



# NORTHERN BORDER DISCORD

*U.S. security,  
trade measures  
anger Canadians.*

BY ERIC KULISCH

**U**.S. Homeland Security Secretary Janet Napolitano has raised the ire of Canadians by suggesting the northern border should not be immune from extra security measures just because Canada is a strong trading partner and friendly neighbor.

Canadian politicians and business groups are particularly upset by what they perceive is a mindset to treat the southwestern and northern borders as equivalent areas of threat, even though drug smuggling and illegal immigration from Canada aren't considered major problems. At the core of the tension is a feeling among Canadians that U.S. officials continue to mistakenly link their northern neighbor as the entrance way for the 9/11 attackers and view it as less vigilant against terrorism.

They complain the U.S. government is moving away from agreed upon risk management principles that balance security and trade towards policies that stress high inspection and documentation levels, regardless of the risk profile of the shipment, conveyance or person — in the process making it harder to do business by increasing costs and delays.

"We can't keep piling fees and paperwork onto cross-border transportation and brokering firms," especially during the current recession, Michael Wilson, Canada's ambas-

sador to the United States, said April 21 at the Border Trade Alliance's (BTA) annual conference in Washington.

Canadians are also extremely unhappy about what they perceive as growing U.S. protectionism, particularly the "Buy America" provisions in the \$787 billion economic stimulus bill enacted in February. The spending legislation has essentially prohibited U.S. agencies, municipalities and states from buying materials from foreign suppliers with Recovery Act dollars.

President Obama assured Canada during a visit to Ottawa that a clause added to the legislation requires the measure to be consistent with U.S. international trade obligations, and would not affect trade with Canada. The North American Free Trade Agreement and other trade treaties permit some domestic preferences and purchasing policies.

But according to industry groups, while some federal contracts are still open to Canadian and other foreign suppliers, most of those issued by state and local governments are not. And regulators have ruled that construction projects even partially funded by the Recovery Act must use American material and equipment.

Meanwhile, other recent and pending legislation also imposes domestic mandates on federal auto fleet purchases, Transporta-

tion and Defense department contracting for steel and iron, and clean water and school construction funds.

Canadian officials argue the Group of Twenty countries pledged their economic stimulus plans would be used to help their own economies and those of their trading partners, and that they actually removed duties on some imported goods.

A potential trade war is brewing as Canadian politicians consider how to retaliate against the U.S. actions. One piece of legislation would require the government to give Canadian companies priority when purchasing goods and services. Already, a number of Ontario towns have passed measures barring U.S. companies from municipal contracts.

**Border Armor.** The Canadian Trucking Association said the hardening of the border has exacerbated a significant decline in cross-border trucking during the past decade attributed to the relocation of manufacturing plants overseas, appreciation in the value of the Canadian dollar and the souring of the economy in the last 18 months.

The number of trucks crossing the northern border is down 10 percent since 2001. There were 5.9 million southbound trucks in 2008, down 200,000, or 10 percent, from the previous year and down 22 percent compared to the peak volume in 2004. And February volumes at the Ambassador, Blue Water and Peace bridges — the three busiest commercial crossings — were down 35 percent, 28 percent and 17 percent, respectively, compared to the same month a year ago.

Many individual drivers are getting out of the business to avoid the hassle of background checks and delays that reduce their productivity, while many U.S. motor carriers are reluctant to cross the border because they don't have good knowledge about U.S. regulations or don't want to make the necessary



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U.S. Department  
of Homeland Security

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investment to comply, industry officials say.

Since the 9/11 terror attacks at least a dozen cross-border regulations, product inspection fees and security programs have been instituted. During the past two years, Canadian officials have urged the United States to renew its commitment to free and open trade in North America.

Two-way U.S.-Canada trade amounts to more than \$500 billion per year or \$1.5 billion per day. Canada is the No. 1 export market for 35 states, supporting 7 million American jobs.

Despite the drop-off in truck volumes, processing time at U.S. border checkpoints has remained about the same, according to Transport Canada. Travelers and shippers are not experiencing the same massive delays of two summers ago when the Department of Homeland Security implemented stricter passenger vehicle checks at ports of entry.

But the reason for the improvement is that the recession masks many of the problems at the border, said Jennifer Fox, assistant vice president for operations and education at the Canadian Trucking Association.

Canadians also lament the loss of a way of life in which the border was largely invisible and people could travel back and forth every day for work, shopping, entertainment or to visit friends without travel documents. The decline in discretionary travel has affected the economy of local communities along the border.

Napolitano's acknowledgement in a March 25 address to the Brookings Institution that the United States needs to more carefully scrutinize people and cargo coming across the northern border irked many Canadians, some of whom questioned the meaning of comments about implementing security in a way that does not "unduly" impact all trade.

