics, binational perspective, and binational professional networks within border management and operation agencies has been a benefit to both countries and individual border regions.

The above efforts however have not established a longer-view assessment of how our countries and agencies might collaborate on border transportation policy and planning for operations and infrastructure. While it is true that the majority of each country's executive level statements on the importance of trade, transportation, and security are in accord, the collaborative efforts fostered by friendship, adjacency, social likeness, and post-NAFTA continental partnership in a globalized economy have not gotten to a place where both countries, together identify mutual expectations of the cross-border transportation system. Instead, with regard to cross-border transportation, the U.S. and Canada continue to separately develop strategic policy, planning, and investment programs and stop short of using forums like the TBWG to form or inform a shared strategy for border planning and development.

1.2. Perspective – the author

My perspective in identifying this research topic and writing this paper comes from 14 years of working with a regional cross-border planning coalition, the International Mobility and Trade Corridor Project (IMTC). Facilitating cross border interagency collaboration through IMTC, conducting periodic planning studies, and advancing improvement projects for regional cross-border transportation and inspection systems is the primary focus of my work at the Whatcom Council of Governments, a U.S. metropolitan planning organization (MPO). Additionally, since 2002, I have participated with the U.S.-Canada Transportation Border Working Group (TBWG), a federal level coordinating body for cross-border transportation issues. I currently serve on the TBWG Steering Committee and as a co-chair of the TBWG Policy Subcommittee.

1.3. Audience

This project's primary audiences are the U.S. and Canadian federal governments (the U.S. Federal Highway Administration and Transport Canada) as they continue joint efforts on collaborative improvement of our shared border. The policy alternatives outlined below will address a variety of persistent obstacles and missing pieces that currently limit the potential depth of coordination on planning and programming.

A detailed review of how transportation-planning coordination could be improved would also benefit states and provinces by helping them clarify and normalize their roles as necessary partners in border management and operation.

1.4. Report structure

This report is organized in four sections. A literature review will survey existing material and current, documented discussion focused on comparing and contrasting the administrative mechanics of U.S. and Canadian federal agencies. Existing collaborative arrangements will be considered as well as legal obstacles to more predictable program alignment.

The body of the report will draw on identified literature, recent work of existing cross-border working groups, interviews with participants in ongoing cross-border work, and the most current actions of U.S. and Canadian federal executive (i.e. the U.S. Canada Border Vision) to address the question: Why has joint policy development been outside the scope? Angles on this question, treated in several report-sections, will include structural differences in federal program development, intergovernmental dynamics, and the role of continuous evolution of cross-border mechanisms.

Lastly the report will offer ideas for improving collaboration on development of shared long term strategy and programs that support those strategies. This section will cover program development, the relationships between federal and state and provincial governments, the role of binational border regions, and the possible improvement of mechanisms for binational investment and cooperation at the sub-national level.

1.5. An important note on scope

At the border, transportation, enforcement and security are intertwined. Because the primary focus of this paper is on improving the policy-making process, and transportation planning and programming is the chosen example for this research, the large amount of border-security and inspection-agency issues that would arise during any kind of actual program or project implementation are largely left to the side.

Literature review

The literature review undertaken here is first a survey of existing discussions of 1) how U.S. and Canadian federal government administration compare and contrast in program development and administration and 2) how similarities and differences affect the feasibility (or desirability) of collaboration at earlier stages of program development. Secondly, material was reviewed that included both assessments of past and current bilateral or North American cooperation as well as policy position papers from various sources on how the U.S. and Canada should proceed in the near future.

Material considered for this project can be grouped in three categories: 1) basic descriptions of underlying government structure including comparisons of U.S. and Canadian policy-making institutions, 2) academic writings and government publications on North American integration, continentalism, government cooperation, etc. and 3) a mixture of academic, journalistic, and institutional policy position-papers related to advancing binational and trinational agendas. Lastly, the very recent declaration between President Obama and Prime Minister Harper is a key document for this project to consider.

1.6. Descriptive texts on government structure

An initial step was to review detailed descriptions of U.S. and Canadian government and legislative mechanics -- the determinants of our respective federal agency mechanics. These materials include thorough descriptions of each country's different form of democracy (the presidential system versus the parliamentary system), Canadian Library of Parliament publications on Canadian Government structure (inclusive of chapters on comparison with U.S. government), published Canadian debates on the U.S. congressional systems versus the British parliamentary system, detailed reviews of the Canadian federal budget process, and more. These materials (listed in the bibliography) inform an overview in the next section of the steps entailed in developing a federal program in the U.S. versus Canada.

1.7. Academic and government-sponsored texts on governance & continentalism

The next layer of literature to review was writings on *existing* forms of government-supported cooperation between the U.S. and Canada. Several institutional websites that maintain libraries and cross-listings of publications on these topics were very helpful. These include the Portal for North America, The North American Center for Transborder Studies, The Border Policy Research Institute, and the U.S.-Canada Transportation Border Working Group. While most of the *academic* literature in this area is under sub-categories like integration, continentalism, intergovernmental cooperation, and governance, there are, within this group, publications more specifically focused on themes relatable to this project's federal-program orientation. While many papers are more focused on examining the prospects of NAFTA-based governance or comparing continental institutions, others focus, at least partially, on the implications of governmental structure on bilateral cooperation and integration.

Clarkson and Banda in their 2004 paper on shifts in North American governance write from the perspectives of International Relations and Political Economy to first broadly discuss drivers of international policy alignment and determinants of whether two or more countries would want to, or would be able to, align their societal priorities—especially when one country, the United States, is disproportionately dominant in the continental relationship. In light of post 9/11 shifts by the U.S. Clarkson and Banda go on to suggest that the typical classification of governance regimes as either *functionalist* (organic alignment pursued within integrated sectors) or *intergovernmental* (deliberately

orchestrated alignments facilitated by government actors) are inadequate for describing the recent interactions between, or likely future for, NAFTA states. Intergovernmental governance, for example, would be that undertaken by European Union style institutions. But Clarkson and Banda's assessment, articulated in these terms, is that the United States, after 9/11, shifted from a functionalist approach to NAFTA to a security-focused intergovernmental approach more focused on *bilateral* interactions than tri-national, North American continental governance. For the research being pursued here, it is interesting that Clarkson & Banda predict that a likely consequence of this shift will be that "economic pressure to maintain free flows of goods and people can be expected to generate integration incrementally as relatively small and technical issues are dealt with on an ad hoc basis." (Clarkson & Banda, pg. 26) Indeed, a point of departure for this paper is that the U.S. & Canada and the U.S. & Mexico have pursued project-level [i.e. incremental] coordination in line with respective national policies but have not formulated longer-term approaches informed by structured review of shared objectives.

Publications that focus more specifically on U.S.-Canada regulatory convergence include George Hoberg's comparative work on U.S. and Canadian environmental governance. Hoberg gives a detailed assessment of how differences in policy-making institutions present challenges for binational cooperation. Differences between the United States' "separation-of-powers" system and Canada's parliamentary system are cited to illustrate the idea of *legalism*: legislative, congressional control of regulatory authority in the U.S. (which also plays out in relative involvement of each country's judiciary in regulatory matters). A second dimension presented by Hoberg is fragmentation, which he uses to cite the relative centralization of each country's federal government – a more powerful federal government in the U.S. and relatively more autonomous provincial governments in Canada. While these factors present challenges, Hoberg asserts (in a way that seems to accord with the motivations for this project) that "It would be too simplistic to state that they [institutional differences] are a force for divergence." (pg. 355)

Hoberg presents three categories of "forces for convergence:" international factors, economic globalization, and emulation. While all three are relevant to the discussion undertaken here, Hoberg's citing of emulation (interactions which involve officials or policy specialists evaluating policy alternatives through participation in transnational policy communities—pg. 359) seems to characterize a lot of what has occurred in recent years between U.S and Canadian federal transportation agencies (including the Transportation Border Working Group).

Kirton and Guebert, writing just last year (more than ten years after the above-cited work by Hoberg), review the relatively recent emergence of what they call summitry – periodic meetings between executives and high-level staff of the North American governments. Summitry, it's argued, finds its effectiveness through "soft-law" mechanisms rather than "hard-law" instruments such as NAFTA. Kirton and Guebert cite four factors that they claim motivate the U.S. and Canada to pursue shared objectives through summitry and soft-law: legal, constitutional, and national values; increasing need of the United States to gain international cooperation on security strategies; political parameters of public opinion; and lastly, the process of incremental institutional "meshing"—incremental, path-dependent successes in meeting basic needs. The last of these four is especially interesting to consider in light of cross-border, interagency activities over the last ten or fifteen years.

One paper that bridges the more academic articles and the policy-position papers of chambers of commerce and industry associations (discussed more below) is Kirton and Richardson's paper (published by the Canadian Policy Research Institute) reviewing the Commission for Environmental Cooperation (CEC) as a lesson for Canada-U.S. regulatory cooperation.

