

Border Crisis: Time for a New Collective Review of Tri-Nation Border Security

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I. INTRODUCTION

This article will highlight the impact of the tragic events of September 11, 2001 on the land-based transportation of goods across the borders between the United States and its two largest trading partners: Canada and Mexico. Additionally, this article provides an introductory analysis of a tri-nation border security agency that would likely facilitate implementation of the new policies and regulations facing the transportation industry.

The article begins in Part I with an introduction of the nature of land-based trade between the United States, Canada, and Mexico, including the problems encountered as a result of the implementation of new security regulations. Part II of the article identifies some of the new regulations placed upon transportation of goods internationally between the United States, Canada, and Mexico. Part III of the article sets forth the tri-nation border security agency and some specific legal issues and challenges raised by its implementation.

II. BACKGROUND

“As the world’s largest trading nation, the United States relies heavily on a vast transportation network to expedite the flow of goods and

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people to and from its trading partners.”¹ At least one commentator has noted that the “[n]ation’s economic growth is dependent on increasing international commerce and decreasing the impediments of borders.”² Nonetheless, over 400 laws arising from more than 40 federal agencies regulate the U.S. cross-border transportation network.³ Even before the attacks of September 11, 2001, the vast volume of trade and traffic on the United States’ borders put immense pressure on the ability of the U.S. Customs and Border Patrol to balance enforcing our nation’s laws with facilitating international trade.⁴

In the wake of September 11, 2001, the challenge of balancing the nation’s security needs with facilitating international transportation of goods rose to a new level.⁵ September 11, 2001 imposed a new and critical focus on border management in which security and trade facilitation became mutually reinforcing priorities. This new and focused risk-based border management approach is aimed at enabling low-risk people and goods to move efficiently while at the same time focusing resources on high-risk travelers and cargo.

Improving security of transportation of goods between the United States, Mexico, and Canada presents a daunting challenge.⁶ Several core challenges remain at the forefront of the development of transportation security policy, including: (1) the best way to “harden” low-volume, high-risk ports of entry that pose a significant threat to overall border security; (2) the best way to develop and deploy non-intrusive technology to detect the implements of terrorism; and (3), the best way to recruit, train, and house the additional Customs officers at the nation’s borders.⁷ Furthermore, as U.S. international trade continues its expected growth, “[d]omestic transportation issues, including port access and cargo security, will need to be evaluated on a continuing basis.”⁸ Perhaps the greatest challenge involves maintaining the right balance between enhanced border security and the smooth flow of legitimate trade and travel expected in our just-in-time global economy. To address these and other

1. International Transportation. Bureau of Transportation Statistics, *available at* <http://www.bts.gov/programs/international> (last visited Feb. 23, 2004).

2. Edward Alden, *Companies Face Large Penalties: Shipping*, THE FIN. TIMES LIMITED, Dec. 3, 2003.

3. Improving Security and Facilitating Commerce at the Northern Border, Committee on Government Reform, Dec. 10, 2001, pg. 21 *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:82583.wais (last visited Feb. 23, 2004).

4. *Id.* at 19.

5. *Id.*

6. Conclusion: Freight Growth and Concerns, Bureau of Transportation Statistics, *available at* http://www.bts.gov/publications/us_international_trade_and_freight_transportation_trends/2003/html/conclusion/html (last visited Feb. 23, 2004).

7. Improving Security, *supra* note 3, at 19.

8. *Id.*

challenges facing land-based trade, the Governments and industries of the United States, Canada, and Mexico will need to work “[t]ogether for solutions that will prevent terrorist attacks while maintaining an efficient flow of goods.”⁹

A. TRADE ACROSS THE UNITED STATES’ LAND BORDERS

Since the implementation of the North American Free Trade Agreement (NAFTA) in 1994, trade between the United States, Canada, and Mexico has increased dramatically.¹⁰ “NAFTA is a regional agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America” that implemented a free trade area.¹¹ A core objective of NAFTA is to eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the parties to the agreement.¹² As a result of NAFTA, trade between the U.S. and Mexico has expanded threefold, and fourfold between the U.S. and Canada.¹³

For example, in the period from November 2002 to November 2003, the total value of exports by surface modes of transportation to Canada was over \$166 billion.¹⁴ Imports into the United States across the Canadian border totaled over \$222 billion.¹⁵ During the same period, the total value of exports by surface modes of transportation to Mexico was over \$92 billion.¹⁶ Imports into the United States from Mexico totaled nearly \$124 billion.¹⁷