The DHS secretary elaborated to the BTA that the northern and southern borders are similar in that human smuggling, drug smuggling and illegal entry take place along both boundaries, although to varying degrees. That means that the techniques and strategies used may vary in proportion to the threat.

"So, we need to recognize that there are actual borders, North and South, not metaphorical borders, and we cannot pretend that there are not borders even though we have close, close relationships with Canada and with Mexico," Napolitano said.

"There needs to be some level of parity between the two borders. We don't want to appear to go heavy on the southern border and light on the northern border. We will have a balanced approach, consistent with effective security for our entire country."

Continuing to allow people to enter the United States without approved travel documents is unrealistic, she added.

Under the Western Hemisphere Travel Initiative (WHTI), a U.S. program that went into effect June 1, all citizens of the United States, Canada, Mexico and Bermuda must present a passport or other approved identification document to enter or depart the United States. Until the 9/11 attacks, an oral declaration of citizenship was sufficient to cross the border. After the attacks a wide range of informal documents were accepted.

DHS officials said WHTI went into effect without any difficulties or long delays at the border that many feared. Many Canadians fear the passport requirements and fees will discourage frequent travel and economic activity across the border.



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Speaking to the Anti-Defamation League National Leadership Conference four weeks later, Napolitano said more security requirements are necessary, "but we need to do it in such a fashion that doesn't slow down trade, that keeps those trucks moving back and forth, those lines short, and recognizes that borders ... are almost like living, breathing organisms."

But it was an earlier interview in which she said that 9/11 attackers entered the United States through Canada that really set off a barrage of criticism in the Canadian press. Napolitano subsequently acknowledged that she misspoke and Public Safety Minister Peter Van Loan, her counterpart in Canada, quickly came to her defense, saying there are no hard feelings over a minor slipup that she quickly corrected.

The clarification of her original remarks did not satisfy opposition members of parliament, who wanted her to make a clear statement to Americans that Canada is not a threat. They say misunderstandings about the border are behind the growth of U.S.-Canada border security measures.

"Canadians are ultra sensitive to border management issues and there were high

expectations for a change in policy when Obama was elected," explained Maryscott Greenwood, executive director of the Canadian American Business Council.

The secretary "stated some things that were obvious about the border, but Canadians were expecting something different. I think there was an overreaction in Canada and a failure to hear all the positive messages that Napolitano said about the U.S.-Canada relationship," Greenwood said.

In his speech, Wilson called for development of a common 15-year vision for how to manage the shared border so that infrastructure and personnel investments in both countries are well targeted, and that border security regulations are not unduly burdensome. Congestion at ports of entry has eased with the economic downturn, but both nations should work to streamline clearance procedures, harmonize approaches to risk management and construct new facilities to allow more risk-based inspections, in anticipation of increases in trade and travel, he said.

Among the needed upgrades are more special lanes for pre-vetted, low-risk travelers and commercial trucks, which could be paid for by U.S. and Canadian economic stimulus funds.

"Canada wants the northern border to be a true gateway to our mutual prosperity — not a cumbersome checkpoint that stifles our competitiveness," Wilson said, echoing remarks he made at the November 2007 Trade Symposium hosted by U.S. Customs and Border Protection.

He noted that U.S. inspection fees on imports disproportionately impact Canadian businesses because integrated supply chains such as those used by the automotive industry involve component pieces moving back-and-forth across the border during the assembly process compared to port shipments that only are subject to a one-time fee.

"Our mantra has been, 'Don't let proximity be a barrier to freer trade,'" Wilson said. "That's why, instead of a per-transaction fee on certain products we need to look at other ways of applying the fee so that the cost of crossing a land border between two contiguous countries is equivalent to the fee charged on a shipload of cars coming from Japan or Korea, or maybe China or India."

Wilson also recommended that studies be conducted to determine how well border security programs instituted after 2001 are working so that companies can be sure they are getting a return on their own security investments in terms of expedited cargo release and transit. The two governments should use the results of the study to consolidate existing programs that meet the shared vision before introducing any new ones, he said.

The Canadian Trucking Association

has asked the prime minister of Canada to create a cabinet committee focused on the border, or a senior bureaucratic position with authority for all aspects of the border, because border policy is often carried out in an inconsistent fashion.

Extra layers of security at the border without seamless passage for low-risk cargo and travelers constrain efficient cross-border movement the same way medieval armor is more restrictive than lightweight, high-tech body armor used by modern soldiers, Greenwood said.

Many Canadians complain the partnership they expected from the U.S.-Canadian

Smart Border Action Plan in December 2001 has not materialized, and that Canada is not consulted about new U.S. security measures.

Canadian politicians, for example, are upset their government was not notified about plans to install new remote video cameras on the U.S. side of the St. Clair River for the Border Patrol to detect illegal border crossings. Brian Masse, a parliamentarian for the center-left New Democrat Party, objected at the BTA to the "militarization" of the border, saying the gunboats, Black Hawk helicopters, security cameras, spy towers and drones on the border "are things we normally associate with Iraq and Afghanistan."