The authors introduce the work as a study of Canada-U.S. regulatory cooperation and the CEC a possible model for broader regulatory cooperation. The report documents important differences as well as similarities to what already exists in the transportation sector in the form of the US-Canada TBWG. The CEC's existence and structure is defined in an international companion agreement to NAFTA (the North American Agreement on Environmental Cooperation – NAAEC). It is approved by our respective legislatures and comes with proscribed authorities. Despite this, the CEC, as depicted in this report, finds much of its effectiveness in coordination and communication similar to that conducted less formally through the TBWG.

One summary comment in the report states, “The CEC has produced useful deliverables. In general, it is best suited to doing so on relatively specific agendas.” (pg. 20) In many ways, it seems that the CEC's lack of “access” to a longer-view discussion about alignment of strategic goals and strategies is similar to the gaps that this research is identifying and responding to.

1.8. Policy papers of industry & government

Perhaps starting with the U.S.-Canada Accord on our Shared Border (the Shared Border Accord), our two countries' administrations have periodically developed and issued detailed policy statements covering an array of cross-border and sector-specific initiatives relative to various binational agenda (the Accord, the Canada U.S. Partnership, Smart Border Declaration, Security Prosperity Partnership). President Obama and Prime Minister Harper have issued the most recent declaration at the time of this writing: *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*.

Along with the established pattern of periodic executive declarations between U.S. and Canadian (and sometimes Mexican) administrations, industry associations, chambers of commerce, and other non-governmental and policy-advocacy institutions have over the last few years issued several assessments and lists of recommendations for how the U.S. and Canada can better align regulations and support relative to shared objectives. Examples of these documents include The Canadian Chamber of Commerce's December 2010 report, *Strengthening Our Ties: Four Steps Toward a More Successful Canada-U.S. Partnership*; NACTS's 2009 report, *North America Next: A Report to President Obama on Building Sustainable Security and Competitiveness*; Carleton University's Canada-U.S. Project's 2009 report: *From Correct to Inspired: A Blueprint for Canada-US Engagement*; and The Canadian International Council's (CIC) 2008 report, *A New Bridge for Old Allies*. These reports, collectively and individually, identify goals, challenges, and strategies that both illustrate a constituency for border-facilitation and substantiate many of the perceived gaps that motivate this research project.

The reports reference the challenges presented by the mechanical differences between our forms of democracy (e.x. the Carleton University report notes that “the unique separation of powers in America inevitably trumps notions of party loyalty...” pg. 13).

The reports note that most U.S.-Canada cooperation has been in response to specific issues as they arise and that such a pattern of ad hoc cooperation will not support the level of collaboration required by current shared objectives. On this point, the Carleton report states that the U.S. and Canada are faced with a dearth of [shared] institutions at the highest levels of government capable of engaging political leaders (Carleton University, pg. 14).

The CIC report is noteworthy for 1) its recommendations regarding transportation planning which includes themes I echo in this research and 2) the many details which seem to have been absorbed into the recent Harper-Obama declaration. Under its section on a “shared border and transportation strategy,” the CIC report recommends that “In order to maximize the benefits for the North

American economy and to strengthen the Regional Secure Space, a Joint Transportation Strategy should be established, so that future transportation planning involving our common border can be undertaken at the same time by policy makers in both countries.” (pg. 6) While this is very much part of the what this research is about, the CIC report illustrates the potential value of this endeavor primarily by citing specific systems (port operations, regulatory changes, etc.). More along the lines of the institutional changes that would be needed to develop and work within a new Joint Transportation Strategy, the CIC report recommends establishing “a standing Canada-US Transportation Planning Group staffed by officials from Transport Canada and the US Department of Transportation and supplemented by representatives from province/state transportation departments to promote synergies between intended transportation investments on both sides of the border.” To the extent that such a committee has existed since 2001 in the form the U.S.-Canada Transportation Border Working Group (TBWG), these good suggestions support the need to explore further how these goals and actions can be built on and used to sustain ongoing, programmatic strategy development and planning-coordination for cross-border transportation.

1.9. Very recent writings saved for later discussion

The February 2011 Beyond the Border Declaration (issued by the Canadian and U.S. governments), as well as a paper examining the declaration (*The Canada Gambit* by Chris Sands) were reviewed for this research. Since these two pieces are so directly pertinent, all discussion of them will be handled in later sections.

Building blocks of symmetrical federal programs

This section will review the determinants most likely to influence the pursuit of the theoretical action considered in this paper: improving our institutional ability to jointly plan and administer complementary federal programs and specifically, programs that focus on our shared cross-border transportation systems. As important context, Section 4 will briefly review challenges to administering border related programs whether such programs are bilateral or not.

1.10. Government structure

As is often and appropriately noted at the beginning of a diplomatic statement by a U.S. or Canadian official commenting on cross-border interaction, our countries enjoy the daily benefits of commonality to a much larger degree than we are encumbered by differences. Nevertheless, in preparing to navigate a path towards improved bilateral coordination, there are meaningful differences to appreciate in the structures of our federal governments that shape the opportunities.

The representative democracies of the United States and Canadian *governments*¹, a presidential system and a parliamentary system respectively, while comprised of a similar federal-government components and legal conventions, operate under significantly different distributions of legislative and executive authorities and resulting sequences of legislation and administrative execution. The preceding section’s discussion of proposed binational commissions, much like initiatives tried under past binational declarations, begins to illustrate how the presidential-parliamentary mismatch should

¹ Distinguishing here between governments and countries – as a country, Canada is a constitutional monarchy with the King or Queen of England as the head of state while the Canadian prime minister is the head of the government. The U.S. president can be considered head of state *and* head of the government. (Forsey, pg. 25)

inform current and future approaches to longer-term cooperative strategy. In Canada, since the prime minister and ministers in charge of federal agencies are selected from the majority party (or coalition) in the legislature (the House of Commons), the executive and legislative branches are, by definition, in accord respecting policies that advance from the government. In the United States, because the president is separately and directly elected and remains a separate actor from the legislature, issuance of a joint declaration with the prime minister of Canada for example, cannot be assumed to have the support of the U.S. Congress. The practical result is that, despite a lot of careful thought and energy of political leaders of both countries, periodic declarations by both countries' executive branches cannot be assumed to have support of the U.S. legislature. And, definitive, legislative support is often needed. U.S. administrative agencies can only spend money (conduct actions) on things that are authorized in law. So, while a declaration might proclaim a shared interest in change, proposed changes might still require new corresponding legislation.

1.10.1. Comparing the origins of federal agency action

To carry out their obligations and policies, governments create programs and agencies. Because U.S. and Canadian government structures (discussed above) apply different parameters and sequences to this process, a general comparison of the path from program conception to execution is useful.

The federal budgets. A good place to start is a comparison of the U.S. and the Canadian federal budget. In Canada, the federal budget is *the document* that declares what the government will do. It's not law in and of itself, but the Government, after a thorough process of consultations with government departments, financial forecasters, and parliamentary committees, introduces the budget to parliament for approval. (Disapproval of the budget is a no-confidence vote and initiates selection of a new government.) After political approval, Parliament approves the budget in law with an implementation act and funds the budget with appropriations acts.

The U.S. federal budget is, by comparison, more simply a proposal from the President based on the administration's (the executive branch's) priorities. While it is also the product of numerous inputs from agencies, committees, and financial forecasts, the programs that the budget proposes to continue or initiate depend on a mixture of existing authority (for existing programs) and new legislation (for new programs) from a cooperative legislature. As a good example of a resulting difference between the U.S. presidential system and the Canadian parliamentary system, the success the President can expect in advancing priorities through the budget is largely dependent on the degree of political alignment with the current Congress.

Authorizations. As noted above once a new program is approved in the Canadian budget, its legislative authorization by Parliament is essentially procedural. In the United States, authorizing-legislation is not only a required next step in response to a budget proposal, it is an independent process of Congress through which the legislative branch can initiate or terminate government programs—either in cooperation with the President or not.

Appropriations. In both countries, for an authorized federal program to receive funds, the legislature must appropriate funds in law. In Canada, like the budget implementation acts (authorization), appropriation acts are almost assured following parliamentary budget approval.

In the United States, the basic fiscal sequence is the same but passage of appropriations acts is a more separate step (institutionally, temporally, and often politically) and continues the policy negotiations between the Administration and the Legislature, between legislators from different parties and regions, and among special interests. It's also important to realize that U.S. appropriations bills have evolved to become an opportunity for legislators to insert language

directing that specific projects receive specific amounts of funding—commonly referred to as earmarks (recently a topic of much debate in the U.S.). A result is that each step is then another opportunity for significant revision.

Execution. At the end of the cycle, a government agency (for the purposes of example in this paper, Transport Canada or the U.S. Federal Highways Administration) is authorized and funded to carry out a program. From the perspective of this research--evaluating the ongoing implications for binational programmatic coordination—two things can be pointed out here.

- 1) Execution of a program by a federal department often requires rule making at the outset—writing regulations. This is obviously a critical area for any binational initiative.
- 2) The coordination of program execution, and in some cases the improved alignment of agency-level regulations *is* the arena that the United States and Canada have been working in. For a longer term, more strategic, programmatic approach to border-facilitation to develop, it is likely necessary to pursue more parallel development of complementary program elements earlier in the cycle outlined above.