More important to this article is that fact that two-thirds of all NAFTA Trade is transported by trucks through various points of entry along the northern and southern borders to the United States.¹⁸ In fiscal year 2001, the California-Mexico ports of entry alone processed 1.2 million commercial trucks carrying goods with a value topping \$22 billion.¹⁹ The Arizona- Mexico border processed over 336,000 commercial trucks.²⁰

9. Freight Growth and Concerns, *supra* note 6.

10. Improving Security, *supra* note 3, at 21.

11. What is NAFTA?, *available at* http://www.nafta-sec-alena.org/DefaultSite/resources/index_e.aspx?ArticleID=282 (last visited April. 4, 2004).

12. NAFTA, Chapter One: Objectives, *available at* http://www.nafta-sec-alena.org/DefaultSite/legal/index_e.aspx?articleid=80 (last visited Feb. 1, 2004).

13. Cross-Border Collaboration in Law Enforcement and Security. Trans-Border Institute Bulletin, Nov. 13, 2003.

14. Transborder Surface Transportation Data, Bureau of Transportation Statistics, Canada, *available at* <http://www.bts.gov/ntda/tbscd> (last visited Feb. 23, 2004).

15. *Id.*

16. Transborder Surface Transportation Data, *supra* note 14.

17. *Id.*

18. Improving Security, *supra* note 3, at 72.

19. *Id.* at 10

20. Improving Security and Facilitating Commerce at the Southern Border, Committee on

Before September 11, 2001 \$1.3 billion in trade crossed the U.S./Canadian border each day.²¹ The service port of entry in Blain, Washington alone processed nearly 800,000 commercial trucks in 2001.²² Together, these statistics present a snapshot of the immense economic importance of maintaining the secure and efficient flow of goods across the United States' land borders with Canada and Mexico. Furthermore, the staggering number of vehicles crossing the border each year illustrates the enormous resources required by each of the United States, Canada, and Mexico to maintain the right balance between border security and the smooth flow of legitimate trade and travel.

B. LENGTHY DELAYS AND REDUCED COMMERCIAL TRAFFIC

In the hours following the September 11, 2001 attacks, our nation's ports were placed on high security alert.²³ The tightening of security at the Nation's borders after the terrorist attacks resulted in a serious slowdown in international trade.²⁴ For example, total trade with Canada by all land modes of transportation declined by approximately \$24 billion between 2000 and 2002.²⁵ Similarly, total trade with Mexico by all land modes of transportation declined by over \$11 billion between 2000 and 2002.²⁶

Not surprisingly, intensification of border inspection procedures led to lengthy border crossing wait times.²⁷ Traffic delays in turn resulted in a lower overall number of border crossings.²⁸ For example, in the southern United States, during the initial weeks following the attacks of September 11, 2001, truckers were experiencing wait times in excess of two hours at the San Ysidro Port of Entry.²⁹ While wait times have gradually

Government Reform, Jan. 31, 2002, pg. 32, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:82954.wais.

21. Improving Security, *supra* note 3, at 9.

22. *Id.*

23. Freight Growth and Concerns, *supra* note 6, at 9.

24. "U.S. Customs, Industry team up on border security." CNN.com; accessible at <http://cnn.allpolitics.printthis.clickability.com/pt/cpt?action=cpt&title=cnn.com> (last visited Feb. 20, 2004).

25. \$24 billion represents the approximate difference between the total trade with Canada by all land modes of transportation in 2002 and 2001 reported by the United States Bureau of Transportation Statistics at: http://www.bts.gov/ntda/tbscd/reports/annual02/nat_2002.html and http://www.bts.gov/ntda/tbscd/reports/annual01/nat_2000.html.

26. \$11 billion represents the approximate difference between the total trade with Mexico by all land modes of transportation in 2002 and 2001 reported by the United States Bureau of Transportation Statistics at: http://www.bts.gov/ntda/tbscd/reports/annual02/nat_m2002.html and http://www.bts.gov/ntda/tbscd/reports/annual01/nat_m2000.html.