Bev Shipley, a Conservative Party member in the House of Commons, told the audience that WHTI and U.S. inspection fees for agriculture shipments are examples of unilateral actions that run counter to the principle of jointly making border-related policy changes.

He suggested the two countries should work towards a European Union model focused on North American perimeter security that allows internal borders to be crossed with ease.

"As we slow down the movement of these products across the border, our competitiveness declines at a time when other regions are starting to get more integrated economically," Michael Kergin, a senior advisor at Bennett Jones LLP and former Canadian ambassador to the United States, said at Brookings.

Wilson reiterated Canada's desire for a land pre-clearance program under which shipments and conveyances are screened, with the help of information technology and advance information, prior to reaching the border. He told reporters after the speech that pre-clearance could involve stationing Customs officers in factories and warehouses to clear goods as they are loaded on a truck, which is then sealed with an approved device and follows a pre-arranged route to the border crossing. The trucks could be outfitted with Global Positioning System tracking to ensure that they stay on course and don't pull over for unscheduled stops.

The other pre-clearance option is for a designated inland pre-clearance facility where goods can be cleared before they reach the border. That approach failed in 2007 when negotiations for a pilot program that would have relocated U.S. primary and secondary inspection stations to the Canadian side of the border at the Peace Bridge in Fort Erie collapsed. The primary stumbling block was DHS's insistence that its inspectors be allowed to collect fingerprints on a routine basis, which is prohibited by Canadian law.

Prescreening was one of the key tenants of the U.S.-Canadian Smart Border Action Plan several years ago.

Napolitano agreed a shared border management regime that synthesizes different immigration, cargo and passenger screening procedures into a unified, bilateral approach is a worthy long-term goal, but noted that such an effort faces enormous legal, logistical and other challenges.

"Let's not pretend that we can just wave a magic wand and we have a shared border management structure. It's not an easy thing to accomplish," she said at Brookings.

An initiative that could placate some concerns of Canadians and industry arose out of a meeting in late May between Napolitano and Minister for Public Safety Peter Van Loan. The two officials agreed to

develop a joint threat and risk assessment for the U.S.-Canada border to help build trust and focus resources on the greatest security priorities.

"If you base yourself on what you collectively agree constitutes a risk and then negotiate between countries as to the measures you need to implement with respect to that risk, you then take some of the politics out of it ... because if you have a different level of risk, you develop different levels and methods of dealing with that risk," Kergin said.

It is also important for Canada and the United States to develop the same technologies that facilitate risk management, and to ensure that they are compatible and reciprocal, he added.

The two ministers also took other steps to improve cooperation on border security and efficiency. During the meeting in Detroit, they signed an agreement to make permanent the Shiprider pilot program under which joint law enforcement teams are stationed along the maritime border to combat smuggling and trafficking of illegal drugs, tobacco, guns and people in shared waterways.

The goal behind the cooperative program is to limit the ability of criminals to exploit the jurisdictional differences associated with cross-border policing beyond the legal water boundary. At present, U.S. or Canadian vessels have to stop at the border when trying to interdict a vessel or swimmer and call upon the other country's officials for help. Under Shiprider, the Royal Canadian Mounted Police and the Coast Guard cross-train officers, share resources and personnel, and utilize each other's vessels in the Great Lakes, St.

Lawrence Seaway and other waters.

Masse, the opposition member of Parliament, criticized the arrangement as an abrogation of Canadian sovereignty and said Van Loan "did everything in his power to capitulate" to the DHS.

Napolitano and Van Loan also agreed to a framework for the movement of people and goods across the border during and following an emergency. The framework is intended to ensure that first responders are not delayed at the border when emergency aid is needed in either country. It also stipulates that if the border is closed it will return to normal operations as quickly as possible.

In a joint statement, the two governments opened the door to exploring models for joint or shared border facilities, equipment and technology, as well as cross-designation of personnel as appropriate. And they stressed the need for risk management techniques to facilitate the movement of legitimate trade and travelers.

The two officials plan to meet twice a year to make sure cross-border issues receive top-level attention. ■

## Blue Water Bridge project green lighted

The U.S. Federal Highway Administration on May 12 completed the final environmental approval for the expansion of the U.S. port of entry at the Blue Water Bridge in Port Huron, Mich., and improvements to 2.5 miles of the Interstate 94/I-69 corridor west of the plaza.

The environmental approval process took seven years of consultations, public hearings, traffic analyses and environmental studies.

The decision allows the Michigan Department of Transportation to begin design and right of way acquisition work for the \$553 million project, starting with the interstate corridor and replacement of the nearby Black River Bridge.

Construction could begin as early as 2011 on expansion of the Black Water Bridge and freeway improvements, according to MDOT.