1.11. Comparing existing U.S. and Canadian national border programs

The U.S. and Canada have adopted compatible views of our shared border. While not intended to complement each other, our countries have developed similar investment programs in support of cross-border trade and travel. This existing context is another building block. This section presents two comparisons of these programs—one to examine the components of the programs and another to examine how the two programs were established within their respective government processes. The purposes of this section are to 1) show that the U.S. and Canada already approach similar issues with similar strategies and tactics, 2) provide a reference for identifying alignment opportunities in the program development stage, and 3) exemplify a perspective that could better facilitate future discussions of coordinated program design.

1.11.1. The U.S. Coordinated Border Infrastructure Program (CBI) and the Canadian Gateways and Border Crossings Fund (GBCF) – STRUCTURE

	Canada’s Gateways & Border Crossings Fund	US Coordinated Border Infrastructure Program
Year started	2007	2005
Length of Program	7 years	5 years (has been extended under continuing resolutions)
Total funding	\$2.1 billion (CAD)	\$833 million (USD)

	Canada’s Gateways & Border Crossings Fund (continued)	US Coordinated Border Infrastructure Program (continued)
Purpose	The Gateways & Border Crossings Fund is advanced under, and in alignment with, the broader <i>National a Framework [NPF] for Strategic Gateways and Trade Corridors</i> , a “...long-term policy, planning and strategic investment in transportation systems to strengthen Canada’s position in international commerce” which “...will support specific strategies to seize geographic, trade and transportation opportunities in key regions.” The Gateways and Border Crossings Fund, specifically, will “enhance Canada’s trade competitiveness and the efficiency of the national transportation system. This fund helps support infrastructure improvements at and leading to key locations, such as major border crossings between Canada and the U.S. It also advances multimodal and technology initiatives that improve system integration.” (NPF pg 14)	...to improve the safe movement of motor vehicles at or across the border between the United States and Canada and the border between the United States and Mexico.
Funding allocation decision process	Strategies and investments are based on subsequent analysis with regard to the NPF’s five policy lenses. (NPF pg. 5) Specific funding amounts are awarded on a merit basis. (NPF pg. 14)	Funds distributed by formula to border states who decide investments based on eligible-use and geographic criteria.
Eligible uses	<ul style="list-style-type: none"> • Core National Highway System (NHS) facilities impacted by increased trade flows, • Inter-modal connectors and facilities, • International bridges and tunnels, • Rail/road grade separations, • Short-line rail, • Short-sea shipping, and • Intelligent transportation systems. 	<ul style="list-style-type: none"> • Improvements to existing transportation and supporting infrastructure • Construction of highways and related safety and safety enforcement facilities related to international trade • Operational improvements, including electronic data interchange and use of telecommunications • Modifications to regulatory procedures • International coordination of transportation planning, programming, and border operation with Canada and Mexico.

	Canada’s Gateways & Border Crossings Fund (continued)	US Coordinated Border Infrastructure Program (continued)
Financial requirements	Federal funding is negotiated with provinces through a participation agreement which establishes match requirements and other	20 percent non-federal match required.
Information sources	<i>National Policy Framework for Strategic Gateways and Trade Corridors</i>	SAFETEA-LU (Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users) Section 1303

Observations on program structure: Breaking down and comparing programs in terms of commonly labeled dimensions helps illustrate some of the details that more symmetrical programs could incorporate as well as those that are probably less important. Timelines could match better which could improve the likelihood of each country being better positioned to pursue collaborative projects. Funding amount, is important but, unless the amounts are so different to render coordination pointless, other aspects of programmatic symmetry are likely much more critical to success.

The stated purposes of the two programs compared here – again, not that these programs were intended to complement each other—are not as dissimilar as they are unbalanced. First, the U.S. program also covers borders with Mexico. Second, the Canadian Gateways & Border Fund is directed at multiple policy objectives. So, the implication of this dimension is that finding ground for symmetry will require focus

The funding allocation dimension gives some insight into Hoberg’s discussion of *fragmentation* (discussed above) – the funding distribution mechanisms being much more institutionalized between U.S. states and the U.S. federal government. But there is no clear reason differences along this dimension would be a barrier to programmatic symmetry.

The eligible use lists are typical. A comparison of them sheds a little light on the program objectives that would need to be narrowed or aligned to affect better symmetry (ex. highway focus vs. multimodal, infrastructure, planning, information technology). Eligible uses may also be a function of the administering agencies involved and what they are authorized to be involved in.

Financial requirements are not likely an essential dimension with regard to program symmetry but could be a source of benefit if designed to be complimentary. Eligible sources match, eligible recipients, amount of time recipients have to use funds are examples of financial dimensions that would affect how well two programs could be coordinated towards shared objectives.

1.11.2. The U.S. Coordinated Border Infrastructure Program (CBI) and the Canadian Gateways and Border Crossings Fund (GBCF) – PROGRAM DEVELOPMENT

This section will review and discuss the basic steps conducted to design and implement the U.S. CBI program and the Canadian GBCF program. Again, the objective is to provide a chronology that will help identify opportunities for coordination earlier the program-development cycle.

	Canada’s Gateways & Border Crossings Fund	US Coordinated Border Infrastructure Program
First documented proposal.	Program proposed from within Transport Canada to be a component of the Strategic Gateways and trade Corridors program.	Proposed in draft reauthorization legislation – either by Congress or the Administration.
Internal review and approval for advancement	Proposal to Minister’s office – Approval by Minister.	Review for incorporation into draft legislation by House and/or Senate subcommittees.
Review for inclusion in authorization bill.	Review for inclusion in next year’s federal budget.	Review of how program fits into context of specific authorization bill.
Passage of authorization act.	Budget approved and corresponding authorization bill passed.	House of Representatives passage.
		Senate passage
		Conference committee administrative revisions
		Presidential signature

Observations on program development: The steps identified and described in the above table are truncated and generalized but is hopefully sufficient to identify questions about possible program-design strategies.

Comparing CBI’s and GBCF’s first documented proposal (some record of both the impetus and the proposed programmatic response) one of the first observations is that collaboration would need to start before this – with a decision to work together to develop this proposal for parallel, complementary programs. If the acknowledged intent were to seek legislative authorization for a new program, would the work required to develop the proposal require its own approval

The transition to and completion of the next two steps, internal review and inclusion in an authorization bill, illustrates a process difference between the United States and Canada. In the U.S. these next phases involve review by legislative committees and inclusion in a bill. In Canada, the process remains under the purview of the government (the administration) until the largely procedural legislative action of authorizing the government’s budget. Because of the large amount of changes that are typically made to draft legislation and budgets by legislators and committees (in both countries) the theoretical example being considered here, deliberate parallel development of symmetrical investment programs, would likely be challenged by the simple difficulty of maintaining control over the details. Before undertaking an effort like this, it would be critical to have a pre-arranged mechanism for monitoring and consultation throughout the process.

1.1. Existing efforts – The Transport Canada – U.S. Department of Transportation MoU and the TBWG

Towards the goal of coordinating various cross-border transportation initiatives, the United States and Canada developed and signed a Memorandum of Understanding in October 2000. Both the MOU and the resulting formation of the TBWG are additional building blocks—additional institutional capacity—that could be drawn on to support and foster development of symmetrical planning and investment programs.

This section will review the October 2000 MOU and the TBWG’s role in advancing the MoU’s goals. The initial section of the MoU, the stated motives (the “whereases”) will be listed and discussed. Next, to provide some context for a review of TBWG-actions relative to the MoU’s stated intentions, basic features of the TBWG will be reviewed. Lastly, the MoU’s listed intentions will be used to structure a review of TBWG activity.

1.1.1. High level objectives of the MoU (MoU part 1 of 2)

WHEREAS 1	<i>WHEREAS the Department of Transportation of the United States of America and Transport Canada desire to enhance collaboration on transportation matters of mutual interest including: The need to</i>
ASSESSMENT	Clarifies parties to the MOU and topic of transportation.
WHEREAS 1B	<i>Develop a common border/ corridor strategy and for better coordination between the United States and Canada;</i>
ASSESSMENT	This research paper largely picks up on this idea.
WHEREAS 1C	<i>Cooperate on developing and implementing national policies on intermodalism; and</i>
ASSESSMENT	Careful language that steers clear of <i>binational</i> policies or institutions but, nonetheless, puts a very ambitious goal on the table.
WHEREAS 1D	<i>The need for more frequent high-level communication between Transport Canada and the U.S. Department of Transportation;</i>
ASSESSMENT	Interesting to remember that not much of this was happening before 2000.
WHEREAS 2	<i>AND WHEREAS the U.S. Department of Transportation and Transport Canada recognize that the significantly increased trade flows and passenger flows between the United States and Canada are exerting pressure on our shared land border and that the resulting border delays have a negative impact on the logistics supply chain and the economy;</i>
ASSESSMENT	The shared motivation: trade, supply-chain logistics, and the economy. Pre 9/11 so security not yet as prominent.
WHEREAS 3	<i>AND WHEREAS establishment of common data elements, data identification, collection, and analysis is of paramount importance in understanding, planning and deployment of interoperable transportation systems of the future;</i>
ASSESSMENT	Acknowledgement of the importance of information based on mutually validated data.