27. Transborder Surface Transportation Data, *supra* note 17, at 9.

28. *Id.*

29. *Id.*

been reduced to an average of forty-five minutes at the world's busiest port of entry, San Ysidro, the delay is not insignificant.³⁰ As recently as October 20, 2003, at the Otay Mesa port of entry not too far from San Ysidro, commercial trucks experienced wait times of up to four hours.³¹

The northern ports of entry between the United States and Canada have presented similar problems for the transportation of goods across the border since September 11, 2001. Despite increased temporary staff at the 128 ports of entry along the U.S./Canadian border, "[l]ong lines have plagued both travelers and international commerce."³² However, some northern ports have been able to "[r]educe waiting times at the border to the levels they were at prior to the September 11, 2001 attacks."³³ Thus, both reduced commercial traffic and delays at border crossings persist in the wake of the terrorist attacks of September 11, 2001.

III. CURRENT POLICIES

The security of the nation's borders remains at the forefront of United States' policy agenda. Most policy makers agree that "it would be counterproductive and damaging to the U.S. economy to inspect 100% of the 7 million sea containers or the 11 million trucks that arrive in the United States every year."³⁴ Yet, the United States' heightened sense of urgency in dealing with the terrorist threat in the wake of the attacks of September 11, 2001 led Congress to consider numerous proposals to increase security at the nation's ports.³⁵ Some 30,000 different ideas have been presented to the United States Customs Service to develop a solution for providing tighter security and at the same time facilitating the flow of commerce at the Nation's borders.³⁶

While some of the ideas proposed to customs have been implemented, the combined effect of the long delays at some border crossings and the reduction in commercial traffic continues to raise concerns about

30. *Id.*

31. *Crossing Over; Truckers Protest Long Waits at the Border*, SAN DIEGO UNION-TRIB., Oct. 20, 2003.

32. *Improving Security*, *supra* note 3, at 9.

33. *Id.* at 24.

34. *Transportation Security*. Senate Commerce, Science, and Transportation Committee. Testimony of Robert C. Bonner, Sept. 9, 2003, pg.3, available at http://cbp.gov/xp/cgov/newsroom/commissioner/speeches_statements/sept092003.xml (last visited Feb. 23, 2004).

35. *Improving Security*, *supra* note 3, at 1.

36. Hearing of the Infrastructure and Border Security Subcommittee of the House Select Committee on Homeland Security, Federal News Service, Inc., July 23, 2003, available at http://www.globalsecurity.org/security/library/congress/2003_h/030723-hatch.htm (last visited Feb. 23, 2004).

the effect of the United States' heightened security policies on trade.³⁷ Early efforts at meeting the new security needs of the United States and combating its effect on the transportation of goods entailed basic increases in the number of staff at the ports of entry.³⁸ Over the course of the past two years, there have been countless meetings between industry leaders, government agencies, members of the U.S. Congress and Senate, and community members to develop strategies to meet the twin goals of increased security and facilitation of the transportation of goods across the border.³⁹ As a result of these meetings, numerous laws creating new agencies and programs have been passed in the wake of September 11, 2001 with these dual objectives in.⁴⁰

A common theme among the current initiatives being implemented by the United States is to push the zone of customs inspection activities outward from U.S. points of entry to foreign points of origin.⁴¹ In particular, several of the new programs, including the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Advance Cargo Information initiative, are aimed at extending our nation's zone of security against the threat of terrorism and facilitating the transportation of goods across the border.⁴² The C-TPAT and Advance Cargo Information programs are discussed briefly in turn.

A. CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM

C-TPAT is a "[j]oint government-business initiative to build cooperative relationships that will strengthen overall supply chain and border security."⁴³ The underlying principle of C-TPAT is that "businesses take significant steps towards policing themselves at international borders in exchange for a quicker trip through customs."⁴⁴ As a condition to participating in C-TPAT, companies must enter into an agreement with the U.S. Customs and Border Protection (CBP).⁴⁵ The agreement between a company and the CBP requires the company to:

37. *Id.* at 1.

38. Improving Security, *supra* note 3, at 1.

39. *Id.* at 2.

40. *Id.* at 1.

41. Port Security. Testimony by Mr. Charles Bartoldus, Director, National Targeting Center. House Energy and Commerce Committee, Dec. 16, 2003, pg. 1, available at <http://energycommerce.house.gov/108/Hearings/12162003hearing1140Bartoldus1821.htm>.

42. *Id.*

43. C-TPAT Fact Sheet, available at http://www.customs.ustreas.gov/xp/cgov/import/commercial_enforcement/ctpat/fact_sheet.xml (last visited Feb. 23, 2004).