WHEREAS 4	<i>AND WHEREAS transportation research and development, including intelligent transportation systems (ITS), is a high priority for both the U.S. Department of Transportation and Transport Canada.</i>
ASSESSMENT	Expectation of cooperation's value to research, development, and application of information systems.

1.1.2. TBWG basics

Administered jointly by FHWA and TC, and meeting semiannually in alternate U.S. and Canadian locations usually near the border itself, the U.S.-Canada Transportation Border Working Group (TBWG) formed a mission statement (based on the MoU), an action plan (available at www.thetbwg.org), and a subcommittee structure to support the action plan.

Most directly connected to the seventh goal of the MoU (listed below), “Meeting more regularly to conduct information exchanges and discuss issues of mutual concern,” the initiation of the TBWG included an additional element that is critical to note here – the inclusion of U.S. states and Canadian provinces. While this added a layer of sub-national government agency participation, it was an essential step in setting up a collaborative framework that accurately reflected the primary role states and provinces have in identifying, prioritizing, and funding transportation system investments and maintenance that, together with federally controlled ports-of-entry, support cross-border movement of trade and travel.

Additionally, while federal inspection agencies were invited to participate in TBWG from the beginning, following the terrorist attacks of 9/11, U.S. and Canadian border inspection agencies were more formally asked to join Transport Canada and U.S. Federal Highway Administration as co-chairs of the working group (This never really took hold as intended).

In recent years, TBWG has regularly included more private sector representatives most notably industry associations representing bridge and tunnel operators (many important border crossings include privately owned bridges and tunnels) and industry associations like national trucking associations and manufacturers.

For more information on the TBWG organization, membership, mission statement, action plan, and activities, please see www.thetbwg.org

1.1.3. The MoU resolutions & TBWG (MoU part 2 of 2)

Following the above section on the basics of TBWG, The “resolution” section of the MoU (included with annotations below) can be used more appropriately as a checklist to review TBWG activities as they have related to the MoU.

Note: In order to facilitate the review of MoU intentions with respect to TBWG, Intention VII, which speaks most directly forming a working group, is moved to the top of the list.

INTRODUCTION	<i>Introduction: The Department of Transportation of the United States of America and Transport Canada intend to enhance collaboration and cooperation on:</i>
ASSESSMENT	The memorandum's "resolutions" are listed as <i>intentions</i> – a good way to move forward with documenting shared goals without invoking the weight and possible inertia of more binding or enforceable mechanisms. TBWG has indeed enhanced collaboration and cooperation – details below.

INTENTION VII	<i>Meeting more regularly to conduct information exchanges and discuss issues of mutual concern.</i>
ASSESSMENT	Lead by Transport Canada and U.S. Federal Highway Administration, TBWG was set up in 2000 and has met two times per year since then. TBWG has also been the principal or joint sponsor of numerous multi-stakeholder sub-committee meetings and U.S.-Canada transportation forums.

INTENTION I	<i>Corridor/border projects and new programs of mutual interest;</i>
ASSESSMENT	Many TBWG participants (ex. state and provincial transportation agency managers) have noted the numerous ways that the professional networks, information-exchange regarding current planning and infrastructure projects, and enhanced mutual appreciation for each other's planning and financing regulations have improved the process and quality of their respective border-related projects. While TBWG has established an Action Plan and subcommittees to help advance it (detailed more below), a specific approach to developing "new programs" has not been undertaken in the context of TBWG. Depending on how the MoU is interpreted on this point, the question posed in this paper is, if the U.S. and Canada (via TBWG or otherwise) wanted to advance coordinated border program development, how would it be best to pursue that?

INTENTION II	<i>Mapping freight flows, collecting data and identifying data gaps that need to be filled to help identify pressure points on the transportation and intermodal freight system in North America;</i>
ASSESSMENT	Early on, the TBWG established collaborative improvement of trade and traffic data as a specific initiative, placed it on the action plan, and formed a sub-committee to advance goals more directly. Benefiting from this level of attention and increased knowledge of various data sources, individual agency offices (like U.S. Bureau of Transportation Statistics and Statistics Canada) have continued collaboration with each other as well as pursued separate efforts to improve complementary data and information with federal border inspection and international trade agencies. The US FHWA Freight office has produced freight-flow maps (based on commodity flow survey data) and Industry Canada has pursued "value-chain mapping" studies. These have been independently pursued but both cognizant of cross-border routes. Transport Canada conducted a 2006 National Roadside Survey which collected more direct data on a large sample of cross-border freight. Lastly, the TBWG data subcommittee also commissioned a data gaps analysis titled <i>Developing a Framework for Collecting and Sharing Data and Information</i> .

INTENTION III	<i>The development of an ITS architecture for North America which includes common data elements and a common border architecture, intermodal freight architecture, and commercial vehicle architecture; and the use of this architecture to guide deployment of interoperable strategic ITS applications along the border;</i>
ASSESSMENT	Very much related to <i>intention IV</i> (below), Transport Canada and FHWA have has effectively used TBWG as the venue to develop and refine the Border Information Flow Architecture (BIFA) – a regional ITS architecture designed to serve as a template for coordinating information technology applications and interdependencies in a cross-border region.

INTENTION IV	<i>The development of North American standards for intelligent transportation systems which focus on priorities of mutual interest and avoid duplicative efforts;</i>
ASSESSMENT	There have been notable initiatives that fall into this category. The ongoing work of the Border Wait-time working group fits this description. In many ways, earlier and continuing work by the U.S. Federal Motor Carriers Administration with counterpart CCMTA in Canada advances goals of regulatory and operational alignment on issues of commercial vehicle safety. These specific operational issues are good examples of the level of detail that the TBWG is equipped to discuss.

INTENTION V	<i>Development of uniform approaches to expedited processing of commercial vehicles through border crossings, while satisfying the requirements of all governmental jurisdictions; federal, state and provincial;</i>
ASSESSMENT	This intention illustrates the level of interest, pre-9/11, in applying IT to border crossing efficiency. Post 9/11 (shortly after the signing of this MoU), this type of initiative took on a primary security focus and was spearheaded by inspection agencies rather than transportation agencies. The most obvious initiative that would fit under this category (but not an obvious <i>result</i> of this MoU) is the U.S. and Canada’s joint roll-out of trusted-trader programs as initiatives of the Smart Border Declaration and under the banner of FAST. The topic of joint-approaches to optimizing cross-border freight flow has remained central at TBWG and has included how federal, state, and provincial jurisdictions can best collaborate with operation of national programs such as FAST or border wait-time measurement and dissemination. This is the only place in the MoU where the importance of multiple governmental jurisdictions is noted. As evidenced by the TBWG’s composition, this level of involvement has been accomplished.

INTENTION VI	<i>Increasing the degree and speed of communication between the two departments to ensure that each is kept apprised of developments and initiatives in the other country;</i>
ASSESSMENT	Semi annual meetings of TBWG since 2000, the resulting network of government agency professionals and shared knowledge of each other’s roles and responsibilities, follows through on this intention very well.

Signed in Washington, DC, on this 13th day of October 2000.

For the Department of Transportation of the United States of America: Rodney E. Slater

For Transport Canada: David M. Collenette

1.1.4. The MoU – what we have established and what remains to be initiated

The U.S. and Canada, via TBWG and other parallel actions, have brought federal agencies together, along with state, provincial, and private sector representatives to create new and important networks, trust-based relationships, and institutional capacity to collaborate and partner on several distinct topics. These include trade and travel data and information collection and sharing, ITS planning standards, adding more coordinated and focused federal support to individual cross-border projects (such as new ports of entry), and repeatedly convened multi-stakeholder participation in new initiatives (i.e. border wait-time evaluations, border infrastructure financing, regional border planning).

Aspects of the MoU that have not advanced, looking specifically at the “intentions,” include collaboration on development of new programs (part of Intention I) and a cooperative assessment of the transportation and intermodal freight system of North America (part of Intention II). Looking at the MoU’s motivations (the “whereases”) it could be inferred that the signatories saw even more potential than they were ready to label as “intentions.” These include development of a common border/corridor strategy, cooperative development of national policies, and planning and development of interoperable transportation systems.

A theoretical objective that would fit well within the scope of these remaining components of the MoU could be cooperative development of new programs, based on shared national strategies, for ongoing coordinated investment in cross-border transportation. The final section of this paper will consider strategies for advancing that objective. Before that, the next two sections will review broader contextual issues that affect bilateral coordination on borders.

2. General challenges

Focusing coordinated attention on the border and border-related issues is challenging enough in the domestic policy environment. While it is the challenge of advancing solutions between neighboring countries that motivates this paper, some issues are likely to persist even if identified strategies worked wonderfully

2.1. Government timelines

Even if our governments were identically structured, it is likely that election cycles (both executive and legislative), fiscal cycles, and related program duration would be different. But many of these schedules are known and could be accounted for if crafting complementary cross-border strategies.

2.2. Operational intersection of transportation and inspection

The challenges of improving the alignment of planning timelines, investment prioritization, and overall communication between federal transportation agencies and federal border inspection agencies is an ongoing challenge that will likely be dealt with similarly with or without improved policy and program coordination.

2.3. Politics and policy agendas

For many reasons, efforts towards international coordination and partnership often raise specific citizen concerns about sovereignty, diversion of resources from domestic issues, association with unrelated policies of the other country, etc. Similarly, high profile domestic policy debates (ex. U.S. healthcare reform) can absorb sufficient amounts of a government’s attention to render other initiatives dormant. Such machinations will always be part of the landscape, and, along with the

structural implications of election cycles and fiscal calendars, only underscores the need for bilateral mechanisms that can sustain the ebb and flow of opportunity (and be able to position new successes as best practice).

3. Updating the context: The February 2011 Beyond the Border Vision (BBV) – declaration by President Obama and Prime Minister Harper

Somewhat concurrent with the initiation of this project, the context for the discussion was augmented by the signing on February 4, 2011 of *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness. A Declaration by the President of the United States of America and the Prime Minister of Canada.*

In many ways, the BBV can be seen as the latest in a series of executive-level declarations focused on improving U.S.-Canada bilateral undertakings and giving the listed objectives added push. Previous declarations in this category include the Security Prosperity Partnership (SPP), the Smart Border Declaration (SBD), the Canada-U.S Partnership (CUSP), and the Shared Border Accord (SBA). While a full review of the BBV is beyond the scope of this paper, specific components are very relevant to this examination of how our two countries might pursue collaborative program development.

3.1.1. Selected BBV citations

As evidence for how the BBV may provide policy direction and support for proactive joint program development, the following selections are listed below.

Citation 1

“We intend to work together...to fulfill our vision.”

Observation: As an opening principle, and much like the preamble of preceding declarations, cooperation on a vision is the essence of planning

Citation 2

“We rely on... transportation networks...”

Observation: Confirms interest in transportation and shared notion of a network.

Citation 3

“We intend to pursue creative and effective solutions to manage the flow of traffic between the United States and Canada. We will focus investment in modern infrastructure and technology at our busiest land ports of entry...”

Observation: While this goal could be pursued via well-intended unilateral investment programs, the desired creativity and effectiveness would be maximized if coordination is pursued prior to the project development phase.

Citation 4

“...we intend to continue planning together, organizing bi-national port of entry committees to coordinate planning and funding, building, expanding or modernizing shared border management facilities and border infrastructure where appropriate...”

Observation: While examples of the above-listed activities exist and provide evidence for the feasibility and effectiveness of such approaches, the success of these initiatives as shared national strategies would be well served by coordinated programmatic support.

Citation 5

“We intend to look for opportunities to integrate our efforts and where practicable, to work together to develop joint facilities and programs.”

Observation: It is fair to say that true “integration of efforts” has been an infrequent outcome. A notable example is the NEXUS trusted traveler program. But the term’s use in the BBV presumably signals an interest in adding more examples.

The intention to “look for opportunities” signals that the BBV is not only intended to proscribe but to invite innovation.

And, this section also makes a direct reference to joint program development. The context around this citation may be more related to operational programs (like NEXUS and FAST), and equally tied to security as to transportation and trade investment. But the acknowledged expected benefit from joint programs and resulting questions about how our countries would pursue joint program development, are very well placed and well timed for the questions raised in this paper.

Citation 6

“We intend to work towards developing an integrated cargo security strategy...”

Observation: This is a direct example of the BBV acknowledging the appropriateness of our two countries jointly developing a strategy – a plan to inform subsequent program development, funding decisions, operations, and projects.

Citation 7

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

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

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

Observation: This is the point where we are left to wait and see what the actual mechanisms for implementation of the BBV goals will be. If through the BBWG, BBV initiatives are simply delegated to federal agencies, it is not reasonable to expect outcomes different from those following prior declarations. If, as the sentence on executive-level responsibility alludes, there is “higher-level” involvement, there will likely be a better chance of more functional interagency-cooperation (as much a domestic issue as a binational one), *and* perhaps a willingness to explore complementary and coordinated legislative involvement.

Resulting strategy for advancing coordinated policy and programming

Drawing on the issues and topics reviewed above, this section will identify components of a strategy that the United States and Canada could pursue to advance the coordinated development of complementary border-planning programs.

3.2. The landscape has continued to evolve

In the 16 years since enactment of the NAFTA, the previously discussed declarations and binational working-group activities have resulted in numerous incremental improvements. Various actions have not only addressed specific persistent stumbling blocks (cost-sharing, data-sharing, system evaluation) but have also resulted in much improved cross-border institutional connections.

3.2.1. Contemporary capacity for cross-border intergovernmental collaboration according to the literature

Going back to the literature reviewed in Section 2, this updated sense of institutional capacity can be viewed in terms of what Clarkson & Banda saw as in *incremental integration* focused mostly on technical issues. While the actors are primarily government agencies, the governments have not formed new institutions (such as those of the European Union) to pursue shared goals, falling well short of a much less organic, *intergovernmental* approach articulated by Clarkson & Banda.

Kirton and Guebert in their description of interagency cooperation between the United States and Canada use the term *institutional meshing* – a process of small successes leading to more significant solutions. Also supporting the perspective that these successes are additive and validate deepening collaboration, Hoberg put forth the concept of *emulation* as a force for ongoing binational convergence.

The TBWG provides examples of technical successes most pertinent to this paper's focus on border-transportation. While many of the items listed below may seem routine when viewed in a domestic context, they were only achieved in the binational, interagency context through creativity, persistence, and commitment to expected value by decision-makers.

- Development and maintenance of an action plan.
- Creation of a joint website (thetbwg.org)
- Completion of an information-technology (ITS) architecture for cross-border operational environments.
- Establishment of a binational, interagency working group between U.S. FHWA, Transport Canada, CBSA, and U.S. CBP to work on development and application of automated border wait-time systems.
- Conclusions of a cost-sharing agreement for transfer of funds between U.S. and Canadian federal agencies.
- Conclusion of a cross-border interagency ITS project work plan (for the joint, border wait-time project).

As seen through the lens of the literature reviewed above, the incremental successes of the TBWG illustrate gradual and important increases, not in new institutions themselves, but in *institutional capacity* between and among existing federal agencies. This would seem to support an interpretation that the prospects for a next step – like the more deeply coordinated programmatic approach to border investment planning envisioned by this paper – is a more feasible prospect than it has been in previous years.

3.2.2. One response to the Beyond the Border Vision

As alluded to in the literature review, a very timely writing by Christopher Sands was published in the month after the BBV declaration – *The Canada Gambit: Will it Revive North America?* Sands' paper, while covering several broader questions, is primarily a review of the Beyond the Border Vision declaration (and the companion joint statement on regulatory cooperation) and provides important perspectives on the resulting prospects for new types of collaboration on border investment and management.

Sands also notes the likely insufficiency of the BBWG *alone* to make meaningful progress under the BBV stating, “Rather than learning from these past experiences, in taking the Canada Gambit route to North American governance negotiations the United States and Canada have embarked upon two new processes that rely mainly on civil service initiative and risk-taking in order to generate progress and potential gains.” (Sands pg. 25) In continuing with this point in terms of a forgone alternative, Sands writes, “Like the Bush administration, the Obama administration appears to be intent on restricting talks with Canada to areas within the statutory authority of administrative departments and agencies so that it is not necessary to seek prior congressional approval for negotiations.” (Sands, pg. 28). And, in further articulating rather low expectations for the BBV process as it stands, Sands says, “There is no mechanism or incentive in the Washington Declarations that would justify higher expectations.”

In addition to explaining reasons why the U.S. and Canada need progress on bilateral initiatives, Sands, like this paper seeks to do, submits reasons why past initiatives (and likely the BBV, too) have fallen short. Much of this boils down to politics: political will, the inherent turnover in representative democracy, competing domestic and other international issues, etc. Making this assessment, Sands states, “The two leaders have invested a limited amount of political capital in these declarations, and have delegated the responsibility for action and oversight to two committees of federal officials.” (pg. 24)

The last of Sands’ many points especially useful for this paper is his acknowledgement that the BBWG (at least as described in the BBV declaration) “does not include state or local governments...” (pg. 20)

Three incremental advances come to mind that address some of the deficits Sands identifies. First, since its formation in 2000, the TBWG, as an agency-level binational working group, has involved border states and provinces. Inasmuch as the BBWG, as described in the BBV, is expected to “...where appropriate, rely upon existing bilateral border-related groups, for implementation,” it can be hoped that there is at least a foot in the door towards addressing this well-placed concern.