44. "U.S. Customs, Industry team up on border security." CNN. Com; accessible at: <http://cnn.allpolitics.printthis.clickability.com/pt/cpt?action=cpt&title=cnn.com> (last visited Feb.23, 2004).

45. C-PAT Fact Sheet, *supra* note 43.

(1) conduct a comprehensive self-assessment of supply chain security using the C-TPAT security guidelines jointly developed by Customs and the trade community; (2) submit a supply chain security profile questionnaire to Customs; (3) develop and implement a program to enhance security throughout the supply chain in accordance with C-TPAT guidelines; and (4) communicate C-TPAT guidelines to other companies in the supply chain and work toward building the guidelines into relationships with these companies.⁴⁶

There are several perceived benefits to the C-TPAT program. The greatest benefit of the program to companies transporting goods across the border is a reduction in the number of inspections and access to a “fast lane” through border crossings.⁴⁷ High technology dedicated travel lanes “[w]ill be made available only to those large firms willing to dedicate extra resources to securing their shipments to the United States.”⁴⁸ Additionally, the partnership between CBP and the trade industry allows the CBP to facilitate the flow of low-risk traffic by focusing inspection resources on high-risk traffic.⁴⁹ As of August 2003, over 3,400 companies are participating in the C-TPAT program.⁵⁰

B. ADVANCE CARGO INFORMATION

Critical to expediting the transportation of goods across the Nation’s borders in the face of heightened security, is advance collection of cargo information. On November 20, 2003, the Department of Homeland Security announced rules pursuant to the Trade Act of 2002 regarding collection of advance cargo information.⁵¹ The new rules require companies transporting goods across the U.S. border to file electronically information regarding their shipment prior to arrival at a U.S. port of entry.⁵² The required data includes details of what goods are being moved and the identities of shippers and receivers.⁵³

The timeline for submitting electronic data about cargo to the CBP varies depending on the mode of transportation. Air and courier services are now required to submit information four hours prior to arrival in the

46. *Id.*

47. Nadine Siak. August 1, 2003 remarks to businesspeople in Honk Kong, WASH. FILE, Aug. 5, 2003.

48. Best Business Practices for Security America’s Borders. Hearing of the Infrastructure and Border Security Subcommittee of the House Select Committee on Homeland Security, July 23, 2003, pg.3.

49. *Id.*

50. *Id.*

51. Department of Homeland Security Announces Cargo Security Initiative, Press Release, available at http://www.customs.ustreas.gov/xp/cgov/newsroom/press_releases/11202003.xml (last visited Feb. 23, 2004).

52. *Id.*

53. John Mintz and Don Phillips, *U.S. anti-terror rules target truck, rail cargo; Truckers fear rules to jam up imports*, WASH. POST, Nov. 21, 2003, available at 2003 WL 67887881.

United States.⁵⁴ Shippers with cargo traveling by rail and ocean going vessels are required to submit information two or twenty-four hours, respectively, prior to arrival at a U.S. port of entry.⁵⁵ Truckers will be required to submit advance electronic information about their cargo either thirty minutes prior to arrival, if they are a part of the Free and Secure Trade (FAST) program, or one hour prior to arrival if they are non-FAST.⁵⁶

The information gathered from transportation companies is “transmitted to a CBP data center in Northern Virginia called the National Targeting Center.”⁵⁷ Various law enforcement and commercial databases will be linked to an automated targeting system that will process the advance cargo information.⁵⁸ Access to advance information will allow the CBP to target high-risk cargo for inspection at ports of entry.⁵⁹ By allowing the CBP to focus on high-risk cargo, low-risk cargo will once again flow smoothly between the United States, Canada, and Mexico.

C. PROBLEMS WITH THE NEW TRADE SECURITY POLICIES

The new C-TPAT and advance cargo information policies will present several challenges to the transportation of goods between the United States, Canada, and Mexico. For example, the expected mid-2004 implementation of the rule will require transportation companies to rapidly assimilate the new reporting requirements into their business processes. In addition to businesses not being ready to submit advance cargo information, a tremendous amount of resources will be necessary for the United States to process the information being submitted. Whether the United States will be able to effectively process and use the vast amount of information collected to thereby provide heightened security remains to be seen.