A second example, also from the experience of the TBWG, is that the working group has acknowledged some of the limitations of its agency-based composition—specifically the consequence that it must keep its actions in the realm of what is currently possible under existing legislative authority rather than actively promoting changes that would require a modified legal foundation. To acknowledge this in a way that preserves space for discussion of alternatives and creative solutions (topics that might fall under the BBV’s phrasing, “opportunities to integrate our efforts,” the TBWG added a Policy Subcommittee. The committee is certainly not “the missing mechanism” for bringing higher levels of our administrations or legislators into a hybrid process, but it does provide a platform to mutually acknowledge and document the shortcomings of existing authority alongside declared goals.

Lastly, some states and provinces have, over the last several years, established their own executive-level, declaration-based initiatives. While most Canadian provinces or territories share a border with the United States (8 of 13 or 62 percent) only 9 of 50 U.S states (18 percent) share a border with Canada. So, it is worth considering how these emerging arrangements and resulting collaborations can help build and sustain the political will and follow-through that has proven more difficult to sustain (as Sands explains) at the federal level in the U.S.

3.2.3. State-province initiatives - review

This section reviews four state-province arrangements. The following section then considers what, beyond the intended regional outcomes, these arrangements could offer towards sustaining national objectives (such as the Beyond the Border Vision Declaration) or supporting specific federal level programmatic outcomes such as coordinated development of border-investment programs.

New York – Quebec

Established: 2002

Name: *Memorandum of Understanding on Economic, Scientific, and Technological Cooperation between the Government of the State of New York and the Gouvernement Du Quebec*

Purpose: To enhance cooperation in economic development, transportation, Science & technology, tourism, and security.

Signatories: The Governor of New York and the Prime Minister of Quebec.

Actions: The agreement was signed at the conclusion of the first Quebec – New York Economic Summit. Subsequent economic summits have been held in 2003, 2005 and 2008. In addition, Quebec and New York have held Border Summits in 2002, 2003 and 2006 to specifically focus on transportation issues affecting our mutual border. Each of the six points under the transportation article of the MoU have been accomplished.

Status: The agreement is still in force.

Vermont – Quebec

Established: 2003

Name: *Cooperation Agreement between the Gouvernement du Quebec and the Government of the State of Vermont*

Purpose: To strengthen ties and increase cooperation in the fields of economic development, energy, the environment, security, justice, tourism, and transportation.

Signatories: The Governor of Vermont and the Prime Minister of Quebec.

Actions: The agreement has been the basis for annual meetings between the Governor and the Prime Minister to update them on progress, changes, or new initiatives, and reaffirm commitments. Most of the transportation items in the agreement have been addressed or continue to be collaborative efforts.

Most of the items in the agreement have been addressed or continue to be collaborative efforts. The Ministère des Transports du Québec and the Vermont Agency of Transportation continue to collaborate directly and hold an annual meeting between the agencies' leadership to review mutual interests and cooperation on transportation and cross-border travel.

Status: The agreement is still in force.

Saskatchewan – Montana

Established: 2004

Name: *Saskatchewan-Montana Intergovernmental Accord*

Purpose: To provide a basis for working together to address issues of mutual interest including economic development and commerce, agriculture and food (animal health and safety), transportation (regulations, environmental issues, “best practices” and corridor development), energy, research and development, and trade.

Signatories: The Governor of Montana and Premier of Saskatchewan

Actions: Focus on border travel.

Status: Active with both the official legislative members of government and/or in legislature-to-legislature arrangements.

Washington – British Columbia

Established: 2005

Name: *Memorandum of Cooperation between the Province of British Columbia and the State of Washington.*

Purpose: To foster ongoing cooperation on issues of mutual interest

Signatories: The Governor of New York and the Premier of British Columbia

Actions: Follow-on agreements have identified numerous program and project improvements to be cooperatively advanced. 2006 follow on agreement: *BC-WA Transportation Protocol Agreement*. 2008 memoranda signed: *Border Action Plan, Alternative Fuels Distribution, Greening the Border, Tourism, & Public Safety*. In 2009, the Governor and Premier signed *The Framework for Transportation, Competitiveness & Prosperity*. With regard to transportation, this last framework also established the Joint Transportation Executive Committee to deliver on the framework’s commitment to establishing an appropriate management structure around the state and provincial governments’ interest in advancing specific projects and policies.

In the years following the BC-WA MoC, the signatory government leaders have also been cooperatively active in advocating policy positions to their respective federal governments. Key examples include pushing for delay of the U.S. Western Hemisphere Travel Initiative (WHTI – the “passport requirement”), U.S. and Canadian approvals of enhanced driver’s license (EDL) programs, and, most recently, urging of the Canadian federal government to waive “cost-recovery” fees for cross-border passenger rail inspections in Vancouver.

Status: The BC-WA agreements are considered active and are being supported by the appointed department heads and staff (such as the JTEC). While there has not been a binational cabinet meeting since the election of a new government in BC, management level meetings and project work continue.

3.2.4. State-province initiatives - observations

The state-province arrangements reviewed above, and actions they have fostered, illustrate commonalities and differences and highlight ways these initiatives could be embraced to help advance U.S.-Canada federal-federal initiatives.

These arrangements are relatively recent with the earliest being signed in 2002. While examples of regional collaboration on cross-border *transportation* had started to improve earlier, additional

motivating factors likely contributed to the political interest in broader, subnational executive agreements. The 2002 & 2003 agreements (NY, VT, and QC) likely reflect the parties' interest in maintaining strong economic ties in the context of increasing security following the September 2001 terrorist attacks. In 2004, Saskatchewan and Montana implemented an Intergovernmental Accord addressing economic and transportation issues but also responding to the urgent issue of that time, the region's response to Bovine Spongiform Encephalopathy (BSE or "mad cow disease"). The series of WA-BC agreements, beginning in 2005, was likely influenced by the region's anticipation of the 2010 Winter Olympic Games in Vancouver/Whistler, BC. Nevertheless, all of the agreements cover a significant amount of cross-border transportation and trade issues as part of the agenda.

While state and provincial agencies are involved in delivering the products identified in these cooperative agreements, communications and decisions about future direction and scope is managed executive-level offices closer to the governors or premiers themselves.

The reviewed agreements, while they include terms for withdrawal, do not have expiration dates. They provide a potentially ongoing source of support for cooperative efforts. They are often "kept current" through periodic summits and the appending of follow-on agreements on specific objectives. Whether or not parties to these agreements continue to cite them as the basis for collaboration can be a function of political and bureaucratic continuity. But, as with federal-federal initiatives, the *mix* of elected executives and agency bureaucrats involved in carrying out shared goals can diversify the base of interest and increase the continuity of purpose.

The state-province pairs' engagement in federal advocacy varies. In their agreement, NY and QC list a mutual interest in funding some large-scale investments which would likely involve an interest in federal funding assistance. The list also includes an interest in pursuing a [U.S. Congressional] high-priority corridor designation; presumably requiring some action by the U.S. Congress. Aside from this objective however federal advocacy is not a primary objective or outcome of the NY-QC agreement.²

The VT-QC agreement includes some more specific language related to federal agency policy and operations.

"Collaborate, within the limits of their mandates, with American and Canadian federal departments and agencies with authority in cross-border matters, notably by taking action on the following projects involving border stations:"

However, it's notable that the federal engagement being discussed here would not involve federal *legislative* bodies or individual legislators.

A side note of particular interest to this paper is the VT-QC agreement language on federal border investment programs:

"Exchanging information on Canadian federal transportation initiatives and the reauthorization of the American federal TEA-21 program and analyzing possible avenues for cooperation with regard to future and present TEA-21 cross-border programs."

Acknowledging, at the time, that both national governments were advancing border-investment programs, VT and QC are here indicating an interest to proactively identify areas of future federal programs that they could influence towards mutual benefit. While this is not a clear indication that

² Regional stakeholders are also often involved in both identifying and advancing objectives listed in these cross-border memoranda. With regard to new border crossing construction and corridor-designations, regional chambers of commerce were also very involved and in discussion with federal legislators.

the state and province would jointly solicit legislative support from federal lawmakers, it does indicate an interest in complementary border investment programs – the scenario explored by this paper.

While WA and BC did not include elements of federal advocacy in their initial memorandum (2005), their follow-on cooperative agreements have included descriptions of a federal advocacy role. In their 2008 MoU titled *Action Plan on Border Management*, the WA Governor and BC Premier included two sections that defined a federal advocacy role. Generally, section VII (*Leadership to Secure Action by Federal Authorities*) acknowledged that various elements of a border strategy are the responsibility of “our respective federal agencies” and that therefore the Governor and Premier needed to work together to communicate a consistent message with Washington, DC and Ottawa. Specifically, section IV (*Action on the Enhanced Driver’s License Program*) committed the WA and BC executives to communicating a list of details regarding the two sub-national governments’ preferences on compliance with the then-pending U.S. Western Hemisphere Travel Initiative (WHTI) (as well as details of Canada’s federal cooperation with future U.S. WHTI regulations).