Specific to the trucking industry, the Chamber of Commerce and the American Trucking Association (ATA) have expressed concerns about problems trucking companies may have meeting the C-TPAT and advance cargo information requirements. Unlike the limited number of rail, air, and seagoing carriers in operation, the trucking industry includes numerous companies, large and small. In fact, “[eighty] percent of U.S. trucking firms operate five or fewer trucks, and. . . most are unable to

54. Department of Homeland Security, *supra* note 51.

55. *Id.*

56. *Id.*

57. John Mintz, *supra* note 53.

58. Department of Homeland Security Announces Cargo Security Initiative, Press Release, available at http://www.customs.ustreas.gov/xp/cgov/newsroom/press_releases/11202003.xml (last visited Feb. 23, 2004).

59. *Id.*

collate and transmit data electronically to government agencies.”⁶⁰ Additionally, the ATA is concerned about “truckers’ ability to communicate quickly with CBP once their loads have been cleared for border crossing.”⁶¹ Often, trucking firms require an immediate decision “[t]o prevent disruptions in the supply chain and to keep on schedule to satisfy the time-sensitive demands of. . . just-in-time manufacturing.”⁶² Thus, implementation of new programs like C-TPAT and advance cargo information will present challenges to the transportation of goods between the United States, Canada, and Mexico.

IV. POLICY ALTERNATIVES FOR THE FUTURE: COOPERATIVE APPROACHES TO BORDER SECURITY

The United States, Canada, and Mexico “[s]hare a common border and common objectives: to ensure that the border is open for business, but closed to crime.”⁶³ Because of the above stated objectives, “[s]ecurity now involves cooperation as never before.”⁶⁴ However, “[a]sking for local, state, and national law enforcement agencies to interact toward common goals in a seamless fashion would have seemed just five years ago to have been asking for the moon.”⁶⁵ Not only are law enforcement agencies in the United States, Canada, and Mexico responsible for enforcing different laws, they each operate within their own complex bureaucracy. Yet, there are calls for “a ‘trilateral future’ in which the North American security perimeter includes all three countries.”⁶⁶ Before such a “trilateral future” may exist, a significant amount of trust, respect, and cooperation between all three countries will be required to bridge existing political, legal, and cultural gaps.

However, cooperation between the United States, Canada, and Mexico in border security initiatives is not a new concept. For example, since 1997, U.S. and Canadian law enforcement agencies have worked together to improve security along the Northern border under a program called the Integrated Border Enforcement Team.⁶⁷ After the terrorist attacks of

60. John Mintz and Don Phillips, *Security Rules Require Truckers to File Cargo Data*, WASHINGTON POST, Nov. 21, 2003, at A19.

61. *Id.*

62. *Id.*

63. See, e.g., Royal Canadian Mounted Police, *Canada/U.S. Integrated Border Enforcement Teams*, at http://www.rcmp.ca/security/ibets_e.htm (last visited Feb. 16, 2004).

64. Dr. Jose Z. Garcia, *Cross-Border Collaboration in Law Enforcement and Security*, TRANS-BORDER INSTITUTE BULLETIN: UNIVERSITY OF SAN DIEGO (Nov. 13, 2003).

65. *Id.*

66. *Id.*

67. *Improving Security and Facilitating Commerce at the Northern Border: Hearing Before the Subcomm. on Criminal Justice, Drug Policy and Human Resources of the House Comm. on Government Reform*, 107th Cong. 8 (2001) (statement of Congressman Rick Larsen).

September 11, 2001, the U.S. Department of Homeland Security made efforts to collaborate with Canada and Mexico in border security programs by entering into "Smart Border" agreements.⁶⁸ One of the intended purposes of the "Smart Border" agreements is to address the reduced commercial traffic and congestion along the Nation's borders since September 11, 2001.⁶⁹ The Smart Border agreements between the United States, Canada, and Mexico include initiatives to harmonize port of entry operation, share border facilities, jointly train officers, and share customs database information.⁷⁰ Thus, cooperation between the United States, Canada, and Mexico is part of a current strategy to secure the Nation's borders while facilitating the flow of goods.

A. THE TRI-NATIONAL BORDER SECURITY AGENCY

The time is ripe to build upon existing cooperative border security initiatives, such as the U.S. Department of Homeland Security's "Smart Border" Action Plan, by creating a tri-national border security agency. In the wake of the attacks of September 11, 2001, Val Meredith, a member of the Canadian Parliament, first suggested a bi-national border management agency to the U.S. Committee on Government Reform.⁷¹ Meredith suggested that the bi-national agency between Canada and the United States should ultimately become a tri-national agency with the inclusion of Mexico.⁷²

The tri-national border security agency (Agency) would be funded pro rata by the United States, Canada, and Mexico. The U.S. Customs and Border Protection (CBP) officials and their counterparts from Canada and Mexico would staff the Agency.⁷³ The United States, Canada, and Mexico would each appoint senior managers to the Agency.⁷⁴ Military and security organizations from each country would also have liaison officers to the tri-national border security agency as needed.⁷⁵ Finally, the tri-national border security agency would be housed in a joint head-

68. See generally Press Release, The White House, Summary of Smart Border Action Plan Status (Sept. 9, 2002) available at <http://www.whitehouse.gov/news/releases/2002/09/print/20020909.html>; The White House, Smart Border: 22 point agreement, U.S. - Mexico Border Partnership Action Plan, available at <http://www.whitehouse.gov/infocus/usmxborder/22points.html> (last visited Feb. 16, 2004).

69. Elizabeth G. Book, *Security Beat: U.S. and Canada Seek to Reduce Border Bottlenecks*, NAT'L DEF. MAG. (December 2002), available at <http://www.nationaldefensemagazine.org/article.cfm?Id=985>.

70. The White House, *supra* note 68.

71. Committee on Government Reform, *supra* note 67 at 56 (written submission of Val Meredith, M.P.).

72. *Id.*

73. *Id.*

74. *Id.* at 57 (written submission of Val Meredith, M.P.).

75. *Id.*

quarters and operate out of joint border facilities.⁷⁶

The recent United States “Smart Border” agreements have laid the groundwork for a tri-national agency and include some of the Agency’s programs, as first suggested by Meredith. Using a common database, the Agency would be able to monitor the entry of people into and out of the North American continent.⁷⁷ Each country would contribute information to the shared database. For example, the United States would share information from the C-PTAT and advance cargo information programs with the Agency database. The transportation of low-risk cargo by companies participating in an automated pre-clearance program, much like the CBP’s new advance electronic cargo information requirements, would be expedited with minimal delay using Intelligent Transportation System technology.⁷⁸

B. INTEGRATION OF A TRI-NATIONAL BORDER AGENCY WITH INTERNATIONAL LAWS

As discussed earlier in this article, over 400 laws arising from more than forty federal agencies regulate the cross-border transportation network.⁷⁹ To be effective at reducing duplicative border security efforts and providing smooth and rapid transportation of goods internationally, a tri-national border security agency would require unified or substantially similar customs regulations between the United States, Canada, and Mexico.

However, harmonization of portions of the laws of the United States, Canada, and Mexico is not an unthinkable task. For example, the implementation of NAFTA required harmonization of international laws by requiring the United States, Canada, and Mexico to conform many of their domestic trade laws to implement a free trade zone.⁸⁰ Furthermore, one of the core objectives of NAFTA was to “[e]stablish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits. . .” of the tri-nation agreement.⁸¹ Accordingly, NAFTA has provided a framework for the successful harmonization of trade security laws between the United States, Canada, and Mexico.

Like the harmonization of trade regulations in the domestic laws of the United States, Canada, and Mexico for NAFTA, the creation of a tri-national border security agency will require the three nations to conform their land border customs security laws. Similar to the gradual imple-

76. *Id.*

77. *Id.*

78. *Id.* at 56 (written submission of Val Meredith, M.P.).

79. *Id.* at 21 (statement of Thomas W. Hardy).

80. “What is NAFTA”, *supra* note 12.

81. *Id.*

mentation of uniform trade regulations in NAFTA, harmonization of customs laws necessary to support a tri-national border security agency has already begun. For example, the United States and Canada are working to align customs processes for all commercial shipments by 2005.⁸² Efforts are underway to harmonize the Canadian 24-hour rule, which requires transmission of manifest information for sea cargo to customs 24 hours in advance of loading, with the current United States' 24-hour rule.⁸³ Furthermore, in July 2003, Canada and the United States announced proposed harmonized rules for advance electronic cargo reporting for rail, air and highway modes of transportation of goods internationally.⁸⁴ Thus, the harmonization of laws for existing programs provides a roadmap to facilitate the changes in law that will be required in the United States, Canada, and Mexico to support a tri-national border agency.