In these examples, state and provincial executives, especially working within an agreement-based framework, can, unlike regional transportation *agencies*, appropriately advocate for federal policy and legislative change. A scenario can be imagined in which this type of political engagement could be connected to various national-level binational objectives. A first example is provided by the above-quoted VT-QC section on border-transportation investment program planning. If governors and premiers have issued a statement of joint interest in our respective national programs, it would seem logical to engage them on coordinated planning for improved symmetry for future program design.

Secondly, these agreement show an understanding that binational systems (i.e. border crossings) are realized through multiple levels of government (state & provincial and federal), it seems reasonable to expect that state and provincial leaders could be motivated advocates for components of binational declarations like the Beyond the Border Vision. In his paper *The Canada Gambit* (discussed in section 6.1.2) Christopher Sands asserts that one reason to have low expectations for the Beyond the Border Vision is the lack of political will that it and past declarations have faced. And, while that’s true, it also seems that border state and provincial leaders have demonstrated that they could be a plentiful source of the previously inadequate political will. More direct state-province involvement would increase ongoing attention to progress on declared goals. States and provincial leaders could also push for the involvement of their respective federal legislators. Especially in the U.S., it can be difficult to maintain federal legislators’ attention to the President’s initiatives—especially, in this example, where a minority of senators and representatives feel their constituencies are directly impacted³.

3.3. Alternatives for advancement

Having identified the basic goals of 1) improving the approach both countries could take towards complementary program development, and 2) improving institutional capacity for sustaining bilateral focus on shared objectives, this section will identify tools and resources for advancing these goals and then present some possible strategies for advancing coordinated border investment programs.

³ Not to discount the fact that a *majority* of states’ largest trading partner is Canada, only eleven of 50 states share a border with Canada.

3.3.1. Tools for supporting international cooperation

This section reviews an array of tools our governments use to support international, and in the case of this paper’s focus, bilateral collaboration. This review of the range of mechanisms employed is intended to inform the subsequent subjective discussion and identification of a few strategies for supporting symmetrical program development and institutional capacity noted above.

Figure 1 below splits an array of sample mechanisms and institutions by two dimensions: formality (from cooperative/informal to binding/enforceable) and level of government involved (federal executive, federal agency, and sub-national/other). This particular breakdown is primarily informed by the documented perspective of the U.S. State Department (especially with regard to formal agreements) but the resulting content illustrates a useful context of recent mechanism entered into by U.S. and Canadian government entities.

Figure 1: Matrix of International Mechanisms for cross-border cooperation.

	Cooperative efforts	Non-binding: declarations, statements, etc.	Agreements: binding & enforceable	
			Executive agreement	Treaty
Federal, EXECUTIVE level		Examples: <ul style="list-style-type: none"> • Beyond the Border declaration • Security Prosperity Partnership • Smart Border Declaration • 2000 Transport Canada, USDOT MoU 		International agreements other than treaties
Federal, AGENCY level	Example: <ul style="list-style-type: none"> • US-Canada Transportation Border Working Group (TBWG) 	Examples: <ul style="list-style-type: none"> • 2000 Transport Canada, USDOT MoU • Implementing agreement for Border Wait-time Working Group 		
Federal, LEGISLATIVE actions	Example: <ul style="list-style-type: none"> • US-Canada Interparliamentary Group 			Example: US International Bridge Act of 1972: authority for U.S. states to enter into treaty-like agreements with Canada.
State, Provincial, & other sub-national	Examples: <ul style="list-style-type: none"> • IMTC, EBTC • WA-BC Joint Transportation Executive Committee 	Examples: <ul style="list-style-type: none"> • Washington-British Columbia • New York-Quebec • Vermont-Quebec • Montana-Saskatchewan 	Project cost-sharing agreements (quasi binding)	

Sources: US Department of State (C175 Handbook), de Eyre 2009.

Treaties and international agreements: The most formal mechanism is a treaty—legally binding and enforceable under international law. From the U.S. perspective, two other types of international agreements exist – those *pursuant to legislation* (based in passage of corresponding laws by the U.S. Congress), and *agreements based on the constitutional authority of the President* (and otherwise accordant with U.S. law). The NAFTA, for example, is, in the U.S., an agreement given force by follow-on Congressional legislation rather than a treaty based in ratification by the Senate. Writers such as Kirton and Guebert (reviewed above) characterize international agreements as “hard-law instruments.”

An interesting treaty-based example for this paper is the 1909 Boundary Waters Treaty between the U.S. and Canada which established the International Joint Commission (IJC). The IJC is a binational commission authorized and funded by our governments to “help prevent and resolve disputes relating to the use and quality of boundary waters (the Great Lakes and their connecting waterways) and to advise Canada and the United States on related questions.”(IJC website: ijc.org) While the purpose of the IJC is significantly different and more focused than the range of binational border transportation and infrastructure objectives surveyed in this paper, it does provide an important example of a long-standing binational institution. Today, the IJC consists of four commissioners and two chairs and, between the Washington, DC office; the Ottawa office; and the regional office in Windsor, ON; has a professional staff of 47.

Another hard-law approach to supporting binational cooperation (again based in a U.S. example) is Congressional pre-authorization of actions by sub-national entities (ex. states or newly created/legislated commissions). An example of this is the International Bridge Act of 1972. (de Eyre, pg 2). In cases such as these, the Federal government is not necessarily the primary party to the agreement but the sub-national entity is authorized to take on specific roles and commitments that Congress finds do not challenge the primacy of the federal government in international affairs.

Non-binding (declarations, statements, memoranda, etc.): As partially illustrated by the varied list of examples, this has become a broad, well-populated category. Most recently seen with U.S. President Obama and Canadian Prime Minister Harper’s signing of the Beyond the Border declaration in February of 2011.

While not binding, not dependent on existing legal authorities of each country, and not enforceable, these mechanisms effectively memorialize shared objectives. Rather than built on the “hard-law” language of “*shall*” and “*will*,” these mechanisms document mutual *intentions* and provide a framework for cooperative actions.

Moving down the level-of-government dimension of Figure 1, non-binding mechanisms are also what federal *agencies* have used to support bilateral undertakings. The 2000 MoU between the U.S. Department of Transportation and Transport Canada is the most pertinent example for this paper. And, while the signatories are often at the “political level,”—ministers or secretaries appointed by the respective executive leaders—subsequent action is undertaken by the agencies than “from the top.”

Canadian provinces and U.S. states have also increasingly employed cross-border agreements and declarations to support shared regional objectives and specific undertakings. The Canada-U.S. Law Institute (CUSLI) prepared an excellent review of the use and legal basis of these sub-national instruments (de Eyre, 2009). A few distinct types of state-province mechanisms can be identified. First, as mentioned above, U.S. states have been given pre-approved federal congressional authority to enter into “treaty-like” agreements for specific objectives. Secondly, U.S. states (especially along the Canada border) and provinces have developed or adopted their own legal bases for forming

implementing agreements (cost-sharing and construction partnerships for example). While commonly accepted as subordinate to treaties, the documents themselves, especially when funding arrangements are involved, will often identify a process for dispute resolution and a court of jurisdiction. Lastly, states and provinces have established broad declarations to foster collaboration on various shared interests.

Ongoing cooperative efforts: Figure 1's column of cooperative efforts--relatively informal working groups and coalitions--are not typically creations of hard-law or soft-law agreements but more organic coalitions formed around shared needs. A "hard-law" exception to this is the U.S.-Canada Interparliamentary Group (IPG) established in U.S and Canadian legislation in 1959. While the IPG provides an example of how our two countries' legislative bodies have enacted a binational mechanism which could in theory provide a distinct capacity for delivering coordinated legislative attention to ongoing border planning and investment, the IPG does not pursue this type of activity. And, while there seems to be a fairly active contingent of Canadian parliamentarians, evidence of sustained involvement among the U.S. Congress is scarce. Thus, the IPG is acknowledged here more as an existing, legislative framework than as an active channel for improving cross-border governance.

The *federal-level agency* example given in the chart is the TBWG. While the mandate for regular meetings between U.S. & Canadian transportation agencies was established in a formal MOU, the TBWG is itself not defined in a formally approved document. Similarly, *state/provincial regional* examples given above are creations of soft-law or even less formal.

The important connection between these less-formal cooperative efforts and the more formal mechanisms (declarations and resulting national laws and policies) is that the ability for project-oriented coalitions to advance solutions is greatly affected by the degree of policy-alignment achieved by our national governments and agencies. Conversely, regional coalitions have been increasingly recognized in recent executive-level declarations as important *contributors* to careful planning and project-delivery.

3.3.2. Strategies for advancing symmetrical program development

Having identified both long-standing and emergent resources for binational collaboration, this section proposes some specific strategies (applications of identified resources) for advancing the creation of symmetrical border transportation investment programs. Again, this hypothetical objective is both a practical exploration (of potential interest to the U.S.-Canada Transportation Border Working Group) and an academic exercise (it provides a context for evaluating the institutional feasibility of a defined step towards cross-border facilitation but, at the same time ignores a lot of other issues that would need to be resolved in the border operational environment such as interagency deliberations between transportation and inspection.