C. CHALLENGES FACING A TRI-NATIONAL BORDER AGENCY

Even ten years after the implementation of NAFTA, its benefits are still being debated.⁸⁵ However, the controversy surrounding the success or failure of NAFTA is not centered on the ability of the United States, Canada, and Mexico to harmonize their trade laws.⁸⁶ Rather, NAFTA's critics focus on the fact "[t]hat NAFTA's impact on the U.S. economy has varied dramatically from place to place and industry to industry."⁸⁷ More importantly, NAFTA critics argue that NAFTA "[f]ailed to address problems created by massive industrialization. . ." along the nation's borders, including the steady stream of trucks that clog the highways.⁸⁸

A common perception among nations, including Canada and Mexico, is that the terrorist attacks of September 11, 2001 "[b]rought a new single-mindedness to U.S. foreign and domestic policy. . ."⁸⁹ Furthermore, the "economic and power differential between the U.S. and Mexico" often lead to Mexican sensitivity about U.S. influence.⁹⁰ Similarly, Canadian think tanks have expressed that "[w]ithout Canadian coopera-

82. Press Release, Government of Canada, Governor Ridge and Deputy Prime Minister Manley Issue One-Year Status Report on the Smart Border Action Plan (Oct. 3, 2003) available at <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=&mid=4&cat=58&did=2465>.

83. *Id.*

84. *Id.*

85. See generally Evelyn Iritani, *10-year-old NAFTA Earns Widely Mixed Evaluations*, LOS ANGELES TIMES, Jan. 29, 2004 available at <http://www.post-gazette.com/pg/04029/266831.stm>.

86. *Id.*

87. *Id.*

88. *Id.*

89. The Globe and Mail, *A 'bold and coordinated' border*, available at <http://www.globeandmail.com/series/borders/border.html> (last visited on Feb. 16, 2004).

90. Garcia, *supra* note 64.

tion in tightening administration along the border, the process will be frustrating, costly and unproductive” to both the United States and Canada.⁹¹ Accordingly, a cooperative approach to the formation and implementation of a tri-national border security agency will be critical to its success.

“[C]ommon border security must be assured without hampering commerce and travel” between the United States and Canada.⁹² Similar to the concerns raised by U.S. trucking companies to the new regulations currently being implemented by the CBP, Canadian and Mexican companies will likely be apprehensive about the imposition of new regulations in their respective nations. For example, Canadian and Mexican trucking companies will likely share concerns similar to that of American trucking companies, discussed *supra*, about their ability to implement C-PTAT and advance cargo information requirements.

Furthermore, enforcement of a tri-national border agency’s regulations may conflict with existing informal working agreements between companies and border communities.⁹³ Thus, any planning for the Agency should include the input from the municipalities, counties, provinces, and states in all three countries that share the border.⁹⁴

D. BENEFITS OF A TRI-NATIONAL BORDER AGENCY

A tri-national border security agency would provide a unified front to citizens and commerce at the borders between the United States, Canada, and Mexico. The greatest perceived benefit of a tri-national agency would be avoiding duplication of efforts.⁹⁵ By sharing information and avoiding duplicative efforts, the Agency would provide intensified and efficient security at the Nation’s ports.⁹⁶ The Agency would also “[e]nsure that there is appropriate infrastructure . . . at land crossings, to separate low-risk, pre-cleared individuals and goods, from those that are not.”⁹⁷ Knowledge management and shared databases of high-risk cargo between the United States, Canada, and Mexico will better enable the United States to ensure the safe and efficient flow of goods across the border. More importantly, the harmonized regulations fostered by the

91. The Globe and Mail, *supra* note 89.

92. Committee on Government Reform, *supra* note 67, at 8 (statement of Congressman Rick Larsen).

93. *Improving Security and Facilitating Commerce at the Southern Border: Hearing Before the Subcomm. on Criminal Justice, Drug Policy and Human Resources of the House Comm. on Government Reform*, 107th Cong. 85 (2002) (written statement of Larry A. Dever).

94. *Id.*

95. Committee on Government Reform, *supra* note 67, at 56 (statement of Val Meredith, M.P.).

96. *Id.*

97. *Id.*

creation of the Agency will simplify the cross-border transportation of goods.

V. CONCLUSION

The terrorist attacks of September 11, 2001, changed the face of our nation's borders for the companies who transport and rely upon the goods that cross our borders each day. The heightened security and inspection of commercial cargo has led to increased wait times and delays in the transportation of goods across the border. New programs like C-TPAT and the advanced electronic cargo information requirements promise to balance the competing needs of heightened security with facilitating the transportation of goods. However, consideration of policy alternatives like cooperative approaches to border security and the creation of a tri-national border security agency will ensure the future facilitation of transportation of goods across the border.