The following strategies are each concluded with a brief assessment of how they address some of the persistent challenges discussed in the earlier sections: lack of bureaucracies' legal authorities to explore new approaches, political cycles, and lack of political will.

1. **Continue to build the foundation:** For the hypothetical coordinated border-investment program described in this paper, the TBWG is a key, existing, government-to-government resource. It would probably be better positioned to address the development of coordinated investment programs if it first more formally documented an interest in *complementary program development* to its Action Plan or chartering MoU. As noted in section 3.1.4, "development of new programs" is a listed intention in the 2000 MOU. If an interest were identified in

pursuing development of coordinated investment programs, it might be beneficial to update the MoU accordingly.

Assessment: This strategy, without new mechanisms to engage legislators, would still improve the TBWG's ability to have a longer view discussion and possibly document benefits of more symmetrical programs (or whatever the programmatic objective might be). But, without a clearer mandate for drafting new authorities and planning for program design and implementation, participating agencies will be appropriately reluctant to test the bounds of prerogative or get in front of their political-level executives.

2. **Pursue opportunities availed by the BBV Declaration:** The clearest opportunity availed by the BBV is the section on “planning together” (port-of-entry committees, funding and building border infrastructure, etc. -- listed in this paper as Citation 4 in section 5.1.1). TBWG is an appropriate body to act on this intention and make suggestions for expanding on this area in the forthcoming Beyond the Border Action Plan.

In addition to having an obvious level of support in the declaration itself, an advancement strategy based on the BBV's executive level status should aim to identify new sources of support from the offices of the U.S. President and Canadian Prime Minister. Could cross-border working groups, like TBWG, be granted more sanctioned prerogative to identify and suggest needed agency authorities? Can better channels to federal legislative bodies be facilitated if needed (and politically feasible)?

The points of contact and range of reasonable expectations should come into clearer focus as the first BBV Action Plan documents are issued – expected this fall (2011).

Assessment: Vesting a [somewhat] separate institution like TBWG with an interest in specific outcomes (like those cited above), *in addition* to the individual agencies, may provide advantages. While TBWG is comprised of U.S. and Canadian federal agencies who would be involved at varying levels regardless, TBWG provides some dimensions that could facilitate attention.

- TBWG's long standing semiannual meeting schedule has also been a fitting venue for binational-project progress reports (Border Wait-time Working Group, commercial vehicle regulatory alignment, etc.). To the extent this schedule provides a community of interest and a timeline, it can provide additional incentive to advance initiatives.
 - Related somewhat to the next suggested strategy, TBWG involves states and provinces. The good reasons for this are explained in section 3.1.2. But aspects of advancing the BBV *will* hinge on state and provincial collaboration. So, it would be efficient to acknowledge that TBWG already has a forum and relationships in place to expedite the necessary dialog and collaboration through national and sub-national levels of government.
3. **Regularize involvement of state and provincial leaders:** At the *project* level, direct involvement of state and provincial transportation agencies is absolutely essential. This is the basic reason that FHWA and TC have involved state and provincial transportation departments in TBWG from the very beginning. But based on states' and provinces' proven interest in collaborating across the border on strategic and policy-based initiatives between their respective executive offices (as well as coordinating infrastructure projects at the agency level), it would be reasonable to consider some structured involvement of interested sub-

national government leaders (governors and premiers) with ongoing federal-level initiatives. As indicated above, states and provinces have, with regard to federal border policies and investments been active proponents and advocates. But it is this broader array of interest that could be an important source of political will for sustaining sufficient attention on declared goals.

Assessment: Past binational declarations have produced notable outcomes (ex. NEXUS, FAST) but many objectives remain stuck and usually re-appear in the next (and current) declaration (ex. perimeter strategies, entry-exit information exchange, joint-facilities and programs, program harmonization, etc.). This is not a surprising outcome when the participants in the process are the two elected executive branches of our federal governments. The nature of these institutions dictates that politics, election cycles, and the reality of competing issues will challenge the best intentions for follow-through. And even though the agencies of our executive branches are typically charged with attending to the details of advancing declared goals, meaningful collaboration between two sovereign, law-based systems will inevitably require actions beyond the authority of these agencies. And the more our binational goals call out the need for innovation (appropriately), the more our success will benefit from legislative involvement. And that requires political will. Thus, if state and provincial leaders are more regularly involved in supporting outcomes, progress on declared objectives would receive more consistent attention and federal elected officials might enjoy the additional political grounding that comes with an important constituency that is openly invested in the outcome.

State and provincial leaders could also be an effective bridge between federal executives working on BBV goals and federal legislators from border states and provinces.

To bring this line of thinking back to how it could improve the prospects of developing symmetrical border investment programs, states' and provinces' inevitable central role in designing and constructing large portions of border-related investments renders them very appropriate champions of creative solutions between our two federal governments.

State and provincial leaders could urge their federal legislators not only to lend support and supporting legislation but also to coordinate with their cross-border counterparts on coordinated legislative solutions. This is explored a bit more below.

- 4. Consider strategies for engaging federal legislators:** As mentioned above, state and provincial leaders could be a logical avenue for involvement of federal legislators whose districts cover border regions or have other relatively stronger U.S.-Canada economic connections. Whether via state leaders, existing agency-based working groups, or facilitated by legislative offices, the prospect of federal legislators becoming more directly involved in U.S.-Canada coordination is appropriate to consider as a possible strategy. If our countries are looking for new solutions for improving border management—between two sovereign states and their agencies—continuing to forgo integrated evaluation of underlying legal authorities will likely guarantee that results are incremental and rarely reflective of our best thinking.

Assessment: In *The Canada Gambit*, discussed above, Sands notes that President Obama and Prime Minister Harper have, with the BBV, chosen to limit the dialog to areas within the statutory authority of agencies so it wouldn't be necessary to seek prior approval of the U.S. Congress for negotiations. But, short of setting the stage for a more formal executive agreement or treaty-level instrument (briefly discussed above), federal legislators with more

direct interests in border facilitation could conceivably work to introduce and support incremental legislative changes that might go a long way towards enabling solutions identified by federal agencies, states and provinces, and other stakeholders.

To relate this thinking to the advancement of complementary border investment programs, the employment of this strategy could be envisioned as open discussions about corresponding draft-legislation that results in legislative authorization of such things as matching timelines, project priorities, eligible-use criteria, etc. But, while this type of scenario may be feasible, some body, some office needs to be tracking progress and facilitating communication. This type of role may be appropriately handled by the Beyond the Border Working Group (BBWG) or, with regard to a more specific, cross-border transportation investment program, perhaps TBWG could be a hub for this kind of interaction.

If a more direct connection between legislatures were desired, such an interaction could be imagined in the above-mentioned Interparliamentary Group. A suggestion for a new binational legislative mechanism was recently made in an article by Brian Crowley stating, “If, for example, American politicians are finally cluing in to the importance of an open border to their own workers, the time has come to create a joint committee of Congress and Parliament charged with oversight of the Canada-U.S. relationship, holding hearings, issuing reports, and taking their newly acquired knowledge and relationships back to their respective bodies.”

Conclusions

Considering the above strategies as solutions to broadly characterized challenges like election cycles, lack of political will, and bureaucratic inflexibility probably seems wishful and untested. But the potential merit of these strategies is better assessed in this paper by developing a scenario in which they are applied to the narrowly characterized hypothetical repeatedly referred to above—development of symmetrical complementary border investment programs.

Such a scenario, leaving many administrative details and consultative requirements to the side for now, could play out, generally, as follows:

Step 1. TBWG participants document discussion and conclusions regarding (presumably) the benefits of considering the development of more complementary border investment programs.

Step 2. Possibly working within the context of the BBWG, the TBWG lead agencies (US Department of Transportation and Transport Canada) pursue (and presumably affect) better articulation of a mandate for coordinated program development (not difficult to imagine given words to this effect in the current MoU).

Step 3. In coordination with their delegate participants in TBWG, state and provincial executives (governors’ and premiers’ offices) could open a dialog with their regions’ federal legislators in support of (presumably) the emerging effort to develop deliberately symmetrical border investment programs and development of a process in which each country’s legislature can cross-reference evolving legislation and work towards complimentary program features, criteria, and authorities.

Step 4. If both resulting U.S. and Canadian programs still require meaningful agency rules-making or development of administrative guidance, tracking the symmetry of such details could happen within the TBWG.

The above scenario doesn't take advantage of all the strategies suggested in the previous section. The most questionably feasible step seems to be affecting productive and coordinated engagement of federal legislators on this issue. More robust mechanisms to address this need could resemble the Interparliamentary Group (a legislated framework). Alternatively a fully independent commission (legislated into existence like the IJC) could provide a mutually-approved coordinator. To clarify, the intention here would be to provide a mechanism for communication on policy development that, because two countries are involved, often *necessitates* legislative adjustments. This mechanism would track and support complementary legislating – leaving administration of resulting, *national* programs to each country's institutions.

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